

# **Documents Pertaining to EDCF Loan Agreements**

**General Terms and Conditions Applicable to EDCF Loan Agreements**

**Guidelines for Procurement under the EDCF Loan**

**Guidelines for the Employment of Consultants under the EDCF Loan**

**Disbursement Procedures under the EDCF Loan**

***ECONOMIC DEVELOPMENT  
COOPERATION FUND***

**General Terms and Conditions**  
**Applicable to EDCF Loan Agreements**

***ECONOMIC DEVELOPMENT***  
***COOPERATION FUND***



## TABLE OF CONTENTS

| <u>Article</u>     |  | <u>Page</u> |
|--------------------|--|-------------|
| <b>Article I</b>   | <b>Purpose; Application to Loan Agreements</b> ..... | <b>5</b>    |
| Section 1.01       | Purpose .....  | 5           |
| Section 1.02       | Application of General Terms and Conditions .....    | 5           |
| Section 1.03       | Inconsistency with Loan Agreement .....              | 5           |
| <b>Article II</b>  | <b>Definitions; References; Headings</b> .....       | <b>5</b>    |
| Section 2.01       | Definitions .....                                    | 5           |
| Section 2.02       | References .....                                     | 8           |
| Section 2.03       | Headings .....                                       | 8           |
| <b>Article III</b> | <b>Loan; Repayment; Interest</b> .....               | <b>8</b>    |
| Section 3.01       | Loan .....   | 8           |
| Section 3.02       | Repayment of Principals .....                        | 9           |
| Section 3.03       | Interest .....                                       | 10          |
| Section 3.04       | Overdue Charge .....                                 | 10          |
| Section 3.05       | Computation .....                                    | 10          |
| Section 3.06       | Application of Payment .....                         | 10          |
| <b>Article IV</b>  | <b>Payments</b> .....                                | <b>11</b>   |
| Section 4.01       | Place of Payment .....                               | 11          |
| Section 4.02       | Banking Day .....                                    | 11          |
| Section 4.03       | Currency .....                                       | 11          |
| Section 4.04       | Payments to be Free and Clear .....                  | 11          |
| Section 4.05       | Expenses .....                                       | 12          |
| Section 4.06       | Loan Account .....                                   | 12          |
| Section 4.07       | Notice .....   | 12          |
| <b>Article V</b>   | <b>Guarantee for Loan</b> .....                      | <b>12</b>   |
| Section 5.01       | Guarantee for Loan .....                             | 12          |
| Section 5.02       | Additional Guarantee .....                           | 12          |
| <b>Article VI</b>  | <b>Procurement</b> .....                             | <b>13</b>   |
| Section 6.01       | Procurement Procedures .....                         | 13          |
| Section 6.02       | Bank's Review and Approval .....                     | 13          |
| Section 6.03       | Approval of Contract .....                           | 13          |
| Section 6.04       | Modifications .....                                  | 13          |
| Section 6.05       | Procurement-related Complaints .....                 | 13          |
| <b>Article VII</b> | <b>Disbursement</b> .....                            | <b>14</b>   |

|                     |  |           |
|---------------------|--|-----------|
| Section 7.01        | Disbursement Procedures .....                        | 14        |
| Section 7.02        | Constitution of Obligation .....                     | 14        |
| Section 7.03        | Adequacy of Documents .....                          | 14        |
| Section 7.04        | Notice of Disbursement .....                         | 14        |
| Section 7.05        | Notice of Completion of Disbursement .....           | 14        |
| <b>Article VIII</b> | <b>Cancellation; Acceleration of Maturity .....</b>  | <b>15</b> |
| Section 8.01        | Cancellation by the Borrower .....                   | 15        |
| Section 8.02        | Acceleration of Maturity .....                       | 15        |
| <b>Article IX</b>   | <b>Administration of Loan .....</b>                  | <b>16</b> |
| Section 9.01        | Management of Project .....                          | 16        |
| Section 9.02        | Reports and Information .....                        | 16        |
| Section 9.03        | Exchange of View .....                               | 17        |
| <b>Article X</b>    | <b>Governing Law; Arbitration .....</b>              | <b>17</b> |
| Section 10.01       | Governing Law .....                                  | 17        |
| Section 10.02       | Arbitration .....                                    | 17        |
| <b>Article XI</b>   | <b>Effectiveness; Termination .....</b>              | <b>19</b> |
| Section 11.01       | Conditions Precedent to Effectiveness .....          | 19        |
| Section 11.02       | Effective Date .....                                 | 20        |
| Section 11.03       | Evidence of Authority and Specimen Signatures .....  | 21        |
| Section 11.04       | Termination of Loan Agreement .....                  | 21        |
| <b>Article XII</b>  | <b>Miscellaneous Provisions .....</b>                | <b>22</b> |
| Section 12.01       | Failure to Exercise Rights .....                     | 22        |
| Section 12.02       | Non-Exemption of the Borrower from Obligations ..... | 22        |
| Section 12.03       | Assignment .....                                     | 22        |
| Section 12.04       | Non-Discrimination .....                             | 22        |
| Section 12.05       | Notices and Requests .....                           | 22        |
| Section 12.06       | Execution in Counterparts .....                      | 23        |
| <b>Annex 1</b>      | Notice Concerning Interest and Principal .....       | 24        |
| <b>Annex 2</b>      | Guarantee for the Loan .....                         | 25        |
| <b>Annex 3</b>      | Application for Approval of Contract .....           | 27        |
| <b>Annex 4</b>      | Notice of Approval of Contract .....                 | 28        |
| <b>Annex 5</b>      | Notice of Disbursement .....                         | 29        |
| <b>Annex 6</b>      | Notice of Completion of Disbursement .....           | 30        |
| <b>Annex 7</b>      | Legal Opinion on Loan Agreement .....                | 31        |
| <b>Annex 8</b>      | Legal Opinion on Guarantee .....                     | 33        |

# **General Terms and Conditions Applicable to EDCF Loan Agreements**

## **ARTICLE I**

### **Purpose; Application to Loan Agreements**

#### **Section 1.01. Purpose**

The purpose of these General Terms and Conditions Applicable to EDCF Loan Agreements (the "**General Terms and Conditions**") is to set forth certain terms and conditions generally applicable to loans made by the Bank from the resources of the EDCF.

#### **Section 1.02. Application of General Terms and Conditions**

The Loan Agreement shall provide that the parties thereto accept the provisions of the General Terms and Conditions. To the extent so provided in the Loan Agreement, the General Terms and Conditions shall apply thereto and shall govern the rights and obligations thereunder of the parties with the same force and effect as if they were fully set forth therein. No revocation or amendment of the General Terms and Conditions shall be effective in respect of any such Loan Agreement unless both parties thereto have so agreed.

#### **Section 1.03. Inconsistency with Loan Agreement**

If any provision of the Loan Agreement or the Guarantee, if any, is inconsistent with a provision of the General Terms and Conditions, the provision of the Loan Agreement or the Guarantee, as the case may be, shall govern.

## **ARTICLE II**

### **Definitions; References; Headings**

#### **Section 2.01. Definitions**

The following terms shall have the following meanings wherever used in the General Terms and Conditions:

**"Agreed Exchange Rate"** means, for any disbursement of the Loan denominated

in a Local Currency, the exchange rate of Korean Won against such Local Currency as agreed between the bank in Korea making the relevant disbursement of the Loan and the bank [in the country of the Borrower] designated by the Borrower.

**"Average Rate"** means the average of the telegraphic transfer selling rates of Korean Won against US Dollar, as quoted and publicly displayed by the Bank, during the one month period from the sixteenth (16th) day of two calendar months prior to the month when the first procurement contract for goods and services or the consulting service contract is signed respectively, to the fifteenth (15th) day of one calendar month prior thereto.

**"Bank"** means the Export-Import Bank of Korea, which has been entrusted by the Government of the Republic of Korea with the operation and management of the EDCF.

**"Banking Day"** means a day on which banks are open for business in Seoul, the Republic of Korea and in the country of the Borrower.

**"Borrower"** means the party to the Loan Agreement to which the Bank has agreed to make the Loan.

**"Complaint"** means a procurement-related complaint raised from interested parties, which is an actual bidder/consultant seeking to obtain the contract at issue including potential bidders/consultants, arising under the situations of (i) prior to the submission of bids, (ii) after submission of bids but prior to contract award; and (iii) after contract award.

**"EDCF"** means the Economic Development Cooperation Fund which is the fund established by the Government of the Republic of Korea under the Economic Development Cooperation Fund Act of the Republic of Korea.

**"EDCF Safeguard Policy"** means environmental and social guidelines or standard of the latest version issued by the Bank

**"Effective Date"** means the date on which the Loan Agreement shall have come

into force and effect pursuant to Section 11.02.

“**Euros**”, “**Euro**” and “**€**” mean the single currency unit of the Participating Member States.

“**Exchange Rate Determination Date**” means (i) with respect to any Purchasing Rate, if (x) the Bank makes one time purchase of all US Dollars or Euros in the foreign exchange market in Korea to make disbursements of the Loan in such currency under the Loan Agreement, the date specified as the currency conversion date in such foreign currency exchange contract and (y) the Bank purchases the US Dollars or Euros in the foreign exchange market in Korea each time a disbursement of the Loan is made in such currency, the date which is two Banking Days before the date on which such disbursement of the Loan is made and (ii) with respect to any Agreed Exchange Rate, the currency conversion date specified in the agreement entered into between the bank in Korea making the relevant disbursement of the Loan and the bank [of the Borrower’s country] designated by the Borrower.

“**Guarantee**” means the irrevocable and unconditional letter of guarantee to be issued by the Guarantor in favor of the Bank in accordance with the provision of Section 5.01.

“**Guarantor**” means the issuer of the Guarantee.

“**Korean Won**” or the sign “**₩**” means the lawful currency of the Republic of Korea.

“**Loan**” means the loan provided for in the Loan Agreement.

“**Local Currency**” means the currency [of the country of the Borrower] specified as such in the Loan Agreement.

“**Participating Member State**” shall mean any member state of the European Community that adopts or has adopted the Euro as its lawful currency in accordance with the legislation of the European Community relating to economic and monetary union.



**"Project"** means the project or program for which the Bank has agreed to make the Loan, as described in the Loan Agreement and as the description thereof may be amended from time to time by agreement between the Bank and the Borrower.

**"Project Executing Agency"** means the entity or entities responsible for carrying out the Project as specified in the Loan Agreement.

**"Purchasing Rate"** means the exchange rate of Korean Won against US Dollar or Euro, as the case may be, when the Bank purchases US Dollars or Euros in the foreign exchange market in the Republic of Korea for the implementation of the Project in accordance with the Borrower's request.

**"Standstill Period"** means the period following the Notification of Intention to Award within which Complaints can be filed. After its expiry, the Borrower will have no obligation to respond to the Complaints.

**"US Dollar"** or the sign **"US\$"** means the lawful currency of the United States of America.

### **Section 2.02. References**

Except where the context otherwise requires, references to a specified Article or Section shall be construed as references to that specified Article or Section of the General Terms and Conditions.

### **Section 2.03. Headings**

The headings of the Articles and Sections and the Table of Contents hereof are inserted for convenience of reference only and shall have no effect on the interpretation of any provision of the General Terms and Conditions.

## **ARTICLE III**

### **Loan; Repayment; Interest**

#### **Section 3.01. Loan**

(a) The amount of the Loan in Korean Won shall be the aggregate of i) the amount allocated for the procurement of goods and services (hereinafter called the

"**Goods and Services Portion**") and ii) the amount allocated for the employment of consulting services (hereinafter called the "**Consulting Services Portion**"). Each of the Goods and Services Portion and the Consulting Services Portion is set out in the Allocation of Loan Proceeds attached to the Loan Agreement as Schedule 2.

(b) The Bank shall, by using the Average Rate, calculate and fix the amount of i) the Goods and Services Portion when it approves the first procurement contract for goods and services and ii) the Consulting Services Portion when it approves the first employment contract for the consulting services, if any.

(c) Notwithstanding paragraph (b) above, where a part of the proceeds of the Goods and Services Portion and/or the Consulting Services Portion is disbursed in US Dollars, Euros or the Local Currency in accordance with the provisions of the Loan Agreement, the whole of the corresponding Goods and Services Portion and/or the Consulting Services Portion shall be calculated i) in case of any disbursement in US Dollars or Euros, by using the Purchasing Rate in effect on the Exchange Rate Determination Date, respectively and ii) in case of any disbursement in a Local Currency, by using the Agreed Exchange Rate in effect on the Exchange Determination Date.

(d) In fixing the amount of the Loan in Korean Won, the Loan amount in Korean Won shall be rounded up to the nearest one million (1,000,000) Korean Won, but if the Korean Loan amount is determined by applying the Purchasing Rate or the Agreed Exchange Rate, as the case may be, in accordance with paragraph (c) above, the Loan amount in Korean Won shall be rounded up to the nearest ten (10) Korean Won.

### **Section 3.02. Repayment of Principal**

(a) The Borrower shall repay the principal amount of the Loan disbursed and outstanding in accordance with the Amortization Schedule attached to the Loan Agreement as Schedule 3.

(b) If all disbursements to be made under the Loan Agreement have been completed and the total of such disbursements is less than the full amount of the Loan stipulated therein, the difference between such amount of the Loan and the

total of all disbursements shall be deducted proportionately from all subsequent installments of repayment of principal.

(c) The Borrower may, upon payment of all accrued interest and all other amounts then due under the Loan Agreement and upon giving not less than thirty (30) days' prior written notice to the Bank, prepay on any Repayment Date specified in the Loan Agreement, or any other date agreed with the Bank, after the Bank sends the Notice of Completion of Disbursement pursuant to Section 7.05, without premium or penalty all or part of the principal amount of the Loan then outstanding. Any such prepayment shall be applied to the installments in inverse order of maturity. When the Borrower prepays any amount of the Loan, the Borrower shall not reborrow such prepaid amount and shall not draw down the undisbursed amount of the Loan.

### **Section 3.03. Interest**

The Borrower shall pay interest semi-annually on each Interest Payment Date at the rate specified in the Loan Agreement on the principal amount of the Loan disbursed and outstanding from time to time. Interest shall accrue from the respective dates on which the Loan is disbursed.

### **Section 3.04. Overdue Charge**

If the Borrower fails to make payment of all or any portion of the principal of the Loan or any other amount payable under the Loan Agreement on the due date therefor (whether at stated maturity, by acceleration or otherwise), the unpaid amount shall bear an overdue charge calculated at the rate of two percent (2%) per annum above the interest rate specified in the Loan Agreement for each day during the period from and including the due date therefor to but excluding the date of actual payment thereof.

### **Section 3.05. Computation**

Interest and overdue charge shall be computed on the basis of a year of 365 days and actual days elapsed. Any fraction of Ten Korean Won (₩10.00) resulting from the computation of any amounts due under the Loan Agreement shall be disregarded.

