

Chapter 2: Procurement of Goods and Services

TABLE OF CONTENTS

	Page
PART I GENERAL	52
Section 1.01 Introduction	52
Section 1.02 International Competitive Bidding (ICB)	55
Section 1.03 Procedures other than International Competitive Bidding (ICB)	56
Section 1.04 Eligibility.....	58
Section 1.05 Misprocurement.....	60
PART II INTERNATIONAL COMPETITIVE BIDDING (ICB)	61
A. Type and Size of Contract	61
Section 2.01 Types of Contract.....	61
Section 2.02 Size of Contract.....	63
Section 2.03 Two-Stage Bidding and Two-Envelope Bidding	64
B. Advertising and Prequalification	66
Section 3.01 Advertising.....	66
Section 3.02 Prequalification of Bidders	67
C. Bidding Documents	71
Section 4.01 General	71
Section 4.02 Reference to the BANK and Corrupt or Fraudulent Practices.....	73
Section 4.03 Bid Bonds or Guarantees	75
Section 4.04 Conditions of Contract	76
Section 4.05 Clarity of Bidding Documents	77
Section 4.06 Standards	79
Section 4.07 Use of Brand Names.....	80
Section 4.08 Expenditures under Contracts	81
Section 4.09 Currency of Bids	82
Section 4.10 Currency Conversion for Bid Comparison.....	83
Section 4.11 Currency of Payment.....	84
Section 4.12 Price Adjustment Clauses.....	85
Section 4.13 Advance Payment.....	86
Section 4.14 Guarantees, Performance Bonds and Retention Money	87

Section 4.15	Insurance.....	89
Section 4.16	Liquidated Damage and Bonus Clauses.....	90
Section 4.17	Force Majeure	91
Section 4.18	Language	92
Section 4.19	Settlement of Disputes.....	93
Section 4.20	Applicable Laws.....	93
D.	Opening of Bids, Evaluation and Award of Contract	94
Section 5.01	Time Interval Between Invitation and Submission of Bids.....	94
Section 5.02	Procedures relating to Opening of Bids.....	95
Section 5.03	Clarification or Alteration of Bids.....	96
Section 5.04	Process to be Confidential.....	97
Section 5.05	Examination of Bids	98
Section 5.06	Evaluation and Comparison of Bids	99
Section 5.07	Postqualification of Bidders.....	103
Section 5.08	Evaluation Report	104
Section 5.09	Award of Contract	105
Section 5.10	Rejection of Bids	107
ANNEX I	FACTORS TO BE EVALUATED IN PREQUALIFICATION (SAMPLE)	109

Part I GENERAL

Section 1.01 Introduction

(a) “Guidelines for Procurement under JBIC ODA Loans” are applicable to the ODA Loans provided by JAPAN BANK FOR INTERNATIONAL COOPERATION (hereinafter referred to as “the BANK”), under Section (1), Paragraph 2, Article 23 of THE JAPAN BANK FOR INTERNATIONAL COOPERATION LAW.

(b) These Guidelines set forth the general rules to be followed by Borrowers of the BANK in carrying out the procurement of goods and services for a development project which is financed in whole or in part by ODA Loans of the BANK. (The term "the Borrower" as used in these Guidelines also refers to the Executing Agency of the project and the term “services” as used in these Guidelines excludes consulting services.)

(c) The proceeds of ODA Loans of the BANK are required to be used with due attention to considerations of economy, efficiency, transparency in the procurement process and non-discrimination among eligible bidders for procurement contracts.

(d) The application of these Guidelines to a particular project financed by an ODA Loan provided by the BANK will be stipulated in the Loan Agreement between the BANK and the Borrower.

(e) These Guidelines govern the relationship between the BANK and the Borrower, who is responsible for the procurement of goods and services. No provision of these Guidelines shall be construed as creating any right or obligation between the BANK and any third party, including those bidding for the procurement of goods and services. The rights and obligations of the Borrower vis-à-vis bidders for goods and services to be furnished for the project will be governed by the bidding documents which the Borrower issues in accordance with these Guidelines.

<Notes>

1. Paragraph (a):

This paragraph defines the term “JBIC ODA Loans” and states that these Guidelines are applicable to JBIC ODA Loans.

2. Paragraph (b):

This Section states that the purpose of these Guidelines is to set forth rules relating to

procurement to be followed by Borrowers in general.

3. Paragraph (c):

This Section states the principles to be considered as basic procurement philosophy. In addition to economy, efficiency, and non-discrimination, transparency is specified in line with the growing recognition of the importance of transparency in the procurement process. It is also one of the general considerations in the World Bank's Guidelines for Procurement.

4. Paragraph (e):

(01) These Guidelines are a part of the Loan Agreement between JBIC and the Borrower, and, thus, should problems arise during the course of procurement procedures between the Borrower and a bidder or a contractor, who are the parties directly concerned, such as problems related to a decision on the awarding or conclusion of a contract, they should be solved by the parties concerned in light of the bidding documents or contract, and JBIC is not in a position to take any responsibility. The paragraph clarifies the point that responsibility for procurement lies with the Borrower and not with the BANK.

(02) These Guidelines apply to usual goods and services (excluding consulting) for normal project loans. Therefore, special cases should be dealt with appropriately, by modification, including addition or deletion of provisions of the Guidelines, or by preparation of a new procurement scheme, depending on the case.

5. With due consideration to non-discrimination among eligible bidders, neither preferential margins nor domestic preferences are permitted when prequalifying applicants or evaluating bids under JBIC ODA Loans.

(01) The reasons for the above policy are as follows:

- i) All eligible firms must be treated equally under JBIC ODA Loans.
- ii) Such preferences may lead to an increase in project costs and/or a downgrading of technical performance.
- iii) Such preferences may distort fair competition among eligible bidders.

(02) Examples of measures for domestic preference frequently proposed by Borrowers are the following. These measures are not acceptable under JBIC ODA Loans.

- i) Obligation to associate with local firms: Not acceptable. However, the encouragement of such associations may be accepted by JBIC.

- ii) Criteria that is advantageous to local firms and the allocation of a substantial amount of points for domestic experience during prequalification: Not acceptable.

- 6. To emphasize free competition among bidders, the Bank has not agreed to the idea to disclose the estimated price for the contract before the bidding. However, some Borrowers and International Financial Institutions have recently come to require the disclosure of the estimated price in view of valuing maximum transparency in the process. Although the Bank does not encourage the disclosure, if the Borrower wishes to disclose the estimated price before the bidding, the Bank may not oppose the Borrower's position.

Section 1.02 International Competitive Bidding (ICB)

The BANK considers that in most cases International Competitive Bidding (ICB) is the best method for satisfying the requirements regarding procurement of goods and services for projects stated in Section 1.01 (c) above. The BANK, therefore, normally requires Borrowers to obtain goods and services through ICB in accordance with the procedures described in Part II of these Guidelines.

<Notes>

This Section is based on the judgment that in light of the principles of Section 1.01 (c), the most suitable procurement method in normal cases is ICB.

Section 1.03 Procedures Other than International Competitive Bidding (ICB)

(a) There may be special circumstances in which ICB may not be appropriate, and the BANK may consider alternative procedures acceptable in cases of the following:

- (i) Where the Borrower wishes to maintain reasonable standardization of its equipment or spare parts in the interests of compatibility with existing equipment.
- (ii) Where the Borrower wishes to maintain continuity of services provided under an existing contract awarded in accordance with procedures acceptable to the BANK.
- (iii) Where the number of qualified contractors, suppliers or manufacturers (hereinafter collectively referred to as "Contractor(s)") is limited.
- (iv) Where the amount involved in the procurement is so small that foreign firms clearly would not be interested, or that the advantages of ICB would be outweighed by the administrative burden involved.
- (v) Where, in addition to cases (i), (ii), (iii) and (iv) above, the BANK deems it inappropriate to follow ICB procedures, e.g. in the case of emergency procurement.

