

The Procurement Guidelines of  
Japan's Grant Aid  
(Type II)

Japan International Cooperation Agency  
(JICA)

## Table of Contents

PART I Basic Principles .....	4
<b>I- I Introduction</b> .....	4
<b>I-II Parties Concerned</b> .....	4
<b>I-III Safety Considerations</b> .....	5
PART II Guidelines for the Use of the Agent.....	5
<b>II-I General</b> .....	5
II-I-1 Role of the Agent .....	5
II-I-2 Agent Agreement .....	6
II-I-3 Services of the Agent.....	6
<b>II-II Approval of the Agent Agreement</b> .....	6
II-II-1 General .....	6
II-II-2 Reference to the G/A .....	6
II-II-3 Scope of the Services .....	6
II-II-4 Completion of the Services .....	6
II-II-5 Agent's Fees .....	7
II-II-6 Approval of the Agent Agreement.....	7
II-II-7 Payment Methods.....	7
II-II-8 Force Majeure.....	7
II-II-9 Responsibilities and Obligations of the Recipient .....	7
II-II-10 Amendment to the Agent Agreement .....	7
PART III Guidelines for the Procurement of the Products and Services by the Agent.....	8
<b>III-I General</b> .....	8
III-I-1 Products and Services Eligible for Procurement.....	8
III-I-2 Firm.....	8
III-I-3 Misprocurement .....	9
<b>III-II Procurement Procedures</b> .....	9
III-II-1 Transfer of the fund.....	9
III-II-2 Method of Procurement .....	10
III- II -3 Type of Contract.....	13
III-II-4 Size of Tender Lot .....	13
III-II-5 Tender Conditions .....	13

III-II-6 Public Announcement .....	13
III-II-7 Language .....	14
<b>III-III Tender Documents</b> .....	<b>14</b>
III-III-1 General .....	14
III-III-2 Contents of the Tender Documents .....	15
III-III-3 Major Items Related to the Instruction to Tenderers .....	15
III-III-4 Procurement Conditions .....	16
III-III-5 Forms of Tender .....	16
III-III-6 Draft of the Contract .....	16
<b>III-IV Implementation of Tender</b> .....	<b>17</b>
III-IV-1 Preparatory Period for the Tender .....	17
III-IV-2 Guarantee for the Tender .....	17
III-IV-3 Questions and Answers regarding the Tender Documents .....	17
III-IV-4 Correction and Alteration of the Tender Documents .....	17
III-IV-5 Pre-qualification Examination of Tenderers .....	17
III-IV-6 Tender Procedures .....	18
III-IV-7 Supplementary Explanation and Modifications of the Tender during Tender Evaluation .....	18
III-IV-8 Confidentiality of Tender Process .....	19
III-IV-9 Examination of Tenders .....	19
III-IV-10 Tender Evaluation .....	19
III-IV-11 Tender Evaluation Report .....	20
III-IV-12 Notification of the Results .....	20
III-IV-13 Rejection of Tenders and Re-tender .....	20
<b>III-V Conclusion of the Contract</b> .....	<b>21</b>
III-V-1 General .....	21
III-V-2 Reference to the G/A .....	21
III-V-3 Contents of the Products and Services .....	21
III-V-4 Contract Price .....	21
III-V-5 Terms of Payment .....	21
III-V-6 Warranty .....	22
III-V-7 Performance Guarantee .....	22
III-V-8 Non-performance of the Contract .....	22
III-V-9 Force Majeure .....	22
III-V-10 Consultation and Resolution Procedures .....	22
III-V-11 Disputes and Arbitration Procedures .....	22

III-V-12 Modifications Procedure .....	23
III-V-13 Responsibilities and Obligations of Each Party.....	23
III-V-14 Applicable Law.....	23
III-V-15 Effectuation, Amendment, and Announcement of the Results of the Contract.....	23
III-V-16 Reporting to JICA .....	23

## **PART I Basic Principles**

### **I- I Introduction**

I-I-1 These Guidelines (Type II) , which are prepared by Japan International Cooperation Agency (hereinafter referred to as "JICA"), set forth the general rules to be followed by the Government of the recipient country (hereinafter referred to as "the Recipient") in using Japanese Grant (hereinafter referred to as "the Grant") for the procurement of the products and services for the implementation of the project / the programme (hereinafter referred to as "the Project / the Programme") which is agreed upon in the Exchange of Notes (hereinafter referred to as "the E/N") between the Government of Japan and the Recipient. These Guidelines (hereinafter referred to as "the Guidelines") are applicable to the procurement by the procurement agent (hereinafter referred to as "the Agent").

