

## Chapter 2: Guidelines for Procurement under Japanese ODA Loans

### TABLE OF CONTENTS

	Page
<b>PART I GENERAL</b> .....	<b>60</b>
Section 1.01 Introduction .....	60
Section 1.02 International Competitive Bidding (ICB) .....	63
Section 1.03 Procedures Other than International Competitive Bidding (ICB) .....	64
Section 1.04 Eligibility .....	66
Section 1.05 JICA's Review .....	67
Section 1.06 Corrupt or Fraudulent Practices .....	69
Section 1.07 Conflict of Interest .....	72
Section 1.08 Language .....	75
<b>PART II INTERNATIONAL COMPETITIVE BIDDING (ICB)</b> .....	<b>76</b>
<b>A. Type and Size of Contract</b> .....	<b>76</b>
Section 2.01 Types of Contract .....	76
Section 2.02 Size of Contract .....	78
Section 2.03 Single-Stage Two-Envelope Bidding and Two-Stage Bidding .....	79
<b>B. Advertising and Prequalification</b> .....	<b>81</b>
Section 3.01 Advertising .....	81
Section 3.02 Prequalification of Bidders .....	82
<b>C. Bidding Documents</b> .....	<b>85</b>
Section 4.01 General .....	85
Section 4.02 Reference to JICA .....	87
Section 4.03 Bid Securities .....	88
Section 4.04 Conditions of Contract .....	89
Section 4.05 Clarity of Bidding Documents .....	90
Section 4.06 Standards .....	92
Section 4.07 Use of Brand Names .....	93
Section 4.08 Expenditures under Contracts .....	94
Section 4.09 Currency of Bids .....	94
Section 4.10 Currency Conversion for Bid Comparison .....	95
Section 4.11 Currency of Payment .....	96

Section 4.12	Price Adjustment Clauses .....	97
Section 4.13	Advance Payment.....	98
Section 4.14	Performance Securities and Retention Money .....	99
Section 4.15	Insurance .....	101
Section 4.16	Liquidated Damage and Bonus Clauses .....	102
Section 4.17	Force Majeure .....	103
Section 4.18	Settlement of Disputes .....	104
Section 4.19	Applicable Laws.....	105
D.	Opening of Bids, Evaluation and Award of Contract.....	106
Section 5.01	Time Interval between Invitation and Submission of Bids .....	106
Section 5.02	Procedures relating to Opening of Bids .....	107
Section 5.03	Clarification or Alteration of Bids .....	108
Section 5.04	Process to be Confidential .....	109
Section 5.05	Examination of Bids.....	110
Section 5.06	Evaluation and Comparison of Bids.....	111
Section 5.07	Postqualification of Bidders .....	114
Section 5.08	Evaluation Report .....	115
Section 5.09	Award of Contract .....	116
Section 5.10	Rejection of Bids .....	117
Section 5.11	Notification to Unsuccessful Bidders and Debriefing .....	119
Section 5.12	Information to be Made Public .....	120

Sections of the Guidelines are stated in the boxes. Notes on the sections provided below the boxes shall also normally be respected, since they represent appropriate interpretation of the sections of the Guidelines.

## Part I GENERAL

### Section 1.01 Introduction

(1) “Guidelines for Procurement under Japanese ODA Loans” are applicable to the ODA Loans provided by JAPAN INTERNATIONAL COOPERATION AGENCY (hereinafter referred to as “JICA”), under Clause (a), Item (ii), Paragraph 1, Article 13 of the ACT of THE INCORPORATED ADMINISTRATIVE AGENCY-JAPAN INTERNATIONAL COOPERATION AGENCY.

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

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

(4) The application of these Guidelines to a particular project financed by an ODA Loan provided by JICA is stipulated in the Loan Agreement between JICA and the Borrower.

(5) These Guidelines govern the relationship between JICA 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 JICA and any third party, including the bidders 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.

(6) JICA and the Borrower will agree on the schedule of procurement, either prior to or in the course of the negotiations relating to Japanese ODA Loans.

#### <Notes>

1. Paragraph (1):

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

2. Paragraph (2):

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 (3):

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 (5):

(01) These Guidelines are a part of the Loan Agreement between JICA 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 JICA 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 JICA.

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

5. Paragraph (6):

The project should be implemented in such a manner as to comply with the schedule agreed between JICA and the Borrower. The Borrower may proceed with the procurement before the Loan Agreement is signed, subject to international rules for Official Development Assistance (ODA), by consulting with JICA as to the procurement procedures to which the Borrower can advance.

6. With due consideration to non-discrimination among eligible bidders, neither

preferential margins nor domestic preferences are permitted when prequalifying applicants or evaluating bids under Japanese ODA Loans.

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

- (a) All eligible bidders must be treated equally under Japanese ODA Loans.
- (b) Such preferences may lead to an increase in project costs and/or a downgrading of technical performance.
- (c) Such preferences may distort fair competition among eligible bidders.

(02) Some examples of preferential margins/domestic preferences are as follows:

- (a) Obligation to associate with local firms (the encouragement of such associations may be accepted by JICA);
- (b) Criteria that are advantageous to local firms (e.g. substantial experience is required in the Borrower's country);
- (c) Obligation to use goods produced in the Borrower's country.

