

Procurement Guidelines

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Asian Development Bank



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I. Introduction

Purpose

1.1 The purpose of these Guidelines is to inform those carrying out a project that is financed in whole or in part by a loan from the Asian Development Bank (ADB), ADB-financed grant, or ADB-administered funds,¹ of the policies that govern the procurement of goods, works, and services (other than consultant services)² required for the project. The financing agreement governs the legal relationships between the borrower³ and ADB, and the Guidelines are made applicable to procurement of goods and works for the project, as provided in the agreement. The rights and obligations of the borrower and the providers of goods and works for the project are governed by the bidding documents, and by the contracts signed by the borrower with the providers of goods and works, and not by these Guidelines or the financing agreements. No party other than the parties to the financing agreement shall derive any rights therefrom or have any claim to the proceeds of the financing.

¹ For the purpose of these Guidelines, financing by ADB includes financing by ADB-administered funds.

² For the selection and engagement of consultants, see *Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers*. References to “goods and works” in these procurement Guidelines include related services such as transportation, insurance, installation, commissioning, training, and initial maintenance. The provisions of these procurement Guidelines also apply to services, such as drilling, mapping, and similar operations.

³ The term “borrower” as used in these Guidelines includes recipients of ADB-financed grants and ADB-administered funds, and also refers to the executing agency for the project. In some cases, the borrower acts only as an intermediary, and the project is carried out by another agency or entity, in which case references in these Guidelines to the borrower include such agencies and entities, as well as sub-borrowers under onlending arrangements.

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. ADB, for its part, has the obligation to ensure that the proceeds of its financing are used with due attention to considerations of economy and efficiency. 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, five basic principles generally guide ADB requirements:

- (a) subject to the qualification stated in paragraph 2.11 with regard to procurement under loans or grants from Special Funds resources, the proceeds of ADB financing can be used only for procurement of goods and works supplied from, and produced in, member countries of ADB, except in any case in which the Board of Directors determines otherwise under Article 14 (ix) of the Articles of Agreement of ADB;
- (b) the need for economy and efficiency in the implementation of the project, including the procurement of the goods and works involved;
- (c) ADB's interest in giving all eligible bidders from developed and developing countries⁴ the same information and equal opportunity to compete in providing goods and works financed by ADB;
- (d) ADB's interest in encouraging the development of domestic contracting and manufacturing industries in the country of the borrower; and
- (e) 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 preferences for domestically manufactured goods and, where appropriate, for domestic contractors⁵ for works under prescribed conditions is the most appropriate method. In most cases, therefore, ADB requires its borrowers to obtain goods, works and services through ICB open to eligible suppliers and contractors.⁶ Section II of these Guidelines describes the procedures for ICB.

⁴ See paras. 1.6, 1.7, and 1.8.

⁵ For purposes of these Guidelines, "contractor" refers only to a firm providing construction services.

⁶ See paras. 1.6, 1.7, and 1.8.

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 Guidelines.

Applicability of Guidelines

1.5 The procedures outlined in these Guidelines apply to all contracts for goods and works financed in whole or in part by ADB.⁷ For the procurement of those contracts for goods and works not financed by ADB, the borrower may adopt other procedures. In such cases ADB 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 To foster competition ADB permits bidders from all eligible member countries to offer goods, works, and services for ADB-financed projects.⁸ Any conditions for participation shall be limited to those that are essential to ensure the bidder's capability to fulfill the contract in question.

1.7 In connection with any contract to be financed in whole or in part by ADB, ADB does not permit a borrower to deny the participation of a bidder for reasons unrelated to its capability and resources to successfully perform the

⁷ This includes those cases where the borrower employs a procurement agent under para. 3.10.

⁸ See para. 2.11.

contract; nor does it permit a borrower to disqualify any bidder 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, 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.⁹
- (c) Government-owned enterprises in the borrower's country may participate as a bidder 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.¹⁰
- (d) A firm or individual sanctioned by ADB in accordance with subparagraph (d) of paragraph 1.14 of these Guidelines or ADB's Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), shall be ineligible to be awarded an ADB-financed or ADB-administered contract or to benefit from an ADB-financed or ADB-administered contract, financially or otherwise, during the period of time determined by ADB.

⁹ See para. 2.5.

¹⁰ Other than force account units, as permitted under para. 3.8.

Advance Contracting and Retroactive Financing

1.9 ADB encourages borrowers 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 Guidelines in order for the eventual contracts to be eligible for ADB financing, and ADB shall review the process used by the borrower. A borrower undertakes such advance contracting at its own risk, and any concurrence by ADB with the procedures, documentation, or proposal for award does not commit ADB to finance the project in question. If the contract is signed, reimbursement by ADB of any payments made by the borrower under the contract prior to signing 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 ADB does not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

ADB Review

1.11 ADB 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 ADB¹¹ 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 by ADB.

