

AFRICAN DEVELOPMENT BANK GROUP



Rules and Procedures for Procurement of Goods and Works

Procurement and Fiduciary Services Department (ORPF)
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Acronyms

ADB	African Development Bank
ADF	African Development Fund
BOO	Build, own, operate
BOOT	Build, own, operate, transfer
BOT	Build, operate, transfer
CIF	Cost, Insurance, and Freight
CIP	Carriage and Insurance Paid (place of destination)
CPT	Carriage Paid To (named place of destination)
DDP	Delivered Duty Paid
EXW	Ex works, Ex factory, or Off the Shelf
FCA	Free Carrier (named place)
GNP	Gross National Product
ICB	International Competitive Bidding
LIB	Limited International Bidding
NCB	National Competitive Bidding
NGO	Nongovernmental organization
NTF	Nigeria Trust Fund
PAR	Project Appraisal Report
RMC	Regional Member Country
SA	Special Account
SBDs	Standard Bidding Documents
UN	United Nations
UNDB	United Nations Development Business

I. Introduction

Purpose

1.1 The purpose of these Rules is to inform those carrying out a project that is financed in whole or in part by Financing¹ from the "Bank",² of the policies that govern the procurement of goods, works, and services (other than consultant services)³ required for the project. The Financing Agreement⁴ governs the legal relationships between the Borrower⁵ of the Financing and the Bank, and the Rules are made applicable to procurement of goods and works for the project, as provided in the Financing Agreement. The rights and obligations of the Borrower and the providers of goods and works for the project are governed by the bidding documents, and by the contracts signed by the Borrower with the providers of goods and works, and not by these Rules or the Financing Agreements. No party other than the parties to the Financing Agreement shall derive any rights therefrom or have any claim to proceeds of the Financing.

General Considerations

1.2 The responsibility for the implementation of the project, and therefore for the award and administration of contracts under the project, rests with the Borrower.⁶ The Bank, for its part, is required by its Charter to "...ensure that the proceeds of any loan made or guaranteed by it are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency"⁷ and without regard to political or non-economic influences or considerations, and it has established detailed procedures, including these Rules, for this purpose.⁸ While in practice the specific procurement rules and procedures to be followed in the implementation of a project depend on the circumstances of the particular case, four considerations generally guide the Bank's requirements:

- (a) the need for economy and efficiency in the implementation of the project, including the procurement of the goods and works involved;

¹ "Financing" shall mean any loan or grant provided by the African Development Bank (ADB), the African Development Fund (ADF), the Nigeria Trust Fund (NTF) or other funds administered by these entities.

² "Bank" shall mean the African Development Bank, the African Development Fund, the Nigeria Trust Fund, as well as any other funds administered by the African Development Bank, and any or all of these entities, as the context may require.

³ References to "goods" and "works" in these Rules include related services such as transportation, insurance, installation, commissioning, training, and initial maintenance. "Goods" includes commodities, raw material, machinery, equipment, and industrial plant. The provisions of these Rules also apply to services which are bid and contracted on the basis of performance of a measurable physical output, such as drilling, mapping, and similar operations. These Rules do not refer to Consultants' services, to which the current Bank's Rules and Procedures for the Use of Consultants apply (referred to herein as Consultant Rules).

⁴ "Financing Agreement" shall mean an agreement with a Borrower by virtue of which the Bank undertakes to provide financing for any project and shall include grant and technical assistance or lines of credit agreements as well as any other financing provided by the Bank. To the extent that the Financing Agreement is not consistent with the Rules, the Financing Agreement shall prevail.

⁵ "Borrower" shall mean a party to a Financing Agreement with the Bank and shall include the Borrower in a loan agreement with the Bank or the recipient of any other type of Financing from the Bank.

⁶ In some cases, the Borrower acts only as an intermediary and the project is carried out by another agency or entity. References in these Rules to the Borrower include such agencies and entities, as well as Sub-borrowers under on-lending arrangements.

⁷ See Agreement Establishing the African Development Bank, 6th Edition, July 2002, Article 17(1)(h); see also Agreement Establishing the African Development Fund, 2nd Edition, July 2003, Article 15(5); and Agreement Establishing the Nigeria Trust Fund, 2nd Edition, May 2004, Article 4.1.

⁸ Reference is made here also to the requirements of Article 38 of the Agreement Establishing the African Development Bank.

- (b) the Bank’s interest in giving all eligible bidders from Member Countries⁹ the same information and equal opportunity to compete in providing goods and works financed by the Bank;
- (c) the Bank’s interest in encouraging the development of domestic and regional contracting, and manufacturing industries in the Borrower’s country; and
- (d) the importance of transparency in the procurement process

1.3 Open competition is the basis for efficient public procurement. Borrowers shall select the most appropriate method for the specific procurement. In most cases, International Competitive Bidding (ICB), properly administered, and with the allowance for preferences¹⁰ for domestically or regionally manufactured goods and, where appropriate, for domestic or regional contractors¹¹ for works under prescribed conditions is the most appropriate method. In most cases, therefore, the Bank requires its Borrowers to obtain goods, works and services through ICB open to eligible suppliers and contractors.¹² Section II of these Rules describes the procedures for ICB.

1.4 Where ICB is not the most appropriate method of procurement, other methods of procurement may be used. Section III describes these other methods of procurement and the circumstances under which their application would be more appropriate. The particular methods that may be followed for procurement under a given project are provided for in the Financing Agreement. The specific contracts to be financed under the project, and their method of procurement, consistent with the Financing Agreement, are specified in the Procurement Plan as indicated in paragraph 1.16 of these Rules.

Applicability of Rules

1.5 The procedures outlined in these Rules apply to all contracts for goods and works financed in whole or in part by the Bank.¹³ For the procurement of those contracts for goods and works not financed by the Bank, the Borrower may adopt other procedures. In such cases, the Bank shall be satisfied that the procedures to be used will fulfill the Borrower’s obligations to cause the project to be carried out diligently and efficiently, and that the goods and works to be procured:

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

Eligibility

1.6 The proceeds of any Financing undertaken in the operations of the Bank shall be used for procurement of goods and works, including the related services, provided by bidders from Eligible¹⁴ Countries.¹⁵ Any conditions for participation shall be limited to those that are essential

⁹ See Para. 1.6, 1.7, and 1.8.

¹⁰ See Appendix 2 for all definitions relating to Domestic and Regional Preferences

¹¹ For purposes of these Rules, “Contractor” refers only to a firm providing construction services.

¹² See Para. 1.6, 1.7, and 1.8.

¹³ This includes those cases where the Borrower employs a procurement agent under Para. 3.10. The Appendix 6 of these Rules shall apply to the Private Sector.

¹⁴ Refer to Appendix 4 for additional information on Eligibility

to ensure the firm's capability to fulfill the contract in question. Bidders from non-Member Countries offering goods, works and related services (including transportation and insurance) are not eligible even if they offer these from Eligible Member Countries. Any waiver to this rule will be in accordance with the Articles 17(1)(d) of the Agreement Establishing the African Development Bank, 15(4)(a) of the Agreement Establishing the African Development Fund, and 4.1 of the Agreement Establishing the Nigeria Trust Fund.

1.7 In connection with any contract to be financed in whole or in part by the Bank, the Bank does not permit a Borrower to deny pre or post-qualification to a firm for reasons unrelated to its capability and resources to successfully perform the contract; nor does it permit a Borrower to disqualify any bidder¹⁶ for such reasons. Consequently, Borrowers should carry out due diligence on the technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

1.8 As exceptions to the foregoing:

- (a) Firms of a country or goods manufactured in a country may be excluded if (i) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods from, or payments to, a particular country, person, or entity. Where the Borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.
- (b) A firm which has been engaged by the Borrower to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods, works, or services resulting from or directly related to the firm's consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the contractor's obligations under a turnkey or design and build contract.¹⁷
- (c) Government-owned enterprises in the Borrower's country may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Borrower or Sub-Borrower.¹⁸
- (d) A firm declared ineligible by the Bank in accordance with subparagraph (d) of paragraph 1.14 of these Rules or in accordance with the African Development Bank Group Anti-Corruption and Fraud Policies¹⁹ shall be ineligible to be awarded a Bank-financed contract during the period of time determined by the Bank.

¹⁵ "Eligible Countries" shall mean: (a) in the case of the African Development Bank, the Member Countries of the African Development Bank; (b) in the case of the African Development Fund, the Member Countries of African Development Bank and State Participants of the African Development Fund.

