

Guidelines for Procurement under the EDCF Loan

***ECONOMIC DEVELOPMENT
COOPERATION FUND***

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Guidelines for Procurement under the EDCF Loan

ARTICLE I

Introduction

Section 1.01. Purpose

(a) The purpose of these Guidelines is to set forth the general principles and procedures to be followed by the Borrower in carrying out the procurement of goods and works (including related services) required for the Project to be financed in whole or in part by the Export-Import Bank of Korea (the "**Bank**") from the resources of the Economic Development Cooperation Fund (the "**EDCF**").

(b) The term "the Borrower" as used in these Guidelines also refers to the Project Executing Agency and the term "services" as used in these Guidelines excludes consulting services. Terms not otherwise defined in these Guidelines shall have the meanings ascribed to them in the "General Terms and Conditions applicable to EDCF Loan Agreements" of the Bank.

(c) The Loan Agreement governs the relationships between the Borrower and the Bank, and these Guidelines are made applicable to procurement of goods and works for the Project. The rights and obligations of the Borrower and the Suppliers of goods and works for the Project are governed by the bidding documents, and by the contracts signed by the Borrower with the Suppliers of goods and works, and not by these Guidelines or the Loan Agreements. No party other than the parties to the Loan Agreement shall derive any rights therefrom or have any claim to loan proceeds.

Section 1.02. General Considerations

(a) The responsibility for the implementation of the Project, and therefore for the award and administration of contracts under the Project, rests with the Borrower.

(b) The proceeds of the EDCF Loans are required to be used with due attention to considerations of economy, efficiency and non-discrimination among those eligible to bid for procurement contracts.

(c) Except as otherwise agreed upon between the Bank and the Borrower, the procurement methods acceptable to the Bank are: (i) Competitive Bidding ("CB"); (ii) Limited Competitive Bidding ("LCB"); (iii) Shopping; and (iv) Direct Contracting.

(d) The procedures to be followed in case of CB are described in ARTICLE II of these Guidelines; ARTICLE III describes the circumstances under which methods other than CB may be employed in the interests of economy and efficiency.

(e) The particular procurement methods and the categories of goods and works to which they apply are determined by the agreement between the Bank and the Borrower either prior to or at the stage of the appraisal of the Project, and shall be specified in the Loan Agreement.

(f) The Borrower shall carry out due diligence on the technical and financial qualifications of Suppliers to be assured of their capabilities in relation to the specific contract.

Section 1.03. Applicability of Guidelines

(a) These Guidelines apply to all procurement of goods and works to be financed by the proceeds of the Loan. The application of these Guidelines to a particular Project financed by the Bank shall be stipulated in the Loan Agreement between the Bank and the Borrower.

(b) For the procurement of those goods and works not financed out of the proceeds of the Loan, the Borrower may adopt its own procurement procedures. In such cases the Bank should be satisfied that the procedures to be used shall fulfill the Borrower's obligations to cause the Project to be carried out diligently and efficiently.

Section 1.04. Eligibility

(a) Goods eligible for financing under the Loan Agreement are those which have origins of the Eligible Source Countries defined in the Loan Agreement. Such goods eligible for financing shall be satisfactory to the following rules of origin:

(i) Either that the goods have been wholly obtained in the Eligible Source Countries; or

(ii) That in the case of more than one country concerned in the production, the last substantial transformation has been carried out in the Eligible Source Countries;

Section 1.05. Advance Contracting and Retroactive Financing

(a) In certain circumstances, advance contracting, whereby the Borrower signs a contract before the signing of the related Loan Agreement may be acceptable in the interests of more rapid and efficient execution of the Project. The procurement procedures shall be in accordance with these Guidelines in order for the eventual contracts to be eligible for the financing by the Bank, and the normal review process by the Bank shall be followed.

(b) A Borrower undertakes such advance contracting at its own risk, and any approval of the Bank with the procedures, documentation or proposal for award does not commit the Bank to make a loan for the Project in question. The reimbursement by the Bank of any payments made by the Borrower under the contract prior to the Effective Date of the Loan Agreement is referred to as "Retroactive Financing," and is only permitted within the limits specified in the Loan Agreement.

