



This security shall be provided in an appropriate form and amount, as specified by the Borrower in the bidding document.⁴⁶ The amount of the security may vary, depending on the type of security furnished and on the nature and magnitude of the works or facilities. A portion of this security shall extend sufficiently beyond the date of completion of the works or facilities to cover the defects liability or maintenance period up to final acceptance by the Borrower. Contracts for works may provide for a percentage of each periodic payment to be held as retention money until final acceptance. Contractors may be allowed to replace retention money with an equivalent security in the form of a Bank security or guarantee after provisional acceptance.

2.40 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. Suppliers or manufacturers may be required to provide a security in an appropriate and reasonable amount to protect against nonperformance of the contract. The security shall, if required, also cover warranty obligations and any installation or commissioning requirements in accordance with the applicable SBD.

Liquidated Damages and Bonus Clauses

2.41 Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works, or failure of the goods, works, and non-consulting services to meet performance requirements would result in extra cost, or loss of revenue, or loss of other benefits to the Borrower. Provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the Borrower.

Force Majeure

2.42 The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

Applicable Law and Settlement of Disputes

2.43 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration in a neutral venue has practical advantages over other methods for the settlement of disputes. Therefore, the Bank requires that Borrowers use this type of arbitration in contracts for the procurement of goods, works, and non-consulting services unless the Bank has specifically agreed to waive this requirement for justified reasons such as equivalent national regulations and arbitration procedures, or the contract has been awarded to a bidder from the Borrower's country. The Bank shall not be named arbitrator or be asked

⁴⁶ The format of the performance security shall be in accordance with the SBDs and shall be issued by a reputable bank or financial institution, such as an insurance, or bonding or surety company, selected by the bidder. If the security is issued by a financial institution located outside the country of the Borrower, such financial institution shall have a correspondent financial institution located in the country of the Borrower to make it enforceable. Bidders shall be allowed to submit bank guarantees directly issued by the bank of their choice located in any eligible country.

to name an arbitrator.⁴⁷ In case of works contracts, supply and installation contracts, and single responsibility (including turnkey) contracts, the dispute settlement provision shall include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

C. Bid Opening, Evaluation, and Award of Contract

Time for Preparation of Bids

2.44 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 magnitude and complexity of the contract. Generally, not less than 6 (six) weeks from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for ICB. Where large works or complex items of equipment are involved, this period shall generally be not less than 12 (twelve) weeks to enable prospective bidders to conduct investigations before submitting their bids. In such cases, the Borrower is encouraged to convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or in person. Borrowers may also use electronic systems permitting bidders to submit bids by electronic means, provided the Bank is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the integrity, confidentiality, and authenticity of bids submitted, and uses an electronic signature system or equivalent to keep bidders bound to their bids. The deadline and place for receipt of bids shall be specified in the invitation to bid.

Bid Opening Procedures

2.45 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly⁴⁸ thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. The Borrower shall open all bids received by the deadline for bid submission at the designated place stipulated in the bidding documents, irrespective of the number of bids received by such deadline. At the bid opening, the Borrower shall neither discuss the merits of any bid nor reject any bid. Bids shall be opened in public; bidders or their representatives shall be allowed to be present (in person or online when electronic bidding is used). The name of the bidder and total amount of each bid, and of any alternative bids, if they have been requested or permitted, shall be read aloud (and posted online when electronic bidding is used) 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. Bids received after the time stipulated, as well as those not opened and read out at bid opening, shall not be considered.

Clarifications or Alterations of Bids

2.46 Except as otherwise provided in paragraphs 2.63 and 2.64 of these Guidelines, bidders shall not be requested or permitted to alter their bids, including through any

⁴⁷ It is understood, however, that officials of the International Centre for Settlement of Investment Disputes (ICSID) shall remain free to name arbitrators in their capacity as ICSID officials.

⁴⁸ To allow sufficient time to take the bids to the place announced for public bid opening.



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voluntary increase or decrease in bid prices, after the deadline for receipt of bids. The Borrower shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders' responses shall be made in writing, in hard copy or by an electronic system satisfactory to the Bank.⁴⁹

Confidentiality

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

Examination of Bids

2.48 The Borrower shall ascertain whether the bids (a) meet the eligibility requirements specified in paragraph 1.8, 1.9, and 1.10 of these Guidelines, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in paragraph 2.14 of the Guidelines, (d) are substantially responsive to the bidding documents, and (e) are otherwise generally in order. If a bid, including with regard to the required bid security, is not substantially responsive, that is if it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall neither be permitted nor invited by the Borrower to correct or withdraw material deviations or reservations once bids have been opened.⁵⁰

Evaluation and Comparison of Bids

2.49 The purpose of bid evaluation is to determine the cost to the Borrower of each bid in a manner that permits a comparison on the basis of their evaluated cost. Subject to paragraph 2.58, the bid with the lowest evaluated cost,⁵¹ but not necessarily the lowest submitted price, shall be selected for award.

2.50 The bid price read out at the bid opening shall be adjusted to correct any arithmetical errors. Also, for the purpose of evaluation, adjustments shall be made for any quantifiable non-material deviations or reservations. Price adjustment provisions applying to the period of implementation of the contract shall not be taken into account in the evaluation.