¹¹ See para. 1.16.

Misprocurement

1.12 ADB finances expenditures for goods and works that are procured in accordance with the provisions of the financing agreement and these Guidelines. If procurement is not carried out as agreed, ADB will declare misprocurement, and normally cancel that portion of the financing allocated to the goods and works that have been misprocured. In appropriate cases, ADB may permit rebidding after declaring misprocurement. ADB may, in addition, exercise other remedies provided for under the financing agreement. Even if a contract is awarded after obtaining a “no objection” from ADB, ADB reserves the right to declare misprocurement if it concludes that the “no objection” was issued on the basis of incomplete, inaccurate, or misleading information or the terms and conditions of the contract had been substantially modified without ADB’s approval.

References to ADB

1.13 When the contract is to be financed wholly or partly by ADB, reference shall be made to ADB in the bidding documents along the lines of the following language:

“ . . . (name of borrower) . . . has received a loan from the (ordinary capital resources or Special Funds resources) of the Asian Development Bank toward the cost of (name of project), and it is intended that the proceeds of this loan will be applied to payments under the contract (contracts) for which this invitation for bids is issued. The terms and conditions of the contract (contracts) and payments therefore by the Asian Development Bank will be subject in all respects to the terms and conditions of the Loan Agreement, including the *Procurement Guidelines*. Except as ADB may specifically otherwise agree, no party other than (name of borrower) shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.”

Fraud and Corruption

1.14 ADB’s anticorruption policy requires borrowers (including beneficiaries of ADB financed activity), as well as bidders, suppliers, and contractors under

ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy,¹² in the context of these Guidelines, ADB:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) “fraudulent practice” means 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) “coercive practice” means 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;
 - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another 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 ADB-financing engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;
- (d) will sanction a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed

¹² See ADB’s Anticorruption Policy (www.adb.org/Documents/Policies/Anticorruption) and Integrity Principles and Guidelines (www.adb.org/Documents/Guidelines/Integrity-Guidelines-Procedures).

or ADB-administered activities or to benefit from an ADB-financed or ADB administered contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive or other prohibited practices;

and

- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by ADB, requiring bidders, suppliers and contractors to permit ADB or its representative 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 ADB.
- 1.15 (a) With the specific agreement of ADB, a beneficiary of ADB-financing may introduce 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. ADB will accept the introduction of such undertaking at the request of the borrowing country, provided the arrangements governing such undertaking are satisfactory to ADB.
- (b) When the contract is to be financed wholly or partly by ADB, the contract documents shall include an undertaking by the contractor that no fees, gratuities, rebates, gifts, commissions, or other payments, except those shown in the bid, have been given or received in connection with the procurement process or in contract execution.
 - (c) ADB considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a prohibited practice under the anticorruption policy. In pursuance of the anticorruption policy's requirement that borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics, ADB will take appropriate actions to manage such

conflicts of interest or may reject a proposal for award if it determines that a conflict of interest has flawed the integrity of any procurement process.

Procurement Plan

1.16 As part of the preparation of the project the borrower shall prepare and, before loan negotiations, furnish to ADB for its approval, a procurement plan¹³ acceptable to ADB 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 ADB review procedures.¹⁴ 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 approved by ADB.

¹³ 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 *Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers*. ADB will disclose the initial procurement plan to the public after the related financing has been approved; additional updates will be disclosed after ADB has approved them.

¹⁴ See Appendix 1.

II. International Competitive Bidding

A. General

Introduction

2.1 The objective of international competitive bidding (ICB), as described in these Guidelines, is to provide all eligible prospective bidders¹⁵ with timely and adequate notification of a borrower's requirements and an equal opportunity to bid for the required goods and works.

Type and Size of Contracts

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

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 plant¹⁶ 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

¹⁵ See paras. 1.6, 1.7 and 1.8.

¹⁶ For purposes of these Guidelines, "plant" refers to installed equipment, as in a production facility.

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.¹⁷

2.5 In certain cases ADB 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 contracting¹⁸ contracts are also acceptable where appropriate.¹⁹

Two-Stage Bidding

2.6 (a) 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 unpriced technical proposals are invited first. These are prepared on the basis of a conceptual design or performance specification, and are subject to technical as well as commercial clarifications and adjustments. The first stage technical proposal clarification is to be followed by issuance of amended bidding documents²⁰ and the submission of final technical proposals and priced bids in the second stage.

¹⁷ See paras. 2.49–2.54 for the bid evaluation procedures.

¹⁸ 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 ADB, the services of the construction manager should be procured under the *Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers*.)