### **Section 3.06. Application of Payment**

All payments made to or collected by the Bank under the Loan Agreement or under the Guarantee shall be applied by the Bank in the following order of priority:

(i) to principal then due and payable, (ii) to accrued interest then due and payable, (iii) to any fee then due and payable, (iv) to any cost then due and payable, (v) to any overdue charge then due and payable, and (vi) to prepayment of principal as specified in paragraph (c) of Section 3.02.b

## **ARTICLE IV**

### **Payments**

#### **Section 4.01. Place of Payment**

The Borrower shall have all payments of principal of, interest and other charges on, the Loan credited to the Bank's account with such a bank as designated in the Loan Agreement.

#### **Section 4.02. Banking Day**

Whenever any payment is to be made on a day which is not a Banking Day, such payment may be made on the next succeeding Banking Day.

#### **Section 4.03. Currency**

The Loan shall be denominated in Korean Won and Korean Won shall be the currency of account, disbursement and any payment to be made by the Borrower hereunder or the Guarantor under the Guarantee, if any, provided that a part of the Loan may be disbursed in US Dollars, Euros or the Local Currency in accordance with the provisions of the Loan Agreement if the relevant procurement contract for goods and services or consultant employment agreement to be funded by such portion of the Loan is denominated in US Dollars, Euros or the Local Currency, respectively.

#### **Section 4.04. Payments to be Free and Clear**

(a) The principal of, interest and other charges on, the Loan shall be paid in full, without set-off or counterclaim, and free and clear of any tax or other deductions or withholdings of any nature.

(b) If the Borrower or the Guarantor, if any, shall be required by any law or regulation to make any deduction or withholding (on account of tax or otherwise) from any payment under the Loan Agreement or the Guarantee, the Borrower or

the Guarantor shall pay such additional amount as may be necessary to ensure that the Bank receives the full amount it would have received if such deduction or withholding had not been made.

**Section 4.05. Expenses**

The Borrower shall pay, or cause to be paid, all banking charges and/or fees relating to disbursement of the Loan, repayment of principal, payment of interest, or any other charges which may arise in connection with the Loan Agreement.

**Section 4.06. Loan Account**

The Bank shall open and maintain on its books a loan account in the Borrower's name, showing the disbursements, outstanding amount of the Loan, repayments, prepayments, and the computation and payment of interest and other amounts due and sums paid under the Loan Agreement. Such loan account shall, in the absence of manifest error, be conclusive and binding on the Borrower as to the existence and amounts of the obligations of the Borrower.

**Section 4.07. Notice**

The Bank may, when it deems necessary, send the Borrower a Notice concerning Interest and Principal in the form of Annex 1 attached hereto.

**\*ARTICLE V  
Guarantee for Loan**

**Section 5.01. Guarantee for Loan**

When the Bank requires a guarantee for the Loan, the Borrower shall deliver the Guarantee to the Bank, duly signed by the Guarantor acceptable to the Bank, immediately after the execution of the Loan Agreement. The Guarantee shall be substantially in the form of Annex 2 attached hereto.

**Section 5.02. Additional Guarantee**

When the amount of the Loan is to be increased, the Borrower shall deliver to the

---

*\* When the Bank does not require a guarantee for the Loan, this whole Article V shall be disregarded.*

Bank an additional Guarantee, signed by the Guarantor acceptable to the Bank, immediately after the Bank and the Borrower have agreed upon such increase.

## **ARTICLE VI**

### **Procurement**

#### **Section 6.01. Procurement Procedures**

Goods and services (*the term "services" as used in the General Terms and Conditions includes consulting services*) to be financed out of the proceeds of the Loan shall be procured in accordance with the procurement procedures provided in the Loan Agreement.

#### **Section 6.02. Bank's Review and Approval**

The Bank may review the Borrower's procurement procedures, documents and decisions relating to procurement. The Loan Agreement shall specify the extent to which the review procedures shall apply in respect of goods and services to be financed out of the proceeds of the Loan.

#### **Section 6.03. Approval of Contract**

(a) When each of the procurement contracts for goods and/or services is entered into, the Borrower shall submit to the Bank a duly executed Application for Approval of Contract in the form of Annex 3 attached hereto together with one certified copy of the contract.

(b) When the Bank considers the contract eligible, it shall notify the Borrower of its approval by sending a Notice of Approval of Contract in the form of Annex 4 attached hereto.

#### **Section 6.04. Modifications**

Any modification or cancellation of a contract approved by the Bank shall require the prior written consent of the Bank thereto, provided, however, any change which does not constitute an important modification of the contract and which does not affect the portion of the contract price provided by the Bank shall not require such consent of the Bank.

#### **Section 6.05. Procurement-related Complaints**

(a) Procurement-related Complaints (the "**Complaints**") should be submitted to

the Borrower in a timely manner as set forth in these Guidelines and bidding documents. If submitted to the Bank, they will be transferred to the Borrower.

(b) After the submission of the bids, if the Standstill Period is used, Complaints must be submitted within the Standstill Period set out in the bidding documents.

(c) When so submitted or transferred to the Borrower, the Borrower shall address them promptly and fairly, and notify the complainant and the Bank of the result.

## **ARTICLE VII**

### **Disbursement**

#### **Section 7.01. Disbursement Procedures**

The Loan shall be disbursed by the Bank as the progress of the Project renders it necessary and in accordance with the disbursement procedures provided in the Loan Agreement (the "**Disbursement Procedures**").

#### **Section 7.02. Constitution of Obligation**

A disbursement effected in accordance with the Disbursement Procedures shall constitute a valid and binding obligation upon the Borrower under the terms of the Loan Agreement with relation to such disbursement as from the date of disbursement.

#### **Section 7.03. Adequacy of Documents**

(a) All documents or evidence required under the Disbursement Procedures must be adequate in form and substance to satisfy the Bank that the Loan to be disbursed is to be used solely for the purposes specified in the Loan Agreement.

(b) The Borrower shall provide the Bank with any additional documents or evidence which the Bank may reasonably request.

#### **Section 7.04. Notice of Disbursement**

After effecting each disbursement, the Bank shall send the Borrower a Notice of Disbursement in the form of Annex 5 attached hereto.

#### **Section 7.05. Notice of Completion of Disbursement**

(a) After effecting the final disbursement under the Loan Agreement, the Bank

shall send the Borrower and the Guarantor, if any, a Notice of Completion of Disbursement in the form of Annex 6 attached hereto in duplicate. When the cumulative total of disbursements is less than the amount of the Loan and no further disbursement is required for the Project, the Borrower shall notify the Bank of the fact in order that the Bank may know that the final disbursement has been made.

(b) The Borrower shall immediately return to the Bank one copy of the Notice of Completion of Disbursement signed by a duly authorized person.

## **ARTICLE VIII**

### **Cancellation; Acceleration of Maturity**

#### **Section 8.01. Cancellation by the Borrower**

After consultation with the Bank, the Borrower may, by notice to the Bank, cancel any amount of the Loan which has not been disbursed prior to the giving of such notice.

#### **Section 8.02. Acceleration of Maturity**

When any of the following events shall have occurred and be continuing, the Bank may, by notice to the Borrower and the Guarantor, if any, suspend in whole or in part the rights of the Borrower. If any of the following events shall have continued for a period of thirty (30) days from the date of such notice, the Bank may terminate disbursement and/or may declare all the principal of the Loan then outstanding, with the interest and any other charges thereon, to be forthwith due and payable whereupon the principal, interest and other charges shall immediately become due and payable:

(a) Default in repayment of principal and/or payment of interest or any other charges required under the Loan Agreement and/or any other Loan Agreement between the Bank and the Borrower;

(b) Default in the performance of any other terms and conditions, covenant or agreement on the part of the Borrower or the Guarantor, if any, under the Loan Agreement or the Guarantee, if any;



(c) Exceptional circumstances beyond the control of the parties (including war, civil war, earthquake, flood, etc.) which make it improbable, in the opinion of the Bank, that the Borrower or the Guarantor, if any, will be able to perform its obligations under the Loan Agreement or the Guarantee, if any; and

(d) Any other event specified in the Loan Agreement for the purposes of this Section.

## **ARTICLE IX**

### **Administration of Loan**

#### **Section 9.01. Management of Project**

(a) The Borrower shall carry out the Project, or cause it to be carried out, with all due diligence and efficiency, and in conformity with appropriate engineering, financial, environmental and social requirements and practices.

(b) The Borrower shall at all times operate and maintain, or cause to be operated and maintained, any facilities relevant to the Project in conformity with appropriate engineering, financial, environmental and social requirements and practices, and promptly as needed, make or cause to be made all necessary repairs and renewals thereof.

(c) The Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used solely for the implementation of the Project under the Loan Agreement.

(d) The Borrower and/or the Project Executing Agency shall furnish the Bank with the Environmental and Social Impact Assessment and/or Resettlement Plan satisfactory to the Bank and comply in all material respect with the EDCF Safeguard Policy which have been furnished to the Borrower.

#### **Section 9.02. Reports and Information**

(a) The Borrower shall enable, or take such steps as may be necessary to enable, the Bank's representatives to visit any facilities and construction sites included in the Project and to examine goods and services financed out of the proceeds of

the Loan and any plant, installation, site, works, building, property, equipment, books, accounts, records and documents relevant to the performance of the obligations of the Borrower under the Loan Agreement.

(b) Should any circumstances arise which prevent, or threaten to prevent, the execution and completion of the Project on schedule, the Borrower shall promptly notify the Bank of such circumstances.

(c) The Borrower shall send, or cause to be sent, to the Bank, promptly upon formulation, details of all plans which would result in any important modification of the Project and these shall be the subject of agreement between the Bank and the Borrower.

### **Section 9.03. Exchange of View**

Each party to the Loan shall, from time to time, as the other party thereto shall reasonably request, afford the other party all reasonable opportunity for exchange of views between the Bank and the Borrower with regard to any and all matters relating to the Loan.

## **ARTICLE X**

### **Governing Law; Arbitration**

#### **Section 10.01. Governing Law**

The Loan Agreement and the Guarantee, if any, shall be governed by and construed in accordance with the laws of the Republic of Korea\*.

#### **Section 10.02. Arbitration**

(a) All disputes or controversies arising from the Loan Agreement or the Guarantee, if any, which cannot be settled between the Bank and the Borrower (together with the Guarantor, if any), shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

---

\*If the Loan Agreement or the Guarantee is not governed by and construed in accordance with the laws of the Republic of Korea, provide that the provisions regarding electronic signature and delivery of documents shall be governed by and construed in accordance with the laws of the Republic of Korea.

(b) The parties to such arbitration shall be the Bank on the one side and the Borrower and the Guarantor, if any, on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: (i) one arbitrator shall be appointed by the Bank; (ii) a second arbitrator shall be appointed by the Borrower and the Guarantor, if any, or if they shall not agree, by the Guarantor; (iii) and the third arbitrator (the "**Umpire**") shall be appointed by agreement of the parties or, if they shall not agree, by an appropriate organ for the settlement of international disputes. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act as an arbitrator, a successor arbitrator shall be appointed without delay in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of the original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party or parties. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within thirty (30) days after the giving of such notice, the other party or parties shall notify the party instituting the proceeding of the name of the arbitrator appointed by such other party or parties.

(e) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(f) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(g) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such

award rendered in accordance with the provisions of this Section shall be final and binding upon the parties, and each party shall abide by and comply with any such award.

(h) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal convenes, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The Arbitral Tribunal may, before it commences its activities, collect equal sums from both parties in such amounts as may be considered necessary to cover its expenses. The expenses of the Arbitral Tribunal shall finally be borne by one or both parties according to the terms of the award. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal.

(i) If within thirty (30) days after the counterparts of the award have been delivered to the parties the award shall not be complied with, a party may institute proceedings to enforce the award against the party with obligations to it under the award in any court of competent jurisdiction.

## **ARTICLE XI**

### **Effectiveness; Termination**

#### **Section 11.01. Conditions Precedent to Effectiveness**

The Loan Agreement shall not become effective until the following documents and evidence shall have been received by the Bank, in form and substance satisfactory to the Bank:

(a) Documentary evidence of the authority of each person who will make, sign and deliver documents required under the Loan Agreement on behalf of the Borrower, together with the authenticated specimen signatures of each such person. Such documentary evidence pertaining to electronic signature and delivery of documents shall (i) include the name, title and the email address of

each person who is authorized to deliver documents electronically in connection with the Loan Agreement or on behalf of the Borrower or the Guarantor, if any, as the case may be, and the name of the department to which such person belongs and (ii) contain an acknowledgement and agreement by the Borrower [or the Guarantor, as the case may be], that any document executed by a person for whom the documentary evidence of authority has been submitted pursuant to this paragraph (a) of this Section 11.01 and transmitted from an email address of such person shall have the same legal effect as the originally executed document and be binding on the party on behalf of whom such document has been delivered.

(b) The Guarantee, if any, duly authorized by and executed and delivered on behalf of the Guarantor; and

(c) A legal opinion of legal counsel to the Borrower substantially in the form of Annex 7 attached hereto and a legal opinion of legal counsel to the Guarantor, if any, substantially in the form of Annex 8 attached hereto, prepared and certified by a person acceptable to the Bank, showing:

- (i) With regard to the Borrower, that the Loan Agreement has been duly authorized by and executed and delivered on behalf of the Borrower and constitutes a valid and binding obligation upon the Borrower with regard to all its terms and conditions, and that the authorizations and all other procedures necessary for the implementation of the Loan Agreement have been duly effected and completed; and
- (ii) With regard to the Guarantor, if any, that the Guarantee has been duly authorized by and executed and delivered on behalf of the Guarantor and constitutes a valid and binding obligation upon the Guarantor with regard to all its terms and conditions.

#### **Section 11.02. Effective Date**

The Loan Agreement shall become effective on the date on which the Bank declares itself satisfied with the documentary evidence of authority and the specimen signatures, the Legal Opinion, and the Guarantee, if any, mentioned in Section 11.01 above. The Bank shall immediately notify the Borrower in writing of the effective date of the Loan Agreement.

**Section 11.03. Evidence of Authority and Specimen Signatures**

(a) When any change has been made relevant to the evidence of authority mentioned in paragraph (a) of Section 11.01 above, the Borrower shall notify the Bank in writing of the fact, providing the Bank with satisfactory new documentary evidence of authority which complies with paragraph (a) of Section 11.01 above.

(b) When a person(s) has been appointed to replace a person(s) specified in the evidence of authority referred to in paragraph (a) of Section 11.01 above or a person(s) specified for delivery of documents by electronic means referred to in paragraph (a) of Section 11.01 above, the Borrower shall notify the Bank in writing of the fact, providing the Bank with an authenticated specimen signature of the newly appointed person(s).

**Section 11.04. Termination of Loan Agreement**

(a) If the Loan Agreement shall not have become effective within one hundred and twenty (120) days after the date of the signing of the Loan Agreement, the Loan Agreement shall terminate unless the Bank, after consideration of the reasons for the delay, shall establish a later date for the purposes of this Section. The Bank shall notify the Borrower and the Guarantor, if any, of such later date.