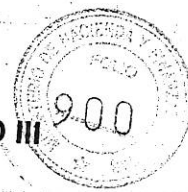
2.51 The evaluation and comparison of bids shall be on CIP (place of destination) prices for the supply of imported goods⁵² and EXW prices, plus cost of inland transportation and insurance to the place of destination, for goods manufactured within the Borrower's

⁴⁹ See paragraph 2.44.

⁵⁰ See paragraph 2.50 regarding corrections.

⁵¹ See paragraph 2.52.

⁵² Borrowers may ask for prices on a CIF basis (and bids compared on that same basis) only when the goods are carried by sea and the goods are not containerized. CIF shall not be used for anything other than sea transport. In the case of manufactured goods, it is unlikely that the choice of CIF will be appropriate, because these goods are usually containerized. CIP can be used for any mode of transport, including sea and multimodal transport.



country, together with prices for any required installation, training, commissioning, and other similar non-consulting services.⁵³

2.52 Bidding documents shall also 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. For goods and equipment, other factors may be taken into consideration including, among others, payment schedule, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, safety, and environmental benefits. The factors other than price to be used for determining the lowest evaluated bid shall be, to the extent practicable, expressed in monetary terms in the evaluation provisions in the bidding documents.⁵⁴

2.53 Under works and turnkey contracts, contractors are responsible for all duties, taxes, and other levies,⁵⁵ and bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Bid evaluation for works shall be strictly in monetary terms. Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to the Borrower may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance.

2.54 The Borrower shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of contract. Borrowers shall provide as a minimum all information required in the Standard Form of Bid Evaluation Report issued by the Bank in addition to other information the Bank deems relevant.

Domestic Preferences

2.55 At the request of the Borrower, and as stipulated in the agreed Procurement Plan and set forth in the bidding documents, a margin of preference may be provided in the evaluation of bids for:

- (a) goods manufactured in the country of the Borrower when comparing bids offering such goods with those offering goods manufactured abroad; and
- (b) works in member countries below a specified threshold of GNP⁵⁶ per capita, when comparing bids from eligible domestic contractors with those from foreign firms.

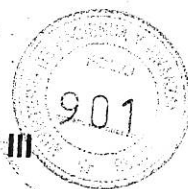
2.56 Where preference for domestically manufactured goods or for domestic contractors is allowed, the methods and stages set forth in Appendix 2 to these Guidelines shall be followed in the evaluation and comparison of bids.

⁵³ The evaluation of bids shall not take into account: (a) customs duties and other taxes levied on imported goods quoted CIP (which are exclusive of custom duties); (b) sales and similar taxes levied in connection with the sale or delivery of the goods

⁵⁴ Exceptionally, relative weight may be given when specifications cannot be precisely defined or factors other than price cannot always be expressed in monetary terms such as may occur for the procurement of complex information technology and textbooks.

⁵⁵ Unless bidding documents specify otherwise for some turnkey contracts (see paragraph 2.22).

⁵⁶ Gross national product as defined annually by the Bank.



Extension of Validity of Bids

2.57 Borrowers shall complete evaluation of bids and the award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing from all bidders before the expiration date. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary no objections, and award the contract. In the case of fixed price contracts, requests for second and subsequent extensions may be permissible only if the Borrower has provided an appropriate mechanism as provided in the Bank's relevant SBD to adjust the quoted price of the winning bidder to reflect any increase in the cost of inputs for the contract over the period of extension. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the quoted (base) price or other conditions of their bid. Bidders shall have the right to refuse to grant such an extension. If the bidding documents require a bid security, bidders may exercise their right to refuse to grant such an extension without forfeiting their bid security and are hence disqualified, but those who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.

Postqualification of Bidders

2.58 If bidders have not been prequalified, the Borrower shall determine whether the bidder whose bid has been determined to offer the lowest evaluated cost has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, the Borrower shall make a similar determination for the next-lowest evaluated bidder.

Award of Contract

2.59 The Borrower shall award the contract, within the period of the validity of bids, 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.⁵⁷ A bidder shall neither be required nor permitted, 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.

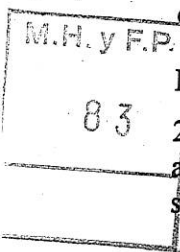
Publication of the Award of Contract

2.60 The Borrower shall ensure that the procedure for publication of the award of contract as specified in paragraph 7 of Appendix 1 is followed.

Rejection of All Bids

2.61 Bidding documents usually provide that Borrowers may reject all bids. Rejection of all bids is justified when there is lack of effective competition, or all bids are not substantially responsive, or no bidder meets the specified qualification criteria, or the bid

⁵⁷ Referred to as "lowest evaluated bidder" and "lowest evaluated bid", respectively.





price of the lowest evaluated winning bid is substantially higher than the Borrower's updated estimated cost or available budget. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the bidding process may be considered valid, if the bid was satisfactorily advertised, the qualification criteria were not unduly restrictive, and prices are reasonable in comparison to market values. If all bids are rejected, the Borrower shall review the causes justifying the rejection of all bids and make appropriate revisions to the bidding documents⁵⁸ before re-inviting bids. The revision of qualification criteria may be justified only when they were set too stringently.

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

2.63 All bids shall not be rejected and new bids invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the Borrower's updated cost estimates by a substantial margin, the Borrower shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. Alternatively, the Borrower may negotiate with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract documents may require rebidding.