7. To emphasize free competition among bidders, JICA, in principle, does not accept the idea to disclose the estimated price for the contract before the bidding although some Borrowers and International Financial Institutions accept such disclosure in view of transparency in the process. JICA may not oppose it if the Borrower insists on the disclosure of such a price while, even in such cases, disclosure of its breakdown is not permitted.

**Section 1.02 International Competitive Bidding (ICB)**

JICA 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 (3) above. JICA, therefore, normally requires Borrowers to obtain goods and services through ICB in accordance with the procedures described in Part II of these Guidelines.

### **Section 1.03 Procedures Other than International Competitive Bidding (ICB)**

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

- (a) Where the Borrower wishes to maintain reasonable standardization of its equipment or spare parts in the interests of compatibility with existing equipment.
- (b) Where the Borrower wishes to maintain continuity of services related to goods and services provided under an existing contract awarded in accordance with procedures acceptable to JICA.
- (c) Where the number of qualified contractors, suppliers or manufacturers (hereinafter collectively referred to as "Contractor(s)") is limited.
- (d) 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.
- (e) Where, in addition to cases (a), (b), (c) and (d) above, JICA deems it inappropriate to follow ICB procedures, e.g. in the case of emergency procurement.

(2) 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:

- (a) Limited International Bidding (LIB), which is essentially international competitive bidding by direct invitation without open advertisement.
- (b) 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.
- (c) Direct Contracting.

(3) These Guidelines will not apply in the case of procurement of goods and services which are, by nature or scope, unlikely to attract foreign firms and, thus, to be domestically procured. Procurement of such goods and services shall, however, be effected with due attention to the considerations stated in Section 1.01 (3). JICA deems it appropriate that such procurement be effected through Local Competitive Bidding (LCB) in accordance with the procurement procedures generally used in the Borrower's country.

#### **<Notes>**

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.

**Section 1.04 Eligibility**

(1) In order to be eligible under a contract funded with Japanese ODA Loans, a Contractor shall:

- (a) be a firm of the eligible source country stipulated in the Loan Agreement;
- (b) be a firm selected based on its own capability;
- (c) not be a firm stated in Section 1.06 (1) ; and
- (d) not be a firm who has the conflict of interest stated in Section 1.07.

(2) A firm who does not meet any of the conditions stipulated in paragraph (1) of this Section shall be ineligible to be awarded a contract funded with Japanese ODA Loans.

### **Section 1.05 JICA's Review**

(1) JICA may review the Borrower's procurement procedures, documents and decisions. The Borrower shall submit to JICA, for JICA's reference, any related documents and information as JICA may reasonably request. The Loan Agreement will specify the extent to which review procedures will apply in respect of goods and services to be financed out of the proceeds of the Loan.

(2) JICA does not finance expenditures for goods and services which, in the opinion of JICA, have not been procured in accordance with the agreed procedures and JICA will cancel that portion of the Loan allocated to such goods and services that have been misprocured. JICA may, in addition, exercise other remedies under the Loan Agreement.

#### **<Notes>**

1. In general, decisions relating to procurement of goods and services subject to JICA's review and concurrence are as follows:
  - (01) If the Borrower wishes to adopt procurement procedures other than ICB, the Borrower shall submit to JICA a Request for Review of Procurement Method(s).
  - (02) Before advertisement and/or notification of prequalification, the Borrower shall submit to JICA the prequalification documents.
  - (03) When the prequalified firms have been selected, the Borrower shall submit to JICA a list of those firms and a report on the selection process, with the reasons for the choice made, attaching all relevant documents.
  - (04) Before inviting bids, the Borrower shall submit to JICA the notices and instructions to bidders, bid forms, proposed draft contract, specifications, drawings and all other documents related to bidding.
  - (05) When the (single-stage) two-envelope bidding procedure is adopted, the Borrower shall, before opening financial bids, submit to JICA the technical bid evaluation report.
  - (06) Before sending a notice of award to the successful bidder, the Borrower shall submit to JICA the bid evaluation report and bid for award. (When the step (05) above is taken, "bid evaluation report" shall be read as "financial bid evaluation report.")
  - (07) When, as provided for in Section 5.10 of these Guidelines, the Borrower wishes to reject all bids or to negotiate with the lowest evaluated bidder (or, failing a

satisfactory result of such negotiation, with the next-lowest evaluated bidder) with a view to obtaining a satisfactory contract, the Borrower shall inform JICA of its reasons, requesting prior review and concurrence.

(08) Promptly after executing a contract, the Borrower shall submit to JICA a duly certified copy of the contract.

2. Additional remedies under the Loan Agreement may be executed by JICA at any time.

### **Section 1.06 Corrupt or Fraudulent Practices**

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

In pursuance of this policy, JICA;

(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 JICA, to be awarded a contract funded with Japanese ODA Loans 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 Japanese ODA Loans or other Japanese ODA;

(c) will recognize a Contractor as ineligible to be awarded a contract funded with Japanese ODA Loans if the Contractor or sub-contractor, who has a direct contract with the Contractor, is debarred under the cross debarment decisions by the Multilateral Development Banks. Such period of ineligibility shall not exceed three (3) years from (and including) the date on which the cross debarment is imposed. The Borrower shall confirm the eligibility of bidders from this point of view.

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

#### **<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 Business Transactions" 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 Asian Development Bank).

2. Paragraphs (1)(a) and (b):

Concrete measures to be taken against a party engaged in corrupt or fraudulent practices under this Section are prescribed in the relevant rules published by JICA.

