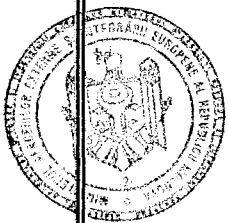


**ACORD**  
**de finanțare (a doua finanțare adițională) dintre**  
**Republica Moldova și Asociația Internațională**  
**pentru Dezvoltare în vederea realizării Proiectului**  
**„Agricultura Competitivă”**

**Chișinău, 8 iulie 2016**



**COPIE CERTIFICATĂ**  
**TEXT ÎN LIMBA ENGLEZĂ**

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CREDIT NUMBER 5858-MD

# Financing Agreement

(Second Additional Financing for Agriculture Competitiveness Project)

between

REPUBLIC OF MOLDOVA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated *July 2*, 2016

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2

CREDIT NUMBER 5858-MD

**FINANCING AGREEMENT**

Agreement dated July 6, 2016, entered into between the REPUBLIC OF MOLDOVA ("Recipient") and the INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association") for the purpose of providing additional financing for activities related to the Original Project (as defined in the Appendix to this Agreement). The Recipient and the Association hereby agree as follows:

**ARTICLE I — GENERAL CONDITIONS; DEFINITIONS**

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

**ARTICLE II — FINANCING**

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a credit in an amount equivalent to seven million one hundred thousand Special Drawing Rights (SDR 7,100,000) (variously, "Credit" and "Financing"), to assist in financing the project described in Schedule 1 to this Agreement ("Project").
- 2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Service Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to three-fourths of one percent (3/4 of 1%) per annum.
- 2.05. The Interest Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to one and a quarter percent (1.25%) per annum.

- 2.06. The Payment Dates are April 15 and October 15 in each year.
- 2.07. The principal amount of the Credit shall be repaid in accordance with the repayment schedule set forth in Schedule 3 to this Agreement.
- 2.08. The Payment Currency is Dollar.

### **ARTICLE III — PROJECT**

- 3.01. The Recipient declares its commitment to the objective of the Project. To this end, the Recipient shall carry out the Project as follows: (a) Parts A and B.1 through MAFI; (b) Part B.2 through MAFI and AIPA; (c) Parts C.1 and C.3 through MOE; (d) Part C.2 through MOE and AIPA; (e) Part D through MAFI and MOE; and (f) Part E through MAFI and AIPA; all in accordance with the provisions of Article IV of the General Conditions.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

### **ARTICLE IV — REMEDIES OF THE ASSOCIATION**

- 4.01. The Additional Event of Suspension consists of the following, namely, that the Food Safety Law has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely, in the opinion of the Association, the ability of the Recipient to perform any of its obligations under this Agreement.
- 4.02. The Additional Event of Acceleration consists of the following, namely, that the event specified in Section 4.01 of this Agreement occurs and is continuing for a period of sixty (60) days after notice of the event has been given by the Association to the Recipient.

### **ARTICLE V — EFFECTIVENESS; TERMINATION**

- 5.01. The Additional Condition of Effectiveness consists of the following, namely, that the Project Operational Manual (POM) has been updated and adopted by the Recipient in a manner acceptable to the Association.

- 5.02. The Effectiveness Deadline is the date one hundred twenty (120) days after the date of this Agreement.
- 5.03. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the date of this Agreement.

**ARTICLE VI — REPRESENTATIVE; ADDRESSES**

6.01. The Recipient's Representative is the Minister of Finance.

6.02. The Recipient's Address is:

Ministry of Finance  
Constantin Tanase Street, 7  
277005 Chisinau  
Republic of Moldova

Facsimile:

(37322) 225393

6.03. The Association's Address is:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable:

Telex:

Facsimile:

INDEVAS  
Washington, D.C.

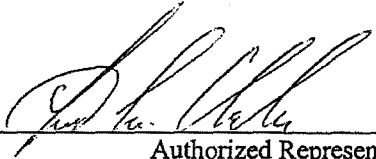
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1-202-477-6391

AGREED at Chisinau, Republic of Moldova, as of the day and year first above written.

REPUBLIC OF MOLDOVA

By

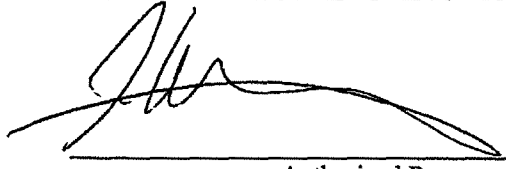
  
Authorized Representative

Name: Iurie Uzunel

Title: Deputy Minister

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

  
Authorized Representative

Name: Alexander Kremen

Title: Acting Country Director

## SCHEDULE 1

### Project Description

The objective of the Project is to enhance the competitiveness of the Recipient's agro-food sector by: supporting the modernization of the food safety management system; facilitating market access for farmers; and mainstreaming agro-environmental and sustainable land management practices.

The Project consists of the following activities:

#### Part A. Enhancing food safety management

Provision of goods, works, and consultants' services, including training for:

A.1 Providing regulatory and institutional support to the Recipient for enhancing the food safety management system through:

- (i) supporting the process of legislative harmonization of the national legislation with the relevant EU regulations;
- (ii) strengthening the institutional capacity of MAFI and the Food Safety Agency (FSA) through: (a) staff training; and (b) support for increasing awareness of relevant private entities regarding the application of the new food safety legislation; and
- (iii) developing methodological and analytical work for soil quality and land degradation risk-assessment, land quality certification, and standard setting to ensure that best soil management practices are integrated in the policy and regulatory framework for food safety management.

A.2 Providing technical enhancements support to the Recipient for the food safety management through:

- (i) rehabilitation of the designated building facility for the FSA; procurement of office, communication and computing equipment for the building; and design of an integrated IT system for the interoperability of various FSA divisions;
- (ii) strengthening of animal and plant health and food safety laboratory network and Border Inspection Points (BIPs) through:
  - (a) rehabilitation of two (2) central reference laboratories for: (i) animal health and food safety for products of animal origin; and (ii) food safety for products of vegetable origin; and

- (b) rehabilitation of four (4) BIPs, namely: on the Eastern border (Tudora); on the Southern border (Giurgiulesti); on the Northern border (Criva) and on the Western border (Leuseni).

**Part B. Enhancing market access potential**

Provision of goods, works, and consultants' services, including training to MAFI for:

**B.1** Providing for a business development support for productive partnerships for primary horticultural, beekeepers and milk producers through: (i) public information and promotion campaign; (ii) development support for identifying, setting up and providing training for new productive partnerships; and (iii) specialized technical assistance support on an ad-hoc basis for the newly created productive partnerships.

**B.2** Set-up of an investment support for post-harvest technologies for Sub-projects on emerging productive partnerships for the modernization of post-harvest and post-collection technologies in the horticultural, beekeepers and milk sectors, all through competitive scheme and in accordance with the Grant Operational Manual.

**Part C. Enhancing land productivity through Sustainable Land Management (SLM)**

Provision of goods, works, and consultants' services, including training to MOE for:

**C.1** Strengthening the sustainable land management capacity building of MOE through, *inter alia*: (i) developing a methodological work on general technical and economic options for farm-based interventions; (ii) strengthening the farmers capacity to monitor economic and environmental benefits; and (iii) organizing awareness raising and training activities to improve farmers' land management skills and public policy response with respect to sustainable land management issues.

**C.2** Providing financial support for piloting SLM for Sub-projects for farmers for farm-level investments in soil conservation practices and technologies, all in accordance with the Grant Operational Manual.

**C.3** Providing support for rehabilitation of shelterbelts by investments in machinery for the creation of two mobile mechanized squads for the rehabilitation of anti-erosion shelterbelts.

**Part D. Project management**

Provision of support for: (a) Project management and implementation, including monitoring and evaluation and Project audits; (b) the establishment and implementation of a grievance redress mechanism; and (c) the design and implementation of a public

information campaign to inform the potential Affected Farmers about Compensatory Sales Support Grants, including its eligibility criteria and application procedures.

Part E. Compensatory Sales Support Grants

Provision of Compensatory Sales Support Grants to Affected Farmers.

## SCHEDULE 2

### Project Execution

#### Section I. Implementation Arrangements

##### A. Institutional Arrangements

1. The Recipient shall vest the overall responsibility for the implementing of the Project in MAFI, and to this end, shall, through MAFI:
  - (a) operate and maintain, throughout Project implementation, CAPMU, to manage overall Project implementation, with structure, functions and responsibilities (including Project financial management, and procurement) acceptable to the Association, and set forth in the POM;
  - (b) operate and maintain, throughout Project implementation, AIPA responsible for: (i) the implementation of Sub-projects under Parts B.2 and C.2 of the Project (including the defrayment of MIGs to Beneficiaries); (ii) the defrayment of Compensatory Sales Support Grants to Affected Farmers; and (iii) the financial management of the MIGs and the Compensatory Sales Support Grants; and
  - (c) operate and maintain, throughout Project implementation, a Steering Committee vested with the responsibility to oversee and coordinate Project implementation, with terms of reference acceptable to the Association (including the Minister of Agriculture and Food Industry (who shall be the chair of said committee), and representatives of MAFI, MOE, MOF, the State Chancellery and farmers/producers organizations).
2. The Recipient shall: (a) update the POM in a manner acceptable to the Association; and (b) immediately thereafter, implement the Project in accordance with the provisions of the POM, and shall not amend, suspend, abrogate, repeal or waive any of its provisions without the prior written consent of the Association. In case of any conflict between the terms and conditions of the POM and those of this Agreement, the terms and conditions of this Agreement shall prevail.
3. The Recipient, through MAFI and MOE, shall assign component coordinators at the level of each of the two ministries to assist with the technical aspects of implementation of their respective Project activities.
4. The Recipient, through MAFI and MOE, shall maintain and operate, throughout Project implementation, an accessible grievance redress mechanism, acceptable to the Association, to address grievances relating to the selection of the Beneficiaries and Sub-projects.

5. For purposes of implementing Part E of the Project, the Recipient shall comply with the obligations set forth in Section I.A.4 of Schedule 2 to the Additional Financing Agreement.

**B. Anti-Corruption**

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

**C. Sub-projects**

1. For the implementation of the Sub-projects, the Recipient shall establish evaluation and selection committees - (i) within MAFI for Sub-projects under Part B.2 of the Project; and (ii) within MOE for Sub-projects under Part C.2 of the Project - which shall be in charge of announcing selection rounds, reviewing and evaluating the financing applications, and making the award decisions, all with composition and terms of reference acceptable to the Association and set forth in the GOM. The decisions of the committees (both awards and rejections) shall be made public on MAFI, MOE's and/or AIPA's websites, respectively. The composition of the evaluation and selection committees, and any subsequent compositional changes, shall be approved by the Steering Committee.
2. Immediately upon the selection of a Sub-project pursuant to the eligibility criteria and procedures established in the GOM, the Recipient, through AIPA, shall provide a Matching Investment Grant (MIG) under a Sub-project Agreement to be entered into with the respective Beneficiary on terms and conditions approved by the Association and stipulated in the GOM, which shall include, *inter alia*, the following:
  - (a) The Recipient shall obtain rights adequate to protect its interests and those of the Association, including the right to suspend or terminate the right of the Beneficiary to use the proceeds of the MIG, or obtain a refund of all or any part of the amount of the MIG then withdrawn, upon the Beneficiary's failure to perform any of its obligations under the Sub-project Agreement; and
  - (b) The Recipient shall obtain rights adequate to protect its interests and those of the Association, including the right to require each Beneficiary to: (A) carry out its Sub-project with due diligence and efficiency and in accordance with sound technical, economic, financial, managerial, environmental and social standards and practices satisfactory to the Association, including in accordance with the provisions of the Anti-Corruption Guidelines applicable to recipients of loan proceeds other than the Recipient; (B) prepare an EIA and/or EMP for each Sub-project in accordance with the EMF and carry out the respective Sub-project in

accordance with such EMP; (C) provide, promptly as needed, the resources required for the purpose of the respective Sub-project as set forth in the GOM; (D) procure the goods, works and services to be financed out of the MIG in accordance with the provisions of Section III of this Schedule; (E) maintain policies and procedures adequate to enable it to monitor and evaluate the progress of the Sub-project and the achievement of its objectives in accordance with indicators acceptable to the Association; (F) maintain a financial management system and prepare financial statements in accordance with the Recipient's accounting standards both in a manner adequate to reflect the operations, resources and expenditures related to the Sub-project, as set forth in the GOM; (G) enable the Recipient and the Association to inspect the Sub-project, its operation and any relevant records and documents; and (H) prepare and furnish to the Recipient and the Association all such information as the Recipient or the Association shall reasonably request relating to the foregoing.

**D. Safeguards**

1. The Recipient shall: (a) implement the Project activities in accordance with the Environmental Management Framework (EMF); and (b) not amend, suspend, abrogate, repeal or waive any provisions of the EMF without the prior written approval of the Association.
2. The Recipient shall ensure that, prior to approval of Sub-projects to be financed under Parts B.2 and C.2 of the Project, the Beneficiaries develop and adopt specific EIAs and EMPs for each of the respective Sub-project in accordance with, and as required by the EMF.
3. The Recipient shall implement measures to raise awareness and educate the Beneficiaries with respect to pesticide handling and to promote integrated pest management technologies, as described in the EMF.

**Section II. Project Monitoring, Reporting and Evaluation**

**A. Project Reports**

The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of indicators acceptable to the Association. Each Project Report shall cover the period of one calendar quarter, and shall be furnished to the Association not later than forty five (45) days after the end of the period covered by such report.