2.64 The Bank's prior no objection shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder.

Debriefing by the Borrower

2.65 In the publication of the award of contract referred to in paragraph 2.60 and paragraph 7 of Appendix 1, the Borrower shall specify that any bidder who wishes to ascertain the grounds on which its bid was not selected, should request an explanation from the Borrower. The Borrower shall promptly provide in writing an explanation of why such bid was not selected. If a bidder requests a debriefing meeting, the bidder shall bear all their costs of attending such a debriefing meeting.

D. Modified ICB

Operations Involving a Program of Imports⁵⁹

2.66 Where the loan provides financing for a program of imports, ICB with simplified advertising and currency provisions may be used for large-value contracts, as defined in the Loan Agreement.⁶⁰

⁵⁸ Such revisions may relate to the scope or conditions of contract, or minimum post qualification criteria (in the absence of prequalification), or the design and specifications, etc. or a combination thereof.

⁵⁹ Also see paragraph 3.12.

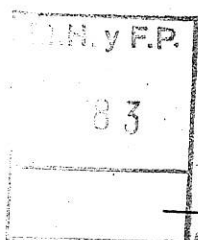


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2.67 The simplified provisions for notification of ICB procurement do not require a General Procurement Notice. Specific Procurement Notices shall be inserted in at least one newspaper of national circulation in the Borrower's country (or in the official gazette, if any, or on a widely used website or electronic portal with free national and international access) in addition to *UNDB online* and the Bank's external website. The period allowed for submission of bids may be reduced to 4 (four) weeks. Bidding and payment may be limited to one currency widely used in international trade.

Procurement of Commodities

2.68 Market prices of commodities, such as grain, animal feed, cooking oil, fuel, fertilizer, and metals, fluctuate depending upon the demand and supply at any particular time. Many are quoted in established commodity markets. Procurement often involves multiple awards for partial quantities to assure security of supply and multiple purchases over a period of time to take advantage of favorable market conditions and to keep inventories low. A list of prequalified bidders may be drawn up to whom periodic invitations are issued. Bidders may be invited to quote prices linked to the market price at the time of or prior to the shipments. Bid validities shall be as short as possible. A single currency in which the commodity is usually priced in the market may be used for bidding and payment. The currency shall be specified in the bidding document. Bidding documents may permit telexed or faxed bids or bids submitted by electronic means, and in such cases either no bid security is required, or standing bid securities valid over a specified period of time have been submitted by prequalified bidders. Standard contract conditions and forms consistent with market practices shall be used.



⁶⁰ Procurement of smaller contracts is normally carried out in accordance with procedures followed by the private or public entity handling the imports, or other established commercial practices acceptable to the Bank, as described in paragraph 3.13.

III. OTHER METHODS OF PROCUREMENT

General

3.1 This Section describes the methods of procurement that can be used where ICB would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate⁶¹ or in the case of paragraph 3.20, when the Bank has agreed to the use of the public procurement system of the Borrower country. The Bank's policies with respect to margins of preference for domestically manufactured goods, works, and non-consulting services contracts do not apply to methods of procurement other than ICB. Paragraphs 3.2 to 3.5 and paragraph 3.7 describe the generally used methods in descending order of preference and the remaining paragraphs describe the methods used in specific circumstances.

Limited International Bidding

3.2 Limited International Bidding (LIB) is essentially ICB by direct invitation without open advertisement. It may be an appropriate method of procurement where (a) there is only a limited number of suppliers, or (b) other exceptional reasons may justify departure from full ICB procedures. Under LIB, Borrowers shall seek bids from a list of potential suppliers broad enough to assure competitive prices, such list to include all suppliers when there are only a limited number. Domestic preferences are not applicable in the evaluation of bids under LIB. In all respects other than advertisement and preferences, ICB procedures shall apply, including the publication of the award of contract as indicated in paragraph 7 of Appendix 1.

National Competitive Bidding

3.3 National Competitive Bidding (NCB) is the competitive bidding procedure normally used for public procurement in the country of the Borrower, and may be the most appropriate method of procurement of goods, works, and non-consulting services which, by their nature or scope, are unlikely to attract foreign competition. To be acceptable for use in Bank-financed procurement, these procedures shall be reviewed and modified⁶² as necessary to assure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of these Guidelines.⁶³ NCB may be the most appropriate method of procurement where foreign bidders are not expected to be interested because (a) of the size and value of the contract, (b) works are scattered geographically or spread over time, (c) works are labor intensive, or (d) the goods, works, and non-consulting services are available locally at prices below the international market.

⁶¹ Contracts shall not be divided into smaller units in order to make them less attractive for ICB procedures; any proposal to divide a contract into smaller packages shall require the prior no objection of the Bank.

⁶² Any such modification shall be reflected in the Loan Agreement. The Bank may agree, if requested by the Borrower, that bidding documents under NCB procedures include a clause rendering ineligible for Bank financing a firm, or an individual, of the Borrower country that is under a sanction of debarment from being awarded a contract by the appropriate judicial authority of the Borrower country and pursuant to its relevant laws, provided that the Bank has determined that the firm, or the individual, has engaged in fraud or corruption and the judicial proceeding afforded the firm or the individual adequate due process.

⁶³ This method is distinct from those under the UCS Piloting Program described in paragraph 3.20.