I-I-2 The application of the Guidelines to a particular programme funded by the Grant will be stipulated in the Grant Agreement (hereinafter referred to as "the G/A") concluded between JICA and the Recipient.

I-I-3 The rights and obligations of the Recipient, procurement agent (hereinafter referred to as "the Agent"), the firm(s) which supplies or provides the products and services for the Project / the Programme (hereinafter referred to as "the Firm") and the consultant(s) which renders consultancy services for the Project / the Programme (hereinafter referred to as "the Consultant") are governed by the employment contract (hereinafter referred to as "the Agent Agreement") concluded between the Recipient and the Agent which is defined in the Agreed Minutes on procedural details (hereinafter referred to as "the A/M") signed together with the E/N and in the G/A, by the tender documents, and by the contracts concluded between the Agent and the Firm and/or the Consultant (hereinafter referred to as "the Contract"), and not by the Guidelines.

### **I-II Parties Concerned**

In the Guidelines, the Grant Aid means a set of arrangements where, based on the E/N between the Government of Japan and the Recipient, JICA concludes the G/A with the Recipient and provides to the Recipient the Grant to be expended for procuring the products and services necessary for the

implementation of the Project / the Programme, whereas the Recipient implements the Project / the Programme using the Grant. The roles of the concerned parties, including the Government of Japan, JICA, the Recipient, the Agent, the Firm and/or the Consultant in relation to the implementation of the Project / the Programme under the Grant are understood as follows:

- I-II-1 The Government of Japan decides that the Grant be extended for the Project / the Programme.
- I-II-2 JICA executes the Grant by making payments of the amount agreed upon in the E/N and pays serious attention to ensure the accountability on proper and effective use of the Grant for the Project / the Programme.
- I-II-3 The Recipient is the beneficiary of the Grant and is responsible for the implementation of the Project / the Programme. The Recipient entrusts the Agent with the procurement of the products and services.
- I-II-4 The Agent is an impartial and specialized organization which provides procurement services of the products and services on behalf of the Recipient according to the Agent Agreement with the Recipient.
- I-II-5 The Firm is the contractor who supplies or provides the products and services for the Project / the Programme in accordance with the Contract.
- I-II-6 The Consultant (physical persons or juridical persons including universities, NGOs, and others with expertise and experience) is the contractor(s) that will be employed to do detailed design and supervise the work and/or the training/guidance work to facilitate the operation and maintenance of equipment/facilities for the Project / the Programme in accordance with the Contract.

### **I-III Safety Considerations**

The Recipient shall comply with all the applicable safety regulations and pay full attention to all the safety measures.

## **PART II Guidelines for the Use of the Agent**

### **II-I General**

#### **II-I-1 Role of the Agent**

The Agent shall conduct the procurement services of the products and services for the Project / the Programme on behalf of the Recipient. The

Agent shall render services with due expertise and in a fair and impartial manner to ensure the smooth and proper implementation of the Project / the Programme.

The Agent shall work to maintain rights and interests of the Recipient and maximize the impacts of the Project / the Programme. The Agent is also required to pay attention to minimizing the burden of the Recipient.

## II-I-2 Agent Agreement

The Recipient shall conclude an Agent Agreement, in principle within two (2) months after the date of signing of the G/A, with the Agent in accordance with the G/A.

## II-I-3 Services of the Agent

The Agent shall conduct the services referred to in the Schedule I of the G/A on behalf of the Recipient.

## II-II Approval of the Agent Agreement

### II-II-1 General

The Agent Agreement is prepared as two identical documents and the copy of the Agent Agreement shall be submitted to JICA by the Recipient through the Agent. JICA confirms whether or not the Agent Agreement is concluded in conformity with the G/A and the Guidelines, and approves the Agent Agreement.

The Agent Agreement concluded between the Recipient and the Agent shall become eligible for the Grant and its accrued interest after the approval by JICA in a written form.

### II-II-2 Reference to the G/A

The Agent Agreement shall refer to the G/A as follows:

JICA shall extend the Grant to the Government of (name of recipient country) in accordance with the G/A signed on (date of signature) between JICA and the Government of (name of recipient country).

### II-II-3 Scope of the Services

The scope of the Agent's services shall be clearly specified in the Agent Agreement. The Agent Agreement with the scope of Agent's services in conflict with the G/A shall not be approved by JICA.