3. Paragraph (1)(c):

(01) "cross debarment decisions by the Multilateral Development Banks" is a corporate

sanction in accordance with the agreement among the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and the World Bank Group signed on 9 April, 2010 (as amended from time to time). From an operational viewpoint, JICA will recognize the World Bank Group's debarment of which period exceeds one year, imposed after 19 July, 2010, the date on which the World Bank Group started operating cross debarment, as "cross debarment decisions by the Multilateral Development Banks".

(02) JICA will recognize a Bidder or Contractor as ineligible to be awarded a contract funded with Japanese ODA Loans if the Bidder or Contractor is debarred by the World Bank Group for the period starting from the date described in (a) through (f) below, up to the signing of the contract, unless (i) such debarment period does not exceed one year, or (ii) three (3) years have passed since such debarment decision.

(a) Advertisements for prequalification, if the Contractor is selected through the ICB and prequalification is conducted;

(b) Invitation for bid, if the Contractor is selected through the ICB and prequalification is not conducted;

(c) Invitation for bid, if the Contractor is selected through the Limited International Bidding;

(d) Request for price quotations, if the Contractor is selected through the International Shopping;

(e) Appointment of the Contractor, if the Contractor is selected through the Direct Contracting; or

(f) Commencement of actual selection/bidding process, if the Borrower wishes to adopt procurement procedures other than (a) through (e) above.

(03) If it is revealed that the Contractor was ineligible to be awarded a contract according to (02) above, JICA will, in principle, impose sanctions against the Contractor.

(04) If it is revealed that the sub-contractor, which has a direct contract with the Contractor, was debarred by the World Bank Group on the sub-contract date, JICA will, in principle, require the Borrower to have the Contractor cancel the sub-contract immediately, unless (i) such debarment period does not exceed one year, or (ii) three (3) years have passed since such debarment decision. If the Contractor refuses, JICA will require the Borrower to declare invalidity or cancelation of the contract and demand the refund of the relevant proceeds of the

loan or any other remedies on the grounds of contractual violation.

(05) (01), (02), (03), and (04) of this Note 3 above shall be stated in the Bidding Documents and Prequalification documents if any.

(06) The Borrower shall require bidders to include in their bids and contract documents a letter of acknowledgement to declare that the contractor is eligible in accordance with the applicable Guidelines for Procurement under Japanese ODA Loans.

### **Section 1.07 Conflict of Interest**

A Contractor shall not have a conflict of interest. A Contractor shall not be employed under any of the circumstances set forth below, where it is determined to have a conflict of interest throughout the bidding/selection process and/or the execution of the contract unless the conflict has been resolved in a manner acceptable to JICA.

(1) A firm shall be disqualified from providing goods or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the Contractor's obligations under a turnkey or design and build contract.

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

(3) Based on the "One Bid Per Bidder" principle, which is to ensure fair competition, a firm and any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm shall not be allowed to submit more than one bid. A firm (including its affiliate), if acting in the capacity of a sub-contractor in one bid, may participate in other bids, only in that capacity.

(4) A firm having any other form of conflict of interest other than (1) through (3) of this Section shall be disqualified.

#### **<Notes>**

1. "The conflict of interest provision" herein should be incorporated into the bidding documents.
  
2. Paragraphs (1) and (3):  
In relation to "affiliate" and "control": The ability to exercise the control is normally, but not limited to, deemed to exist when one party has, whether directly or indirectly, not less than 20% of all the subscribed shares or other equity interests or the total capital of the other party.

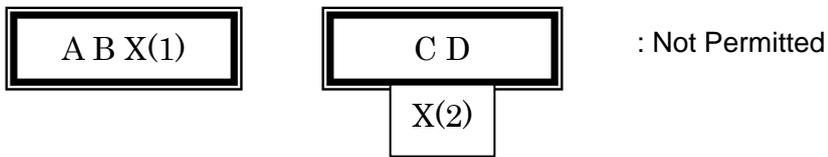
3. Paragraph (3):

The diagram below shows the idea of “One Bid per Bidder” principle stipulated in Paragraph (3). “X(1)” and “X(2)” in the diagram stand for the same firm or the affiliates.

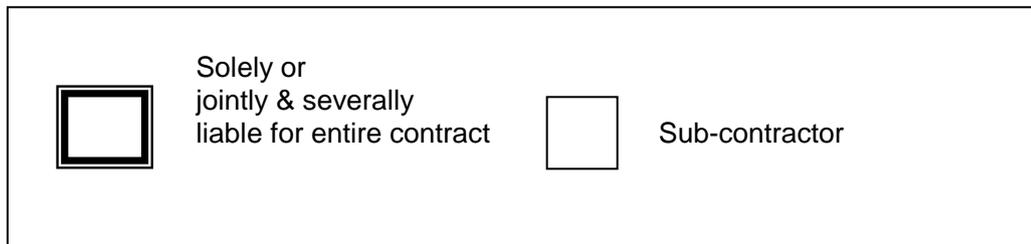
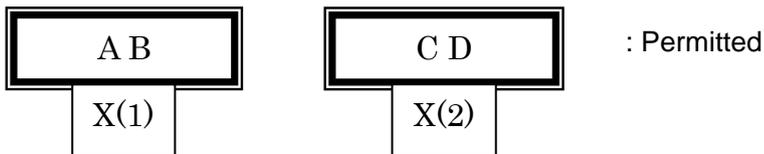
(ex. 1)