¹⁹ Also see paras. 3.14 and 3.15 for performance-based contracting.

²⁰ 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.

- (b) Two-envelope procedures, wherein bids with separate envelopes for technical and financial proposals are submitted simultaneously, may be used for the procurement of goods, works or turnkey contracts. The borrower has the option to use the two-envelope procedure with single-stage or two-stage bidding. In the single-stage, two-envelope procedure, the technical proposal is opened first and reviewed to determine responsiveness to the bidding documents. Only the financial proposals of bidders with responsive technical proposals are opened for evaluation and comparison. The financial proposals of bidders whose technical proposals are not responsive shall be returned unopened. In the two-stage, two-envelope procedure, bidders are allowed to amend their technical proposals in order to ensure conformance to the same technical standards. Only the financial proposals, including supplementary price proposals, of bidders whose original or revised technical proposals are found conforming to the agreed technical standards, are opened for evaluation and comparison. The use of these procedures must be agreed upon by ADB and the borrower.

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 ADB a draft general procurement notice. ADB will arrange for its publication.²¹ The notice shall contain information concerning the borrower (or prospective borrower), amount and purpose of the loan, scope of procurement under ICB, and the name, telephone number, email address (or fax number) 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. Except in the case of advance contracting²² 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.

²¹ On ADB website: www.adb.org

²² See para. 1.9.

2.8 Invitations to prequalify or to bid, as the case may be, shall be advertised as specific procurement notices in ADB's website as well as in (i) a newspaper of national circulation in the borrower's country (at least in one English language newspaper, if available), or (ii) on an internationally known and freely accessible website in English. A copy of the invitation for bids shall be submitted to ADB for approval and for publication in ADB's website in accordance with the provisions of the financing agreement.

Prequalification of Bidders

2.9 Prequalification may be 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 contracts 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) capabilities with respect to construction or manufacturing facilities, and (c) financial position.²³

2.10 The invitation to prequalify for bidding on specific contracts or groups of similar contracts shall be advertised and notified as described in paragraphs 2.7 and 2.8 above. The scope of the contract and a clear statement of the requirements for qualification shall be sent to those who responded to the invitation. Generally, a minimum period of six weeks shall be allowed for the submission of prequalification applications. There shall be no limits on the number of bidders to be prequalified, and all found capable of performing the work satisfactorily in accordance with the approved prequalification criteria shall be prequalified and invited to submit bids. As soon as prequalification is completed, the bidding documents shall be made available to the prequalified prospective bidders. For prequalification for groups of contracts to be awarded

²³ ADB has prepared a standard prequalification document for mandatory use by its borrowers, for appropriate contract types.

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 (a) Bidding documents shall state that payments from the proceeds of ADB loans or grants will be limited to goods produced in, and services supplied by, member countries of ADB, except in the case of loans or grants from Special Funds resources, where payments will be limited to goods produced in, and services supplied by, developed member countries that have contributed to such resources, and all developing member countries.
- (b) It is essential that the bidding documents provide all the information necessary for bidders to prepare responsive bids. While the detail and complexity of these documents vary depending upon the kind of goods to be procured and the size of the contract, they shall normally include the following: invitation for bids; instructions to bidders; bidding forms; conditions of contract, both general and special; technical specifications; bill of quantities and drawings; schedule of prices; and necessary appendixes, proforma bid securities and performance securities.
- 2.12 (a) Borrowers shall use the appropriate Standard Bidding Documents (SBDs) issued by ADB with minimum changes, acceptable to ADB, as necessary to address project specific 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 ADB'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 ADB.

- (b) The borrower may use an electronic system to distribute bidding documents, provided that ADB is satisfied with its adequacy. 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 ADB.

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 ADB (if prior review is required), and obtain all the necessary approvals 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 documents²⁴ 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.

²⁴ The bid security, at the bidder's option, shall be in the form of a certified check, a letter of credit or a bank guarantee from a reputable bank.

Language

2.15 Under the Articles of Agreement of ADB, the working language of ADB is English and therefore bidding and other relevant documents, including advertisements, shall be prepared in English. Where more than one language is used, the English version shall prevail.

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 ADB. 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. ADB shall receive a copy 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 must specify substantial equivalence, will also be accepted.