**B. Financial Management, Financial Reports and Audits**

1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.
2. Without limitation on the provisions of Part A of this Section, the Recipient, through CAPMU, shall prepare and furnish to the Association as part of each Project Report, interim unaudited financial reports for the Project covering the pertinent quarter, in form and substance satisfactory to the Association.
3. Notwithstanding the provisions of paragraph B.2 of this Section, the Recipient, through AIPA, shall: (a) prepare and furnish to CAPMU: (a) not later than thirty (30) days after end of each calendar quarter, interim unaudited financial reports; and (b) no later than sixty (60) days after the end of each fiscal year of the Recipient, annual unaudited financial statements, both with respect to: (i) MIGs for Sub-projects under Parts B.2 and C.2 of the Project; and (ii) Compensatory Sales Support Grants under Part E of the Project. The Recipient, through CAPMU, shall: (a) consolidate and furnish the overall interim unaudited financial reports to the Association according to the provisions of paragraph B.2 of this Section; and (b) consolidate the overall annual financial statements referred to above and have them audited as part of the Financial Statements in accordance with paragraph B.4 of this Section.
4. The Recipient shall have its Financial Statements audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one fiscal year of the Recipient. The audited Financial Statements for each such period shall be furnished to the Association not later than six (6) months after the end of such period.
5. The Recipient shall have the MIGs and Compensatory Sales Support Grants payments subject to one-off independent operational review (under terms of reference acceptable to the Association) assessing the efficiency and effectiveness of fund use, appropriateness of MIGs and Compensatory Sales Support Grant amounts and compliance of the Beneficiaries and Affected Farmers with the pertinent eligibility criteria set forth in the POM.
6. Upon completion of the independent operational review, the Recipient shall afford the Association the opportunity to exchange views on the results of such operational review and shall take all measures required to ensure the efficient execution of the Project and to achieve the Project's objective, based on the conclusions and recommendations of said review, and taking into account the Association's views on the matter.

**Section III. Procurement**

**A. General**

1. **Goods and Non-consulting Services.** All goods and non-consulting services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section (including Annex A to this Schedule).
2. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.
3. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

**B. Particular Methods of Procurement of Goods and Non-consulting Services**

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods and non-consulting services shall be procured under contracts awarded on the basis of International Competitive Bidding.
2. **Other Methods of Procurement of Goods and Non-consulting Services.** The following methods of procurement, other than International Competitive Bidding, may be used for goods and non-consulting services. The Procurement Plan shall specify the circumstances under which such methods may be used: (a) National Competitive Bidding, subject to the additional provisions specified in Annex A to this Schedule; (b) Shopping; (c) Direct Contracting; and (d) Well-established Private Sector Procurement Methods or Commercial Practices which have been found acceptable to the Association.

**C. Particular Methods of Procurement of Consultants' Services**

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants' services shall be procured under contracts awarded on the basis of Quality and Cost-based Selection.
2. **Other Methods of Procurement of Consultants' Services.** The following methods, other than Quality and Cost-based Selection, may be used for procurement of consultants' services for those contracts which are specified in the Procurement Plan: (a) Quality-based Selection; (b) Selection under a Fixed

Budget; (c) Least Cost Selection; (d) Selection based on Consultants' Qualifications; (e) Single-source Selection of consulting firms; (f) Procedures set forth in paragraphs 5.2 and 5.3 of the Consultant Guidelines for the Selection of Individual Consultants; and (g) Single-source procedures for the Selection of Individual Consultants.

**D. Review by the Association of Procurement Decisions**

1. The Procurement Plan shall set forth those contracts which shall be subject to the Association's Prior Review. All other contracts shall be subject to Post Review by the Association.
2. The Recipient shall: (a) no later than June 30 of every year during the implementation of the Project, beginning on June 30, 2017, prepare and furnish to the Association, a procurement progress report (Procurement Report) in form and substance acceptable to the Association, which shall include, *inter alia*: (i) a description of the issues which arose during the full procurement cycle under the Project during the twelve months preceding the date of presentation of each Procurement Report, from design through planning, bidding, contract implementation and completion; (ii) a list of proposed measures and actions to be taken to resolve the issues identified under (i) above; and (iii) a proposed timeline for the implementation of the said measures and actions; and (b) thereafter implement the proposed measures and actions under each Procurement Report in accordance with its terms and in a manner acceptable to the Association.

**Section IV. Withdrawal of the Proceeds of the Financing**

**A. General**

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the "World Bank Disbursement Guidelines for Projects" dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing ("Category"), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

Category	Amount of the Financing Allocated (expressed in SDR)	Percentage of Expenditures to be Financed (inclusive of Taxes)
(1) Goods, works, non-consulting services, consultants' services (including Project audits), Training and Operational Costs under Parts B.1 and D of the Project	1,400,000	100%
(2) Matching Investment Grants for Sub-projects under Part B.2 of the Project	5,700,000	100%
(3) Matching Investment Grants for Sub-projects under Part C.2 of the Project	0	100%
(4) Goods, works, non-consulting services, consultants' services, Training and Operational Costs under Parts A and C.1 and C.3 of the Project	0	100%
(5) Compensatory Sales Support Grants under Part E of the Project	0	100%
<b>TOTAL AMOUNT</b>	<b><u>7,100,000</u></b>	

3. For the purposes of this Section:

- (a) the term "Training" means expenditures (other than those for consultants' services) incurred by the Recipient to finance the reasonable travel costs (i.e. accommodation, transportation, travel insurance and *per diem, inter alia*) of trainees and trainers (if applicable), training registration fees, catering, rental of training facilities and equipment, logistics and printing services, as well as training materials, all for the purposes of, and directly related to, the activities described in the Project; and
- (b) the term "Operational Costs" means reasonable expenditures (none of which would have been incurred by the Recipient absent the Project), for

the implementation, coordination and supervision of the Project, including, *inter alia*, travel costs (i.e. accommodation, transportation, travel insurance, and *per diem*); operation and maintenance of office equipment (including the purchase of minor office equipment/furniture); rental of offices; office supplies; communication costs; bank charges; utilities; maintenance and operation of vehicles (including fuel); printing and publications (electronic and/or paper); translation services; insurance for goods; and salaries (including qualified social charges, as determined by the Association) of staff working for the Project; but excluding the Recipient's civil servants; and such other expenditures as may be agreed upon by the Association; all based on quarterly budget plans acceptable to the Association.

**B. Withdrawal Conditions; Withdrawal Period**

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement.
2. The Closing Date is June 30, 2019.

**Section V. Other Undertakings**

The Recipient and the Association hereby agree to amend the Original Financing Agreement and the Additional Financing Agreement as set forth in Schedules 4 and 5 to this Agreement, respectively.

**ANNEX A**  
**to**  
**SCHEDULE 2**

**Additional Provisions Relating to Procurement of Goods, Works and Non-consulting Services under Association-Financed Contracts Subject to National Competitive Bidding**

Without limitation upon the provisions of Section III of Schedule 3 to this Agreement and Section I and paragraphs 3.3 and 3.4 of the Procurement Guidelines, the procurement procedure to be followed for National Competitive Bidding shall be the Open Bidding Procedure set forth in the Recipient's Law on Procurement No. 96-XVI dated April 13, 2007, as further amended on September 17, 2010, December 23, 2011, March 30, 2012, April 12, 2012, June 15, 2012, and June 14, 2013 (the "PPL"), provided, however, that such procedure shall be subject to the following additional provisions:

**Eligibility:** Eligibility to participate in a procurement process and to be awarded an Association-financed contract shall be as defined under Section I of the Procurement Guidelines; accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the Association for reasons other than those provided in Section I of the Procurement Guidelines.

**Registration of Contractors and Suppliers:** Registration shall not be used to assess bidders' qualifications. A foreign bidder shall not be required to register as a condition for submitting its bid, and a foreign bidder recommended for contract award shall be given a reasonable opportunity to register, with the reasonable cooperation of the Recipient, prior to contract signing.

**Participation of Joint Ventures:** Participation of joint ventures shall be allowed and all its members shall be jointly and severally liable for the entire contract.

**Bidding Documents:** Bidding documents acceptable to the Association shall be used, and shall be prepared so as to ensure economy, efficiency, transparency, and broad consistency with the provisions of Section I of the Procurement Guidelines.

**Qualification:** Qualification criteria shall be clearly specified in the bidding documents. All criteria so specified, and only such specified criteria, shall be used to determine whether a bidder is qualified. Qualification shall be assessed on a "pass or fail" basis, and merit points shall not be used. Such assessment shall be based entirely upon the bidder's or prospective bidder's capability and resources to effectively perform the contract, taking into account objective and measurable factors, including: (i) relevant general and specific experience, and satisfactory past performance and successful completion of similar contracts over a given period; (ii) financial position; and where relevant; (iii) capability of construction and/or manufacturing facilities. Prequalification procedures and documents acceptable to the Association shall be used for large, complex and/or specialized works.

The verification of the information upon which a bidder was prequalified, including current commitments, shall be carried out at the time of contract award, along with the bidder's capability with respect to personnel and equipment. In the procurement of goods and works where pre-qualification is not used, the qualification of the bidder who is recommended for award of contract shall be assessed by post-qualification, applying the qualification criteria stated in the bidding documents.

Cost Estimate: The detailed cost estimates shall be confidential and shall not be disclosed to prospective bidders. No bids shall be rejected on the basis of comparison with the cost estimates without the Association's prior written concurrence.

Bid Submission and Bid Opening: Prospective bidders shall be given at least thirty (30) days from the date of publication of the invitation to bid or the date of availability of the bidding documents, whichever is later, to prepare and submit bids. Bids shall be opened in public, immediately after the deadline for submission of bids. Bids received after the deadline for bid submission shall be rejected and returned to bidders unopened. A copy of the bid opening minutes shall be promptly provided to all bidders who submitted bids, and to the Association with respect to contracts subject to the Association's prior review.

Bid Evaluation: Evaluation of bids shall be made in strict adherence to the evaluation criteria specified in the bidding documents. Evaluation criteria other than price shall be quantified in monetary terms. Merit points shall not be used, and no minimum point or percentage value shall be assigned to the significance of price, in bid evaluation. Contracts shall be awarded to the qualified bidder whose bid has been determined: (i) to be substantially responsive to the bidding documents; and (ii) to offer the lowest-evaluated cost. No negotiations shall be permitted. A bidder shall not be required, as a condition for award, to undertake obligations not specified in the bidding documents or otherwise to modify the bid as originally submitted. A bidder shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.

Rejection of All Bids and Re-bidding: All bids (or the sole bid if only one bid is received) shall not be rejected, the procurement process shall not be cancelled, and new bids shall not be solicited without the Association's prior written concurrence.

Bid Validity: The bid validity period required by the bidding documents shall be sufficient to account for any period that may be required for the approval and registration of the contract as contemplated in the PPL. If justified by exceptional circumstances, an extension of bid validity may be requested in writing from all bidders before the original bid validity expiration date, provided that such extension shall cover only the minimum period required to complete the evaluation, award a contract, and/or complete the registration process, but not more than thirty (30) days; a corresponding extension of any bid guarantee also shall be required in such cases. A Bidder may refuse the request for extension of bid validity without forfeiting its bid guarantee. No further extensions shall be requested without the prior written concurrence of the Association.

Guarantees: Guarantees shall be in the format included in the bidding documents. The bid guarantee shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested. No advance payments shall be made without a suitable advance payment guarantee. Performance security shall not exceed ten percent (10%) of the contract amount.

Fraud and Corruption: The bidding documents and contract as deemed acceptable by the Association, shall include provisions stating the Association's policy to sanction firms or individuals found to have engaged in fraud and corruption as defined in the Procurement Guidelines.

Inspection and Audit Rights: Each bidding document and contract financed out of the proceeds of the Credit shall provide that bidders, suppliers and contractors, and their subcontractors, agents, personnel, consultants, service providers, or suppliers, shall permit the Association to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Association. Acts intended to materially impede the exercise of the Association's inspection and audit rights provided for in the Procurement Guidelines constitute an obstructive practice as defined in the Guidelines.

Contract Modifications: With respect to contracts subject to the Association's prior review, the Recipient shall obtain the Association's no objection before agreeing to: (a) a material extension of the stipulated time for performance of a contract; (b) any substantial modification of the scope of services or other significant changes to the terms and conditions of the contract; (c) any variation order or amendment (except in cases of extreme urgency) which, singly or combined with all variation orders or amendments previously issued, increases the original contract amount by more than fifteen percent (15%); or (d) the proposed termination of the contract. A copy of all contract amendments shall be provided to the Association.

SCHEDULE 3

Repayment Schedule

Date Payment Due	Principal Amount of the Credit repayable (expressed as a percentage)*
On each April 15 and October 15:  commencing April 15, 2021 to and including April 15, 2031  commencing October 15, 2031 and including April 15, 2041	1.65%  3.35%

\* The percentages represent the percentage of the principal amount of the Credit to be repaid, except as the Association may otherwise specify pursuant to Section 3.03 (b) of the General Conditions.

**SCHEDULE 4**

**Amendments to the Original Financing Agreement**

The Recipient and the Association hereby agree to amend the Original Financing Agreement to read as follows:

1. Schedule 1 to the Original Financing Agreement is hereby amended and replaced in its entirety to read as Schedule 1 to this Agreement.

2. Section I.C of Schedule 2 to the Original Financing Agreement is hereby amended to read in its entirety as Section I.C of Schedule 2 to this Agreement.

3. Section I of the Appendix to the Original Financing Agreement is hereby amended as follows:

(a) The following definition is amended to read in its entirety as follows:

“Beneficiary” or “Beneficiaries” means any legally established producer organization eligible for assistance under Parts B.2 and C.2 of the Project, selected pursuant to the criteria and procedures set forth in the GOM.”

(b) The following definition is added and placed in alphabetical order, to read as follows:

“Sub-project Agreement” means any of the agreements referred to in Section I.C.2 of Schedule 2 to this Agreement.”

**SCHEDULE 5**

**Amendments to the Additional Financing Agreement**

The Recipient and the Association hereby agree to amend the Additional Financing Agreement to read as follows:

1. Schedule 1 to the Additional Financing Agreement is hereby amended and replaced in its entirety to read as Schedule 1 to this Agreement.
2. Section II.B.3 of Schedule 2 to the Additional Financing is hereby amended and replaced in its entirety to read as follows:

“Notwithstanding the provisions of paragraph B.2 of this Section, the Recipient, through AIPA, shall: (a) prepare and furnish to CAPMU: (a) not later than thirty (30) days after end of each calendar quarter, interim unaudited financial reports; and (b) no later than sixty (60) days after the end of each fiscal year of the Recipient, annual unaudited financial statements, both with respect to: (i) MIGs for Sub-projects under Parts B.2 and C.2 of the Project; and (ii) Compensatory Sales Support Grants under Part E of the Project. The Recipient, through CAPMU, shall: (a) consolidate and furnish the overall interim unaudited financial reports to the Association according to the provisions of paragraph B.2 of this Section; and (b) consolidate the overall annual financial statements referred to above and have them audited as part of the Financial Statements in accordance with paragraph B.4 of this Section.”