(b) If the procurement of goods or services to be financed out of the proceeds of the Loan shall not have been carried out within eighteen (18) months after the effective date of the Loan Agreement, the determination of assistance policy for the Project, made by the Government of the Republic of Korea, shall be invalid, and accordingly the Loan Agreement shall terminate unless the Bank, after the consideration of the reasons for the delay, agrees that the Loan Agreement shall be terminated on such later date as determined by the Bank and notified to the Borrower.

(c) If and when the entire principal amount of the Loan shall have been repaid and all interest and other charges payable to the Bank under the Loan Agreement shall have been paid, the Loan Agreement and the Guarantee, if any, shall forthwith terminate.

**ARTICLE XII**  
**Miscellaneous Provisions**

**Section 12.01. Failure to Exercise Rights**

No failure on the part of the Bank to exercise, or delay in exercising, any of its rights under the Loan Agreement or the Guarantee, if any, shall be construed to be a waiver thereof, nor shall any single or partial exercise by the Bank of any of its rights under the Loan Agreement or the Guarantee, if any, impair the Bank's further exercise of such rights or any other right.

**Section 12.02. Non-Exemption of the Borrower from Obligations**

All claims or disputes in connection with any supply contract for procurement of goods or services to be financed by the Loan shall be settled among the parties thereto, and no such claims or disputes shall exempt the Borrower from any obligations incurred under the Loan Agreement.

**Section 12.03. Assignment**

The Borrower shall not assign or transfer any rights or obligations under the Loan Agreement without prior written consent of the Bank.

**Section 12.04. Non-Discrimination**

Regarding repayment of principal and payment of interest or any other charges payable under the Loan Agreement, the Borrower shall undertake not to treat such debts to the Bank less favorably than its any other debts other than short-term debts.

**Section 12.05. Notices and Requests**

(a) Any notice or request required to be given or made under the Loan Agreement or the Guarantee, if any, shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall have been delivered by hand, received by mail or dispatched by cable, telex or facsimile to the party to which it is to be given or made at such party's address specified in the Loan Agreement or the Guarantee, if any, or at such other address as that party shall have designated by notice to the party giving the notice or making the request.

(b) All notices, requests or other communications to be made under the Loan Agreement or the Guarantee, if any, shall be in the English language.

**Section 12.06. Execution in Counterparts**

The Loan Agreement may be executed in several counterparts, each of which shall be an original.



Annex 1

**Notice Concerning  
Interest and Principal**

Date: [●]

(Name and Address of the Borrower)

Attention: [●]

Re: **EDCF Loan Agreement No. [●] for [●] Project**

Please be notified of the due date and amount payable by you under the captioned EDCF Loan Agreement as follows:

|           | Due Date | Amount |
|-----------|----------|--------|
| Principal |          |        |
| Interest※ |          |        |
| Total     |          |        |

※ *Interest computation: As per attached sheet.*

Please credit the above amount to the account of the Export-Import Bank of Korea (Account No.: [●]) with [●] ( Name and Address of the designated bank in Seoul ) on or before the due date (Seoul Time).

## Guarantee for the Loan

Date: [●]

The Export-Import Bank of Korea  
Seoul, Republic of Korea

Attention: President

In consideration of the Loan amount to be extended in Korean Won, not exceeding the equivalent of [●] US Dollars (US\$ [●]), to (*Name of the Borrower*) (the "**Borrower**") for [●] Project (*Name of the Project*) by THE EXPORT-IMPORT BANK OF KOREA (the "**Bank**") under the Loan Agreement No. [●], dated [●] between the Borrower and the Bank (the "**Loan Agreement**"), (*Name of the Guarantor*) (the "**Guarantor**") hereby guarantees jointly and severally with the Borrower the due and punctual payment of the principal of, and the interest and any other charges on, the Loan as provided for in the Loan Agreement.

The Guarantor, furthermore, agrees that:

(a) The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the Borrower, any exercise of right or remedy against the Borrower, or any modification or amplification of the provisions of the Loan Agreement, provided that if the principal of the Loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase; and

(b) So long as any amount due and payable by the Borrower under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:

- (i) Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement; and
- (ii) Not, without prior written consent of the Bank, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities.

(c) The Guarantor waives notice of acceptance of this Guarantee, notice concerning principal and interest, and notice of dishonor or non-payment of any such liabilities.

Very truly yours,

*(Name of the Guarantor)*

---

Name:

Title:

### Application for Approval of Contract

The Export-Import Bank of Korea  
Seoul, Republic of Korea

Date: [●]

Attention: Director, Economic Development Cooperation Fund Department [●]

Re: Application for Approval of Contract under the Loan Agreement No.[●]  
dated [●]

In accordance with Section 6.03 of the General Terms and Conditions, we hereby apply for your Approval of the Contract for (*Name of the Project*) (the "**Contract**"). The details of the Contract are as follows:

- a. Number and Date of the Contract:
- b. Name of the Purchaser:
- c. Name of the Supplier:
- d. Contract Price:
- e. EDCF Loan Amount
  - i) amount of the Loan to be disbursed in Korean Won:
  - \*[ ii) amount of the Loan to be disbursed in [US Dollar, Euro, the Local Currency]:  
We hereby request you to purchase US\$ € [●] in accordance with Section 4.02 and 5.03 under the Loan Agreement. ]

One certified copy of the Contract is attached hereto. Please notify us of your approval of the Contract in accordance with Section 6.03 of the General Terms and Conditions.

Very truly yours,

*(Name of the Borrower)*

*(Authorized Signature)*

Name :

Title :

---

\* Delete if not applicable

**Notice of Approval of Contract**

Date: [●]

(Name and Address of the Borrower)

Attention: [●]

Re: Approval of Contract concerning Contract No. [●] dated [●] between [●] and  
under the Loan Agreement No. [●] dated [●]

We hereby inform you that the Contract referred to above has been approved  
by us in accordance with Section 6.03 of the General Terms and Conditions.  
Disbursements for this Contract shall be made by us within the limit of [●]  
(Amount).

Very truly yours,

(Authorized Signature)

### Notice of Disbursement

(Name and Address of the Borrower)

Attention: [●]

Re: **EDCF Loan Agreement No. [●] for [●] Project**

We hereby notify you that, pursuant to your Application for Disbursement No. [●]\_\_\_\_\_ dated [●], we have made the following disbursement under the EDCF Loan Agreement No. [●] dated [●] between [●] (*Name of the Borrower*) and the Export-Import Bank of Korea:

1. Number of disbursement: [●]
2. Date of disbursement: [●]
3. Amount of disbursement:

| Disbursement | Principal to be repaid | Remark             |
|--------------|------------------------|--------------------|
| ₩ [●]        | ₩ [●]                  |                    |
| US\$ [●]     | US\$ [●]               | US\$ [●]×@ = ₩ [●] |

4. Cumulative total of disbursements under the said Loan Agreement (including this disbursement): ₩ [●]

Very truly yours,

(Authorized Signature)

**Notice of Completion of Disbursement**

(Name and Address of the Borrower)

Date: [●]

Re: **EDCF Loan Agreement No. [●] for [●] Project**

With reference to the Loan Agreement No. [●] dated [●] between (*Name of the Borrower*) and the Export-Import Bank of Korea, we hereby notify you that all disbursements under the said Loan Agreement have been completed.

The details of disbursements under the Loan Agreement are as follows:

1. Loan Limit (A): ₩ [●]
2. Cumulative Total of Disbursements (B): ₩ [●]
3. Unused Balance (A-B): ₩ [●]
4. Date of the Final Disbursement: [●]

We also wish to notify you that the said Loan Agreement shall be implemented henceforth as follows:

1. Amortization Schedule: As per attached schedule.
2. Due Dates of Interest Payments:
  - (i) Due Date of Next Payment: [●], 20[●]
  - (ii) Due Date thereafter: [●], 20 and [●], 20 of each year.

In confirmation of this Notice, please return to us immediately one copy, signed by a duly authorized person.

Very truly yours,

(Authorized Signature)

(Please do not detach)

.....

Date: [●]

We hereby acknowledge receipt of this Notice and confirm that the Loan Agreement shall be implemented as stated above.

(Name of the Borrower)  
(Authorized Signature)

## Legal Opinion on Loan Agreement

Date: [●]

The Export-Import Bank of Korea  
Seoul, Republic of Korea

Attention: [●]

Re: **EDCF Loan Agreement No. [●] for [●] Project**

With respect to the EDCF Loan amount to be extended in Korean Won, not exceeding the equivalent of [●] US Dollars (US\$ [●]), by the Export-Import Bank of Korea (the "**Bank**") to (*Name of the Borrower*) (the "**Borrower**") in accordance with the terms and conditions of the Loan Agreement No. [●], dated [●], between the Bank and the Borrower (the "**Loan Agreement**"), I, the undersigned, acting as legal counsel for the Borrower, certify as follows:

I have considered and examined, among other things, the documents:

- (a) The Agreement dated [●] and the Arrangement dated [●] between the Government of [●] (*Name of the Borrower's Country*) and the Government of the Republic of Korea;
- (b) The Loan Agreement;
- (c) Evidence of authority and specimen signatures issued by [●];
- (d) Such other documents as I have considered necessary or desirable for this opinion; and
- (e) All the laws and regulations in the country of the Borrower relevant to the power and authority of the Borrower to execute, deliver and perform the Loan Agreement.

Based upon the foregoing, I hereby certify as follows:

1. That the Loan Agreement has been made, signed and delivered, for and on behalf of the Borrower, by [●] (*Name and Title of the Authorized Person*), who has the power and authority to do so;



2. That the Borrower is authorized to borrow foreign currency funds from abroad and that the terms and conditions of the Loan Agreement are in compliance with the provisions of the laws of the Borrower's country;

3. That, therefore, the Loan Agreement has been duly authorized by and made, signed and delivered on behalf of the Borrower and constitutes a valid and binding obligation upon the Borrower with regard to all its terms and conditions; and

4. That the authorization and any other procedures necessary for implementation of the Loan Agreement have been duly effected and completed.

Very truly yours,

---

Name:

Title:

## Legal Opinion on Guarantee

Date: [●]

The Export-Import Bank of Korea  
Seoul, Republic of Korea

Attention: [●]

Re: **EDCF Loan Agreement No. [●] for [●] Project**

With respect to the Guarantee dated [●] given by [●] (*Name of the Guarantor*) (the "the **Guarantor**") in respect of the EDCF Loan amount to be extended in Korean Won, not exceeding the equivalent of [●] US Dollars (US\$[●]), by the Export-Import Bank of Korea (the "**Bank**") to [●] (*Name of the Borrower*) (the "**Borrower**") in accordance with the terms and conditions of the Loan Agreement No. [●], dated [●], between the Bank and the Borrower (the "**Loan Agreement**"), I, the undersigned, acting as legal counsel for the Guarantor, certify as follows:

I have considered and examined, among other things, the following documents:

- (a) The Agreement dated [●] and the Arrangement dated [●] between the Government of [●] (*Name of the Borrower's Country*) and the Government of the Republic of Korea;
- (b) The Loan Agreement;
- (c) The Guarantee;
- (d) Such other documents as I have considered necessary or desirable for this opinion; and
- (e) All the laws and regulations in the country of the Guarantor relevant to the power and authority of the Guarantee to execute, deliver and perform the Guarantee.

Based upon the foregoing, I hereby certify as follows:

1. That the Guarantor has the full power and authority, under the laws of the Guarantor's country, to guarantee the Loan made by the Bank to the Borrower in accordance with the terms and conditions of the Loan Agreement;

2. That the Guarantee was made, signed delivered by (*Name and Title*) who is authorized to do so for and on behalf of the Guarantor;

3. That, therefore, the Guarantee has been duly authorized by and made, signed and delivered on behalf of the Guarantor and constitutes a valid and binding obligation upon the Guarantor with regard to all its terms and conditions; and

4. That the authorization and any other procedures necessary for implementation of the Guarantee have been duly effected and completed.

Very truly yours,

---

Name:

Title:

**Guidelines for Procurement  
under the EDCF Loan**

***ECONOMIC DEVELOPMENT  
COOPERATION FUND***



## TABLE OF CONTENTS

| <u>Article</u>  |   | <u>Page</u> |
|---|---|-------------|
| <b>Article I</b>  | <b>Introduction</b> .....                                     | <b>39</b>   |
| Section 1.01  | Purpose .....   | 39          |
| Section 1.02  | General Considerations .....                                  | 39          |
| Section 1.03  | Applicability of Guidelines .....                             | 40          |
| Section 1.04  | Eligibility .....   | 40          |
| Section 1.05  | Advance Contracting and Retroactive Financing .....           | 41          |
| Section 1.06  | Bank's Review .....   | 41          |
| Section 1.07  | Misprocurement .....  | 41          |
| Section 1.08  | Fraud and Corruption .....                                    | 42          |
| <b>Article II</b>   | <b>Competitive Bidding</b> .....                              | <b>43</b>   |
| <b>A. General</b> .....                                       |   | <b>43</b>   |
| Section 2.01  | Type and Size of Contracts .....                              | 43          |
| Section 2.02  | Two-Stage Bidding and Two-Envelope Bidding .....              | 43          |
| Section 2.03  | Advertising .....   | 44          |
| Section 2.04  | Prequalification of Bidders .....                             | 44          |
| <b>B. Bidding Documents</b> .....                             |   | <b>45</b>   |
| Section 2.05  | Bidding Documents .....                                       | 45          |
| Section 2.06  | References to the Bank .....                                  | 46          |
| Section 2.07  | Bid Bonds or Guarantees .....                                 | 46          |
| Section 2.08  | Conditions of Contract .....                                  | 46          |
| Section 2.09  | Language .....  | 46          |
| Section 2.10  | Clarity of Bidding Documents .....                            | 47          |
| Section 2.11  | Standards .....   | 47          |
| Section 2.12  | Use of Brand Names .....                                      | 47          |
| Section 2.13  | Currency of Bids and Contracts .....                          | 47          |
| Section 2.14  | Price Adjustment Provisions .....                             | 48          |
| Section 2.15  | Advance Payments .....  | 48          |
| Section 2.16  | Performance Bond and Retention Money .....                    | 48          |
| Section 2.17  | Insurance .....   | 49          |
| Section 2.18  | Liquidated Damages and Bonus Clauses .....                    | 49          |
| Section 2.19  | Force Majeure .....   | 49          |
| Section 2.20  | Settlement of Disputes .....                                  | 49          |
| <b>C. Bid Opening, Evaluation and Award of Contract</b> ..... |   | <b>50</b>   |
| Section 2.21  | Time Interval between Invitation and Submission of Bids ..... | 50          |
| Section 2.22  | Bid Opening Procedures .....                                  | 50          |
| Section 2.23  | Confidentiality .....   | 50          |
| Section 2.24  | Clarifications or Alteration of Bids .....                    | 50          |
| Section 2.25  | Examination of Bids .....                                     | 50          |

|                    |  |           |
|--------------------|--|-----------|
| Section 2.26       | Evaluation and Comparison of Bids          | 51        |
| Section 2.27       | Evaluation Report                          | 52        |
| Section 2.28       | Postqualification of Bidders               | 52        |
| Section 2.29       | Rejection of All Bids                      | 52        |
| Section 2.30       | Notification of the Intention to Award     | 53        |
| Section 2.31       | Standstill Period                          | 53        |
| Section 2.32       | Award of Contract                          | 54        |
| Section 2.33       | Debriefing                                 | 54        |
| <b>Article III</b> | <b>Other Methods of Procurement</b>        | <b>55</b> |
| Section 3.01       | Limited Competitive Bidding                | 55        |
| Section 3.02       | Shopping                                   | 55        |
| Section 3.03       | Direct Contracting                         | 56        |
| Section 3.04       | Force Account                              | 57        |
| <b>Annex 1</b>     | Review by the Bank of Procurement Decision | 58        |
| <b>Annex 2</b>     | Guidance to Bidders                        | 60        |

# **Guidelines for Procurement under the EDCF Loan**

## **ARTICLE I Introduction**

### **Section 1.01. Purpose**

(a) The purpose of these Guidelines 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 Project to be financed in whole or in part by the Export-Import Bank of Korea (the "**Bank**") from the resources of the Economic Development Cooperation Fund (the "**EDCF**").