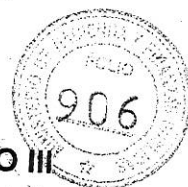
NCB procedures may also be used where the advantages of ICB are clearly outweighed by the administrative or financial burden involved.

3.4 The complete text of advertisement shall be published in a national newspaper of wide circulation in the National Language as defined under paragraph 2.15, or in the official gazette, provided that it is of wide circulation, or on a widely used website or electronic portal with free national and international access. The Borrower may publish a shorter version of the advertisement text, including the minimum relevant information, in the national press provided that the full text is simultaneously published in the official gazette or on a widely used website or electronic portal with free national and international access. Notification shall be given to prospective bidders in sufficient time to enable them to obtain relevant documents. Bidding documents may be issued in the National Language. The currency of the country of the Borrower is generally used for the purposes of bidding and payment. In addition, the bidding documents shall provide clear instructions on how bids should be submitted, how prices should be offered, and the place and time for submission of bids. Adequate response time for the preparation and submission of bids shall be provided. The procedures shall provide for adequate competition in order to ensure reasonable prices, and methods used in the evaluation of bids and the awards of contract shall be objective and made known to all bidders in the bidding documents and not be applied arbitrarily. The comparison of all bids and the award of contract may be based on the total cost at destination including all taxes and duties. The procedures shall also include public opening of bids, publication of results of evaluation and of the award of contract as per paragraph 7 of Appendix 1. Borrowers shall have an effective and independent protest mechanism in place allowing bidders to protest and have their protests handled in a timely manner. If foreign firms wish to participate in NCB they shall be allowed to do so on the prevailing NCB terms and conditions that apply to national bidders.

Shopping

3.5 Shopping is a procurement method based on comparing price quotations obtained from several suppliers (in the case of goods), from several contractors (in the case of civil works), or service providers (in the case of non-consulting services) with a minimum of three, to assure competitive prices, and is an appropriate method for procuring limited quantities of readily available off-the-shelf goods or standard specification commodities of small value, or simple civil works of small value⁶⁴ when more competitive methods are not justified on the basis of cost and efficiency. If the Borrower has been unable to obtain at least three quotations, it shall provide the Bank with the reasons and justification why no other competitive method could be considered and obtain a no objection before proceeding on the basis of the only responses already received. 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

⁶⁴ For the purpose of Shopping, and procurement from UN agencies under paragraph 3.10(c) of these Guidelines, a small value contract should normally not exceed US\$100,000 for off-the-shelf goods and commodities and US\$200,000 for simple civil works. Thresholds applicable to each project are defined in the Procurement Plan.



follow the same principles as of open bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

Framework Agreements

3.6 A Framework Agreement (FA) is a long-term agreement with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. FAs are generally based on prices that are either pre-agreed, or determined at the call-off stage through competition or a process allowing their revision without further competition.⁶⁵ FAs may be permitted as an alternative to the Shopping and NCB methods for: (a) goods that can be procured off-the-shelf, or are of common use with standard specifications; (b) non-consulting services that are of a simple and non-complex nature and may be required from time to time by the same agency (or multiple agencies) of the Borrower; or (c) small value contracts for works under emergency operations. The Borrower shall submit to the Bank for its no objection the circumstances and justification for the use of an FA, the particular approach and model adopted, the procedures for selection and award, and the terms and conditions of the contracts. FAs shall not restrict foreign competition, and should be limited to a maximum duration of 3 (three) years. FA procedures applicable to the project are those of the Borrowers that have been deemed acceptable by the Bank, and shall be described in the Loan Agreement. Maximum aggregate amounts for the use of an FA shall be set in the procurement plan in accordance with risks and in no case higher than the applicable NCB maximum aggregate amounts, and shall be agreed with the Bank. FAs shall follow all guiding principles and procedures of NCB under paragraphs 3.3 and 3.4, including but not limited to the procedures for advertisement, fair and open competition, an effective and independent protest mechanism, and transparent bid evaluation and selection criteria. Publication of award of the FA shall follow the procedure described in paragraph 7 of Appendix 1.

Direct Contracting

3.7 Direct contracting is contracting without competition (single-source) and may be an appropriate method under the following circumstances. The Borrower shall submit to the Bank for its review and no objection a sufficiently detailed justification, including the rationale for direct contracting instead of a competitive procurement process and the basis for recommending a particular firm in all such cases, except for contracts below a threshold defined on the basis of risks and the scope of the project, and set forth in the Procurement Plan.

- M.H.y F.P. 83
- (a) An existing contract for goods, works, and non-consulting services, awarded in accordance with procedures acceptable to the Bank, may be extended for additional goods, works, and non-consulting services of a similar nature. The Bank shall be

⁶⁵ Borrowers have adopted different models of FAs under different names. The three most commonly used models, based on closed or open, one-stage or two-stage, competition methods, are: (i) "Closed FA" based on predefined criteria including for the award of "call offs", signed with one or multiple suppliers/contractors and not permitting new entrants during the duration of the agreement; (ii) "Closed FA" with a restriction on new entrants but conducted in two stages: a first stage to select more than one supplier/contractor, and a second stage when call-offs are decided through competition among suppliers/contractors selected at the first stage and the award is made to the lowest evaluated bidder based on the offered priced and delivery conditions; and (iii) "Open FA" also following a two-stage approach as per the above model, but without any restrictions on the participation of new entrants.