3. The table under paragraph 2 of Section IV.A of Schedule 2 to the Additional Financing Agreement is hereby amended and replaced in its entirety to read as follows:

<b>Category</b>	<b>Amount of the Financing Allocated (expressed in SDR)</b>	<b>Percentage of Expenditures to be Financed (inclusive of Taxes)</b>
(1) Goods, works, non-consulting services, consultants' services (including Project audits), Training and Operational Costs under Parts A and D of the Project	3,300,000	100%

Category	Amount of the Financing Allocated (expressed in SDR)	Percentage of Expenditures to be Financed (inclusive of Taxes)
(2) Compensatory Sales Support Grants under Part E of the Project	5,400,000	100%
<b>TOTAL AMOUNT</b>	<u>8,700,000</u>	

4. Section I of the Appendix to the Additional Financing Agreement is hereby amended as follows:

(a) The following definition is amended to read in its entirety as follows:

““Beneficiary” or “Beneficiaries” means any legally established producer organization eligible for assistance under Parts B.2 and C.2 of the Project, selected pursuant to the criteria and procedures set forth in the GOM.”

(b) The following definition is added and placed in alphabetical order, to read as follows:

““Sub-project Agreement” means any of the agreements referred to in Section I.C.2 of Schedule 2 to this Agreement.”

## APPENDIX

### Section I. Definitions

1. "Additional Financing Agreement" means the financing agreement between the Recipient and the Association, dated May 21, 2015 as amended to the date of this Agreement (Credit No. 5639).
2. "Affected Farmers" means any farmer who meets the eligibility criteria set forth in the POM (hereinafter defined) to benefit from a Compensatory Sales Support Grant, including: (i) legally owning or leasing a horticultural plantation of up to fifteen (15) hectares in the Recipient's territory; and (ii) having sold their production of plums, apples and/or grapes in the fall of 2014; and selected in accordance with the procedures set forth in the POM.
3. "AIPA" means the Recipient's Agency for Payments and Interventions in Agriculture established under the subordination of MAFI (hereinafter defined) according to Government Decision No. 60 dated February 4, 2010 and published in the Recipient's Official Gazette No. 20-22 dated February 9, 2010 (as said Decision has been amended to the date of this Agreement).
4. "Anti-Corruption Guidelines" means the "Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants", dated October 15, 2006 and revised in January 2011.
5. "Beneficiary" or "Beneficiaries" means any legally established producer organization eligible for assistance under Parts B.2 and C.2 of the Project, selected pursuant to the criteria and procedures set forth in the GOM.
6. "Border Inspections Points" or "BIPS" means border inspections points within the Recipient's territory selected in accordance with the criteria and procedures set forth in the POM.
7. "CAPMU" means the Consolidated Agricultural Project Management Unit within MAFI established by the Recipient for purposes of Project coordination and management.
8. "Category" means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
9. "Compensatory Sales Support Grant" means a single cash transfer payment grant made out of the proceeds of the Financing by the Recipient (through the AIPA) to the Affected Farmer under Part E of the Project to compensate for the losses due to the export restrictions, all pursuant to the provisions of the POM.

10. "Consultant Guidelines" means the "Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers" dated January 2011 (revised July 2014).
11. "EIA" or "EIAs" means the Environmental Impact Assessment(s) identifying the potential environmental impacts of the Project activities and Sub-projects which include evaluation of potential alternatives, as well as appropriate mitigation, management, and monitoring measures, satisfactory to the Association.
12. "EMF" means Environmental Management Framework prepared by the Recipient for the benefit of the Project based, *inter alia*, on the analysis of both the Recipient's legislation and guidelines; and the Bank's safeguard policies, that outlines environmental assessment procedures and mitigation requirements for the Project's activities and Sub-projects and provides details on procedures, criteria and responsibilities for Sub-projects screening, including EIAs and EMPs guidelines and checklist, and guidelines for chance findings of physical cultural property.
13. "EMP" or "EMPs" means the Environmental Management Plan(s) developed or to be developed for each investment site under a Sub-project, in accordance with the sample presented in the EMF, which includes appropriate environmental monitoring and mitigation plans and up-dated provisions regarding construction permit requirements.
14. "EU" means European Union.
15. "Food Safety Law" means the Recipient's Law No. 113, dated May 18, 2012 which establishes, *inter alia*, general principles and requirements regarding food safety, as said law has been amended to the date of this Agreement.
16. "Food Safety Agency" or "FSA" means the Recipient's Food Safety Agency established pursuant to Government's Decision No. 51 dated January 16, 2013 (as said Decision has been amended to the date of this Agreement).
17. "General Conditions" means the "International Development Association General Conditions for Credits and Grants", dated July 31, 2010, with the modifications set forth in Section II of this Appendix.
18. "Grant Operational Manual" or "GOM" means the manual approved by the Project Steering Committee and adopted by the Recipient as part of the POM (hereinafter defined), setting forth the Beneficiaries' eligibility, competitive selection criteria and operational details of the Matching Investment Grants, as the same may be amended and supplemented from time to time with the Association's prior written approval.

19. "IT" means information and technology.
20. "MAFI" means the Recipient's Ministry of Agriculture and Food Industry or any successor thereto.
21. "Matching Investment Grant" or "MIG" means a grant to be made to a Beneficiary for works, goods and services under a Sub-project in accordance with the requirements set forth or referred to in the GOM (herein defined).
22. "MOE" means the Recipient's Ministry of Environment or any successor thereto.
23. "MOF" means the Recipient's Ministry of Finance, or any successor thereto.
24. "Original Financing Agreement" means the financing agreement between the Recipient and the Association, dated May 28, 2012 as amended to the date of this Agreement (Credit No. 5095).
25. "Original Project" means the Project described in Schedule 1 to the Original Financing Agreement.
26. "Procurement Guidelines" means the "Guidelines: Procurement of Goods, Works and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers" dated January 2011 (revised July 2014).
27. "Procurement Plan" means the Recipient's procurement plan for the Project, dated April 15, 2015 and referred to in paragraph 1.18 of the Procurement Guidelines and paragraph 1.25 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
28. "Procurement Report" means any of the reports referred to in Section III.D.2 of Schedule 2 to this Agreement.
29. "Project Operational Manual" or "POM" means the Recipient's manual, acceptable to the Association, which shall include, *inter alia*: (a) the operational and administrative responsibilities; (b) procedures and rules for the implementation of the Project (including financial management and procurement procedures); (c) the GOM; (d) the eligibility criteria, requirements and procedures for the selection of the Affected Farmers and provision of the Compensatory Sales Support Grant under Part E of the Project; (e) the mechanisms for verification of compliance with the provision of Compensatory Sales Support Grants; and (f) the EMF; as the same may be amended and supplemented from time to time with the Association's prior written approval.
30. "SLM" means sustainable land management.

31. "State Chancellery" means the Recipient's State Chancellery or any successor thereto.
32. "Steering Committee" means the steering committee established through Governmental Decision No. 878 dated September 9, 1999, as amended to the date of this Agreement.
33. "Sub-project" or "Sub-projects" means specific investment project to be carried out by a Beneficiary utilizing the proceeds of a Matching Investment Grant in accordance with the requirements set forth or referred to in the GOM.
34. "Sub-project Agreement" means any of the agreements referred to in Section I.C.2 of Schedule 2 to this Agreement.

**Section II. Modifications to the General Conditions**

The modifications to the General Conditions are as follows:

1. Section 3.02 is modified to read as follows:

*"Section 3.02. Service Charge and Interest Charge*

- (a) *Service Charge.* The Recipient shall pay the Association a service charge on the Withdrawn Credit Balance at the rate specified in the Financing Agreement. The Service Charge shall accrue from the respective dates on which amounts of the Credit are withdrawn and shall be payable semi-annually in arrears on each Payment Date. Service Charges shall be computed on the basis of a 360-day year of twelve 30-day months.
  - (b) *Interest Charge.* The Recipient shall pay the Association interest on the Withdrawn Credit Balance at the rate specified in the Financing Agreement. Interest shall accrue from the respective dates on which amounts of the Credit are withdrawn and shall be payable semi-annually in arrears on each Payment Date. Interest shall be computed on the basis of a 360-day year of twelve 30-day months."
2. Paragraph 28 of the Appendix ("Financing Payment") is modified by inserting the words "the Interest Charge" between the words "the Service Charge" and "the Commitment Charge".

3. The Appendix is modified by inserting a new paragraph 32 with the following definition of "Interest Charge", and renumbering the subsequent paragraphs accordingly:  
  
"32. "Interest Charge" means the interest charge specified in the Financing Agreement for the purpose of Section 3.02(b)."
4. Renumbered paragraph 37 (originally paragraph 36) of the Appendix ("Payment Date") is modified by inserting the words "Interest Charges" between the words "Service Charges" and "Commitment Charges".
5. Renumbered paragraph 50 (originally paragraph 49) of the Appendix ("Service Charge") is modified by replacing the reference to Section 3.02 with Section 3.02 (a).

REPUBLIC OF MOLDOVA

July 8, 2016

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Re: Credit No. 5858-MD  
(Second Additional Financing for Agriculture Competitiveness Project)  
Section 5.01 of the General Conditions  
Financial and Economic Data

Dear Sirs and Mesdames:


In connection with the Financing Agreement (Financing Agreement) of this date between the Republic of Moldova (Member Country) and International Development Association (Association) providing financing (Financing) for the above-captioned Project, and the General Conditions (General Conditions) made applicable to the Financing Agreement, I am writing on behalf of the Member Country to set forth the following:

1. We understand and agree that, for purposes of Section 5.01 of the General Conditions, the Member Country is required by the Association to report "long-term external debt" (as defined in the World Bank's Debtor Reporting System Manual, dated January 2000 (DRSM)), in accordance with the DRSM, and in particular, to notify the Association of new "loan commitments" (as defined in the DRSM) not later than 30 days after the end of the quarter during which the debt is incurred, and to notify the Association of "transactions under loans" (as defined in the DRSM) once a year, not later than March 31 of the year following the year covered by the report.
2. We represent that no defaults exist in respect of any external debt (as defined in the DRSM). It is our understanding that, in making the Financing, the Association may rely on the representations set forth or referred to in this letter.

3. Please confirm your agreement to the foregoing by having a duly authorized representative of the Association sign in the space provided below.

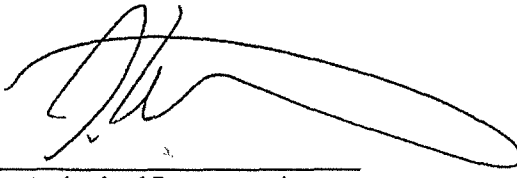
Very truly yours,

REPUBLIC OF MOLDOVA

By   
Authorized Representative

AGREED:

INTERNATIONAL DEVELOPMENT ASSOCIATION

By   
Authorized Representative

Supplemental Letter No. 2

REPUBLIC OF MOLDOVA

July 8, 2016

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Re: Credit No. 5858-MD  
(Second Additional Financing for Agriculture Competitiveness Project)  
Performance Monitoring Indicators

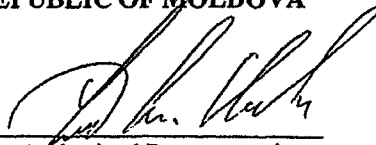
Dear Sirs and Mesdames:

This refers to the provisions of paragraph A of Sections II of Schedule 2 to the Financing Agreement of same date between the Republic of Moldova (the Recipient) and the International Development Association (the Association). The Recipient hereby confirms to the Association that the indicators set out in the attachment to this letter shall serve as a basis for the Recipient to monitor and evaluate the progress of the Project and the achievement of the objectives

Very truly yours,

REPUBLIC OF MOLDOVA

By

  
Authorized Representative

**REPUBLIC OF MOLDOVA**  
(Second Additional Financing for Agriculture Competitiveness Project)

**Project Development Objectives**

Original Project Development Objective - Parent:

The Project Development Objective is to enhance the competitiveness of the agro-food sector by supporting the modernization of the food safety management system, facilitating market access for farmers, and mainstreaming agro-environmental and sustainable land management practices.