(ex. 2)



(ex. 3)



4. Paragraph (4):

As an example, exchange of personnel in a form of secondment between a consultant and a Contractor engaged in the same project (e.g. in a case where a Contractor lends or temporarily seconds its personnel to the consultant and that any of the personnel is directly or indirectly involved in any capacity in the same project, that Contractor shall be disqualified from the bidding or the selection for providing goods and non-consulting services resulting from the consulting services provided by the consultant. On the contrary, in a case where the personnel of the Contractor are not involved in the project in question, such exchange of personnel will not constitute a reason for disqualification of the Contractor. Likewise, it is recognized that conflict of interest does not exist when the personnel have resigned from the Contractor).

5. In principle, if it is found that a firm or consultant is in violation of this Section, that firm or that consultant shall be disqualified from the bidding or the selection. However, there are cases where the Borrower may suffer a disadvantage, even if there is no fault on the part of the Borrower (e.g. due to false information provided by the consultant and/or its affiliate, the Borrower did not recognize the relation between them, and the affiliate is awarded a contract). In such cases, JICA will take the Borrower's interests into consideration, while paying due attention to the overall project implementation and the procurement policy of JICA as a whole.

### **Section 1.08 Language**

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

#### **<Notes>**

1. ICB is, in principle, applied to the procurement under Japanese ODA Loans. One of the objectives of bidding is to minimize costs by ensuring the greatest degree of competition possible, and the use of Japanese, English, French or Spanish is necessary in this regard. Sometimes bids have been invited/required both in Japanese, English, French or Spanish and in 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, any application for prequalification or bid shall be prepared in Japanese, English, French or Spanish. In cases where, as a result, a domestic contractor is awarded, the authenticated contract documents may be prepared in the national language of the Borrower's country. Even in that case, the Borrower has to prepare a translated version in Japanese, English, French or Spanish for JICA's review and concurrence.

## Part II INTERNATIONAL COMPETITIVE BIDDING (ICB)

### A. Type and Size of Contract

#### Section 2.01 Types of Contract

(1) Contracts may be concluded on the basis of unit prices for work performed or items supplied, a lump sum price, cost-reimbursable, 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.

(2) Cost-reimbursable contracts are not acceptable to JICA except in exceptional circumstances, such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy.

(3) Single contracts for engineering, supply of 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. Paragraph (1):

The Lump-sum contract (contract price is determined as a lump sum of a certain amount) 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 (contract price is determined in accordance with quantity x a unit price), 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).

2. Paragraph (2):

For the cost-reimbursable contract, the payment amount is determined after the completion of the work, and consists of the actual construction costs (e.g. material costs, labor costs) and indirect costs (e.g. head office expenses). The cost-reimbursable contract includes a cost-plus-fixed-fee contract and cost-plus-percentage-fee contract, etc. The cost-reimbursable contract, where the contract price cannot be determined at all in advance is, in principle, not permitted, as is stated in this Section, since the amount to be financed by Japanese ODA Loan cannot be

determined.

3. Paragraph (3):

One of the contract types according to the contracted scope is the “turnkey” contract of this paragraph. Under a turnkey contract (or design-build contract), a single contractor is responsible for the design and provision, in accordance with the employer’s requirements, of works which may include any combination of engineering (including civil, mechanical, electrical, etc.), procurement and construction and commissioning. There is also a “design, build and operate contract”, where the turnkey contract is further extended, with this contract covering management in the operation stage after commissioning.

**Section 2.02 Size of Contract**

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

**<Notes>**

As one of the purposes of having bidding is to fully utilize the competition principle, the size of each bidding package (lot) should be large enough to attract a number of firms. "One contract for one project" is not at all necessary, but arbitrary packaging for eluding ICB shall be avoided. Unreasonable division of lots results in many negative effects such as less competitiveness among international contractors and complexity of the project management, and should be avoided as much as possible.

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

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

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

#### **<Notes>**

Paragraph (1):

(01) Single-stage 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. Single-stage two-envelope bidding is generally advisable in terms of the emphasis on quality, as price competition exists only among bidders who have passed the technical evaluation. In order to benefit from this advantage, it is never allowed in the two-envelope bidding

to open financial bids of bidders who failed to meet technical requirements or to open financial bids at the time of technical evaluation.

(02) In the case of single-stage two-envelope bidding, the result of technical evaluation is subject to JICA's prior review and concurrence in general.

## **B. Advertising and Prequalification**

### **Section 3.01 Advertising**

In all cases of ICB contract, invitations to prequalification or to bidding 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 JICA.

#### **<Notes>**

1. One of the objectives in employing ICB is to achieve cost-minimization by promoting the competition principle to the greatest extent possible. 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 deadline for submission of bids), 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 a Japanese ODA Loan” in order to attract and invite as many firms as possible by presenting a sound funding source. In addition, advertising the eligible source countries ensure that non-eligible firms do not submit bids.
3. The advertisement may be published by an electronic system as well as in a newspaper.

### **Section 3.02 Prequalification of Bidders**

(1) 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.

