

**PRACTICAL REFERENCE  
for  
the Procurement Procedures  
of  
Japanese ODA Loan Projects**

**2018**

**Japan International Cooperation Agency**

## Preface

Indonesia and Japan have long been working in partnership on the socioeconomic development of Indonesia. Japan's official development assistance (ODA) loans played a particularly crucial role in improving Indonesia's economic infrastructure, and have been extended to many development projects, including the construction of power generation and transmission systems, highway networks, railways and port facilities as well as river improvements. Many local construction companies and consultants have also been engaged in the projects financed by Japan's ODA loans.

For the successful implementation of development projects, fair and highly transparent bidding is essential. JICA's Guidelines for Procurement and the Employment of Consultants under Japanese ODA Loans (JICA's Procurement Guidelines) also underline the need to consider their procurement principles economy, efficiency, transparency in the procurement process, non-discrimination among eligible bidders during the selection process and quality. To ensure that the completed infrastructures are of high quality, JICA, like other international organizations, requires the use of its procurement guidelines as well as standard bidding documents that are in line with the international standards.

LKPP, established directly under the President of Indonesia in 2007, and JICA have had a series of discussion on the ways to better coordinate the use of Indonesia's procurement regulations and JICA's Procurement Guidelines. Both LKPP and JICA also confirmed the importance of having executing agencies complete the procurement process without confusion. As a result, LKPP and JICA reached the agreement in February 2017 that (1) JICA's Procurement Guidelines shall be used for international competitive biddings, and (2) Indonesia's domestic regulations (Perpres) shall be used for competitive biddings restricted to domestic bidders, and the attached memorandum was separately signed in November 2017.

This Practical Reference, formulated based on the attached memorandum, aims at guiding executing agencies to complete the procurement process under international competitive biddings without confusion, using JICA's Procurement Guidelines. It explains the content of JICA's Procurement Guidelines along with practical application methods, as well as the clear reference to Perpres articles that will not be applicable to international competitive biddings. It is our hope that this Practical Reference will be utilized by those involved in the procurement and contribute to the successful implementation of development projects.

January 2018

Yasushi Tanaka  
Director General  
Southeast Asia and Pacific Department  
Japan International Cooperation Agency (JICA)

**MEMMORANDUM  
BETWEEN  
JAPAN INTERNATIONAL COOPERATION AGENCY  
AND  
NATIONAL PUBLIC PROCUREMENT AGENCY  
ON  
PROCUREMENT UNDER JAPANESE ODA LOAN PROJECTS**

November 3, 2017, Jakarta

Japan International Cooperation Agency (hereinafter referred to as "JICA") and the National Public Procurement Agency of the Republic of Indonesia (hereinafter referred to as "LKPP") had a series of discussion on the basic policy on procurement of goods and services, as well as employment of consultants under Japanese ODA Loan Projects, and agreed as follows:

- 1) JICA and LKPP agreed that JICA and Executing Agencies of Japanese ODA Loan projects (hereinafter collectively referred to as "Executing Agency") decide procurement procedures to be applied to the ODA Loan projects, and confirm the procurement procedures in minutes of discussions signed by JICA and Executing Agency.
- 2) LKPP confirmed that LKPP has no objection to the decision of JICA and Executing Agency as mentioned in Paragraph 1 above to apply JICA's rules for procurement and consultant selection (e.g. Guidelines of Procurement and the Employment of Consultants) for international competitive bidding (ICB) and other international selection procedures, and Indonesian rules and regulations for local competitive bidding and other local selection procedures.

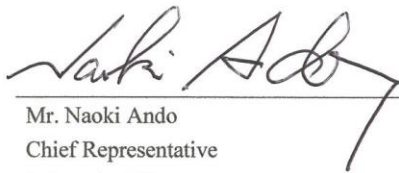
*AB.*

*L.A.*

3) JICA and LKPP confirmed that "PRACTICAL REFERENCE for the Procurement Procedures of Japanese ODA Loan Projects" issued by JICA as Attachment attached hereto will be used as a reference document by Executing Agency in case JICA and Executing Agency decide to apply ICB and other international selection procedures.

For

JAPAN INTERNATIONAL  
COOPERATION AGENCY



Mr. Naoki Ando  
Chief Representative  
Indonesia Office  
Japan International Cooperation  
Agency

For

NATIONAL PUBLIC PROCUREMENT  
AGENCY



Dr. Ir. Agus Prabowo, M.Eng,  
Chairman of National Public Procurement  
Agency

End

Attachment:

PRACTICAL REFERENCE for the Procurement Procedures of Japanese ODA Loan  
Projects

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## **Definition**

The words used in this Practical Reference have following meanings:

- (a) “Exchange of Notes” means diplomatic documents agreed between the two governments (Indonesia and Japan)
- (b) “Executing Agency” means an institution/organization which is responsible for procurement and implementation of a Japanese ODA loan project.
- (c) “International Competitive Bidding” or “ICB” means the procurement method open to all countries and areas including Indonesia under the Japanese ODA loans.
- (d) “JICA’s Review and Concurrence” mean all the processes vested in JICA and stipulated in the Loan Agreement which confirm the eligibility and appropriateness of procurement procedures taken by Executing Agency.
- (e) “Local Competitive Bidding” or “LCB” means the procurement method which is in accordance with the relevant rules and regulations set forth in Perpres.
- (f) “Minutes of Discussions” or “M/D” means the agreed documents between JICA and the Indonesian parties concerned including Executing Agency and BAPPENAS at the time of JICA’s appraisal. M/D includes the procurement method applicable to the concerned ODA loan project.
- (g) “Perpres” means the Presidential Regulation of the Republic of Indonesia No.54, Year 2010 including its amendments on government procurement.
- (h) “Standard Bidding Documents” mean the bidding documents including the Standard Request for Proposal and the Standard Prequalification Documents which are standardized and applicable to all Japanese ODA loan projects.

# **1. Introduction**

## **1.1. The Agreement between LKPP and JICA**

JICA and LKPP confirmed that the procurement procedures to be applied to all the Japanese ODA loan projects are based on the Memorandum agreed between LKPP Chairman and Chief Representative of JICA Indonesia Office on November 3, 2017 as per the attached copy to this Practical Reference.

## **1.2. Implication of the Agreement**

Based on the above agreement between LKPP and JICA, for the projects to be financed by Japanese ODA Loans, it is necessary to make a decision between JICA and Executing Agency on the procedure of procurement and employment of consulting service. For Japanese ODA loans, JICA's procurement guidelines, i.e. "Guidelines for Procurement under Japanese ODA Loans", "Guidelines for the Employment of Consultants under Japanese ODA Loans" together with Standard Bidding Documents (hereinafter collectively referred to as "JICA's Guidelines") are applied, and JICA and Executing Agency confirm this decision in Minutes of Discussion (M/D). Based on JICA's Guidelines, the following are put into practice:

For ICB and other international selection procedures, Executing Agency shall follow JICA's rules for procurement and consultant selection.

For local competitive bidding and other local selection procedures, Executing Agency shall follow Indonesian rules, i.e. Perpres.

## **1.3. Purpose of Practical Reference**

JICA and LKPP have agreed to use this "Practical Reference for the Procurement Procedures of Japanese ODA Loan Projects" (hereinafter referred to as "Practical Reference") as a ready resource to provide guidance to Executing Agency. The objective of this Practical Reference is to inform such Executing Agency on how to smoothly carry out proceeding of procurement of goods and services, and employment of consultant selection under the JICA's Guidelines. In the section "3. Important Points of Guidelines" of this Practical Reference, significant points to be noted for ICB and other international selection procedures are explained.

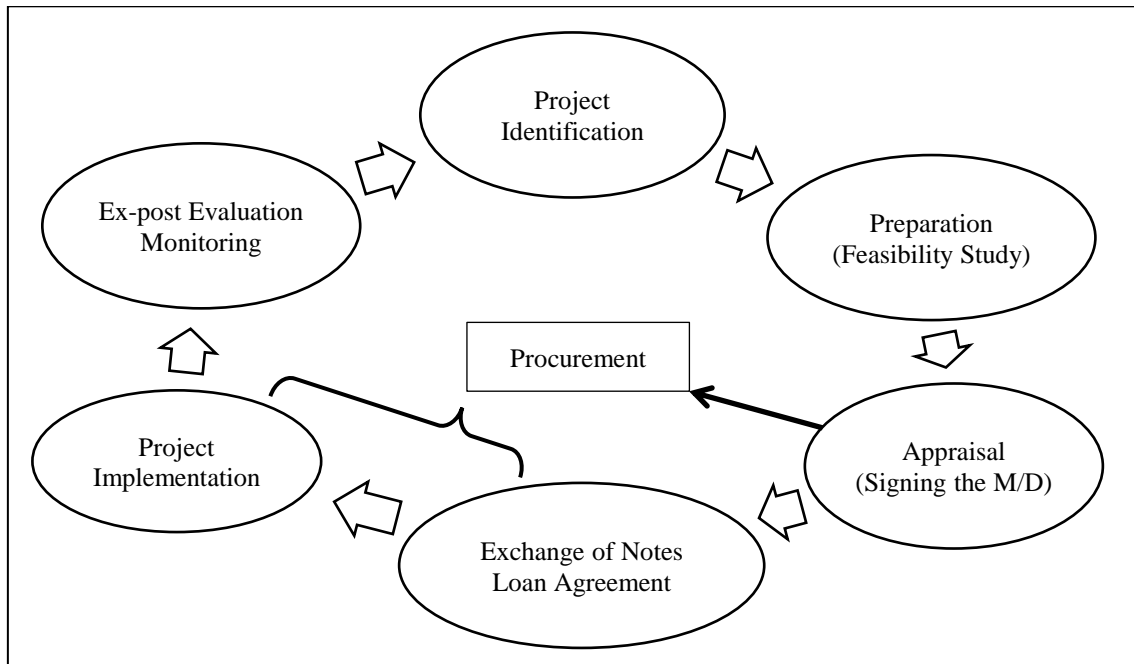
It should, however, be noted that Practical Reference may not cover all the detailed aspects of procurement. If Executing Agency has any concern/question, please do not hesitate to ask JICA Indonesia Office.