Proposed Project Development Objective - Additional Financing (AF):

**Results**

Core sector indicators are considered: Yes

Results reporting level: Project Level

**Project Development Objective Indicators**

Status	Indicator Name	Core	Unit of Measure		Baseline	Actual(Current)	End Target
No Change	Completion of targeted food safety actions for approximation to EU SPS requirements	<input type="checkbox"/>	Percentage	Value	0.00	70.00	100.00
				Date	01-Jul-2012	31-Dec-2015	30-Jun-2017
				Comment			
Revised	Increased sales (domestic and exports) of high value crops by targeted partnerships that receive investment support grants	<input type="checkbox"/>	Percentage	Value	0.00	9.00	50.00
				Date	01-Jul-2012	31-Dec-2015	30-Jun-2019
				Comment			
No Change	Increased on-farm area benefitting from sustainable land management practices supported by the project	<input type="checkbox"/>	Hectare(Ha)	Value	0.00	34841.00	10000.00
				Date	01-Jul-2012	31-Dec-2015	30-Jun-2017
				Comment			
No Change	Increased area protected by robust anti-erosion shelterbelts rehabilitated under the project	<input type="checkbox"/>	Hectare(Ha)	Value	0.00	45100.00	50000.00
				Date	01-Jul-2012	25-Mar-2016	30-Jun-2017
				Comment			

No Change	Stabilized levels of production of apples, plums and grapes among beneficiaries of compensatory grants	<input type="checkbox"/>	Percentage	Value	100.00	100.00	85.00
				Date	01-Dec-2014	31-Dec-2015	01-Dec-2015
				Comment		Official data is available only for 2014. Data for 2015 will be available only in July 2016	

**Intermediate Results Indicators**

Status	Indicator Name	Core	Unit of Measure		Baseline	Actual(Current)	End Target
No Change	Food safety agency is functional	<input type="checkbox"/>	Text	Value	The Food Safety Agency is presently not functional	Food safety agency is functional	Food safety agency is functional
				Date	01-Jan-2012	25-Mar-2016	01-Jan-2014
				Comment			
No Change	Number of laboratories compliant with standards for international accreditation	<input type="checkbox"/>	Number	Value	0.00	0.00	2.00
				Date	01-Jul-2012	25-Mar-2016	30-Jun-2012
				Comment			
No Change	Operational Border Inspection Points	<input type="checkbox"/>	Number	Value	0.00	2.00	4.00
				Date	01-Jul-2012	25-Mar-2016	30-Jun-2014
				Comment			
Revised	Capacity for post-harvest handling created in targeted productive partnerships.	<input type="checkbox"/>	Metric ton	Value	0.00	13542.00	30000.00
				Date	01-Jul-2012	31-Dec-2015	30-Jun-2019
				Comment			
Revised	Productive partnerships created with project support	<input type="checkbox"/>	Number	Value	0.00	34.00	50.00
				Date	01-Jul-2012	25-Mar-2016	30-Jun-2019
				Comment			The target value is increased from 20 to 50

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							due to 2-nd AF
No Change	Analytical solutions for site-specific SLM technologies developed and disseminated	<input type="checkbox"/>	Text	Value	Limited analytical work exists to date	Analytical solutions ready.	Analytical options ready for application by farmers.
				Date	01-Jul-2012	01-May-2015	01-Mar-2013
				Comment			
No Change	Mechanized mobile squads are operational	<input type="checkbox"/>	Number	Value	0.00	2.00	2.00
				Date	01-Jul-2012	25-Mar-2016	30-Jun-2013
				Comment			
No Change	Anti-erosion shelterbelts rehabilitated	<input type="checkbox"/>	Hectare(Ha)	Value	0.00	1654.00	2000.00
				Date	01-Jul-2012	31-Dec-2015	30-Jun-2017
				Comment			
Revised	Amount provided as compensatory grants	<input type="checkbox"/>	Amount(USD)	Value	0.00	7000000.00	7000000.00
				Date	15-Feb-2015		01-Dec-2015
				Comment			The target value of \$11 million has been reduced to \$7 million due to reallocation of \$4 million from Component 5 to Component 1
No Change	Grievance mechanism established	<input type="checkbox"/>	Text	Value	No grievance mechanism	GRM is in place	Grievance mechanism in place
				Date	15-Feb-2015	25-Mar-2016	01-Dec-2015
				Comment			
No Change	Published report on the functioning of the grievance	<input type="checkbox"/>	Text	Value	No report	Report published	Report published

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	mechanism, including resolution rates			Date	15-Feb-2015	01-Dec-2015	01-Dec-2015
				Comment			
Revised	Direct project beneficiaries	<input checked="" type="checkbox"/>	Number	Value	0.00	4794.00	5000.00
				Date	15-Feb-2015	25-Mar-2016	01-Dec-2015
				Comment		Data on female beneficiaries will be collected by the end of 2016 after all compensations have been disbursed and M&E has been conducted	The target value of 8,000 direct beneficiaries was reduced to 5,000. A smaller number of farmers applied for compensatory support. One of the reasons could be the fact that farmers lacked evidence of sale transactions, which was a requirement for eligibility.
No Change	Female beneficiaries	<input checked="" type="checkbox"/>	Percentage Sub Type Supplemental	Value	0.00		1000.00

**The World Bank**  
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT  
INTERNATIONAL DEVELOPMENT ASSOCIATION

1818 H Street N.W.  
Washington, D.C. 20433  
U.S.A.

(202) 473-1000  
Cable Address: INTBAFRAD  
Cable Address: INDEVAS

July 8, 2016

H.E. Octavian Armașu  
Minister  
Ministry of Finance  
Chisinau  
Republic of Moldova

**Re: Credit No. 5858-MD (Second Additional Financing for Agriculture Competitiveness Project)  
GEF Grant No. TF012145 (Agriculture Competitiveness Project) – Second Amendment to the  
Grant Agreement**

Excellency:

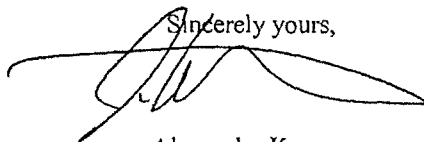
Enclosed are the following documents regarding the above-mentioned Projects, which are delivered to you as the authorized representative of the Republic of Moldova:

1. One signed original Financing Agreement between the Republic of Moldova (the Recipient) and International Development Association (IDA).
2. One signed original Amendment Letter to the GEF Grant Agreement between the Recipient and the World Bank, acting as an Implementing Agency of the Global Environment Facility (GEF).
3. One signed original Supplemental Letter No. 1 Re: Financial and Economic Data.
4. One signed original Supplemental Letter No. 2 Re: Performance Monitoring Indicators.
5. One signed original Disbursement Letter.
6. One copy of Disbursement Guidelines.
7. One copy of General Conditions for Credits and Grants dated July 31, 2010.
8. One copy of Procurement Guidelines dated January 2011 and revised July 2014.
9. One copy of Consultant Guidelines dated January 2011 and revised July 2014.
10. One copy of the Guidelines on Preventing and Combating Fraud and Corruption dated October 15, 2006 and revised in January 2011.

Pursuant to the provisions of Section 5.02 of the Financing Agreement, November 4, 2016 is the terminal date for the effectiveness of the Financing Agreement.

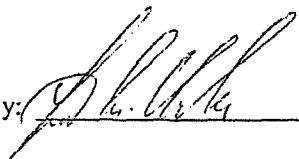
Please confirm on behalf of the Republic of Moldova receipt of the documents listed above by signing the enclosed copy of this letter.

Sincerely yours,



Alexander Kremer  
Acting Country Director  
Belarus, Moldova, and Ukraine  
Europe and Central Asia

Received By:



**The World Bank**  
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT  
INTERNATIONAL DEVELOPMENT ASSOCIATION

1818 H Street N.W.  
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U.S.A.

(202) 473-1000  
Cable Address: INTBAFRAD  
Cable Address: INDEVAS

July 8, 2016

H. E. Mr. Octavian Armașu  
Minister  
Ministry of Finance  
Chisinau  
Republic of Moldova

Excellency:

**Re: Global Environment Facility Grant No.TF012145  
(Agriculture Competitiveness Project)  
Second Amendment to the Grant Agreement**

We refer to the Grant Agreement between the Republic of Moldova (the "Recipient") and the International Bank for Reconstruction and Development acting as an Implementing Agency of the Global Environment Facility (the "World Bank") dated May 28, 2012 and amended on August, 19, 2014, with respect to the above-captioned Project (the "Grant Agreement"). Capitalized terms used in this Amendment Letter and not defined herein have the meaning ascribed to them in the Grant Agreement.

Pursuant to the discussions between the Recipient and the World Bank in the context of the preparation of an additional financing for the above-captioned Project, the Bank is proposing to amend the terms of the Grant Agreement to add the activities under a new Part E to the Project as described below.

Accordingly, the description of activities under Schedule 1 to the Grant Agreement is hereby amended and replaced in its entirety to read as follows:

**"Part A. Enhancing food safety management**

Provision of goods, works, and consultants' services, including training for:

**A.1** Providing regulatory and institutional support to the Recipient for enhancing the food safety management system through:

- (i) supporting the process of legislative harmonization of the national legislation with the relevant EU regulations;
- (ii) strengthening the institutional capacity of MAFI and the Food Safety Agency (FSA) through: (a) staff training; and (b) support for increasing awareness of relevant private entities regarding the application of the new food safety legislation; and

- (iii) developing methodological and analytical work for soil quality and land degradation risk-assessment, land quality certification, and standard setting to ensure that best soil management practices are integrated in the policy and regulatory framework for food safety management.

A.2 Providing technical enhancements support to the Recipient for the food safety management through:

- (i) rehabilitation of the designated building facility for the FSA; procurement of office, communication and computing equipment for the building; and design of an integrated IT system for the interoperability of various FSA divisions;
- (ii) strengthening of animal and plant health and food safety laboratory network and Border Inspection Points (BIPs) through:
  - (a) rehabilitation of two (2) central reference laboratories for:
    - (i) animal health and food safety for products of animal origin, and (ii) food safety for products of vegetable origin; and
  - (b) rehabilitation of four (4) BIPs, namely: on the Eastern border (Tudora); on the Southern border (Giurgiulesti); on the Northern border (Criva) and on the Western border (Leuseni).

Part B. Enhancing market access potential

Provision of goods, works, and consultants' services, including training to MAFI for:

B.1 Providing for a business development support for productive partnerships for primary horticultural, beekeepers and milk producers through: (i) public information and promotion campaign; (ii) development support for identifying, setting up and providing training for new productive partnerships; and (iii) specialized technical assistance support on an ad-hoc basis for the newly created productive partnerships.

B.2 Set-up of an investment support for post-harvest technologies for Sub-projects on emerging productive partnerships for the modernization of post-harvest and post-collection technologies in the horticultural, beekeepers and milk sectors, all through competitive scheme and in accordance with the Grant Operational Manual.

Part C. Enhancing land productivity through Sustainable Land Management (SLM)

Provision of goods, works, and consultants' services, including training to MOE for:

C.1 Strengthening the sustainable land management capacity building of MOE through, *inter alia*: (i) developing a methodological work on general technical and economic options for farm-based interventions; (ii) strengthening the farmers capacity to monitor economic and environmental benefits; (iii) organizing awareness raising and

training activities to improve farmers' land management skills and public policy response with respect to sustainable land management issues.

C.2 Providing financial support for piloting SLM for Sub-projects for farmers for farm-level investments in soil conservation practices and technologies, all in accordance with the Grant Operational Manual.

C.3 Providing support for rehabilitation of shelterbelts by investments in machinery for the creation of two mobile mechanized squads for the rehabilitation of anti-erosion shelterbelts.

Part D. Project management

Provision of support for: (a) Project management and implementation, including monitoring and evaluation and Project audits; (b) the establishment and implementation of a grievance redress mechanism; and (c) the design and implementation of a public information campaign to inform the potential Affected Farmers about Compensatory Sales Support Grants, including its eligibility criteria and application procedures.

Part E. Compensatory Sales Support Grants

Provision of Compensatory Sales Support Grants to Affected Farmers.”

Secondly, the following definitions are added to Section I of the Appendix to the Grant Agreement, placed in alphabetical order, (and the existing definitions are consequently renumbered to keep the alphabetical order) to read as follows:

““Affected Farmers” means any farmer who meets the eligibility criteria set forth in the POM (hereinafter defined) to benefit from a Compensatory Sales Support Grant, including: (i) legally owning or leasing a horticultural plantation of up to fifteen (15) hectares in the Recipient’s territory; and (ii) having sold their production of plums, apples and/or grapes in the fall of 2014; and selected in accordance with the procedures set forth in the POM.”

“Compensatory Sales Support Grant” means a single cash transfer payment grant made out of the proceeds of the Financing by the Recipient (through the AIPA) to the Affected Farmer under Part E of the Project to compensate for the losses due to the export restrictions, all pursuant to the provisions of the POM.”

“Sub-grant Agreement” means any of the agreements referred to in Section I.C.3 of Schedule 2 to this Agreement.””

In addition, the following definition of Section I of the Appendix to the Grant Agreement is hereby amended and replaced in its entirety to read as follows:

““Beneficiary” or “Beneficiaries” means any legally established producer organization eligible for assistance under Parts B.2 and C.2 of the Project, selected pursuant to the criteria and procedures set forth in the GOM.”

Please confirm your agreement with the foregoing amendment by signing and dating this Amendment Letter in the spaces provided below. All other provisions of the Grant Agreement,

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except as amended through this Amendment Letter shall remain in full force and effect. This Amendment Letter shall be executed in two counterparts each of which shall be an original.

The provisions set forth in this Amendment Letter shall become effective upon the date of the countersignature and receipt by the World Bank of one fully executed original of this Amendment Letter.

Very truly yours,

**INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT**

By: 

Alexander Kremer  
Acting Country Director  
Belarus, Moldova, and Ukraine  
Europe and Central Asia

**AGREED:**

**REPUBLIC OF MOLDOVA**

By: 

Authorized Representative

Name: Iurie Uzurelu

Title: Deputy Minister

Date: July 8, 2016

**The World Bank**  
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT  
INTERNATIONAL DEVELOPMENT ASSOCIATION

1818 H Street N.W.  
Washington, D.C. 20433  
U.S.A.

(202) 473-1000  
Cable Address: INTBAFRAD  
Cable Address: INDEVAS

July 8, 2016

H.E. Octavian Armașu  
Minister  
Ministry of Finance  
Chisinau  
Republic of Moldova

Excellency:

**Re: Credit No. 5639-MD, Credit No. 5095-MD, and Credit No.5858-MD  
(Additional Financing II for Agriculture Competitiveness Project)  
Revised Disbursement Letter  
Additional Instructions: Disbursement**

I refer to the Financing Agreements (“Financing Agreements” or “Agreements”) between the International Development Association (“Association”) and Republic of Moldova (the “Recipient”) for the above-referenced project, dated May 28, 2012, May 21, 2015 and July 8, 2016. This revised version supersedes all previous Disbursement Letters for Credit No. 5639 and Credit 5095, and provides additional instruction for the second additional financing. The Agreements provides that the World Bank may issue additional instructions regarding the withdrawal of the proceeds of the Credits No.5095-MD, No. 5639-MD and No. 5858-MD (each, “Financing”). This letter (“Disbursement Letter”), as revised from time to time, constitutes the additional instructions.

The attached *World Bank Disbursement Guidelines for Projects*, dated May 1, 2006, (“Disbursement Guidelines”) (Attachment 1), are an integral part of the Disbursement Letter. The manner in which the provisions in the Disbursement Guidelines apply to the Financing is specified below. Sections and subsections in parentheses below refer to the relevant sections and subsections in the Disbursement Guidelines and, unless otherwise defined in this letter, the capitalized terms used have the meanings ascribed to them in the Disbursement Guidelines.