(b) The term "the Borrower" as used in these Guidelines also refers to the Project Executing Agency and the term "services" as used in these Guidelines excludes consulting services. Terms not otherwise defined in these Guidelines shall have the meanings ascribed to them in the "General Terms and Conditions applicable to EDCF Loan Agreements" of the Bank.

(c) The Loan Agreement governs the relationships between the Borrower and the Bank, and these Guidelines are 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, and not by these Guidelines or the Loan Agreements. No party other than the parties to the Loan Agreement shall derive any rights therefrom or have any claim to loan proceeds.

### **Section 1.02. 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 EDCF Loans 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) Except as otherwise agreed upon between the Bank and the Borrower, the procurement methods acceptable to the Bank are: (i) Competitive Bidding ("CB"); (ii) Limited Competitive Bidding ("LCB"); (iii) Shopping; and (iv) Direct Contracting.



(d) The procedures to be followed in case of CB are described in ARTICLE II of these Guidelines; ARTICLE III describes the circumstances under which methods other than CB may be employed in the interests of economy and efficiency.

(e) The particular procurement methods and the categories of goods and works to which they apply are determined by the agreement between 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.

(f) The Borrower shall carry out due diligence on the technical and financial qualifications of Suppliers to be assured of their capabilities in relation to the specific contract.

### **Section 1.03. Applicability of Guidelines**

(a) These Guidelines apply to all procurement of goods and works to be financed by the proceeds of the Loan. The application of these Guidelines 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.

### **Section 1.04. Eligibility**

(a) Goods eligible for financing under the Loan Agreement are those which have origins of the Eligible Source Countries defined in the Loan Agreement. Such goods eligible for financing shall be satisfactory to the following rules of origin:

(i) Either that the goods have been wholly obtained in the Eligible Source Countries; or

(ii) That in the case of more than one country concerned in the production, the last substantial transformation has been carried out in the Eligible Source Countries;

### **Section 1.05. 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 these Guidelines 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 approval 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.

### **Section 1.06. 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 Annex 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.

### **Section 1.07. Misprocurement**

The Bank does not finance expenditures for goods and works which have not been procured in accordance with the agreed provisions in the Loan Agreement. In such cases, the Bank shall declare misprocurement, and it is the policy of the Bank to cancel that portion of the loan allocated to the goods and works that have been misprocured. The Bank may, in addition, exercise other remedies provided for under the Loan Agreement. Even once the contract is awarded after obtaining a "no objection" from the Bank, the Bank may still declare misprocurement if it concludes that the "no objection" 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 Bank's approval.

### **Section 1.08. Fraud and Corruption**

It is the Bank's policy to require that Borrowers (including beneficiaries of EDCF loans), as well as bidders, suppliers, and contractors under contracts financed by EDCF loans, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:

(a) shall reject a proposal for award and declare a firm ineligible to enter into the contract in question if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract;

(b) shall declare a firm ineligible, for a period determined by the Bank, to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF 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 EDCF loan;

(c) notwithstanding the foregoing, shall declare a firm ineligible, even after the end of a period determined by the Bank, to participate in any bid for, to be awarded, and to enter into a contract related to the project in question 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, the contract of the project;

(d) shall recognize a firm as ineligible to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if the firm is debarred under the cross debarment decision by Multilateral Development Banks (MDBs). Such period of ineligibility shall not exceed two (2) years from (and including) the date on which the cross debarment is imposed. With regard to the participation in the bid, the base date of determination on the debarment status is the date of the deadline for submission of bids. The Borrower shall confirm the eligibility of bidders, taking into account the decisions of MDBs; and

(e) shall recognize a firm as ineligible to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if such firm constitutes any of the inappropriate business entities defined in the Act on Contracts to Which the State is a Party, the Act on Contracts to Which a Local Government is a Party, and the Act on the Management of Public Institutions of the Republic of Korea. Such period of ineligibility shall be equated to the sanction period decided by the

Korean government and public institutions. With regard to the participation in the bid, the base date of determination on the sanction status is the date of the deadline for submission of bids. The Borrower shall confirm the eligibility of bidders, taking into account the decisions of the Korean government and public institutions. The Borrower may ask the Bank of the decisions of the Korean government and public institutions.

## **ARTICLE II**

### **Competitive Bidding**

#### **A. General**

##### **Section 2.01. 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.

##### **Section 2.02. Two-Stage Bidding and Two-Envelope Bidding**

(a) In order to maximize competition and to facilitate bid evaluation with respect to large and complex contracts where the problem of technically unequal bids is likely to be encountered, a two-stage bidding procedure may be adopted. The use of this procedure must be agreed upon by the Bank and the Borrower.

(b) For works, machinery or equipment for which complete technical specifications are prepared in advance, a two-envelop bidding procedure may be adopted. Under this procedure, bidding will be invited to submit technical and price proposals simultaneously in two separate envelopes.

### **Section 2.03. Advertising**

On all contracts subject to CB, 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.

### **Section 2.04. 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) capabilities 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 Section 2.03 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. 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.

## **B. Bidding Documents**

### **Section 2.05. Bidding Documents**

(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; 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 Standard Bidding Documents (SBDs) of the latest version issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address project-specific conditions. When no relevant SBDs have been issued, the Borrower may use other Standard Bidding Documents issued by the international development institutions such as the World Bank, the Asian Development Bank, etc., provided that they are modified in accordance with the requirements of the Loan Agreement and these Guidelines.

### **Section 2.06. References to the Bank**

(a) 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 from the resources of the Economic Development Cooperation Fund of the Republic of Korea in the amount of [●] (*US Dollar 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."

(b) 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 EDCF Loan'. Except as the Bank may specially otherwise agree, no party other than the Borrower (*Name of the Borrower*) shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.

### **Section 2.07. 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.

### **Section 2.08. 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. 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.

### **Section 2.09. Language**

Bidding documents shall be prepared in English. If any other language is to be used in the bidding documents, a full English text shall be incorporated in those

documents and it shall be specified which is prevailing.

### **Section 2.10. 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.

(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 items or a group of items or as a total package, this shall be stated in the bidding documents.

### **Section 2.11. 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 standards which ensure equivalent or higher quality than the standards specified shall also be accepted.

### **Section 2.12. 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.

### **Section 2.13. Currency of Bids and Contracts**

(a) The bid price shall be stated in US Dollars. However, it shall be stipulated in the bidding documents that the contract price shall be stated in Korean Won



converted by using the exchange rate applicable to the calculation of the amount of the Loan under the provisions of the Loan Agreement.

(b) Notwithstanding paragraph (a) above, a portion of the contract price may be stated in [US Dollars, Euros, the Local Currency] within the amount of the Loan to be disbursed in [US Dollars, Euros, the Local Currency] under the provisions of the Loan Agreement.

#### **Section 2.14. 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.

#### **Section 2.15. 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.

#### **Section 2.16. 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 nonperformance 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.

### **Section 2.17. 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.

### **Section 2.18. 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.

### **Section 2.19. 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.

### **Section 2.20. 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**

### **Section 2.21. 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.

### **Section 2.22. 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.

### **Section 2.23. 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.

### **Section 2.24. 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.

### **Section 2.25. 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.

### **Section 2.26. 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 and minor deviations, if any. 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) 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.

\*(d) 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:

---

*\* If it is inappropriate for a particular Project to be subject to this paragraph, alteration should be made.*

- \* (i) The bid is seriously unbalanced or front-loaded in the opinion of the Borrower;
- \* (ii) The bid is significantly lower than the Borrower's estimates;
- \*\* (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.

### **Section 2.27. 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.

### **Section 2.28. 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.

### **Section 2.29. Rejection of All Bids**

(a) The bidding documents usually provide that the Borrower may reject all bids.

---

\* *(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.*

\*\* *(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; and*
- (iii) Where the bid evaluation system, which applies a comprehensive assessment of the bid price and technical merits of each bid, is adopted.*

Such rejection is justified when (i) all bids submitted are substantially non-responsive, (ii) there is evidence of lack of competition, or (iii) the lowest evaluated bid exceeds the cost estimates by a substantial amount. However, all bids shall not be rejected solely for the purpose of obtaining lower prices in the new bids to be invited on the same specifications.

(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 approval shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder.

### **Section 2.30. Notification of the Intention to Award**

If Standstill Period is applied, following the decision to award the contract, the Borrower shall promptly and simultaneously provide, by the quickest means available and as further specified in the bidding documents, written notification of the Borrower's intention to award the contract to the successful Bidder (the "**Notification of Intention to Award**"). Such notification shall be sent to each bidder that submitted a bid.

### **Section 2.31. Standstill Period**

(a) To give bidders time to examine the Notification of Intention to Award and to assess whether it is appropriate to submit a complaint, the Bank may permit the use of the Standstill Period by approving the bidding documents in which the use of the Standstill Period is specified.

(b) Standstill Period will not be applied under the following conditions:

- (i) Only one bid was submitted in an competitive bidding process; and
- (ii) Direct contracting.

(c) Transmission of the Borrower's Notification of Intention to Award, begins the Standstill Period. The Standstill Period shall last ten (10) Business Days after such transmission date, unless otherwise extended in accordance with the Section 2.33. The contract shall not be awarded either before or during the Standstill Period.

(d) If the Borrower does receive a complaint from an unsuccessful bidder within the Standstill Period, the Borrower shall not proceed with contract award until the complaint has been resolved. The borrower will keep the Bank duly informed and updated.

### **Section 2.32. Award of Contract**

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.

### **Section 2.33. Debriefing**

(a) If Standstill Period is applied, on receipt of the Borrower's Notification of Intention to Award, an unsuccessful bidder has three (3) Business Days to make a written request to the Borrower for a debriefing. The Borrower shall provide a debriefing within five (5) Business Days to all unsuccessful bidders whose request is received within this deadline. If the Borrower decides, for justifiable reasons, to provide the debriefing outside the five (5) Business Day timeframe, the Standstill Period shall automatically be extended until five (5) Business Days after such debriefing is provided. The Borrower shall promptly inform, by the quickest means available, all bidders and the Bank of the extended Standstill Period. The Borrower may extend the debriefing timeframe only once.

(b) Where a request for debriefing is received by the Borrower later than the three (3) Business Day deadline, the Borrower should provide the debriefing as soon

as practicable. Request for debriefing received outside the three (3) Business Day deadline shall not lead to an extension of the Standstill Period.

(c) In a nonstandstill situation, the Borrower shall inform the bidders that any bidder who wishes to ascertain the grounds, on which its bid was not selected, shall request an explanation from the Borrower after the award of contract. The Borrower shall promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of the Borrower. The requesting bidder shall bear all the costs of attending such a debriefing.

### **ARTICLE III**

#### **Other Methods of Procurement**

##### **Section 3.01. 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, or (iii) other exceptional reasons may justify departure from full CB procedures. Under the procedure of the LCB, Borrowers shall seek bids from a list of potential suppliers broad enough to assure competitive prices. In all respects other than advertisement, CB procedures shall apply.

##### **Section 3.02. 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.

### **Section 3.03. 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 CB, 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.

### **Section 3.04. Force Account**

Force account, that is, construction by the use of the Borrower's own personnel and equipment, may be the only practical method for constructing some kinds of works. The use of force account may be justified where:

- (i) quantities of work involved cannot be defined in advance;
- (ii) works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (iii) work is required to be carried out without disrupting ongoing operations;
- (iv) risks of unavoidable work interruption are better borne by the Borrower than by the supplier; and
- (v) there are emergencies needing prompt attention.

## **Annex I**

### **REVIEW BY THE BANK OF PROCUREMENT DECISION**

1. The following provisions set forth standard arrangements for the review by the Bank of procurement actions taken by Borrowers in cases where competitive bidding is required in the procurement of goods or works. These provisions shall apply to all such cases except as otherwise agreed by the Bank. Procedures for review of contract and its modification shall be subject to the following provisions of General Terms and Conditions Applicable to EDCF Loan Agreements.

#### **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 approved by the Bank 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 approval.

(b) Issue of Prequalification Invitation. As soon as the prequalification invitation has been advertised and notified as required in Section 2.03 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, approval of the Bank shall be obtained to the results of the evaluation before such results are communicated to the applicants for prequalification. For this purpose, the Bank shall, promptly after the evaluation of prequalification 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. 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 approved by the Bank 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 approval shall show all important conditions of bidding including the proposed bidding period and the proposed delivery period.

(b) Issue of Invitation to Bid. As soon as the invitation to bid has been advertised as required in section 2.03, 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, approval of the Bank 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) the proposal for award (together with the consultants' recommendations, where applicable); (iv) a draft contract; and (v) an appropriate certificate of the eligibility of the proposed contract where required by the Bank. In case the bidding procedure allows for more than one stage, the Bank's approval of the results of the evaluation at each stage shall be obtained before the results are communicated to the 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 approved by the Bank, or if any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to the Bank for prior approval.

## **Annex 2**

### **GUIDANCE TO BIDDERS**

#### **Purpose**

1. This Annex 2 provides guidance to potential bidders wishing to participate in the procurement financed by EDCF loans.

#### **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 EDCF 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 Section 1.02 in these Guidelines shall be submitted with the Borrower's payment application. As emphasized in Section 1.02 of these Guidelines, 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 Section 1.06 of these Guidelines, the Bank reviews the procurement procedures, documents, bid evaluations, award recommendations, and the contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Loan Agreement. In the case of major contracts, the documents are reviewed by the Bank prior to their issue, as described in Annex 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 Section 1.07. 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 Section 1.08 of these Guidelines.