### II-II-4 Completion of the Services

The Agent Agreement shall clearly state that when the entire amount of the fund transferred from the Recipient's account in the name of the Recipient at

a bank in Japan (hereinafter referred to as “the Recipient Account”) to the account in the name of the Agent (hereinafter referred to as “the Procurement Account”) has been paid for the procurement of the products and services, or when the remaining amount of the said fund has been transferred to the Recipient Account, the Agent's services shall be regarded as complete.

#### **II-II-5 Agent's Fees**

The amount and currency or calculations of Agent's fees shall be precisely and correctly stated in the Agent Agreement. The conditions and amount or calculation for additional fees to which the Agent is entitled shall be clearly stated.

#### **II-II-6 Approval of the Agent Agreement**

The Agent Agreement shall clearly state that it shall become eligible for the Grant and its accrued interest after the approval by JICA in a written form.

#### **II-II-7 Payment Methods**

The Agent Agreement shall stipulate that “regarding all transfers of the fund to the Agent, the Recipient shall designate the Agent to act on behalf of the Recipient and issue a Blanket Disbursement Authorization to conduct the transfer of the fund (hereinafter referred to as “the Advances”) to the Procurement Account from the Recipient Account.”

The Agent Agreement shall clearly state that the payment to the Agent shall be made in Japanese yen from the Advances and that the final payment to the Agent shall be made when the total remaining amount become less than three percent (3%) of the Grant and its accrued interest excluding the Agent's fees.

#### **II-II-8 Force Majeure**

The conditions of the Agent Agreement shall contain a clause stating that failure on the part of the Agent to fulfill obligations under the Agent Agreement would not be considered a default if such failure is the result of an event of force majeure. The scope of force majeure shall be defined in the conditions of the Agent Agreement.

#### **II-II-9 Responsibilities and Obligations of the Recipient**

The Agent Agreement shall clearly state the responsibilities and obligations of the Recipient in accordance with the G/A.

#### **II-II-10 Amendment to the Agent Agreement**

If an amendment to the Agent Agreement is required, the amended Agent Agreement shall clearly state that:



- (1) all the clauses except that which is / are amended, remain unchanged;  
and
- (2) the amendment to the Agent Agreement shall become eligible for the Grant and its accrued interest only after the approval by JICA in a written form.

## **PART III Guidelines for the Procurement of the Products and Services by the Agent**

### **III-I General**

#### **III-I-1 Products and Services Eligible for Procurement**

The products and services to be procured shall be selected from those defined in the G/A.

#### **III-I-2 Firm and Consultant**

- (1) In principle, firms for construction works shall be of recipient country's nationality as long as the firms satisfy the conditions specified in the tender documents.

For the Grant Aid for conflict prevention and peace-building, in principle, firms for construction works could be of recipient country's nationality or of Japanese nationality.

Besides, firms of any nationality could be contracted as suppliers as long as the firms satisfy the conditions specified in the tender documents.

- (2) Notwithstanding the provision (1) above, as a general rule, the Consultant may be Japanese nationals recommended by JICA, for the purpose of maintaining technical consistency with the preliminary examination and other related studies, conducted prior to the signing of the G/A (hereinafter referred to as "the Studies").

The recommendation of the Consultant by JICA to the Recipient does not mean that JICA shall assume the responsibilities which the Consultant shall bear to the Agent for the Recipient on the basis of the Contract.

In other cases than JICA recommend the Consultant to the Recipient, the guidelines issued by the Agent shall be applied to the selection of the Consultant.

- (The term "Japanese nationals" wherever used in the Guidelines means Japanese physical persons or Japanese juridical persons controlled by Japanese physical persons.)

### III-I-3 Misprocurement

JICA requires that, under contracts funded by the Grant, tenderers the Firm and the Consultant observe the highest standard of ethics during the procurement and execution of such contracts. In this regard, JICA shall demand that the Recipient and the Agent shall reject a tender if it determines that the tenderer has engaged in corrupt or fraudulent practices in competing for the contract in question. JICA will recognize a firm as ineligible, for a period determined by JICA, to be awarded a contract funded by the Grant if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing any other contracts funded by the Grant or other Japan's Official Development Assistance (ODA).

When JICA receives information concerning suspected corrupt or fraudulent practices in the competition for, or in the execution of, the contract funded by the Grant, the Recipient shall provide JICA with such information as JICA may reasonably request, which includes information related to any concerned official of the government and/or public organizations of the Recipient's country.

The Recipient shall not unfairly or unfavorably treat the physical persons and juridical persons, that provided the information concerning suspected corrupt or fraudulent practices in the competition for, or in the execution of, the contract funded by the Grant to JICA and/or the Recipient.