## 2. Planning and Implementation of Procurement

### 2.1. Project Cycle

ODA loans usually follow a sequence of standard procedures. They are: project identification, preparation, appraisal, exchange of notes, loan agreement, project implementation including procurement, ex-post evaluation and monitoring after project completion. Thus, the whole series of procedures forming the circle is called the “project cycle”.



Japanese ODA Loan Project Cycle

### 2.2. Planning of Procurement

#### 2.2.1. Preparation Stage

In the preparation stage, a feasibility study (F/S) of a project is conducted. An F/S involves more detailed examination of the project’s economic, social, financial and technical feasibility and its environmental impacts. At this stage, the planning of procurement is also an important element. The packaging and selection of appropriate procurement methods are necessary factors to be incorporated in the F/S.

#### 2.2.2. Appraisal Stage

The purpose of appraisal by JICA is to confirm whether the project is suitable for Japanese ODA loan financing. At this stage, JICA dispatches a fact-finding mission and appraisal mission, and review the feasibility, including the procurement plans for consultants, and goods and services relating to the Project. The result of appraisal will be incorporated in M/D which should be signed by Executing Agency, BAPPENAS and JICA.

- (1) Employment of Consultants  
Based on the analysis of the institutional capacity of the Executing Agency, JICA reviews:
  - a) the need to employ consultants
  - b) Terms of Reference (TOR) which explicitly describes the scope of services assigned to consultants, and the nature of their responsibilities, and
  - c) the selection method of consultants.
- (2) Procurement of Goods and Services  
JICA reviews the contract package together with the procurement method for the Project in terms of the nature of goods and services to be procured

### **2.2.3. Exchange of Notes (E/N) Stage**

The procurement conditions are discussed and decided by the two governments. The Government of Japan determines conditions for the procurement under the concerned Japanese ODA loan project, based on the following categories:

- (1) General Untied  
The Borrower may procure goods and services from all countries and areas.
- (2) Tied  
Special Terms for Economic Partnership (STEP) loan

### **2.2.4. Loan Agreement Stage**

At this stage, the procurement procedures are discussed and clearly stipulated in the Loan Agreement (L/A), especially in “Schedule 4 Procurement Procedures”.

The major points to be included in L/A are:

- (1) Guidelines to be used for the procurement under the Loan
- (2) Eligible source countries
- (3) JICA’s review and concurrence relating to the procurement of goods and services (except consulting services)
- (4) JICA’s review and concurrence of decisions relating to the employment of consultants

## **2.3. Implementation of Procurement**

### **2.3.1. Procedures for Employment of Consultants**

Consultants are selected by the Quality-Based Selection (QBS) method or the Quality- and Cost-Based Selection (QCBS) method. In the case of QCBS method, the selection procedures are as follows:

- (1) Preparation of Terms of Reference (TOR)
- (2) Preparation of Short List of Consultants (S/L)
- (3) Preparation of Request for Proposals (RFP) based on JICA’s Standard Request for Proposals (SRFP)
- (4) JICA’s Review and Concurrence (1<sup>st</sup>) on S/L and RFP
- (5) Sending the RFP to short listed consultants
- (6) Receiving proposals from short listed consultants
- (7) Opening of technical proposals

- (8) Evaluation of technical proposals
- (9) JICA's Review and Concurrence (2<sup>nd</sup>) on the result of evaluation of technical proposals
- (10) Public opening of financial proposals
- (11) Evaluation of financial proposals
- (12) Ranking of proposals based on the total score (combination of technical score and financial score)
- (13) JICA's Review and Concurrence (3<sup>rd</sup>) on the ranking of consultant and result of evaluation
- (14) Invitation of 1<sup>st</sup>-ranking consultant
- (15) Contract negotiation
- (16) Signing of contract
- (17) JICA's Review and Concurrence (4<sup>th</sup>) on the signed contract
- (18) Effectuation of contract

### **2.3.2. Procurement of Goods and Services**

As an example, procurement procedures of the two envelope method with Pre-qualification (P/Q) for a large scale contract are outlined as follows:

- (1) Preparation of P/Q documents based on JICA's Standard P/Q documents
- (2) JICA's Review and Concurrence (1<sup>st</sup>) on P/Q documents
- (3) Advertisement of P/Q documents
- (4) Receiving P/Q applications
- (5) Evaluation of P/Q applications
- (6) Decision on P/Q evaluation result
- (7) JICA's Review and Concurrence (2<sup>nd</sup>) on the process and result of P/Q
- (8) Preparation of Bidding Documents (B/Ds) based on JICA's Standard Bidding Documents
- (9) JICA's Review and Concurrence (3<sup>rd</sup>) on the draft B/Ds
- (10) Sending B/Ds to qualified bidders
- (11) Receiving bids from qualified bidders
- (12) Opening of technical bids
- (13) Evaluation of technical bids
- (14) JICA's Review and Concurrence (4<sup>th</sup>) on the evaluation result of technical bids
- (15) Public opening of financial bids of only for bidders who passed the technical evaluation
- (16) Evaluation of financial bids
- (17) Decision of award
- (18) JICA's Review and Concurrence (5<sup>th</sup>) on the evaluation result of financial bids and proposal of award
- (19) Award (Letter of Acceptance)
- (20) Signing of contract
- (21) JICA's Review and Concurrence (6<sup>th</sup>) on the signed contract

### **3. Important Points of Guidelines**

Although there is not much difference between Perpres and JICA's procurement rules, some articles of Perpres conflict with JICA's Guidelines. This Practical Reference explains the important points to which Executing Agency (EA) should pay attention at the time of procurement of goods and services, including consulting services.

In the Practical Reference, important points of procurement rules are explained separately for consultants ("3.1. Consultant Guidelines" below) and for goods and services (later in "3.2. Procurement Guidelines").

#### **3.1. Consultant Guidelines**

Procedures for the employment of consultants under Japanese ODA Loans follow JICA's "Guidelines for the Employment of Consultants under Japanese ODA Loans" (hereinafter referred to as "JICA's Consultant Guidelines"). Following articles in the JICA's Consultant Guidelines need to be addressed in order for EA to understand the difference between Perpres and JICA's Consultant Guidelines.

Section 1.01	Introduction
Section 1.05	JICA's Review
Section 1.07	Conflict of Interest
Section 1.08	Language
Section 2.01	Types of Assignment
Section 3.04	Preparation of Short List of Consultants
Section 3.07	Sending of the Request for Proposals to Consultants
Section 3.10	Evaluation of Financial Proposals and Ranking of Proposals
Section 3.11	Contract Negotiations
Section 4.07	Description of Consultants' Costs and Fees
Section 4.09	Conditions and Methods of Payment
Section 4.16	Modifications
Section 4.20	Applicable Laws

### 3.1.1. Section 1.01 Introduction

#### Part I GENERAL

#### Section 1.01 Introduction

(1) “Guidelines for the Employment of Consultants 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) For the efficient and proper preparation and implementation of projects financed in whole or in part by Japanese ODA Loans, most Borrowers of Japanese ODA Loans require the assistance of consultants (In these Guidelines, the term "the Borrower" also refers to the Executing Agency of the project and the term "consultant(s)" includes a wide variety of private and public entities such as consulting firms, engineering firms, construction firms, management firms, procurement agents, multinational organizations, universities, research institutions, government agencies, nongovernment agencies (NGOs), and individuals).

(3) The purpose of these Guidelines is to indicate JICA's views as to the proper selection and employment of consultants and the full utilization of consultants' expertise, and to ensure their impartiality, and, in addition, to set forth general rules to be followed by Borrowers in their use of consultants. Main considerations in selecting consultants are quality, efficiency, transparency in the selection process and non-discrimination among consultants eligible for contracts. The application of these Guidelines to a particular project financed by Japanese ODA Loans is to be stipulated in the Loan Agreement between JICA and the Borrower.

#### <Notes>

Paragraph (1):

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

Paragraph (2):

Since a majority of consultants employed under Japanese ODA Loans are private consulting firms, the term “a firm(s)”, wherever used in the following Sections in these Guidelines, may be interpreted as “an entity(ies)”, or “a consultant(s)” as appropriate.

## **Points of Attention for Executing Agencies**

1. JICA's Consultant Guidelines shall be used for the employment of consultants under Japanese ODA Loan projects.
2. It is acceptable for EA to encourage foreign consultants to work in association with local consultants. However, EA shall not compel foreign consultants to form such association with local consultants, limit the number of foreign consultant in JV or apply preference margins and/or domestic preference because JICA's Consultant Guidelines clearly uphold "non-discrimination among consultants" as a main consideration to be given during the selection process. In addition, the obligation to associate with a local consultant may restrict the prime consultant referred to in the Short List from making a free choice, which is prohibited in JICA's Consultant Guidelines (see <Notes> 2. Paragraph (1) (01) of Section 3.05 of JICA's Consultant Guidelines).

In a large project, it is envisaged that foreign consultants will form joint ventures or associations. In such a case EA shall not limit the number of JV members regardless of nationality of such firms in accordance with "non-discrimination among consultants" principle.

3. In a large project, a Japanese ODA loan may be provided by phases, considering its magnitude and time frame although the total estimated cost and implementation schedule of the whole project will be described in the Minutes of Discussion. In such a case, the first loan is insufficient to cover the total project budget. The contract of the project under the first loan can be signed in anticipation of the succeeding loans.
4. If the budget is not available or not sufficiently available for the selection of consultants, such selection may be cancelled. In such a case JICA and the Indonesian parties concerned will work in close consultation to find a solution. Attention should be paid that the cancellation of the selection process shall be subject to concurrence of JICA.
5. Any procedure under which proposals above or below a predetermined value, such as Owner's Estimate (OE), are automatically disqualified is not permitted. Therefore, EA shall not put such a ceiling amount for the price of proposal in order to disqualify the consultants.
6. To emphasize free competition among consultants, JICA does not accept the idea of disclosing the estimated price for the contract before the selection.