(2) Prequalification shall be based entirely upon the capability of prospective bidders to perform the particular contract satisfactorily, taking into account, inter alia, their: (a) experience of and past performance on similar contracts, (b) capabilities of construction or production capacity of plants, and (c) financial position. A clear scope of the contract and the requirements for qualification (criteria) shall be specified in the prequalification documents.

(3) All bidders meeting the criteria specified shall be allowed to bid.

#### **<Notes>**

1. Paragraph (1):

(01) This Section concerns prequalification, usually conducted for contracts for large construction works, etc.

(02) JICA considers that prequalification is “in principle required” in view of emphasis on quality. At least, prequalification is required for large-scale procurement amounting to more than 1 billion yen, for complex works/contracts, or under any other circumstances such as design-build contracting in which preparing detailed bids is costly. This ensures that invitations to bid are extended only to those with adequate capabilities and resources. Prequalification may also be required when participation of numerous bidders is expected and, thus, prescreening to a certain extent should be carried out at this stage for an efficient evaluation of bids.

2. Paragraph (2):

(01) Prequalification is conducted for the main contractor, but when a subcontractor(s) performs (perform) essential works under the supervision of the main contractor, data on the subcontractor(s) may be taken into consideration.

(02) Using a financial ratio for Pass/Fail criteria should be avoided since such a ratio may vary depending on accounting procedures, rules, and methods used in

different countries. The Borrower should give the applicants certain flexibility with respect to the information and documents required to demonstrate their financial capability.

(03) Criteria for prequalification should not be so strict as to limit participation to specific firms only. However, it is important to set the criteria so that only fully competent firms will submit bids, in view of the “emphasis on quality.” Arbitrary relaxation of criteria in order to allow specific firms to participate in the bidding is never allowed.

(04) The prequalification criteria should be applied strictly when prequalification evaluation results are examined. Relaxation of prequalification criteria in favor of specific firms (e.g. an extremely broad interpretation of a “similar experience”) or the relaxation of predetermined criteria during the prequalification evaluation with the justification of ensuring competition is not allowed, in light of the transparency and “emphasis on quality.”

(05) 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 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.

3. Paragraph (3):

(01) It is not acceptable to set a limit on the number of successful applicants prior to the evaluation of prequalification. All applicants meeting the criteria 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 bidding is not preferable because it will increase the burden of the Borrower when evaluating the bids.

(02) 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 bidding 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 of these Guidelines.

4. A change in the members of a joint venture after prequalification is acceptable, provided that all of the following conditions are satisfied;
  - (01) the new joint venture meets the prequalification criteria (the new member is not necessarily limited to only prequalified firms);
  - (02) the reason for such a change is acceptable to the Borrower;
  - (03) such a change does not distort competition among qualified bidders;
  - (04) such a change is requested to and approved by the Borrower prior to bidding; and
  - (05) such a change is not forced by the Borrower but has taken place by the free choice of the firms involved.
  
5. Whether the information provided at the time of prequalification is true and correct should be strictly ascertained in order to ensure quality. It is generally recommended that such information be verified at the time of bid evaluation and award of contract, and the award shall normally be denied to a bidder judged as no longer having the capability or resources to successfully perform the contract, including cases where the information provided was fraudulent or incorrect.
  
6. The time allowed for preparation and submission of applications for prequalification should be sufficient for applicants to gather all the information required.
  
7. The Borrower should inform applicants of the result of their application usually within 60 days after the date of submission of applications.
  
8. For prequalification of bidders for groups of contracts to be awarded, either at the same time or over a period of time, a limit on the number or total value of awards to any one bidder may be imposed on the basis of the bidder's technical capability and financial resources to meet qualification criteria for the combined contracts.

## C. Bidding Documents

### Section 4.01 General

(1) The bidding documents shall provide all information necessary to enable a prospective bidder to prepare a bid for the 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. Guidelines on the principal components of the bidding documents are given in the following Sections.

(2) Borrowers shall use the appropriate Standard Bidding Documents (SBDs) of the latest version issued by JICA with minimum changes acceptable to JICA, as necessary to address project-specific conditions. Any such changes shall be introduced only through bid data sheets, or through special conditions of contract, and not by introducing changes in the standard wording of JICA's SBDs. When no relevant SBDs have been issued, the Borrower shall use other internationally recognized standard conditions of contract and contract forms acceptable to JICA.

(3) If a fee is charged for the bidding documents, it shall be reasonable and reflect the cost of their production and shall not be so high as to discourage qualified bidders.

#### <Notes>

1. Paragraphs (1) and (2):

(01) An example showing elements of the bidding document is as follows:

- a) Instruction to Bidders
- b) Evaluation Criteria
- c) Bid Form
- d) General Conditions of Contract
- e) Special Conditions of Contract
- f) Specifications
- g) Bill of Quantities
- h) Drawings
- i) Contract Form

- j) Bid Security Form
- k) Performance Security Form

(02) No such modifications from the SBDs shall impair the fair allocation of risk and liability between the parties to the contract, as stated in Section 4.04 (2). The selection of the SBDs used should be discussed during the course of agreement on the procurement schedule stated in Section 1.01 (6).

(03) In light of the principle of non-discrimination between the bidders as stated in Section 1.01 (3), the Borrower should not impose excessive requirements in terms of the domestic procedures or documentations of the Borrower's country, which lead to a decline in the motivation of prospective foreign bidders.

2. Paragraph (3):

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.