(b) In the above-mentioned cases the following procurement methods, may, as appropriate, be applied in such a manner as to comply with the ICB procedures to the fullest possible extent:

- (i) Limited International Bidding (LIB), which is essentially international competitive bidding by direct invitation without open advertisement.
- (ii) International Shopping, which is a procurement method based on comparing price quotations obtained from several (usually at least three) foreign and/or local suppliers to ensure competitive prices.
- (iii) Direct Contracting.

(c) These Guidelines will not apply in the case of procurement of goods and services which are to be financed by the local currency portion of the Loan.

Procurement of such goods and services shall, however, be effected with due attention to the considerations stated in Section 1.01 (c). The BANK deems it appropriate that such procurement be effected through Local Competitive Bidding (LCB) among Contractors of the country of the Borrower.

<Notes>

1. This Section describes the cases where procurement methods other than ICB, which is the principal method, may be used, and also describes the procedures to be adopted when such methods are used.

2. Paragraph (c):

For the procurement of goods and services to be financed under the local currency portion, these Guidelines will not apply. In such a case, the procurement procedure generally used in the Borrower's country is acceptable. Nevertheless, this paragraph stipulates that competitive bidding is preferable from the viewpoint of addressing the considerations stated in Section 1.01 (b).

Section 1.04 Eligibility

(a) Any contract under which goods and/or services are procured from countries other than the eligible source countries for the implementation of the project will be eligible for financing under the Loan if the combined costs of such goods and/or services are less than 50 percent of the price of the said contract.

(b) A firm or an organization which has been engaged by the Borrower to provide consulting services for the preparation related to procurement for or implementation of a project, and any of its associates/affiliates (inclusive of parent firms), shall be disqualified from working in any other capacity on the same project (including bidding relating to any goods and services for any part of the project). Only in special cases and only with clear justification, and after taking into account all aspects and circumstances, may the BANK and the Borrower agree to permit a firm and/or its associates/affiliates (inclusive of parent firms) to be invited to bid on a project financed by ODA Loans of the BANK as a Contractor, when it is also employed on the same project as a consultant.

(c) The provisions of paragraph (b) of this Section also apply to Contractors who lend, or temporarily second, their personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.

<Notes>

1. Paragraph (a):

The range of eligible source countries is usually determined at the stage of prior notification (pledge) to the Borrower's country.

Eligible countries are:

- For General-Untied loans: all countries and areas
- For Partial-Untied loans: Japan and LDCs (listed on the DAC List Part I and Part II)
- For Bilateral Tied loans: Japan and the Borrowing country
- For Tied loans: Japan only.

2. Paragraph (b):

Each eligible bidder shall submit only one bid either by itself, or as a partner in a joint venture, unless the bidding documents clearly state that submission of an alternative bid is acceptable.

3. Paragraphs (b) and (c):

Please refer to the following interpretation regarding the terms “lend, or temporarily second.”

(01) In a case where a contractor or a manufacturer lends or temporarily seconds its personnel to a consultant, that contractor/manufacturer shall be disqualified only if the personnel are in charge of the project to which the contractor/manufacturer is related.

(02) Personnel who are lent or temporarily seconded are defined as personnel who have not resigned from the contractor/manufacturer. “Resignation” is defined as where the personnel have received a severance payment and they no longer receive any financial benefit from the contractor/manufacturer. In such a case, after the resignation, those personnel are not regarded as lent or temporarily seconded.

(03) “Be in charge of the project” is defined as that which is specified in the consulting services contract concerning the personnel’s participation in work, whether at the head office or the project site. On the other hand, in the case where the personnel lent or temporarily seconded are not in charge of the project in question, there will be no problem regarding the impartiality of the contractor/manufacturer.

(04) The impartiality of consultants is required for the contract not only at the stage of procurement but also at the stages of detailed design, preparation of tender documents, and supervision of works. In short, all staff of the consultant who participate in the stages mentioned above shall be impartial from bidders.

4. In principle, if it is found that a company is in violation of this Section, that company (associates/affiliates of a consultant) shall be disqualified from the bidding.

Section 1.05 Misprocurement

The BANK does not finance expenditures for goods and services which, in the BANK's opinion, have not been procured in accordance with the agreed procedures in the Loan Agreement, and the BANK will cancel that portion of the Loan allocated to goods and services that have been misprocured. The BANK may, in addition, exercise other remedies under the Loan Agreement. It is the BANK's policy to require that bidders and Contractors, as well as Borrowers, under contracts funded with ODA Loans of the BANK and other Japanese ODA observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the BANK;

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

(b) will recognize a Contractor as ineligible, for a period determined by the BANK, to be awarded a contract funded with ODA Loans of the BANK if it at any time determines that the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with ODA Loans of the BANK or other Japanese ODA.

<Notes>

1. This section has been introduced to conform with the emerging international consensus on anti-corruption ("Convention on Combating Bribery of Foreign Public Officials in International Financial Institutions" of the Organisation for Economic Co-operation and Development (OECD) has entered into force and anti-corruption clauses have been introduced to Procurement and Consultant Employment Guidelines under loans of the World Bank and ADB.).
2. "Implementation Rules for Sanctions against a Party Engaged in Corrupt or Fraudulent Practices Under a Contract Funded by JBIC ODA Loans," which is open to the public on the JBIC web site (<http://www.jbic.go.jp/english/oec/guide/fusei/index.php>), prescribes concrete measures to be taken against a party engaged in corrupt or fraudulent practices under this section.

Part II INTERNATIONAL COMPETITIVE BIDDING (ICB)

A. Type and Size of Contract

Section 2.01 Types of Contract

Contracts may be concluded on the basis of unit prices for work performed or items supplied, a lump sum price, cost plus fees, or a combination thereof for different portions of the contract, depending on the nature of the goods or services to be provided. The bidding documents shall clearly state the type of contract selected. Cost-reimbursable contracts are not acceptable to the BANK except in exceptional circumstances, such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Single contracts for engineering, equipment and construction to be provided by the same party ("turnkey contracts") are acceptable if they offer technical and economic advantages to the Borrower, e.g. where a special process or considerable integration of the various stages is desirable.

<Notes>

1. The principal types of contract are: the lump-sum contract (contract price is determined as a lump sum of a certain amount), the unit-price contract (contract price is determined in accordance with quantity x a unit price), and the cost-plus fee contract. The type of contract should be specified in the bidding documents as a matter of course.
2. The Lump-sum contract is used when the scope of work can be estimated in full detail (construction work for the superstructure of bridges, houses and buildings, etc.), while the unit-price contract is for cases where either content or quantity is not clear or where the project work volume cannot be precisely estimated (e.g., complex civil engineering works). Examples of the "combination" in this provision are a plant contract with a lump-sum portion for the plant itself and a unit-price portion for related parts.
3. For the cost-plus fee contract, the payment amount is determined after the completion of the work, and consists of the actual construction costs (material costs, labor costs, etc.) and indirect costs (e.g., head office expenses). The cost-plus fee contract includes a cost-plus fixed fee contract and cost-plus percentage fee contract, etc. The

cost-reimbursable (cost-plus fee) contract, where the contract price cannot be determined at all in advance is, in principle, not permitted, as is stated in the text, since the amount to be financed by the BANK cannot be determined.

4. One of the contract types according to the contracted scope is the turn-key contract of this Section. This contract type, characterized as engineering, equipment and construction, is contracted for with a single contractor (this contract type is also called a “design-build contract,” “design and construct,” “all-in contract,” “package deal,” etc.). When design, procurement (or manufacturing), construction, start-up, and a performance test run are all contracted for, the contract is referred to as a full turn-key contract. There is also a contract called the product-in-hand contract, where the above contract type is further extended, with this contract covering not only the stages before commissioning but management in the operation stage afterwards.

Section 2.02 Size of Contract

In the interests of the broadest possible competition, individual contracts for which bids are invited shall, whenever feasible, be of a size large enough to attract bids on an international basis.

<Notes>

As one of the purposes of having bidding is to utilize the competition principle fully, the size of each bidding package (lot) should be large enough to attract a number of companies. "One contract for one project" is not at all necessary, but arbitrary packaging for eluding ICB as mentioned in Section 1.03 (a) (iv) shall be avoided. Borrower countries tend to divide a project into a large number of lots of small amounts, expecting acceptance of orders by local companies, but this results in many negative effects on the management of the project, in terms of difficulty in coordinating the lots, complexity of contract control, etc., in addition to the reduced possibility of using ICB, and should be avoided as much as possible.