## **Reference to Perpres No.54**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 2 (3): The provisions on procurement partially or wholly financed by Foreign Loans/Grants:  
The stipulation "The provisions on Procurement, partially or wholly financed by Foreign Loans/Grants, are based on this Presidential Regulation." is not applicable because JICA's Consultant Guidelines are applied.
- Article 13: Budget Availability:  
This article (Prohibition of entering into an agreement or signing a Contract with a Provider of Goods/Services if no budget or no sufficient budget is available, etc.) is not applicable

because the suspension/cancellation of the procurement process has negative impact to smooth and timely implementation of a project. EA should pay full attention to the appropriation of the necessary budget through the communication with relevant ministries and JICA.

- Article 19: Conditions on the Providers of goods/services:  
This article (conditions relating taxpayer identification numbers, etc.) is not applicable because one of the fundamental principles of JICA's Consultant Guidelines is non-discrimination. Also, it could have an adverse influence on quality of consulting services. Please refer to Perpres No. 70 (an amendment to Perpres No. 54) Article 19 (1a) (Foreign Providers of Goods/Services are excepted from item d, item j and item l of subsection (1)).
- Article 66: Owner's Estimate (OE):  
This article (The total OE amount is open and not confidential, etc.) is not applicable because JICA does not accept the idea of disclosing the estimated price for the contract before the selection, to emphasize free competition among consultants.
- Article 96: Maximum use of domestic goods/services, including domestic experts.:  
This article is not applicable because one of the fundamental principles of JICA's Consultant Guidelines is non-discrimination which includes non-restriction for the prime consultant in the Short List on its free choice (see <Notes> 2. Paragraph (1) (01) of Section 3.05 of JICA's Consultant Guidelines). Also, it could have an adverse influence on quality of consulting services.
- Article 97: Maximum use of domestic goods/services:  
This article (Domestic Products shall be used for Providers of Goods/Services who offer Goods/Services with TKDN value plus the Company Benefit Weight (BMP) value representing at least 40%) is not applicable because one of the fundamental principles of JICA's Consultant Guidelines is non-discrimination which includes non-restriction for the prime consultant in the Short List on its free choice (see <Notes> 2. Paragraph (1) (01) of Section 3.05 of JICA's Consultant Guidelines). Also, it could have an adverse influence on quality of consulting services.
- Article 98: Price preference for domestic goods/services, including consultants.  
This article is not applicable because one of the fundamental principles of JICA's Consultant Guidelines is non-discrimination which includes non-restriction for the prime consultant in the Short List on its free choice (see <Notes> 2. Paragraph (1) (01) of Section 3.05 of JICA's Consultant Guidelines). Also, it could have an adverse influence on quality of consulting services.
- Article 101: Procurement through International Bidding/Selection  
This article (Maximizing the use of domestic components and national Providers, Partnership between foreign Providers of Goods/Services and domestic Industries, etc.) is not applicable because one of the fundamental principles of JICA's Consultant Guidelines is non-discrimination which includes non-restriction for the prime consultant in the Short List on its free choice (see <Notes> 2. Paragraph (1) (01) of Section 3.05 of JICA's Consultant Guidelines). Also, it could have an adverse influence on quality of consulting services.
- Article 102: Procurement Financed by a Foreign Loan/Grant  
This article (Maximum use of national capacity/potential and national standards, etc.) is not applicable because one of the fundamental principles of JICA's Consultant Guidelines is

non-discrimination which includes non-restriction for the prime consultant in the Short List on its free choice (see <Notes> 2. Paragraph (1) (01) of Section 3.05 of JICA's Consultant Guidelines). Also, it could have an adverse influence on quality of consulting services.



### 3.1.2. Section 1.05 JICA's Review

#### Section 1.05 JICA's Review

(1) JICA may review the Borrower's selection 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 consulting services to be financed by Japanese ODA Loans.

(2) JICA does not finance expenditures for services provided by consultants who, in the opinion of JICA, have not been selected in accordance with the agreed procedures and JICA will cancel that portion of the Loan allocated to such services provided by consultants who have not been properly selected. JICA may, in addition, exercise other remedies under the Loan Agreement.

#### <Notes>

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

In general, decisions relating to employment of consultants subject to JICA's review and concurrence are as follows:

- (01) Before proposals are invited from consultants, the Borrower shall submit to JICA a Short List of Consultants and the Request for Proposals (refer to Notes 1. of Section 3.05).
- (02) When Quality- and Cost-Based Selection (QCBS) is adopted, the Borrower shall, before opening financial proposals, submit to JICA the Borrower's analysis of technical proposals.
- (03) Before initiating contract negotiations with the highest-ranked consultant, the Borrower shall submit to JICA the results of the Borrower's evaluation of proposals.
- (04) Promptly after executing a contract, the Borrower shall submit to JICA a duly certified copy of the contract.

##### 2. Paragraph (2):

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

#### Points of Attention for Executing Agencies

There are many inappropriate cases found by JICA through its review and concurrence procedures in some countries. In order to ensure accountability, transparency and the effective use of JICA funds, JICA is delegated by the Japanese Government to review and concur with the procurement procedures as stipulated in Schedule 4 of Loan Agreement. JICA is audited by the Board of Audit of Japan for appropriate use of government funds.

#### Reference to Perpres No.54

N/A

### 3.1.3. Section 1.07 Conflict of Interest

#### Section 1.07 Conflict of Interest

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

(1) Conflict between consulting activities and procurement of goods or non-consulting services: A consultant that has been engaged to provide goods or non-consulting services for a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that consultant, shall be disqualified from providing consulting services resulting from or directly related to those goods or non-consulting services. Conversely, a consultant hired to provide consulting services for the preparation or implementation of a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that consultant, shall be disqualified from subsequently providing goods or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the Contractor's obligations under a turnkey or design and build contract.

(2) Conflict among consulting assignments: Neither consultant nor any affiliate that directly or indirectly controls, is controlled by, or is under common control with that consultant, shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultant.

(3) Relationship with Borrower's staff: A consultant 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 Terms of Reference for the assignment, (ii) the selection process for the contract, or (iii) the supervision of such contract, shall be disqualified.

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

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

**<Notes>**

1. "The conflict of interest provision" herein should be incorporated into the Request for Proposals.

2. Paragraphs (1), (2), and (4):

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.

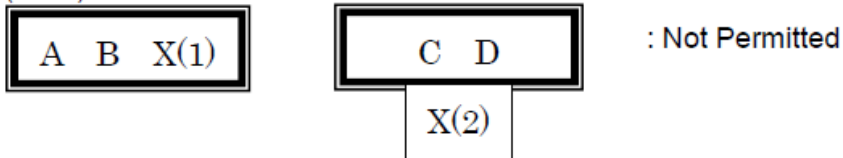
3. Paragraph (4):

The diagram below shows the idea of "One Bid Per Bidder" stipulated in Paragraph (4). "X(1)" and "X(2)" in the diagram stand for the same firm or the affiliates.

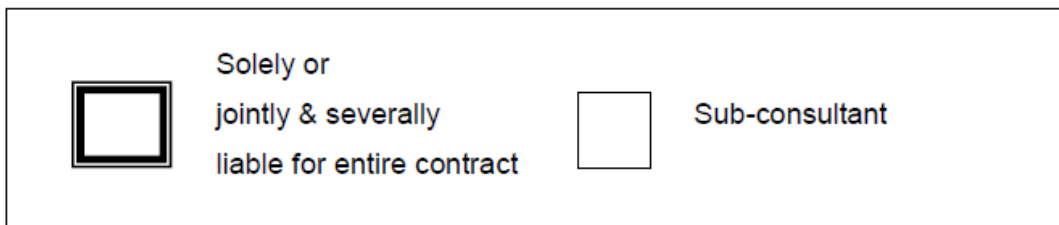
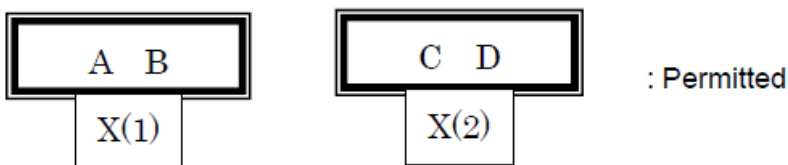
(ex. 1)



(ex. 2)



(ex. 3)



4. Paragraph (5):

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 consultant lends or temporarily second its personnel to the Contractor and any of the personnel is directly or indirectly involved in any capacity in the same project, that consultant shall be

disqualified from the selection for the consulting services resulting from the goods and non-consulting services delivered by the Contractor. On the contrary, in a case where the personnel of the consultant are not involved in the project in question, such exchange of personnel will not constitute a reason for disqualification of the consultant. Likewise, it is recognized that conflict of interest does not exist when the personnel have resigned from the consultant).

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.

#### **Points of Attention for Executing Agencies.**

As stipulated in Section 2.01 of JICA's Consultant Guidelines, a planning consultant which prepares a feasibility study, detailed design, etc. is allowed to participate as a construction management/supervising consultant, taking into account the advantages of continuity of a basic technical approach.

#### **Reference to Perpres No.54**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 6: Procurement Code of Ethics:  
This article and the explanation of this article (cases of conflict among consulting services, etc.) are not applicable, because the advantage as a planning consultant does not undermine non-discrimination with other consultants so that the conflict of interest does not exist.
  
- Article 19 (4): Conflict of Interest:  
This article and the explanation of this article (cases of conflict among consulting services, etc.) are not applicable, because the advantage as a planning consultant does not undermine non-discrimination with other consultants so that the conflict of interest does not exist.