Use of Brand Names

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

Pricing

2.21 Bids for goods shall be invited on the basis of CIF, or CIP for all goods offered from abroad, and EXW²⁵ for locally available or manufactured or assembled

²⁵ Refer to INCOTERMS 2000 for further definitions. Published by the International Chamber of Commerce, 38 Cours Albert 1er, 75008 Paris, France. CIF is cost, insurance and freight, and FOB is free on board, for maritime transportation. CIP is carriage and insurance paid to (named place of destination), and FCA is free carrier, in the case of multimodal transportation. EXW is ex works, ex factory or off-the-shelf. The EXW price shall include all duties, sales and other taxes already paid or payable for the components and raw materials used in the manufacture or assembly of the equipment, or the prior import of the equipment, offered in the bid.

goods, including those previously imported. Where inland transportation, installation, commissioning or other similar services are required to be performed by the bidder, as in the case of “supply and installation” contracts, the bidder shall be required to provide a separate quotation for these services.

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

2.23 Bidders for civil 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 the most competitive bids.

Price Adjustment

2.24 The bidding documents shall clearly indicate whether price adjustments are allowed in the event changes occur in major cost components of the contract such as labor, equipment, and materials, over which the contractor has no control. Price adjustment provisions are not necessary for simple supply contracts involving short delivery periods. However, for contracts with long delivery or completion periods (generally beyond 18 months), including major civil works contracts, price adjustment provisions shall be provided. For certain type of equipment where normal commercial practice requires bidders to submit firm prices regardless of the delivery time, price adjustment provisions are not needed. Contracts which contain a large commodity component whose price may vary sharply in the short term shall contain a price adjustment clause that protects the borrower or contractor from losses in case of any abrupt changes in price.

2.25 The amount of price adjustment shall be based on changes in the cost of the major components of the contract. If used, the method of adjustment

indicated in the bidding documents shall provide for adjustments calculated using a price adjustment formula or formulae. The comparison of bid prices shall be carried out on the basis of base price only.

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% of the contract amount in the currency of the contract or in a freely convertible currency to enable prompt replacement of lost or damaged goods. For works, a contractor's All Risk form of policy usually shall be specified. For large projects with several contractors on a site, a "wrap-up" or total project insurance arrangement may be obtained by the borrower, in which case the borrower shall seek competition for such insurance.

2.27 As an exception, if a borrower wishes to reserve transportation and insurance for the import of goods to national companies or other designated sources, bidders shall be asked to quote FOB, FCA, CFR (named place), or CPT (named place of destination)²⁶ prices in addition to the CIF or CIP (place of destination) price specified in paragraph 2.21. Selection of the lowest evaluated bid shall be on the basis of the CIF or CIP (place of destination) price, but the borrower may sign the contract on FOB, FCA, CFR, or CPT terms and make its own arrangement for transportation and/or insurance. Under such circumstances, the contract shall be limited to the FOB, FCA, CFR or CPT cost. If the borrower does not wish to obtain insurance coverage in the market, evidence shall be provided to ADB that resources are readily available for prompt payment in a freely convertible currency of the indemnities required to replace lost or damaged goods.

²⁶ *INCOTERMS 2000* for free carrier (named place) and for carriage paid to (named place of destination), respectively.

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.

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 currency²⁷ 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

²⁷ Referred to hereafter as local currency.

this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the central bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance, such source and date to be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity.

Currency of Payment

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

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

Terms and Methods of Payment

2.34 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and works, and shall be made in accordance with the procedures provided in ADB's *Loan Disbursement Handbook* (as amended from time to time).

- (a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the supplier has complied with all its obligations under the contract. The use of letters of credit is encouraged so as to assure prompt payment to the supplier. In major contracts for equipment and plant, provision shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.

- (b) Contracts for works shall provide in appropriate cases for mobilization advances, 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.²⁸ 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. In addition, retention money to ensure compliance by the contractor of its warranty or maintenance obligations may be required in an amount not to exceed 10% of the payments. Such retention money will be withheld until the expiration of the warranty or maintenance period. After completion of the works, but before the expiration of the warranty or maintenance period, the retention money may, at the option of the borrower, be replaced with a suitable bank guarantee or other appropriate security.

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. In addition 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

²⁸ The format of the performance security shall be in the form of a bank guarantee, or cash deposit, 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 the borrower to make it enforceable.

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, ADB recommends that borrowers use this type of arbitration in contracts for the procurement of goods and works. ADB 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, a longer period may be necessary 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 ADB is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and integrity of bids submitted, and employs acceptable management procedures to establish date and time of submission, and facilitate modification and withdrawal. Where electronic procurement is used, bidders shall continue to have the option to submit their bids in print form. The deadline and place for receipt of bids shall be specified in the invitation for bids and the bidding documents.

Bid Opening Procedures

2.45 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly²⁹ 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 ADB 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. When electronic bid submission is used, an online bid opening procedure acceptable to ADB may be employed.

Clarifications or Alterations of Bids

2.46 Except as otherwise provided in paragraphs 2.6, 2.63, and 2.64 of these Guidelines, bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. The borrower shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the

²⁹ To allow sufficient time to take the bids to the place announced for public bid opening.