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satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable. Provisions for such an extension, if considered likely in advance, shall be included in the original contract;

- (b) standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original Supplier. For such purchases to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable, and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to the Bank;
- (c) the required equipment is proprietary and obtainable only from one source;
- (d) the procurement of certain goods from a particular supplier is essential to achieve the required performance or functional guarantee of an equipment or plant or facility;
- (e) in exceptional cases, such as, but not limited to, in response to natural disasters and emergency situations declared by the Borrower and recognized by the Bank; and
- (f) in circumstances that are in accordance with the provisions of paragraph 3.10 for procurement from UN Agencies.

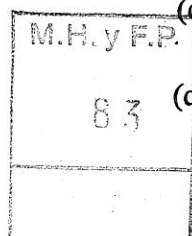
3.8 The procedure for the publication of the award of contract is described in paragraph 7 of Appendix 1.

Force Account

3.9 Force Account, which are works such as construction and installation of equipment and non-consulting services carried out by a government department of the Borrower's country using its own personnel and equipment,⁶⁶ may be the only practical method of procurement under specific circumstances. The use of Force Account requires that the Borrower sets maximum aggregate amounts for the use of Force Account, to which the Bank shall give its no objection, and applies the same rigorous quality checks and inspection as for contracts awarded to third parties. Force Account shall be justified and may only be used, after Bank no objection, under any of the following circumstances:

- (a) quantities of construction and installation works that are involved cannot be defined in advance;
- (b) construction and installation works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (c) construction and installation works are required to be carried out without disrupting ongoing operations;
- (d) risks of unavoidable work interruption are better borne by the Borrower than by a contractor;

⁶⁶ A government-owned construction unit that is not managerially, legally, or financially autonomous shall be considered a Force Account unit. "Force Account" is otherwise known as "direct labor", "departmental forces", or "direct work".





- (e) specialized non-consulting services such as aerial surveys and mapping, as a matter of Borrower's law or official regulations for consideration such as national security, can only be carried out by specialized branches of the government; or
- (f) urgent repairs to prevent further damages, requiring prompt attention, or works to be carried out in conflict-affected areas where private firms may not be interested.

Procurement from United Nations Agencies

3.10 There may be situations in which procurement directly from agencies⁶⁷ of the UN, following their own procurement procedures may be the most appropriate method of procurement:

- (a) of small quantities of off-the-shelf goods, primarily in the fields of education and health;
- (b) of health-related goods for the treatment of humans and animals, including vaccines, drugs and pharmaceuticals, preventive health and contraceptive devices, and biomedical equipment, provided that: (i) the number of suppliers is limited; (ii) the UN agency is uniquely or exceptionally qualified to procure such goods and related incidental non-consulting services, if any; and (iii) the Borrower uses the standard form of Agreement between a Borrower and a UN agency for the procurement of supplies and provision of certain services agreed by the Bank;
- (c) of small value contracts (as defined in footnote 64) for works of a simple nature when the UN agencies act as contractors, or directly hire small contractors, and skilled or unskilled labor; or
- (d) in exceptional cases, such as in response to natural disasters and emergency situations declared by the Borrower and recognized by the Bank.

Procurement Agents and Construction Managers

3.11 Where Borrowers lack the necessary organization, resources, and experience, Borrowers may wish (or be required by the Bank) to employ, as their agent, a firm specializing in handling procurement. Construction Managers may be employed in a similar manner for a fee, e.g., to contract for miscellaneous works involving reconstruction, repairs, rehabilitation, and new construction in emergency and post-conflict situations, or where large numbers of small contracts are involved, or when the capacity of the Borrower is limited. The Procurement Agent or Construction Manager shall follow all the procurement methods provided for in the Loan Agreement and as further elaborated in the Procurement Plan approved by the Bank on behalf of the Borrower, including the use of Bank SBDs, review procedures, and documentation. This

⁶⁷ An agency of the United Nations refers to the United Nations departments, specialized agencies and their regional offices (e.g., the PanAmerican Health Organization - PAHO), funds and programmes. The Borrower shall submit to the Bank for its no objection a full justification and the draft form of agreement with the UN agency.



also applies in cases where UN agencies act as Procurement Agents. The Borrower shall include capacity-building measures in the contract, as agreed with the Bank.⁶⁸

Inspection Services

3.12 Pre-shipment inspection and certification of imports is one of the safeguards for the Borrower, particularly where the country has a large import program. The inspection and certification usually covers quality, quantity, and reasonableness of price. Imports procured through ICB procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through ICB may additionally be subjected to price verification. Physical inspection services may also be included. The inspection service providers are ordinarily paid for on a fee basis levied on the value of the goods. Costs for certification of imports shall not be considered in the evaluation of bids under ICB.