### 3.1.4. Section 1.08 Language

#### Section 1.08 Language

All documents relating to the selection and employment of consultants, 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>

Similarly, the proposals shall be prepared in Japanese, English, French or Spanish. In cases where, as a result, a domestic consultant 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.

#### Points of Attention for Executing Agencies

1. Due attention should be paid that all the documents for the international procurement under Japanese ODA Loans shall be prepared in English from the view point of international standards and non-discrimination principle.
2. JICA's Guidelines allow EA to prepare procurement documents in the Indonesian language for the Borrower's reference, and Perpres 54 Article 101 also requests EA to prepare such documents in both English and Indonesian.
3. Although EA may issue translated versions of documents in the Indonesian language for the Borrower's reference, the English documents shall take precedence, based on the stipulations of JICA's Consultant Guidelines.
4. It is time and cost consuming to put the Indonesian language in procurement documents. Therefore, it should not be mandatory to put the Indonesian language in such documents.

#### Reference to Perpres No.54

The following Article is not applicable to Japanese ODA loan projects:

- Article 101 (3): In the case of different interpretations in the Procurement Documents: This article (Prevailing Indonesian language in the case of different interpretations between the versions of different languages, etc.) is not applicable from the view point of international standards and non-discrimination which is one of the fundamental principles of JICA's Consultant Guidelines. In Indonesia, the English documents shall take precedence in accordance with Section 1.08 of JICA's Consultant Guidelines above.

### 3.1.5. Section 2.01 Types of Assignment

#### Section 2.01 Types of Assignment

- (1) In general, the services of consultants can be grouped into the following five broad categories:
- (a) Preinvestment studies, including:
    - (i) determination of the relative priority to be accorded a project;
    - (ii) preparation and comparison of alternatives, and recommendations as to the best solution;
    - (iii) general engineering layout and preliminary design of major structures;
    - (iv) estimates of costs, benefits and construction period;
    - (v) evaluation of economic and technical soundness, financial and commercial viability, suitability of organizational and managerial arrangements and social and environmental impact;
    - (vi) studies and/or recommendations related to environmental and social matters, including implementation/review of environmental impact assessments; and
    - (vii) other recommendations concerning implementation of the project.
  - (b) Preparation services, including:
    - (i) detailed investigations and review of preinvestment studies;
    - (ii) preparation of detailed designs, specifications and contract documents;
    - (iii) pre-qualification of contractors, suppliers or manufacturers (hereinafter collectively referred to as “Contractor(s)”);
    - (iv) evaluation of bids and recommendations regarding award of contract; and
    - (v) studies and/or recommendations related to environmental and social matters, including implementation/review of environmental impact assessments.
  - (c) Implementation services, including:
    - (i) supervision of construction work;
    - (ii) technical and administrative services for the implementation and management of the project; and
    - (iii) studies and/or recommendations related to environmental and social matters, including environmental management, monitoring and audit.
  - (d) Assistance in the start-up of facilities and operation:

Assistance in operation and maintenance of the facilities after the project completion and the start-up of facilities and their operation for an initial period.
  - (e) Other services necessary for the project, including:
    - (i) advisory services, in connection, for example, with national and/or sectorial development plans and institution building;
    - (ii) assistance in implementation of recommendations, post-evaluation and impact studies of the project; and
    - (iii) other Borrower support services.

(2) Taking into account the advantages of continuity of a basic technical approach, it is advisable that functions (b), (c) and (d) above be carried out by the same consultant. If a consultant has already satisfactorily carried out function (a), it shall not be excluded from the short list for a consultant to carry out functions (b), (c) and (d) because of its prior involvement in the project.

**<Notes>**

1. Paragraph (1):

(01) All these studies in (i) to (vi) of (a) are termed “feasibility studies.”

(02) “Technical and administrative services for the implementation and management of the project” in (ii) of (c) refer to overall organizational operations, financing, production management, market research (marketing), sales, information management, and labor management.

(03) (d) refers to instruction and technical training associated with the operation of the project.

2. Paragraph (2):

Among those referred to in (ii) of (e) of paragraph (1), post-evaluation (including evaluation of the consultant’s performance) should be carried out by a consultant other than the consultant referred to in (b) or (c).

**Points of Attention for Executing Agencies**

As stipulated in Section 2.01 (2) of JICA’s Consultant Guidelines, the planning consultant which prepares a feasibility study, detailed design, etc. is allowed to participate as a construction management/supervising consultant.

**Reference to Perpres No.54**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 6: Procurement Code of Ethics:  
This article and the explanation of this article (cases of conflict among consulting services, etc.) are not applicable because the advantage as a planning consultant does not undermine non-discrimination with other consultants so that the conflict of interest does not exist.
  
- Article 19 (4): Conflict of Interest:  
This article and the explanation of this article (cases of conflict among consulting services, etc.) are not applicable because the advantage as a planning consultant does not undermine non-discrimination with other consultants so that the conflict of interest does not exist.



### 3.1.6. Section 3.04 Preparation of Short List of Consultants

#### Section 3.04 Preparation of Short List of Consultants

(1) Once JICA and the Borrower have agreed on the Terms of Reference for the consulting services required, as described in Section 3.03, the Borrower shall prepare a Short List of Consultants to be invited to submit proposals, taking into account the factors mentioned in Parts I and II. (See Annex II)

(2) Such a Short List shall normally consist of not less than three and not more than five consultants. There is usually little advantage in inviting more than five consultants to submit proposals, because with a larger number some are likely to be less interested and the quality of proposals is likely to suffer.

(3) Should the Borrower find it difficult to compile a satisfactory Short List of qualified consultants from the information available to it from its own past experience and other sources, JICA will, at the request of the Borrower, make available information on consultants, from which the Borrower may draw up its own Short List.

#### <Notes>

1. In principle, the consultants shall satisfy the following conditions to be listed in the Short List:
  - (01) The consultants have satisfactory overseas experience of the consulting services concerned (e.g. detailed design, supervision) in the sector in question (in a narrow sense, e.g. ports other than fishing ports, irrigation). However, if the consultant is from a developing country and is to provide the consulting services in that country, it need not have any overseas experience in the area of the consulting services concerned.
  - (02) Consultants must have experience in a developing country.
  - (03) Experience with Japanese ODA projects is preferable.
2. The reasons why the number of consultants normally needs to be 3 to 5 are:
  - To encourage consultants to prepare well elaborated proposals by giving certain level of opportunity to be awarded.
  - To increase the probability of a well-qualified consultant being selected.
  - To allow for an intense and meaningful evaluation of proposals.
  - To reduce the opportunity for outside influence.
3. Any consultant from a country other than the eligible source countries must not be listed on the Short List, neither as a single participant nor a member of a joint venture.
4. The Short Listed consultants may undertake works in association with other consultants listed or not listed in the Short List as long as the Short Listed consultants execute a major portion of the required services.

5. Prior to the preparation of a Short List, it is not necessary to invite Expressions of Interest. However, if Expressions of Interest are invited, the invitation shall be advertised in at least one newspaper of general circulation in the Borrower's country. The information should be the minimum required to make a judgment on the consultant's suitability, and should not be too complex as to discourage consultants from expressing interest. In addition, no consultant shall be excluded by a factor outside their competence.

### **Points of Attention for Executing Agencies**

1. The method to be used in the preparation of Short List of Consultants (S/L) shall be decided by EA. Usually, such a method is discussed and agreed at the time of appraisal. The agreed method shall be clearly stated in the Minutes of Discussion (M/D) between the Indonesian Government/EA and JICA.
2. JICA will give available information on consultants to EA for the preparation of S/L if requested by EA.
3. JICA's Consultant Guidelines do not require EA to conduct the Expression of Interest (EOI) process for the preparation of S/L. If the EOI process is to be conducted, the invitation to submit EOI shall be advertised in at least one newspaper of general circulation in Indonesia. The information should be the minimum required to make a judgment on the consultant's suitability, and should not be too complex so as not to discourage consultants from expressing interest. In addition, no consultant shall be excluded due to a factor outside their competence.

### **Reference to Perpres No.54**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 42 (2): The Selection of Providers of Consulting Services through a Competitive Selection Method:  
This article is not applicable because the official announcement is not required in the case of Short-List method.
- Article 42 (3): A Short List under a Competitive Selection:  
The number of short-listed consultant should be three to five as stipulated in Section 3.04, not five to seven stipulated in Perpres.
- Article 43 (3): The Selection of Providers of Consulting Services through a Simple Selection Method:  
This article is not applicable because the official announcement is not required in the case of Short-List method.

### **Perpres No. 4 (An amendment to Perpres No. 54)**

The following Article is not applicable to Japanese ODA loan projects:

- Article 109 (7): E-Tendering Process  
JICA's Guidelines do not provide the stipulation on the E-Tendering and the Standard

Bidding Documents are not designated for E-Tendering. JICA has not yet accepted to apply the SPSE (Sistem Pengadaan Secara Elektronik) to Japanese ODA loan projects.

### 3.1.7. Section 3.07 Sending of the Request for Proposals to Consultants

#### Section 3.07 Sending of the Request for Proposals to Consultants

After preparing the Short List and the Request for Proposals in accordance with the provisions of the foregoing Sections, the Borrower shall invite all the consultants on the Short List to submit proposals by mailing to them the Request for Proposals.

#### <Notes>

In principle, it is considered that a competition has taken place even if only one consultant has submitted a proposal, because at the moment of submission, that consultant does not know it is the only one submitting an offer. Therefore, the Borrower can proceed to the evaluation of the proposal and, if the proposal is satisfactory, to contract negotiations. When all consultants on the Short-List form a joint venture and only one proposal is submitted, however, it is evident that competition did not take place. In such a case, the Borrower should consult with JICA on further procedures.