Section 2.03 Two-Stage Bidding and Two-Envelope Bidding

(a) 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 offers 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 proposals and priced bids in the second stage. The use of this procedure must be agreed upon by the BANK and the Borrower.

(b) For works, machinery and equipment for which complete technical specifications are prepared in advance, a two-envelope bidding procedure may be adopted. Under this procedure, bidders will be invited to submit technical and price proposals simultaneously in two separate envelopes. The technical proposals are opened first and reviewed to determine that they conform to the specifications. After the technical review has been completed, the price envelopes of the bidders whose technical proposals have been determined to conform to the technical specifications are then opened publicly, with bidders or their representatives allowed to be present. Opening of price envelopes shall follow the procedures stipulated in Section 5.02 of these Guidelines. Evaluation of price proposals shall be consistent with Section 5.06 of these Guidelines. The price proposals of the bidders whose technical proposals have been determined not to conform to the technical specifications shall promptly be returned unopened to the bidders concerned. The use of this procedure must be agreed upon by the BANK and the Borrower.

<Notes>

1. Paragraph (a):

For example, two-stage bidding can be used for plant projects with different manufacturing processes, turn-key contracts when several process designs are available, or in the case of procurement of equipment which is subject to rapid technological advances such as computers.

2. Paragraph (b):

Two-envelope bidding has been employed in the case of power-generating equipment for thermal power stations, bridge construction projects, subway construction projects, etc., and can be commonly adopted. Two-envelope bidding is preferable in terms of the emphasis on quality, as price competition exists only among bidders who have passed the technical evaluation. There are cases in which price proposals of bidders who failed to meet technical standards were opened in order to seek lower price bids, due to a lack of understanding on the purpose of this procedure. In addition, there are cases in which price proposals are opened at the time of technical evaluation, and, thus, the evaluation was affected. Such cases should never be allowed.

3. In the evaluation of proposals, price changes in accordance with clarification or price loading against deviation should be fully examined to avoid substantial price changes (discounting after bidding).
4. In case of two-stage or two-envelope bidding, the result of technical evaluation is subject to the BANK's review and concurrence in general.

B. Advertising and Prequalification

Section 3.01 Advertising

In all cases of ICB contract, invitations to prequalify or to bid shall be advertised in at least one newspaper of general circulation in the Borrower's country. The Borrower should also promptly send copies of such invitations (or the advertisement therefor) to the local representatives of the eligible source countries and the BANK.

<Notes>

1. One of the objectives in employing ICB is to achieve cost-minimization by promoting the competition principle to the greatest extent possible, as mentioned above. Advertising to the public and providing information to as many potential bidders as possible is important from this point of view.
2. The advertisement should include all necessary information, such as the subject matter of the bid, contact addresses, schedules (including bidding deadline), etc. In addition, it is desirable to include in the advertisement prior to the bidding documents the fact that "the funding source related to this bidding is an ODA Loan of JBIC" in order to attract and invite as many companies as possible (that is, in order to promote the principle of competition). Advertising the presence of a sound funding source and eligible source countries can ensure that non-eligible companies do not submit bids.

Section 3.02 Prequalification of Bidders

Prequalification is in principle required in advance of bidding for large or complex works and, exceptionally, for custom-designed equipment and specialized services to ensure that invitations to bid are extended only to those who are technically and financially capable. Prequalification shall be based entirely upon the capability of prospective bidders to perform the particular contract satisfactorily, taking into account, inter alia, their: (i) experience of and past performance on similar contracts, (ii) capabilities with respect to personnel, equipment and plant, and (iii) financial position. A sample of factors to be evaluated in prequalification is shown in Annex I. A clear statement of the scope of the contract and the requirements for qualification (criteria) shall be sent to all those wishing to be considered for prequalification. All bidders meeting the criteria specified shall be allowed to bid. Verification of the information provided at the time of prequalification shall be confirmed at the time of award of contract, and award may be denied to a bidder judged to no longer have the capability or resources to successfully perform the contract, including the case where the information provided was fraudulent or incorrect.

<Notes>

1. This Section concerns prequalification, usually conducted for contracts for large construction works, etc.
2. The BANK considers that BANK prequalification is “in principle required” in view of the BANK’s emphasis on quality. Prequalification is required not only for large-scale procurements but for some not-so-large ones, depending on the content of the procurement.
3. Prequalification is used when it is necessary to ensure bidding by fully qualified companies (to avoid awarding a contract to an unqualified bidder based on a superficial evaluation) for contracts on large projects, where an efficient evaluation of bids is particularly important (as there are many factors to be evaluated that are difficult to quantify) or when a large number of bidders is expected (or it is especially necessary to reduce the burden of the bidders, and, thus, prescreening to a certain extent should be carried out at this stage). As mentioned above, prequalification is “required in principle” from the viewpoint of an “emphasis on quality,” at least, for large-scale

procurement amounting to more than 1 billion yen or for complex works/contract, or in any other circumstances in which the high cost of preparing detailed bids could discourage competition such as design-build contracting.

4. Major items for prequalification are, as mentioned in this provision, (i) experience in and performance on similar contracts, (ii) capability with regard to human resources and facilities, and (iii) various factors/matters relating to the financial situation, as well as experience in the country concerned, general information on the company concerned (capital, nationality, etc.), experience in projects financed by international aid organizations (See Annex I), etc. Prequalification looks at the primary contractor, but when a sub-contractor(s) will be responsible for the actual work under the contract, data on the sub-contractor(s) may be taken into consideration.
5. On financial position, audited financial statements shall be submitted and must demonstrate the soundness of the applicants' financial position. Using a financial index/ratio for Pass/Fail criteria should be avoided since such Pass/Fail criteria can not secure an impartial evaluation of the financial soundness. A financial index/ratio is based on different accounting procedures, rules, and methods depending on the country, and it is not the criteria to demonstrate every aspect of a bidder's financial position. In case the Borrower strongly requires the use of the index, Net Worth, as a very basic index, may be used. The Borrower should give the applicants certain flexibility with respect to the information and documents required to demonstrate their financial capability.
6. To further improve transparency in the prequalification evaluation, the Guidelines require that clear criteria for prequalification evaluation be sent to prospective bidders.
7. Criteria for prequalification should not be so strict as to limit participation to only certain companies. However, it is important to set the criteria so that only fully competent companies will submit bids, in view of the "emphasis on quality." Arbitrary relaxation of criteria in order to allow companies in the Borrower's country to participate in the bidding is never allowed.
8. The prequalification criteria should be applied strictly when prequalification evaluation results are examined. Relaxation of prequalification criteria to favor companies in the Borrower's country (e.g., an extremely broad interpretation of a "similar experience") or

the relaxation of criteria during prequalification evaluation with the justification of ensuring competition is not allowed, in light of the “emphasis on quality.”

9. A change in the members of a joint venture after prequalification is acceptable, provided that all of the following conditions are satisfied:
 - i) the new joint venture meets the prequalification criteria (the new member is not necessarily limited to only prequalified firms)
 - ii) the reason for such a change is acceptable to the Borrower
 - iii) such a change does not distort competition among qualified bidders
 - iv) such a change is requested and approved by the Borrower prior to bidding
 - v) such a change is not forced by the Borrower but has taken place by the free choice of the firms involved

10. It is not acceptable to prequalify a firm or joint venture that satisfies the criteria in all aspects of qualification but does not satisfy the criteria in one specific area. For example, a firm that has sufficient experience, personnel, and equipment but does not have financial capability and is likely to go bankrupt during the contract execution should be disqualified. A failure in one area cannot be covered by capability in other areas.

11. It is not acceptable to set a limit on the number of successful applicants prior to the evaluation of prequalification. All bidders meeting the criteria specified shall be allowed to bid. However, it is also important to set the criteria so that a reasonable number of applicants, normally no more than ten, shall be qualified. An excessive number of applicants taking part in the bid is not preferable because it will increase the burden of the Borrower when evaluating the bid proposals.