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 Section 2.05. 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 Section 1.01 of these Guidelines. If a bidder feels that any of the provisions in the documents are inconsistent with these Guidelines, 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 section 2.23 of these Guidelines, 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 section 2.33, if, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it shall address its request to the Borrower.

**Guidelines for the  
Employment of Consultants  
under the EDCF Loan**

***ECONOMIC DEVELOPMENT  
COOPERATION FUND***





## TABLE OF CONTENTS

| <u>Article</u>     |  | <u>Page</u> |
|--------------------|--|-------------|
| <b>Article I</b>   | <b>General</b> .....                                 | <b>67</b>   |
| Section 1.01       | Introduction.....                                    | 67          |
| Section 1.02       | General Considerations .....                         | 67          |
| Section 1.03       | Need for Consultants .....                           | 67          |
| Section 1.04       | Bank’s Files on Consultants .....                    | 68          |
| Section 1.05       | Advance Contracting and Retroactive Financing.....   | 68          |
| Section 1.06       | Bank’s Review .....                                  | 69          |
| Section 1.07       | Reference to the Bank .....                          | 69          |
| Section 1.08       | Misprocurement.....                                  | 69          |
| Section 1.09       | Fraud and Corruption.....                            | 70          |
| <br>               |  |             |
| <b>Article II</b>  | <b>Consulting Services</b> .....                     | <b>72</b>   |
| Section 2.01       | Types of Consultants .....                           | 72          |
| Section 2.02       | Types of Assignments .....                           | 72          |
| Section 2.03       | Responsibilities of Consultants .....                | 73          |
| Section 2.04       | Competence of Consultants .....                      | 73          |
| Section 2.05       | Impartiality of Consultants .....                    | 73          |
| <br>               |  |             |
| <b>Article III</b> | <b>Procedures for Selection of Consultants</b> ..... | <b>74</b>   |
| Section 3.01       | General .....  | 74          |
| Section 3.02       | Terms of Reference .....                             | 75          |
| Section 3.03       | Short List of Consultants.....                       | 75          |
| Section 3.04       | Invitation for Proposals .....                       | 75          |
| Section 3.05       | Evaluation of Proposals.....                         | 76          |
| Section 3.06       | Rejection of All Proposals .....                     | 77          |
| Section 3.07       | Contract Negotiations .....                          | 77          |
| Section 3.08       | Notification of the Intention to Award .....         | 78          |
| Section 3.09       | Standstill Period.....                               | 78          |
| Section 3.10       | Informing Unsuccessful Consultants .....             | 78          |
| Section 3.11       | Debriefing.....                                      | 78          |
| Section 3.12       | Two-Envelope System .....                            | 79          |
| Section 3.13       | Other Selection Procedures.....                      | 80          |
| <br>               |  |             |
| <b>Article IV</b>  | <b>Contract</b> .....                                | <b>80</b>   |
| Section 4.01       | General .....  | 80          |
| Section 4.02       | Scope of Project and of Consulting Services .....    | 81          |
| Section 4.03       | Responsibilities of Parties to Contract .....        | 81          |
| Section 4.04       | Contract Amount .....                                | 81          |
| Section 4.05       | Description of Consultant’s Fees .....               | 81          |
| Section 4.06       | Currency .....                                       | 81          |

|                |  |    |
|----------------|--|----|
| Section 4.07   | Conditions and Methods of Payment              | 82 |
| Section 4.08   | Services to be Provided by Borrower            | 82 |
| Section 4.09   | Serious Hindrances                             | 82 |
| Section 4.10   | Reports  | 82 |
| Section 4.11   | Modifications                                  | 82 |
| Section 4.12   | Force Majeure                                  | 83 |
| Section 4.13   | Termination                                    | 83 |
| Section 4.14   | Settlement of Disputes                         | 83 |
| Section 4.15   | Applicable Laws                                | 83 |
| Section 4.16   | Language                                       | 83 |
| <b>Annex 1</b> | Review by the Bank of Selection of Consultants | 84 |
| <b>Annex 2</b> | Guidance to Consultants                        | 85 |

# **Guidelines for the Employment of Consultants under the EDCF Loan**

## **ARTICLE I General**

### **Section 1.01. Introduction**

(a) For the efficient and proper preparation and implementation of projects financed in whole or in part by the Export-Import Bank of Korea (the "**Bank**") from the resources of the Economic Development Cooperation Fund (the "**EDCF**"), most Borrowers require the assistance of consultants. The Borrower under these Guidelines refers to the Project Executing Agency, as well.

(b) The purpose of these Guidelines is to indicate the Bank's views as to the proper selection and employment of consultants and to ensure the impartiality of consultants and, in addition, to set forth the general rules to be followed by Borrowers in their use of consultants.

(c) How these Guidelines are to apply to a particular Project financed by the Bank is to be stipulated in the Loan Agreement between the Bank and the Borrower. Terms not otherwise defined herein shall have the meanings ascribed to them in the General Terms and Conditions applicable to EDCF Loan Agreements.

### **Section 1.02. General Considerations**

The Borrower is responsible for preparing and implementing the Project, and therefore for selecting the consultant, and awarding and subsequently administering the contract.

### **Section 1.03. Need for Consultants**

The Bank and the Borrower shall agree on the need to employ consultants and the Terms of Reference for their services either prior to or in the course of the negotiations relating to the Loan. At the same time, the two parties shall agree on the approximate amount of funds required for such services.

#### **Section 1.04. Bank's Files on Consultants**

(a) The Bank maintains files of information supplied by a number of consultants concerning their capability and experience. Such information provides a basis for the Bank's assessment of the acceptability of consultants proposed or chosen by Borrowers.

(b) Information in the Bank's files on consultants shall be available to Borrowers who wish to review and assess the experience and qualifications of consultants they are considering for the Project. However, the information available in the Bank's reference files is limited, and it is frequently necessary for the Bank, or the Borrower, to request additional detailed information from a particular consultant in order to form a judgment of its capability to carry out a specific assignment.

(c) The fact that the Bank has been supplied with or has supplied information about a consultant does not entitle that consultant to any contract connected with the Bank. Neither does it indicate that the Bank endorses the consultant's qualifications in general, nor that the Bank will approve that consultant's appointment for any specific Project.

#### **Section 1.05. 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 consultant selection procedures shall be in accordance with these Guidelines 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 approval 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 limit of the Loan specified in the Loan Agreement.

### **Section 1.06. Bank's Review**

The procedures for consultant selection by Borrowers and the terms and conditions of the employment contract between the Borrower and the consultant shall be subject to the review of the Bank. The procedures for the Bank's review are described in Annex 1 attached hereto.

### **Section 1.07. References to the Bank**

(a) The Borrower shall use the following paragraph when referring to the Bank in the Letter of Invitation and contract documents:

“[Name of the Borrower] has received (or in appropriate cases, ‘has applied for’) a loan from the Export-Import Bank of Korea from the resources of the Economic Development Cooperation Fund of the Republic of Korea in the amount [●] (*loan amount*) toward the cost of the Project (*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.

(b) 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 the Employment of Consultants under the EDCF Loan’. Except as the Bank may specially otherwise agree, no party other than the Borrower (*Name of the Borrower*) shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.”

### **Section 1.08. Misprocurement**

The Bank does not finance expenditures for consulting services if the consultants have not been selected or the services have not been contracted in accordance with the agreed provisions of the Loan Agreement approved by the Bank. In such cases, the Bank shall declare misprocurement, and it is the Bank’s policy to cancel that portion of the loan allocated to the services that have been misprocured. The Bank may, in addition, exercise other remedies provided for under the Loan Agreement. Even once the contract is awarded after the approval of the Bank, the Bank may still declare misprocurement if it concludes that the contract was approved on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower or that the terms and conditions of the contract had been modified without Bank’s approval.

### **Section 1.09. Fraud and Corruption**

It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as consultants under the EDCF-financed contracts, observe the highest standards of ethics during the selection and execution of such contracts. In pursuance of this policy, the Bank:

(a) shall reject a proposal for award and declare a consultant ineligible to enter into the contract in question if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract;

(b) shall declare a consultant ineligible, for a period determined by the Bank, to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if it at any time determines that the consultant has engaged in corrupt, fraudulent practices or any other integrity violations in competing for, or in executing, a contract financed by an EDCF loan;

(c) notwithstanding the foregoing, shall declare a consultant ineligible, even after the end of a period determined by the Bank, to participate in any bid for, to be awarded, and to enter into a contract related to the project in question if it at any time determines that the consultant has engaged in corrupt, fraudulent practices or any other integrity violations in competing for, or in executing, the contract of the project;

(d) shall recognize a consultant as ineligible to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if the consultant is debarred under the cross debarment decision by Multilateral Development Banks (MDBs). Such period of ineligibility shall not exceed two (2) years from (and including) the date on the cross debarment is imposed. With regard to the participation in the bid, the base date of determination on the debarment status is the date of the deadline for submission of bids. The Borrower shall confirm the eligibility of consultants taking the decisions of MDBs into full account.

(e) shall recognize a consultant as ineligible to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if the consultant constitutes any of the inappropriate business entities defined in the Act on

Contracts to Which the State is a Party, the Act on Contracts to Which a Local Government is a Party, and the Act on the Management of Public Institutions of the Republic of Korea. Such period of ineligibility shall be equated to the sanction period decided by the Korean government and public institutions. With regard to the participation in the bid, the base date of determination on the sanction status is the date of the deadline for submission of bids. The Borrower shall confirm the eligibility of bidders, taking into account the decisions of the Korean government and public institutions. The Borrower may ask the Bank of the decisions of the Korean government and public institutions.



## **ARTICLE II**

### **Consulting Services**

#### **Section 2.01. Types of Consultants**

(a) In general, consultants fall into one or more of the following categories:

(i) Independent Consultants;

(ii) Organizations of a public character, including public corporations and foundations, which also provide consulting services;

(iii) Firms which combine the functions of consultant with those of contractor, manufacturer, supplier, or which are associated with, affiliated to, or owned by contractors, manufacturers, suppliers.

(b) To ensure professional impartiality, firms in category (iii) of paragraph (a) of this Section shall normally be acceptable only if they agree to limit their role to that of consultant and to disqualify themselves and their associates/affiliates from working in any other capacity on the same Project. Therefore, only in special cases and only with clear justification, may the Bank and the Borrower agree to permit firms in category (iii) and/or their associates/affiliates to be invited to on the Project as contractors or suppliers, if they are also employed on the same Project as consultants.

(c) Paragraph (b) of this Section does not apply to those consultants, under a turnkey or design and build contract, whose work is limited to usual assignments of consultants.

#### **Section 2.02. Types of Assignments**

The services of consultants used by the Borrowers often include: (i) Pre-investment studies: including studies to establish investment priorities and sector policies, to assess governmental operations and institutions for project formulation and implementation, and to determine the feasibility and justification of investment projects; (ii) Detailed engineering and design: including preparation of detailed designs, specifications, cost estimates and tender documents; and (iii) Project implementation: including supervision of project execution, assistance in project operation for an initial period, execution of training programs, and

institution building or financial studies for the successful implementation of projects.

### **Section 2.03. Responsibilities of Consultants**

(a) The consultant shall at all times exercise all reasonable skill, care, and diligence in the discharge of its duties and shall be responsible for the accuracy and completeness of its work.

(b) In all professional matters the consultant shall act as a faithful adviser to the Borrower. The Borrower may, however, delegate to the consultant the authority to act on its behalf and to make final decisions on certain matters, especially as to design, tests, certification of invoices, acceptance of equipment, and certification of completion of work. The nature of and the limits to such delegation of authority to the consultant shall be clearly defined in the Terms of Reference and in the contract between the Borrower and the consultant.

(c) In case of differences of opinion between the Borrower and the consultant on any important matters involving professional judgement that might affect the proper evaluation or execution of the Project, the consultant shall promptly submit to the Borrower a written report, which the latter shall forward to the Bank with its comments, in time to allow the Bank to study it and communicate with the Borrower before any irreversible step are taken in such matters. In cases of urgency, the consultant shall have the right to insist that the matter be raised immediately with the Bank for discussion.

### **Section 2.04. Competence of Consultants**

In order to ensure the efficient and proper execution of the Project as specifically required by the Loan Agreement, it is essential that consultants employed on the Projects clearly possess the necessary competence.

### **Section 2.05. Impartiality of Consultants**

In order to ensure that the goods and services used for the Projects are suitable and their cost reasonable, and in order to ensure also that designs and specifications in no way limit the Bank's requirements regarding competitive bidding, it is also essential that consultants employed on the Projects shall be demonstrably impartial.

**ARTICLE III**  
**Procedures for Selection of Consultants**

**Section 3.01. General**

(a) The Bank normally requires Borrowers to adopt the following procedures in the selection and employment of consultants:

- (i) Preparation of the Terms of Reference and cost estimates;
- (ii) Preparation of a Short List of Consultants;
- (iii) Invitation to submit proposals;
- (iv) Evaluation of proposals; and
- (v) Negotiation of a contract.

(b) The Bank may, however, accept the Borrower's employment of a specific consultant in cases of the following:

- (i) Where the consultant has already satisfactorily carried out services for the project concerned, such as preparation of a pre-investment study;
- (ii) Where the consultant has satisfactorily carried out services on a project closely related and/or similar to the Project concerned;
- (iii) Where the consultant is considered to be the only firm qualified to provide the services required; or
- (iv) Where the consultant is considered to be the best for the services required for other adequate reasons.

(c) All documents relating to the selection and employment of consultants are to be in English. If another language is used in those documents, a full English text is to be incorporated in them and it shall be specified which is governing.

### **Section 3.02. Terms of Reference**

(a) The Terms of Reference are the initial statement to the consultant of the work that is required to and, with eventual modifications, form an integral part of the contract which governs the work that the consultant is to perform.

(b) Normally, the Terms of Reference should contain the following:

- (i) a precise statement of the objectives of the assignment;
- (ii) the scope and timing of the required services;
- (iii) the inputs to be provided by the Borrower; and
- (iv) particulars of the output (i.e., reports, drawings, etc.) required by the consultant.

### **Section 3.03. Short List of Consultants**

(a) The selection of a consultant for a particular assignment usually begins with the preparation of a Short List of Consultants to be invited to submit proposals.

(b) Such a Short List shall normally consist of not less than three and not more than five consultants.

(c) Should the Borrower find it difficult to compile a satisfactory Short List of qualified consultants from the information available to it from its own past experience and other sources, the Bank shall, at the request of the Borrower, make available information on consultants, from which the Borrower may draw up its own Short List.

### **Section 3.04. Invitation for Proposals**

(a) After the completion of a Short List of Consultants, the Letter of Invitation shall be sent to the "short-listed" consultants to submit their proposals.

(b) The Letter of Invitation shall include the Terms of Reference and any other supplementary information (which may include estimated man-months) concerning the proposed work and the conditions under which the work is to be performed.