Section 1.06. Bank's Review

The Bank reviews the Borrower's procurement procedures, documents, bid evaluations, award proposal and contracts to ensure that the procurement process is properly carried out. These review procedures are described in Annex 1 attached hereto. The Loan Agreement shall specify the extent to which these review procedures shall apply in respect of the different categories of goods and works to be financed out of the proceeds of the Loan.

Section 1.07. Misprocurement

The Bank does not finance expenditures for goods and works which have not been procured in accordance with the agreed provisions in the Loan Agreement. In such cases, the Bank shall declare misprocurement, and it is the policy of the Bank to cancel that portion of the loan allocated to the goods and works that have been misprocured. The Bank may, in addition, exercise other remedies provided for under the Loan Agreement. Even once the contract is awarded after obtaining a "no objection" from the Bank, the Bank may still declare misprocurement if it concludes that the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower or the terms and conditions of the contract modified without Bank's approval.

Section 1.08. Fraud and Corruption

It is the Bank's policy to require that Borrowers (including beneficiaries of EDCF loans), as well as bidders, suppliers, and contractors under contracts financed by EDCF loans, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:

(a) shall reject a proposal for award and declare a firm ineligible to enter into the contract in question if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract;

(b) shall declare a firm ineligible, for a period determined by the Bank, to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if it at any time determines that the firm has engaged in corrupt, fraudulent practices or any other integrity violations in competing for, or in executing, a contract financed by an EDCF loan;

(c) notwithstanding the foregoing, shall declare a firm ineligible, even after the end of a period determined by the Bank, to participate in any bid for, to be awarded, and to enter into a contract related to the project in question if it at any time determines that the firm has engaged in corrupt, fraudulent practices or any other integrity violations in competing for, or in executing, the contract of the project;

(d) shall recognize a firm as ineligible to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if the firm is debarred under the cross debarment decision by Multilateral Development Banks (MDBs). Such period of ineligibility shall not exceed two (2) years from (and including) the date on which the cross debarment is imposed. With regard to the participation in the bid, the base date of determination on the debarment status is the date of the deadline for submission of bids. The Borrower shall confirm the eligibility of bidders, taking into account the decisions of MDBs; and

(e) shall recognize a firm as ineligible to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if such firm constitutes any of the inappropriate business entities defined in the Act on Contracts to Which the State is a Party, the Act on Contracts to Which a Local Government is a Party, and the Act on the Management of Public Institutions of the Republic of Korea. Such period of ineligibility shall be equated to the sanction period decided by the

Korean government and public institutions. With regard to the participation in the bid, the base date of determination on the sanction status is the date of the deadline for submission of bids. The Borrower shall confirm the eligibility of bidders, taking into account the decisions of the Korean government and public institutions. The Borrower may ask the Bank of the decisions of the Korean government and public institutions.

ARTICLE II

Competitive Bidding

A. General

Section 2.01. Type and Size of Contracts

(a) Contracts may be awarded on the basis of unit prices for work performed or items supplied, or on a lump-sum price or cost-plus-fees basis, or by a combination thereof for different portions of the contract, depending on the nature of the goods or works to be provided. The bidding documents shall clearly state the type of contracts selected.

(b) The size and scope of individual contracts shall depend on the magnitude, nature and location of the Project. For projects requiring a variety of works and equipment, separate contracts generally are awarded for the works and for the supply and/or installation of different major items of plant and equipment.

(c) In appropriate cases, e.g. where special processes or closely integrated manufacturing are involved, the Bank may allow turnkey contracts under which the engineering, supply of equipment, and the construction of a complete plant are provided through a single contract.

Section 2.02. Two-Stage Bidding and Two-Envelope Bidding

(a) In order to maximize competition and to facilitate bid evaluation with respect to large and complex contracts where the problem of technically unequal bids is likely to be encountered, a two-stage bidding procedure may be adopted. The use of this procedure must be agreed upon by the Bank and the Borrower.

(b) For works, machinery or equipment for which complete technical specifications are prepared in advance, a two-envelop bidding procedure may be adopted. Under this procedure, bidding will be invited to submit technical and price proposals simultaneously in two separate envelopes.