**I. Disbursement Arrangements**

*(i) Disbursement Methods (section 2)*. The following Disbursement Methods may be used under the Credit:

- Reimbursement
- Advance
- Direct Payment

(ii) *Disbursement Deadline Date (subsection 3.7)*. The Disbursement Deadline Date is four months after the Closing Date specified in the Financing Agreement. Any changes to this date will be notified by the Association.

(iii) *Disbursement Conditions (subsection 3.8)*. Please refer to the Disbursement Condition(s) in the Financing Agreement.

## **II. Withdrawal of Financing Proceeds**

(i) *Authorized Signatures (subsection 3.1)*. A letter in the Form attached (Attachment 2) should be furnished to the World Bank at the address indicated below providing the name(s) and specimen signature(s) of the official(s) authorized to sign Applications:

The World Bank  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America  
Attention: Country Director, ECCU2

Applications for this Financing will be signed by the official(s) authorized to sign Applications as indicated in a letter signed by the Minister of Finance

(ii) *Applications (subsections 3.2 - 3.3)*. Please provide completed and signed: (a) applications for withdrawal, together with supporting documents; and (b) applications for special commitments, together with the copy of the commercial bank letter of credit, to the address indicated below:

The World Bank  
Radnička cesta 80/9<sup>th</sup> Floor  
Zagreb, HR – 10000  
Croatia  
Attention: Loan Operations

(iii) *Electronic Delivery (subsection 3.4)* The World Bank may permit the Recipient to electronically deliver to the World Bank Applications (with supporting documents) through the World Bank's Client Connection, web-based portal. The option to deliver Applications to the World Bank by electronic means may be effected if: (a) the Recipient has designated in writing, pursuant to the terms of subparagraph (i) of this Section, its officials who are authorized to sign and deliver Applications and to receive secure identification credentials ("SIDC") from the World Bank for the purpose of delivering such Applications by electronic means; and (b) all such officials designated by the Recipient have registered as users of Client Connection. If the World Bank agrees, the World Bank will provide the Recipient with SIDC for the designated officials. Following which, the designated officials may deliver Applications electronically by completing Form 2380, which is accessible through Client Connection (<https://clientconnection.worldbank.org>). The Recipient may continue to exercise the option of preparing and delivering Applications in paper form. The World Bank reserves the right and may, in its sole discretion, temporarily or permanently disallow the electronic delivery of Applications by the Recipient.

*(iv) Terms and Conditions of Use of SIDC to Process Applications.* By designating officials to accept SIDC and by choosing to deliver the Applications electronically, the Recipient confirms through the authorized signatory letter its agreement to: (a) abide by the *Terms and Conditions of Use of Secure Identification Devices in connection with Use of Electronic Means to Process Applications and Supporting Documentation* (“Terms and Conditions of Use of SIDC”) provided in Attachment [3]; and (b) to deliver the Terms and Conditions of Use of Tokens to each such official and to cause such official to abide by those terms and conditions.

*(v) Minimum Value of Applications (subsection 3.5).* The Minimum Value of Applications is 20% of the outstanding advance for each of the Designated Accounts if applicable.

*(vi) Advances (sections 5 and 6).*

- *Type of Designated Accounts (subsection 5.3):* Each DA will be pooled for Credit No. 5639-MD, Credit No. 5095-MD, and Credit No.5858-MD.
  - *Designated Account A:* Category 2 managed by AIPA.
  - *Designated Account B:* Category 1 managed by CAPMU.
- *Currency of Designated Accounts (subsection 5.4):* US Dollars.
- *Financial Institution at which the Designated Accounts Will Be Opened (subsection 5.5):*  
Treasury will open the Designated Accounts in the National Bank of Moldova
- *Ceiling (subsection 6.1):* forecast for 2 quarters as provided in the CAPMU's quarterly Consolidated Interim Financial Report, including AIPA IFR for Category 2.

### **III. Reporting on Use of Financing Proceeds**

*(i) Supporting Documentation (section 4).* Supporting documentation should be provided with each application for withdrawal as set out below:

- *For requests for Reimbursement and for reporting eligible expenditures paid from each of the Designated Accounts:*
  - The consolidated (CAPMU and AIPA activities) Interim Financial Report in the form attached (Attachment 4).
- *For requests for Direct Payment:* records evidencing eligible expenditures, e.g., copies of receipts, supplier invoices.

*(ii) Frequency of Reporting Eligible Expenditures Paid from the Designated Account (subsection 6.3):* the period set out in the Financing Agreement for provision of Interim Financial Reports – quarterly.

#### **IV. Other Disbursement Instructions**

By preparing this revised Disbursement Letter covering the Original Financing, Additional Financing (AF 1) and Financing (AF 2), it consolidates all disbursement arrangements and the instructions for the flow of funds for the project as a whole. Disbursements should proceed as follows: Funds from the Original Financing (IDA Credit No. 5095) should be used first, then AF 1 (IDA Credit No. 5639), and at last AF 2 (IDA Credit No. 5858), for the respective categories financed by all sources of funds.

By pooling funds from Credit No. 5639-MD, Credit No. 5095-MD, and Credit No. 5858-MD into the new pooled respective DA A for AIPA and DA B for CAPMU, the previous segregated accounts should be reconciled, their balances should be cancelled and transferred to the new pooled accounts. For the purpose of using a pool account the project may select any of the existing DAs currently available under Credit No. 5639 or Credit No. 5095 indistinctly.

#### **V. Other Important Information**

For additional information on disbursement arrangements, please refer to the Disbursement Handbook available on the World Bank's public website at <https://www.worldbank.org> and its secure website "Client Connection" at <https://clientconnection.worldbank.org>. Print copies are available upon request.

If you have not already done so, the World Bank recommends that you register as a user of the Client Connection website (<https://clientconnection.worldbank.org>). From this website you will be able to download Applications, monitor the near real-time status of the Financing, and retrieve related policy, financial, and procurement information. All Recipient officials authorized to sign and deliver Applications by electronic means are required to register with Client Connection before electronic delivery can be effected. For more information about the website and registration arrangements, please contact the World Bank by email at <[clientconnection@worldbank.org](mailto:clientconnection@worldbank.org)>.

If you have any queries in relation to the above, please contact Finance Officer at [wfafo\\_eca@worldbank.org](mailto:wfafo_eca@worldbank.org) using the above reference.

Yours sincerely,

By: 

Alexander Kremer  
Acting Country Director  
Belarus, Moldova, and Ukraine  
Europe and Central Asia

Attachments

1. *World Bank Disbursement Guidelines for Projects*, dated May 1, 2006
2. Form for Authorized Signatures
3. *Terms and Conditions of Use of Secure Identification Devices in connection with Use of Electronic Means to Process Applications and Supporting Documentation*, dated March 1, 2006
4. Consolidated Interim Financial Report

cc with copies: Mr. Liviu Gumovschi, Director, Consolidated Agriculture Project Management Unit

Name  
Minister of Finance  
Ministry of Finance  
Address

[DATE]

The World Bank  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Attention:  
Director

Dear Director:

**Re: Credit No.5858-MD (Second Additional Financing for Agriculture  
Competitiveness Project)**

I refer to the Financing Agreement ("Agreement") between the International Development Association (the "Association") and the Republic of Moldova (the "Recipient"), dated July 8, 2016, providing the above Financing. For the purposes of Section 2.03 of the General Conditions, as defined in the Agreement, any [one] of the persons whose authenticated specimen signatures appear below is authorized on behalf of the Recipient to sign applications for withdrawal [and applications for a special commitment] under this Financing:

[Name], [position] Specimen Signature: \_\_\_\_\_

[Name], [position] Specimen Signature: \_\_\_\_\_

[Name], [position] Specimen Signature: \_\_\_\_\_

Yours truly,

/ signed /

\_\_\_\_\_  
[Position]

<sup>1</sup> Instruction to the recipient when sending this letter to the Association: Stipulate if more than one person needs to sign Applications, and how many or which positions, and if any thresholds apply.

**Terms and Conditions of Use of Secure Identification Devices  
in connection with Use of Electronic Means  
to Process Applications  
and Supporting Documentation**

January 20, 2010

The World Bank (Bank)<sup>2</sup> will provide secure identification devices (Tokens) to permit the Borrower<sup>3</sup> to deliver applications for withdrawal and applications for special commitments under the Agreement(s) and supporting documentation (such applications and supporting documentation together referred to in these Terms and Conditions of Use as Applications) to the Bank electronically, on the terms and conditions of use specified herein.

**A. Identification of Users.**

1. The Borrower will be required to identify in a completed Authorized Signatory Letter (ASL) duly delivered to and received by the Bank each person who will be authorized to deliver Applications. The Bank will provide Tokens to each person identified in the ASL (Signatory), as provided below. The Borrower shall also immediately notify the Bank if a Signatory is no longer authorized by the Borrower to act as a Signatory.
2. Each Signatory must register as a user on the Bank's Client Connection (CC) website (<https://clientconnection.worldbank.org>) prior to delivery of Tokens. Registration on CC will require that the Signatory establish a CC password (CC Password). The Signatory shall not reveal his/her CC Password to anyone or store or record the CC Password in written or other form. Upon registration as a CC user, the Signatory will be assigned a unique identifying account name.

**B. Distribution, Initialization and Return of Tokens.**

1. The Bank will physically deliver a Token to each Signatory in a manner to be determined by and satisfactory to the Bank.
2. At the time of delivery of a Token to a Signatory, the Signatory will receive a copy of these Terms and Conditions of Use for purposes of initializing the Token.
3. The Bank will verify that the Token, Temporary Password and Terms and Conditions of Use have been duly delivered to and received by the CC User.
4. Promptly upon receipt of the Token and Terms and Conditions of Use, the Signatory will access CC using his/her account name and CC Password and register his/her Token and set a personal identification number (PIN) to be used in connection with the use of his/her Token, after which the Token will be initialized for use by the Signatory exclusively for purposes of delivering Applications. Upon initialization of the Token, the Signatory will be a "Token User". The Bank

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<sup>2</sup> "Bank" includes IBRD and IDA.

<sup>3</sup> "Borrower" includes the borrower of an IBRD loan, IDA credit, or Project Preparation Facility advance and the recipient of a grant.

will maintain in its database a user account (Account) for each Token User for purposes of managing the Token of the Token User. Neither the Borrower nor the Token User will have any access to the Account.

5. Prior to first use of the Token by the Token User for delivering Applications, the Borrower shall ensure that the Token User has received training materials provided by the Bank in use of the Token.
6. Tokens shall be promptly returned to the Bank upon request of the Bank.

**C. Management of Tokens.**

1. Tokens will remain the property of the Bank.
2. Use of the Token is strictly limited to use in the delivery of Applications by the Token User in the manner prescribed by the Bank in the Agreement(s) and these Terms and Conditions. Any other use of the Token is prohibited.
3. The Bank assumes no responsibility or liability whatsoever for any misuse of the Token by the Token User, other representatives of the Borrower, or third parties.
4. The Borrower undertakes to ensure, and represents and warrants to the Bank (such representation and warranty being expressly relied upon by the Bank in delivery of a Token to each Token User) that each Token User is provided, understands and will abide by, these Terms and Conditions of Use, including without limitation the following:

***Security***

- 4.1. The Token User shall not reveal his/her PIN to anyone or store or record the PIN in written or other form.
- 4.2. The Token User shall not allow anyone else to utilize a Token to deliver an Application to the Bank.
- 4.3. The Token User shall always logout from CC when not using the system. Failure to logout properly can create a route into the system that is unprotected.
- 4.4. If the Token User believes a third party has learned his/her PIN or has lost his/her Token he/she shall immediately notify [clientconnection@worldbank.org](mailto:clientconnection@worldbank.org).
- 4.5. The Borrower shall immediately notify the Bank at [clientconnection@worldbank.org](mailto:clientconnection@worldbank.org) of any lost, stolen or compromised Tokens, and take other reasonable steps to ensure such Tokens are disabled immediately.

***Care of Tokens***

- 4.6. Tokens contain delicate and sophisticated instrumentation and therefore should be handled with due care, and should not be immersed in liquids, exposed to extreme temperatures, crushed or bent. Also, Tokens should be kept more than five (5) cm from devices that generate electromagnetic radiation (EMR), such as mobile phones, phone-enabled PDAs, smart phones and other similar devices. Tokens should be carried and stored separate from any EMR device. At close

range (less than 5 cm), these devices can output high levels of EMR that can interfere with the proper operation of electronic equipment, including the Token.

4.7 Without derogating from these Terms and Conditions of Use, other technical instructions on the proper use and care Tokens are available at <http://www.rsa.com>.

5. *Replacement*

5.1. Lost, damaged, compromised (in terms of 4.5, above) or destroyed Tokens will be replaced at the expense of the Borrower.

5.2. The Bank reserves the right, in its sole discretion, not to replace any Token in the case of misuse, or not to reactivate a Token User's Account

6. *Reservation of Right to disable Token*

6.1. The Borrower shall reserve the right to revoke the authorization of a Token User to use a Token for any reason.

6.2. The Bank reserves the right, in its sole discretion, to temporarily or permanently disable a Token, de-activate a Token User's Account or both.

**International Bank for  
Reconstruction and Development**

**General Conditions  
for  
Loans**

**Dated July 31, 2010**

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## **ARTICLE I**

### **Introductory Provisions**

#### *Section 1.01. Application of General Conditions*

These General Conditions set forth certain terms and conditions generally applicable to the Loan Agreement and to any other Legal Agreement. They apply to the extent the Legal Agreement so provides. If the Loan Agreement is between the Member Country and the Bank, references in these General Conditions to the Guarantor and the Guarantee Agreement shall be disregarded. If there is no Project Agreement between the Bank and a Project Implementing Entity, references in these General Conditions to the Project Implementing Entity and the Project Agreement shall be disregarded.

#### *Section 1.02. Inconsistency with Legal Agreements*

If any provision of any Legal Agreement is inconsistent with a provision of these General Conditions, the provision of the Legal Agreement shall govern.