¹⁶ Bidders could be natural persons, enterprises, joint ventures or partnerships. Firms could be enterprises, joint ventures or partnerships. The eligibility criteria in each case are given in Appendix 4

¹⁷ See Para. 2.5.

¹⁸ Other than Force Account units, as permitted under Para. 3.8.

¹⁹ African Development Bank Group Policy on Good Governance & Whistle Blowing and Complaint Handling Policy

Advance Contracting and Retroactive Financing

1.9 The Borrower may wish to proceed with the initial steps of procurement before signing the related Financing Agreement. In such cases, the procurement procedures, including advertising, shall be in accordance with the Rules in order for the eventual contracts to be eligible for Bank Financing, and the Bank shall review the process used by the Borrower. A Borrower undertakes such advance contracting²⁰ at its own risk, and any concurrence by the Bank with the procedures, documentation, or proposal for award does not commit the Bank to provide Financing for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to signing of the Financing Agreement is referred to as retroactive Financing and is only permitted within the limits specified in the Financing Agreement.

Joint Ventures

1.10 Any firm may bid independently or in joint venture confirming joint and several liability, either with domestic firms and/or with foreign firms, but the Bank does not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

Bank Review

1.11 The Bank reviews the Borrower's procurement procedures, documents, bid evaluations, award recommendations, and contracts to ensure that the procurement process is carried out in accordance with the agreed procedures. These review procedures are described in Appendix 1. The Procurement Plan approved by the Bank²¹ shall specify the extent to which these review procedures shall apply in respect of the different categories of goods and works to be financed, in whole or in part from the Bank Financing.

Misprocurement

1.12 The Bank does not finance expenditures for goods and works which have not been procured in accordance with the agreed provisions in the Financing Agreement and as further elaborated upon in the Procurement Plan.²² In such cases, the Bank will declare misprocurement, and it is the policy of the Bank to cancel that portion of the Financing allocated to the goods and works that have been misprocured. The Bank may, in addition, exercise other remedies provided for under the Financing 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 had been modified without the Bank's "no objection".

²⁰ See Appendix 5

²¹ See Paragraphs 1.16.

²² See Paragraphs 1.16.

References to Bank

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

“[Name of the Borrower] has received [or, ‘has applied for’] a [type of Financing] from the [ADB, ADF, NTF] (the Bank) in an amount equivalent to UA____, toward the cost of [name of project], and intends to apply a portion of the proceeds of this [type of Financing] to eligible payments under this Contract. Payments by the [Bank] will be made only at the request of [name of Borrower or designate] and upon approval by the [Bank], and will be subject, in all respects, to the terms and conditions of the [Financing] Agreement. No party other than [name of Borrower] shall derive any rights from the [Financing] Agreement or have any claim to the proceeds of the [type of Financing].

Fraud and Corruption

1.14 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank Financing), as well as bidders, suppliers, and contractors and their subcontractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy²³, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) “Fraudulent Practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “Collusive Practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in Corrupt, Fraudulent, Collusive, or Coercive Practices in competing for the contract in question;
- (c) will cancel the portion of the Financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of such Financing engaged in Corrupt, Fraudulent, Collusive, or Coercive Practices during the procurement or the

²³ See the Bank’s “Rules and Procedures for Whistleblowing and Complaints Handling in the Bank”; and the “Guidelines for Preventing & Combating Corruption & Fraud in Bank Group Operations”

execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur;

(d) will sanction a firm or individual, including declaring ineligible either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if the Bank at any time determines that the firm or individual has, directly or through an agent, engaged in Corrupt, Fraudulent, Collusive or Coercive Practices in competing for, or in executing, a Bank-financed contract; and

(e) will have the right to require that a provision be included in bidding documents and in contracts financed by the Bank, a provision be included requiring bidders, suppliers and contractors to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

1.15. With the specific agreement of the Bank, a Borrower may introduce, into bid forms for large contracts financed by the Bank, an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the bidding documents.²⁴ The Bank will accept the introduction of such undertaking at the request of the Borrowing country, provided the arrangements governing such undertaking are satisfactory to the Bank.

Procurement Plan

1.16. As part of the preparation of the project the Borrower shall prepare and, before negotiating the Financing Agreement, furnish to the Bank for its approval, a Procurement Plan²⁵ acceptable to the Bank setting forth: (a) the particular contracts for the goods, works, and/or services required to carry out the project during the initial period of at least 18 months; (b) the proposed methods for procurement of such contracts that are permitted under the Financing Agreement, and (c) the related Bank review procedures.²⁶ The Borrower shall update the Procurement Plan annually or as needed throughout the duration of the project. The Borrower shall implement the Procurement Plan in the manner in which it has been granted the approval by the Bank.

Parallel and Joint-Financing

1.17. Where the Bank is Financing on a Parallel²⁷ or Joint²⁸ basis with other sources of finance, the following shall apply:

²⁴ As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in the country of the [Purchaser] [Employer], as such laws have been listed by the [Purchaser] [Employer] in the bidding documents for this contract."

²⁵ If the Project includes the selection of consulting services, the Procurement Plan should also include the methods for selection of consulting services in accordance with the *Rules and Procedure for the Use of Consultants*. The Bank will disclose the initial Procurement Plan to the public after the related loan has been approved; additional updates will be disclosed after the Bank has approved them.

²⁶ See Appendix 1

²⁷ "Parallel-financing" shall mean an arrangement whereby the Bank and one or more parties other than the Borrower finance separate categories of expenditures or packages of the same project, or of the same part of a project, but each under its own procurement rules.

²⁸ "Joint-financing" shall mean an arrangement whereby the Bank and one or more parties other than the Borrower finance the same project or the same packages of a project under one set of procurement rules.

- (a) where the Bank finances on a Parallel basis with other financiers, these Rules shall apply to the components financed solely by the Bank, unless other financiers accept to apply the Rules; and
- (b) where the Bank finances on a Joint basis with financiers, other than the Borrower, it will require as a condition for its Financing that these Rules apply, unless the Board of Directors authorizes a waiver.

II. International Competitive Bidding

A. General

Introduction

2.1 The objective of International Competitive Bidding (ICB), as described in these Rules, is to provide all eligible prospective bidders²⁹ with timely and adequate notification of a Borrower's requirements and an equal opportunity to bid for the required goods and works.

Type and Size of Contracts

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

2.3 The size and scope of individual contracts will depend on the magnitude, nature, and location of the project. For projects requiring a variety of goods and works, separate contracts generally are awarded for the supply and/or installation of different items of equipment and plant³⁰ and for the works.

2.4 For a project requiring similar but separate items of equipment or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms, which could be allowed, at their option, to bid for individual contracts (slices) or for a group of similar contracts (package). All bids and combinations of bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest evaluated cost to the Borrower.³¹

2.5 In certain cases the Bank may accept or require a turnkey contract under which the design and engineering, the supply and installation of equipment, and the construction of a complete facility or works are provided under one contract. Alternatively, the Borrower may remain responsible for the design and engineering, and invite bids for a single responsibility contract for the supply and installation of all goods and works required for the project component. Design and build, and management contracting³² contracts are also acceptable where appropriate.³³

²⁹ See Para. 1.6, 1.7 and 1.8.

³⁰ For purposes of these Rules, "plant" refers to installed equipment, as in a production facility.

³¹ See Paras. 2.49–2.54 for the bid evaluation procedures.

³² In construction, a management contractor usually does not perform the work directly but contracts out and manages the work of other contractors, taking on the full responsibility and risk for price, quality, and timely performance. Conversely, a construction manager is a consultant for, or agent of, the Borrower, but does not take on such risks. (If financed by the Bank, the services of the construction manager should be procured under the Consultant Rules. See footnote 3.)

³³ Also see Paras. 3.14 and 3.15 for performance-based contracting.

Two-Stage Bidding

2.6 In the case of turnkey contracts or contracts for large complex facilities or works of a special nature or complex information and communication technology, it may be undesirable or impractical to prepare complete technical specifications in advance. In such a case, a two-stage bidding procedure may be used, under which first unpriced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents³⁴ and the submission of final technical proposals and priced bids in the second stage.

Notification and Advertising

2.7 Timely notification of bidding opportunities is essential in competitive bidding. For projects that include ICB the Borrower is required to prepare and submit to the Bank a draft General Procurement Notice. The Bank will arrange for its publication in the *UN Development Business online (UNDB online)* and on the *Bank's Internet Website*.³⁵ The Notice shall contain information concerning the Borrower (or prospective Borrower), amount and purpose of the Financing, scope of procurement under ICB, and the name, telephone (or fax) number, e-mail and address of the Borrower's agency responsible for procurement and the address of the Website where specific procurement notices will be posted. If known, the scheduled date for availability of prequalification or bidding documents should be indicated. The related prequalification or bidding documents, as the case may be, shall not be released to the public earlier than the date of publication of the General Procurement Notice.