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 ADB.³⁰

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 paragraph 1.6, 1.7 and 1.8 of these Guidelines, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in paragraph 2.14 of the Guidelines, (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 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.³¹

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,³² 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

³⁰ See para. 2.44.

³¹ See para. 2.50 regarding corrections, and para. 2.6 regarding clarifications in two-stage and two-envelope procedures.

³² See para. 2.52.

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 CIF or CIP (place of destination) prices for the supply of imported goods³³ 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.³⁴

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 in the evaluation provisions of the bidding documents. Bids shall be compared on the basis of base price without taking into account the provisions for price adjustments. Likewise, customs duties and import taxes on goods to be imported shall be excluded in comparing bids for the supply of goods.

2.53 Under works contracts, contractors are responsible for all duties, taxes, and other levies, and bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Turnkey contracts shall be evaluated excluding taxes and duties for the goods component.³⁵ Bid evaluation for works shall be strictly in monetary terms. Any

³³ 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 multi-modal transport.

³⁴ The evaluation of bids shall not take into account: (a) customs duties and other taxes levied on imported goods quoted CIF or CIP (which exclude custom duties); and (b) sales and similar taxes levied in connection with the sale or delivery of the goods.

³⁵ Unless bidding documents specify otherwise for some turnkey contracts (see para. 2.22).

procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to the borrower may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance.

2.54 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 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 in the country of the borrower when comparing bids offering such goods with those offering goods manufactured abroad; and
- (b) works in member countries below a specified threshold of GNP³⁶ per capita, when comparing bids from eligible domestic contractors with those from foreign firms.

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

Extension of Validity of Bids

2.57 Borrowers shall complete evaluation of bids and award of contract within the initial period of bid validity so that extensions are not necessary.³⁷ 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

³⁶ Gross national product as defined annually by ADB.

³⁷ See Appendix 1, para. 2(d).

the necessary approvals, and award the contract. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the 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.

Postqualification 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 offer the lowest evaluated cost.³⁸ A bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

Publication of the Award of Contract

2.60 Within two weeks of receiving ADB's "no objection" to the recommendation of contract award, the borrower shall publish in an English language newspaper or well-known and freely accessible website the results identifying the bid and lot numbers, and the following information: (a) name

³⁸ Referred to as "lowest evaluated bidder" and "lowest evaluated bid," respectively.

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. For contracts subject to post review, the borrower shall publish the results no later than the date of contract award.

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 ADB's prior approval, 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 nonresponsive, new bids may be invited from the initially prequalified firms, or with the agreement of ADB from only those that submitted bids in the first instance.

2.63 When all bids have been rejected, a rebidding may be called, and the borrower shall request for new bids from all who were supplied with bidding documents in the first instance. However, if there has been a sufficient number of bids in the initial bidding, the borrower may consider inviting bids only from those who have previously submitted bids. Where all bid prices substantially exceed the cost estimates, the borrower may, instead of calling for new bids, and after consultation with ADB, negotiate with the lowest evaluated bidder for a reduction of the bid price. If no satisfactory contract can be concluded

and a rebidding is called, modification of the scope of the contract shall be considered.

2.64 ADB'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 Imports

2.66 Proceeds of a program loan may be utilized to finance economy-wide import requirements on the basis of a negative import list, or sector-specific import requirements on the basis of a positive import list. Normally, negative import lists will be appropriate, although positive lists may also be applied, for example when foreign exchange is scarce and ADB wishes to ensure that sector import requirements are met. Documentation in respect of specific imports is required for program loans for which a positive list of eligible items is utilized.

2.67 ADB's normal ICB procedures are not required for contracts financed under program loans. For goods commonly traded in international commodity markets (e.g., petroleum products and fertilizers), normal commercial procedures appropriate to the trade are regarded as acceptable for ADB financing. Financing of specific commodities may be limited to an agreed upon maximum percentage (say 60% of the total loan amount). The specific procurement procedures proposed for each program loan are based on ADB's assessment of the procedures in the borrowing DMC and are set out in the loan

documentation. The borrower and, where appropriate, concerned agencies are required to keep accurate records of the accounts under the program loan.

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 faxed bids or bids submitted by electronic means, and in such cases either no bid security is required, or standing bid securities may be submitted by prequalified bidders valid over a specified period of time. Standard contract conditions and forms consistent with market practices shall be used.

Repeat Order

2.69 Where, after the items originally envisaged for the project have been procured through international competitive bidding, an additional quantity of the same items is urgently needed to meet the requirements of the project and funds are available for this purpose, the additional items may be procured through repeat order bidding where it can be shown clearly that no advantage could be gained by adopting full international competitive bidding.³⁹ Under this procedure, bids may be invited only from those who submitted responsive bids for the original order or, if there was a large number of responsive bidders, only from the five lowest responsive bidders.

