

**Procurement Guidelines for  
the Japanese Grants  
(for Japanese consultant and local  
contractors) (Tentative Type II )**

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**JAPAN INTERNATIONAL COOPERATION AGENCY**

**(JICA)**

***Procurement Guidelines for the Japanese Grants (for Japanese  
consultant and local contractors) (Tentative Type II)***

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## **Preface**

1. The employment of consultants and procurement of products and services under projects financed by Japanese Grants from Japan International Cooperation Agency (hereinafter referred to as “JICA”) (hereinafter referred to as “the Grants”) is carried out in accordance with the general principles and procedures laid down in the Procurement Guidelines for the Japanese Grants (for Japanese consultant and local contractors) (Tentative Type- II ) (hereinafter referred to as “the Procurement Guidelines”).
2. The Procurement Guidelines consists of two parts: Chapter I Guidelines for the Employment of Consultants; and Chapter II Guidelines for Procurement.

## **Chapter I Guidelines for the Employment of Consultants**

### **PART I GENERAL**

#### **Section 1.01 Introduction**

- (1) “Guidelines for the Employment of Consultants” are applicable to the Grants.
- (2) The application of these Guidelines to a particular project is to be stipulated in the Grant Agreement (hereinafter referred to as "the G/A") concluded between JICA and the Recipient (In these Guidelines, the term "the Recipient" also refers to the Executing Agency of the project).
- (3) For the efficient and proper preparation and implementation of projects financed in whole or in part by the Grants, the Recipient shall require the assistance from the consultants.
- (4) The purpose of these Guidelines is to indicate JICA's views as to the proper employment of consultants and the full utilization of consultants' expertise, and to ensure their impartiality, and, in addition, to set forth general rules to be followed by the Recipients in their use of consultants.

#### **Section 1.02 Need for Employment of Consultants**

The Recipient shall enter into contract with the consultant for consulting services with regard to the designing, bidding, cost estimating and supervising the procurement and construction works for the project.

#### **Section 1.03 Recommendation of Consultants**

The consultant for a project funded by the Grants is to be recommended by JICA to the Recipient for each project in order to ensure the technical consistency from the designing stage of the project. Such recommendation of the consultant by JICA does not mean that JICA shall assume the responsibilities which the consultant shall bear to the Recipient.

#### Section 1.04 Eligibility

- (1) In order to be eligible under a contract funded with the Grants, a consultant shall;
  - (a) be a firm or an individual of the eligible nationality stipulated in the G/A;
  - (b) not be a firm or an individual stated in Section 1.06 of the Chapter I ; and
  - (c) not be a firm or an individual who has the conflict of interest stated in Section 1.07 of the Chapter I.
- (2) A firm or an individual who does not meet any of the conditions stipulated in paragraph (1) of this Section shall be ineligible to be awarded a contract funded with the Grants.

#### Section 1.05 JICA's Review

- (1) JICA may review the Recipient's procedures, documents and decisions regarding employment of consultants and its contract stipulated in the G/A. The Recipient shall submit to JICA, with support of the consultant, for JICA's reference, any related documents and information as JICA may reasonably request. The G/A will specify the extent to which review procedures will apply in respect of products and/or services to be funded out of the Grants as shown in Box 1.  
The review and concurrence by JICA related to the contract as shown in Box 1 shall be clearly stated in the contract between the Recipient and the consultant.

**Box 1: Procedures which require JICA's review regarding employment of consultant and its contract**

- (1) Execution of the contract for consultants  
The original contract for the consultant shall be submitted promptly after its signing in order for the contract to be verified as eligible for the Grants.
- (2) Allocation of the remaining balance or contingencies of the Grants  
A request for review and concurrence on the allocation of the remaining balance or contingencies of the Grants with the reason therefor shall be submitted to JICA before any action is taken in relation to the use of the remaining balance or contingencies of the Grants.
- (3) Amendment or termination of contract
  - (a) The extension of the contract period and the reason which justifies the proposal shall be submitted before the contract is amended; in the situation where the extended period is more than three (3) months or the period between the end of contract period and the deadline of availability of the Grants become less than six (6) months.

(b) Any major amendment or termination of the contract shall be notified to JICA immediately and the original of the contract and other necessary documentation thereon shall also be submitted after signing in order for the amendment of the contract to be verified as eligible for the Grants.

(4) Modification from the original design

A description of any major modification from the original design of the project shall be submitted before the implementation of any work related to the modified design.

For the avoidance of doubt, any change which does not constitute a major modification of the design or a major amendment of the contract, as specified by JICA, shall not require such concurrence of JICA.

(2) With regard to (1) and (3) in Box 1 above, JICA will review the contracts in the light of points shown in Box 2.

**Box 2: Points to be reviewed by JICA on the contract**

Any amendment related to the items listed below is regarded as major amendment.

- (a) The project title, signing date of the G/A and the Exchange of Notes between the Government of Japan and the Government of recipient country concerning Japanese economic cooperation to be extended with a view to promoting the economic and social development of recipient country (hereinafter referred to as “the E/N”)/is consistent with the G/A;
- (b) The total amount of the contract including other contract(s) of the same project to be covered by the Grants does not exceed the amount of the Grants;
- (c) The period of the execution of the service or work of the contract(s) does not exceed the terms of validity of the Grants as prescribed in the G/A;
- (d) The scope of the services or works is consistent with the purpose of the Grants and description of the project;
- (e) Consultants, contractors, country of origin of the product and/or service meets the eligibility as specified in the G/A and the Procurement Guidelines;
- (f) The contract properly refers to the G/A and JICA’s review and concurrence as defined in the G/A and the Procurement Guidelines;
- (g) The rights and obligations of the Recipient and the consultant are in accordance with the E/N and G/A;

- (h) The currency, conditions and method of the payment is consistent with the terms and conditions set forth in the G/A and the Procurement Guidelines;
- (i) The contract price and the period of the execution of the service or works are precisely and correctly worded; and
- (j) The provisions and sentences required to be included in accordance with the Procurement Guideline are properly and clearly stated.

(3) With regard to (2) in Box 1, the allocation of the remaining balance or the contingencies shall be used in accordance with JICA's "Guidelines on the grant for contingencies".