#### **Section 4.02 Reference to JICA**

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

“.....(name of Borrower).....has received (or where appropriate, ‘has applied for’) an ODA Loan from JAPAN INTERNATIONAL COOPERATION AGENCY (hereinafter referred to as “JICA”) in the amount of ¥ \_\_\_\_toward the cost of (name of project, 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 a Japanese ODA Loan by JICA 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 Japanese ODA Loans’. 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.”

#### **<Notes>**

This Section describes the need to state explicitly in the bidding documents that a Japanese ODA Loan is being provided (for this requirement, see Note 2 of Section 3.01 of these Guidelines). The need to observe the provisions of these Guidelines is specified so that the procurement process should be compliant with such provisions. This will enable bidders to fully understand the existence of and the need to observe JICA’s Guidelines for Procurement.

### **Section 4.03 Bid Securities**

Bid bonds or 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 contract has been signed with the successful bidder.

#### **<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 is not acceptable, since foreign bidders will be placed in an extremely disadvantageous position and fair competition will be hampered.
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.
4. The bid validity period should be sufficient to evaluate the bids, obtain JICA's concurrence on the evaluation of bids and bid for award, and send a notice of award. It is not preferable to extend the original bid validity period without any clear justification and necessity. If justified by exceptional circumstances, all bidders may be requested to agree in writing to an extension of the period of bid validity before the expiration date. Bidders shall have the right to refuse to grant such extension without forfeiting their bid security.

#### **Section 4.04 Conditions of Contract**

(1) 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 may be included.

(2) In the conditions of contract, risks and liabilities among the parties shall be allocated in a balanced manner, and modification of such allocation in customary general conditions of contract shall be reasonable in view of smooth implementation of the project.

(3) Safety shall be emphasized in the implementation of the project. Safety measures taken by the Contractor shall be specified in the contract.

#### **<Notes>**

1. Paragraph (1):

These conditions of contract, comprising General Conditions used for all contracts and Special Conditions which differ depending on the nature of the individual contract, should be stated clearly.

2. Paragraph (2):

In some cases, JICA may not give its concurrence to the modification stated in this paragraph, if it is not justifiable.

#### **Section 4.05 Clarity of Bidding Documents**

(1) 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 priority order shall be that specified in the conditions of contract used. 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. Invitations to bid shall specify the eligible source countries and other eligibility provisions (as stated in Section 1.04). The specifications shall be so worded as to permit and encourage the widest possible competition.

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

#### **<Notes>**

Paragraph (1):

(01) 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.

(02) 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.

(03) 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 type of equipment, such as boilers, which enable only specific firms (or firms in a specific country) to submit bids, shall be avoided.
- The arbitrary setting of overly loose specifications in order to allow specific firms to participate in bidding shall be avoided.

**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 Note (03) of Section 4.05 of these Guidelines.

#### **Section 4.07 Use of Brand Names**

Specifications shall be based on relevant characteristics and/or performance requirements. Reference to brand names, catalogue numbers, or similar classification shall be avoided. If it is necessary to quote a brand name or catalogue number of a specific manufacturer for a specific reason, 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 Note (03) of Section 4.05 of these Guidelines).

**Section 4.08 Expenditures under Contracts**

The use of Japanese ODA Loans is limited to financing expenditures for goods and services from eligible source countries.

**Section 4.09 Currency of Bids**

(1) A Japanese ODA Loan 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.

(2) 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.

(3) The currency or currencies in which the bid price may be stated shall be specified in the bidding documents.

**<Notes>**

Paragraph (1):

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**

(1) The bid price is the sum of all payments to be made to the bidder, in whichever currency.

(2) 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), commercial banks, or newspapers circulated internationally 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>**

Paragraph (2):

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**

(1) 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.

(2) 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 the burden of exchange risk on the successful bidder. That is, paragraph (1) prescribes JICA's principle that payment under the contract should be made in the currency used by the bidder in the bid. Moreover, paragraph (2) states that the exchange rate specified by the bidder in the bid should be used where paragraph (1) is not applied, "so as to ensure that the value of the currency or currencies used in the bid is maintained."
4. Paragraph (2):  
As an example, a fixed rate originally specified in the bid may be used. It is acceptable to use a variable rate by stipulating as "the rate X days before each payment", however Paragraph (2) is for exceptional cases only, while the method mentioned in paragraph (1) is recommended.

#### **Section 4.12 Price Adjustment Clauses**

(1) 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.

(2) If the price is adjustable, the adjustment shall be carried out according to the adjustment formula or formulae indicated in the bidding documents.

#### **<Notes>**

Paragraph (2):

(01) It is generally recommended that price adjustment provisions be included for contracts with long delivery or completion periods (generally beyond 18 months), and that such provisions be included, even for contracts of shorter duration, if fluctuation of prices is expected.

(02) In general, the base cost indices or prices should be those bases prevailing on the day 28 days prior to the closing date for the submission of bids.

(03) When prices in the contract are not adjustable, in whole or in part, a price adjustment formula or formulae should be included in the bidding documents to protect the bidders from the risk of price fluctuation in case of an extension of bid validity.

**Section 4.13 Advance Payment**

(1) The percentage of the total payment to be made in advance, upon entry into effect of the contract, for mobilization and similar expenses shall be reasonable and specified in the bidding documents.

(2) The bidding documents shall specify the arrangements for any security required for advance payments.