12. The Borrower may request the applicants to submit a bank reference letter from a reputable commercial bank to the effect that such a bank certifies the financial capability of the applicants to meet their financial obligation to perform the said contract. The Borrower, however, should not request the applicants to submit the bank reference letter to the effect that such a bank issues a specific line of credit when and if the contract is awarded to the applicants. The reason is that it is difficult for a reputable commercial bank to issue a specific line of credit at a stage as early as prequalification, regardless of the financial capability of the applicants. The Borrower may request the applicants to submit the bank reference letter to the effect that such a bank will

consider the issuance of a specific line of credit when and if the contract is awarded to the applicants.

13. In case only one applicant is prequalified as a result of the evaluation, the Borrower should reject this prequalification process because it is of no value to conduct a bid with the only applicant. Accordingly, the Borrower should initiate another prequalification process with certain modifications of conditions or other relevant methods based on the basic principles on guidelines.

C. Bidding Documents

Section 4.01 General

The bidding documents shall provide all information necessary to enable a prospective bidder to prepare a bid for the goods and services to be provided. While the detail and complexity of these documents will vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract (both general and special); technical specifications; list of goods or bill of quantities and drawings, as well as necessary appendices, detailing, for example, the type(s) of security required or acceptable. If a fee is charged for the bidding documents, it shall be reasonable and reflect the cost of their production and shall not be so high as to discourage qualified bidders. Guidelines on the principal components of the bidding documents are given in the following paragraphs.

<Notes>

1. An example showing elements of the bidding document is as follows:
 - (a) Instruction to Bidders
 - (b) Bid Form
 - (c) General Conditions of Contract
 - (d) Special Conditions
 - (e) General Specifications
 - (f) Technical Specifications
 - (g) Bill of Quantities
 - (h) Drawings
 - (i) Contract Form
 - (j) Bid Security Form
 - (k) Performance Security Form

2. The fee of the bidding documents should only be nominal, to cover reproduction and mailing costs and to ensure that only bona fide bidders apply for the bidding documents while not being so high as to discourage bona fide bidders. In general, an amount of not more than the equivalent of US\$1,000 is considered appropriate, depending on the size and complexity of the contract and the bidding documents.

3. JBIC has prepared a series of Sample Documents for the Borrowers to use in the procurement procedures under JBIC ODA Loans. Their use is encouraged as the procedures and practices they convey have been developed through broad international experience, and they comply with the procurement policy and rules of JBIC ODA Loans.

Section 4.02 Reference to the BANK and Corrupt or Fraudulent Practices

Bidding documents shall normally refer to the BANK and corrupt or fraudulent practices using the following language:

(a) “...(name of Borrower)....has received (or where appropriate, ‘has applied for’) an ODA Loan from JAPAN BANK FOR INTERNATIONAL COOPERATION BANK in the amount of ¥____ toward the cost of (name of project, signed date of Loan Agreement), and intends to apply (where appropriate, ‘a portion of’) the proceeds of the loan to payments under this contract. Disbursement of an ODA Loan by JAPAN BANK FOR INTERNATIONAL COOPERATION will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the ‘Guidelines for Procurement under ODA Loans of JBIC .’ No party other than (name of Borrower) shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, (name of Borrower) will take appropriate measures for finance.”

(b) “The BANK requires that bidders and Contractors, as well as Borrowers, under contracts funded with ODA Loans of the BANK and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the BANK;

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

(ii) will recognize a Contractor as ineligible, for a period determined by the BANK, to be awarded a contract funded with ODA Loans of the BANK if it at any time determines that the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with ODA Loans of the BANK or other Japanese ODA.”

<Notes>

1. This Section describes the need to state explicitly in the bidding documents that an ODA Loan of JBIC is being provided (for this requirement, see Section 3.01. 2 of these Guidelines). The need to follow the provisions of the Guidelines is specified so that observance of the provisions in the Guidelines for Procurement shall be further clarified. This will enable bidders to fully understand the existence of and the need to follow the

BANK's Guidelines for Procurement.

2. Bidding documents shall include Section 1.05 in order to inform bidders that firms determined to engage in corrupt or fraudulent practices in contracts funded with ODA Loans of the BANK and other Japanese ODA will become ineligible to participate in contracts funded with ODA Loans of the BANK for a period determined by the BANK.

Section 4.03 Bid Bonds or Guarantees

Bid bonds or bidding guarantees will usually be required, but they shall not be set so high as to discourage suitable bidders. Bid bonds or guarantees shall be released to unsuccessful bidders as soon as possible after the bids have been opened.

<Notes>

1. The limitation of guarantor banks to those in the Borrower's country, regardless of the fact that the country has very few foreign bank branches, or the addition of provisions to make the repatriation of funds only in the currency of the Borrower's country will place foreign companies in an extremely disadvantageous position and hamper fair competition. Therefore, attention should be paid in this regard.
2. The internationally accepted amount of bid security is around 2% of the estimated cost in ordinary contracts.
3. It is not acceptable to prohibit bidders from submitting their securities in internationally accepted forms, such as bank guarantees or letters of credit, or to limit the forms of security to those with high liquidity such as cash or checks. Such requirements would discourage suitable bidders from participating.

Section 4.04 Conditions of Contract

The conditions of contract shall clearly define the rights and obligations of the Borrower and the Contractor, and the powers and authority of the consultant as the engineer, if one is employed by the Borrower, in the 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 shall be included.

<Notes>

1. These conditions for contracts comprise General Conditions used for all contracts and Special Conditions, which differ depending on the nature of the individual contract, but these conditions should, naturally, be stated clearly. Some standard forms for the former are available from organizations such as the FIDIC (International Federation of Consulting Engineers) or ENAA (Engineering Advancement Association of Japan) and are used in many cases.
2. In case the Borrower wants to modify substantially the risk allocation between the Borrower and Contractor in the adopted standard forms, such modification shall be reasonable in terms of the principles of the Guidelines.

Section 4.05 Clarity of Bidding Documents

Specifications shall set forth as clearly and precisely as possible the work to be accomplished, the goods and services to be supplied and the place of delivery or installation. Drawings shall be consistent with the text of the specifications. Where drawings are inconsistent with the text of the specifications, the text shall govern. The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating and comparing 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. Any additional information, clarification, correction of errors or alteration of specifications shall be sent promptly to all those who requested the original bidding documents. Invitations to bid shall specify the eligible source countries and other eligibility provisions, such as permissible import content from non-eligible source countries (as stated in Section 1.04). The specifications shall be so worded as to permit and encourage the widest possible competition.

<Notes>

1. In order to prevent subjective evaluation, it is required that methods used to quantify and evaluate factors other than price should be specified in the bidding documents. The acceptability of, and evaluation methods to be used for, alternatives should be also specified.
2. In order to avoid confusion and the partial comparison of bids, the bidding documents shall make clear the treatment of taxes, customs, and relevant duties for bidders' setting of bid prices. In addition, treatment of those factors shall be clearly stipulated in the evaluation methods.
3. Specifications shall be clear and precise to avoid confusion among bidders and various problems in the evaluation stage. In the context of ICB, the specification must be drafted to permit the widest possible competition.
<For example>
 - Specifying a specific type of general equipment, such as boilers, which enable only specific companies (or companies in a specific country) to submit bids, shall be avoided.

- The arbitrary setting of overly loose specifications in order to allow companies in the Borrower's country to participate in bidding shall be avoided.
4. When original specifications are to be altered, added, or corrected due to reasons on the Borrower's side, notification of those modifications, etc., should be immediately sent to all the bidders, using an addendum or the like, and if the change is considered to be major/substantial, bidders should be given additional time for the submission of their bids.
 5. A bid with a technically unacceptable deviation should be considered non-responsive. It is not permissible to accept such a bid on the condition that the bidder concerned provides goods and services which conform to specifications stipulated in the bidding documents without increasing the bid price.

Section 4.06 Standards

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

<Notes>

The Japan Industrial Standards (JIS) or other internationally accepted standards should be used when specifying standards in bidding documents. The reason for this is as described in Section 4.05. 2 of these Guidelines.