(4) With regard to (4) in Box 1, the Recipient shall implement the project in accordance with the original design summarized in the report prepared for the Project.

The major modification from the original design is defined as shown in Box 3. However the concurrence by JICA does not mean that JICA will assume the legal or technical responsibilities for the substance of the modifications.

**Box 3: Major modification from the original design**

- (a) Decline in quality and/or functions of products and/or services from the original design;
- (b) Increase in amount of the contract price; and
- (c) Change of project sites.

In addition, the modification of the design shall be limited to the following circumstances:

- (a) The drawings and specifications contain any inaccuracies or deficiencies ;
- (b) The drawings and specifications contain ambiguous or unclear expressions;
- (c) The actual natural or artificial conditions including, but not limited to, land configuration, nature of soil, ground water, and limiting factors for the execution of the construction or procurement works at the project site are different from those expressed in the drawings and specifications;
- (d) Unforeseeable special situations occur in the conditions that are not specified in the drawings and specifications;
- (e) The necessity of restoring the scope reviewed and scale-downed during the detailed design in order to meet budgetary limit constrained by the amount of the Grants; and
- (f) Other modifications which will not change the basic concept and plan of the original plan



where JICA deems it appropriate.

- (5) JICA does not finance expenditures for services provided by consultants, who, in the opinion of JICA, have not been employed, in accordance with the agreed procedures and JICA will cancel the portion of the Grants allocated to such services provided by consultants who have not been properly employed. JICA may, in addition, exercise other remedies under the G/A.

#### Section 1.06 Corrupt or Fraudulent Practices

It is JICA's policy to require that consultants, as well as the Recipient, under contracts funded with the Grants or other Japanese Official Development Assistance (hereinafter referred to as "Japanese ODA"), observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JICA will recognize a physical or juridical person as ineligible, for a period determined by JICA, to become a party to, to become a subcontractor under, or to be delegated any responsibilities under any contract funded with the Grants or other Japanese ODA, if JICA at any time, determines that the person has engaged in corrupt practices or fraudulent practices in competing for, or in executing, another contract funded with the Grants or other Japanese ODA.

#### Section 1.07 Conflict of Interest

A consultant shall not have a conflict of interest. A consultant shall not be employed, and/or shall be excluded or prohibited to engage in certain activity under any of the circumstances set forth below (1) to (5), where it is determined to have a conflict of interest throughout the execution of the contract unless the conflict has been resolved in a manner acceptable to JICA. The same shall be applied mutatis mutandis to a joint venture, a member of which is under any of the circumstances set forth below (1) to (5).

- (1) Conflict between consulting activities and procurement of products or non-consulting services:

A consultant that has been engaged to provide products or non-consulting services for the project, or any firm who has any of the following capital, personal or contractual ties (including similar ones) with such consultant (hereinafter referred as "Related Person) shall be disqualified from providing consulting services resulting from or directly related to those products or non-consulting services. Conversely, a consultant employed to provide consulting services for the preparation or implementation of the project or any Related Person, shall be disqualified from subsequently providing products or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

- (a) a parent company or a subsidiary
- (b) subsidiary companies of the same parent company
- (c) a firm whose director, officer or executive officer serves as a director, officer or executive

officer in the above-mentioned consultant,

- (d) a firm whose director serves as a trustee
- (e) a sub-consultant, directly employed by a consultant, who plays a major role in preparation and implementation of the project (hereinafter referred as “Sub-consultant”).

This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the contractor’s obligations under a turnkey or design and build contract.

- (2) Conflict among consulting assignments: Neither consultant nor any Related Person shall be employed for any assignment that, by its nature, may be in conflict with another assignment of the consultant.
- (3) Relationship with Recipient’s official: A consultant that has a close business relationship with the Recipient’s official, who is directly or indirectly involved in the supervision of contract with a consultant of the project, such consultant shall be disqualified or excluded.
- (4) A consultant or the Sub-consultant may not involve any individual (whether as employee, contractor or otherwise) in the provision of consulting service for the preparation or implementation for the project who is, has been or is intended to be assigned (whether by the consultant or any other party) to provide products or non-consulting services resulting from or directly related to such consulting services. Conversely, a consultant or the Sub-consultant may not involve any individual (whether as employee, contractor or otherwise) in the provision of products or non-consulting services for the project who is, has been or is intended to be assigned (whether by the consultant or any other party) to provide consulting services directly related to those products or non-consulting services.
- (5) A consultant having any other form of conflict of interest other than (1) through (4) above shall be disqualified or excluded.

#### Section 1.08 Language

All documents relating to employment of consultants, including the contract, shall be prepared in one of the following languages, selected by the Recipient: English, French or Spanish. Although the Recipient may issue translated versions of these documents in the national language of the Recipient’s country for the Recipient’s reference, the English, French or Spanish documents shall take precedence.

## PART II CONSULTING SERVICES

### Section 2.01 Types of Assignment

In general, the services of consultants can be grouped into the following broad categories:

- (1) Preparation services, including:
  - (a) Detailed investigations and review of preinvestment studies;
  - (b) Preparation of detailed designs, specifications and contract documents including division of bidding lots;
  - (c) Pre-qualification of contractors, if necessary;
  - (d) Evaluation of bids and recommendations regarding award of contract; and
  - (e) Studies and/or recommendations related to environmental and social matters, including implementation/review of environmental impact assessments.
- (2) Implementation services, including:
  - (a) Supervision of construction work;
  - (b) Technical and administrative services for the implementation and management of the project;
  - (c) Pre-check of payment documents submitted by contractors; and
  - (d) Studies and/or recommendations related to environmental and social matters, including environmental management, monitoring and audit.
- (3) Assistance in the start-up of facilities and operation:

Assistance in operation and maintenance of the facilities and the start-up of facilities and their operation for an initial period.
- (4) Other services necessary for the project, including:

Assistance to the Recipient related to implementing necessary procedures in accordance with the G/A and the Procurement Guidelines.