#### *Section 1.03. Definitions*

Whenever used in these General Conditions or in the Legal Agreements (except as otherwise provided in the Legal Agreements), the terms set forth in the Appendix have the meanings ascribed to them in the Appendix.

#### *Section 1.04. References; Headings*

References in these General Conditions to Articles, Sections and Appendix are to the Articles and Sections of, and the Appendix to, these General Conditions. The headings of the Articles, Sections and Appendix, and the Table of Contents are inserted in these General Conditions for reference only and shall not be taken into consideration in interpreting these General Conditions.

## **ARTICLE II**

### **Withdrawals**

#### *Section 2.01. Loan Account; Withdrawals Generally; Currency of Withdrawal*

(a) The Bank shall credit the amount of the Loan to the Loan Account in the Loan Currency. If the Loan is denominated in more than one currency, the

Bank shall divide the Loan Account into multiple sub-accounts, one for each Loan Currency.

(b) The Borrower may from time to time request withdrawals of amounts of the Loan from the Loan Account in accordance with the provisions of the Loan Agreement and of these General Conditions.

(c) Each withdrawal of an amount of the Loan from the Loan Account shall be made in the Loan Currency of such amount. The Bank shall, at the request and acting as an agent of the Borrower, and on such terms and conditions as the Bank shall determine, purchase with the Loan Currency withdrawn from the Loan Account such Currencies as the Borrower shall reasonably request to meet payments for Eligible Expenditures.

Section 2.02. *Special Commitment by the Bank*

At the Borrower's request and on such terms and conditions as the Bank and the Borrower shall agree, the Bank may enter into special commitments in writing to pay amounts for Eligible Expenditures notwithstanding any subsequent suspension or cancellation by the Bank or the Borrower ("Special Commitment").

Section 2.03. *Applications for Withdrawal or for Special Commitment*

(a) When the Borrower wishes to request a withdrawal from the Loan Account or to request the Bank to enter into a Special Commitment, the Borrower shall deliver to the Bank a written application in such form and substance as the Bank shall reasonably request. Applications for withdrawal, including the documentation required pursuant to this Article, shall be made promptly in relation to Eligible Expenditures.

(b) The Borrower shall furnish to the Bank evidence satisfactory to the Bank of the authority of the person or persons authorized to sign such applications and the authenticated specimen signature of each such person.

(c) The Borrower shall furnish to the Bank such documents and other evidence in support of each such application as the Bank shall reasonably request, whether before or after the Bank has permitted any withdrawal requested in the application.

(d) Each such application and accompanying documents and other evidence must be sufficient in form and substance to satisfy the Bank that the Borrower is entitled to withdraw from the Loan Account the amount applied for

and that the amount to be withdrawn from the Loan Account will be used only for the purposes specified in the Loan Agreement.

(e) The Bank shall pay the amounts withdrawn by the Borrower from the Loan Account only to, or on the order of, the Borrower.

Section 2.04. *Designated Accounts*

(a) The Borrower may open and maintain one or more designated accounts into which the Bank may, at the request of the Borrower, deposit amounts withdrawn from the Loan Account as advances for purposes of the Project. All designated accounts shall be opened in a financial institution acceptable to the Bank, and on terms and conditions acceptable to the Bank.

(b) Deposits into, and payments out of, any such designated account shall be made in accordance with the Loan Agreement and these General Conditions and such additional instructions as the Bank may specify from time to time by notice to the Borrower. The Bank may, in accordance with the Loan Agreement and such instructions, cease making deposits into any such account upon notice to the Borrower. In such case, the Bank shall notify the Borrower of the procedures to be used for subsequent withdrawals from the Loan Account.

Section 2.05. *Eligible Expenditures*

The Borrower and the Project Implementing Entity shall use the proceeds of the Loan exclusively to finance expenditures which, except as otherwise provided in the Loan Agreement, satisfy the following requirements ("Eligible Expenditure"):

(a) the payment is for the financing of the reasonable cost of goods, works or services required for the Project, to be financed out of the proceeds of the Loan and procured, all in accordance with the provisions of the Legal Agreements;

(b) the payment is not prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

(c) the payment is made on or after the date specified in the Loan Agreement, and except as the Bank may otherwise agree, is for expenditures incurred prior to the Closing Date.

**Section 2.06. *Financing Taxes***

The use of any proceeds of the Loan to pay for Taxes levied by, or in the territory of, the Member Country on or in respect of Eligible Expenditures, or on their importation, manufacture, procurement or supply, if permitted by the Legal Agreements, is subject to the Bank's policy of requiring economy and efficiency in the use of the proceeds of its loans. To that end, if the Bank at any time determines that the amount of any such Tax is excessive, or that such Tax is discriminatory or otherwise unreasonable, the Bank may, by notice to the Borrower, adjust the percentage of such Eligible Expenditures to be financed out of the proceeds of the Loan specified in the Loan Agreement, as required to ensure consistency with such policy of the Bank.

**Section 2.07. *Refinancing Preparation Advance; Capitalizing Front-end Fee and Interest***

(a) If the Loan Agreement provides for the repayment out of the proceeds of the Loan of an advance made by the Bank or the Association ("Preparation Advance"), the Bank shall, on behalf of the Borrower, withdraw from the Loan Account on or after the Effective Date the amount required to repay the withdrawn and outstanding balance of the advance as at the date of such withdrawal from the Loan Account and to pay all accrued and unpaid charges, if any, on the advance as at such date. The Bank shall pay the amount so withdrawn to itself or the Association, as the case may be, and shall cancel the remaining unwithdrawn amount of the advance.

(b) Except as otherwise provided in the Loan Agreement, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account on or after the Effective Date and pay to itself the amount of the Front-end Fee payable pursuant to Section 3.01.

(c) If the Loan Agreement provides for financing of interest and other charges on the Loan out of the proceeds of the Loan, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account on each of the Payment Dates, and pay to itself the amount required to pay such interest and other charges accrued and payable as at such date, subject to any limit specified in the Loan Agreement on the amount to be so withdrawn.

Section 2.08. *Reallocation*

Notwithstanding any allocation of an amount of the Loan to a category of expenditures under the Loan Agreement, if the Bank reasonably determines at any time that such amount will be insufficient to finance such expenditures, it may, by notice to the Borrower:

(a) reallocate any other amount of the Loan which in the opinion of the Bank is not needed for the purpose for which it has been allocated under the Loan Agreement, to the extent required to meet the estimated shortfall; and

(b) if such reallocation will not fully meet the estimated shortfall, reduce the percentage of such expenditures to be financed out of the proceeds of the Loan, in order that withdrawals for such expenditures may continue until all such expenditures have been made.

**ARTICLE III**

**Loan Terms**

Section 3.01. *Front-end Fee.* The Borrower shall pay the Bank a front-end fee on the Loan amount at the rate specified in the Loan Agreement (the "Front-end Fee").

Section 3.02. *Interest*

(a) The Borrower shall pay the Bank interest on the Withdrawn Loan Balance at the rate specified in the Loan Agreement; provided, however, that if the Loan Agreement provides for Conversions, such rate may be modified from time to time in accordance with the provisions of Article IV. Interest shall accrue from the respective dates on which amounts of the Loan are withdrawn and shall be payable semi-annually in arrears on each Payment Date.

(b) If interest on any amount of the Withdrawn Loan Balance is based on a Variable Spread, the Bank shall notify the Loan Parties of the interest rate on such amount for each Interest Period, promptly upon its determination.

(c) If interest on any amount of the Loan is based on LIBOR or EURIBOR, and the Bank determines that such Reference Rate has permanently ceased to be quoted for the relevant Currency, the Bank shall apply such other comparable Reference Rate for such Currency as it may reasonably determine. The Bank shall promptly notify the Loan Parties of such other rate.

(d) If interest on any amount of the Withdrawn Balance is payable at the Variable Rate, then whenever, in light of changes in market practice affecting the determination of the interest rate applicable to such amount, the Bank determines that it is in the interest of its borrowers as a whole and of the Bank to apply a basis for determining such interest rate other than as provided in the Loan Agreement and these General Conditions, the Bank may modify the basis for determining such interest rate upon not less than three months' notice to the Loan Parties of the new basis. The new basis shall become effective on the expiry of the notice period unless a Loan Party notifies the Bank during such period of its objection to such modification, in which case the modification shall not apply to such amount of the Loan.

(e) Notwithstanding the provisions of paragraph (a) of this Section, if any amount of the Withdrawn Loan Balance remains unpaid when due and such non-payment continues for a period of thirty days, then the Borrower shall pay the Default Interest Rate on such overdue amount in lieu of the interest rate specified in the Loan Agreement (or such other interest rate as may be applicable pursuant to Article IV as a result of a Conversion) until such overdue amount is fully paid. Interest at the Default Interest Rate shall accrue from the first day of each Default Interest Period and shall be payable semi-annually in arrears on each Payment Date.

#### Section 3.03. *Repayment*

The Borrower shall repay the Withdrawn Loan Balance to the Bank in accordance with the provisions of the Loan Agreement.

#### Section 3.04. *Prepayment*

(a) After giving not less than forty-five days' notice to the Bank, the Borrower may repay the Bank the following amounts in advance of maturity, as of a date acceptable to the Bank (provided that the Borrower has paid all Loan Payments due as at such date, including any prepayment premium calculated pursuant to paragraph (b) of this Section): (i) the entire Withdrawn Loan Balance as at such date, or (ii) the entire principal amount of any one or more maturities of the Loan. Any partial prepayment of the Withdrawn Loan Balance shall be applied in the manner specified by the Borrower, or in the absence of any specification by the Borrower, in the following manner: (A) if the Loan Agreement provides for the separate amortization of specified disbursed amounts of the principal of the Loan ("Disbursed Amounts"), the prepayment shall be applied in the inverse order of the Disbursed Amounts, with the Disbursed Amount which has been withdrawn last being repaid first and with the latest

maturity of said Disbursed Amount being repaid first; and (B) in all other cases, the prepayment shall be applied in the inverse order of the Loan maturities, with the latest maturity being repaid first.

(b) The prepayment premium payable under paragraph (a) of this Section shall be an amount reasonably determined by the Bank to represent any cost to it of redeploying the amount to be prepaid from the date of its prepayment to its maturity date.

(c) If, in respect of any amount of the Loan to be prepaid, a Conversion has been effected and the Conversion Period has not terminated at the time of prepayment: (i) the Borrower shall pay a transaction fee for the early termination of the Conversion, in such amount or at such rate as announced by the Bank from time to time and in effect at the time of receipt by the Bank of the Borrower's notice of prepayment; and (ii) the Borrower or the Bank, as the case may be, shall pay an Unwinding Amount, if any, for the early termination of the Conversion, in accordance with the Conversion Guidelines. Transaction fees provided for under this paragraph and any Unwinding Amount payable by the Borrower pursuant to this paragraph shall be paid not later than sixty days after the date of prepayment.

#### Section 3.05. *Partial Payment*

If the Bank at any time receives less than the full amount of any Loan Payment then due, it shall have the right to allocate and apply the amount so received in any manner and for such purposes under the Loan Agreement as it determines in its sole discretion.

#### Section 3.06. *Place of Payment*

All Loan Payments shall be paid at such places as the Bank shall reasonably request.

#### Section 3.07. *Currency of Payment*

(a) The Borrower shall pay all Loan Payments in the Loan Currency; and if a Conversion has been effected in respect of any amount of the Loan, as further specified in the Conversion Guidelines.

(b) If the Borrower so requests, the Bank shall, acting as agent of the Borrower, and on such terms and conditions as the Bank shall determine, purchase the Loan Currency for the purpose of paying a Loan Payment upon

timely payment by the Borrower of sufficient funds for that purpose in a Currency or Currencies acceptable to the Bank; provided, however, that the Loan Payment shall be deemed to have been paid only when and to the extent that the Bank has received such payment in the Loan Currency.

**Section 3.08. *Temporary Currency Substitution***

(a) If the Bank reasonably determines that an extraordinary situation has arisen under which the Bank shall be unable to provide the Loan Currency at any time for purposes of funding the Loan, the Bank may provide such substitute Currency or Currencies (“Substitute Loan Currency”) for the Loan Currency (“Original Loan Currency”) as the Bank shall select. During the period of such extraordinary situation: (i) the Substitute Loan Currency shall be deemed to be the Loan Currency for purposes of these General Conditions and the Legal Agreements; and (ii) Loan Payments shall be paid in the Substitute Loan Currency, and other related financial terms shall be applied, in accordance with principles reasonably determined by the Bank. The Bank shall promptly notify the Loan Parties of the occurrence of such extraordinary situation, the Substitute Loan Currency and the financial terms of the Loan related to the Substitute Loan Currency.

(b) Upon notification by the Bank under paragraph (a) of this Section, the Borrower may within thirty days thereafter notify the Bank of its selection of another Currency acceptable to the Bank as the Substitute Loan Currency. In such case, the Bank shall notify the Borrower of the financial terms of the Loan applicable to said Substitute Loan Currency, which shall be determined in accordance with principles reasonably established by the Bank.

(c) During the period of the extraordinary situation referred to in paragraph (a) of this Section, no premium shall be payable on prepayment of the Loan.

(d) Once the Bank is again able to provide the Original Loan Currency, it shall, at the Borrower’s request, change the Substitute Loan Currency to the Original Loan Currency in accordance with principles reasonably established by the Bank.

**Section 3.09. *Valuation of Currencies***

Whenever it becomes necessary for the purposes of any Legal Agreement, to determine the value of one Currency in terms of another, such value shall be as reasonably determined by the Bank.

Section 3.10. *Manner of Payment*

(a) Any Loan Payment required to be paid to the Bank in the Currency of any country shall be made in such manner, and in Currency acquired in such manner, as shall be permitted under the laws of such country for the purpose of making such payment and effecting the deposit of such Currency to the account of the Bank with a depository of the Bank authorized to accept deposits in such Currency.

(b) All Loan Payments shall be paid without restrictions of any kind imposed by, or in the territory of, the Member Country and without deduction for, and free from, any Taxes levied by or in the territory of the Member Country.

(c) The Legal Agreements shall be free from any Taxes levied by or in the territory of the Member Country on or in connection with their execution, delivery or registration.