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

## III-II Procurement Procedures

### III-II-1 Transfer of the fund

The Agent shall take necessary measures for transferring the fund necessary for the procurement of the products and services from the Recipient Account to the Procurement Account prior to the procurement procedures.

### III-II-2 Method of Procurement

#### (1) Competitive Tendering

In implementing procurement, sufficient attention shall be paid so that there is no unfairness among tenderers who are eligible for the procurement of the products and services.

For this purpose, competitive tendering shall be employed in principle.

#### (2) Other Procurement Methods

If competitive tendering is deemed inappropriate or impractical due to any of the following special situations, the Agent is permitted to proceed with procurement on selective tendering, international shopping or direct contracting:

1) when spare parts or accessories, etc. for existing equipment or equipment manufactured by specified manufacture are procured (In this case direct contracting is expected);

2) when there are adequate reasons to maintain uniformity and continuity of the products and services provided under an existing contract (In this case direct contracting is expected);

3) when the number of firms to satisfy the conditions is limited (In this case selective tendering or international shopping is expected);

4) when it is quite doubtful that the prospective tenderers would be interested in participating in competitive tendering, and thereby the advantages of competitive tendering would be outweighed by the administrative burdens involved (In this case selective tendering or international shopping is expected);

5) part or all of the tender procedure was not successfully completed and re-tendering is implemented (In this case selective tendering or international shopping is expected);

6) when emergency procurement is required (In this case selective tendering or international shopping is expected); and

7) when consultants are to be selected (In this case, competitions among contents of Technical Proposals and financial proposal or direct contracting with the consultant recommended by JICA is expected).

When procurement method other than competitive tendering are employed, the Agent shall implement procedures in such a manner as to comply with the competitive tendering procedures described in the Guidelines to the fullest possible extent, in order to ensure the transparency of the selecting

procedures.

(3) Modifications of the Project / the Programme

The Grant must only be used for procuring the products and services necessary for implementing the Project / the Programme based on the Studies. Therefore, the Recipient is to implement each component based on the items listed on the report of the Studies prepared and submitted for the Recipient by JICA and/or concerned parties. However, on the occasion that the content of the Project / the Programme shall be modified due to various reasons at the stage of determining the details or implementing the Project / the Programme, the Recipient must obtain prior approval from JICA under the consensus of the consultative committee stipulated in the G/A (hereinafter referred to as "the Committee") through the Agent, provided that the modifications of the Project / the Programme are beyond the concept of the Studies.

The prior consent for the modifications is conducted by JICA to ensure that the modifications of the Project / the Programme are appropriate and to confirm whether any modifications are required on the contract price or not, however it does not mean that JICA will assume the legal or technical responsibilities for the substance of the modifications.

On the other hand, provided that the modifications of the Project / the Programme are minor than the concept of the Studies, the Recipient, through the Agent, must obtain post-identification from JICA.

The details of the procedures for modifications will be advised by JICA separately.

(4) Additional Procurement

If the Recipient may request an additional procurement by using the Remaining Amount described in (5) 1) below, the Agent is allowed to conduct an additional procurement, following the points mentioned below:

1) Procurement of the same products and services

The additional procurement may be implemented by a direct contracting with the successful tenderer of the initial tender when a competitive tendering is judged to be disadvantageous or uneconomical in such cases where the products and services to be additionally procured are identical with the initial tender and also the quantity to be additionally procured is limited, or there was no other participants than the successful tenderer in the initial tender.

When a direct contracting with the same firm is not necessarily advantageous

or appropriate in such case where a portion of the balance is relatively large, firms shall be selected through a new tendering procedure.

2) Other procurements

When the products and services other than those mentioned in 1) above are to be procured, the procurement shall be implemented in principle through a competitive tendering. In this case, the products and services for additional procurement shall be selected from among those in accordance with the G/A.

(5) Handling of the Remaining Amount

1) "The Remaining Amount" refers to the difference in amount between "the total amount of the Grant, accrued interest and, where available, the resources received as delay damages, compensations or penalty(ies) (hereinafter referred to as "the Charges")" and "the total amount paid to the Firm, the Consultant and the Agent."

2) In the case conditions described in 3) below are fulfilled, the Recipient may use the Remaining Amount to cover the change of the contract price due to the modifications of the Project / the Programme and to fund additional procurements needed in the implementation of the Project / the Programme (including changes in the type of procurement of services, etc.) by taking steps described in (6) below. Any funds that remain after the completion of all procurements are to be returned to JICA.