### Section 2.02 Responsibilities of Consultants

- (1) Consultants shall render services to the Recipient by exercising all reasonable skill, care, due diligence and sound technical judgment in the discharge of their duties. Consultants are responsible for the accuracy and completeness of its work.
- (2) In all professional matters a consultant is to act as a faithful adviser to the Recipient. The Recipient may, however, in the case of supervision of work and/or management aspects, delegate to a consultant a certain range of authority to act on its behalf. The nature of and the limits to such delegation of authority to the consultant, as well as the scope and the nature of the responsibilities which the consultant is to assume shall be clearly defined in the contract between the Recipient and the consultant.
- (3) In the case of a difference of opinion between the Recipient and the consultant on any important matters involving professional judgment that might affect the proper evaluation or execution of

the project, the Recipient shall allow the consultant to submit promptly to the Recipient a written report and, simultaneously, to submit a copy to JICA. The Recipient shall forward the report to JICA with its comments in time to allow JICA to study it and communicate with the Recipient before any irreversible steps are taken in the matter. In cases of urgency, a consultant shall have the right to request the Recipient and/or JICA that the matter be discussed immediately between the Recipient and JICA. This provision shall be stated in the contract between the Recipient and the consultant.

#### Section 2.03 Impartiality of Consultants

It is essential that consultants employed in the projects financed by the Grants shall be demonstrably impartial in providing any consulting services so that the requirements regarding procurement under the Grants will fully be met.

#### Section 2.04 Monitoring by JICA

- (1) The Recipient shall check and review the performance of the service provided by the consultants in order to ensure that the consultant fulfills the responsibilities in accordance with the contract. Without assuming the responsibilities of the Recipient or the consultant, JICA may monitor the work as necessary in order to satisfy itself that it is being carried out in accordance with appropriate standards and is based on acceptable data.
- (2) As appropriate, JICA may take part in discussions between the Recipient and the consultant. However, JICA shall not be liable in any way for the implementation of the project by reason of such monitoring or participation in discussions. Neither the Recipient nor the consultant shall be released from any responsibility for the project by reason of JICA's monitoring or participation in discussions.
- (3) This provision shall be clearly stated in the contract between the Recipient and the consultant.

### PART III RECOMMENDATION PROCEDURE

#### Section 3.01 Recommendation of Consultants

After signing of the G/A, JICA will recommend the consultant to the Recipient in writing. The consultant shall be those who carried out the study on preparation of the outline design for the particular project.

#### Section 3.02 Information to be Made Public

After a contract is concurred by JICA to be eligible for the Grants, JICA may publicize the information related to such contract, including the name of the consultant who entered into contract,

the contract date, the contract amount and the date of verification of the contract.

## PART IV CONTRACT

### Section 4.01 General

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

### Section 4.02 Reference to the the Grants

The contract shall refer to the Grants as follows: "JICA extends its grant to the Government of (name of recipient country) in accordance with the G/A concluded on (day, month, year) between JICA and the Recipient concerning the (name of the project)." and "No party other than the Recipient shall derive any rights from the G/A or have any claim to the Grants. The above Grants will cover only a part of the project cost. As for the remaining portion, the client will take appropriate measures for finance."

### Section 4.03 Scope of the Project and of the Consulting Services

- (1) The contract shall describe in detail the scope of the project and of the services to be rendered by the consultant.
- (2) The consultants shall assist the Recipient in preparation of the safety requirements in accordance with the laws and regulations in the Government of the Recipient, relevant international standards, if any, and also in consideration of "the Guidance for the Management of Safety for Construction Works in Japanese ODA Projects", and review the content of the plan for safety measures prepared by the Contractor for the project.

### Section 4.04 Duration of Contract

The contract shall clearly stipulate the duration for the provision of consulting services.

### Section 4.05 Conditions relating to Validity of Contract

The contract shall include a clause specifying on what conditions it will be valid.

### Section 4.06 Responsibilities of the Parties

- (1) The contract shall clearly describe the responsibilities of the Recipient and of the consultant, including the obligation of the Recipient under the E/N and G/A, and the relationship between

them.

- (2) When the consultant is a joint venture, consortium or other form of association of firms, the contract shall state clearly whether they will both/all be "jointly and severally" responsible for performance under the contract, or whether one firm will be "solely" responsible, and shall state which firm will be a leader and acting on behalf of the joint venture (or other type of association of firms) in all its relations and communications with the Recipient.

#### Section 4.07 Contract Amount

The contract shall state clearly the total amount of fees to be paid to the consultant in Japanese yen using both words and figures. If there is a discrepancy between the price in words and that in figures, the price in words shall prevail.

#### Section 4.08 Conditions and Methods of Payment

The contract shall specify the conditions and methods of payment.

Payment shall be made in accordance with the criteria stipulated by JICA.

#### Section 4.09 Serious Hindrances

- (1) The contract shall require the consultant to report to the Recipient and JICA promptly the occurrence of any event or condition which might delay or prevent completion of any significant part of the project in accordance with the agreed schedules and to indicate what steps shall be taken to meet the situation.
- (2) When the Recipient receives such a report from the consultant, the Recipient shall immediately forward a copy of it to JICA with its comments.

#### Section 4.10 Copyright

The contract shall specify whether the copyright of documents prepared by the consultant under the contract rests with the consultant.

#### Section 4.11 Amendments

The contract shall provide that it may only be amended by agreement in writing between the two parties.

#### Section 4.12 Force Majeure

The contract shall clearly establish:

- (1) The force majeure conditions which would release the consultant, temporarily or permanently, from all or part of its obligations under the contract;

- (2) The procedures to be followed by the consultant regarding determination and notification of any such conditions; and
- (3) The Recipient's and the consultant's rights and obligations (e.g. as to payments following termination, including, if appropriate, reimbursement of movement expenses) in force majeure situations.

#### Section 4.13 Termination

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

#### Section 4.14 Settlement of Disputes

- (1) The contract shall establish the procedures to be followed in case of a dispute arising between the Recipient and the consultant in connection with the contract.
- (2) Provisions dealing with the settlement of disputes shall be included in the conditions of contract. International commercial arbitration administered by an international arbitration institution in a neutral venue has practical advantages over other methods for the settlement of disputes. Therefore, the use of this type of arbitration shall be stipulated as a condition of the contract unless JICA has specifically agreed to waive this requirement for justified reasons.