³⁹ Also see para. 3.6(a).

III. Other Methods of Procurement

General

3.1 This Section describes the methods of procurement that can be used where international competitive bidding (ICB) would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate.⁴⁰ ADB'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, (b) the amount of the contract is not large enough to attract foreign suppliers and contractors through ICB, or (c) 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

⁴⁰ 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 ADB.

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, and 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 ADB-financed procurement, these procedures shall be reviewed and modified⁴¹ as necessary to assure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of these Guidelines. 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 the national press or official gazette, or a free and open access website. Bidding documents may be only in a national language of the borrower's country (or the language used nation-wide in the borrower's country for commercial transactions), 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 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

⁴¹ Any such modification shall be reflected in the financing agreement.

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) Additional items are required under an existing contract, which was awarded in accordance with ICB procedures. ADB shall be satisfied in such cases that no better offer is likely to be received, and that the price to be paid is not more than the original price. Usually, the repeat order shall occur within 18 months of the original order while the additional quantities shall not exceed 30% of the original quantities.
- (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 ADB.

- (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) Where civil works are to be contracted that are a natural extension of an earlier or ongoing job and it can be shown that the engagement of the same contractor will be more economical and will ensure compatibility of results in terms of quality of work.
- (f) In exceptional cases, such as in response to natural disasters.

3.7 After the contract signature, the borrower shall publish in an English language newspaper or in English on a well-known and freely accessible website the name of the contractor, price, duration, and summary scope of the contract. 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,⁴² 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; or
- (e) there are emergencies needing prompt attention.

⁴² 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."

Procurement from Specialized Agencies

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 ADB) 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 the Guidelines, including use of ADB SBDs, review procedures, and documentation. This also applies in cases where UN agencies act as procurement agents.⁴³ 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 Preshipment 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 competitive bidding procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through ICB may additionally be subjected to price verification. The inspection agents are ordinarily paid for on a fee basis levied on the value of the goods. Costs for certification of imports shall not be considered in the evaluation of bids under ICB.

⁴³ The Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers 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 ADB, if so provided in the financing agreement, and provided the terms and conditions of selection and employment are acceptable to ADB.

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, 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 ADB. 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 In the case of loans made by ADB to the private sector without government guarantee, ADB does not insist on ICB procedures, but will request borrowers to satisfy ADB that procurement procedures have been applied in a transparent manner, preferably through competitive bidding procedures, and that the goods and works procured are from eligible member countries and are suitable for the project. Where ADB is participating in financing a BOO/BOT/BOOT⁴⁴ or similar type of project, either of the following procurement procedures shall be used:

- (a) The project sponsor for a BOO/BOT/BOOT or similar type of project shall be selected in a transparent manner, preferably through competitive bidding procedures acceptable to ADB, which may include several stages in order to arrive at the optimal combination of criteria for the purpose of establishing the most economic and efficient proposal, such as the performance specifications of the facility offered, the cost charged to the user or purchaser, and the period of the facility depreciation. The project sponsor selected in this manner shall then be free to procure the goods

⁴⁴ BOO = build, own, operate; BOT = build, operate, transfer; BOOT = build, own, operate, transfer.

and works required for the facility from eligible member countries, using suitable procedures.

Or,

- (b) If the project sponsor has not been selected in the manner set forth in subparagraph (a) above, the goods and works required for the facility and to be financed by ADB, shall be procured from eligible member countries in a transparent manner, through competitive bidding procedures acceptable to ADB.

Performance-Based Procurement

3.14 Performance based procurement,⁴⁵ 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,

⁴⁵ The use of performance based procurement in ADB-financed projects should be the result of the satisfactory technical analysis of the different options available and should be either included in the financing agreement or subject to prior approval by ADB for incorporation into the procurement plan.

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.⁴⁶ 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 ADB

3.16 If ADB 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 ADB. The procedures proposed and the project components to be carried out by community participation shall be outlined in the financing agreement and further elaborated in the procurement plan or the relevant project implementation document approved by ADB.

⁴⁶ 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.

Procurement under Disaster and Emergency Assistance

3.18 Procurement of goods and works under disaster and emergency assistance shall incorporate greater flexibility. ICB requirements will be relaxed in favor of NCB with an abbreviated bidding period. LIB will be the norm for procurement of goods with minimum bidding periods ranging from one to two weeks. Direct contracting to contractors and suppliers under existing loans or grants will be allowed for new contracts, with rates negotiated around those in effect for the existing contract with adjustments as required for inflation and physical considerations. Similarly, contractors and suppliers competitively selected under projects financed by other donors will be considered for direct contracting for new ADB-financed contracts.