Section 2.03. Advertising

On all contracts subject to CB, invitations to prequalify or to bid shall be advertised in at least one newspaper of general circulation (in an English language newspaper if possible) in the Borrower's country. Copies of such invitations (or the advertisement therefor) shall also be sent promptly to the Bank.

Section 2.04. Prequalification of Bidders

(a) Prequalification is in principle necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialized services, some complex information and technology and contracts to be let under turnkey. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources.

(b) Prequalification shall be based entirely upon the capability of prospective bidders to perform the particular contract satisfactorily, taking into account their:

- (i) experience and past performance on similar contracts;
- (ii) capabilities with respect to personnel, equipment and plant; and
- (iii) financial position.

(c) The invitation to prequalify for bidding on specific contracts shall be advertised and notified as described in Section 2.03 above.

(d) The scope of the contract and a clear statement of the requirements for prequalification shall be provided to prospective bidders wishing to be considered for prequalification. Every such bidder who meets the specified criteria shall be allowed to bid. Borrower shall inform all applicants of the results of prequalification.

(e) As soon as prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. Verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract, and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully perform the contract.

B. Bidding Documents

Section 2.05. Bidding Documents

(a) Bidding documents shall contain all information necessary for a prospective bidder to prepare a bid for the goods and works to be provided. While the detail and complexity of these documents shall vary with the size and nature of the proposed bid package and contract, they shall generally include the following: invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; drawings; technical specifications; bill of quantities; the type(s) of security required or acceptable; and necessary appendices.

(b) The basis for bid evaluation and selection of the lowest evaluated bid shall be clearly outlined in the instructions to bidders and/or the specifications.

(c) If a fee is charged for the bidding documents, it shall be reasonable and reflect the cost of their production and shall not be so high as to discourage qualified bidders. Guidelines on the principal components of the bidding documents are given in the following paragraphs.

(d) The Borrower shall use the appropriate Standard Bidding Documents (SBDs) of the latest version issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address project-specific conditions. When no relevant SBDs have been issued, the Borrower may use other Standard Bidding Documents issued by the international development institutions such as the World Bank, the Asian Development Bank, etc., provided that they are modified in accordance with the requirements of the Loan Agreement and these Guidelines.

Section 2.06. References to the Bank

(a) If the Borrower wishes to refer to the Bank in bidding documents the following language shall be used:

"[●] (*Name of the Borrower*) has received (or in appropriate cases 'has applied for') a loan from the Export-Import Bank of Korea from the resources of the Economic Development Cooperation Fund of the Republic of Korea in the amount of [●] (*US Dollar amount*) toward the cost of [●] (*Name of the Project*) and intends to apply a portion of the proceeds of this loan to payments under the contract for which this invitation to bid is issued."

(b) The terms and conditions of the contract and payments therefore by the Bank shall be subject in all respects to the terms and conditions of the Loan Agreement, including 'Guidelines for Procurement under the EDCF Loan'. Except as the Bank may specially otherwise agree, no party other than the Borrower (*Name of the Borrower*) shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.

Section 2.07. Bid Bonds or Guarantees

A bid bond or any other bidding guarantee may be required to secure the validity of the bid within the period specified in the invitation to bid. However, it shall not be set too high to discourage suitable bidders. The bidding documents shall specify the type and amount of the bid bond or bidding guarantee and release thereof.

Section 2.08. Conditions of Contract

(a) The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Borrower and the contractor or supplier, and the functions and authority of the engineer or architect, if one is employed by the Borrower, in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions appropriate to the nature and location of the Project shall be included.

(b) The conditions of contract shall provide a balanced allocation of risks and liabilities between the Borrower and the contractor or supplier.

Section 2.09. Language

Bidding documents shall be prepared in English. If any other language is to be used in the bidding documents, a full English text shall be incorporated in those

documents and it shall be specified which is prevailing.

Section 2.10. Clarity of Bidding Documents

(a) Bidding documents shall describe clearly and precisely the works to be done or goods to be supplied, the place and period of delivery or installation, the warranty and maintenance requirements, and other pertinent terms.

(b) The technical specifications shall describe all essential features of the item(s) to be procured and shall state that any non-conformity to these essential features would render the bid as substantially unresponsive. Drawings shall be consistent with the text of the technical specifications.