#### Points of Attention for Executing Agencies

EA can proceed to the evaluation of the proposal(s) even if only one consultant has submitted the proposal except when all short-listed consultants form a joint venture and submit one proposal as stipulated in the <Notes>, Section 3.07 as above. This is because at the moment of submission, the consultant does not know whether s/he is the only one submitting a proposal. It is thus considered that a competition has taken place.

#### Reference to Perpres No.54

The following Articles are not applicable to Japanese ODA loan projects:

- Article 58: Steps to Select Providers of Consulting Services:  
This article is not applicable because the procedures stipulated in JICA's Consultant Guidelines and Standard Request for Proposals should be applicable.
- Article 83: Unsuccessful Selection:  
This article (Selection is unsuccessful if less than 3 (three) bidders submit Bid Documents, etc.) is not applicable because it is considered that a competition has taken place even if only one consultant has submitted a proposal as stipulated in the <Notes> of JICA's Consultant Guidelines Section 3.07.
- Article 84: Procedures after Unsuccessful Selection:  
This article (In the case that only 1 (one) bidder submits a bid in the repeat Bidding/Selection, the process shall continue as in the Direct Appointment process, etc.) is not applicable because it is considered that a competition has taken place even if only one consultant has submitted a proposal as stipulated in the <Notes> of JICA's Consultant Guidelines Section 3.07.

### **3.1.8. Section 3.10 Evaluation of Financial Proposals and Ranking of Proposals**

#### **Section 3.10 Evaluation of Financial Proposals and Ranking of Proposals**

(Applicable only to QCBS)

(1) The Borrower shall review the congruency of the technical and financial proposals, make adjustments as appropriate, and correct arithmetical or computational errors.

(2) The total score shall be obtained by weighting and adding the technical and financial scores; this will determine the overall ranking of the consultants' proposals. The weight for the "cost" shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. It shall normally be 20%.

#### **<Notes>**

1. The minimum man-months required for the assignment (both international and local), the weight for quality and cost, and the methodology to calculate the total score shall be expressed in the Request for Proposals.
2. Paragraph (2):  
The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.
3. If financial proposals contain unreasonably low price, the Borrower should ask the consultant concerned for clarification of such an offer and should receive answers from the consultant to ensure appropriate execution during the contract stage, before concluding the evaluation.

#### **Points of Attention for Executing Agencies**

1. In the case of QCBS, the relative weight to be given to quality and cost, respectively, shall be determined in consideration of the nature of the assignment, at the time of appraisal. The result should be clearly stipulated in the Minutes of Discussion between the Indonesian Government/EA and JICA.
2. It should be noted that 20% is the maximum weight given to cost since consulting service plays critical role to have successful project with good quality. For a project that is necessary to have higher technology including advanced technology, higher weight should be given to the technical scores.
3. In the case of QBS, all financial proposals from consultants who passed the evaluation of technical proposals shall not be opened at the same time.

## **Reference to Perpres No.54**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 49: Bid Evaluation Method in Procurement of Consulting Services:  
This article (Technical score between 0.60 and 0.80; Cost score between 0.20 and 0.40) is not applicable because 20% is the maximum weight given to cost, in view of JICA's emphasis on quality as mentioned in "Points of Attention for Executing Agencies" 2. above.
  
- Article 83: Unsuccessful Selection:  
This article (Selection is unsuccessful if the corrected lowest price for a Unit Price Contract is higher than Owner's Estimates, etc.) is not applicable because the proposed unit rates for remuneration have been factors in the selection process as stipulated in JICA's Consultant Guidelines Section 3.11 (1). Attention should be paid that such practice would adversely affect quality, one of the principles of JICA's Consultant Guidelines. Any procedure under which proposals above or below a predetermined value, such as Owner's Estimate (OE), are automatically disqualified is also not permitted as explained in "Points of Attention for Executing Agencies" for Section 1.01 of JICA's Consultant Guidelines.

## **Perpres No. 70 (An amendment to Perpres No. 54)**

The following Article is not applicable to Japanese ODA loan projects:

- Article 49: Bid Evaluation Method in Procurement of Consulting Services:  
This article (Technical score between 0.60 and 0.80; Cost score between 0.20 and 0.40) is not applicable because the weight of financial score shall normally be 20% in view of JICA's emphasis on quality as mentioned in "Points of Attention for Executing Agencies" 2. above.

### 3.1.9. Section 3.11 Contract Negotiations

#### Section 3.11 Contract Negotiations

(1) After evaluation of the proposals has been completed, the Borrower shall invite the highest-ranked consultant to enter into negotiations on the conditions of a contract between them. When QCBS is applied, proposed unit rates for remuneration shall not be altered since they have been factors in the selection process.

(2) When QBS is applied, discussions concerning costs and other financial matters shall be conducted only with a consultant who has been selected to be invited to enter into contract negotiations.

(3) If the two parties are unable to reach agreement on a contract within a reasonable time, the Borrower may terminate the negotiations with the highest-ranked consultant and invite the consultant who ranked second in the evaluation to enter into negotiations. The Borrower shall consult with JICA prior to taking this step. This procedure shall be followed until the Borrower reaches agreement with a consultant.

(4) While there should be some flexibility in work plans, staff assignment and major work inputs which have been previously agreed on as appropriate for the assignment shall not be materially modified to meet a budget.

#### <Notes>

1. Discussions on the work program, staff assignment plan, and services to be provided by the Borrower should be completed during contract negotiations. Contract negotiations will not substantially alter the TOR attached to the Request for Proposals.
2. Paragraph (3):  
Contract negotiations with the second-ranked consultant require prior consultation with JICA.
3. Financial negotiations may include discussions of the consultant's tax liability in the Borrower's country (if any) and the quantities of reimbursable items in the consultant's financial proposal but shall be reasonable in order to keep consistency between the quality and the price of the services.
4. Before or after the contract, any change of the proposed staff should not affect the quality of services and undermine the effectiveness of the selection procedures. Therefore, if a change of staff is necessary, it should be examined in a discreet manner with its reasons. In case such a change is reasonably underpinned, the staff to be assigned shall be qualified at the same or higher level as required in the evaluation criteria.

## **Points of Attention for Executing Agencies**

1. JICA's Consultant Guidelines clearly prohibit the price negotiation of the unit rates for remuneration during contract negotiations, in the case of QCBS. Due attention should be paid to JICA's Consultant Guidelines Section 3.11 (1) "When QCBS is applied, proposed unit rates for remuneration shall not be altered since they have been factors in the selection process."

## **Reference to Perpres No.54**

The following Article is not applicable to Japanese ODA loan projects:

- Article 49: Bid Evaluation Method in Procurement of Consulting Services:  
This article (Clarifications and negotiations about direct personnel unit costs shall be based on an audited payroll and/or Income Tax Payment evidence for such experts/consultants, the direct personnel unit costs amount to a maximum of 3.2 (three point two) times the basic salary received by a permanent expert, etc.) is not applicable because JICA's Consultant Guidelines clearly prohibit the price negotiation.

## **Perpres No. 70 (An amendment of Perpres No. 54)**

The following Article is not applicable to Japanese ODA loan projects:

- Article 49: Bid Evaluation Method in Procurement of Consulting Services  
This article (Negotiations over direct personnel unit costs may be held based on audited payrolls, payment evidence for income tax of experts, or statement of Providers on reasonable billing rates describing their availability to make these the basis for audit, the direct personnel unit costs amount to a maximum of 4 (four) times the basic salary received by a permanent expert, etc.) is not applicable because JICA's Consultant Guidelines clearly prohibit the price negotiation.



### 3.1.10. Section 4.07 Description of Consultants' Costs and Fees

#### Section 4.07 Description of Consultants' Costs and Fees

(1) The personnel costs and fees necessary for fulfillment of the contract shall normally be expressed in terms of fixed "man-month rates" for each expert staff member to be provided by the consultant. The "man-month rates" will include the basic salary of the staff member, the firm's overheads (including financial, social security and other benefits payable to, or for, the staff member, such as vacation pay, sick leave pay, insurance, etc.) and the firm's fee.

(2) For extended periods of field service in the country concerned, the contract may also provide for overseas allowances in addition to the "man-month rates" mentioned in paragraph (1) of this Section.

(3) The contract shall stipulate clearly the number of working or calendar days of vacation and sick leave to which each staff member will be entitled.

(4) In addition to the personnel costs described under paragraph (1) of this Section, the contract shall normally provide for reimbursement, at actual cost or agreed "unit cost" for travel, equipment and other items necessary for the consulting services covered by the contract.

(5) The contract shall normally include an amount set aside for contingencies, such as work not foreseen and rising costs, which the consultant may not use, however, without the written approval of the Borrower.

#### <Notes>

##### 1. Paragraph (4):

Direct costs include airfare, communication/transport costs, daily allowance (per diem), accommodation charges, cost of vehicles and office supplies, office rent, costs involved in preparing reports, further investigation costs, data-processing costs, equipment-delivery costs, and costs for employing local staff.

##### 2. Paragraph (5):

Physical contingencies normally account for 5 to 10% of the amount of the contract. For contracts with a duration of more than 18 months, it is recommended to include a price adjustment clause. It is advisable that contracts of a shorter duration include a provision for price adjustment if sharp fluctuation of prices is expected.

## **Points of Attention for Executing Agencies**

As stipulated in JICA's Consultant Guidelines Section 4.07 (5), the physical contingency (5 – 10%) and the price adjustment (stipulated in Special Condition of Contract Section 6.2 (c), Standard form of Contract (Time-Based), Standard Request for Proposals) should be incorporated in the contract price. Such price adjustment and services not foreseen should be incorporated in the contract price.