#### Section 4.15 Governing Laws

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

## **Chapter II Guidelines for Procurement of the Products and Services**

### **PART I GENERAL**

#### **Section 1.01 Introduction**

- (1) “Guidelines for Procurement” are applicable to the Grants.
- (2) The application of these Guidelines to a particular project is to be stipulated in "the G/A" concluded between JICA and the Recipient on the basis of "the E/N" between the Government of Japan and the Recipient.
- (3) These Guidelines set forth the general rules to be followed by the Recipient in carrying out the procurement of products and services for a development project which is financed in whole or in part by the Grants. (the term “products and services” or “products and/or services” as used in Chapter II of these Guidelines includes related services other than consulting services.)
- (4) The proceeds of the Grants are required to be used with due attention to considerations of economy, efficiency, transparency in the procurement process and non-discrimination among bidders eligible for procurement contracts.
- (5) These Guidelines govern the relationship between JICA and the Recipient, who is responsible for the procurement of products and services. No provision of these Guidelines shall be construed as creating any right or obligation between JICA and any third party, including the bidders for the procurement of products and/or services. The rights and obligations of the Recipient vis-à-vis bidders for products and/or services to be furnished for the project will be governed by the bidding documents which the Recipient issues in accordance with these Guidelines.
- (6) JICA and the Recipient will agree on the schedule of procurement, either prior to or in the course of the negotiations relating to the Grants.

#### **Section 1.02 Competitive Bidding**

JICA considers that in most cases general competitive bidding is the best method for satisfying the requirements regarding procurement of products and/or services for projects stated in Section 1.01(4) above. JICA, therefore, requires the Recipients to obtain products and/or services through competitive bidding in accordance with the procedures described in Part II of these Guidelines.

#### **Section 1.03 Procedures Other than Competitive Bidding**

- (1) There may be special circumstances in which competitive bidding may not be appropriate and JICA may consider alternative procedures acceptable in cases of the following:
  - (a) Limited competitive bidding , which is competitive bidding by direct invitation without



open advertisement

- a) Where the number of qualified contractors, suppliers or manufacturers (hereinafter collectively referred to as “Contractor(s)”) is limited.
  - b) Where, JICA deems it inappropriate to follow competitive bidding procedures, e.g. in the case of emergency procurement.
  - c) Where, JICA deems it inappropriate to follow general competitive bidding procedures after unsuccessful bidding.
- (b) Direct contracting
- a) Where the qualified contractors, suppliers or manufacturers is limited to the specific firm.
  - b) Where, JICA deems it inappropriate to follow competitive bidding procedures, e.g. in the case of emergency procurement.
  - c) Where the amount involved in the procurement is so small that the firms clearly would not be interested, or that the advantages of competitive bidding would be outweighed by the administrative burden involved.
  - d) Where, JICA deems it inappropriate to follow competitive bidding procedures after unsuccessful bidding.
- (2) In the above-mentioned cases the following procurement methods, may, as appropriate, be applied in such a manner as to comply with the procedures of competitive bidding to the fullest possible extent:

#### Section 1.04 Eligibility

- (1) In order to be eligible under a contract funded with the Grants, a Contractor shall;
- (a) be a firm of eligible nationality stipulated in the G/A;
  - (b) be a firm selected based on its own capability;
  - (c) not be a firm stated in Section 1.07 of the Chapter II; and
  - (d) not be a firm who has the conflict of interest stated in Section 1.08 of the Chapter II.
- (2) A firm who does not meet any of the conditions stipulated in paragraph (1) of this Section shall be ineligible to be awarded a contract funded with the Grants.

#### Section 1.05 Eligible Source Countries

The use of the Grants is limited to financing expenditures for products and/or services from eligible source countries specified in the G/A.

The eligible source countries for each product or services will be specified in the bidding documents in view of quality assurance and economic rationality of those products as well as bid competitiveness.

### Section 1.06 JICA's Review

- (1) JICA may review the Recipient's procedures, documents and decisions regarding procurement and its contract stipulated in the G/A. The Recipient shall submit to JICA, with support of the consultant, for JICA's reference, any related documents and information as JICA may reasonably request. The G/A will specify the extent to which review procedures will apply in respect of products and/or services to be funded out of the Grants as shown in Box 1.

The review and concurrence by JICA related to the contract as shown in Box 1 shall be clearly stated in the contract between the Recipient and the contractor.

**Box 1: Procedures which require JICA's review regarding procurement and its contract**

- (1) Procurement procedures other than competitive bidding

Descriptions of proposed procurement procedures other than competitive bidding shall be submitted before commencing such procedures when particular circumstances render competitive bidding inappropriate.

- (2) Public announcement for pre-qualification

In case that pre-qualification is to be proceeded, the contents of the public announcement for pre-qualification shall be submitted before the public announcement is made. Any important amendments to the documents by which such public announcement is to be made shall also be submitted before the documents are sent to prospective bidders.

- (3) Selection of pre-qualification

(i) The list of pre-qualified firms that applied to be selected as the Supplier(s), (ii) the report on the selection process, including the decisions made by Recipient during the selection, and (iii) other relevant documents shall be submitted promptly after the selection before notification of the result of the pre-qualification to the applicants.

- (4) Bidding procedures

Bidding documents, such as notices and instructions to bidders, the bid form, bid evaluation criteria, and the proposed draft contract, shall be submitted before inviting the submission of bids. Any important amendments to the said documents shall also be submitted before the documents are sent to prospective bidders.

- (5) Analysis of technical proposals

Analysis of technical proposals shall be submitted promptly after the analysis and before inviting the opening of bid prices.

(6) Analysis of bid prices

Analysis of bid prices shall be submitted promptly after the analysis and before notification of an award to the successful bidder.

(7) Execution of contracts for the Supplier(s)

The original contract for the Supplier(s) shall be submitted promptly after its signing in order for the contract to be verified as eligible for the Grants.

(8) Allocation of the remaining balance or contingencies of the Grants

A request for review and concurrence on the allocation of the remaining balance or contingencies of the Grants with the reason therefor shall be submitted to JICA before any action is taken in relation to the use of the remaining balance or contingencies of the Grants.