3) Conditions for using the Remaining Amount are as follows:

- (a) it must be used for purposes and scopes stipulated in the G/A;
- (b) it must be used in line with the procedure stipulated in the G/A;
- (c) it must be used in line with the aims and contents listed in the Studies and other documents;
- (d) the procurements shall be of the products and services necessary for effective implementation of the relevant projects / programmes, and such procurements shall be completed within the period set at the beginning;
- (e) in the case of purchasing or additionally procuring spare parts, the amount used for this out of the Remaining Amount must not exceed ten percent (10%) of the contract price of each equipment or thirty million Japanese yen (JPY30,000,000), whichever amount is smaller; and
- (f) the reimbursement of the Remaining Amount shall be carried out as stipulated in the G/A.

(6) Authorization Process for Using the Remaining Amount

The following steps shall be taken to obtain approval of JICA to use the

Remaining Amount:

- 1) the implementing agency of the Recipient submits a proposal for using the Remaining Amount to the Committee and JICA and obtains their consensus;
- 2) JICA, based on the request form mentioned in 1) above, considers from a technical standpoint whether or not to authorize the use of the Remaining Amount; and
- 3) JICA responds to the implementing agency of the Recipient, through the Agent, regarding the result mentioned in 2) above.

### III-II -3 Type of Contract

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

### III-II-4 Size of Tender Lot

If a possible tender lot may be technically and administratively divided and such a division is likely to result in the broadest possible competition, the tender lot shall be divided into two or more. On the other hand, in the interest of obtaining the broadest possible competition, any one lot for which a tender is invited shall, whenever possible, be of a size large enough to attract tenderers.

### III-II-5 Tender Conditions

The Agent shall fully study and consider technical specifications, construction period, required technical standards, prices, manufacturing, transportation, trade regulations, etc. regarding the products and services to be procured and finalize appropriate tender and procurement conditions after obtaining confirmation from the Recipient. Also, the price expected for the procurement (referential price) shall be set in advance for reference in the selection of firms.

### III-II-6 Public Announcement

Public announcement shall be carried out in such a way that all potential tenderers will have fair opportunity to learn about and participate in the tender.

The invitation to prequalification or to tender shall be publicized at least in a newspaper of general circulation in the recipient country (or neighboring countries) or in Japan, and in the easily accessible webpage operated by the Agent. The items to be contained in the public announcement are as follows:

- (1) name of the Grant;

- (2) names of the products and services to be procured;
- (3) name of the Agent and contact information including a location of its webpage (written as an agent for the Recipient);
- (4) required qualifications of tenderers;
- (5) date, time and place of the distribution and price of tender documents;  
and
- (6) other relevant information considered to be necessary for firms to determine whether to participate in the tender.

The Agent is required to publicize the information from (1) to (3) above in the newspapers if other details including (4) to (6) above are advertised on the webpage of the Agent.

### **III-II-7 Language**

The tender invitation, tender documents and contracts should be prepared in principle in English, French or Spanish. In case that an announcement is made in a newspaper in circulation in Japan, Japanese translation shall be attached when possible.

## **III-III Tender Documents**

### **III-III-1 General**

- (1) The tender documents should contain all information necessary to enable tenderers to prepare valid offers for the products and services to be procured for the Project / the Programme.
- (2) The rights and obligations of the Recipient, the Agent and the Firm and/or the Consultant of the products and services should be stipulated in the tender documents to be prepared by the Agent. The tender documents shall be prepared in consultation with the Recipient.
- (3) The tender documents shall clearly state that JICA shall extend the Grant to the Government of (name of recipient country) in accordance with the G/A signed on (date of signature) between JICA and the Government of (name of recipient country).
- (4) The tender documents shall clearly state that "JICA requires that, under contracts funded by the Grant, tenderers, the Firm and the Consultant observe the highest standard of ethics during the procurement and execution of such contracts. In this regard, JICA will demand that the Recipient and the Agent shall reject a tender if it determines that the tenderer has engaged in corrupt or fraudulent practices in competing for

the contract in question. JICA will recognize a firm as ineligible, for a period determined by JICA, to be awarded a contract funded by the Grant if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing any other contracts funded by the Grant or other Japan's Official Development Assistance (ODA). When the authorities concerned of the Government of Japan decide to impose against a firm such administrative sanctions as debarment, exclusion of goods manufactured, etc., from Japanese governmental procurement, JICA may ask the Recipient and the Agent to exclude the goods manufactured by the sanctioned firm from the procurement under the Grant, for the period of the sanctions by such authorities concerned of the Government of Japan.”

### **III-III-2 Contents of the Tender Documents**

The tender documents should consist of the following documents:

- (1) instruction to tenderers;
- (2) procurement conditions;
- (3) form of the tender; and
- (4) draft of the contract.