(c) Bidding documents shall indicate the methods, terms and conditions of bid evaluation, as well as the factors or bases (including those unquantifiable in monetary terms and the specific weights to be given) to be taken into account in comparing bids. If the Borrower reserves its right to compare bid prices based on single items or a group of items or as a total package, this shall be stated in the bidding documents.

Section 2.11. Standards

If particular national or other standards with which equipment or materials must comply are cited, bidding documents shall state that equipment or materials meeting other standards which ensure equivalent or higher quality than the standards specified shall also be accepted.

Section 2.12. Use of Brand Names

Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications shall be avoided unless this is deemed necessary to ensure inclusion of certain essential features. In such a case, the reference shall be followed by the words "or equivalent" and the specifications shall permit offers of alternative goods which provide performance and quality at least equal to those specified.

Section 2.13. Currency of Bids and Contracts

(a) The bid price shall be stated in US Dollars. However, it shall be stipulated in the bidding documents that the contract price shall be stated in Korean Won

converted by using the exchange rate applicable to the calculation of the amount of the Loan under the provisions of the Loan Agreement.

(b) Notwithstanding paragraph (a) above, a portion of the contract price may be stated in [US Dollars, Euros, the Local Currency] within the amount of the Loan to be disbursed in [US Dollars, Euros, the Local Currency] under the provisions of the Loan Agreement.

Section 2.14. Price Adjustment Provisions

(a) Bidding documents shall clearly indicate whether price adjustments are allowed in the event that changes occur in the major cost components of the contract such as labor, equipment, and materials. Price adjustment provisions are usually not necessary for simple contracts involving delivery of goods within about a year.

(b) The specific formula for and ceiling on price adjustment shall be defined in the bidding documents.

Section 2.15. Advance Payments

The percentage of the total payment to be made in advance upon effectuation of the contract for mobilization and similar expenses shall be reasonable and specified in the bidding documents. Other advances, for example, for materials delivered to the site for use in works shall also be defined in the bidding documents. The bidding documents shall specify the arrangements for any security required for advance payments.

Section 2.16. Performance Bond and Retention Money

(a) Bidding documents for works shall require security in an amount sufficient to protect the Borrower in case of breach of the contract by the contractor. This security shall be provided by a performance bond or a bank guarantee in an appropriate form and amount as specified in the bidding documents. The amount of the bond or guarantee may vary with the size and nature of the works. Security shall extend sufficiently beyond the estimated date for completion of the works to cover the warranty or maintenance period specified in the contract. Alternatively, a separate security may be obtained for that period.

(b) In contracts for the supply of goods, the need for performance security shall depend on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a bank guarantee to protect against nonperformance of the contract. Such guarantee may also cover warranty obligations or, alternatively, a percentage of the payments may be held as retention money to cover warranty obligations. The guarantees or retention money shall be reasonable in amount.

Section 2.17. Insurance

Bidding documents shall state precisely the types of insurance to be provided by the successful bidder and should indicate the kinds of risks insured against, the liabilities to be covered, and the duration of the insurance.

Section 2.18. Liquidated Damages and Bonus Clauses

Provisions for liquidated damages or similar payments in an appropriate amount shall be included in the bidding documents to provide compensation to the Borrower when delays in completion of works or delivery of goods would result in extra cost, loss of revenues or of other benefits to the Borrower. Provisions may also be made for payment of bonuses to contractors or suppliers for completion of works or delivery of goods ahead of the time specified in the contract when such earlier completion or delivery would benefit the Borrower.

Section 2.19. Force Majeure

The conditions of contract included in the bidding documents shall, when appropriate, stipulate that failure on the part of the parties to perform their obligations under the contract would not be considered a default if such failure is due to force majeure as defined in the contract.

Section 2.20. Settlement of Disputes

Whenever possible, the conditions of contract shall contain provisions dealing with the applicable law and the forum for the settlement of disputes. It would usually be advantageous to consider international commercial arbitration in contracts for the procurement of goods and services. The Bank, however, shall not be named arbitrator or be asked to name an arbitrator.