(9) Amendment or termination of contract

(a) The extension of the contract period and the reason which justifies the proposal shall be submitted before the contract is amended; in the situation where the extended period is more than three (3) months or the period between the end of contract period and the deadline of availability of the Grants become less than six (6) months.

(b) Any major amendment or termination of the contract shall be notified to JICA immediately and the original contract and other necessary documentation thereon shall also be submitted after signing in order for the amendment of the contract to be verified as eligible for the Grants.

(10) Modification from the original design

A description of any major modification from the original design of the project shall be submitted before the implementation of any work related to the modified design.

For the avoidance of doubt, any change which does not constitute a major modification of the design or a major amendment of the contract, as specified by JICA, shall not require such concurrence of JICA.

(2) With regard to (7) and (9) in the Box 1 above, JICA will review the contracts in the light of points shown in Box 2.

**Box 2: Points to be reviewed by JICA on the contract**

Any amendment related to the items listed below is regarded as major amendment.

- (a) The project title, signing date of the G/A and the E/N is consistent with the G/A;
- (b) The total amount of the contract including other contract(s) of the same Project to be covered by the Grants does not exceed the amount of the Grants;
- (c) The period of the execution of the service or work of the contract(s) does not exceed the terms of validity of the Grants as prescribed in the G/A;
- (d) The scope of the services or works is consistent with the purpose of the Grants and description of the project;
- (e) The Contractor(s), country of origin of the product and/or service meets the eligibility as specified in the G/A and the Procurement Guidelines;
- (f) The contract properly refers to the G/A and JICA's review and concurrence as defined in the G/A and the Procurement Guidelines;
- (g) The rights and obligations of the Recipient and the contractors are in accordance with the E/N and G/A;
- (h) The currency, conditions and method of the payment is consistent with the terms and conditions set forth in the G/A and the Procurement Guidelines;
- (i) The contract price and the period of the execution of the service or works are precisely and correctly worded;
- (j) The risks and liabilities among the parties shall be allocated in a balanced manner, and modification of such allocation in customary general conditions of contract shall be reasonable in view of smooth implementation of the project ; and
- (k) The provisions and sentences required to be included in accordance with the Procurement Guideline are properly and clearly stated.

(3) With regard to (8) in Box 1, the allocation of the remaining balance or the contingencies shall be used in accordance with JICA's "Guidelines on the grant for contingencies".

(4) With regard to (10) in Box 2, the Recipient shall implement the project in accordance with the original design of the project summarized in the report prepared for the Project.

The major modification from the original design is defined as shown in Box 3. However the concurrence by JICA does not mean that JICA will assume the legal or technical responsibilities for the substance of the modifications.

**Box 3: Major modification from the original design**

- (a) Decline in quality and/or functions of products and/or services from the original design;
- (b) Increase in amount of the contract price; and
- (c) Change of project sites.

In addition, the modification of the design shall be limited to following circumstances:

- (a) The drawings and specifications contain any inaccuracies or deficiencies;
  - (b) The drawings and specifications contain ambiguous or unclear expressions;
  - (c) The actual natural or artificial conditions including, but not limited to, land configuration, nature of soil, ground water, and limiting factors for the execution of the construction or procurement works at the project site are different from those expressed in the drawings and specifications;
  - (d) Unforeseeable special situations occur in the conditions that are not specified in the drawings and specifications;
  - (e) The necessity of restoring the scope reviewed and scale-downed during the detailed design in order to meet budgetary limit constrained by the amount of the Grants; and
  - (f) Other modifications which will not change the basic concept and plan of the original plan where JICA deems it appropriate.
- (5) JICA does not finance expenditures for products and/or services which, in the opinion of JICA, have not been procured in accordance with the agreed procedures and JICA will cancel that portion of the Grants allocated to such products and/or services that have been misprocured. JICA may, in addition, exercise other remedies under the G/A.

**Section 1.07 Corrupt or Fraudulent Practices**

- (1) It is JICA's policy to require that bidders and contractors, as well as the Recipient, under contracts funded with the Grants or other Japanese ODA observe the highest standard of ethics during the procurement and execution of such contracts.

In pursuance of this policy, JICA may;

- (a) reject a proposal for the award of a contract if it determines that the bidder recommended for the award has engaged in corrupt or fraudulent practices in competing for the contract in question; and
- (b) recognize a physical or juridical person as ineligible, for a period determined by JICA, to become a party to, to become a subcontractor under, or to be delegated any responsibilities

under any contract funded with the Grants or other Japanese ODA, if JICA, at any time, determines that the person has engaged in corrupt practices or fraudulent practices in competing for, or in executing, another contract funded with the Grant or other Japanese ODA;

When the authorities concerned of the Government of Japan decide to impose against a firm such administrative sanctions as debarment, exclusion of products manufactured, etc., from Japanese governmental procurement, JICA may ask the Recipient to exclude the products manufactured by the sanctioned firm from the procurement under the Grants, for the period of the sanctions determined by such authorities concerned of the Government of Japan.

- (2) This provision shall be stated in the bidding documents.

#### Section 1.08 Conflict of Interest

A contractor shall not have a conflict of interest. A contractor shall not be employed or an individual shall be excluded under any of the circumstances set forth below (1) to (5), where it is determined to have a conflict of interest throughout the bidding/selection process and/or the execution of the contract unless the conflict has been resolved in a manner acceptable to JICA. The same shall be applied mutatis mutandis to a joint venture or a consortium, a member of which is under any of the circumstances set forth below (1) to (5).

- (1) A firm that provides consulting services for the preparation or implementation of a project, shall be disqualified from providing products or non-consulting services resulting from or directly related to such consulting services..

A firm who has any of the following capital, personal or contractual ties (including similar ones) with the above-mentioned firm shall also be disqualified.

- (a) a parent company or a subsidiary
- (b) subsidiary companies of the same parent company
- (c) a firm whose director , officer or executive officer serves as a director, officer or executive officer in the above-mentioned firm
- (d) a firm whose director serves as a trustee
- (e) a sub-consultant, directly employed by the above-mentioned firm, who plays a major role in preparation and implementation of the project.