If a fee is charged for the tender documents, it should be reasonable and reflect the cost of implementation of the tender procedure.

### **III-III-3 Major Items Related to the Instruction to Tenderers**

- (1) The instruction to tenderers should clearly describe the procedure for question and answers, correction regarding the tender documents, tender procedures, tender evaluations, and the other relevant issues of the tendering process.
- (2) The instruction to tenderers should clearly describe the products and services to be procured, qualifications required of tenderers, existence of local agents, elimination of disqualified firms from the tender, eligible source countries, size of contract, place of delivery and date of shipment, insurance, transportation, bond, warranty, tax exemption described in the G/A and other pertinent terms.
- (3) The instruction to tenderers should clearly describe that the tender price shall be stated in figures and words as firm and final, and if there is a difference between the price in words and that in figures, the price in words is deemed correct.



### III-III-4 Procurement Conditions

#### (1) Clarity and Accuracy of Conditions

The procurement conditions should specify clearly and in detail the services to be performed, the products and services to be supplied and the relevant terms such as contents of the products and services, technical specifications, the place of delivery, etc.

The procurement conditions should identify the main factors or criteria to be taken into account in evaluation and comparison of tenders. The procurement conditions should be prepared so as to secure the broadest possible competitive tendering.

#### (2) Impartiality of the Technical Specifications

The technical specifications supplied with procurement conditions should be based on the related characteristics and required capacities of the products and services to be procured.

Making reference to trademark names, catalogue numbers or similar classifications should be avoided unless in the case of the procurement of particular spare parts, etc.

#### (3) Standards

In the event that specifications require the products to comply with industrial standards, technical specifications should be decided in appropriate manner, considering that the products meeting internationally accepted standards and domestically accepted standards, and should be stated in the tender document.

### III-III-5 Forms of Tender

The following forms of tender should be clarified:

- (1) tender qualification certificates;
- (2) tender specifications; and
- (3) tender price.

### III-III-6 Draft of the Contract

The draft contract should clearly state “the contract terms” such as “the rights and obligations of the Recipient, the Agent, the Firm (and/or the Consultant etc.” and the following items:

- (1) terms of payment;
- (2) warranty period;
- (3) performance bond;
- (4) non-performance of the contract;

- (5) force majeure; and
- (6) settlement of disputes.

### **III-IV Implementation of Tender**

#### **III-IV-1 Preparatory Period for the Tender**

The allowable period for the preparation and submission of the tender should be determined with due consideration to the particular circumstances related to the Project / the Programme in the recipient country and the scale and complexity of the tender lots. Sufficient period before the date of tender should be allowed from the date when the documents are made available for potential tenderers.

#### **III-IV-2 Guarantee for the Tender**

The Agent may request that the tenderers submit bid bond (e.g. bank guarantees) for the tender. The amount of the bid bond, however, should not be so high as to discourage potential tenderers. The bid bonds submitted from the unsuccessful tenderers should be returned immediately after the award of the contract.

#### **III-IV-3 Questions and Answers regarding the Tender Documents**

The Agent, for the purpose of the smooth implementation of the tender, should accept questions about the tender documents from the purchasers of the documents and provide answers to the questions, in accordance with the following points:

- (1) a reasonable period should be set, respectively for accepting questions and providing answers to those questions; and
- (2) the answers should be given to all those who have purchased the tender documents well in advance of the date of tender so that the prospective tenderers can take proper measures.

#### **III-IV-4 Correction and Alteration of the Tender Documents**

Any additional information, supplementary explanations, correction of errors and alterations related to the tender documents should be notified to all those who have purchased the tender documents well in advance of the date of tender so that prospective tenderers can take proper measures.

#### **III-IV-5 Pre-qualification Examination of Tenderers**

- (1) The Agent may conduct a pre-qualification examination of tenderers in advance of the tender so that the invitation to the tender can be extended only to eligible firms.

- (2) The pre-qualification examination should be performed not to limit the tenderers but to confirm the capability and resources of potential tenderers to perform the particular work satisfactorily and should not hinder the objective of the competitive tendering.
- (3) In this case, the following points should be taken into consideration:
  - 1) experience and past performance in contracts of a similar kind;
  - 2) property foundation or financial credibility;
  - 3) existence of local offices, etc. to be specified in the tender documents;  
and
  - 4) their potentialities to use necessary personnel, equipment and facilities.