There are two kinds of contingency and provisional sum: Contingency consists of price escalation and physical contingency. The price escalation contingency is for an increase in the unit cost by inflation. The physical contingency is for an unforeseen condition and work. In a case of price adjustment, EA will be able to use the contingency within the original contract. Provisional Sum is an allowance for the services that is not yet defined in enough detail for consultants to price. If the original contract price which was concurred by JICA would not be enough, EA can discuss with JICA the availability of additional financial resources

## **Reference to Perpres No.54**

The following Article is not applicable to Japanese ODA loan projects:

- Article 87: Amendment to Contract:  
This article (It should not be more than 10% (ten percent) of the price contained in the first Contract, etc.) is not applicable because there are cases where the contract needs to be amended by more than 10% of the original price due to, for example, unforeseeable events or inflation. It is more important to smoothly carry out the consulting services required for the implementation of the Project with its quality maintained.

## **Perpres No. 70 (An amendment to Perpres 54)**

The following Article is not applicable to Japanese ODA loan projects:

- Article 87 Amendment to Contract:  
This article (It should not be more than 10% (ten percent) of the price contained in the first Contract, etc.) is not applicable because there are cases where the contract needs to be amended by more than 10% of the original price due to, for example, unforeseeable events or inflation. It is more important to smoothly carry out the consulting services required for the implementation of the Project with its quality maintained.

### 3.1.11. Section 4.09 Conditions and Methods of Payment

#### Section 4.09 Conditions and Methods of Payment

(1) The contract shall specify the conditions and methods of payment, the currency or currencies in which payment is to be made, and the rate of exchange for any currency conversion.

(2) Payment to the consultant shall be scheduled in such a manner as roughly to keep pace with its expenditures (i.e. the consultant shall not receive payments substantially in advance of its actual expenses for its services nor shall it have to wait long for payment for services already rendered). In line with this concept, the contract may, when appropriate, provide for the following:

(a) An advance payment to the consultant at the time the contract becomes effective that will approximately cover its initial reimbursable expenses;

(b) Withholding of the final payment until all services covered by the contract have been completed.

#### <Notes>

1. Paragraph (2):

Interim payments are normally made on a quarterly, bi-monthly or monthly basis for the smooth implementation of the services.

2. Paragraph (2) (a):

Initial costs that are particularly likely to accrue include airfare, transport costs, equipment-delivery costs, and rent. Normally, an advance payment is less than 15% of the amount of the contract.

3. Paragraph (2) (b):

Normally, the final payment accounts for 5 to 10% of the amount of the contract. Performance securities are not recommended for consulting services, and are given only in exceptional cases where the final product can easily be calculated.

## **Points of Attention for Executing Agencies**

The advance payment to the consultant is very important for the smooth and effective project implementation. The amount and repayment conditions of advance payment should be provided in RFP and the amount is normally less than 15% of the contract price.

### **Reference to Perpres No.54**

The following Article is not applicable to Japanese ODA loan projects:

- Article 88: Advance Payment and Work Performance Payment:  
This article (For a Multi-Year Contract, the advance payment shall be the lowest of the two: 1) 20% (twenty percent) of the Contract in the first year; or 2) 15% (fifteen percent) of the Contract value, etc.) is not applicable because 20% of the Contract in the first year would be too small an amount for long term contract in ODA loan projects.

### **Perpres No. 70 (An amendment of Perpres No. 54)**

The following Article is not applicable to Japanese ODA loan projects:

- Article 88: Advance Payment and Work Performance Payment:  
This article (For a Multi-Year Contract, the advance payment shall be the lowest of the two: 1) 20% (twenty percent) of the Contract in the first year; or 2) 15% (fifteen percent) of the Contract value, etc.) is not applicable because 20% of the Contract in the first year would be too small an amount for long term contract in ODA loan projects.

### 3.1.12. Section 4.16 Modifications

#### Section 4.16 Modifications

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

#### <Notes>

1. This includes changes in staff. In other words, the Borrower has the right to request changes in staff where the staff are unsatisfactory or inappropriate, with the consultant to bear any expenses resulting from such changes. The Borrower's consent is necessary for the consultant to change/substitute any staff members on the grounds of illness, etc., at the consultant's expense.
2. Regarding the change of staff, refer to Note 4 of Section 3.11 of these Guidelines.

#### Points of Attention for Executing Agencies

There are many past cases where the contract for consulting services was amended. There are two main reasons for such amendments: an increase in the unit cost by inflation and an unforeseeable condition. In order to be prepared for these situations, the contract should incorporate price adjustment and physical contingencies.

If the original contract price which was concurred by JICA would not be enough, EA can discuss with JICA the availability of the additional financial resources.

#### Reference to Perpres No.54

The following Article is not applicable to Japanese ODA loan projects:

Article 87: Amendment to Contract:

This article (It should not be more than 10% (ten percent) of the price contained in the first Contract, etc.) is not applicable because there are cases where the contract needs to be amended by more than 10% of the original price due to, for example, unforeseeable events or inflation. It is more important to smoothly carry out the consulting services required for the implementation of the Project with its quality maintained.

#### Perpres No. 70 (An amendment to Perpres No. 54)

The following Article is not applicable to Japanese ODA loan projects:

Article 87: Amendment to Contract:

This article (It should not be more than 10% (ten percent) of the price contained in the first Contract, etc.) is not applicable because there are cases where the contract needs to be amended by more than 10% of the original price due to, for example, unforeseeable events or inflation. It is more important to smoothly carry out the consulting services required for the implementation of the Project with its quality maintained.

### **3.1.13. Section 4.20 Applicable Laws**

#### **Section 4.20 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.

#### **Points of Attention for Executing Agencies**

EA is requested to pay full attention to the Notes of this Section “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.”

### **3.2. Procurement Guidelines**

Procurement procedures of goods and services under Japanese ODA Loans follow JICA's "Guidelines for Procurement under Japanese ODA Loans" (hereinafter referred to as "JICA's Procurement Guidelines"). Following articles in the JICA's Procurement Guidelines may be especially pertinent for EA to understand the difference between Perpres and JICA's Procurement Guidelines.

Section 1.01	Introduction
Section 1.02	International Competitive Bidding (ICB)
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### 3.2.1. Section 1.01 Introduction

#### 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.

### **Points of Attention for Executing Agencies**

1. JICA's Procurement Guidelines shall be used for the procurements under Japanese ODA loan projects.
2. It is acceptable for a foreign company to voluntarily form such association with a local company. However, EA shall not compel a foreign company to work in association with a local company, or limit the number of foreign companies in JV, or apply preference margins and/or domestic preference because the JICA's Procurement Guidelines clearly uphold "non-discrimination among bidders" as one of the considerations to be given in the procurement process (see <Notes> 6. of Section 1.01 of JICA's Procurement Guidelines above).
3. In a large project, Japanese ODA loans are sometimes provided by phases, considering its magnitude and time frame although the total estimated cost and implementation schedule of the whole project will be described in the Minutes of Discussion. In such a case, the first loan is not sufficient to cover the total project budget. The contract of the project under the first loan can be signed in anticipation of the succeeding loans.
4. If the budget is not available or not sufficiently available for the procurement of goods/services, such procurement may be cancelled. In such a case, JICA and Indonesian parties will work in close consultation to find a solution. Attention should be paid that the cancellation of tendering shall be subject to concurrence of JICA.
5. Any procedure under which bids above or below a predetermined value, such as Owner's Estimate (OE), are automatically disqualified is not permitted. Therefore, EA shall not put such a ceiling amount for the bid price in order to disqualify the bidders. In a case where the lowest evaluated bid price exceeds the cost estimates by a substantial amount (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), EA may reject all bids only after consultation with JICA and obtaining its concurrence. In addition, if all bids need to be rejected, EA should review factors that made such rejections necessary and consider rectifying the situation by revising the specifications, and/or modifying the project design (or the amounts of work or items in the original invitation to bid) before inviting new bids.
6. To emphasize free competition among bidders, JICA does not accept the idea to disclose the estimated price for the contract before the bidding.

## Reference to Perpres No.54

The following Articles are not applicable to Japanese ODA loan projects:

- Article 2 (3): The provisions on procurement partially or wholly financed by Foreign Loans/Grants:  
The stipulation “The provisions on Procurement partially or wholly financed by Foreign Loans/Grants are based on this Presidential Regulation.” is not applicable because JICA’s Procurement Guidelines are applied.
- Article 13: Budget Availability:  
This article (Prohibition of entering into an agreement or signing a Contract with a Provider of Goods/Services if no budget or no sufficient budget is available, etc.) is not applicable because the suspension/cancellation of procurement process has a negative impact on the smooth and timely implementation of a project. EA should pay full attention to the appropriation of the necessary budget through communication with the relevant ministries and JICA.
- Article 19: Conditions on the Providers of goods/services:  
This article (conditions relating taxpayer identification number, etc.) is not applicable because one of the fundamental principles of JICA’s Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured. Please refer to Perpres No. 70 (an amendment to Perpres No. 54) Article 19 (1a) (Foreign Providers of Goods/Services are excepted from item (d), item (j) and item (l) of subsection (1)).
- Article 66: Owner’s Estimate (OE):  
This article (The total OE amount is open and not confidential, etc.) is not applicable because JICA, in principle, does not accept the idea of disclosing the estimated price for the contract before the bidding, to emphasize free competition among bidders.
- Article 96: Maximum use of domestic goods/services including domestic experts:  
This article is not applicable because one of the fundamental principles of JICA’s Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured (see <Notes> 6. of Section 1.01 of JICA’s Procurement Guidelines above).
- Article 97: Maximum use of domestic goods/services:  
This article (Domestic Products shall be used for Providers of Goods/Services who offer Goods/Services with TKDN value plus the Company Benefit Weight (BMP) value representing at least 40%) is not applicable because one of the fundamental principles of JICA’s Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured (see <Notes> 6. of Section 1.01 of JICA’s Procurement Guidelines above).
- Article 98: Price preference for domestic goods/services including consultants:  
This article is not applicable because one of the fundamental principles of JICA Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured (see <Notes> 6. of Section 1.01 of JICA’s Procurement Guidelines above).
- Article 101: Procurement through International Bidding/Selection:  
This article (maximizing the use of domestic components and national Providers,

Partnership between foreign Providers of Goods/Services and domestic Industries, etc.) is not applicable because one of the fundamental principles of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured (see <Notes> 6. of Section 1.01 of JICA's Procurement Guidelines above).