This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the Contractor's obligations under a turnkey or design and build contract.

- (2) A firm that has a close business relationship with the Recipient's official, who is directly or indirectly involved in any part of: (i) the preparation of the bidding documents for the contract, (ii) the bid evaluation, or (iii) the supervision of such contract, shall be disqualified.

- (3) Based on the “One Bid Per Bidder” principle, which is to ensure fair competition, a firm and a firm who has capital or personal ties (including similar ones) set forth (a) to (d) of Paragraph (1) above with that firm (hereinafter referred as “Related Firm”) shall not be allowed to submit more than one bid, either individually as a bidder or as a member of a joint venture or consortium. A firm (including the Related Firm) may participate in other Bids, only in the capacity of a subcontractor.
- (4) A firm may not involve any individual (whether as employee, contractor or otherwise) in the provision of products or non-consulting services for the project who is, has been or is intended to be assigned (whether by the consultant, a sub-consultant or any other party) to provide consulting services for the preparation or implementation of the project.
- (5) A firm or an individual having any other form of conflict of interest other than (1) through (4) above shall be disqualified or excluded.

#### Section 1.09 Language

All documents relating to the procurement, including the contract shall be prepared in one of the following languages, selected by the Recipient: English, French or Spanish. Although the Recipient may issue translated versions of these documents in the national language of the Recipient’s country for the Recipient’s reference, the English, French or Spanish documents shall take precedence.

### PART II COMPETITIVE BIDDING

#### A. Type and Size of Contract

##### Section 2.01 Type of Contract

The contract shall be concluded on the basis of a lump sum price.

##### Section 2.02 Size of Contract

The size and scope of individual contracts will depend on the magnitude, nature and location of the project.

##### Section 2.03 Single-Stage Two-Envelope Bidding and Two-Stage Bidding

- (1) A single-stage two-envelope bidding procedure shall be adopted unless otherwise stated in the G/A or prior agreement with JICA. Under this procedure, bidders will be invited to submit technical and financial bids simultaneously in two separate envelopes. The technical bid are opened first and reviewed to determine that they conform to the specifications. After the technical review has been completed, the financial bids of the bidders whose technical bidders

have been determined to conform to the technical specifications are then opened publicly, with bidders or their representatives allowed to be present. Opening of financial bids shall follow the procedures stipulated in Section 5.02 of the Chapter II of these Guidelines. Evaluation of financial bids shall be consistent with Section 5.06 of the Chapter II of these Guidelines. The financial bids of the bidders whose technical bids have been determined not to conform to the technical specifications shall promptly be returned unopened to the bidders concerned.

- (2) In the case of turnkey contracts or contracts for large and complex plants or procurement of equipment which is subject to rapid technological advances, such as major computer systems, for which it may be undesirable or impractical to prepare complete technical specifications in advance, a two-stage bidding procedure may be adopted. Under this procedure, bidders will first be invited to submit technical proposals without prices on the basis of the minimum operating and performance requirements. After technical and commercial clarifications and adjustments, followed by amended bidding documents, the bidders will be invited to submit final technical bids and financial bids in the second stage. The use of this procedure must be agreed upon by JICA and the Recipient.

## B. Advertising and Prequalification

### Section 3.01 Public Announcement

In all cases of competitive bidding, public announcement shall be carried out in such a way that all potential bidders will have fair opportunity to learn about and participate in the bid. Invitation to prequalification or to bid shall be advertised in at least one newspaper in general circulation in the Recipient country. Items to be included in the public announcement are:

- (a) name of the project;
- (b) brief description of the project;
- (c) name of the executing agency of the project;
- (d) qualification required of bidder;
- (e) date, time and place of the delivery of bidding documents (date, time and place of the delivery of prequalification documents, in case of prequalification); and
- (f) other relevant and important information that potential bidders may need to determine whether to submit a bid.

### Section 3.02 Prequalification of Bidders

- (1) Prequalification may be conducted in advance of bidding, that the invitation to bid is to be extended only to those who are technically and financially capable.



(2) Prequalification shall be based entirely upon the capability of prospective bidders to perform the particular contract satisfactorily and shall be conducted not to limit the bidders but to confirm the capability and resources of potential bidders to perform the particular work satisfactorily and shall not hinder the objective of the competitive bidding. The following may be taken into account for Prequalification, in particular:

- (a) their experience and past performance under similar contracts;
- (b) their potentialities to use equipment and facilities; and
- (c) their financial position.

The invitation to prequalification for a specific contract shall be publicly announced as described in Section 3.01 the Chapter II. A clear statement of the scope of the contract and the requirements for qualification shall be sent to all those who wish to be considered for prequalification. As soon as prequalification is completed, the bidding documents shall be issued to the qualified bidders.

(3) All such bidders that meet the specified criteria shall be allowed to bid.

#### Section 3.03 Joint venture/Consortium

Joint venture or consortium shall be accepted in any type of bidding and shall be allowed in construction project.

### C. Bidding Documents

#### Section 4.01 General

- (1) The bidding documents shall provide all information necessary to enable a prospective bidder to prepare a bid for the products and/or services to be procured. They generally include:
- (a) invitation to bid;
  - (b) instruction to bidders;
  - (c) form of bid;
  - (d) form of contract;
  - (e) conditions of contract (both general and special);
  - (f) technical specifications; and
  - (g) necessary appendices, etc.

Guidelines on the principal components of the bidding documents are given in the following Sections.

- (2) JICA will encourage the Recipient to use the JICA's form of instruction to bidders and conditions of contract. The Recipient may make changes to the JICA's form to address project-specific condition; however the Recipient shall highlight any changes in submitting the documents to JICA.
- (3) If a fee is charged for the bidding documents, it shall be reasonable and reflect the cost of their

production, and shall not be so high as to discourage potential bidders.