Section 4.07 Use of Brand Names

Specifications shall be based on performance capability and shall only specify brand names, catalogue numbers, or products of a specific manufacturer if either specific spare parts are required or it has been determined that a degree of standardization is necessary in order to ensure continuity for certain essential features. In the latter case, the specifications shall permit offers of alternative goods which have similar characteristics and provide performance and quality at least equal to those specified.

<Notes>

This Section states that the specification of brand names or the like should be excluded as much as possible.

In some cases, even with ICB, some specific brand names or catalogue numbers for equipment might be required because of the need for standardization, etc. (In this case, if the portion concerned is a major part of the specification, Direct Contracting is usually adopted.) But even in this case, it is preferable that alternative goods with similar characteristics and of a quality at least equal to those specified be accepted to the greatest extent possible, for the above-mentioned reason (see Section 4.05. 2 of these Guidelines).

Section 4.08 Expenditures under Contracts

As the use of ODA Loans of the BANK is limited to financing expenditures for goods and services from eligible source countries (including those with a permissible import content from non-eligible source countries), the bidding documents shall require the Contractor to use only such goods and services for the contract and to identify all expenditures related to non-eligible source countries (import content) in his statements or invoices.

Section 4.09 Currency of Bids

ODA Loan of the BANK is denominated in Japanese Yen and the bid price should normally be stated in Japanese Yen. Whenever necessary, however, other international trading currencies may also be permitted. In addition, any portion of the bid price which the bidder expects to spend in the Borrower's country may be stated in the currency of the country of the Borrower. The currency or currencies in which the bid price may be stated shall be specified in the bidding documents.

<Notes>

International currencies other than Japanese yen are also permitted as bid currencies. Also, the portion which the bidder expects to spend in the Borrower's country "may be stated in the currency of the country of the Borrower." It is, additionally, clarified that the currencies which may be used to state the bid price shall be specified in the bidding documents. In determining the currency, the Borrower's exchange risk burden should be considered, while an extreme limitation of competition should also be avoided. The term, "international trading currency" refers to the so-called "hard currencies," such as the US dollar or the euro.

Section 4.10 Currency Conversion for Bid Comparison

The bid price is the sum of all payments to be made to the bidder, in whichever currency. For the purpose of comparing prices, all bid prices shall be converted to a single currency selected by the Borrower and stated in the bidding documents. The Borrower shall effect this conversion by using the exchange (selling) rates for those currencies quoted by an official source (such as the Central Bank) for similar transactions on a date selected in advance and specified in the bidding documents, provided that such date shall not be earlier than thirty days prior to, nor later than, the date specified for the opening of bids.

<Notes>

The comparison of bid prices in plural currencies is made after their conversion to a single currency, and this Section states that the exchange rate for the date prescribed in the bidding documents should be used to prevent an arbitrary decision.

Section 4.11 Currency of Payment

(a) 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, except where a different arrangement is clearly justified and specified in the bidding documents.

(b) Where the bid price is to be paid, wholly or partly, in a currency or currencies other than the currency of the bid, the exchange rate to be used for purposes of payment shall be that specified by the bidder in the bid so as to ensure that the value of the currency or currencies used in the bid is maintained without any loss or gain.

<Notes>

1. The basic position on bid currency is as described in Section 4.09 of these Guidelines.
2. The use of major international trading currencies is also permitted, in addition to Japanese yen.
3. The payment currency is required to be the same as the currency of the bid specified by the bidder, in principle, so as to avoid an exchange risk burden for the successful bidder. That is, paragraph (a) prescribes the BANK's principle that payment under the contract should be made in the currency used by the bidder in the bid. Moreover, paragraph (b) states that the exchange rate specified by the bidder in the bid should be used where paragraph (a) is not applied, "so as to ensure that the value of the currency or currencies used in the bid is maintained."
4. An example of paragraph (b) is the case where payment for a part of the contract for which a bid was made as a lump-sum in a foreign currency is requested in the currency of the Borrower's country for use in the Borrower's country. In this case, a fixed rate originally agreed to may be used as the "rate specified in the bid," but there is no problem with arrangements such as "use of the rate X days before each payment" to maintain the value of the foreign currency. Paragraph (b) is for exceptional cases only, while the paragraph (a) method is recommended.

Section 4.12 Price Adjustment Clauses

Bidding documents shall state clearly whether firm prices are required or adjustment of bid prices is acceptable. In appropriate cases, provision will be made for adjustment (upwards or downwards) of the contract price, should changes occur in the prices of major cost components of the contract, such as labor or important materials. Specific formulae for price adjustment shall be clearly stated in the bidding documents in order that the same provisions may apply to all bids. A ceiling on price adjustment shall be included in contracts for the supply of goods, but it is not usual to include such a ceiling in contracts for civil works. There should normally be no price adjustment provision for goods to be delivered within one year.

<Notes>

1. It is generally recommended to apply price adjustment provisions in works contracts which extend beyond one year.
2. As evaluation is difficult when some bidders submit bid prices with adjustment, while others submit fixed (firm) bid prices in the same bid, it is crucial to have a single bidding method ((i) bidding at a fixed price or (ii) bidding at a base-price with adjustment) in order to avoid such difficulty as much as possible.
When a prospective bidder submits a bid with adjustment, even though bidding at a fixed-price is requested, that bidder may be treated as (i) disqualified or (ii) not disqualified by permitting clarification. However, the latter (case (ii)) should not be allowed, in principle, because other bidders' prices have already been opened and this case may be regarded as a substantial price change after the bid submission. Also, it is necessary that bidding documents state clearly that a bid price with adjustment disqualifies the bidder.

Section 4.13 Advance Payment

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. Other advances, such as for materials delivered to the site for use in works, shall also be clearly defined in the bidding documents. The bidding documents shall specify the arrangements for any security required for advance payments.

<Notes>

Advance payment clauses generally apply, except in the case of small-amount contracts, and the amount of the advance payment should be within a reasonable range in relation to international practice. The percentage can usually be expected to lie between 10 and 15% of the contract price, with the exception of small-sized or special contracts for ships, etc. Zero advance payment cases should be avoided as much as possible and a certain amount should be required to ensure a smooth progress of work, since the financial situations of some businesses in developing countries are frequently not entirely satisfactory.

Section 4.14 Guarantees, Performance Bonds and Retention Money

Bidding documents for civil works shall require some form of security to guarantee that the work will be continued until it is completed. This security can be provided either by a bank guarantee or by a performance bond, the amount of which will vary with the type and size of the work, but shall be sufficient to protect the Borrower in the case of default by the Contractor. 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. For such portion of the security extended beyond the date of completion of the works, contracts may provide for a percentage of each periodic payment to be held as retention money until final acceptance. The amount of the security required shall be stated in the bidding documents. In contracts for the supply of goods it is usually preferable to have a percentage of the total payment held as retention money to guarantee performance rather than to have a bank guarantee or bond. The percentage of the total payment to be held as retention money and the conditions for its ultimate payment shall be stipulated in the bidding documents. If, however, a bank guarantee or bond is preferred, it shall be of a reasonable amount.

<Notes>

1. For civil works or large-equipment supply contracts, a performance security is provided in the form of bank guarantees or a performance bond to protect the purchaser (Borrower) from default by the supplier/contractor.

This Section aims to protect the Borrower, and the clauses are, in practice, included in the bidding documents prepared by the Borrower almost without exception. However, the amount (which may vary greatly, depending on the case, and is between 5 and 15% of the contract price) and the validity period (the validity period is normally about one year after completion of the work) should be reasonable in the light of international business practice.
2. The timing for releasing retention money (about 5 to 10% of the contract price) should be clearly stipulated in contract conditions. However, the total or a certain part of the retention money should be held until final acceptance, which is normally about one year after completion of the work.

3. In the case of a bank guarantee, the limitation of guarantor banks to those in the Borrower's country, regardless of the fact that the country has very few foreign bank branches, or the addition of provisions to make the repatriation of funds only in the currency of the Borrower's country will place foreign companies in an extremely disadvantageous position and hamper fair competition. Therefore, attention should be paid in this regard.