Procurement in Loans to Financial Intermediary Institutions and Entities

3.13 When the loan provides funds to a financial intermediary institution or entity (or its designated agency) such as an agricultural credit institution, a development finance company, or an infrastructure development fund, to be on-lent to beneficiaries such as individuals, private sector enterprises, small and medium enterprises, or autonomous commercial enterprises of the public sector for the partial financing of subprojects, procurement of goods, works, and non-consulting services is usually undertaken by the respective beneficiaries in accordance with well-established private sector procurement methods or commercial practices that shall be acceptable to the Bank. However, even in these situations, open or limited international or national competitive bidding may be the most appropriate procurement method for the purchase of large single items or in cases where large quantities of like goods can be grouped together for bulk purchasing.⁶⁹ When loan funds are on-lent to public sector beneficiaries or for large and complex contracts, consideration shall be given to the use of competitive procurement methods set forth in these Guidelines. If the funds are on-lent for Public Private Sector Partnership (PPP) operations, paragraphs 3.14 and 3.15 below shall apply. The Project Implementation Document (or Manual) shall describe the basic guiding principles and acceptable procedures applicable to the loan. These principles shall, inter alia, include mandatory provisions that beneficiaries of the loan shall not award contracts to their parent or affiliate companies unless there is an established arms-length

⁶⁸ The Consultant Guidelines shall apply for the selection of Procurement Agents and Construction Managers, as well as inspection services providers. The cost or fee of the Procurement Agents and Construction Managers or inspection services providers (see paragraph 3.12) is eligible for financing from the Bank loan, if so provided in the Loan Agreement and in the Procurement Plan, and provided that the terms and conditions of selection and employment are acceptable to the Bank.

⁶⁹ The Bank shall review the methods and procedures of procurement and selection of consultants of the private sector and the commercial practices in the country of the Borrower to determine their acceptability. Private sector procedures and practices are not subject to the same oversight as when public funds are used, and are therefore simpler with single-point decision making and require less documentation. The Bank normally accepts only procedures that at least meet national requirements as established by the chamber of commerce, selected and established private sector enterprises, the central bank, or import licensing and customs authorities. There is no need to specify in the Loan Agreements or Procurement Plans thresholds by value of contracts for their use regardless of the adopted specific procurement methods and commercial practices. Given the demand-driven nature of such projects, it may not be always practical to prepare Procurement Plans as per paragraph 1.18, especially when the selection of consultants is conducted by the beneficiaries. Simplified procurement plans, where feasible and practical, should be prepared based on an indicative list of eligible activities to be implemented.

arrangement. The documentation shall define the main responsibilities of financial intermediary institutions and entities (or of their designated agencies) such as: (a) assessing the capacity of the beneficiaries to carry out procurement efficiently; (b) approving acceptable plans for the procurement of goods, works, and non-consulting services, and the selection of consultants as may be applicable; (c) agreeing to supervision and oversight arrangements under each sub-loan (consistently with the provisions under the Bank loan) for the procurement to be carried out by the beneficiaries so as to ensure compliance with the agreed private sector methods and commercial practices under the sub-loans; and (d) maintaining all relevant records for the Bank's post review and audits when requested. The financial intermediary institution or entity (or its designated agency) should satisfy itself with the reasonableness of the price of contracts awarded by the beneficiaries in the particular market through the hiring of an independent entity or auditors, if necessary.

Procurement under Public Private Partnership (PPP) Arrangements

3.14 Where the Bank is participating in financing the cost of a project or a contract procured under PPP arrangements such as a BOO/BOT/BOOT,⁷⁰ concessions or similar type of private sector arrangement, either of the following procurement procedures shall be used, as provided for in the Loan Agreement and further elaborated in the Procurement Plan approved by the Bank:

- (a) The concessionaire or entrepreneur under a BOO/BOT/BOOT or similar type of contract shall be selected by the Borrower under open competitive bidding procedures determined acceptable by the Bank,⁷¹ which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facility offered, the cost charged to the end user, other income generated for the concessionaire or entrepreneur by the facility, and the period of the facility's depreciation. The said concessionaire or entrepreneur selected in this manner shall then be free to procure the goods, works, and consulting and non-consulting services required for the facility from eligible sources, using its own procedures. In this case, the Project Appraisal Document (PAD) and the Loan Agreement shall specify the types of expenditures to be incurred by the said concessionaire or entrepreneur towards which Bank financing will apply.

Or,

- (b) If the said concessionaire or entrepreneur has not been selected in the manner set forth in paragraph 3.14(a) above, the goods, works, or non-consulting services required for the facility and to be financed by the Bank shall be procured in accordance with ICB or LIB procedures for large value procurement as defined in Section II and other appropriate procurement methods determined acceptable by the

⁷⁰ BOO: Build, Own, Operate; BOT: Build, Operate, Transfer; BOOT: Build, Own, Operate, Transfer.

⁷¹ For projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems. Open competitive bidding means: 1) international competitive bidding, or 2) national competitive bidding for contracts of an estimated value below thresholds set by the Regional Procurement Managers. In addition, direct invitation such as LIB procedures may be considered. All such procedures shall be subject to Bank review before acceptance.

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Bank for smaller value contracts, and for consulting services in accordance with the Consultant Guidelines.

3.15 Notwithstanding the provisions under paragraph 3.14(b), the Bank may accept, in exceptional cases such as small scale expansions of existing systems operated by an incumbent concessionaire or entrepreneur that is either a privately-owned or a government-owned company, and when an open competitive method may not be warranted, the use of the procurement procedures of such company provided that: (i) the entity meets the criteria under paragraph 1.10(b) of these Guidelines; (ii) the Bank determines to be acceptable the procurement capacity and practices and procedures that the entity relies upon as part of its normal business operations; (iii) subject to provisions under paragraph 1.7(a), the entity does not grant any preference or award contracts to their parents or affiliates or controlling shareholders; and (iv) procurement procedures ensure fair competition, economy, efficiency, quality, and transparency. The Bank shall conduct post reviews from time to time during implementation to satisfy itself that the procurement capacity and practices remain acceptable, and that the procurement procedures agreed under the loan were followed.