C. Bid Opening, Evaluation and Award of Contract

Section 2.21. Time Interval between Invitation and Submission of Bids

The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the Project and the size and complexity of the contract. Generally, not less than 45 days from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for bidding. Where large works or complex items of equipment are involved, this period shall be generally not less than 90 days to enable prospective bidders to conduct investigations at the site before submitting their bids. In such cases, the Borrower is recommended to convene pre-bid conferences and arrange site visits.

Section 2.22. Bid Opening Procedures

All bids shall be opened publicly at the date, time and place stipulated in the invitations to bid. Bids received after the time stipulated shall be returned unopened. The name of each bidder and the total amount of each bid shall be publicly read aloud and recorded when opened, and a copy of this record shall be promptly sent to the Bank and to all bidders who submitted bids in time.

Section 2.23. Confidentiality

After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and proposals concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the award of contract is notified to the successful bidder.

Section 2.24. Clarifications or Alteration of Bids

No bidder shall be permitted to alter its bid after the first bid has been opened. The Borrower may ask any bidder for clarification needed to evaluate its bid but shall not ask or permit any bidder to change the substance or price of its bid after the bid opening.

Section 2.25. Examination of Bids

Following the opening of bids, it shall be ascertained whether material errors in computation have been made in the bids; whether the bids are substantially responsive to the bidding documents; whether the required securities have been

provided; whether documents have been properly signed; and whether the bids are otherwise generally in order. If a bid is not substantially responsive to the bidding documents or contains inadmissible reservations, it shall be rejected. A technical analysis shall then be made to evaluate responsive bids and to enable bids to be compared.

Section 2.26. Evaluation and Comparison of Bids

(a) Bids which conform to the technical specifications and are substantially responsive to the bidding documents will be compared on the basis of their evaluated costs and the bid with the lowest evaluated cost, which may not necessarily be the lowest-priced bid, shall be selected for award.

(b) Bid evaluation shall be consistent with the terms and conditions set forth in the bidding documents. The bidding documents shall specify the relevant factors in addition to price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. Factors which may be taken into consideration include, *inter alia*, the operating costs, the efficiency and compatibility of the equipment, the availability of service and spare parts, the reliability of proposed construction methods and minor deviations, if any. To the extent practicable, these factors shall be expressed in monetary terms or given a relative weight in the evaluation provisions of the bidding documents.

(c) Where contractors are responsible for all duties, taxes and other levies under contracts, bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Any procedure under which bids above or below a predetermined bid value assessment are automatically disqualified is not permitted.

*(d) This paragraph is only applicable to Projects involving the procurement of works. The Borrower shall require the Bidder who submits the lowest evaluated bid price to produce detailed price analyses for any or all items of the bill of quantities, to demonstrate internal consistency of those prices with the proposed construction methods and schedule, under any of the following circumstances:

** If it is inappropriate for a particular Project to be subject to this paragraph, alteration should be made.*

*(i) The bid is seriously unbalanced or front-loaded in the opinion of the Borrower;

*(ii) The bid is significantly lower than the Borrower's estimates;

** (iii) The bid is lower than 80% of the aggregate amount made up of 70% of the consultant's estimates and 30% of the average bid price.

Section 2.27. Evaluation Report

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

Section 2.28. Postqualification of Bidders

If there has been no prequalification of bidders, the Borrower shall determine whether the bidder whose bid has been evaluated the lowest has the capability and resources to carry out the contract concerned effectively. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, its bid shall be rejected. In such an event, the Borrower shall then make a similar decision regarding the next lowest evaluated bidder.

Section 2.29. Rejection of All Bids

(a) The bidding documents usually provide that the Borrower may reject all bids.

** (Applicable to (i) and (ii)) After the evaluation of the price analyses, the Borrower may, taking into consideration the schedule of estimated contract payments, require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Borrower against financial loss in the event that the successful Bidder under the contract defaults.*

*** (Applicable to (iii)) If the Bidder fails to submit the price analyses to the Borrower or the price analyses by the Bidder is insufficient to justify the bid, the Borrower may reject the bid, except in the following cases:*

(i) Where the consultant is not employed;

(ii) Where a turnkey or design and build method is adopted as a procurement method; and

(iii) Where the bid evaluation system, which applies a comprehensive assessment of the bid price and technical merits of each bid, is adopted.