4. In case of the procurement of goods, the warranty period of a contract is generally between 12 months from the time of delivery or 18 months from the time of shipment at a port in the source country. Considering that trade insurance lasting longer than 2 years is fairly difficult to obtain, the warranty period should be shorter than 2 years, unless there is a technical reason to extend the period. Similarly, in the case of civil work contracts, the defects liability period of a contract should not exceed two years.

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) to be obtained by the successful bidder.

Section 4.16 Liquidated Damage and Bonus Clauses

Liquidated damage clauses shall be included in the bidding documents for delays in completion or delivery resulting in extra cost, loss of revenues or loss of other benefits to the Borrower. Provision may also be made for a bonus to be paid to contractors for completion of civil works contracts by or in advance of times specified in the contract, when such earlier completion will be of benefit to the Borrower.

<Notes>

1. The percentage of liquidated damage should be about 0.1% of the contract price per 1-day delay, 0.5% per 1-week delay and the upper limit for the total amount should be about 5 to 10%.
2. Liquidated damage is usually deducted from the performance bond, but in some cases, it is offset by retention money or the proceeds after that. The amount involved may, in other cases, be paid separately and directly.
3. It is unacceptable not to set an upper limit of liquidated damages for delays in completion or delivery with the aim to make the contractor perform the contract strictly on schedule. Such requirements impose an unreasonably high risk on the bidders.

Section 4.17 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 4.18 Language

Bidding documents should be prepared in English. If another language is used in the bidding documents, a full English text shall be incorporated in those documents and it shall be specified which is governing.

<Notes>

1. One of the objectives of bidding is to minimize costs by ensuring the greatest degree of competition possible, and the use of English is necessary in this regard. Sometimes bids have been invited/required both in English and the local language, but such a procedure places bidders from other countries at a disadvantage (the cost of preparing documents in the local language is required) and should not, in principle, be permitted.
2. Similarly, the bid proposals should be prepared in English. Bidders may be allowed to use other languages to submit their bid proposals, but even in such circumstances, bidders should also be allowed to use English. The Borrower should be responsible for providing sufficient information in English to JBIC for review and concurrence.
3. The contract documents should also be prepared in English. If non-discrimination among eligible bidders in the procurement procedure is ensured, the contract documents may be prepared in other languages. In such cases, although the Borrower does not have to prepare an English copy of the contract documents with the signatures of responsible persons, the Borrower should be responsible for providing sufficient information in English to JBIC for review and concurrence.

Section 4.19 Settlement of Disputes

Provisions dealing with the settlement of disputes shall be included in the conditions of contract. It is advisable that the provision be based on the "Rules of Conciliation and Arbitration" prepared by the International Chamber of Commerce.

Section 4.20 Applicable Laws

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

D. Opening of Bids, Evaluation and Award of Contract

Section 5.01 Time Interval between Invitation and Submission of Bids

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, not less than 45 days shall be allowed for international bidding. Where large civil works or complex items of equipment are involved, generally not less than 90 days shall be allowed to enable prospective bidders to conduct investigations at the site before submitting their bids.

<Notes>

1. It is of significant importance to allow enough time between the inviting of bids and the submission deadline. Not simply because it is necessary for securing proper competition (and cost minimization), sufficient time for bid preparation allows bidders to analyze bid documents carefully and prepare well considered bids. This leads to the avoidance of subsequent problems, such as numerous clarifications, confusion and arbitrary evaluation, or other troublesome situations. It should be emphasized that securing high quality bids through sufficient preparation time results in a shortened total period of procurement in the long run.
2. The time interval is prescribed as in the above Section (not less than 45 days for general contracts and not less than 90 days for large civil works contracts), since 1 to 2 months is usually needed for equipment contracts and at least 3 to 4 months for large civil work contracts, because of the need for investigation at the site. However, the length of the interval varies greatly, depending on the size and complexity of the contract, project site, degree of urgency, etc., and flexibility, to some extent, is permissible in applying this Section.

Section 5.02 Procedures relating to Opening of Bids

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. The name of the bidder and total amount of each bid and of any alternative bids, if such have been requested or permitted, shall be read aloud and recorded when opened. This record shall be confirmed and signed by all bidders or their representatives present at opening of bids, and a copy of this record shall be promptly sent to the BANK.

<Notes>

1. The public opening of bids in this Section should be observed to prevent the arbitrary award of a contract and to ensure a fair decision in the presence of the public.
2. The time for the bid opening shall be the same as for the deadline for the receipt of bids or promptly thereafter.
3. In the case of two-envelop bidding, a financial envelop, which is opened after the evaluation of the technical bid, shall be made public. As a matter of course, financial envelops of rejected bidders in the technical evaluation shall be returned to each bidder unopened.

Section 5.03 Clarification or Alteration of Bids

Except as otherwise provided in Section 5.10 of these Guidelines, no bidder shall be requested or permitted to alter his bid after the bids have been opened. Only clarifications not changing the substance of the bid are acceptable. The Borrower may ask any bidder for a clarification of the bid, but shall not ask any bidder to change the substance or price of the bid.

<Notes>

1. Naturally, no bidder shall be allowed to alter his bid, though mere clarifications may be permitted. In addition, the Borrower shall not be permitted to ask any bidder to change his price or bid after the bids have been opened.
2. Requests for clarification and the bidders' responses shall be made in writing. In order to make the clarification process fair and effective, reasonable time shall be given to the bidders to respond to the clarification request.
3. It is, in principle, at the discretion of the Borrower whether clarification is necessary in the bid evaluation. It should be noted, however, that such discretion does not mean to allow the Borrower to treat bids in an arbitrary manner. The Borrower shall be impartial in making any clarifications as well as the evaluation of its results.

Section 5.04 Process to be Confidential

Except as may be required by law, no information relating to the examination, clarification and evaluation of bids and recommendations concerning awards shall be communicated after the public opening of bids to any persons not officially concerned with this process until a contract has been awarded to a bidder.

<Notes>

The confidentiality of the process is essential to enable the Borrower and the BANK to avoid improper interference either in an explicit or implicit manner.

Section 5.05 Examination of Bids

Following the opening of bids, it shall be ascertained whether material errors in computation have been made in the bids, whether the bids are substantially responsive to the bidding documents, whether the required securities have been provided, whether documents have been properly signed and whether the bids are otherwise generally in order. If a bid 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. A technical analysis shall then be made to evaluate each responsive bid and to enable bids to be compared.

<Notes>

Examination shall be made, in respect to formality, in areas such as material errors in computation, conformity to specifications required in the bidding documents, proper signatures, and required bid bonds.

When a check of the bids after their opening reveals deviation from the above requirements, or when large discrepancies are found, the bid concerned should be rejected, in light of the fundamental rules for bidding. Of course, the Borrower, who placed the order, should determine whether the deviation is within a permissible range. However, in the case that the opinions of the consultant and the Borrower differ, due attention should be paid to both opinions.

Section 5.06 Evaluation and Comparison of Bids

(a) The purpose of bid evaluation is to compare bids which conform to the technical specifications and are responsive to the bidding documents on the basis of their evaluated cost. Among the bids which conform to the technical specifications, the bid with the lowest evaluated cost, not necessarily the lowest submitted price, shall be selected for award. Even when there has been prequalification of bidders, technical factors shall be given their full importance when evaluating bids.

(b) Bid evaluation shall be consistent with the terms and conditions set forth in the bidding documents. The bidding documents shall specify, in addition to provisions for adjustment of a bid price to correct any errors in computation, the relevant factors to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. Factors which may be taken into consideration include, inter alia, the cost of inland transport to the project site, the payment schedule, the time of completion of construction or delivery, the operating costs, the efficiency and compatibility of the equipment, the availability of service and spare parts, the reliability of the quality control methods (including construction methods) proposed, safety, environmental benefits, and minor deviations, if any. To the extent practicable, factors other than price shall be expressed in monetary terms according to criteria specified in the bidding documents, or given a relative weight in accordance with the evaluation provisions in the bidding documents. Provisions for price adjustment included in a bid shall not be taken into consideration.