Performance Based Procurement

3.16 Performance Based Procurement⁷², also called Output Based Procurement, refers to competitive procurement processes (ICB, LIB, or NCB) resulting in a contractual relationship where payments are made for measured outputs instead of the traditional way where inputs are measured. The technical specifications define the desired result and which outputs will be measured including how they will be measured. Those outputs aim at satisfying a functional need in terms of quality, quantity, and reliability. Payment is made in accordance with the quantity of outputs delivered, subject to their delivery at the level of quality required. Reductions from payments (or retentions) may be made for lower-quality level of outputs and, in certain cases, premiums may be paid for higher quality level of outputs. The bidding documents do not normally prescribe the inputs, nor a work method for the Contractor. The Contractor is free to propose the most appropriate solution, based on mature and well-proven experience, and shall demonstrate that the level of quality specified in the bidding documents will be achieved.

3.17 Performance Based Procurement (or Output Based Procurement) can involve: (a) the provision of non-consulting services to be paid on the basis of outputs; (b) design, supply, construction (or rehabilitation), and commissioning of a facility to be operated by the Borrower; or (c) design, supply, construction (or rehabilitation) of a facility, and provision of non-consulting services for its operation and maintenance for a defined period of years after its commissioning.⁷³ For the cases where design, supply, and/or construction are required, prequalification is normally adopted and the use of two-stage bidding as indicated in paragraph 2.6 shall normally apply.

⁷² The use of Performance Based Procurement in Bank-financed projects shall be agreed by the Bank as the result of a satisfactory technical analysis of the different options available and shall be identified in the PAD and incorporated in the Procurement Plan.

⁷³ Examples of such type of procurement are: (i) for the case of procurement of services: provision of medical services, i.e. payments for specific services, like office visits, or defined laboratory tests, etc.; (ii) for the case of procurement of a facility: design, procurement, construction, and commissioning of a thermal power plant to be operated by the Borrower; (iii) for the case of procurement of a facility and services: design, procurement, construction (or rehabilitation) of a road, and operation and maintenance of the road for 5 (five) years after construction.



Procurement under Loans and Payment Obligations Guaranteed by the Bank

3.18 If the Bank guarantees the repayment of a loan made by another lender, or guarantees the payment of a non-loan related government payment obligation, the goods, works, and non-consulting services financed by said loan or said payment obligation shall be procured with due attention to economy and efficiency and in accordance with procedures which meet the requirements of paragraph 1.5. The Bank may conduct a review of the procurement transactions financed on this basis.

Community Participation in Procurement

3.19 Where, in the interest of project sustainability, or to achieve certain specific social objectives of the project, it is desirable in selected project components to (a) call for the participation of local communities and/or nongovernmental organizations (NGOs) in civil works and the delivery of non-consulting services, or (b) increase the utilization of local know-how, goods, and materials, or (c) employ labor-intensive and other appropriate technologies, the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations, provided that these are acceptable to the Bank. The procedures proposed and the project activities to be carried out by community participation shall be outlined in the Loan Agreement and further elaborated in the Procurement Plan or the relevant Project Implementation Document (or Manual) approved by the Bank and made publicly available by the Borrower. Given the demand-driven nature of Community Driven Development (CDD) projects, it may not always be practical to prepare detailed procurement plans at the time of negotiations as required under paragraph 1.18 for the CDD component of the projects, especially when the procurement of activities or the activities themselves are carried out directly by the community. Simplified procurement plans may be prepared, if practical, based on an indicative list of eligible activities to be implemented.⁷⁴

Use of Country Systems

3.20 The Use of Country Systems (UCS) refers to the use of the procurement procedures and methods contemplated in the public procurement system in place in the country of the Borrower that have been determined to be consistent with these Guidelines and acceptable to the Bank under the Bank's Use of Country Systems Piloting Program⁷⁵.

⁷⁴ CDD projects generally envisage a large number of small value contracts for goods and both non-consulting and consulting services, and a large number of small works scattered in remote areas. Commonly used procurement procedures include Shopping, local competitive bidding inviting prospective bidders for goods and works located in and around the local community, direct contracting for small value goods, works, and non-consulting services, and the use of community labor and resources. The Project Implementation Document (or Manual) as referred to in the Loan Agreement shall describe in sufficient details all procurement arrangements, methods, and procedures including the roles, the responsibilities, and the extent of participation of the community in general (including in certain circumstances community tender committees as may be needed), simplified steps for all applicable methods of procurement, provisions for any technical or other assistance required by the community, payment procedures, and procedures for maintenance of records, simplified forms of contracts to be used, roles and oversight functions of the implementing agency, etc. The Bank's procurement supervision arrangements, including technical and financial reviews and auditing requirements, shall be indicated in the PAD, the Loan Agreement, the simplified Procurement Plan, and the Project Implementation Document (or Manual). The audit scope should cover verification of both quality and quantity of goods, works, and services procured and proper use of funds.

⁷⁵ The Piloting Program is described in the Board paper dated March 3 and March 25, 2008 entitled *Use of Country Systems in Bank-Supported Operations: Proposed Piloting Program* (R2008-0036 and 0036 and 0036/1), approved by the Bank's Board of Executive Directors on April 24, 2008.