Such rejection is justified when (i) all bids submitted are substantially non-responsive, (ii) there is evidence of lack of competition, or (iii) the lowest evaluated bid exceeds the cost estimates by a substantial amount. 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.

(b) If all bids are rejected, the Borrower shall review the causes justifying the rejection and consider making either revisions of the specifications or modification of the Project (or amounts of work or items called for in the original invitations to bid), or both, before inviting new bids. In special circumstances, 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.

(c) The Bank's prior approval shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder.

Section 2.30. Notification of the Intention to Award

If Standstill Period is applied, following the decision to award the contract, the Borrower shall promptly and simultaneously provide, by the quickest means available and as further specified in the bidding documents, written notification of the Borrower's intention to award the contract to the successful Bidder (the **"Notification of Intention to Award"**). Such notification shall be sent to each bidder that submitted a bid.

Section 2.31. Standstill Period

(a) To give bidders time to examine the Notification of Intention to Award and to assess whether it is appropriate to submit a complaint, the Bank may permit the use of the Standstill Period by approving the bidding documents in which the use of the Standstill Period is specified.

(b) Standstill Period will not be applied under the following conditions:

- (i) Only one bid was submitted in an competitive bidding process; and
- (ii) Direct contracting.

(c) Transmission of the Borrower's Notification of Intention to Award, begins the Standstill Period. The Standstill Period shall last ten (10) Business Days after such transmission date, unless otherwise extended in accordance with the Section 2.33. The contract shall not be awarded either before or during the Standstill Period.

(d) If the Borrower does receive a complaint from an unsuccessful bidder within the Standstill Period, the Borrower shall not proceed with contract award until the complaint has been resolved. The borrower will keep the Bank duly informed and updated.

Section 2.32. Award of Contract

The Borrower shall award the contract to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined:

- (i) to be substantially responsive to the bidding documents; and
- (ii) to offer the lowest evaluated cost. A bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

Section 2.33. Debriefing

(a) If Standstill Period is applied, on receipt of the Borrower's Notification of Intention to Award, an unsuccessful bidder has three (3) Business Days to make a written request to the Borrower for a debriefing. The Borrower shall provide a debriefing within five (5) Business Days to all unsuccessful bidders whose request is received within this deadline. If the Borrower decides, for justifiable reasons, to provide the debriefing outside the five (5) Business Day timeframe, the Standstill Period shall automatically be extended until five (5) Business Days after such debriefing is provided. The Borrower shall promptly inform, by the quickest means available, all bidders and the Bank of the extended Standstill Period. The Borrower may extend the debriefing timeframe only once.

(b) Where a request for debriefing is received by the Borrower later than the three (3) Business Day deadline, the Borrower should provide the debriefing as soon

as practicable. Request for debriefing received outside the three (3) Business Day deadline shall not lead to an extension of the Standstill Period.

(c) In a nonstandstill situation, the Borrower shall inform the bidders that any bidder who wishes to ascertain the grounds, on which its bid was not selected, shall request an explanation from the Borrower after the award of contract. The Borrower shall promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of the Borrower. The requesting bidder shall bear all the costs of attending such a debriefing.

ARTICLE III

Other Methods of Procurement

Section 3.01. Limited Competitive Bidding

LCB is essentially competitive bidding by direct invitation without open advertisement, and may be an appropriate method of procurement in cases where (i) the amounts are small, (ii) there are only a limited number of suppliers of the particular goods or services needed, or (iii) other exceptional reasons may justify departure from full CB procedures. Under the procedure of the LCB, Borrowers shall seek bids from a list of potential suppliers broad enough to assure competitive prices. In all respects other than advertisement, CB procedures shall apply.

Section 3.02. Shopping

(a) Shopping is a procurement method based on comparing price quotations obtained from several suppliers (*in the case of goods*) or from several contractors (*in the case of civil works*), with a minimum of three, to assure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification commodities of small value, or simple civil works of small value.