**<Notes>**

Advance payment clauses are generally included in contracts, 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.

#### **Section 4.14 Performance Securities and Retention Money**

(1) Bidding documents for works shall require a security in an amount sufficient to protect the Borrower in case of breach of contract by the Contractor. This security can be either a bank guarantee or a performance bond, the amount of which will vary with the type and size of the 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 interim payment to be held as retention money until final acceptance. The amount of the security required shall be stated in the bidding documents.

(2) In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Contractors may be required to provide a guarantee to protect the Borrower against nonperformance of the contract. Such security in an appropriate amount may also cover warranty obligations. Alternatively, a percentage of the payments may be held as retention money to cover warranty obligations, and any installations or commissioning requirements. The security or retention money 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 is not acceptable, since foreign bidders will be placed in an extremely disadvantageous position and fair competition will be hampered.

4. Paragraph (2):

In the case of the procurement of goods, the warranty period of a contract is generally 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 works contracts, the defects liability period of a contract should be about 1 year after the completion and 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 work contracts ahead of time 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 interim payment.
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 Contractors.

**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 Settlement of Disputes**

Provisions dealing with the settlement of disputes shall be included in the conditions of contract. International commercial arbitration administered by an international arbitration institution in a neutral venue has practical advantages over other methods for the settlement of disputes. Therefore, the use of this type of arbitration shall be stipulated as a condition of the contract unless JICA has specifically agreed to waive this requirement for justified reasons or the contract has been awarded to a bidder from the Borrower's Country. In case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall include mechanisms such as dispute boards or adjudicators, which are designed to permit a speedier dispute settlement.

#### **<Notes>**

"Rules of Arbitration" of the International Chamber of Commerce are recommended as the most widely used international arbitration rules.

**Section 4.19 Applicable Laws**

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

**<Notes>**

In addition to applicable laws, the contents of the Exchange of Notes and the provisions of the Loan Agreement will be taken into consideration in execution of the project by the Borrower.

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

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

(1) The time allowed for preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the size and complexity of the contract. Generally, not less than 45 days shall be allowed for international bidding.

(2) 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 invitation 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 bidding 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 this Section (not less than 45 days for general contracts and not less than 90 days for large work 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.
3. If prequalification is conducted in advance of the bidding, invitations to bid should be issued as soon as possible after the prequalification has been completed.

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

(1) The date, hour and place for the latest receipt of bids and for the opening of bids shall be announced in the invitations to bid and all bids shall be opened publicly at the stipulated time and place. Bids received after this time shall be returned unopened.

(2) The name of the bidder and total amount of each bid 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 JICA.

### **<Notes>**

#### **1. Paragraph (1):**

(01) The public opening of bids in this Section shall be observed to prevent the arbitrary award of a contract and to ensure a fair decision.

(02) The time for the bid opening shall be the same as for the deadline for the receipt of bids or promptly thereafter.

2. In the case of two-envelop bidding, financial bids, which are opened after the evaluation of the technical bids, shall be made public. It is necessary to ensure that financial bids 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. 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.
2. 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 the evaluation of bids.

**Section 5.04 Process to be Confidential**

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

**<Notes>**

1. The confidentiality of the process is essential to enable the Borrower and JICA to avoid improper interference either in an explicit or implicit manner.
2. This provision also applies to the prequalification process until the notification of prequalification results is made to all applicants.

### **Section 5.05 Examination of Bids**

(1) Following the opening of bids, it shall be ascertained 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.

(2) If a bid does not substantially conform to the specifications, or contains inadmissible reservations or is otherwise not substantially responsive to the bidding documents, it shall be rejected.

(3) A technical analysis shall then be made to evaluate each responsive bid and to enable bids to be compared.

#### **<Notes>**

1. Paragraph (1):

Examination shall be made in areas such as conformity to specifications required in the bidding documents, proper signatures, and the required bid bond amount and period.

2. Paragraph (2):

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. It is the Borrower who placed the order and 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. It is not permissible for a bid with a deviation unacceptable to the Borrower to be modified so as to conform to the specifications stipulated in the bidding documents, even without increasing or decreasing the bid price, since, as provided for in Section 5.03 of these Guidelines, such a practice constitutes an alteration of bid.

## **Section 5.06 Evaluation and Comparison of Bids**

(1) 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.

(2) Bid evaluation shall be consistent with the terms and conditions set forth in the bidding documents.

(a) The bidding documents shall specify 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.

(b) Factors other than price which may be taken into consideration include, inter alia, the payment schedule, the time of completion of construction or delivery, the operating costs, the efficiency and compatibility of the equipment, consumption (energy) efficiency, 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, these factors other than price shall be expressed in monetary terms according to criteria specified in the bidding documents.

(c) Provisions for price adjustment included in a bid shall not be taken into consideration.

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

(a) Bidders will be required to state in their bids the CIP (place of destination) price for imported goods or the EXW (ex works, ex factory, or off-shelf) price plus cost of inland transportation and insurance to the place of destination for other goods offered in the bid;

(b) 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

(c) 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 it is specified in the bidding documents.

(4) 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.

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

**<Notes>**

1. Paragraph (2):

Price adjustment on escalation stipulated in Section 4.12 of these Guidelines shall not be considered in the evaluation since it is impossible to make comparisons on the same basis among different adjustment formulae proposed by different bidders.