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They may be used by Borrowers in pilot projects that have been approved by the Bank under such Piloting Program.

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**APPENDIX 1: REVIEW BY THE BANK OF PROCUREMENT DECISIONS
AND PUBLICATION OF AWARDS OF CONTRACTS**

Scheduling of Procurement

1. The Bank shall review⁷⁶ Procurement Plans and their updates that are prepared by the Borrowers in accordance with provisions under paragraph 1.18. They shall be consistent with the Project Implementation Plan, the Loan Agreement, and these Guidelines.

Prior Review

2. With respect to all contracts⁷⁷ which are subject to the Bank's prior review:
- (a) In cases where prequalification is used, the Borrower shall, before prequalification submissions are invited, furnish the Bank with the draft documents to be used, including the text of the invitation to prequalify, the prequalification questionnaire, and the evaluation methodology, together with a description of the advertising procedures to be followed, and shall introduce such modifications in said procedure and documents as the Bank shall reasonably request. The report evaluating the applications received by the Borrower, the list of proposed prequalified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for prequalification, shall be furnished by the Borrower to the Bank for its comments before the applicants are notified of the Borrower's decision, and the Borrower shall make such additions to, deletions from, or modifications in the said list as the Bank shall reasonably request.
 - (b) Before bids are invited, the Borrower shall furnish to the Bank for its comments, draft bidding documents, including the invitation to bid, instructions to bidders, including the basis of bid evaluation and contract award, and the conditions of contract and specifications for the civil works, supply of goods, or installation of equipment, etc., as the case may be, together with a description of the advertising procedures to be followed for the bidding (if prequalification has not been used), and shall make such modifications in the said documents as the Bank shall reasonably request. Any further modification shall require the Bank's no objection before it is issued to the prospective bidders.
 - (c) After bids have been received and evaluated, the Borrower shall, before a final decision on the award is made, furnish to the Bank, in sufficient time for its review, a detailed report (prepared, if the Bank shall so request, by experts acceptable to the Bank), on the evaluation and comparison of the bids received (for each stage in case of two-stage bidding and framework agreements) together with the

⁷⁶ Paragraphs 11 to 15 of Appendix III set forth the actions taken by the Bank in response to communications from bidders, including bidder complaints, and bidder requests for debriefing.

⁷⁷ Prior review thresholds are expressed in monetary terms, determined on the basis of assessed risks, and stated in the Procurement Plan for all procurement methods applicable to the Loan. They shall represent the total value of the contract, including all taxes and duties if payable under the contract. For contracts procured on the basis of direct contracting under paragraph 3.7, the Borrower shall furnish to the Bank for its no objection prior to contract execution, a copy of the specifications and the draft contract. The contract shall be executed only after the Bank has given its no objection, and the provisions in paragraph 2(h) of this Appendix shall apply with respect to the executed contract.



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recommendations for award and such other information as the Bank shall reasonably request. The Bank shall, if it determines that the intended award would be inconsistent with the Loan Agreement and/or the Procurement Plan, promptly inform the Borrower and state the reasons for such determination. Otherwise, the Bank shall provide its no objection to the recommendation for the award of contract. The Borrower shall award the contract only after receiving the no objection from the Bank.

- (d) If the Borrower requires an extension of bid validity to complete the process of evaluation, obtain necessary internal clearances and Bank no objection, and to make the award, it shall seek the Bank's prior no objection for the first request for extension, if it is longer than 4 (four) weeks, and for all subsequent requests for extension, irrespective of the period.
- (e) If after publication of the award the Borrower receives protests or complaints from bidders, a copy of the complaint, the Borrower's comments on each issue raised in the complaint, and a copy of the Borrower's response shall be sent to the Bank for its review and comments.
- (f) If as result of analysis of a protest the Borrower changes its contract award recommendation, the reasons for such decision and a revised evaluation report shall be submitted to the Bank for no objection. The Borrower shall provide a republication of the contract award in the format of paragraph 7 of Appendix 1 of these Guidelines.
- (g) The terms and conditions of a contract shall not, without the Bank's prior no objection, materially differ from those on which bids were asked or prequalification of contractors, if any, was invited.
- (h) One conformed copy of the contract, and of the advance payment security and the performance security if they were requested, shall be furnished to the Bank promptly after its signing and prior to the submission to the Bank of the first application for withdrawal of funds from the Loan Account in respect of such contract. When payments for the contract are to be made out of a Special Account (SA), copies of the contract, and the advance payment security and the performance security if they were requested, shall be furnished to the Bank prior to the making of the first payment out of the SA in respect of such contract.
- (i) All evaluation reports shall be accompanied by a summary of the procurement on a form provided by the Bank. The description and amount of the contract, together with the name and address of the successful bidder, shall be subject to public disclosure by the Bank in accordance with paragraph 2(h) above upon receipt of the signed copy of the contract from the Borrower.
- (j) The Borrower shall retain all documentation with respect to each contract during project implementation until two years after the closing date of the Loan Agreement. This documentation would include, but not be limited to: (i) the signed original of each contract and all subsequent amendments or addenda; (ii) original bids, all documents and correspondence related to the procurement and implementation of the contract, including those in support of the evaluation of bids,