Appendix 1

ADB Review of Procurement Decisions

Scheduling of Procurement

1. ADB shall review the procurement arrangements proposed by the borrower in the procurement plan for its conformity with the financing agreement and these Guidelines. 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 ADB for its prior approval.

Prior Review

2. With respect to all contracts⁴⁷ which are subject to ADB's prior review:
- (a) In cases where prequalification is used, the borrower shall, before prequalification submissions are invited, furnish ADB with the draft documents to be used, including the text of the invitation to prequalify, the prequalification documents (including instructions to applicants, qualification criteria, application forms, and scope of contract), 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 ADB 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 ADB for its comments before the applicants are notified of the borrower's decision, and the borrower shall

⁴⁷ For contracts procured on the basis of direct contracting under paras. 3.6 and 3.7, the borrower shall furnish to ADB for its approval, prior to contract execution, a copy of the specifications and the draft contract. The contract shall be executed only after ADB has given its approval, and the provisions in (h) of this paragraph shall apply with respect to the executed contract.

make such additions to, deletions from, or modifications in the said list as ADB shall reasonably request.

- (b) Before bids are invited, the borrower shall furnish to ADB 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 ADB shall reasonably request. Any further modification shall require ADB's approval 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 ADB, at least four weeks prior to expiration of bid validity, a detailed report (prepared, if ADB shall so request, by experts acceptable to ADB), on the evaluation and comparison of the bids received, together with the recommendations for award and such other information as ADB shall reasonably request. ADB 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, ADB shall provide its no objection to the recommendation for contract award. The borrower shall award the contract only after receiving the "no objection" from ADB.
- (d) If the borrower requires an extension of bid validity to complete the process of evaluation, obtain necessary approvals and clearances, and to make the award, it should seek ADB's prior approval 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 ADB 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 ADB for no objection. The borrower shall

provide a republication of the contract award in the format of paragraph 2.60 of these Guidelines.

- (g) The terms and conditions of a contract shall not, without ADB's prior approval, materially differ from those on which bids were asked or prequalification of contractors, if any, was invited.
- (h) Promptly after each contract is awarded, ADB shall be furnished with three copies of the contract as executed. If the final contract proposed to be executed differs substantially from the draft contract previously approved by ADB, or if any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to ADB for prior approval.
- (i) All evaluation reports shall be accompanied by a summary of the procurement on a form provided by ADB. The description and amount of the contract, together with the name and address of the successful bidder, shall be subject to release by ADB 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% of the original price, the borrower shall seek ADB's no objection to the proposed extension, modification, or change order. If ADB 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 ADB for its record.

4. **Translations.** Contracts awarded under ICB must be written in English. Any supporting documentation that might have originated in another language (such as technical descriptions of equipment) must be accompanied with an English translation.

Post Review

5. If ADB and the borrower have agreed on post review, ADB will review and respond as soon as practicable, but no later than 6 months after receipt of the required documents, or it will be assumed that ADB has no objection to the borrower's action. The borrower shall retain all documentation with respect to each contract where post review is required during project implementation and up to two years after the project closing date. This documentation would include, but not be limited to, the signed original of the contract, the evaluation report including the analysis of the respective proposals, and recommendations for award, for examination by ADB or by its consultants. Master copies of electronic documents must be retained in print form, suitably authenticated by the issuing agency by signature, stamp or other feature acceptable to ADB. The borrower shall furnish such documentation to ADB upon award of contract unless otherwise specified in the financing agreement. If ADB determines that the goods, or works were not procured in accordance with the agreed procedures as reflected in the financing agreement, it may declare misprocurement as established in paragraph 1.12 of the Guidelines. ADB shall promptly inform the borrower the reasons for such determination. If misprocurement is declared after disbursement, the borrower shall refund the corresponding amount to ADB.

Appendix 2

Domestic Preferences

Preference for Domestically Manufactured Goods

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

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

- (a) *Group A*: bids exclusively offering goods manufactured in the country of the borrower if the bidder establishes to the satisfaction of the borrower and ADB that (i) labor, raw material, and component from within the country of the borrower will account for 30% 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.

3. 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 component 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 CIF or

CIP (place of destination), which is exclusive of customs duties and other import taxes already paid or to be paid.

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

5. If as a result of the comparison under paragraph four above, 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% of the CIF or CIP bid price. The lowest evaluated bid determined from this last comparison shall be selected.