- Article 102: Procurement Financed by a Foreign Loan/Grant:  
This article (Maximum use of national capacity/potential and national standards, etc.) is not applicable because one of the fundamental principles of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured (see <Notes> 6. of Section 1.01 of JICA's Procurement Guidelines above).

### **Perpres No. 70 (An amendment to Perpres No. 54)**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 101: Procurement through International Bidding/Selection:  
This article (maximizing the use of domestic components and national Providers, Partnership between foreign Providers of Goods/Services and domestic Industries, etc.) is not applicable because one of the fundamental principles of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured (see <Notes> 6. of Section 1.01 of JICA's Procurement Guidelines above).

### 3.2.2. Section 1.02 International Competitive Bidding (ICB)

#### 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.

#### Points of Attention for Executing Agencies

The use of Local Competitive Bidding (LCB) should be decided by EA first. Usually, the method of procurement for each package (ICB or LCB) will be discussed and agreed by JICA and EA at the time of appraisal, depending on the nature of each package. The resultant decision shall be clearly stated in the Minutes of Discussion (M/D) between the Indonesian Government/EA and JICA. In principle, JICA will respect EA's ownership in the process.

#### Reference to Perpres No.54

The following Articles are not applicable to Japanese ODA loan projects (see <Notes> 6. of previous Section 1.01 of JICA's Procurement Guidelines):

- Article 101: Procurement through International Bidding/Selection  
This article (maximizing the use of domestic components and national Providers, Partnership between foreign Providers of Goods/Services and domestic Industries, etc.) is not applicable because one of the fundamental principle of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured.
- Article 102: Procurement Financed by a Foreign Loan/Grant  
This article (Maximum use of national capacity/potential and national standards, etc.) is not applicable because one of the fundamental principle of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured.
- Article 104: Foreign Companies' Participation in Procurement:  
This article (condition on the Foreign Companies' Participation in Procurement, etc.) is not applicable because one of the fundamental principle of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured.

#### Perpres No. 70 (Amendment of Perpres 54)

Following Articles are not applicable to Japanese ODA loan projects (see <Notes> 6. of previous Section 1.01 of JICA's Procurement Guidelines):

- Article 101: Procurement through International Bidding/Selection  
This article (maximizing the use of domestic components and national Providers, Partnership between foreign Providers of Goods/Services and domestic Industries, etc.) is not applicable because one of the fundamental principles of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured.
  
- Article 104: Foreign Companies' Participation in Procurement:  
This article (condition on the Foreign Companies' Participation in Procurement, etc.) is not applicable because one of the fundamental principles of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured.

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

#### 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.

## **Points of Attention for Executing Agencies**

Usually, the method of procurement for each package (ICB or LCB) will be discussed and agreed at the time of appraisal, depending on the nature of each package. The resultant decision shall be clearly stated in the Minutes of Discussion (M/D) between the Indonesian Government/EA and JICA.

## **Reference to Perpres No.54**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 2 (3): The provisions on procurement partially or wholly financed by Foreign Loans/Grants:  
The stipulation “The provisions on Procurement partially or wholly financed by Foreign Loans/Grants are based on this Presidential Regulation.” is not applicable because JICA’s Procurement Guidelines are applied (see previous Section 1.01 (2) of JICA’s Procurement Guidelines) except for the procurement applying LCB method.
  
- Chapter VI, Part 3 “Selection of the Procurement System” Paragraph 1 "Stipulation of the Selection Method of the Provider of Goods/Construction Works/Other Services": Articles 35 - 40 are not applicable as the method of procurement of each package will be discussed and agreed at the time of appraisal, depending on the nature of each package and based on JICA’s Procurement Guidelines.



### 3.2.4. Section 1.08 Language

#### **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.

#### **Points of Attention for Executing Agencies**

1. Due attention should be paid to the fact that all documents for the international procurement under Japanese ODA Loans shall be prepared in English from the view point of international standards and non-discrimination principle.
2. JICA's Procurement Guidelines allow EA to prepare procurement documents in the Indonesian language for the Borrower's reference, and Perpres No. 54 Article 101 requests EA to prepare in both English and Indonesian.
3. Although EA may issue translated versions of documents in the Indonesian language for the Borrower's reference, the English documents shall take precedence, based on the stipulations of JICA's Procurement Guidelines.
4. It is time and cost consuming to put the Indonesian language in documents. Therefore, it should not be mandatory to put the Indonesian language in such documents.

## Reference to Perpres No.54

The following Article are not applicable to Japanese ODA loan projects:

- Article 101 (3): In the case of different interpretations in the Procurement Documents:  
This article (Prevailing Indonesian language in the case of different interpretations between the versions of different languages, etc.) is not applicable from the viewpoint of international standards and non-discrimination which is one of the fundamental principles of JICA's Procurement Guidelines. In Indonesia the English documents shall take precedence in accordance with Section 1.08 of JICA's Procurement Guidelines above.

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### 3.2.5. Section 3.01 Advertising

#### 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.

#### Points of Attention to for Executing Agencies

1. It should be noted that advertisement in at least one newspaper of general circulation in Indonesia is necessary for the announcement of prequalification and/or bidding under ICB packages.
2. The advertisement may be published by an electronic system, in addition to that in a newspaper.

#### Reference to Perpres No.54

The following Article is not applicable to Japanese ODA loan projects:

- Article 73: Announcement of Providers Selection:  
This article is not applicable because the invitations to prequalification or to bidding shall be advertised in at least one newspaper as stipulated in Section 3.01 of JICA's Procurement Guidelines above.

### 3.2.6. Section 3.02 Prequalification of Bidders

#### 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.

### **Points of Attention for Executing Agencies**

EA should pay full attention to the principle of non-discrimination. 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. Regarding the minimum number of prequalified bidders, if more than or equal to two firms are qualified as a result of prequalification, the tender should be continued.

### **Reference to Perpres No.54**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 19: Conditions on the Providers of goods/services:  
This article (conditions relating to the taxpayer identification number, etc.) is not applicable because one of the fundamental principles of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured. Please refer to Perpres No. 70 (an amendment to Perpres No. 54) Article 19 (1a) (Foreign Providers of Goods/Services are excepted from (d), item (j) and item (1) of subsection (1)).
- Article 83: Unsuccessful Selection:  
This article (Selection is unsuccessful if less than 5 (five) bidders for Competitive Selection or less than 3 (three) pass qualification in a prequalification process, etc.) is not applicable because it is not acceptable to set a limit on the number of successful applicants prior to the evaluation of prequalification, as stipulated in <Notes> 3 Paragraph (3) (01) of Section 3.02 of JICA's Procurement Guidelines above.
- Article 84: Procedures after Unsuccessful Selection:  
This article (In the case where only 2 (two) bidders pass prequalification in the repeat Bidding/Selection, the process of Direct Bidding/Selection shall continue, etc.) is not applicable because it is not acceptable to set a limit on the number of successful applicants prior to the evaluation of prequalification, as stipulated in <Notes> 3 Paragraph (3) (01) of Section 3.02 of JICA's Procurement Guidelines above.

### 3.2.7. Section 4.01 General

#### 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.

### **Points of Attention for Executing Agencies**

1. JICA has developed seven (7) types of Standard Bidding Documents (SBDs). Borrowers shall use the latest version of the appropriate SBDs issued by JICA with minimum changes acceptable to JICA. Usually, the type of SBDs for each package would be discussed and agreed at the time of appraisal. The result should be clearly stipulated in the Minutes of Discussion (M/D) between the Indonesian Government/EA and JICA.
2. In a large project, Japanese ODA loans are sometimes provided by phases. In such a case the first loan is insufficient to cover the total project budget. The contract of the project under the first loan can be signed in anticipation of the succeeding loans.
3. If budget is not available or not sufficiently available for the procurement of goods/services, such procurement may be cancelled. In such a case, JICA and the Indonesian parties concerned will work in close consultation to find a solution. Attention should be paid that the cancellation of the tendering shall be subject to concurrence of JICA.
4. Any procedure under which bids above or below a predetermined value, such as Owner's Estimate (OE), are automatically disqualified is not permitted. Therefore, EA shall not put such a ceiling amount for the bid price in order to disqualify the bidders. In a case where the lowest evaluated bid price exceeds the cost estimates by a substantial amount (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), EA may reject all bids only after consultation with JICA and obtaining its concurrence. In addition, if all bids need to be rejected, EA should review factors that made such rejections necessary and consider rectifying the situation by revising the specifications, and/or modifying the project design (or the amounts of work or items in the original invitation to bid) before inviting new bids.
5. To emphasize free competition among bidders, JICA does not accept the idea of disclosing the estimated price for the contract before the bidding as stipulated in <Notes> 7 of Section 1.01 of JICA's Procurement Guidelines.
6. EA can proceed to the evaluation of the bid even if less than three bidders have submitted the bids. This is because at the moment of submission, the bidders do not know the number



of bidders who submitted the bids. It is thus considered that competition has taken place (see <Notes> 1. Paragraph (1) (03) of later Section 5.10 of JICA's Procurement Guidelines).