2. Paragraph (3):

Bids should be evaluated based on the CIP (place of destination) price for imported goods and EXW price plus cost of inland transportation and insurance to the place of destination for other goods. (The terms of CIP and EXW are defined by Incoterms 2010, or as revised from time to time.) "Goods" means end products and "EXW 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.

3. Paragraph (4):

The reason why tax treatment different from (3) (b) is permitted for (4) civil work contracts is that, although taxes should ideally also be excluded for civil work projects, taxes to be imposed for civil works vary greatly depending on the country, site location, location of firms, and type of works, meaning evaluation without taxes for each bid is, in practice, impossible.

4. As is clear from the phrase "the bid with lowest evaluated cost," the bid is judged to be the best after comprehensive consideration of the above factors, and the bid with the lowest "read-out price" will not necessarily be awarded the contract.

5. Under Japanese ODA Loans, the use of the Merit Point System, according to which price and technical factors are given relative weights, and the bid that obtains the

highest point total is selected, is not accepted in principle. Evaluation using Merit Point System tends to be subjective since no objective or impartial rule has been established for the allocation of weights to price and technical factors. These Guidelines require the 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.

6. 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 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.
7. The Borrower should complete the evaluation of bids within the bid validity period stipulated in the bidding documents.

### **Section 5.07 Postqualification of Bidders**

(1) 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.

(2) 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 is suitable for use in the procurement of goods of small value and small works contracts.
2. To facilitate the evaluation during the process of postqualification, bidding 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 bidding documents or otherwise modify the bid as originally submitted.

#### **<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 bidder 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. (It should be noted that Notification of Award is neither 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 should complete the evaluation of bids and award the contract within the period of the validity of bids. 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. An example of documents constituting a contract is:
  - Contract Agreement
  - Letter of Acceptance
  - Letter of Bid and Appendix to Bid
  - Conditions of Contract
  - Specifications
  - Drawings
  - Bill of Quantities
4. 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 joint venture to separately make contracts for a divided portion.

## **Section 5.10 Rejection of Bids**

(1) Bidding documents usually provide that the Borrower may reject all bids. Rejection of all bids may be justified when (a) the lowest evaluated bid exceeds the cost estimates by a substantial amount, (b) no bid is substantially responsive to the bidding documents or (c) there is a lack of competition. However, all bids shall not be rejected solely for the purpose of obtaining lower prices in the new bids to be invited on the same specifications.

(2) 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.

(3) Where exceptional circumstances justify it, 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. Paragraph (1):**

(01) 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 permitted only in case no other alternative is available.

(02) The Borrower may reject all the bids, if: a) the lowest bid price greatly exceeds the price expected by the Borrower (the price expected here may not be an unreasonably low price, determined unilaterally by the Borrower, but should be a price reasonably agreed upon with JICA such as the price obtained from the calculation of the loan amount, result of detailed design, or other proper measures for estimation), b) no bid meets the Borrower’s requirements (specification, etc.), or c) competition does not actually exist. In other words, bids should not be invited again solely for the purpose of obtaining a lower price.

(03) In the case of c) of (02) above, the fact that only one bidder submits a bid does not necessarily mean lack of competition. The so-called “single bid” is only the result of bidding and is different from direct contracting in nature: since the bidder did not know that it is a single bid, its bid is deemed to have been prepared in a competitive manner, and in such a situation the Borrower may award the contract

to the bidder.

2. Paragraph (2):

If, for justified reasons, re-advertisement is not practical or the rejection is due to all of the bids being non responsive, new bids may be invited, with the prior no objection from JICA, from the initially prequalified firms, or, in the absence of prequalification, from all firms having purchased the initial bidding documents. Exceptionally, when justified, JICA may agree to re-invite only those firms that submitted bids in the first instance.

3. Paragraph (3):

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 a) of 1.(02). (Prior consultation with JICA is required.)

4. Actions and considerations to be taken on the rejection of bids are as follows:

(01) The Borrower shall submit an application to JICA 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.

(02) 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.

(03) When the Borrower has selected negotiation with the lowest evaluated bidder but fails to obtain a satisfactory result, the Borrower shall promptly notify the result to such a bidder in a written form, prior to negotiation with the next lowest evaluated bidder. In addition, the Borrower shall consult with JICA regarding the result of the first negotiation, before starting the negotiation with the next lowest evaluated bidder.

**Section 5.11 Notification to Unsuccessful Bidders and Debriefing**

(1) Upon furnishing by the successful bidder of a performance security, the Borrower shall promptly notify the other bidders that their bids have been unsuccessful.

(2) If any bidder who submitted a bid wishes to ascertain the reasons why its bid was not selected, such bidder may request an explanation from the Borrower. The Borrower shall promptly provide an explanation as to why its bid was not selected.

**<Notes>**

Explanation should include the results of the bid evaluation of the bidder concerned in light of the evaluation criteria and/or the reason of the judgment of non-responsiveness, if any. It shall be provided in writing or in a meeting.

**Section 5.12 Information to be Made Public**

(1) After a contract is determined to be eligible for JICA's financing, the names of all bidders, their bid prices, the name and address of successful bidder concerning the award of contract, the name and address of supplier, and the award date and amount of the contract may be made public by JICA.

(2) The Borrower shall have all provisions and measures necessary to ensure that the above information shall be available for being made public incorporated in documents related to procurement, such as bidding documents and contracts.