(c) For the purposes of evaluation and comparison of bids for the supply of goods to be procured on the basis of international bidding:

(i) Bidders will be required to state in their bids the c.i. f. port of entry price for imported goods or the ex-factory price of other goods offered in the bid;

(ii) Customs duties and other import taxes levied in connection with the importation or sales and similar taxes levied in connection with the sale or delivery of goods pursuant to a bid shall not be taken into account in the evaluation of that bid; and

(iii) The cost of inland freight and other expenditures incidental to the transportation and delivery of the goods to the place of their use or installation for the purposes of the project shall be included, if this is specified in the bidding documents.

(d) Where contractors are responsible for all duties, taxes and other levies under civil works contracts, bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis.

(e) Any procedure under which bids above or below a predetermined bid value assessment are automatically disqualified is not permitted.

<Notes>

1. In evaluation, not only price, but other factors, such as payment schedule, time of completion of construction or delivery, availability of service and spare parts, as well as factors including the consumption (energy) efficiency of plants are to be taken into account. Such non-price factors should be evaluated after quantification into monetary terms or by a points system, in accordance with evaluation criteria.
2. As is clear from the phrase “the bid with lowest evaluated cost,” a contract should be awarded to the bid which is judged to be the best after a comprehensive consideration of the above factors, except in cases involving very simple items, and the bid that ranked highest in price terms only (the highest-ranked bid in terms of the “surface price”) is not necessarily to be awarded the contract.
3. Some Borrowers wish to employ the so-called Preferential Margin/Domestic Preference measures (to give preference to domestic companies in the Borrower’s country, a certain percentage for customs duties and so on is added to bid prices by foreign companies so that domestic companies are awarded the contract) when comparing bids, with a view to promoting (or giving preference to) domestic businesses, but this is not permitted by the BANK. Attention should be paid to indirect preferential measures favoring domestic businesses, where, for example, more than a certain ratio of domestic production or specification of a domestic production ratio is required in the bidding.
4. In bidding where the item (lot) basis is expressly permitted in bidding documents (the so-called “partial bid”), the bid price when (i) the total sum of the lowest prices for each item (procurement from multiple bidders) is different from (ii) the amount including all the items as one group (procurement from the same bidder) (especially in the case where the former < the latter), no problem is posed, even if the former is awarded a contract, provided that the evaluation (technical connection among items, and so on) is rationally appropriate.
5. Taking into account price adjustment provisions (so-called “escalation provisions”; see the paragraphs of Section 4.12 for these guidelines) in the evaluation can be a problem.

The content of escalation shall not be included in the subject to be evaluated in principle, as the escalation portion cannot be established as a definite numerical value at the evaluation stage due to the impossibility of making comparisons based on similar criteria (even if the “specific formulae” of Section 4.12 is specified, comparisons using similar criteria are impossible when the basis for calculation differs [e.g., the price fluctuation rate naturally varies when the bidders’ countries are different in the case of an equipment contract]).

6. The reason why tax treatment different from (c) (ii) is permitted for (d) civil work contracts is that, although taxes should ideally also be excluded for civil work projects, taxes to be imposed for civil work vary greatly depending on the country, location of the site, location of companies, and type of work, and, therefore, evaluation without taxes for each bid is in practice impossible.
7. In a Merit Point System of bid evaluation, price factors and non-price factors are given relative weight, and the bid that obtains the highest point total is selected. In contracts financed by JBIC ODA Loans, the use of the Merit Point System is not accepted in principle. Because there is no established rule for the allocation of weights to price and non-price factors, a subjective evaluation is inevitable when the Merit Point System is used. Guidelines for Procurement under JBIC ODA Loans require its Borrowers to set clear technical specifications and to compare bids which conform to the technical specifications on the basis of their evaluated cost. The Merit Point System does not conform to this requirement.
8. Bids should be evaluated based on the CIF port of entry price for imported goods and the ex-factory price for other goods. “Goods” means end products and “ex-factory price” means the price of an end product fixed at the time of shipment from the factory. It is not acceptable to deduct customs duties levied on imported raw materials, which were used to produce domestic goods, because similar customs duties are levied in countries of production on raw materials for imported goods as well.
9. If a bid contains a seriously unbalanced (unreasonably low or high) unit price for certain goods or services to be provided, the Borrower is expected to ask the bidder concerned for clarification of such an offer and should receive answers from the bidder to ensure appropriate execution during the contract stage, before concluding the evaluation. A reasonable increase of performance security may be requested to a

successful bidder if the Borrower has appropriate reasons to do so.

10. An inspection of bidders' factories during the bid preparation is acceptable, provided that the Borrower pays the entire cost of such an inspection.

Section 5.07 Postqualification of Bidders

If there has been no prequalification of bidders, the Borrower shall determine whether the bidder whose bid has been evaluated the lowest has the capability and resources to carry out the contract concerned effectively.

The criteria to be met shall be set out in the bidding documents and if the bidder does not meet them, the bid shall be rejected. In such an event, the Borrower shall then make a similar decision regarding the next-lowest evaluated bidder.

<Notes>

1. Postqualification involves determining that the bidder, supplier, or contractor submitting the lowest evaluated bid has the capability and capacity to fulfill the contract.
2. Postqualification is suitable for use in the procurement of goods of small value and small works contracts.
3. To facilitate the evaluation during the process of postqualification, bid documents should contain a questionnaire on qualifications similar to that of prequalification and criteria for evaluation.

Section 5.08 Evaluation Report

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

Section 5.09 Award of Contract

The contract is to be awarded to the bidder whose bid has been determined to be the lowest evaluated bid and who meets the appropriate standards of capability and financial resources. A bidder shall not be required as a condition of award to undertake responsibilities or work not stipulated in the specifications or to modify the bid.

<Notes>

1. The award of a contract is notified to the successful bidder by a Notice of Award, Letter of Intent, Letter of Acceptance, etc. Regardless of the form/method employed, when a company is notified that it has been awarded the contract by such notification, a contract is interpreted, in general, as being established between the parties at this point. (Attn: Notification of Award is not the notification of the result of the bid evaluation nor an invitation to contract negotiations with the 1st ranked bidder.)
Price negotiation is not allowed in view of the purpose of bidding and the need to protect the interests of bidders.
2. The Borrower shall complete the evaluation of bids and award the contract within the initial period of the validity of bids so that extensions are not necessary. In order to award the contract within the period, the Borrower should pay due attention to realistic scheduling and its management, effectively achieving a smooth and efficient procurement.
3. Despite the above 2., if justified by exceptional circumstances, the Borrower may request bidders to extend the period of validity of bids. In case a significant extension is required, however, in order to protect bidders from the risk of price fluctuation, certain methods to mitigate such risk are recommended to be taken, such as an objective formulae for price adjustment. In addition, in order not only to mitigate the bidders' risk but also to secure impartial and transparent procedures, such a formulae for price adjustment should be clearly established in the request for extension of bid validity.
4. An example of factors constituting a contract is:
 - Contract Agreement
 - Letter of Acceptance

- Bid and Appendix to Bid
- Conditions of Contract
- Specifications
- Drawings
- Bill of Quantities

5. When a joint venture is awarded, it is “jointly and severally” responsible for execution of the whole contract. Therefore, it is not acceptable to divide the lot and to allow each member of the firm to separately make contracts for a divided portion.

Section 5.10 Rejection of Bids

Bidding documents usually provide that the Borrower may reject all bids. However, all bids shall not be rejected and new bids invited on the same specifications solely for the purpose of obtaining lower prices in the new bids, except in cases where the lowest evaluated bid exceeds the cost estimates by a substantial amount. Rejection of all bids may also be justified when (a) no bid is substantially responsive to the bidding documents or (b) there is a lack of competition. If all bids are rejected, the Borrower shall review factors that made such rejection necessary and consider either revision of the specifications or modification of the project (or the amounts of work or items in the original invitation to bid), or both, before inviting new bids. Where exceptional circumstances justify this, the Borrower may, as an alternative to rebidding, negotiate with the lowest evaluated bidder (or, failing a satisfactory result of such negotiation, with the next-lowest evaluated bidder) to try to obtain a satisfactory contract.