#### Section 4.02 Reference to the Grants

Bidding documents shall normally refer to the Grants using the following language:

“The Government of (name of the recipient country) has received a Japanese ODA Grant (hereinafter referred to as “the Grant) from Japan International Cooperation Agency (hereinafter referred to as “JICA”) on the basis of the Grant Agreement (hereinafter referred to as “the G/A”) signed on the *[insert date]* day of *[insert month]*, *[insert year]*, between the Government of *[insert name of the recipient country]* and JICA concerning (name of the Project stipulated in the G/A) (hereinafter referred to as “the Project”). It is intended that part of the proceeds of this Grant will be applied to eligible payments under the contract(s) for which these Bidding Documents are issued. Disbursement of a Japanese Grant by JICA will be subject, in all respects, to the terms and conditions of the Grant Agreement, including the disbursement procedures and the applicable Procurement Guidelines for the Japanese Grants. No party other than The Government of (name of the recipient country) shall derive any rights from the G/A or have any claim to the Grant proceeds. The above G/A will cover only a part of the Project cost. As for the remaining portion, The Government of (name of the recipient country) will take appropriate measures for finance.”

#### Section 4.03 Bid Securities

Bid bonds or guarantees shall be required in principle unless required by the legislation in the Recipient Country and JICA deem it appropriate. The amount of bid bonds or other bid guarantees shall not be set so high as to discourage potential bidders.

Bid bonds or guarantees shall be released to unsuccessful bidders as soon as possible after the contract has been signed with the successful bidder.

#### Section 4.04 Conditions of Contract

- (1) The conditions of contract shall clearly define the rights and obligations of the Recipient and the Contractor, and the scope of service of the consultant, and the powers and authority of the consultant in administration of the contract and any amendments thereto. In addition to customary general conditions of contract, some of which are referred to in these Guidelines, special conditions appropriate to the nature and location of the project may be included.
- (2) In the conditions of contract, risks and liabilities among the parties shall be allocated in a balanced manner, and modification of such allocation in customary general conditions of contract shall be reasonable in view of smooth implementation of the project.
- (3) Safety shall be emphasized in the implementation of the project. Safety measures taken by the Contractor shall be specified in the contract.

- (4) The conditions of contract shall clearly state the time of commencement and the period of any warranties if those warranties are required.

#### Section 4.05 Clarity of Bidding Documents

- (1) Bidding documents shall describe as clearly as possible, qualification required of the bidder, eligible sources countries (as stated in Section 1.05 of the Chapter II) as well as other pertinent terms.

- (2) Except as previously agreed between the Recipient and JICA to consider the factors other than price into consideration in bid evaluation, bidding documents shall clearly state the method of bid evaluation. The statement shall include the following:

"the bidder whose offer substantially conforms to the specification and other conditions of the bidding documents, and who offers the lowest price shall be designated as the successful bidder".

In case the bid is divided into several packages, the statement shall include the following; "The bid evaluation shall be done separately."

- (3) Specifications shall set forth as clearly and precisely as possible the work to be accomplished, the products and/or services to be supplied and the place of delivery or installation, insurance, transportation, bond, warranty. Drawings shall be consistent with the text of the specifications. Where drawings are inconsistent with the text of the specifications, the priority order shall be that specified in the conditions of contract used.

- (4) In addition, specification, where appropriate, shall define the tests, standards, and methods to be employed to judge conformity of the products and/or services to be procured with the required specification.

The specifications shall be so worded as to permit and encourage the widest possible competition.

- (5) Any additional information, clarification, correction of errors or alteration of specifications shall be sent promptly to all those who requested the original bidding documents. When original specifications are to be altered, added, or corrected due to reasons on the Recipient's side, notification of those modifications, etc., should be immediately sent to all the bidders, using an addendum, and if the change is considered to be major/substantial, bidders should be given additional time for the submission of their bids.

#### Section 4.06 Standards

The bidding documents shall state that the products meeting the standards of the Recipient country.

#### Section 4.07 Use of Brand Names

- (1) Specifications shall be based on relevant characteristics and/or performance requirements. Designation of brand names, catalogue numbers or similar classifications shall be avoided except the following cases:
- (a) procurement of particular spare parts;
  - (b) procurement of the equipment that the Recipient wishes to maintain the continuity of the services of the equipment due to safety of operation and maintenance.
- (2) If it is necessary to quote a brand name or catalogue number of a specific manufacturer for a specific reason other than the reason mentioned above, the specifications shall permit offers of alternative products which have similar characteristics and provide performance and quality at least equal to those specified.

#### Section 4.08 Scope of Work

The conditions of contract shall clearly state all products and/or services to be procured.

#### Section 4.09 Period of Execution

The conditions of contract shall clearly stipulate the period of execution of work.

#### Section 4.10 Responsibilities of the Parties

The conditions of contract shall clearly state the responsibilities of the Recipient and the contractor, including the obligation of the Recipient under the E/N and G/A, and the relationship between them.

#### Section 4.11 Pricing and Currency of Bids

Bidding documents shall clearly mention the following:

- (a) the bid price shall be stated in the specified currency on the basis of a lump sum price, in conformity with the specification stipulated in the bidding documents;
- (b) the currency in which the bid price may be stated shall be specified in the bidding documents; and
- (c) the bid price shall be firm and final.

#### Section 4.12 Contract Amount, Terms of Payment and Payment Method

- (1) The total amount of the contract price covered by the Grants shall not exceed the amount of the Grants specified in the G/A. The contract price shall be precisely and correctly stated in the contract using both words and figures. If there is a discrepancy between the price in words and that in figures, the price in words shall prevail.
- (2) Terms of Payment

The conditions of contract shall state the terms of payment. In general, the terms of payment shall be as follows:

(a) in the case of contract for supply of the products other than those mentioned in (b) below, the payment for the products will be made upon the completion of the shipment or delivery of the contracted products; and

(b) in the case of a contract for construction, a reasonable advance payment and/or regular progress payments may be applicable.

(3) Payment Method

The conditions of contract shall have a clause for disbursement procedure of the Grants, in accordance with the G/A. Payment from the Grants shall be made in accordance with the criteria stipulated by JICA.

#### Section 4.13 Advance Payment Securities

- (1) The percentage of the total payment to be made in advance, upon entry into effect of the contract, for mobilization and similar expenses shall be reasonable and specified in the bidding documents.
- (2) The bidding documents shall specify the arrangements for any security required for advance payments.