(b) Requests for quotations shall indicate the description and quantity of the goods or specifications of works, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile or by electronic means. The evaluation of quotations shall follow the same principles as of open

bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

Section 3.03. Direct Contracting

(a) Direct contracting involves dealing with a particular supplier or contractor and may be an appropriate procurement method in the following situations:

(i) Where the Borrower buys small or off-the-shelf items generally valued at less than Five Hundred and Thousand US Dollars (US\$500,000);

(ii) Where the Borrower has adequate reasons for wishing to maintain reasonable standardization of its equipment or spare parts in the interests of compatibility with existing equipment;

(iii) Where the Borrower has adequate reasons for wishing to maintain continuity of services provided under an existing contract awarded in accordance with procedures acceptable to the Bank;

(iv) Where the required equipment is proprietary and obtainable only from one supplier;

(v) Where the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of his guarantee of performance; and

(vi) Where the advantages of CB, LCB or Shopping would be outweighed by the administrative burden involved due to the size, efficiency or urgency of procurement.

(b) Before initiating a negotiation with a prospective supplier, the Borrower shall review the capability of the prospective supplier to perform the particular contract satisfactorily, taking into account its (i) experience and past performance on similar contracts; (ii) capabilities with respect to personnel, equipment and plan; and (iii) financial position. The Bank shall be furnished with a copy of the report of such review by the Borrower.

Section 3.04. Force Account

Force account, that is, construction by the use of the Borrower's own personnel and equipment, may be the only practical method for constructing some kinds of works. The use of force account may be justified where:

- (i) quantities of work involved cannot be defined in advance;
- (ii) works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (iii) work is required to be carried out without disrupting ongoing operations;
- (iv) risks of unavoidable work interruption are better borne by the Borrower than by the supplier; and
- (v) there are emergencies needing prompt attention.

Annex I

REVIEW BY THE BANK OF PROCUREMENT DECISION

1. The following provisions set forth standard arrangements for the review by the Bank of procurement actions taken by Borrowers in cases where competitive bidding is required in the procurement of goods or works. These provisions shall apply to all such cases except as otherwise agreed by the Bank. Procedures for review of contract and its modification shall be subject to the following provisions of General Terms and Conditions Applicable to EDCF Loan Agreements.

2. Prequalification Procedure

(a) Prequalification Invitation. The prequalification invitation and all related documents (including the proposed prequalification methodology and criteria) shall show the loan number and shall be approved by the Bank before they are issued. For this purpose, one copy of the draft prequalification invitation and all related documents shall be submitted to the Bank for approval.

(b) Issue of Prequalification Invitation. As soon as the prequalification invitation has been advertised and notified as required in Section 2.03 hereof, the Bank shall be furnished with a report including a copy of the prequalification invitation as issued and a copy of the newspaper advertisement as published.

(c) Proposal for Prequalification. As soon as the prequalification applications have been evaluated, approval of the Bank shall be obtained to the results of the evaluation before such results are communicated to the applicants for prequalification. For this purpose, the Bank shall, promptly after the evaluation of prequalification application, be furnished with a copy of (i) a list of the applicants for prequalification; (ii) a summary and evaluation of the applications; and (iii) the proposal for prequalification (together with the consultants' recommendations, where applicable).

3. Competitive Bidding

(a) Invitation to Bid and Bidding Documents. The invitation to bid and all related bidding documents (including bidding instructions and conditions, specifications, form and conditions of contract) shall show the loan number and shall be approved by the Bank before they are issued. For this purpose, a copy of the invitation to bid and all related bidding documents shall be submitted to the Bank. The draft bidding documents to be submitted to the Bank for approval shall show all important conditions of bidding including the proposed bidding period and the proposed delivery period.

(b) Issue of Invitation to Bid. As soon as the invitation to bid has been advertised as required in section 2.03, the Bank shall be furnished with a report including a copy of the invitation to bid as issued and a copy of the newspaper advertisement as published.

(c) Proposal for Award. As soon as the bids received have been evaluated, approval of the Bank shall be obtained to the proposal for award of contract before a contract is awarded. For this purpose, the Bank shall be furnished with a copy of (i) an account of the public opening of the bids; (ii) a summary and evaluation of the bids; (iii) the proposal for award (together with the consultants' recommendations, where applicable); (iv) a draft contract; and (v) an appropriate certificate of the eligibility of the proposed contract where required by the Bank. In case the bidding procedure allows for more than one stage, the Bank's approval of the results of the evaluation at each stage shall be obtained before the results are communicated to the bidder.