2.8 Invitations to pre-qualify or to bid, as the case may be, shall be advertised as Specific Procurement Notices in at least one newspaper of national circulation in the Borrower's country. The Borrower may also publish these notices in the official gazette or an electronic portal with free access. Such invitations shall also be published in *UNDB online* and on the *Bank's Internet Website*. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.³⁶

Prequalification of Bidders

2.9 Prequalification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialized services, some complex information and technology and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (a) experience and past performance on similar contracts, (b)

³⁴ In revising the bidding documents in the second stage the Borrower should respect the confidentiality of the bidders' technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights.

³⁵ UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations (Website: www.devbusiness.com; e-mail: dbsubscribe@un.org); The African Development Bank Website is www.afdb.org.

³⁶ See Para. 2.44.

capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position.³⁷

2.10 The invitation to pre-qualify for bidding on specific contracts or groups of similar contracts shall be advertised and notified as described in paragraphs 2.7 and 2.8 above. The scope of the contract and a clear statement of the requirements for qualification shall be sent to those who responded to the invitation. All such applicants that meet the specified criteria shall be allowed to bid. Borrowers shall inform all applicants of the results of prequalification. As soon as prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. For prequalification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's resources. The list of prequalified firms in such instances shall be updated periodically. Verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract, and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully perform the contract.

B. Bidding Documents

General

2.11 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods and works to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data (including of geological and environmental nature); list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. The basis for bid evaluation and selection of the Lowest Evaluated Bid³⁸ shall be clearly outlined in the instructions to bidders and/or the specifications. If a fee is charged for the bidding documents, it shall be reasonable and reflect only the cost of their printing and delivery to prospective bidders, and shall not be so high as to discourage qualified bidders. The Borrower may use an electronic system to distribute bidding documents, provided that the Bank is satisfied with the adequacy of such system. If bidding documents are distributed electronically, the electronic system shall be secure to avoid modifications to the bidding documents and shall not restrict the access of bidders to the bidding documents. Bidding documents must be provided in print form to bidders who request them. A master copy of electronic documents shall be retained in print form, suitably authenticated by signature, stamp or other instrument acceptable to the Bank. Guidance on critical components of the bidding documents are given in the following paragraphs.

2.12 Borrowers shall use the appropriate *Standard Bidding Documents* (SBDs) issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address project-specific

³⁷ The Bank has prepared a Standard Prequalification Document for use by its Borrowers, where appropriate.

³⁸ "Lowest Evaluated Bid" shall mean a bid which is determined to be the most economic after evaluating all terms and conditions of the bid including cost but not necessarily price. For goods and equipment other factors that may be taken into account in assessing the Lowest Evaluated Bid are listed in Paragraph 2.52 of these Rules.

conditions. Any such changes shall be introduced only through bid or contract data sheets, or through special conditions of contract, and not by introducing changes in the standard wording of the Bank's SBDs. Where no relevant standard bidding documents have been issued, the Borrower shall use other internationally recognized standard conditions of contract and contract forms acceptable to the Bank.

Validity of Bids and Bid Security

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

2.14 Borrowers have the option of requiring a bid security. When used, the bid security shall be in the amount and form specified in the bidding documents³⁹ and shall remain valid for a period of four weeks beyond the validity period for the bids, in order to provide reasonable time for the Borrower to act if the security is to be called. Bid security shall be released to unsuccessful bidders once the contract has been signed with the winning bidder. In place of a bid security, the Borrower may require bidders to sign a declaration accepting that if they withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents, the bidder will be suspended for a period of time from being eligible for bidding in any contract with the Borrower.

Language

2.15 Prequalification and bidding documents and the bids shall be prepared in one of the following languages, selected by the Borrower: English or French. The contract signed with the winning bidder shall be written in the language so selected for the bidding documents, and this language shall be the one that governs the contractual relations between the Borrower and the winning bidder. In addition to being prepared in English or French the prequalification and bidding documents may, at the Borrower's option, also be prepared in the national language of the Borrower's country (or the language used nation-wide in the Borrower's country for commercial transactions).⁴⁰ If the prequalification and bidding documents are prepared in two languages, bidders shall be permitted to submit their bids in either of these two languages. In such case, the contract signed with the winning bidder shall be written in the language in which its bid was submitted, in which case this language shall be the one that governs the contractual relations between the Borrower and the winning bidder. If the contract is signed in a language other than English or French, and is subject to Bank's prior review, the Borrower shall provide the Bank with a translation of the contract in the internationally used language in which the bidding documents were prepared. Bidders shall not be required nor permitted to sign contracts in two languages.

³⁹ The format of the bid security shall be in accordance with the Standard Bidding Documents and shall be issued by a reputable bank or financial institution selected by the bidder. If the institution issuing the security is located outside the country of the Borrower, it shall have a correspondent financial institution located in the country of Borrower to make it enforceable.

⁴⁰ The Bank shall be satisfied with the language to be used.

Clarity of Bidding Documents

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

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

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

Standards

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

Use of Brand Names

2.20 Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an

otherwise incomplete specification, the words “or equivalent” shall be added after such reference. The specification shall permit the acceptance of offers for goods, which have similar characteristics and which provide performance, at least substantially equivalent to those specified.

Pricing

2.21 Bids for goods shall be invited on the basis of CIP⁴¹ (place of destination) for all goods manufactured abroad, including those previously imported, and EXW⁴² (ex works, ex factory, or off-the-shelf) plus cost of inland transportation and insurance to the place of destination for goods manufactured or assembled in the country of the Borrower. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source.⁴³ Where installation, commissioning, or other similar services are required to be performed by the bidder, as in the case of “supply and installation” contracts, the bidder shall be required to quote for these services, in addition.

2.22 In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Unless otherwise specified in the bidding documents, the turnkey price shall include all duties, taxes, and other levies.⁴⁴

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

Price Adjustment

2.24 Bidding documents shall state either that (a) bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen (18) months, but shall be included in contracts which extend beyond eighteen (18) months. However, it is normal commercial practice to obtain firm

⁴¹ Refer to *INCOTERMS 2000* for further definitions. Published by the International Chamber of Commerce, 38 Cours Albert 1^{er}, 75008 Paris, France. CIP is carriage and insurance paid to (named place of destination). This term may be used irrespective of the mode of transport, including multimodal transport. CIP term is for custom duties and other import taxes unpaid, payment for which is the responsibility of the Borrower, either for goods previously imported or that will be imported. For previously imported goods, the quoted CIP price shall be distinguishable from the original import value of these goods declared to customs and shall include any rebate or mark-up of the local agent or representative and all local costs except import duties and taxes, which will be paid by the purchaser.

⁴² The EXW price shall include all duties, sales, and other taxes already paid or payable for the components and raw materials used in the manufacture or assembly of the equipment, offered in the bid.

⁴³ See Para. 1.6, 1.7 and 1.8.

⁴⁴ Goods in bids for turnkey contracts may be invited on the basis of DDP delivery duty paid (named place of destination) and Bidders should be free to choose the best arrangement between imported goods or goods manufactured in the country of the Borrower, in the preparation of their bids.

prices for some types of equipment regardless of the delivery time and, in such cases, price adjustment provisions are not needed.

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

Transportation and Insurance

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

2.27 As an exception, if a Borrower wishes to reserve transportation and insurance for the import of goods to national companies or other designated sources, bidders shall be asked to quote FCA (named place) or CPT (named place of destination)⁴⁵ prices in addition to the CIP (place of destination) price specified in paragraph 2.21. Selection of the Lowest Evaluated Bid shall be on the basis of the CIP (place of destination) price, but the Borrower may sign the contract on FCA or CPT terms and make its own arrangement for transportation and/or insurance. Under such circumstances, the contract shall be limited to the FCA or CPT cost. If the Borrower does not wish to obtain insurance coverage in the market, evidence shall be provided to the Bank that resources are readily available for prompt payment in a freely convertible currency of the indemnities required to replace lost or damaged goods.

Currency Provisions

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

⁴⁵ *INCOTERMS 2000* for free carrier (named place) and for carriage paid to (named place of destination), respectively.

Currency of Bid

2.29 Bidding documents shall state that the bidder may express the bid price in any currency. If the bidder wishes to express the bid price as a sum of amounts in different foreign currencies, they may do so, provided the price includes no more than three foreign currencies. Furthermore, the Borrower may require bidders to state the portion of the bid price representing local costs incurred in the currency⁴⁶ of the country of the Borrower.