#### Section 4.14 Performance Securities

Bidding documents shall require a security in an amount sufficient to protect the Recipient in case of breach of contract by the Contractor. This security can be either a bank guarantee or a performance bond, the amount of which will vary with the type and size of the contract, but shall be sufficient to protect the Recipient in the case of default by the Contractor. A portion of this security shall extend sufficiently beyond the date of completion of the works or the services under the Contract to cover the defects liability or maintenance period up to final acceptance by the Recipient, if JICA deem it appropriate.

#### Section 4.15 Insurance

The bidding documents shall state precisely the types and terms of insurance (e.g. liabilities to be covered and duration of the insurance and the amount of liquidated damage) to be obtained by the successful bidder.

#### Section 4.16 Force Majeure

The conditions of contract included in the bidding documents shall, when appropriate, contain clauses stipulating that failure on the part of the parties to perform their obligations under the

contract will not be considered a default under the contract if such failure is the result of force majeure as defined in the conditions of contract.

#### Section 4.17 Settlement of Disputes

Provisions dealing with the settlement of disputes shall be included in the conditions of contract. International commercial arbitration administered by an international arbitration institution in a neutral venue has practical advantages over other methods for the settlement of disputes. Therefore, the use of this type of arbitration shall be stipulated as a condition of the contract unless JICA has specifically agreed to waive this requirement for justified reasons.

#### Section 4.18 Governing Laws

The laws of the Recipient country shall govern the interpretation and performance of the contract.

#### Section 4.19 Amendment

The contract shall provide that it may only be amended by agreement in writing between the two parties.

### D. Opening of Bid, Evaluation and Award of Contract

#### Section 5.01 Time Interval between Invitation and Submission of Bids

- (1) The time allowed for preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project, and the size and complexity of the contract. Generally, the deadline for the submission of bids shall be set not less than forty-five (45) days after the date when bidding documents are made available for potential bidders.
- (2) Where construction works, complex or large number of items of equipment, large scale of installation works are involved, generally not less than sixty (60) days shall be allowed to enable prospective bidders to conduct investigations at the site before submitting their bids.

#### Section 5.02 Procedures relating to Opening of Bids

- (1) The date, hour and place for the latest receipt of bids and for the opening of bids shall be announced in the invitations to bid and all bids shall be opened publicly at the stipulated time and place. Bids received after this time shall be returned unopened.
- (2) The name of the bidder and total amount of each bid shall be read aloud and recorded when opened.

#### Section 5.03 Clarification or Alteration of Bids

No bidder shall be requested or permitted to alter its bid after the bids have been opened.

Only clarifications without changing the substance of the bid may be accepted. The Recipient may ask any bidder for clarification on its bid submitted, but shall not ask any bidder to change the substance or price of the bid.

#### Section 5.04 Process to be Confidential

No information relating to the examination, clarification and evaluation of bids and recommendations concerning awards shall be disclosed after the public opening of bids to any persons not officially concerned with this process until a contract has been awarded to a bidder.

#### Section 5.05 Examination of Bids

- (1) Following the opening of bids, it shall be ascertained that (i) computations are free of material errors, (ii) the bids are substantially responsive to the bidding documents, (iii) the required certificates have been provided, (iv) documents have been properly signed, and (v) the bids are consistent with the instructions of the bidding documents.
- (2) If a bid does not substantially conform to the specifications, or contains inadmissible reservations or is otherwise not substantially responsive to the bidding documents, it shall be rejected.
- (3) A technical analysis shall then be made to evaluate each responsive bid and to enable bids to be compared.

#### Section 5.06 Evaluation of Bids

- (1) Bid evaluation shall be consistent with the terms and conditions set forth in the bidding documents. Those bids which substantially conform to the technical specifications, and are responsive to other stipulations of the bidding documents, shall be judged solely on the basis of the submitted price, and the bidder who offers the lowest price shall be designated as the successful bidder.
- (2) If there has been no prequalification of bidders, the Recipient shall determine whether the bidder whose bid has been evaluated the lowest has the capacity and resources to carry out the contract concerned effectively.
- (3) 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 Recipient shall then make a similar decision regarding the next-lowest evaluated bidder.

#### Section 5.07 Evaluation Report

A detailed report on the evaluation of bids setting forth the specific reasons, giving the reasons for the acceptance or rejection of bids, shall be prepared by the Recipient

#### Section 5.08 Award of Contract

The contract shall be awarded within the period specified for the validity of the bid, to the bidder who, in compliance with the conditions and specifications stipulated in the bidding documents, offers the lowest price, except as defined in Section 4.05 of the Chapter II.

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

#### Section 5.09 Rejection of Bids

Any bids shall not be rejected nor a new bid be invited using the same specifications solely for the purpose of obtaining lower prices in the new bid, except in the case where the lowest bid exceeds the cost estimates. Rejection of any bids may only be justified when bids do not comply with the bidding documents.

If all bids are rejected, the Recipient shall review the causes of the rejection, and consider revision of the specifications called for in the original invitation to bid.

#### Section 5.10 Notification to Unsuccessful Bidders and Debriefing

- (1) Upon obtaining the concurrence on the result of evaluation of technical bid by JICA and issuing the award to the successful bidder, the Recipient shall promptly notify the other bidders that their bids have been disqualified or unsuccessful.
- (2) If any bidder who submitted a bid wishes to ascertain the reasons why its bid was disqualified or not selected, such bidder may request an explanation from the Recipient, then the Recipient shall promptly provide an explanation as to why its bid was disqualified or not selected after issuing the award to the successful bidder .

#### Section 5.11 Information to be Made Public

- (1) After a contract is concurred by JICA to be eligible for the Grants, JICA may publicize any information related to such contract, including the ceiling price of the bid, the names of all the bidders and their bid prices, the name of the successful bidder concerning the award of contract, the name of the bidder who entered into the contract, the contract date, the contract amount and the date of verification of the contract.
- (2) The Recipient shall have all provisions and measures necessary to ensure that the above information shall be available for being made public incorporated in documents related to procurement, such as bidding documents and contracts.

END