<Notes>

1. Since bid price is considered to be the “market price” so long as the competitiveness was assured throughout the bidding process, the application of this Section should be adopted only in case no other alternative is available.
2. The Borrower may reject all the bids, if: (i) no bid is within an extent that can be adjusted by clarification to meet the Borrower’s request (specification, etc.); (ii) only one bidder submits a bid, and competition does not actually exist; or (iii) the lowest bid price greatly exceeds the price expected by the Borrower (the price expected here may not be an unreasonably low price determined one-sidedly by the Borrower, but should be a price reasonably agreed upon with JBIC such as the price for the calculation of the loan amount, result of detailed design, or other proper measures for estimation). In other words, bids should not be invited again solely for the purpose of obtaining a lower price. As the purpose of this Section is to prevent bidding from becoming meaningless due to a repeated invitation of new bids by a Borrower hoping for a further reduction in the price, this does not mean that the Borrower is not prohibited from inviting new bids for proper reasons other than the above. What constitutes “proper reasons” should be judged case by case. They include, for example, the case where the BANK cannot consider the bidding to be fair and proper and the Borrower may suffer disadvantage, though there is no fault on the Borrower’s part. (For example, regarding impartiality of a

consultant vis-à-vis a contractor, where the relationship with the contractor is not made clear in the history of the consultant in the consulting contract, and the company concerned participated in the bidding and submitted the “lowest evaluated bid” while the Borrower did not recognize the relationship.)

3. In the case of (ii) above, the so-called “single bid” is only the result of bidding and is different from direct contracting in nature (the bidder does not know that it is a single bid, and competition is regarded as existing), and in such a situation the Borrower may award the contract to the bidder.
4. Measures to reach an agreement by price negotiation with the lowest evaluated bidder (or, failing to reach a satisfactory result in such negotiation, with the next-lowest evaluated bidder) for the purpose of avoiding the time required for rebidding in view of the urgency of the situation is permitted only when it falls under the case above (iii) and when there is judged to be no problem in terms of the principles for bidding. (Prior consultation with JBIC is required.)
5. Actions and remarks on the rejection of bids are as follows:
 - i) The Borrower shall submit an application to JBIC for its review and concurrence on the evaluation result accompanied by the expected action to be taken (negotiation with the lowest evaluated bidder or re-bidding) and its reason.
 - ii) When the Borrower negotiates with the lowest evaluated bidder, changes in price should accompany a corresponding revision of the specifications or modification of the project, amounts of work, items in the original invitation to bid, etc. However, a substantial reduction in the scope or modification to the contract documents may require rebidding.
 - iii) When the Borrower has selected negotiation with the lowest evaluated bidder but fails to obtain a satisfactory result, the Borrower should promptly notify the result to the bidder concerned in a written form, prior to negotiation with the next lowest evaluated bidder. In addition, the Borrower should consult with JBIC regarding the result of the first negotiation, before starting the negotiation with the next lowest evaluated bidder.

Annex I Factors to be Evaluated in Prequalification (Sample)

- The prequalification process is intended to prequalify Contractors with regard to the capabilities described below in advance of bidding so that invitations to bid are extended only to those who have the requisite technical and financial capability. The Borrower reserves the right to waive minor deviations, if they do not materially affect the capability of an applicant to perform the contract satisfactorily. Subcontractors' experience and resources shall not be taken into account in determining the Applicant's compliance with the qualifying criteria¹.
- This sample only gives examples of the factors to be evaluated in prequalification documents. The sample will require adaptation to a greater or lesser degree in actually preparing the prequalification documents, taking account of the scale and nature of the contract.
- The weight given to each of the following factors is to be determined on a project by project basis.

1. General Experience

The Applicant will submit the following information:

- Average annual turnover over the last __ years. The minimum requirement is \$___².
- Successful experience as prime Contractor in the execution of projects of a nature and complexity comparable to the proposed contract. The execution of at least projects within the last ___years is required³. Experience of execution of a project of a comparable nature and complexity refers to the execution of more than (e.g. One million cubic meters of rock placed in rockfill dams in one year)⁴.
- Letters of reference from past customers, together with the contact address, etc., of each customer, in order to show past performance in the execution of projects of a comparable nature and complexity.
- Experience of project execution in the country concerned and of project execution abroad in similar countries will be taken into consideration when evaluating an Applicant's experience and capability.

2. Personnel Capabilities

- The Applicant must have suitably qualified personnel to fill the following

positions. The Applicant will supply information on a prime candidate and an alternate for each of the following positions, both of whom should meet the experience requirements specified below.

	Total experience (years)	In similar works (years)	As managers of similar works (years)
Project manager			
Other position			

(List only key management and specialist positions.)

3. Equipment Capabilities

- The Applicant should own, or have assured access to, the following key items of equipment in full working order, and should demonstrate that they will be available for use in the proposed contract. The Applicant may also list alternative equipment which he would propose for the Contract, together with an explanation of the proposal.

Equipment type and characteristics	Minimum number required
1 .	
2 .	

(This section applies mainly to construction works or contracts requiring production capacity. The items listed should be limited to major items of equipment crucial to the proper and timely execution of the contract, and which applicants may not readily be able to purchase, hire, or lease in the required time-frame.)

4. Financial Position

- (1) The Applicant should demonstrate that he has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the construction cash flow for a period of __ months, estimated at US\$ __ equivalent, net of the Applicant's commitments for other

(2) The Applicant should submit the audited balance sheets for the last five years and demonstrate the soundness of its financial position. Where necessary, the Borrower will make inquiries of the Applicant's bankers.

5. Litigation History

- The Applicant is to provide accurate information on any litigation or arbitration resulting from contracts completed or under execution by him over the last years. A consistent history of awards against the Applicant or any partner of a joint venture may result in failure of the application.

6. In the Case of a Joint Venture

- (1) The lead partner should meet not less than ___ % of all the qualifying criteria given in paragraphs 1 and 4(1) above⁶.
- (2) The other partners should meet not less than ___ % of all the qualifying criteria given in paragraphs 1 and 4(1) above⁷.
- (3) The joint venture should satisfy collectively the criteria of paragraphs 2, 3, and 4(1), for which purpose the relevant figures for each of the partners shall be added together to arrive at the joint venture's total capability. Individual members should each satisfy the requirements of paragraphs 4(2) and 5.

- The formation of a joint venture after prequalification, and any change in a prequalified joint venture, will be subject to the written approval of the Borrower prior to the deadline for submission of bids. Such approval may be denied, if (i) as a result of the change in a prequalified joint venture, any of its partners individually or collectively does not meet the qualifying requirements or (ii) in the opinion of the Borrower, a substantial reduction in competition may result.

¹ Subcontractors' experience and resources may be considered, however, when they perform essential work under the supervision of the main contractor(s).

² Usually not less than five times the estimated annual cash flow in the proposed contract or works. The coefficient may be smaller for large contracts.

³ It is essential to ensure that the criteria are drawn up in accordance with the realistic needs of the project. Execution of three projects over a period of five years may be required for normal projects, and over a period of ten years for large-scale projects. For projects of a special nature, the criteria are to be established on a case-by-case basis.

- ⁴ For example, indicate an annual production rate for the key construction activity. The annual rate should be a percentage (e.g. 80%) of the expected peak rate of construction for the key activity.
- ⁵ Calculate the cash flow for a number of months, determined as the total time needed by the Borrower to pay a contractor's invoice after the invoice has been issued.
- ⁶ Except for very large projects, the appropriate percentage should be not less than 40%.
- ⁷ Except for very large projects, the appropriate percentage should be not less than 25%.

<Notes>

1. This sample is intended only as an example of evaluation items, and the items should be modified as appropriate, depending on the content of individual procurement, in actual prequalification.
2. Some Borrowers have attempted to broaden the interpretation of these items or to relax the criteria at the prequalification evaluation stage. However, this is not acceptable and instructions should be given so that the criteria specified in the prequalification documents are strictly followed, keeping in mind the non-discrimination principle and the importance of quality