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

Currency Conversion for Bid Comparison

2.31 The bid price is the sum of all payments in various currencies required by the bidder. For the purpose of comparing prices, bid prices shall be converted to a single currency selected by the Borrower (local currency or fully convertible foreign currency) and stated in the bidding documents. The Borrower shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance, such source and date to be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity.⁴⁷

Currency of Payment

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

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

Terms and Methods of Payment

2.34 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and works.⁴⁸

- (a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the Supplier has

⁴⁶ Referred to hereafter as local currency.

⁴⁷ "Bid Validity Period" shall mean the period of time subsequent to the closing date for submission of bids for which the bid price and the conditions of the bid are not subject to any change by the bidder

⁴⁸ Payments shall be made in accordance with the procedures provided in the Bank's Disbursement Handbook

complied with all its obligations under the contract. The use of letters of credit is encouraged so as to assure prompt payment to the supplier. In major contracts for equipment and plant, provision shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.

- (b) Contracts for works shall provide in appropriate cases for mobilization advances, advances on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract.

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

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

Alternative Bids

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

Conditions of Contract

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

Performance Security

2.39 Bidding documents for works shall require security in an amount sufficient to protect the Borrower in case of breach of contract by the Contractor. This security shall be provided in an appropriate form and amount, as specified by the Borrower in the bidding document.⁴⁹ The amount of the security may vary, depending on the type of security furnished and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the Borrower; alternatively, contracts may provide for a percentage of each

⁴⁹ The format of the performance security shall be in accordance with the standard bidding documents and shall be issued by a reputable bank or financial institution selected by the bidder. If the institution issuing the security is located outside the country of the Borrower, it shall have a correspondent financial institution located in the country of Borrower to make it enforceable.

periodic payment to be held as retention money until final acceptance. Contractors may be allowed to replace retention money with an equivalent security after provisional acceptance.

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

Liquidated Damages and Bonus Clauses

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

Force Majeure

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

Applicable Law and Settlement of Disputes

2.43 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration has practical advantages over other methods for the settlement of disputes. Therefore, the Bank recommends that Borrowers use this type of arbitration in contracts for the procurement of goods and works. The Bank shall not be named arbitrator or be asked to name an arbitrator. In case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

C. Bid Opening, Evaluation, and Award of Contract

Time for Preparation of Bids

2.44 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than six weeks from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for ICB. Where large works or complex items of equipment are involved, this period shall generally be not less than twelve weeks to enable prospective bidders to conduct investigations before submitting their

bids. In such cases, the Borrower is encouraged to convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or by hand. Borrowers may also use electronic systems permitting bidders to submit bids by electronic means, provided the Bank is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of bids submitted, uses an electronic signature system or equivalent to keep bidders bound to their bids, and only allows bids to be opened with due simultaneous electronic authorization of the bidder and the Borrower. In this case, bidders shall continue to have the option to submit their bids in hard copy. The deadline and place for receipt of bids shall be specified in the invitation to bid.

Bid Opening Procedures

2.45 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly⁵⁰ thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. The Borrower shall open all bids at the stipulated time and place. Bids shall be opened in public; bidders or their representatives shall be allowed to be present (in person or online, when electronic bidding is used). The name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, shall be read aloud (and posted online when electronic bidding is used) and recorded when opened and a copy of this record shall be promptly sent to the Bank and to all bidders who submitted bids in time. Bids received after the time stipulated, as well as those not opened and read out at bid opening, shall not be considered.

Clarifications or Alterations of Bids

2.46 Except as otherwise provided in Paragraphs 2.63 and 2.64 of these Rules, bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. The Borrower shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders' responses shall be made in writing, in hard copy or by an electronic system satisfactory to the Bank.⁵¹

Confidentiality

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

Examination of Bids

2.48 The Borrower shall ascertain whether the bids (a) meet the eligibility requirements specified in paragraphs 1.6, 1.7 and 1.8 of these Rules, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in paragraph 2.14 of the Rules, (d) are substantially responsive to the bidding documents, and (e) are otherwise generally in order. If a bid is not substantially responsive, that is, it contains material

⁵⁰ To allow sufficient time to take the bids to the place announced for public bid opening.

⁵¹ See Paragraph 2.44

deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened.⁵²

Evaluation and Comparison of Bids

2.49 The purpose of bid evaluation is to determine the cost to the Borrower of each bid in a manner that permits a comparison on the basis of their evaluated cost. Subject to paragraph 2.58, the bid with the lowest evaluated cost,⁵³ but not necessarily the lowest submitted price, shall be selected for award.

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

2.51 The evaluation and comparison of bids shall be on CIP (place of destination) prices for the supply of imported goods⁵⁴ and EXW prices, plus cost of inland transportation and insurance to the place of destination, for goods manufactured within the Borrower's country, together with prices for any required installation, training, commissioning, and other similar services.⁵⁵

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

2.53 Under works and turnkey contracts, contractors are responsible for all duties, taxes, and other levies,⁵⁶ and bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Bid evaluation for works shall be strictly in monetary terms. Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to the Borrower may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance.

⁵² See Para. 2.50 regarding corrections.

⁵³ See Para. 2.52.

⁵⁴ Borrowers may ask for prices on a CIF basis (and bids compared on that same basis) only when the goods are carried by sea and the goods are not containerized. CIF shall not be used for anything other than sea transport. In the case of manufactured goods, it is unlikely that the choice of CIF will be appropriate, because these goods are usually containerized. CIP can be used for any mode of transport, including sea and multimodal transport.

⁵⁵ The evaluation of bids shall not take into account: (a) customs duties and other taxes levied on imported goods quoted CIP (which are excluded of custom duties); (b) sales and similar taxes levied in connection with the sale or delivery of the goods

⁵⁶ Unless bidding documents specify otherwise for some turnkey contracts (see Para. 2.22).

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

Domestic and Regional Preferences

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

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

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

Extension of Validity of Bids

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

Post-qualification of Bidders

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

In such an event, the Borrower shall make a similar determination for the next-lowest evaluated bidder.

Award of Contract

2.59 The Borrower shall award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (i) to be substantially responsive to the bidding documents and (ii) to be the Lowest Evaluated Bid. A bidder shall not be required, as a condition of award, to undertake responsibility for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

Publication of the Award of Contract

2.60 Within two weeks of receiving the Bank's "no objection" to the recommendation of contract award, the Borrower shall publish in *UNDB online* and on the *Bank's Internet Website* the results identifying the bid and lot numbers and the following information: (a) name of each bidder who submitted a bid; (b) bid prices as read out at bid opening; (c) name and evaluated prices of each bid that was evaluated; (d) name of bidders whose bids were rejected and the reasons for their rejection; and (e) name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.

Rejection of All Bids

2.61 Bidding documents usually provide that Borrowers may reject all bids. Rejection of all bids is justified when there is lack of effective competition, or bids are not substantially responsive or when bid prices are substantially higher than existing budget. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the bidding process may be considered valid, if the bid was satisfactorily advertised and prices are reasonable in comparison to market values. Borrowers may, after the Bank's prior "no objection", reject all bids. If all bids are rejected, the Borrower shall review the causes justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids.

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

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

2.64 The Bank's prior approval shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the Lowest Evaluated Bidder.

Debriefing

2.65 In the publication of Contract Award referred to in paragraph 2.60 the Borrower shall specify that any bidder who wishes to ascertain the grounds on which its bid was not selected, should request an explanation from the Borrower. The Borrower shall promptly provide 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.

D. Modified ICB

Operations Involving a Program of Imports⁵⁷

2.66 Where the Financing is for a program of imports, ICB with simplified advertising and currency provisions may be used for large-value contracts, as defined in the Financing Agreement.⁵⁸

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

Procurement of Commodities

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

⁵⁷ Also see Para 3.11.

⁵⁸ Procurement of smaller contracts is normally carried out in accordance with procedures followed by the private or public entity handling the imports, or other established commercial practices acceptable to the Bank, as described in Para. 3.12.

III. Other Methods of Procurement

General

3.1 This Section describes the methods of procurement that can be used where ICB would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate.⁵⁹ The Bank's policies with respect to margins of preference for domestically manufactured goods and works contracts do not apply to methods of procurement other than ICB. Paragraphs 3.2 to 3.7 describe the generally used methods in descending order of preference and the remaining paragraphs the methods used in specific circumstances.