### **Reference to Perpres No.54**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 13: Budget Availability:  
This article (Prohibition of entering into an agreement or signing a Contract with a Provider of Goods/Services if no budget or no sufficient budget is available, etc.) is not applicable because the suspension/cancellation of the procurement process has a negative impact on the smooth and timely implementation of a project. EA should pay full attention to the appropriation of the necessary budget through communication with relevant ministries and JICA.
- Article 57: Steps to Select Providers of Goods/Civil Works/Other Services:  
This article is not applicable because the procedures stipulated in JICA's Procurement Guidelines, and SBDs should be applicable.
- Article 66: Owner's Estimate (OE):  
This article (The total OE amount is open and not confidential, etc.) is not applicable because JICA does not accept the idea of disclosing the estimated price for the contract before the bidding, to emphasize free competition among bidders (see <Notes> 7 of previous Section 1.01 of JICA's Procurement Guidelines).
- Article 83: Unsuccessful Selection:  
This article (Selection is unsuccessful if less than 3 (three) bidders submit Bid Documents, etc.) is not applicable because it is considered that competition has taken place even if less than three bidders have submitted the bids (see <Notes> 1. Paragraph (1) (03) of later Section 5.10 of JICA's Procurement Guidelines).
- Article 84: Procedures after Unsuccessful Selection:  
This article (Selection is unsuccessful if less than 3 (three) bidders submit Bid Documents, etc.) is not applicable because it is considered that competition has taken place even if less than three bidders have submitted bids.

### 3.2.8. Section 4.03 Bid Securities

#### 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.

#### Points of Attention for Executing Agencies

Due attention should be paid to Note 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".

#### Reference to Perpres No.54

The following Article is not applicable to Japanese ODA loan projects:

Article 67: Procurement Bonds

This article (A Bond-issuing Insurance Company shall hold a license to sell suretyship products as decreed by the Minister of Finance, etc.) is not applicable because foreign bidders will be

placed in an extremely disadvantageous position and fair competition will be hampered as referred to in <Notes>1 of Section 4.03 of JICA's Procurement Guidelines above.

### 3.2.9. Section 4.06 Standards

#### 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.

#### Points of Attention for Executing Agencies

Note (03) of Section 4.05:

Quote

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.

Unquote

It is not acceptable to use only the Indonesian National Standard (SNI) to provide a preference to local companies. An internationally-recognized standard, such as JIS, should be used from the view point of non-discrimination among bidders.

#### Reference to Perpres No.54

The following Article is not applicable to Japanese ODA loan projects:

- Article 96: Maximum use of domestic goods/services including domestic experts:  
This article is not applicable because one of the fundamental principle of JICA's Procurement Guidelines is non-discrimination. Also, it could have an adverse influence on cost and quality of goods and services to be procured as stipulated in <Notes> 6 of previous Section 1.01 of JICA's Procurement Guidelines.

### 3.2.10. Section 4.12 Price Adjustment Clauses

#### 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.

#### Points of Attention for Executing Agencies

There are many past cases where the contract was amended. There are two main reasons for such amendments: the increase in the cost by inflation and an unforeseeable condition. In order to be prepared for the increase in the cost by inflation, the contract should incorporate price adjustment clauses.

If the original contract price which was concurred by JICA would not be enough, EA should consider the amendment of the contract promptly in accordance with the relevant stipulation of the L/A including the availability of additional financial resources, if necessary.

#### Reference to Perpres No.54

The following Article is not applicable to Japanese ODA loan projects:

- Article 87: Amendment to Contract:

This article (It should not be more than 10% (ten percent) of the price contained in the first Contract, etc.) is not applicable because there are cases where the contract needs to be amended by more than 10% of the original price due to, for example, inflation or unforeseeable situations. For that purpose, JICA's Standard Bidding Documents contain such flexible contract conditions. It is more important to smoothly carry out the contract

required for the implementation of the Project with its quality maintained.

**Perpres No. 70 (An amendment to Perpres 54)**

The following Article is not applicable to Japanese ODA loan projects:

- Article 87 Amendment to Contract:

This article (It should not be more than 10% (ten percent) of the price contained in the first Contract, etc.) is not applicable because there are cases where the contract needs to be amended by more than 10% of the original price due to, for example, inflation or unforeseeable situations. For that purpose, JICA's Standard Bidding Documents contain such flexible contract conditions. It is more important to smoothly carry out the contract required for the implementation of the Project with its quality maintained.

### 3.2.11. Section 4.13 Advance Payment

#### 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.

#### Points of Attention for Executing Agencies

Due attention should be paid to the above Note “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.”

#### Reference to Perpres No.54

The following Article is not applicable to Japanese ODA loan projects:

- Article 88: Advance Payment and Work Performance Payment:  
This article (For a Multi-Year Contract, the advance payment shall be the lowest of the two: 1) 20% (twenty percent) of the Contract in the first year; or 2) 15% (fifteen percent) of the Contract value, etc.) is not applicable because 20% of the Contract in the first year would be too small an amount.

#### Perpres No. 70 (Amendment of Perpres 54)

The following Article is not applicable to Japanese ODA loan projects:

- Article 88: Advance Payment and Work Performance Payment:  
This article (For a Multi-Year Contract, the advance payment shall be the lowest of the two: 1) 20% (twenty percent) of the Contract in the first year; or 2) 15% (fifteen percent) of the Contract value, etc.) is not applicable because 20% of the Contract in the first year would be too small amount.

### 3.2.12. Section 4.14 Performance Securities and Retention Money

#### 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.

### **Points of Attention for Executing Agencies**

1. Due attention should be paid to Note 1 “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. Due attention should be paid to Note 3 “In the case of a bank guarantee, the limitation of guarantor banks to those in the Borrower’s country, or the addition of provisions to make the repatriation of funds only in the currency of the Borrower’s country is not acceptable”.

### **Reference to Perpres No.54**

The following Article is not applicable to Japanese ODA loan projects:

- Article 67: Procurement Bonds:  
This article (A Bond-issuing Insurance Company shall hold a license to sell suretyship products as decreed by the Minister of Finance, etc.) is not applicable because foreign bidders will be placed in an extremely disadvantageous position and fair competition will be hampered as referred to in <Notes> 3 of Section 4.14 of JICA’s Procurement Guidelines above.

### **3.2.13. Section 4.19 Applicable Laws**

#### **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.

#### **Points of Attention to for Executing Agencies**

EAs are requested to pay full attention to the Note of this Section “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.”

### 3.2.14. Section 5.06 Evaluation of Comparison of Bids

#### 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.

### **Points of Attention for Executing Agencies**

1. Regarding the Merit Point System, due attention should be paid to Note 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.”.
2. Any procedure under which bids above or below a predetermined value, such as Owner’s Estimate (OE), are automatically disqualified is not permitted. Therefore, EA shall not put such a ceiling amount for the bid price in order to disqualify the bidders. In a case where the lowest evaluated bid price exceeds the cost estimates by a substantial amount (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), EA may reject all bids only after consultation with JICA and obtaining its concurrence. In addition, if all bids need to be rejected, EA should review factors that made such rejections necessary and consider rectifying the situation by revising the specifications, and/or modifying the project design (or the amounts of work or items in the original invitation to bid) before inviting new bids.
3. To emphasize free competition among bidders, JICA does not accept the idea of disclosing the estimated price for the contract before the bidding as mentioned in <Notes> 7 of previous Section 1.01 of JICA’s Procurement Guidelines.

### **Reference to Perpres No.54**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 48: Bid Evaluation Methods:  
This article (The Merit Point System evaluation, etc.) is not applicable because the evaluation using the 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 (see <Notes> 5 of Section 5.06 of JICA’s Procurement Guidelines above).
- Article 83: Unsuccessful Selection:  
This article (The corrected lowest bid price for a Unit Price Contract is higher than Owner’s Estimate, etc.) is not applicable because JICA’s Procurement Guidelines Section 5.06 (5) above clearly stipulates “Any procedure under which bids above or below a predetermined value are automatically disqualified is not permitted.”

## **Perpres No. 70 (An amendment to Perpres No. 54)**

The following Articles are not applicable to Japanese ODA loan projects:

- Article 48: Bid Evaluation Methods:

This article (The Merit Point System evaluation, etc.) is not applicable because the valuation using the 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 (see <Notes> 5 of Section 5.06 of JICA's Procurement Guidelines above).

- Article 83: Unsuccessful Selection:

This article (The corrected lowest bid price for a Unit Price Contract is higher than Owner's Estimate, etc.) is not applicable because JICA's Procurement Guidelines Section 5.06 (5) above clearly stipulates "Any procedure under which bids above or below a predetermined value are automatically disqualified is not permitted."

### 3.2.15. Section 5.10 Rejection of Bids

#### 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.

### **Points of Attention for Executing Agencies**

As stipulated in JICA's Procurement Guidelines Section 5.06, any procedure under which bids above or below a predetermined value, such as Owner's Estimate (OE) are automatically disqualified is not permitted. Therefore, EA shall not put such ceiling amount for the bid price in order to disqualify the bidders. In a case where the lowest evaluated bid price exceeds the cost estimates (such as cost estimates agreed between EA and JICA) by a substantial amount, EA may reject all bids only after consultation with JICA and obtaining its concurrence. In addition, if all bids need to be rejected, EA should review factors that made such rejection necessary and consider rectifying the situation by revising the specifications and/or modifying the project design (or the amounts of work or items in the original invitation to bid) before inviting new bids.

### **Reference to Perpres No.54**



The following Article is not applicable to Japanese ODA loan projects:

- Article 83: Unsuccessful Selection:

This article (The corrected lowest bid price for a Unit Price Contract is higher than OE, etc.) is not applicable because JICA's Procurement Guidelines Section 5.06 (5) clearly stipulates "Any procedure under which bids above or below a predetermined value are automatically disqualified is not permitted."

**Perpres No. 70 (Amendment of Perpres 54)**

The following Article is not applicable to Japanese ODA loan projects:

- Article 83: Unsuccessful Selection:

This article (The corrected lowest bid price for a Unit Price Contract is higher than OE, etc.) is not applicable because JICA's Procurement Guidelines Section 5.06 (5) clearly stipulates "Any procedure under which bids above or below a predetermined value are automatically disqualified is not permitted."