#### III-IV-6 Tender Procedures

- (1) The tender documents should clearly indicate the deadline of the date and time for accepting the tendering as well as the date and place for opening the tender.
- (2) The tenderer should be instructed to submit the following necessary tender documents:
  - 1) tender qualification certificates;
  - 2) tender specifications; and
  - 3) tender price.
- (3) All tenders should be opened in the presence of the Agent and tenderers or their representatives at the fixed date, time and place. The presence of tenderers is not requirement as far as transparency and necessary confidentiality are secured Tenderers who do not attend the tender opening should not be disadvantaged in respect of selection procedure.
- (4) Any tender submitted after the specified deadline is not acceptable as a valid tender.
- (5) In opening tenders with the attendance of tenderers, the name of each tenderer and the tender price concerned shall be read aloud and recorded.

#### III-IV-7 Supplementary Explanation and Modifications of the Tender during Tender Evaluation

- (1) No tenderers shall be permitted to modify the contents of the tenders after the tenders have been opened.
- (2) The Agent may request any tenderers to make a supplementary explanation but not permitted to request them for substantial modifications of the contents of the tenders and a change in tender

prices.

### III-IV-8 Confidentiality of Tender Process

Until notification of the award has been sent to the successful tenderer, the Recipient and the Agent shall not disclose to the tenderers and to other people who are not officially concerned with the tender procedures, any information on the examination of the tenders, supplementary explanations and evaluations, or any information related to the recommendation of a successful tenderer.

### III-IV-9 Examination of Tenders

The Agent shall examine the following items with regard to the submitted tenders:

- (1) serious errors in calculation;
- (2) attachment of requested documents;
- (3) attachment of requested certificates;
- (4) attachment of requested guarantees;
- (5) confirmation of proper signatures to the documents; and
- (6) conformity of the submitted tenders with the instruction of the tender documents.

In examining the tenders, if a tender does not substantially conform to the specifications, or contains inadmissible reservations or is otherwise not substantially responsive to the tender documents, it should be disqualified.

After the above examination, each tender that satisfies the conditions should be examined for evaluation and comparison, in principle beginning with those submitted from the tenderer with the lowest tender price.

### III-IV-10 Tender Evaluation

- (1) The tender evaluation shall be implemented on the basis of the conditions specified in the tender documents.
- (2) All those tenders which substantially conform to the technical specifications, and are responsive to other stipulations of the tender documents, shall be opened and judged in principle on the basis of the submitted price, and the tenderer who offers the lowest price shall be designated as the successful tenderer. In case the selection of successful tenderer solely based on the submitted prices is not appropriate or irrational in the respect of the natures of the products and services to be procured, other elements than the price such as length of delivery or construction periods, superiority of technical specifications, etc. might be

considered by qualifying their degrees and evaluated comprehensively together with the price competitiveness. In such cases, method and standard of tender evaluation shall be clearly explained in the tender documents.

- (3) In cases where satisfactory results in the respect of price or other relevant elements, if any, are not offered in the tender, the Agent may negotiate with the most advantageous tenderer (if this fails to obtain satisfactory results, the second ranking tenderer) to try and conclude a satisfactory contract (a contract ad libitum).
- (4) If the tender is divided into several lots, the tender evaluation shall be performed for each lot.

### III-IV-11 Tender Evaluation Report

The Agent shall prepare a detailed tender evaluation report clarifying the reasons for the successful tender and the disqualification, and submit it to the Recipient to obtain confirmation before concluding the contract with the successful tenderer. The Agent shall submit a detailed evaluation report of tenders to JICA for its information, while the notification of the results to the tenderers will not be premised on the confirmation by JICA.

### III-IV-12 Notification of the Results

- (1) The Agent, within the validity period specified in the tender documents, should notify all the tenderers of the results of the tender. In case notification of result within the validity period is not possible, the Agent shall notify all the tenderers of the extension of the period before the expiry of the original period.
- (2) No tenderers shall be required, as a condition to be successful tenders, to bear responsibilities or obligations that are not described in the tender documents.

### III-IV-13 Rejection of Tenders and Re-tender

- (1) The Agent shall not implement the re-tendering with the same specifications merely for the purpose of reducing the price except when the lowest tender price has exceeded the referential price. The rejection of all tenders may only be justified in the following cases:
  - 1) successful tender was not given even after the result of negotiation with the advantageous tenderers in such case where offer prices extremely exceed the referential price;
  - 2) all tenders do not comply with the tender documents as a result of the

- examination and evaluation of the tenders;
  - 3) it is clear that competition is impeded in the process; and
  - 4) there is a rational reason to believe that the aim of procurement shall not be achieved by continuing the ongoing tender procedure.
- (2) In case all the tenders are to be rejected and a re-tender to be called, the Agent should examine the causes and consider revising the specifications and other conditions specified in the original tender documents as well as procurement methods.