**ARTICLE IV**

**Conversions of Loan Terms**

Section 4.01. *Conversions Generally*

(a) The Borrower may, at any time, request a conversion of the terms of the Loan in accordance with the Loan Agreement in order to facilitate prudent debt management. Each such request shall be furnished by the Borrower to the Bank in accordance with the Conversion Guidelines and, upon acceptance by the Bank, the conversion requested shall be considered a Conversion for the purposes of these General Conditions.

(b) Upon acceptance by the Bank of a request for a Conversion, the Bank shall take all actions necessary to effect the Conversion in accordance with these General Conditions, the Loan Agreement and the Conversion Guidelines. To the extent any modification of the provisions of the Loan Agreement providing for withdrawal or repayment of the proceeds of the Loan is required to give effect to the Conversion, such provisions shall be deemed to have been modified as of the Conversion Date. Promptly after the Execution Date for each Conversion, the Bank shall notify the Loan Parties of the financial terms of the Loan, including any revised amortization provisions and modified provisions providing for withdrawal of the proceeds of the Loan.

(c) Except as otherwise provided in the Conversion Guidelines, the

Borrower shall pay a transaction fee for each Conversion, in such amount or at such rate as announced by the Bank from time to time and in effect on the Execution Date. Transaction fees provided for under this paragraph shall be either: (i) payable as a lump sum not later than sixty days after the Execution Date; or (ii) expressed as a percentage per annum and added to the interest rate payable on each Payment Date.

*Section 4.02. Conversion of Loan that Accrues Interest at a Rate Based on the Variable Spread*

A Conversion of all or any amount of the Loan that accrues interest at a rate based on the Variable Spread to a Fixed Rate or a Currency Conversion of such amount shall be effected first by fixing the Variable Spread applicable to such amount into the Fixed Spread for the Loan Currency and adding to such Fixed Spread the Variable Spread Fixing Charge, followed immediately by the Conversion requested by the Borrower.

*Section 4.03. Interest Payable following Interest Rate Conversion or Currency Conversion*

(a) *Interest Rate Conversion.* Upon an Interest Rate Conversion, the Borrower shall, for each Interest Period during the Conversion Period, pay interest on the amount of the Withdrawn Loan Balance to which the Conversion applies at the Variable Rate or the Fixed Rate, whichever applies to the Conversion.

(b) *Currency Conversion of Unwithdrawn Amounts.* Upon a Currency Conversion of all or any amount of the Unwithdrawn Loan Balance to an Approved Currency, the Borrower shall, for each Interest Period during the Conversion Period, pay interest in the Approved Currency on such amount as subsequently withdrawn and outstanding from time to time at the Variable Rate.

(c) *Currency Conversion of Withdrawn Amounts.* Upon a Currency Conversion of all or any amount of the Withdrawn Loan Balance to an Approved Currency, the Borrower shall, for each Interest Period during the Conversion Period, pay interest in the Approved Currency on such Withdrawn Loan Balance at the Variable Rate or Fixed Rate, whichever applies to the Conversion.

*Section 4.04. Principal Payable following Currency Conversion*

(a) *Currency Conversion of Unwithdrawn Amounts.* In the event of a Currency Conversion of an amount of the Unwithdrawn Loan Balance to an Approved Currency, the principal amount of the Loan so converted shall be

determined by the Bank by multiplying the amount to be so converted in its Currency of denomination immediately prior to the Conversion by the Screen Rate. The Borrower shall repay such principal amount as subsequently withdrawn in the Approved Currency in accordance with the provisions of the Loan Agreement.

(b) *Currency Conversion of Withdrawn Amounts.* In the event of a Currency Conversion of an amount of the Withdrawn Loan Balance to an Approved Currency, the principal amount of the Loan so converted shall be determined by the Bank by multiplying the amount to be so converted in its Currency of denomination immediately prior to the Conversion by either: (i) the exchange rate that reflects the amounts of principal in the Approved Currency payable by the Bank under the Currency Hedge Transaction relating to the Conversion; or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate. The Borrower shall repay such principal amount in the Approved Currency in accordance with the provisions of the Loan Agreement.

(c) *Termination of Conversion Period prior to Final Loan Maturity.* If the Conversion Period of a Currency Conversion applicable to a portion of the Loan terminates prior to the final maturity of such portion, the principal amount of such portion of the Loan remaining outstanding in the Loan Currency to which such amount shall revert upon such termination shall be determined by the Bank either: (i) by multiplying such amount in the Approved Currency of the Conversion by the spot or forward exchange rate prevailing between the Approved Currency and said Loan Currency for settlement on the last day of the Conversion Period; or (ii) in such other manner as specified in the Conversion Guidelines. The Borrower shall repay such principal amount in the Loan Currency in accordance with the provisions of the Loan Agreement.

#### Section 4.05. *Interest Rate Cap; Interest Rate Collar*

(a) *Interest Rate Cap.* Upon the establishment of an Interest Rate Cap on the Variable Rate, the Borrower shall, for each Interest Period during the Conversion Period, pay interest on the amount of the Withdrawn Loan Balance to which the Conversion applies at the Variable Rate, unless on any Reference Rate Reset Date during the Conversion Period the Variable Rate exceeds the Interest Rate Cap, in which case, for the Interest Period to which the Reference Rate Reset Date relates, the Borrower shall pay interest on such amount at a rate equal to the Interest Rate Cap.

(b) *Interest Rate Collar.* Upon the establishment of an Interest Rate

Collar on the Variable Rate, the Borrower shall, for each Interest Period during the Conversion Period, pay interest on the amount of the Withdrawn Loan Balance to which the Conversion applies at the Variable Rate, unless on any Reference Rate Reset Date during the Conversion Period the Variable Rate: (i) exceeds the upper limit of the Interest Rate Collar, in which case, for the Interest Period to which the Reference Rate Reset Date relates, the Borrower shall pay interest on such amount at a rate equal to such upper limit; or (ii) falls below the lower limit of the Interest Rate Collar, in which case, for the Interest Period to which the Reference Rate Reset Date relates, the Borrower shall pay interest on such amount at a rate equal to such lower limit.

(c) *Interest Rate Cap or Collar Premium.* Upon the establishment of an Interest Rate Cap or an Interest Rate Collar, the Borrower shall pay to the Bank a premium on the amount of the Withdrawn Loan Balance to which the Conversion applies, calculated: (i) on the basis of the premium, if any, payable by the Bank for an interest rate cap or collar purchased by the Bank from a Counterparty for the purpose of establishing the Interest Rate Cap or Interest Rate Collar; or (ii) otherwise as specified in the Conversion Guidelines. Such premium shall be payable by the Borrower not later than sixty days after the Execution Date.

(d) *Early Termination.* Except as otherwise provided in the Conversion Guidelines, upon the early termination of any Interest Rate Cap or Interest Rate Collar by the Borrower: (i) the Borrower shall pay a transaction fee for the early termination, in such amount or at such rate as announced by the Bank from time to time and in effect at the time of receipt by the Bank of the Borrower's notice of early termination; and (ii) the Borrower or the Bank, as the case may be, shall pay an Unwinding Amount, if any, for the early termination, in accordance with the Conversion Guidelines. Transaction fees provided for under this paragraph and any Unwinding Amount payable by the Borrower pursuant to this paragraph shall be paid not later than sixty days after the effective date of the early termination.

## **ARTICLE V**

### **Project Execution**

#### **Section 5.01. *Project Execution Generally***

The Borrower and the Project Implementing Entity shall carry out their Respective Parts of the Project:

- (a) with due diligence and efficiency;
- (b) in conformity with appropriate administrative, technical, financial, economic, environmental and social standards and practices; and
- (c) in accordance with the provisions of the Legal Agreements and these General Conditions.

Section 5.02. *Performance under the Loan Agreement and Project Agreement*

(a) The Guarantor shall not take or permit to be taken any action which would prevent or interfere with the execution of the Project or the performance of the obligations of the Borrower or the Project Implementing Entity under the Legal Agreement to which it is a party.

(b) The Borrower shall: (i) cause the Project Implementing Entity to perform all of the obligations of the Project Implementing Entity set forth in the Project Agreement in accordance with the provisions of the Project Agreement; and (ii) not take or permit to be taken any action which would prevent or interfere with such performance.

Section 5.03. *Provision of Funds and other Resources*

The Borrower shall provide or cause to be provided, promptly as needed, the funds, facilities, services and other resources: (a) required for the Project; and (b) necessary or appropriate to enable the Project Implementing Entity to perform its obligations under the Project Agreement.

Section 5.04. *Insurance*

The Borrower and the Project Implementing Entity shall make adequate provision for the insurance of any goods required for their Respective Parts of the Project and to be financed out of the proceeds of the Loan, against hazards incident to the acquisition, transportation and delivery of the goods to the place of their use or installation. Any indemnity for such insurance shall be payable in a freely usable Currency to replace or repair such goods.

Section 5.05. *Land Acquisition*

The Borrower and the Project Implementing Entity shall take (or cause to be taken) all action to acquire as and when needed all land and rights in respect of land as shall be required for carrying out their Respective Parts of the Project and shall promptly furnish to the Bank, upon its request, evidence satisfactory to the

Bank that such land and rights in respect of land are available for purposes related to the Project.

*Section 5.06. Use of Goods, Works and Services; Maintenance of Facilities*

(a) Except as the Bank shall otherwise agree, the Borrower and the Project Implementing Entity shall ensure that all goods, works and services financed out of the proceeds of the Loan are used exclusively for the purposes of the Project.

(b) The Borrower and the Project Implementing Entity shall ensure that all facilities relevant to their Respective Parts of the Project shall at all times be properly operated and maintained and that all necessary repairs and renewals of such facilities shall be made promptly as needed.

*Section 5.07. Plans; Documents; Records*

(a) The Borrower and the Project Implementing Entity shall furnish to the Bank all plans, schedules, specifications, reports and contract documents for their Respective Parts of the Project, and any material modifications of or additions to these documents, promptly upon their preparation and in such detail as the Bank shall reasonably request.

(b) The Borrower and the Project Implementing Entity shall maintain records adequate to record the progress of their Respective Parts of the Project (including its cost and the benefits to be derived from it), to identify the goods, works and services financed out of the proceeds of the Loan and to disclose their use in the Project, and shall furnish such records to the Bank upon its request.

(c) The Borrower and the Project Implementing Entity shall retain all records (contracts, orders, invoices, bills, receipts and other documents) evidencing expenditures under their Respective Parts of the Project until at least the later of: (i) one year after the Bank has received the audited Financial Statements covering the period during which the last withdrawal from the Loan Account was made; and (ii) two years after the Closing Date. The Borrower and the Project Implementing Entity shall enable the Bank's representatives to examine such records.

*Section 5.08. Project Monitoring and Evaluation*

(a) The Borrower shall maintain or cause to be maintained policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis,

in accordance with indicators acceptable to the Bank, the progress of the Project and the achievement of its objectives.

(b) The Borrower shall prepare or cause to be prepared periodic reports ("Project Report"), in form and substance satisfactory to the Bank, integrating the results of such monitoring and evaluation activities and setting out measures recommended to ensure the continued efficient and effective execution of the Project and to achieve the Project's objectives. The Borrower shall furnish or cause to be furnished each Project Report to the Bank promptly upon its preparation, afford the Bank a reasonable opportunity to exchange views with the Borrower and the Project Implementing Entity on such report, and thereafter implement such recommended measures, taking into account the Bank's views on the matter.

(c) The Borrower shall prepare, or cause to be prepared, and furnish to the Bank not later than six months after the Closing Date, or such earlier date as may be specified for that purpose in the Loan Agreement: (i) a report of such scope and in such detail as the Bank shall reasonably request, on the execution of the Project, the performance by the Loan Parties, the Project Implementing Entity and the Bank of their respective obligations under the Legal Agreements and the accomplishment of the purposes of the Loan; and (ii) a plan designed to ensure the sustainability of the Project's achievements.

Section 5.09. *Financial Management; Financial Statements; Audits*

(a) The Borrower shall maintain or cause to be maintained a financial management system and prepare financial statements ("Financial Statements") in accordance with consistently applied accounting standards acceptable to the Bank, both in a manner adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower shall:

(i) have the Financial Statements periodically audited in accordance with the Legal Agreements by independent auditors acceptable to the Bank, in accordance with consistently applied auditing standards acceptable to the Bank;

(ii) not later than the date specified in the Legal Agreements, furnish or cause to be furnished to the Bank the Financial Statements as so audited, and such other information

concerning the audited Financial Statements and such auditors, as the Bank may from time to time reasonably request; and

- (iii) make the audited Financial Statements, or cause the audited Financial Statements to be made, publicly available in a timely fashion and in a manner acceptable to the Bank.

**Section 5.10. *Cooperation and Consultation***

The Bank and the Loan Parties shall cooperate fully to assure that the purposes of the Loan and the objectives of the Project will be accomplished. To that end, the Bank and the Loan Parties shall:

- (a) from time to time, at the request of any one of them, exchange views on the Project, the Loan, and the performance of their respective obligations under the Legal Agreements, and furnish to the other party all such information related to such matters as it shall reasonably request; and

- (b) promptly inform each other of any condition which interferes with, or threatens to interfere with, such matters.

**Section 5.11. *Visits***

- (a) The Member Country shall afford all reasonable opportunity for representatives of the Bank to visit any part of its territory for purposes related to the Loan or the Project.

- (b) The Borrower and the Project Implementing Entity shall enable the Bank's representatives to: (i) visit any facilities and construction sites included in their Respective Parts of the Project; and (ii) to examine the goods financed out of the proceeds of the Loan for their Respective Parts of the Project, and any plants, installations, sites, works, buildings, property, equipment, records and documents relevant to the performance of their obligations under the Legal Agreements.

**Section 5.12. *Disputed Area***

In the event that the Project is in an area which is or becomes disputed, neither the Bank's financing of the Project, nor any designation of or reference to such area in the Legal Agreements, is intended to constitute a judgment on the part of the Bank as to the legal or other status of such area or to prejudice the

determination of any claims with respect to such area.