(d) Award of Contract. Promptly after each contract is awarded, the Bank shall be furnished with two copies of the contract as executed. If the final contract proposed to be executed differs substantially from the draft contract previously approved by the Bank, or if any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to the Bank for prior approval.

Annex 2

GUIDANCE TO BIDDERS

Purpose

1. This Annex 2 provides guidance to potential bidders wishing to participate in the procurement financed by EDCF loans.

Responsibility for Procurement

2. The responsibility for the implementation of the project, and therefore for the payment of goods, works, and services under the Project, rests solely with the Borrower. The Bank, for its part, is required by the Loan Agreement to ensure that funds are paid from the EDCF only as expenditures are incurred. Disbursements of the proceeds of a loan are made only at the Borrower's request. Supporting evidence that the funds are used in accordance with the Loan Agreement and the agreement between the Bank and the Borrower stated in Section 1.02 in these Guidelines shall be submitted with the Borrower's payment application. As emphasized in Section 1.02 of these Guidelines, the Borrower is legally responsible for the procurement. It invites, receives, and evaluates bids, and awards the contract. The contract is made between the Borrower and a supplier or a contractor. The Bank is not a party to the contract.

Bank's Role

3. As stated in Section 1.06 of these Guidelines, the Bank reviews the procurement procedures, documents, bid evaluations, award recommendations, and the contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Loan Agreement. In the case of major contracts, the documents are reviewed by the Bank prior to their issue, as described in Annex 1. Also, if, at any time in the procurement process (even after the award of contract), the Bank concludes that the agreed procedures were not followed in any material respect, the Bank might declare misprocurement, as described in Section 1.07. However, if a Borrower has awarded a contract after obtaining the Bank's "no objection," the Bank will declare misprocurement only if the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower. Furthermore, if the Bank determines that the Bidder recommended for the award has engaged in corrupt

or fraudulent practices, the Bank may reject a proposal for award set forth in Section 1.08 of these Guidelines.

4. The Bank has recommended Standard Bidding Documents (SBDs) issued by the international development institutions such as the World Bank, the Asian Development Bank, etc., as stated in Section 2.05. The prequalification and bidding documents are finalized and issued by the Borrower.

Bidder's Role

5. Once a bidder receives the prequalification or bidding document, the bidder shall study the documents carefully to decide if it can meet the technical, commercial, and contractual conditions, and if so, proceed to prepare its bid. The bidder shall then critically review the documents to see if there is any ambiguity, omission, or internal contradiction, or any feature of specifications or other conditions which are unclear or appear discriminatory or restrictive; if so, it shall seek clarification from the Borrower, in writing, within the time period specified in the bidding documents for seeking clarifications.

6. The criteria and methodology for selection of the successful bidder are outlined in the bidding documents, generally under Instructions to bidders and specifications. If these are not clear, clarification shall be similarly sought from the Borrower.

7. In this connection it shall be emphasized that the specific bidding documents issued by the Borrower govern each procurement, as stated in Section 1.01 of these Guidelines. If a bidder feels that any of the provisions in the documents are inconsistent with these Guidelines, it shall also raise this with the Borrower.

8. It is the responsibility of the bidder to raise any issue of ambiguity, contradiction, omission, etc., prior to the submission of its bid, to assure submission of a fully responsive and compliant bid, including all the supporting documents requested in the bidding documents. Noncompliance with critical (technical and commercial) requirements will result in rejection of the bid. If a bidder wishes to propose deviations to a noncritical requirement, or propose an alternative solution, the bidder shall quote the price for the fully compliant bid and then separately indicate the adjustment in price that can be offered if the deviation is accepted. Alternative

solutions shall be offered only when authorized in the bidding documents. Once bids are received and publicly opened, bidders shall not be required or permitted to change the price or substance of a bid.

Confidentiality

9. As stated in section 2.23 of these Guidelines, the process of bid evaluation shall be confidential until the publication of contract award. This is essential to enable the Borrower and Bank to avoid either the reality or perception of improper interference. If at this stage a bidder wishes to bring additional information to the notice of the Borrower, the Bank, or both, it shall do so in writing.

Debriefing

10. As stated in section 2.33, if, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it shall address its request to the Borrower.