(c) Except as otherwise provided in Section 3.12, the Letter of Invitation shall clearly indicate that financial terms are not to be included in the proposals at this

stage, that the selection shall be made on the basis of qualifications to perform the work, and that financial terms shall be discussed and agreed only at the time of contract negotiations with the selected consultant.

(d) The Letter of Invitation shall also stipulate the details of the selection procedure to be followed, including the technical evaluation categories and an indication of the weight to be given to each.

(e) Borrowers shall use the applicable Standard Request for Proposals under the EDCF Loan (Standard RFP) of the latest version issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address project-specific conditions.

### **Section 3.05. Evaluation of Proposals**

(a) Proposals received by the Borrower in response to the invitation shall be evaluated in accordance with the criteria stipulated in the Letter of Invitation. Such criteria shall normally include:

- (i) The consultant's general experience and performance record in the field covered by the Terms of Reference;
- (ii) The adequacy of the proposed approach, methodology and work plan; and
- (iii) The experience and records of the staff members to be assigned to the work.

(b) The relative importance of the above-mentioned three factors will vary with the type of consulting services to be performed, but in the overall rating of the proposals most weight shall normally be given either to the qualifications of the staff members to be assigned to the Project or to the approach and methodology, rather than to the reputation or fame of the consultant.

(c) The qualifications of the staff members to be assigned to the Project should be evaluated on the basis of the following three criteria:

- (i) General qualifications (education, length of experience, types of position held, duration of service with the consultant, etc.);
- (ii) Suitability for the Project (experience in performing the duties which will be assigned to them in the Project); and

(iii) Familiarity with the language and the conditions of the country in which the work is to be performed, or experience in similar environments.

(d) In its evaluation of the proposals, the borrower shall use numerical ratings and prepare an evaluation report. Such evaluation report should normally give detailed information on the organization responsible for the evaluation, selection criteria and relative weight distribution.

### **Section 3.06. Rejection of All Proposals**

(a) The Letter of Invitation generally provides that the Borrower may reject all proposals. Such rejection is justified when (i) all proposals submitted are non-responsive because they fail to respond to important aspects of the Terms of Reference or present major deficiencies in complying with the Terms of Reference, or (ii) all proposals fail to achieve the minimum technical score.

(b) If all proposals are rejected, the Borrower shall review the causes justifying the rejection before inviting new proposals.

(c) The Bank's prior approval shall be obtained for rejecting all proposals or re-inviting proposals.

### **Section 3.07. Contract Negotiations**

(a) After the evaluation of the proposals has been completed, the Borrower shall invite the first-ranked consultant to enter on negotiations on the conditions (including costs and financial terms) of a contract between them.

(b) If the two parties are unable to reach agreement on a contract within a reasonable time, the Borrower shall terminate the negotiations with the first-ranked consultant and invite the consultant who ranked second in the evaluation to enter on negotiations. This procedure will be followed until the Borrower reaches agreement with a consultant.

(c) While there shall be some flexibility in work plans, staff assignment and major work inputs which have been previously agreed as appropriate for the assignment should not be materially modified to meet a budget.

### **Section 3.08. Notification of the Intention to Award**

If Standstill Period is applied, promptly after completion of negotiations with the selected consultant, the Borrower shall promptly and simultaneously provide, by the quickest means available and as further specified in the request for proposals, Notification of Intention to Award to the successful consultant and the other consultants on the Short List that they have been unsuccessful.

### **Section 3.09. Standstill Period**

(a) To give consultants time to examine the Notification of Intention to Award and to assess whether it is appropriate to submit a complaint, the Bank may permit the use of the Standstill Period by approving the request for proposals in which the use of the Standstill Period is specified.

(b) Standstill Period will not be applied under the following conditions:

- (i) only one bid was submitted in an competitive bidding process; and
- (ii) direct contracting.

(c) Transmission of the Borrower's Notification of Intention to Award, begins the Standstill Period. The Standstill Period shall last ten (10) Business Days after such transmission date, unless otherwise extended in accordance with the Section 3.11. The contract shall not be awarded either before or during the Standstill Period.

(d) If the Borrower does receive a complaint from an unsuccessful consultant within the Standstill Period, the Borrower shall not proceed with contract award until the complaint has been resolved. The borrower will keep the Bank duly informed and updated.

### **Section 3.10. Informing Unsuccessful Consultants**

Promptly after completion of negotiations with the selected consultant, or after the resolution of the complaint, if the Standstill Period is applied, the Borrower shall notify the other consultants on the Short List that they have been unsuccessful.

### **Section 3.11. Debriefing**

(a) If Standstill Period is applied, on receipt of the Borrower's Notification of Intention to Award, an unsuccessful consultant has three (3) Business Days to

make a written request to the Borrower for a debriefing. The Borrower shall provide a debriefing within five (5) Business Days to all unsuccessful consultants whose request is received within this deadline. If the Borrower decides, for justifiable reasons, to provide the debriefing outside the above timeframe, the Standstill Period shall automatically be extended until five (5) Business Days after such debriefing is provided. The Borrower shall promptly inform, by the quickest means available, all consultants and the Bank of the extended Standstill Period. The Borrower may extend the debriefing timeframe only once.

(b) Where a request for debriefing is received by the Borrower later than the three (3) Business Day deadline, the Borrower should provide the debriefing as soon as practicable. Request for debriefing received outside the three (3) Business Day deadline shall not lead to an extension of the Standstill Period.

(c) In a nonstandstill situation, in the notification referred to in Section 3.10, the Borrower shall inform the short-listed consultants that any consultant who wishes to ascertain the grounds on which its proposal was not selected, shall request an explanation from the Borrower. The Borrower shall promptly provide the explanation as to why such proposal was not selected, either in writing and/or in a debriefing meeting, at the option of the consultant. The requesting consultant should bear all the costs of attending such a debriefing.

### **Section 3.12. Two-Envelope System**

Notwithstanding the Bank's general policy, set forth in Section 3.04 above, that proposals be invited from consultants without financial terms, the Borrower may, if it so prefers, invite price proposals together with technical proposals, by utilizing a "two-envelope system" according to the following procedures:

- (i) A technical proposal and a financial proposal shall be obtained simultaneously but in separate envelopes from each of the "short-listed" consulting firms. The financial proposals shall be submitted in sealed envelopes;
- (ii) The technical proposals shall first be evaluated and ranked, and the financial proposals shall be kept separate and unopened;



(iii) The first-ranked firm shall then be invited for contract negotiations and the financial envelope of this firm shall be opened in the presence of the firm;

(iv) If acceptable financial terms cannot be agreed upon with the first-ranked firm, negotiations shall be terminated with the concurrence of the Bank, and the firm next in ranking shall be invited for negotiations (and so on, if necessary until an agreement is concluded); and

(v) When a contract has been successfully negotiated, the financial envelopes of the remaining firms must be returned to them unopened.

### **Section 3.13. Other Selection Procedures**

(a) The application of the general procedures for selection of consulting firms set forth in Sections 3.01 to 3.12 above may be waived by the Bank in exceptional cases if there is adequate justification, such as where only one firm may be invited to submit proposals because of its previous involvement in the same Project or in a closely related project.

(b) Before initiating a negotiation with a prospective consultant pursuant to paragraph (a) of Section 3.13 above, the Borrower shall review the capability of the prospective consultant to perform the particular contract satisfactorily. The Bank shall be furnished with a copy of the report including the selection method for its review.

(c) Other methods that are generally used by Multilateral Development Banks can be applied to the selection of consultants under a loan if the Borrower requests.

## **ARTICLE IV**

### **Contract**

#### **Section 4.01. General**

The contract between the Borrower and the consultant shall be prepared in such detail as to adequately protect the interests of both parties to the contract. As a rule, the contract shall, *inter alia*, include the principal clauses outlined below.

#### **Section 4.02. Scope of Project and of Consulting Services**

The contract shall describe in detail the scope and duration of the Project and of the services to be rendered by the consultant.

#### **Section 4.03. Responsibilities of Parties to Contract**

(a) The contract shall clearly describe the responsibilities of the Borrower and the consultant and the relationship between them.

(b) Where the consultant is a joint venture or other form of association of several firms, the contract shall clearly state whether they will be "jointly and severally" responsible for performance under the contract, or whether one firm will be "solely" responsible, and shall state which firm will be acting on behalf of the joint venture (or other type of association of firms) in all its relations and communications with the Borrower.

#### **Section 4.04. Contract Amount**

The contract should clearly state the total amount, or ceiling, of fees to be paid to the consultant.

#### **Section 4.05. Description of Consultant's Fees**

(a) The personnel costs and fees necessary for fulfillment of the contract shall normally be expressed in terms of fixed "man-month rates" for each expert staff member to be provided by the consultant. The "man-month rate" shall cover the basic salary of the staff member, the firm's overheads (including financial, social security and other benefits payable to, or for, the staff member, such as vacation pay, sick leave pay, insurance, etc.) and the consultant's fee.

(b) The contract shall normally include an amount set aside for contingencies, such as unexpected work and rising costs, which the consultant may not use, however, without the written approval of the Borrower.

#### **Section 4.06. Currency**

Costs and fees shall normally be expressed in Korean Won, provided that costs and fees to be disbursed in US Dollars, Euros or the Local Currency under the provisions of the Loan Agreement may be expressed in that currency.

#### **Section 4.07. Conditions and Methods of Payment**

(a) The contract shall specify the conditions and methods of payment, the currency or currencies in which payment is to be made, and the rate of exchange for any currency conversions, if required.

(b) Payments to the consultant should be scheduled in such a manner as roughly to keep pace with its expenditures. In line with this concept, the contract may, when appropriate, provide for the following:

(i) An advance payment to the consultant at the time the contract becomes effective that will approximately cover its initial reimbursable expenses; and

(ii) Withholding of the final payment until all services covered by the contract have been completed, or certain performance guarantees have been given.

In case of (ii) above, however, the final payment shall be made within the disbursement period stipulated in the Loan Agreement.

#### **Section 4.08. Services to be Provided by Borrower**

The contract shall clearly specify the services and facilities to be provided by the Borrower, such as counterpart staff, maps, aerial photographs, data and statistics, office space, housing, vehicles and equipment.

#### **Section 4.09. Serious Hindrances**

The contract shall require the consultant to report to the Borrower promptly the occurrence of any event or condition which might delay or prevent completion of any significant part of the Project in accordance with the agreed schedules, and indicate what steps should be taken to meet the situation.

#### **Section 4.10. Reports**

The contract shall specify the scope, number, type and frequency of the reports to be submitted by the consultant to the Borrower.

#### **Section 4.11. Modifications**

The contract shall provide that it may only be modified by an agreement in writing between the parties to the contract.

**Section 4.12. Force Majeure**

The contract shall provide that failure on the part of either party to perform its obligations under the contract would not be considered a default if such failure is due to force majeure as defined in the contract.

**Section 4.13. Termination**

The contract shall include a clause specifying in detail on what conditions either party may terminate the contract and a clause stipulating procedures to be followed by the party wishing to terminate the contract. The contract shall clearly state the rights and obligations of both parties in the event of termination of the contract.

**Section 4.14. Settlement of Disputes**

The contract shall establish the procedures to be followed in case of a dispute arising between the Borrower and the consultant in connection with the contract.

**Section 4.15. Applicable Laws**

The contract shall stipulate the laws which are to govern its interpretation and performance.

**Section 4.16. Language**

The contract shall normally be prepared in English. If another language is used in the contract, a full English text shall be incorporated in the contract and it shall be stipulated which is governing.

## **Annex 1**

### **REVIEW BY THE BANK OF THE SELECTION OF CONSULTANTS**

Except as the Bank may otherwise agree, the following procedures shall be subject to the Bank's approval.

(a) Before proposals are invited from consultants, the Borrower shall submit to the Bank, for the Bank's approval, the Terms of Reference, Short List of Consultants, and draft Letter of Invitation.

(b) Before inviting the highest-ranked consultant to enter on contract negotiations, the Borrower shall send to the Bank, for the Bank's approval, the results of its evaluation of proposals received.

(c) When, as provided for in Section 3.07 (b) of the Consultant Guidelines, the Borrower wishes to terminate the contract negotiations with the highest-ranked consultant and invite the second-ranked consultant to enter on negotiations, the Borrower shall inform the Bank of this fact, stating its reasons for the Bank's reference.

(d) If the Borrower wishes, as provided for in Section 3.01 (b) of the Consultant Guidelines, to employ a specific consultant, the Borrower shall inform the Bank in writing of its reasons, for the Bank's approval.

(e) Promptly after executing a contract, the Borrower shall submit to the Bank, for the Bank's approval, one certified copy of the Contract.

Any modification or cancellation of a contract approved by the Bank shall require the prior written consent of the Bank thereto, provided, however, that any change which does not constitute an important modification of the contract and which does not affect the portion of the contract price provided by the Bank shall not require such consent of the Bank.

## **Annex 2**

### **GUIDANCE TO CONSULTANTS**

#### **Purpose**

1. This annex provides guidance to consultants wishing to provide consulting and professional services financed from the resources of the EDCF.

#### **Responsibility for Selection of Consultants**

2. The responsibility for the implementation of the Project, and therefore for the payment of consulting services under the Project, rests solely with the Borrower. Disbursements of the proceeds of a loan are made only at the Borrower's request. Supporting evidence that the loans are used in accordance with the Loan Agreement shall be submitted with the Borrower's withdrawal application. Payment may be made (a) to reimburse the Borrower for payment(s) already made from its own resources, (b) directly to a third party (to the consultant). As emphasized in Section 1.02 of these Guidelines, the Borrower is responsible for the selection and employment of consultants. It invites, receives, and evaluates proposals and awards the contract. The contract is made between the Borrower and the consultant. The Bank is not a party to the contract.

#### **Bank's Role**

3. The Bank reviews the Letter of Invitation, the evaluation of proposals, award proposal, and contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Loan Agreement. For all contracts subject to Bank's review, the Bank reviews the documents before they are issued, as described in Annex 1. Also, if at any time in the selection process (even after the award of contract) the Bank concludes that the agreed procedures were not followed in any substantial respect, the Bank may declare misprocurement, as described in section 1.08. However, if the Borrower has awarded a contract

after obtaining the Bank's approval, the Bank shall declare misprocurement only if the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower. Furthermore, if the Bank determines that the consultant recommended for the award has engaged in corrupt or fraudulent practices, the Bank may reject a proposal for award set forth in section 1.09 of these Guidelines.

### **Consultants' Role**

4. When consultants receive the Letter of Invitation, and if they can meet the requirements of the terms of reference and the commercial and contractual conditions, they shall make the arrangements necessary to prepare a responsive proposal (for example, visiting the country of the assignment, seeking associations, collecting documentation, setting up the preparation team). If the consultants find in the Letter of Invitation documents - especially in the selection procedure and evaluation criteria - any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they shall seek clarification from the Borrower, in writing, within the period specified in the Letter of Invitation for seeking clarifications.