### **III-V Conclusion of the Contract**

#### **III-V-1 General**

In order to procure the products and services in accordance with the G/A, the Agent shall conclude contracts with the Firm and/or the Consultant selected by tendering or other methods. If more than one lot is awarded to the same contractor, the contracts may be combined into one.

#### **III-V-2 Reference to the G/A**

The Contract shall clearly state that JICA shall extend the Grant to the Government of (name of recipient country) in accordance with the G/A signed on (date of signature) between JICA and the Government of (name of recipient country).

#### **III-V-3 Contents of the Products and Services**

The Contract shall clearly state the contents of the products and services to be procured. The Contract of the procurement of the products and services which are not covered by the G/A shall not be concluded.

#### **III-V-4 Contract Price**

The amount of all contract price and, where there is/are amendment(s) of the Contract, amended contract price (hereinafter jointly referred to as "the Contract Price") and the Agent's Fee shall not exceed the amount of the Grant and its accrued interest. In case that there are the Charges, the total amount of the Contract Price and the Agent's Fee shall not exceed the sum of the Grant, its accrued interest and the Charges. Each of the Contract Price and the Agent's Fee shall be precisely and correctly stated in both words and figures. If there is a discrepancy between the price in words and that in figures, the price in words is deemed correct.

#### **III-V-5 Terms of Payment**

The Contract shall clearly state the terms of payment. The Agent shall make

payment from the Advances, against the submission of the necessary documents from the Firm and/or the Consultant on the basis of the conditions specified in the Contract, after the obligations of the Firm and/or the Consultant have been fulfilled. When the services are the object of procurement, the Agent may pay certain portion of the contract amount in advance to the Firm and/or the Consultant on the conditions that such the Firm and/or the Consultant submits the advance payment guarantee worth the amount of the advance payment to the Agent.

### **III-V-6 Warranty**

The Contract shall clearly state the contents and the period of warranty if warranty is provided to the products and services to be procured from the providers of such products and services.

### **III-V-7 Performance Guarantee**

Each of the Firm and/or the Consultant may be requested to submit performance guarantees. Such performance guarantees shall be of an appropriate amount, and it shall be returned immediately after the delivery of the products and the completion of the services.

### **III-V-8 Non-performance of the Contract**

The Contract shall clearly state that if the performance of a contract by the Firm and/or the Consultant is delayed from the contracted period of execution or results in non-performance due to other reasons including bankruptcy, etc., the Agent is permitted to claim the payment of indemnities, forfeiture of the performance guarantees, or cancellation of the Contract against the Firm and/or the Consultant.

### **III-V-9 Force Majeure**

The Contract should contain a clause to the effect that failure on the part of the Firm to fulfill obligations under the Contract would not be considered a default if such failure is the result of an event of force majeure as defined in the terms of the Contract.

### **III-V-10 Consultation and Resolution Procedures**

The procedures for consultation and resolution shall be clearly stipulated for both cases that the damage is ascribed to the Recipient / the Agent and/or the Firm and/or the Consultant and that the damage is ascribed to force majeure.

### **III-V-11 Disputes and Arbitration Procedures**

The procedures for disputes and arbitration shall be clearly stipulated.

### III-V-12 Modifications Procedure

The modifications procedures of the Contract shall be clearly stipulated, when modification is deemed necessary by the Recipient / the Agent and the Firm and/or the Consultant.

### III-V-13 Responsibilities and Obligations of Each Party

The Contract shall clearly state the responsibilities and obligations of the Recipient, the Agent and the Firm and/or the Consultant .

### III-V-14 Applicable Law

The Contract shall clearly state the applicable law by which the Contract is governed and interpreted.

### III-V-15 Effectuation, Amendment, and Announcement of the Results of the Contract

- (1) The Contract shall become eligible for the Grant and its accrued interest only after the signing of the Contract between the Agent and the Firm and/or the Consultant.
- (2) If an amendment to the Contract is required, the Agent, obtaining the consent of the Recipient in advance, shall conclude a contract for the amendment with the Firm and/or the Consultant. The amended contract shall clearly state that "All clauses except that which is or are amended, remain unchanged".
- (3) The Agent shall, as soon as the Contract is concluded, announce information on the Contract such as names of procured items, name of the Firm and/or the Consultant, amount of the Contract and date of the Contract on the webpage of the Agent.

### III-V-16 Reporting to JICA

The Recipient, through the Agent, shall periodically submit a written report on the progress of the Project / the Programme to JICA.