6. In the case of single responsibility, supply and installation or turnkey⁴⁸ contracts in which a number of discrete items of equipment is grouped into one contract package or in a bid package involving multiple items, the preference margin shall not be applied to the whole package, but only to the locally manufactured equipment within the package. Equipment offered from abroad shall be quoted CIF or CIP, and equipment offered locally EXW (free of sales and similar taxes); and all other components, such as design, works, installation, and supervision, shall be quoted separately. Bids should not be classified into groups A, B, or C. In the comparison of bids, only the CIF or CIP price in each bid of the equipment offered from outside the borrower's country shall be increased by 15%. No preference shall be applied for any associated services or works included in the package.

⁴⁸ These provisions apply only if customs duties are excluded from the bid prices, and the price of imported goods quoted is on a CIF or CIP basis.

Preference for Domestic Contractors

7. For contracts for works to be awarded on the basis of ICB, eligible borrowers may, with the agreement of ADB, grant a margin of preference of 7.5% to domestic contractors,⁴⁹ 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,⁵⁰ such information, including details of ownership, as shall be required to determine whether, according to the classification established by the borrower and accepted by ADB, 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.

8. For the purpose of evaluation and comparison of bids, an amount equal to 7.5% of the bid amount shall be added to bids received from contractors in group B.

⁴⁹ Preference for domestic Contractors is applicable only in countries which qualify.

⁵⁰ At the prequalification and/or at the bidding stage.

Appendix 3

Guidance to Bidders

Purpose

1. This appendix provides guidance to potential bidders wishing to participate in ADB-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. ADB, for its part, is required by its Charter to ensure that funds are paid from ADB financing only as expenditures are incurred. Disbursements are made only at the borrower's request. Supporting evidence that the funds are used in accordance with the financing agreement and/or the procurement plan shall be submitted with the borrower's withdrawal application. Payment may be made (a) to reimburse the borrower for payment(s) already made from its own resources, (b) directly to a third party (usually to a supplier or contractor), or (c) to a commercial bank for expenditures against a Commitment Letter covering a commercial bank's letter of credit.⁵¹ As emphasized in paragraph 1.2 of the Guidelines, 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. ADB is not a party to the contract.

ADB's Role

3. As stated in paragraph 1.11 of the Guidelines, ADB 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 ADB prior to their issue, as described

⁵¹ A complete description of ADB's disbursement procedures is provided in the Loan Disbursement Handbook (available on ADB's website at www.adb.org).

in Appendix 1. Also, if, at any time in the procurement process (even after the award of contract), ADB concludes that the agreed procedures were not followed in any material respect, ADB may declare misprocurement, as described in paragraph 1.12. However, if a borrower has awarded a contract after obtaining ADB's "no objection," ADB 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 ADB determines that corrupt or fraudulent practices were engaged in by representatives of the borrower or of the bidder, ADB may impose the applicable sanctions set forth in paragraph 1.14 of the Guidelines.

4. ADB has published Standard Bidding Documents (SBDs) for various types of procurement. As stated in paragraph 2.12 of the Guidelines, 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.

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 Guidelines. General guidance on participation, as well as advance information on business opportunities in upcoming projects, may be obtained from the ADB website.⁵²

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,

⁵² www.adb.org

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 Guidelines. If a bidder feels that any of the provisions in the documents are inconsistent with the Guidelines, 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 noncritical requirement, or propose an alternative solution, the bidder should quote the price for the fully compliant bid and then separately indicate the adjustment in price that can be offered if the deviation 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 Guidelines, the process of bid evaluation shall be confidential until the publication of contract award. This is essential to enable the borrower and ADB 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, ADB, or both, it should do so in writing.

Action by ADB

11. Bidders are free to send copies of their communications on issues and questions with the borrower to ADB or to write to ADB directly, when borrowers do not respond promptly, or the communication is a complaint against the borrower. All such communications should be addressed to the project officer for the project, with a copy to the Principal Director, Central Operations Services Office.

12. References received by ADB from potential bidders, prior to the closing date for submission of the bids, will, if appropriate, be referred to the borrower with ADB'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 ADB, 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 ADB staff. In the cases of contracts subject to the prior review process, the communication will be examined by ADB, 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, ADB will ask the borrower to obtain it and comment or incorporate it, as appropriate, in the evaluation report. ADB's review will not be completed until the communication is fully examined and considered.

14. (a) Except for acknowledgment, ADB will not normally enter into discussion or correspondence with any bidder during the evaluation and review process of the procurement, until award of the contract is published.
- (b) Notwithstanding paragraph 14(a) above, ADB may enter into discussion where it deems necessary to conduct investigations, audit, evaluation or other assessments of the procurement process.

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 ADB, it may do so by writing the Principal Director, Central Operations Services Office, 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.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries substantially reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.8 billion people who live on less than \$2 a day, with 903 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

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