Limited International Bidding

3.2 Limited International Bidding (LIB) is essentially ICB by direct invitation without open advertisement. It may be an appropriate method of procurement where (a) there is only a limited number of suppliers, or (b) other exceptional reasons may justify departure from full ICB procedures. Under LIB, Borrowers shall seek bids from a list of potential suppliers broad enough to assure competitive prices, such list to include all suppliers when there are only a limited number. Domestic preferences are not applicable in the evaluation of bids under LIB. In all respects other than advertisement and preferences, ICB procedures shall apply, including the publication of the award of contract as indicated in Paragraph 2.60.

National Competitive Bidding

3.3 National Competitive Bidding (NCB) is the competitive bidding procedure normally used for public procurement in the country of the Borrower. NCB may be the most appropriate way of procuring goods or works which, by their nature or scope, are unlikely to attract foreign competition. To be acceptable for use in Bank-financed procurement, these procedures shall be reviewed and modified⁶⁰ as necessary to assure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of these Rules. NCB may be the most appropriate method of procurement where foreign bidders are not expected to be interested because (a) the contract values are small, (b) works are scattered geographically or spread over time, (c) works are labor intensive, or (d) the goods or works are available locally at prices below the international market. NCB procedures may also be used where the advantages of ICB are clearly outweighed by the administrative or financial burden involved.

3.4 Advertising may be limited to at least a sole electronic portal of free access where the Borrower advertises all government business opportunities or in the absence, in a national newspaper of wide circulation. Bidding documents may be any of the official languages of the Bank and the currency of the country of the Borrower is generally used for the purposes of bidding and payment. In addition, the bidding documents shall provide clear instructions on how bids should be submitted, how prices should be offered, and the place and time for submission of

⁵⁹ Contracts shall not be divided into smaller units in order to make them less attractive for ICB procedures; any proposal to divide a contract into smaller packages shall require the prior approval of the Bank.

⁶⁰ Any such modification shall be reflected in the Financing Agreement.

bids. Adequate response time for preparation and submission of bids shall be provided. The procedures shall provide for adequate competition in order to ensure reasonable prices, and methods used in the evaluation of bids and the award of contracts shall be objective and made known to all bidders in the bidding documents and not be applied arbitrarily. The procedures shall also include public opening of bids, publication of results of evaluation and of the award of contract and provisions for bidders to protest. If foreign firms wish to participate under these circumstances, they shall be allowed to do so.

Shopping

3.5 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. 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.

Direct Contracting

3.6 Direct contracting is contracting without competition (single source) and may be an appropriate method under the following circumstances:

- (a) An existing contract for goods or works, awarded in accordance with procedures acceptable to the Bank, may be extended for additional goods or works of a similar nature. The Bank shall be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable. Provisions for such an extension, if considered likely in advance, shall be included in the original contract.
- (b) Standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original Supplier. For such purchases to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable, and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to the Bank.
- (c) The required equipment is proprietary and obtainable only from one source.
- (d) The Contractor responsible for a process design requires the purchase of critical items from a particular Supplier as a condition of a performance guarantee.
- (e) In exceptional cases, such as in response to natural disasters.⁶¹

3.7 After the contract signature, the Borrower shall publish, in *UNDB online* and on the *Bank's Internet Website*, the name of the contractor, price, duration, and summary scope of the contract.

⁶¹ Refer to Paragraph 3.18 for additional information on natural disasters.

This publication may be done quarterly and in the format of a summarized table covering the previous period.

Force Account

3.8 Force account, that is, construction by the use of the Borrower's own personnel and equipment,⁶² may be the only practical method for constructing some kinds of works. The use of force account may be justified where:

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

Procurement from Specialized Agencies⁶³

3.9 There may be situations in which procurement directly from Specialized Agencies, acting as suppliers, pursuant to their own procedures, may be the most appropriate way of procuring: (a) small quantities of off-the-shelf goods, primarily in the fields of education and health; and (b) specialized products where the number of suppliers is limited such as for vaccines or drugs.

Procurement Agents

3.10 Where Borrowers lack the necessary organization, resources, and experience, Borrowers may wish (or be required by the Bank) to employ, as their agent, a firm specializing in handling procurement. The agent shall follow all the procurement procedures provided for in the Financing Agreement and as further elaborated in the Procurement Plan approved by the Bank on behalf of the Borrower, including use of Bank SBDs, review procedures, and documentation. This also applies in cases where specialized agencies act as procurement agents.⁶⁴ Management contractors may be employed in a similar manner for a fee to contract for miscellaneous works involving reconstruction, repairs, rehabilitation, and new construction in emergency situations, or where large numbers of small contracts are involved.

Inspection Agents

3.11 Pre-shipment inspection and certification of imports is one of the safeguards for the Borrower, particularly where the country has a large import program. The inspection and certification usually covers quality, quantity, and reasonableness of price. Imports procured through ICB procedures shall not be subject to price verification, but only verification for quality

⁶² A government-owned construction unit that is not managerially and financially autonomous shall be considered a force account unit. "Force account" is otherwise known as "direct labor," "departmental forces," or "direct work."

⁶³ Specialized Agencies are agencies affiliated with public international organizations that can be contracted by Borrowers as consultants, procurement agents or suppliers, with Financing from the Bank.

⁶⁴ The Consultant Rules shall apply for the selection of procurement and inspection agents. The cost or fee of the procurement or inspection agent is eligible for Financing from the Bank, if so provided in the Financing Agreement and in the Procurement Plan, and provided the terms and conditions of selection and employment are acceptable to the Bank.

and quantity. However, imports not procured through ICB may additionally be subjected to price verification. The inspection agents are ordinarily paid a fee based on the value of the goods. Costs for certification of imports shall not be considered in the evaluation of bids under ICB.

Procurement in Loans to Financial Intermediaries

3.12 Where the Financing provides funds to an intermediary institution such as an agricultural credit institution or a development finance company or other financial intermediary, to be re-lent to beneficiaries such as individuals, private sector enterprises, small and medium enterprises, or autonomous commercial enterprises in the public sector for the partial financing of subprojects, the procurement is usually undertaken by the respective beneficiaries in accordance with established private sector or commercial practices, which are acceptable to the Bank. However, even in these situations, ICB may be the most appropriate procurement method for the purchase of large single items or in cases where large quantities of like goods can be grouped together for bulk purchasing.

Procurement under BOO/BOT/BOOT, Concessions and Similar Private Sector Arrangements

3.13 Where the Bank is participating in Financing the cost of a project procured under a BOO/BOT/ BOOT,⁶⁵ concessions or similar type of private sector arrangement, either of the following procurement procedures shall be used, as provided in the Financing Agreement and further elaborated in the Procurement Plan that was granted the approval by the Bank:

- (a) The concessionaire or entrepreneur under the BOO/BOT/ BOOT or similar type of contract⁶⁶ shall be selected under ICB procedures acceptable to the Bank, which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for the Borrower or purchaser by the facility, and the period of the facility's depreciation. The said entrepreneur selected in this manner shall then be free to procure the goods, works, and services required for the facility from eligible sources, using its own procedures. In this case, the Project Appraisal Report, and the Financing Agreement shall specify the type of expenditures incurred by the said entrepreneur towards which Bank Financing will apply.

Or,

- (b) If the said concessionaire or entrepreneur has not been selected in the manner set forth in subparagraph (a) above, the goods, works, or services required for the facility and to be financed by the Bank shall be procured in accordance with ICB procedures defined in Section II.

⁶⁵ BOO: Build, Own, Operate; BOT: Build, Operate, Transfer; BOOT: Build, Own, Operate, Transfer.

⁶⁶ For projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems.

Performance-Based Procurement

3.14 Performance Based Procurement,⁶⁷ also called Output-Based Procurement, refers to competitive procurement processes (ICB or NCB) resulting in a contractual relationship where payments are made for measured outputs instead of the traditional way where inputs are measured. The technical specifications define the desired result and which outputs will be measured including how they will be measured. Those outputs aim at satisfying a functional need both in terms of quality, quantity and reliability. Payment is made in accordance with the quantity of outputs delivered, subject to their delivery at the level of quality required. Reductions from payments (or retentions) may be made for lower-quality level of outputs and, in certain cases, premiums may be paid for higher quality level of outputs. The bidding documents do not normally prescribe the inputs, nor a work method for the contractor. The contractor is free to propose the most appropriate solution, based on mature and well proven experience and shall demonstrate that the level of quality specified in the bidding documents will be achieved.

3.15 Performance Based Procurement (or Output Based Procurement) can involve: (a) the provision of services to be paid on the basis of outputs; (b) design, supply, construction (or rehabilitation) and commissioning of a facility to be operated by the Borrower; or (c) design, supply, construction (or rehabilitation) of a facility and provision of services for its operation and maintenance for a defined period of years after its commissioning.⁶⁸ For the cases where design, supply and/or construction are required, prequalification is normally required and the use of Two-Stage Bidding as indicated in paragraph 2.6 shall apply.