5. In this connection, it shall be emphasized that the specific Letter of Invitation issued by the Borrower governs each selection, as stated in these Guidelines. If consultants feel that any of the provisions in the Letter of Invitation are inconsistent with these Guidelines, they shall also raise this issue with the Borrower.

6. Consultants shall ensure that they submit a fully responsive proposal including all the supporting documents requested in the Letter of Invitation. It is essential to ensure accuracy in the curricula vitae of key staff submitted with the proposals. Once technical proposals are received and opened, consultants shall not be required nor permitted to change the substance, the key staff, and so forth. Similarly, once financial proposals are received, consultants shall not be required or permitted to change the quoted fee and so forth.

## **Confidentiality**

7. The process of proposal evaluation shall be confidential until the announcement of contract award, except for the disclosure of the technical points as indicated. Confidentiality enables the Borrower and the Bank to avoid either the reality or perception of improper interference. If, during the evaluation process, consultants wish to bring additional information to the notice of the Borrower, the Bank, or both, they shall do so in writing.

## **Debriefing**

8. If after contract award, a consultant wishes to ascertain the grounds on which its proposal was not selected, it shall address its request to the Borrower as indicated in section 3.11





**Disbursement Procedures  
under the EDCF Loan**

***ECONOMIC DEVELOPMENT  
COOPERATION FUND***



## TABLE OF CONTENTS

| <u>Article</u>  | <u>Page</u>   |
|---|---------------|
| <b>Article I      General</b> .....   | <b>93</b>     |
| Section 1.01    Purpose.....  | 93            |
| Section 1.02    Standard Procedures .....   | 93            |
| Section 1.03    Minimum Amount of Application .....                                 | 93            |
| Section 1.04    Advice of Disbursement to the Borrower.....                         | 93            |
| Section 1.05    Expenses .....  | 94            |
| <br><b>Article II      Commitment Procedure</b> .....                               | <br><b>94</b> |
| Section 2.01    Introduction.....   | 94            |
| Section 2.02    Issuance of the Letter of Credit and the Letter of Commitment ..... | 94            |
| Section 2.03    Bank’s Reimbursement .....  | 95            |
| Section 2.04    Contract in US Dollar .....   | 95            |
| Section 2.05    Others .....  | 95            |
| <br><b>Article III     Reimbursement Procedure</b> .....                            | <br><b>96</b> |
| Section 3.01    Introduction.....   | 96            |
| Section 3.02    Application for Disbursement .....                                  | 96            |
| Section 3.03    Supporting Documents .....  | 96            |
| Section 3.04    Bank’s Disbursement.....  | 97            |
| <br><b>Article IV     Direct Payment Procedure</b> .....                            | <br><b>98</b> |
| Section 4.01    Introduction.....   | 98            |
| Section 4.02    Application for Payment .....                                       | 98            |
| Section 4.03    Supporting Documents .....  | 98            |
| Section 4.04    Bank’s Payment .....  | 99            |
| <br><b>Annex 1</b> Irrevocable Letter of Credit.....                                | <br>100       |
| Payment Terms .....   | 102           |
| <b>Annex 2</b> Irrevocable Letter of Credit.....                                    | 103           |
| Payment Schedule .....  | 105           |
| Statement of Performance .....  | 106           |
| <b>Annex 3</b> Letter of Commitment.....  | 107           |
| <b>Annex 4</b> Request for Reimbursement .....                                      | 108           |
| <b>Annex 5</b> Application for Disbursement.....                                    | 109           |
| <b>Annex 6</b> Summary Sheet of Disbursement.....                                   | 111           |
| <b>Annex 7</b> Application for Payment .....  | 112           |
| <b>Annex 8</b> Summary Sheet of Payments.....                                       | 114           |



## **Disbursement Procedures under the EDCF Loan**

### **ARTICLE I General**

#### **Section 1.01. Purpose**

The purpose of these Disbursement Procedures (the "**Disbursement Procedures**") is to set forth the procedures to be followed by the Borrowers (and the Project Executing Agencies where applicable) for disbursement of proceeds of Loans extended by the Export-Import Bank of Korea (the "**Bank**") from the resources of the Economic Development Cooperation Fund (the "**EDCF**"). Terms not otherwise defined in the Disbursement Procedures shall have the meanings ascribed to them in the "General Terms and Conditions Applicable to EDCF Loan Agreements."

#### **Section 1.02. Standard Procedures**

(a) The standard procedures for disbursement of EDCF Loans consist of:

- (i) Commitment Procedure;
- (ii) Reimbursement Procedure; and
- (iii) Direct Payment Procedure.

(b) The Borrower may use any or all of these procedures in accordance with the provisions of the relevant Loan Agreement.

#### **Section 1.03. Minimum Amount of Application**

The amount of each application for disbursement shall not be less than Thirty Million Korean Won (₩30,000,000) or its equivalent except the final disbursement under the Loan Agreement.

#### **Section 1.04. Advice of Disbursement to the Borrower**

The Bank will expeditiously process each disbursement application received from the Borrower. If and to the extent the disbursement application is approved, payment is promptly arranged and the Borrower shall be advised of such disbursement. If for any reason the application is not approved, the Bank shall promptly notify the Borrower of the extent of disapproval with reasons.

### **Section 1.05. Expenses**

All banking charges or fees accrued in connection with the disbursement procedures are for the Borrower's account, provided, however, that such charges or fees may be borne by the supplier, contractor or consultant (collectively the "**Supplier**") according to the terms of the relevant supply contract.

## **ARTICLE II Commitment Procedure**

### **Section 2.01. Introduction**

(a) Under the Commitment Procedure, the Borrower shall arrange an irrevocable letter of credit (the "**Letter of Credit**") issued in favor of the Supplier to make payment for the import of goods and services which are eligible for financing under the Loan Agreement.

(b) The Letter of Credit shall provide that a bank doing business in the Supplier's country (the "**Advising Bank**") shall reimburse itself from a designated Korean foreign exchange bank in Seoul (the "**Paying Bank**").

(c) The Paying Bank shall obtain reimbursement from the Bank under the assurance of the Bank. Such assurance, whenever provided, takes the form of a letter of commitment (the "**Letter of Commitment**") whereby the Bank undertakes to reimburse, on certain conditions, the amount paid or to be paid by the Paying Bank under and in accordance with the specified Letter of Credit.

*Note: When the Advising Bank is a designated foreign exchange bank in Seoul, the Advising Bank is identical to the Paying Bank.*

### **Section 2.02. Issuance of the Letter of Credit and the Letter of Commitment**

(a) The Borrower or its designated authority shall request the foreign exchange bank in the Borrower's country as designated in the Loan Agreement (the "**Issuing Bank**") to issue the Letter of Credit in accordance with the terms of the relevant supply contract.

(b) The Issuing Bank shall issue the Letter of Credit, on behalf of and under authorization of the Borrower, in favor of the Supplier through the Advising Bank substantially in the form of Annex 1 for goods and in the form of Annex 2 for services respectively. The Paying Bank shall send a copy of the Letter of Credit to the Bank in order to obtain the Letter of Commitment from the Bank.

(c) When the Bank finds such Letter of Credit in order and in conformity with the

provisions of the Loan Agreement and the terms of the contract concerned, the Bank shall issue the Letter of Commitment to the Paying Bank in the form of Annex 3.

(d) Upon receipt of the Letter of Commitment, the Paying Bank shall send the Letter of Credit, which shall become effective when the Paying Bank acknowledges receipt of the Letter of Commitment from the Bank, to the Supplier through the Advising Bank. The Paying Bank shall simultaneously send a copy of the Letter of Commitment to the Issuing Bank.

### **Section 2.03. Bank's Reimbursement**

(a) The Advising Bank shall make payment to the Supplier pursuant to the Letter of Credit and request the Paying Bank to reimburse the funds by sending one set of documents specified in the Letter of Credit. Simultaneously the Advising Bank shall send the remaining sets of documents directly to the Issuing Bank.

(b) Upon receipt of such request, the Paying Bank shall present to the Bank the Request for Reimbursement in the form of Annex 4 attached hereto.

(c) The Bank shall, within fifteen (15) business days of its receipt of the Request for Reimbursement, make reimbursement of the requested amount to the Paying Bank in accordance with the Letter of Commitment. Such reimbursement by the Bank shall constitute a valid disbursement of the Loan under the Loan Agreement.

### **Section 2.04. Contract in US Dollar**

(a) In case the relevant contract is fixed and payable in US Dollars, Forms EDCF-LC1 and EDCF-LC2 attached hereto shall be applied mutatis mutandis to that case.

(b) The amount of the Letter of Commitment and the Request for Reimbursement shall be stated in US Dollars.

### **Section 2.05. Others**

(a) Care should be taken to ensure that an agreement on the Letter of Credit, and on the method of the reimbursement be concluded between the Paying Bank, the Issuing Bank and the Borrower or its designated authority after the signing of the Loan Agreement.

(b) Claims or disputes in connection with aforementioned Letter of Credit shall be settled among the parties concerned and such claims or disputes shall not exempt the Borrower from any obligation under the Loan Agreement concerned.



## **ARTICLE III**

### **Reimbursement Procedure**

#### **Section 3.01. Introduction**

The Reimbursement Procedure is to be followed in cases where the Borrower has made payments which are eligible for financing under the Loan Agreement.

#### **Section 3.02. Application for Disbursement**

The Borrower shall request the Bank to make disbursement for a sum not exceeding the amount actually paid by the Borrower by sending to the Bank an Application for Disbursement in the form of Annex 5 and its Summary Sheet in the form of Annex 6.

#### **Section 3.03. Supporting Documents**

The Borrower shall submit to the Bank following documents in support of the Application for Disbursement. It is not necessary to furnish original documents; a photocopy will suffice.

(a) For all cases described in (b) through (e) below:

(i) the contract or confirmed purchase order<sup>1)</sup> - showing that the payment was due, and

(ii) evidence of payment<sup>2)</sup> - showing the date and amount paid.

(b) For payment against delivery/shipment of goods; in addition to (a) above:

(i) supplier's invoice - indication of the goods, quantities and prices, and

(ii) bill of lading or other similar documents.

---

1) If this has already been furnished to the Bank, a reference to the letter or documents with which it was sent earlier should be given in the "Footnote" of the Summary Sheet.

2) Such as a bill of exchange, a cancelled bank check, a demand draft, a simple receipt, or a bank's remittance advice, etc.

(c) For payments made prior to delivery/shipment of goods:

Only those listed in (a) above. However, as promptly as the supplier's invoice and the bill of lading become available, copies of these documents should be furnished to the Bank.

(d) For payments for consultants and other services; in addition to (a) above:

(i) bill, claim or invoice of the consultants or suppliers of services rendered and amount payable to them. If such services relate to the importation of goods (e.g., freight, insurance payments), adequate reference should be given to enable the Bank to relate each of these items to specific goods which are eligible for financing by the Bank.

(e) For payments under civil works contracts; in addition to (a) above:

(i) bill, claim or invoice of the contractor- showing, in sufficient details, the work performed by the contractor and amount claimed therefor, and

(ii) certificate - signed by the chief engineering officer or any equivalent entity/person of the Borrower assigned to the Project, to the effect that the work performed by the contractor is satisfactory and in accordance with the terms of the contract.

#### **Section 3.04. Bank's Disbursement**

When the Bank finds the Application for Disbursement and its supporting documents in order and in conformity with the provisions of the Loan Agreement and the terms of the relevant contract, the Bank shall make disbursement. Disbursement shall be made within fifteen (15) business days from the date of receipt of the Application by paying into the account of the Borrower with a bank designated by the Borrower. Such reimbursement shall constitute a valid disbursement of the Loan under the Loan Agreement.

## **ARTICLE IV**

### **Direct Payment Procedure**

#### **Section 4.01. Introduction**

Under the Direct Payment Procedure, payment to be financed from the EDCF Loan may be paid to the Supplier by the Bank. Accordingly, the Borrower may request the Bank to pay the due amount to the Supplier's account with a bank as designated by the Borrower.

#### **Section 4.02. Application for Payment**

The Borrower shall present an Application for Payment in the form of Annex 7 and its Summary Sheet in the form of Annex 8. The Application for Payment should show clearly the specific amount to be paid as well as the date on which such amount would become due for payment.

#### **Section 4.03. Supporting Documents**

The Borrower should submit to the Bank following documents in support of the Application for Payment. It is not necessary to furnish original documents; a photocopy will suffice.

(a) The contract or purchase order under which the specified amount is due to be made; unless it has already been furnished to the Bank.

(b) If payment to be made relates to shipment of goods, the supplier's invoice showing items of shipment should be furnished; if shipment has already been effected, the relevant bill of lading should also be furnished.

(c) If payment to be made relates to rendering of services, the supplier's or consultant's claim showing sufficient details should be furnished.

(d) If payment to be made relates to work performed under a civil works contract, the claim of the contractor showing the work performed and amount due to be paid should be furnished; a certificate, to the effect that the work has been performed satisfactorily and that the payment claimed by the contractor is due under and in accordance with the terms of the contract, should also be furnished by the chief engineering officer or any equivalent entity/person of the Borrower assigned to the Project.

**Section 4.04. Bank's Payment**

When the Bank finds the Application for Payment and its supporting documents in order and in conformity with the provisions of the Loan Agreement and the terms of the contract concerned, the Bank shall pay the requested amount. The payment shall be made by depositing the amount into the account of the Supplier with a bank as designated by the Borrower within fifteen (15) business days or on the date as specified in the Application whichever is later. Such payment by the Bank shall constitute a valid disbursement of the Loan under the Loan Agreement.

## IRREVOCABLE LETTER OF CREDIT

Date:

L/C No.:

To: (Name and address of the Advising Bank)

This Letter of Credit has been issued pursuant to EDCF Loan Agreement No. [●], dated [●] (*Name and address of the Borrower*) and THE EXPORT-IMPORT BANK OF KOREA

Dear Sirs,

We request you to advise [●] (*Name and address of the Supplier*) that we have opened our irrevocable credit No.[●] in their favor for account of [●] (*Name of the Borrower*) for a sum or sums not exceeding an aggregate amount of [●] available by beneficiary's drafts at sight for full invoice value drawn on (*the designated Korean foreign exchange bank in Seoul*),

To be accompanied by the following documents:

Signed commercial invoice in [●]

Packing list in [●]

Certificate of Origin in [●]

Full set of clean on board ocean bills of lading made out to order and blank endorsed and marked "Freight [●] " and "Notify [●] " (Other documents)

evidencing shipment of (*Brief description of goods referring to Contract No. [●]*) from [●] to [●] Partial shipments are [●] permitted. Transshipment is [●] permitted. Bills of lading must be dated not later than [●], 20\_\_\_\_. Drafts must be presented to the drawee not later than [●], 20\_\_\_\_\_.

All drafts and documents under this credit must be marked "Drawn under [●] (*Name of the Issuing Bank*) irrevocable credit No. [●] dated [●], 20\_\_\_\_\_, and Import Reference No(s). [●] (if any)".

This credit is not transferable.