Procurement under Loans Guaranteed by the Bank

3.16 If the Bank guarantees the repayment of a loan made by another lender, the goods and works financed by the said loan shall be procured with due attention to economy and efficiency and in accordance with procedures which meet the requirements of paragraphs 1.2 and 1.5.

Community Participation in Procurement

3.17 Where, in the interest of project sustainability, or to achieve certain specific social objectives of the project, it is desirable in selected project components to (a) call for the participation of local communities and/or nongovernmental organizations (NGOs) in the delivery of services, or (b) increase the utilization of local know-how and materials, or (c) employ labor-intensive and other appropriate technologies, the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations, provided these are efficient and are acceptable to the Bank.⁶⁹ The procedures proposed and the project components to be carried out by community participation shall be outlined in Financing Agreement and

⁶⁷ The use of Performance Based Procurement in Bank financed projects should be the result of the satisfactory technical analysis of the different options available and should be either included in the PAR or subject to prior approval by the Bank for incorporation into the procurement plan.

⁶⁸ Examples of such type of procurement are: (i) for the case of procurement of services: provision of medical services, i.e. payments for specific services, like office visits, or defined laboratory tests, etc. ; (ii) for the case of procurement of a facility: Design, Procurement, Construction, and Commissioning of a thermal power plant to be operated by the Borrower; (iii) for the case of procurement of a facility and services: Design, Procurement, Construction (or Rehabilitation) of a road and operation and maintenance of the road for 5 years after construction.

⁶⁹ See the Bank's "Guidelines for Procurement Under Community-Based Investment Projects".

further elaborated in the Procurement Plan or the relevant project implementation document for which the Bank has given its “approval or no objection”.

Procurement under Disaster and Emergency Assistance

3.18 Procurement of goods and works, under disaster and emergency assistance, shall incorporate greater flexibility. ICB requirements shall be relaxed in favour of NCB, LIB or Shopping as appropriate, with an abbreviated bidding period. Direct Contracting to contractors and suppliers, under existing loans or grants, shall be allowed for new contracts, with unit rates negotiated around those in effect for the existing contracts, and adjustments, as required, for inflation and physical factors. Similarly, eligible contractors and suppliers, competitively selected under projects financed by other donors, shall be considered for Direct Contracting for new Bank-financed contracts. In any case, the Task Team⁷⁰ should determine the actual mode of procurement to be used from the range of modes available at the Bank at the time of assessment.

⁷⁰ “Task Team” an individual or group that represents the Bank’s interest during evaluation of emergency needs at the site of a disaster.

Appendix 1: Review by the Bank of Procurement Decisions

Scheduling of Procurement

1. The Bank shall review the procurement arrangements proposed by the Borrower in the Procurement Plan for its conformity with the Financing Agreement and these Rules. The Procurement Plan shall cover an initial period of at least 18 months. The Borrower shall update the Procurement Plan on an annual basis or as needed always covering the next 18 months period of project implementation. Any revisions proposed to the Procurement Plan shall be furnished to the Bank for its prior approval.

Prior Review

2. With respect to all contracts⁷¹ which are subject to the Bank's prior review:
- (a) In cases where prequalification is used, the Borrower shall, before prequalification submissions are invited, furnish the Bank with the draft documents to be used, including the text of the invitation to prequalify, the prequalification questionnaire, and the evaluation methodology, together with a description of the advertising procedures to be followed, and shall introduce such modifications in said procedure and documents, as the Bank shall reasonably request. The report evaluating the applications received by the Borrower, the list of proposed prequalified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for prequalification, shall be furnished by the Borrower to the Bank for its comments before the applicants are notified of the Borrower's decision, and the Borrower shall make such additions to, deletions from, or modifications in the said list as the Bank shall reasonably request.
 - (b) Before bids are invited, the Borrower shall furnish to the Bank for its comments, draft bidding documents, including the invitation to bid; instructions to bidders, including the basis of bid evaluation and contract award; and the conditions of contract and specifications for the civil works, supply of goods, or installation of equipment, etc., as the case may be, together with a description of the advertising procedures to be followed for the bidding (if prequalification has not been used), and shall make such modifications in the said documents as the Bank shall reasonably request. Any further modification shall require the Bank's "no objection", before it is issued to the prospective bidders.
 - (c) After bids have been received and evaluated, the Borrower shall, before a final decision on the award is made, furnish to the Bank, in sufficient time for its review, a detailed report (prepared, if the Bank shall so request, by experts acceptable to the Bank), on the evaluation and comparison of the bids received, together with the recommendations for award and such other information as the Bank shall reasonably request. The Bank shall, if it determines that the intended award would be inconsistent with the Financing Agreement and/or the Procurement Plan, promptly inform the Borrower and state the reasons for such determination. Otherwise, the Bank shall provide its no objection to the recommendation

⁷¹ For contracts procured on the basis of direct contracting under Paragraphs 3.6 and 3.7, the Borrower shall furnish to the Bank for its "no objection", prior to contract execution, a copy of the specifications and the draft contract. The contract shall be executed only after the Bank has given its "no objection", and the provisions in (h) of this Paragraph shall apply with respect to the executed contract.

for contract award. The Borrower shall award the contract only after receiving the “no objection” from the Bank.

- (d) If the Borrower requires an extension of bid validity to complete the process of evaluation, obtain necessary approvals/no objections and clearances, and to make the award, it should seek the Bank’s prior no objection for the first request for extension, if it is longer than four weeks, and for all subsequent requests for extension, irrespective of the period.
- (e) If after publication of the results of evaluation, the Borrower receives protests or complaints from bidders, a copy of the complaint and a copy of the Borrower’s response shall be sent to the Bank for information.
- (f) If as result of analysis of a protest the Borrower changes its contract award recommendation, the reasons for such decision and a revised evaluation report shall be submitted to the Bank for its no objection. The Borrower shall provide a republication of the contract award in the format of Paragraph 2.60 of these Rules.
- (g) The terms and conditions of a contract shall not, without the Bank’s prior no objection, materially differ from those on which bids were asked or prequalification of Contractors, if any, was invited.
- (h) One conformed copy of the contract shall be furnished to the Bank promptly after its execution and prior to delivery to the Bank of the first application for disbursement of funds from the Financing Account in respect of such contract. Where payments for the contract are to be made out of a Special Account (SA), a copy of the contract shall be furnished to the Bank prior to the making of the first payment out of the SA in respect of such contract.
- (i) All evaluation reports shall be accompanied by a summary of the procurement on a form provided by the Bank. The description and amount of the contract, together with the name and address of the successful bidder, shall be subject to release by the Bank upon receipt of the signed copy of the contract.

3. *Modifications.* In the case of contracts subject to prior review, before granting a material extension of the stipulated time for performance of a contract, agreeing to any modification or waiver of the conditions of such contract, including issuing any change order or orders under such contract (except in cases of extreme urgency) which would in aggregate increase the original amount of the contract by more than 15 percent of the original price, the Borrower shall seek the Bank’s no objection to the proposed extension, modification, or change order. If the Bank determines that the proposal would be inconsistent with the provisions of the Financing Agreement and/or Procurement Plan, it shall promptly inform the Borrower and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to the Bank for its record.

4. *Translations.* If a contract awarded under ICB procedures is subject to prior-review and is written in the national language,⁷² (or the language used nation-wide in the Borrower’s country for commercial transactions) a certified translation of the contract in the internationally used language specified in the bidding documents (English or French) shall be furnished to the Bank

⁷² Refer to Para. 2.15.

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

Post Review

5. The Borrower shall retain all documentation with respect to each contract not governed by paragraph two of this Appendix, during project implementation and up to two years after the closing date of the Financing Agreement. This documentation would include, but not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award, for examination by the Bank or by its consultants.

6. Similar to Paragraph 2 (h) of this Appendix, the Borrower shall furnish to the Bank, promptly after its signing and prior to delivery to the Bank of the first application for disbursement of funds from the Financing Account in respect of such contract, one conformed copy of such contract, together with the analysis of the respective bid, and recommendations for award. The Borrower shall also furnish any other documentation to the Bank upon request.

7. The Bank shall reserve the right to carry out post review of such documents, at any time before or after the first disbursement, and whenever it determines that the goods, works or services were not procured in accordance with the agreed procedures, as reflected in the Financing Agreement and further detailed in the Procurement Plan approved by the Bank or that the contract itself is not consistent with such procedures, the Bank may declare misprocurement as established in Paragraph 1.12 of the Rules. The Bank shall promptly inform the Borrower the reasons for such determination.

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

Appendix 2 Preference Allowances

General

1. Where procurement is made through international competitive bidding, the Borrower may, in agreement with the Bank, grant a margin of preference to domestic manufactured goods and to domestic contractors when evaluating bids and comparing domestic with foreign bids, subject to the conditions specified in these Rules.
2. Similarly, a Borrower may, in agreement with the Bank, grant a margin of preference to goods produced in and services provided by contractors from other regional member countries which have joined the Borrowing country in a regional economic institutional arrangement when evaluating bids and comparing those bids with other bids, subject to the conditions specified in these Rules.
3. Any preference granted by the Borrower to domestic manufactured goods and for works undertaken by domestic contractors is deemed to be a domestic preference, for the purpose of these Rules. Any preference granted by the Borrower, to goods manufactured in, and for works undertaken by contractors from those regional Eligible Member Countries, which have joined its own country in a regional economic institutional arrangement, is deemed to be a regional preference, for the purpose of these Rules.
4. A Borrower wishing to grant either domestic or regional preference, must seek the agreement of the Bank, including the applicable margin of preference, either at the time of project appraisal, or at loan negotiations. In the case of advance contracting, the Bank's approval should be obtained before any advance contracting takes place.
5. Any preference allowances must be announced in the invitation for bids, and be clearly indicated in the bidding documents, together with the information required to establish the eligibility of a bid for such preferences, as well as the methods and stages that will be followed in the evaluation and comparison of such bids.

Eligibility for Domestic Preference

6. For the purpose of applying domestic preferences, goods (including related services) shall be deemed to be domestic manufactured, if the manufacturing costs of such goods include a value added, net of taxes and duties, in the country of the Borrower, equal to at least 20 percent of the ex-factory bid price of such goods.
7. A contractor is deemed to be domestic if:
 - (a) its legal constitution is in accordance with the laws of the borrowing country, where it must have its registered office, and undertake the majority of its activities; and
 - (b) the majority of the capital shares are held by nationals of that country; and
 - (c) the majority of the members of the Board of Directors are nationals of that country; and
 - (d) not less than 50 percent of the key personnel are nationals of that country; and

- (e) there is no arrangement whereby any major part of the net profits, or other tangible benefits of the domestic contractor, will accrue, or be paid, to persons not nationals of that country, or to firms which would not be eligible under this Paragraph of these Rules.

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

Domestic Margin

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

- (a) manufactured goods and related services - 15%
- (a) construction works - 10%.

Eligibility for Regional Preference

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

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

- (a) the contractor is legally constituted in accordance with the law of a regional member country, which is party to the established regional preferential arrangement, and has a registered office in that particular country, and does business mainly in the same, or other countries that are parties to the said regional preferential arrangement;
- (b) at least a majority of the capital shares of each of the contracting firms is owned by nationals of countries that are parties to the said regional preferential arrangement;
- (c) the majority of the members of the Board of Directors of each of the contracting firms is constituted by nationals of countries that are parties to the said regional preferential arrangement;
- (d) not less than 50 percent of the key personnel of each contracting firm are nationals of countries that are parties to the said regional preferential arrangement; and
- (e) there are no arrangements, whereby any major parts of net profits, or other tangible benefits of any of the contracting firms, will accrue, or be paid, to persons not nationals of any of the countries, which are parties to the said regional preferential arrangement, or to firms that would not be eligible under this Paragraph of these Rules.

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

Regional Margin

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

- (a) manufactured goods and related services - 10%
- (b) construction works - 7.5%.

Evaluation and Comparison of Bids Involving Domestic and Regional Preferences

14. Domestic or regional preferences will be applied in bid evaluation for goods, works and related services, to be procured through international competitive bidding, in accordance with the following Procedures.

Preference for Domestically Manufactured Goods

15. The nationality of the manufacturer, or supplier, is not a condition for such eligibility. The methods and stages set forth hereunder shall be followed in the evaluation and comparison of bids.

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

- (a) Group A: bids exclusively offering goods manufactured in the country of the Borrower, if the bidder establishes to the satisfaction of the Borrower and the Bank, that: (i) labour, raw material, and components, from within the country of the Borrower, will account for 20 percent, or more, of the EXW price of the product offered; and (ii) the production facility in which those goods will be manufactured, or assembled, has been engaged in manufacturing/assembling such goods, at least, since the time of bid submission.
- (b) Group B: all other bids offering goods manufactured in the country of the Borrower.
- (c) Group C: bids offering goods manufactured abroad that have been already imported, or that will be directly imported.

17. The price quoted for goods in bids, of Groups A and B, shall include all duties and taxes paid, or payable, on the basic materials, or components purchased in the domestic market, or imported, but shall exclude the sales and similar taxes on the finished product. The price quoted for goods in bids of Group C shall be on the basis of CIP (place of destination), which is exclusive of customs duties and other import taxes, already paid, or to be paid.

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

19. If as a result of the comparison under Paragraph 18, the Lowest Evaluated Bid is a bid from Group C, the Lowest Evaluated Bid from Group C shall be further compared with the Lowest Evaluated Bid, from Group A, after adding to the evaluated price of goods offered in the bid from Group C, for the purpose of this further comparison only, an amount equal to 15 percent of the CIP bid price. The Lowest Evaluated Bid determined from this last comparison shall then be selected.

20. In the case of single responsibility, or turnkey, contracts for the supply of a number of discrete items of equipment, as well as major installation and/or construction services, no margin of preference shall apply.⁷³ However, with the Bank's "no objection", bids for such contracts may be invited and evaluated on the basis of DDP⁷⁴ (named place of destination) prices for goods manufactured abroad.

Preference for Domestic Contractors

21. For contracts for works, to be awarded on the basis of ICB, eligible Borrowers may, with the agreement of the Bank, grant a margin of preference of 10 percent to domestic contractors, in accordance with, and subject to, the following provisions:

- (a) Contractors applying for such preference shall be asked to provide, as part of the data for qualification,⁷⁵ such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Borrower and accepted by the Bank, a particular contractor, or group of contractors, qualifies for a domestic preference. The bidding documents shall clearly indicate the preference and the method that will be followed, in the evaluation and comparison of bids, to give effect to such preference.
- (b) After bids have been received and reviewed by the Borrower, responsive bids shall be classified into the following groups:
 - (i) Group A: bids offered by domestic contractors, eligible for the preference.
 - (ii) Group B: bids offered by other contractors.

22. For the purpose of evaluation and comparison of bids, an amount equal to 10 percent of the bid amount shall be added to bids received from contractors in Group B.

⁷³ This does not refer to the supply of goods, with supervision of installation in the same contract, which is considered a contract for the supply of goods, and therefore eligible for the application of domestic preference in the goods component.

⁷⁴ DDP is the INCOTERM, which stands for "Delivered Duty Paid" where the seller delivers the goods to the buyer, cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods thereto including, where applicable, any duty for import in the country of destination, and unloading at final destination as part of the turnkey contract. In countries that exempt bidders on imports under contracts financed by the Bank, comparison shall be made on the basis of non-exemption of duties and taxes on importation of goods manufactured abroad and the bidding documents may indicate that, before contract signature, the purchaser and the winning bidder will identify the amount of taxes payable for importation of the goods offered resulting from that exemption. However, the contract amount to be signed will not include the identified total amount of exempted duties and taxes.

⁷⁵ At the prequalification and/or at the bidding stage.

Preference for Regionally Manufactured Goods

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

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

Group B, which includes all other bids.

24. In order to determine the Lowest Evaluated Bid of each group, all evaluated bids in each group shall first be compared among themselves, subject to Paragraph 2.51 Such Lowest Evaluated Bids shall then be compared with each other, and if, as a result of this comparison, a bid from Group A is the lowest, it shall be selected for the award.

25. If, as a result of the comparison under Paragraph 24 above, the Lowest Evaluated Bid is a bid from Group B, all Group B bids shall be further compared with the Lowest Evaluated Bid from Group A, after adding to the evaluated bid price of the imported goods offered in each Group B bid, for the purpose of this further comparison only, an amount equal to:

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

26. If the Lowest Evaluated Bid from Group A, in such further comparison is the lowest, it shall be selected for the award. If not, the Lowest Evaluated Bid from Group B, as determined from the comparison under Paragraph 24, shall be selected.

Preference for Regional Contractors

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

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

Group B, which includes all other bids.