We hereby undertake that all drafts drawn under and in compliance with the terms of this credit shall be duly honored on due presentation and delivery of documents to the drawee.

Unless otherwise expressly stated, this credit is subject to "Uniform Customs and Practice for Documentary Credits (1993 Revisions), International Chamber of Commerce Brochure No. 500."

Special Instructions to the Negotiating Bank:

1. This credit shall become effective when [●] (*the designated Korean foreign exchange bank in Seoul*) acknowledges receipt of the Letter of Commitment from THE EXPORT-IMPORT BANK OF KOREA under the aforementioned Loan Agreement. After obtaining the reimbursement from THE EXPORT-IMPORT BANK OF KOREA in accordance with the provisions of the Letter of Commitment, [●] (*the designated Korean foreign exchange bank in Seoul*) shall undertake to remit the amount of the drafts in accordance with instruction issued by you.

2. You must forward the drafts and one complete set of documents to (the designated Korean foreign exchange bank in Seoul) together with the certificate stating that the remaining documents have been airmailed direct to us.

Yours faithfully,

(Name of the Issuing Bank)

(Authorized Signature)

## PAYMENT TERMS

This payment terms constitutes an integral part of our Letter of Credit No. [●].

I. Initial Payment

Amount: [●] being [●] % of the total contract price.

Required documents:

Latest presentation date:

II. Intermediate Payment (if any)

Amount: [●] being [●] % of the total contract price.

Required documents:

Latest presentation date:

III. Payment against Shipping Documents

Amount: [●] being [●] % of the total contract price.

Note: This attached sheet is not required in case of full payment against shipping documents.

## IRREVOCABLE LETTER OF CREDIT

Date:  
L/C No.:

To: (Name and address of the Advising Bank)

This Letter of Credit has been issued pursuant to EDCF Loan Agreement No. \_\_\_\_\_, dated \_\_\_\_\_ between (Name and address of Borrower) and THE EXPORT-IMPORT BANK OF KOREA

Dear Sirs,

We request you to advise [●] (Name and address of the Supplier) that we have opened our irrevocable credit No. [●] in their favor for account of [●] (Name of the Borrower) for a sum or sums not exceeding an aggregate amount of [●] available by beneficiary's drafts at sight for full invoice value drawn on [●] (the designated Korean foreign exchange bank in Seoul).

To be accompanied by the following documents, in accordance with the Payment Schedule attached hereto, concerning (Contract No. [●] with regard to [●] Project).

Drafts must be presented to the drawee not later than [●], 20\_\_\_\_. All drafts and documents must be marked "Drawn under [●] (Name of the Issuing Bank) irrevocable credit No. [●] dated [●], 20\_\_\_\_.

This credit is not transferable.

We hereby undertake that all drafts drawn under and in compliance with the terms of this credit shall be duly honored on due presentation and delivery of documents to the drawee.

Unless otherwise expressly stated, this credit is subject to "Uniform Customs



and Practice for Documentary Credits (1993 Revisions), International Chamber of Commerce Brochure No. 500."

Special Instructions to the Negotiating Bank:

1. This credit shall become effective when [●] (*the designated Korea foreign exchange bank in Seoul*) acknowledges receipt of the Letter of Commitment from THE EXPORT-IMPORT BANK OF KOREA under the aforementioned Loan Agreement.

After obtaining the reimbursement from THE EXPORT-IMPORT BANK OF KOREA in accordance with the provisions of the Letter of Commitment, [●] (*the designated Korean foreign exchange bank in Seoul*) undertakes to remit the amount of the drafts in accordance with instructions issued by you.

2. You must forward the drafts and one complete set of documents to [●] (*the designated Korean foreign exchange bank in Seoul*) together with the certificate stating that the remaining documents have been airtailed direct to us.

Yours faithfully,

(Name of the Issuing Bank)

(Authorized Signature)

**PAYMENT SCHEDULE**

The payment schedule constitutes an integral part of our Letter of Credit No. [●].

I. Initial payment

Amount: [●] being [●] % of the total contract price.  
Required documents: Beneficiary's statement  
Latest presentation date:

II. Progress payment

Aggregate amount: [●] being [●] % of the total contract price to be paid as follows:

|                  | <u>Amount due</u> | <u>Latest Presentation</u> |
|------------------|-------------------|----------------------------|
| 1st Installment: | _____             | _____                      |
| 2nd Installment: | _____             | _____                      |
| _____:           | _____             | _____                      |

Required documents: a copy of Statement of Performance issued by (Borrower or its designated authority), a form of which is attached hereto.

## STATEMENT OF PERFORMANCE

Date:

Ref. No.:

To (Name and address of the Supplier)

Re: Letter of Credit No. [●], dated [●] issued by [●] for (Amount) in favor of [●] concerning [●] Project under EDCF Loan Agreement No. [●].

I, the undersigned, representing [●] *(Name of the Borrower)*, hereby issue a Statement of Performance to entitle [●] *(Name of the Supplier)* to receive the sum of (Amount) THE EXPORT-IMPORT BANK OF KOREA in accordance with the Payment Terms stipulated in the Contract No. , dated , between [●] *(Name of Supplier)* and [●] *(Name of Purchaser)*.

(Name of Borrower)

(Authorized Signature)

Special Instruction:

*The details of the actual performance shall be stated in the sheet attached hereto.*

## LETTER OF COMMITMENT

Date:

Commitment No.:

To: (Name and address of Paying Bank)

Reference: Letter of Credit No. [●] dated [●], issued by [●] for [●] (*Amount*)  
in favor of [●] (*Name of the Supplier*).

Gentlemen:

We hereby irrevocably undertake to reimburse you for a sum or sums not exceeding [●] against the Request for Reimbursement, accompanied by a copy of the drafts drawn by the beneficiary, within fifteen (15) business days of our receipt of the Request.

This Letter of Commitment shall expire on [●].

It is further understood that in reimbursing you pursuant to this Letter of Commitment, we shall in no way be liable or responsible for the acts or omissions of the issuing bank, the negotiating bank, the beneficiary and/or any other parties concerned with the captioned Letter of Credit in connection with the issuance, negotiation, payments thereof or any other matters connected therewith.

Yours truly,

The Export-Import Bank of Korea

(Authorized Signature)

## REQUEST FOR REIMBURSEMENT

Date:

Ref. No.:

To: The Export-Import Bank of Korea Seoul, Korea  
Attn: Director, EDCF Department

Re: Loan Agreement (No. [●]) dated [●]  
Country: [●]  
Letter of Credit No. [●]  
Letter of Commitment No. [●]

Gentlemen,

We have received the documents concerning the supply of [●] (*quantity and description of goods or services according to the Letter of Credit*) and found them in order and in conformity with the terms of the said Letter of Credit.

Pursuant to the above Letter of Commitment, we hereby request you to make reimbursement to us from the above Loan with the following particulars:

- (a) Amount of Reimbursement:
- (b) Amount of the Draft:  
(*payable under the said Letter of Credit*):
- \* (c) Rate of Exchange
- (d) Date of Reimbursement:

Yours truly,

(Name of Paying Bank)

(Authorized Signature)

Name :

Title :

Enclosed: \_\_\_\_\_

\* Delete if not applicable.

## APPLICATION FOR DISBURSEMENT

Date :  
Loan Agreement No.:  
App. Serial No.:

To : The Export-Import Bank of Korea  
Seoul, Republic of Korea

Attn : Director, EDCF Department

Gentlemen,

1. Pursuant to the Loan Agreement No. [●] dated [●] between THE EXPORT-IMPORT BANK OF KOREA (hereinafter referred to as the "Bank") and [●] (*Name of the Borrower*), the undersigned hereby requests disbursement of the sum of [●] (*Amount*) in reimbursement of expenditures as described in the attached Summary Sheet(s).
2. For such reimbursement, please make disbursement of the requested amount by paying it into the account of [●] (*Name of the Borrower*) (*account no. \_\_\_\_*) with (*Name and Address of the Authorized Bank*) on (*Date of Disbursement*).
3. The undersigned has not previously requested for disbursement of any amounts from the Loan for the purpose of reimbursing or of meeting the expenditures described in the attached Summary Sheet(s). The undersigned has not obtained nor will obtain funds for such purpose out of any other loan, credit or grant available to the undersigned except short-term loans or credits, if any, established in anticipation of the disbursement requested herein and to be repaid pro tanto with the funds disbursed hereunder and any charges, commission or interest paid or payable under such anticipatory short-term credits are not included in the amount herein requested to be disbursed.

4. The undersigned certifies that:

- (a) the expenditures, hereby sought to be reimbursed, were made for the purposes specified in the Loan Agreement;
- (b) the goods and services purchased with these expenditures have been procured in accordance with the applicable procurement procedures agreed upon with the Bank pursuant to the said Loan Agreement and the cost and terms of purchase thereof are reasonable;
- (c) the said goods and services were or will be supplied by the supplier(s) specified in the attached Summary Sheet(s) and were or will be produced in (or, in the case of services, supplied from) the eligible source country (countries) under the Loan Agreement; and
- (d) as of the date of this request there is no existing default under the Loan Agreement, nor, to the best of the undersigned's knowledge and belief, under the Guarantee, if any.

5. This request consists of (Number) page(s) and (Number) signed and numbered Summary Sheet(s).

(Name of the Borrower)

(Authorized Signature)

Name :

Title :

Enclosed :

**Summary Sheet of Disbursement**

Date:

Loan Agreement No.:

App. Serial No.:

Summary Sheet No. [●]

No. and Title of Category/Subcategory \_[●]

*(For more than ten items, use additional sheet(s) with same number)*

| 1        | 2             | 3                 | 4                                | 5  | 6                            | 7               | 8           | 9              | 10                     | 11      |
|----------|---------------|-------------------|----------------------------------|--|------------------------------|-----------------|-------------|----------------|------------------------|---------|
| Item No. | Delivery date | Country of Origin | Descriptor of Goods and Services | No. and date of Contract or Purchase order | Name And Address of supplier | Date of payment | Amount paid | Amount claimed | Nature of Payment made | Remarks |
| 1        |               |                   |                                  |  |                              |                 |             |                |                        |         |
| 2        |               |                   |                                  |  |                              |                 |             |                |                        |         |
| 3        |               |                   |                                  |  |                              |                 |             |                |                        |         |
| 4        |               |                   |                                  |  |                              |                 |             |                |                        |         |
| 5        |               |                   |                                  |  |                              |                 |             |                |                        |         |
| 6        |               |                   |                                  |  |                              |                 |             |                |                        |         |
| 7        |               |                   |                                  |  |                              |                 |             |                |                        |         |
| 8        |               |                   |                                  |  |                              |                 |             |                |                        |         |
| 9        |               |                   |                                  |  |                              |                 |             |                |                        |         |
| 10       |               |                   |                                  |  |                              |                 |             |                |                        |         |
| Total    |               |                   |                                  |  |                              |                 |             |                |                        |         |

Note: Column 10 is to indicate, against each item, whether the payment is a down-payment, or an installment payment (if so, the number of installment) or the final payment in full settlement.

(Name of the Borrower)(Authorized Signature)

Name:

Title:



**APPLICATION FOR PAYMENT**

Date :  
Loan Agreement No. :  
App. Serial No. :

To : The Export-Import Bank of Korea  
Seoul, Korea

Attn : Director, EDCF Department

Gentlemen,

1. Pursuant to the Loan Agreement No. [●] dated [●] between The Export-Import Bank of Korea (hereinafter referred to as the "Bank") and [●] (*Name of the Borrower*), the undersigned hereby requests payment of the sum of [●] (*Amount*) for the undersigned's settlement of expenditures as described in the Summary Sheet(s) of Payment attached hereto.
2. For such settlement, please make payment of the requested amount by paying it into the account(s) of the Supplier(s) (*account No. [●]*) with [●] (*Name and Address of the Supplier's Bank*) by the [●]th of [●], [●].
3. The undersigned has not requested for disbursement of any amounts under the Loan Agreement for the purpose of meeting the expenditures described in the attached Summary Sheet(s). The undersigned has not obtained nor will obtain funds for such purpose out of any other loan, credit or grant available to the undersigned.

4. The undersigned certifies that:

- (a) The expenditures described in the attached Summary Sheet(s) are to be made for the purposes specified in the Loan Agreement;
- (b) The concerned goods and services purchased have been procured in accordance with the applicable procurement procedures agreed upon with the Bank pursuant to the said Loan Agreement and the cost and terms of purchase thereof are reasonable;
- (c) The said goods and services were or will be supplied by the supplier(s) specified in the attached Summary Sheet(s) and were or will be produced in (or, in the case of services, supplied from) the eligible source country (countries) under the Loan Agreement; and
- (d) As of the date of this request there is no existing default under the Loan Agreement.

5. This application consists of (Number) page(s) and (Number) signed and numbered summary Sheet(s).

(Name of the Borrower)

(Authorized Signature)

Name :

Title :

Annex 8 (Form EDCF-AFP(2))

**Summary Sheet of Payments**

Date:

Serial No.:

| 1                                   | 2        | 3*                      | 4                                 | 5      | 6               | 7               | 8                 | 9**               |
|-------------------------------------|----------|-------------------------|-----------------------------------|--------|-----------------|-----------------|-------------------|-------------------|
| Transaction                         | Supplier | Nationality of Supplier | Description of Goods and Services | Origin | Contract Amount | Date of payment | Amount of payment | Nature of payment |
| 1.<br>2.<br>3.<br>4.<br>.<br>.<br>. |          |                         |                                   |        |                 |                 |                   |                   |
| Total                               |          |                         |                                   |        |                 |                 |                   |                   |

The undersigned certifies that the Supplier(s) and goods and/or services stated above are eligible under the Loan Agreement.

\* *Note for 3. Nationality of Supplier: Country in which the Supplier is incorporated and registered.*

\*\* *Note for 9. Nature of Payment: A down-payment, an installment payment or the final payment, etc.*

\_\_\_\_\_  
(Authorized Signature)

## **Contacts for Inquiries**

For further information, please contact the following offices:

The Embassy of the Republic of Korea in your country

The Ministry of Economy and Finance of the Republic of Korea

Attn : Director, Development Cooperation Division, International Economic Affairs Bureau  
Government Complex-Sejong, 477, Galmae-ro,  
Sejong Special Self-Governing City 30109, Korea

Fax : (82-44) 215-8152

Tel : (82-44) 215-7710, 215-7723

The Ministry of Foreign Affairs of the Republic of Korea

Attn : Director, Development Cooperation Division, Development Cooperation Bureau  
60, Sajik-ro 8-gil, Jongno-gu, Seoul 03172, Korea

Fax : (82-2) 2100-8359

Tel : (82-2) 2100-8137, 2100-8348

The Export-Import Bank of Korea

Attn : Director General, EDCF [●] Department

38 Eunhaeng-ro, Yeongdeungpo-gu, Seoul 07242, Korea

Fax : (82-2) 3779-[●]

Tel : (82-2) 3779-[●], 3779-6114