28. In order to determine the Lowest Evaluated Bid, all evaluated bids in each group shall first be compared among themselves, subject to Paragraph 2.53 Such Lowest Evaluated Bids shall then be compared with each other, and if, as a result of this comparison, a bid from Group A is the lowest, it shall be selected for the award.

29. If as a result of the comparison under 28 above, the Lowest Evaluated Bid is a bid from Group B, for the purpose of this further comparison only, an amount equal to 7.5% of the bid price will be added to bids received from contractors in Group B.

30. If the Lowest Evaluated Bid from Group A, in such further comparison is the lowest, it shall be selected for the award. If not, the Lowest Evaluated Bid from Group B, as determined from the comparison under Para. 28 shall be selected.

Appendix 3 Guidance to Bidders

Purpose

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

Responsibility for Procurement

2. The responsibility for the implementation of the project, and therefore for the payment of goods, works, and services under the project, rests solely with the Borrower. The Bank, for its part, is required by its Articles of Agreement to ensure that funds are paid from Bank Financing only as expenditures are incurred. Disbursements of the proceeds of Financing are made only at the Borrower's request. Supporting evidence that the funds are used in accordance with the terms of the Financing Agreement and/or the Procurement Plan shall be submitted with the Borrower's disbursement 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 (usually to a supplier or contractor), (c) to a commercial bank for expenditures against a African Development Bank Special Commitment covering a commercial bank's letter of credit; or (d) through revolving fund account for small amounts.⁷⁶ As emphasized in Paragraph 1.2 of the Rules, the Borrower is legally responsible for the procurement. It invites, receives, and evaluates bids, and awards the contract. The contract is between the Borrower and the supplier or contractor. The Bank is not a party to the contract.

Bank's Role

3. As stated in Paragraph 1.11 of the Rules, 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 Financing Agreement. In the case of major contracts, the documents are reviewed by the Bank prior to their issue, as described in Appendix 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 may declare misprocurement, as described in Paragraph 1.12. However, if a Borrower has awarded a contract after obtaining the Bank's "no objection" the Bank will declare misprocurement only if the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower. Furthermore, if the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of the bidder, the Bank may impose the applicable sanctions set forth in Paragraph 1.14 of the Rules

4. The Bank has published *Standard Bidding Documents* (SBDs) for various types of procurement. As stated in Paragraph 2.12 of the Rules, it is mandatory for the Borrower to use these documents, with minimum changes to address country- and project-specific issues. The prequalification and bidding documents are finalized and issued by the Borrower.

⁷⁶ A complete description of the Bank's disbursement procedures is provided in the Disbursement Handbook (available on the Bank's website at <http://www.afdb.org/projects>).

Information on Bidding

5. Information on bidding opportunities under ICB may be obtained from the General Procurement Notice and the Specific Procurement Notices as described in Paragraphs 2.7 and 2.8 of the Rules. General guidance on participation, as well as advance information on business opportunities in upcoming projects, may be obtained from the African Development Bank website.⁷⁷ Project Appraisal Reports (PAR) are also available from the Bank's website upon approval of the Financing.

Bidder's Role

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

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

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

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

Confidentiality

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

⁷⁷ <http://www.afdb.org>

Action by the Bank

11. Bidders are free to send copies of their communications on issues and questions with the Borrower to the Bank or to write to the Bank directly, when Borrowers do not respond promptly, or the communication is a complaint against the Borrower. All such communications should be addressed to the Sector Director for the project, with a copy to the Resident Representative⁷⁸ for the Borrowing country and to the Head of the Procurement and Financial Management Unit. Name of Sector Director is available in the PAR.

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

13. Communication received from bidders after the opening of the bids, will be handled as follows. In the case of contracts not subject to prior review by the Bank, the communication will be sent to the Borrower for due consideration and appropriate action, if any, and these will be reviewed during subsequent supervision of the project by Bank staff. In the cases of contracts subject to the prior review process, the communication will be examined by the Bank, in consultation with the Borrower. If additional data is required to complete this process, these will be obtained from the Borrower. If additional information or clarification is required from the bidder, the Bank will ask the Borrower to obtain it and comment or incorporate it, as appropriate, in the evaluation report. The Bank's review will not be completed until the communication is fully examined and considered.

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

Debriefing

15. As stated in Paragraph 2.65, if, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Borrower. If the bidder is not satisfied with the explanation given and wishes to seek a meeting with the Bank, it may do so by addressing the Head of the Procurement and Financial Management Unit, who will arrange a meeting at the appropriate level and with the relevant staff. In this discussion, only the bidder's bid can be discussed and not the bids of competitors.

⁷⁸ Or to the Regional Director for countries with no Bank Field Offices.

APPENDIX 4: Eligibility Criteria

Overview

1. The eligibility criteria for participation in the supply of goods, works and related services, to be procured through Bank Financing, derive from the requirements of the Agreement Establishing the African Development Bank, Article 17.1.d, the Agreement Establishing the African Development Fund, Article 15.4(a), as well as the Agreement Establishing the Nigeria Trust Fund, Article 4.1. The foregoing requirements basically prescribe two types of eligibility criteria:

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

Eligibility of the Bidder

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

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

Eligibility of the Goods, Works and Related Services

3. In order to be eligible, the goods to be procured must have been mined, grown, or produced, in the form in which they are purchased, in an Eligible Member Country.

4. For works contracts, which may include civil works, plant construction, or turnkey contracts, the contractor must satisfy the nationality criteria of eligibility, either as a natural person, or corporation, or joint venture and association. Labour, equipment, and materials needed for carrying out the works contract, shall be supplied from Eligible Member Countries.

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

Appendix 5: Advance Contracting

Introduction

1. In particular instances, or for major projects, when it is clearly demonstrated that the advance award of contracts for goods, works or services will be a vital factor for the rapid implementation of the project, the Borrower may, with the Bank's prior approval, be authorized to issue invitations to bid, or to pre-qualify, or even sign the related contracts, prior to the approval of the project by the Board of Directors. In such cases, the Bank requires the Borrower to submit for its approval all the documents and stages of the selection process, in conformity with these Rules.

Timing of Decision on Advance Contracting

2. In general, with the exception of pre-investment studies, Advance Contracting should be considered only after project preparation or appraisal has been completed, in order to ensure that the Bank is satisfied with the overall design of the project, and that it has identified appropriate components for its own financing and possible elements which may be acceptable for Advance Contracting, if the Borrower so requests.

Safeguards

3. The following safeguards are recommended for advance contracting and should be clearly indicated and discussed with prospective Borrowers requesting to proceed with Advance Contracting:

- (a) The Borrower shall be fully aware that Advance Contracting is undertaken at its own risk and does not commit the Bank in any way to approve the Financing for the project;
- (b) The Borrower shall also be fully aware that procurement under Advance Contracting must have been carried out according to Bank's procedures, if it is to be eligible for Bank Financing; and
- (c) Announcements, in the case of Advance Contracting, must indicate that the Borrower has applied for Financing from the Bank, and that disbursement, in respect of any contracts signed, will be subject to approval of the Financing by the Bank.

APPENDIX 6: Private Sector Financing

Application of Procedures to Private Sector Operations

1. In general, the Bank's procurement policies also apply to the private sector, whether the entity is a Borrower from the Bank or a recipient of a Bank guarantee. In particular, the Bank's policies regarding the appropriate use of Financing and the eligibility of goods, works, and services, as well as its policies regarding economy and efficiency, apply to the private sector.

2. To be eligible for financing, an enterprise should be privately owned and managed, meaning that more than 50 percent of its voting shares must be in private hands. Entities with more than 50 percent of their shares held by the government and/or governmental entities or agencies ("government-owned entities") may be owners in this enterprise, provided that it has operational and managerial autonomy and is run on a commercial basis. Where government-owned entities hold, in the aggregate, more than 50 percent of the voting shares of an enterprise, private sector financing may exceptionally be considered. This would be where the Bank's involvement is consistent with the basic objectives of private sector development and direct foreign investment.

Methods of Procurement

3. Private sector Borrowers shall utilize procurement procedures in accordance with established private sector or commercial practices that are acceptable to the Bank. The Bank ensures that such procedures result in competitive market prices for the goods and works and that these meet the needs of the project.

Conflict of Interest

4. Contracts awarded by private sector Borrowers should be negotiated on an arm's-length basis, taking into account the financial interests of the Borrower rather than the interests of its parent firm. When a shareholder of a private sector Borrower also acts as contractor to the Borrower, it should be demonstrated to the Bank that the costs of the acquisition are approximately equivalent to budget estimates and market prices, and that the conditions of the contract are equitable and reasonable. The Bank will not finance acquisitions that exceed market prices.