## ARTICLE VI

### **Financial and Economic Data; Negative Pledge**

#### Section 6.01. *Financial and Economic Data*

The Member Country shall furnish to the Bank all such information as the Bank shall reasonably request with respect to financial and economic conditions in its territory, including its balance of payments and its External Debt as well as that of its political or administrative subdivisions and of any entity owned or controlled by, or operating for the account or benefit of, the Member Country or any such subdivision, and of any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for the Member Country.

#### Section 6.02. *Negative Pledge*

(a) It is the policy of the Bank, in making loans to, or with the guarantee of, its members not to seek, in normal circumstances, special security from the member concerned but to ensure that no other External Debt shall have priority over its loans in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of such member. To that end, if any Lien is created on any Public Assets as security for any External Debt, which will or might result in a priority for the benefit of the creditor of such External Debt in the allocation, realization or distribution of foreign exchange, such Lien shall, unless the Bank shall otherwise agree, *ipso facto* and at no cost to the Bank, equally and ratably secure all Loan Payments, and the Member Country, in creating or permitting the creation of such Lien, shall make express provision to that effect; provided, however, that if for any constitutional or other legal reason such provision cannot be made with respect to any Lien created on assets of any of its political or administrative subdivisions, the Member Country shall promptly and at no cost to the Bank secure all Loan Payments by an equivalent Lien on other Public Assets satisfactory to the Bank.

(b) The Borrower which is not the Member Country undertakes that, except as the Bank shall otherwise agree:

- (i) if it creates any Lien on any of its assets as security for any debt, such Lien will equally and ratably secure the payment

of all Loan Payments and in the creation of any such Lien express provision will be made to that effect, at no cost to the Bank; and

- (ii) if any statutory Lien is created on any of its assets as security for any debt, it shall grant at no cost to the Bank, an equivalent Lien satisfactory to the Bank to secure the payment of all Loan Payments.

(c) The provisions of paragraphs (a) and (b) of this Section shall not apply to: (i) any Lien created on property, at the time of purchase of such property, solely as security for the payment of the purchase price of such property or as security for the payment of debt incurred for the purpose of financing the purchase of such property; or (ii) any Lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after the date on which it is originally incurred.

## **ARTICLE VII**

### **Cancellation; Suspension; Acceleration**

#### *Section 7.01. Cancellation by the Borrower*

The Borrower may, by notice to the Bank, cancel any amount of the Unwithdrawn Loan Balance, except that the Borrower may not cancel any such amount that is subject to a Special Commitment.

#### *Section 7.02. Suspension by the Bank*

If any of the events specified in paragraphs (a) through (m) of this Section occurs and is continuing, the Bank may, by notice to the Loan Parties, suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account. Such suspension shall continue until the event (or events) which gave rise to the suspension has (or have) ceased to exist, unless the Bank has notified the Loan Parties that such right to make withdrawals has been restored.

(a) *Payment Failure.*

- (i) The Borrower has failed to make payment (notwithstanding the fact that such payment may have been made by the Guarantor or a third party) of principal or interest or any other amount due to the Bank or the Association: (A) under the Loan Agreement; or (B) under any other agreement

between the Bank and the Borrower; or (C) under any agreement between the Borrower and the Association; or (D) in consequence of any guarantee extended or other financial obligation of any kind assumed by the Bank or the Association to any third party with the agreement of the Borrower.

- (ii) The Guarantor has failed to make payment of principal or interest or any other amount due to the Bank or the Association: (A) under the Guarantee Agreement; or (B) under any other agreement between the Guarantor and the Bank; or (C) under any agreement between the Guarantor and the Association; or (D) in consequence of any guarantee extended or other financial obligation of any kind assumed by the Bank or the Association to any third party with the agreement of the Guarantor.

(b) *Performance Failure.*

- (i) A Loan Party has failed to perform any other obligation under the Legal Agreement to which it is a party or under any Derivatives Agreement.
- (ii) The Project Implementing Entity has failed to perform any obligation under the Project Agreement.

(c) *Fraud and Corruption.* At any time, the Bank determines that any representative of the Guarantor or the Borrower or the Project Implementing Entity (or any other recipient of any of the proceeds of the Loan) has engaged in corrupt, fraudulent, coercive or collusive practices in connection with the use of the proceeds of the Loan, without the Guarantor or the Borrower or the Project Implementing Entity (or any other such recipient) having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur.

(d) *Cross Suspension.* The Bank or the Association has suspended in whole or in part the right of a Loan Party to make withdrawals under any agreement with the Bank or with the Association because of a failure by a Loan Party to perform any of its obligations under such agreement or any other agreement with the Bank.

(e) *Extraordinary Situation.*

- (i) As a result of events which have occurred after the date of the Loan Agreement, an extraordinary situation has arisen which makes it improbable that the Project can be carried out or that a Loan Party or the Project Implementing Entity will be able to perform its obligations under the Legal Agreement to which it is a party.
- (ii) An extraordinary situation has arisen under which any further withdrawals under the Loan would be inconsistent with the provisions of Article III, Section 3 of the Bank's Articles of Agreement.

(f) *Event Prior to Effectiveness.* The Bank has determined after the Effective Date that prior to such date but after the date of the Loan Agreement, an event has occurred which would have entitled the Bank to suspend the Borrower's right to make withdrawals from the Loan Account if the Loan Agreement had been effective on the date such event occurred.

(g) *Misrepresentation.* A representation made by a Loan Party in or pursuant to the Legal Agreements or in or pursuant to any Derivatives Agreement, or any representation or statement furnished by a Loan Party, and intended to be relied upon by the Bank in making the Loan or executing a transaction under a Derivatives Agreement, was incorrect in any material respect.

(h) *Co-financing.* Any of the following events occurs with respect to any financing specified in the Loan Agreement to be provided for the Project ("Co-financing") by a financier (other than the Bank or the Association) ("Co-financier").

- (i) If the Loan Agreement specifies a date by which the agreement with the Co-financier providing for the Co-financing ("Co-financing Agreement") is to become effective, the Co-financing Agreement has failed to become effective by that date, or such later date as the Bank has established by notice to the Loan Parties ("Co-financing Deadline"); provided, however, that the provisions of this sub-paragraph shall not apply if the Loan Parties establish to the satisfaction of the Bank that adequate funds for the Project are available from other sources on terms and conditions consistent with the obligations of the Loan

Parties under the Legal Agreements.

- (ii) Subject to sub-paragraph (iii) of this paragraph: (A) the right to withdraw the proceeds of the Co-financing has been suspended, canceled or terminated in whole or in part, pursuant to the terms of the Co-financing Agreement; or (B) the Co-financing has become due and payable prior to its agreed maturity.
- (iii) Sub-paragraph (ii) of this paragraph shall not apply if the Loan Parties establish to the satisfaction of the Bank that: (A) such suspension, cancellation, termination or prematuring was not caused by the failure of the recipient of the Co-financing to perform any of its obligations under the Co-financing Agreement; and (B) adequate funds for the Project are available from other sources on terms and conditions consistent with the obligations of the Loan Parties under the Legal Agreements.

(i) *Assignment of Obligations; Disposition of Assets.* The Borrower or the Project Implementing Entity (or any other entity responsible for implementing any part of the Project) has, without the consent of the Bank: (i) assigned or transferred, in whole or in part, any of its obligations arising under or entered into pursuant to the Legal Agreements; or (ii) sold, leased, transferred, assigned, or otherwise disposed of any property or assets financed wholly or in part out of the proceeds of the Loan; provided, however, that the provisions of this paragraph shall not apply with respect to transactions in the ordinary course of business which, in the opinion of the Bank: (A) do not materially and adversely affect the ability of the Borrower or of the Project Implementing Entity (or such other entity) to perform any of its obligations arising under or entered into pursuant to the Legal Agreements or to achieve the objectives of the Project; and (B) do not materially and adversely affect the financial condition or operation of the Borrower (other than the Member Country) or the Project Implementing Entity (or such other entity).

(j) *Membership.* The Member Country: (i) has been suspended from membership in or ceased to be a member of the Bank; or (ii) has ceased to be a member of the International Monetary Fund.

(k) *Condition of Borrower or Project Implementing Entity.*

- (i) Any material adverse change in the condition of the

Borrower (other than the Member Country), as represented by it, has occurred prior to the Effective Date.

- (ii) The Borrower (other than the Member Country) has become unable to pay its debts as they mature or any action or proceeding has been taken by the Borrower or by others whereby any of the assets of the Borrower shall or may be distributed among its creditors.
- (iii) Any action has been taken for the dissolution, disestablishment or suspension of operations of the Borrower (other than the Member Country) or of the Project Implementing Entity (or any other entity responsible for implementing any part of the Project).
- (iv) The Borrower (other than the Member Country) or the Project Implementing Entity (or any other entity responsible for implementing any part of the Project) has ceased to exist in the same legal form as that prevailing as of the date of the Loan Agreement.
- (v) In the opinion of the Bank, the legal character, ownership or control of the Borrower (other than the Member Country) or of the Project Implementing Entity (or of any other entity responsible for implementing any part of the Project) has changed from that prevailing as of the date of the Legal Agreements so as to materially and adversely affect the ability of the Borrower or of the Project Implementing Entity (or such other entity) to perform any of its obligations arising under or entered into pursuant to the Legal Agreements, or to achieve the objectives of the Project.

(l) *Ineligibility.* The Bank or the Association has declared the Borrower (other than the Member Country) or the Project Implementing Entity ineligible to receive proceeds of any financing made by the Bank or the Association or otherwise to participate in the preparation or implementation of any project financed in whole or in part by the Bank or the Association, as a result of: (i) a determination by the Bank or the Association that the Borrower or the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by the Bank or the Association; and/or (ii) a declaration by another

financier that the Borrower or the Project Implementing Entity is ineligible to receive proceeds of any financing made by such financier or otherwise to participate in the preparation or implementation of any project financed in whole or in part by such financier as a result of a determination by such financier that the Borrower or the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by such financier.

(m) *Additional Event.* Any other event specified in the Loan Agreement for the purposes of this Section has occurred (“Additional Event of Suspension”).

### Section 7.03. *Cancellation by the Bank*

If any of the events specified in paragraphs (a) through (f) of this Section occurs with respect to an amount of the Unwithdrawn Loan Balance, the Bank may, by notice to the Loan Parties, terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice, such amount shall be cancelled.

(a) *Suspension.* The right of the Borrower to make withdrawals from the Loan Account has been suspended with respect to any amount of the Unwithdrawn Loan Balance for a continuous period of thirty days.

(b) *Amounts not Required.* At any time, the Bank determines, after consultation with the Borrower, that an amount of the Unwithdrawn Loan Balance will not be required to finance Eligible Expenditures.

(c) *Fraud and Corruption.* At any time, the Bank determines, with respect to any amount of the proceeds of the Loan, that corrupt, fraudulent, collusive or coercive practices were engaged in by representatives of the Guarantor or the Borrower or the Project Implementing Entity (or other recipient of the proceeds of the Loan) without the Guarantor, the Borrower or the Project Implementing Entity (or other recipient of the proceeds of the Loan) having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur.

(d) *Misprocurement.* At any time, the Bank: (i) determines that the procurement of any contract to be financed out of the proceeds of the Loan is inconsistent with the procedures set forth or referred to in the Legal Agreements; and (ii) establishes the amount of expenditures under such contract which would otherwise have been eligible for financing out of the proceeds of the Loan.

(e) *Closing Date.* After the Closing Date, there remains an Unwithdrawn Loan Balance.

(f) *Cancellation of Guarantee.* The Bank receives notice from the Guarantor pursuant to Section 7.05 with respect to an amount of the Loan.

*Section 7.04. Amounts Subject to Special Commitment not Affected by Cancellation or Suspension by the Bank*

No cancellation or suspension by the Bank shall apply to amounts of the Loan subject to any Special Commitment except as expressly provided in the Special Commitment.

*Section 7.05. Cancellation of Guarantee*

If the Borrower has failed to pay any required Loan Payment (otherwise than as a result of any act or omission to act of the Guarantor) and such payment is made by the Guarantor, the Guarantor may, after consultation with the Bank, by notice to the Bank and the Borrower, terminate its obligations under the Guarantee Agreement with respect to any amount of the Unwithdrawn Loan Balance as at the date of receipt of such notice by the Bank; provided that such amount is not subject to any Special Commitment. Upon receipt of such notice by the Bank, such obligations in respect of such amount shall terminate.

*Section 7.06. Events of Acceleration*

If any of the events specified in paragraphs (a) through (f) of this Section occurs and continues for the period specified (if any), then at any subsequent time during the continuance of the event, the Bank may, by notice to the Loan Parties, declare all or part of the Withdrawn Loan Balance as at the date of such notice to be due and payable immediately together with any other Loan Payments due under the Loan Agreement or these General Conditions. Upon any such declaration, such Withdrawn Loan Balance and Loan Payments shall become immediately due and payable.

(a) *Payment Default.* A default has occurred in the payment by a Loan Party of any amount due to the Bank or the Association: (i) under any Legal Agreement; or (ii) under any other agreement between the Bank and the Loan Party; or (iii) under any agreement between the Loan Party and the Association (in the case of an agreement between the Guarantor and the Association, under circumstances which would make it unlikely that the Guarantor would meet its obligations under the Guarantee Agreement); or (iv) in consequence of any

guarantee extended or other financial obligation of any kind assumed by the Bank or the Association to any third party with the agreement of the Loan Party; and such default continues in each case for a period of thirty days.

(b) *Performance Default.*

- (i) A default has occurred in the performance by a Loan Party of any other obligation under the Legal Agreement to which it is a party or under any Derivatives Agreement, and such default continues for a period of sixty days after notice of such default has been given by the Bank to the Loan Parties.
- (ii) A default has occurred in the performance by the Project Implementing Entity of any obligation under the Project Agreement, and such default continues for a period of sixty days after notice of such default has been given by the Bank to the Project Implementing Entity and the Loan Parties.

(c) *Co-financing.* The event specified in sub-paragraph (h) (ii) (B) of Section 7.02 has occurred, subject to the proviso of paragraph (h) (iii) of that Section.

(d) *Assignment of Obligations; Disposition of Assets.* Any event specified in paragraph (i) of Section 7.02 has occurred.

(e) *Condition of Borrower or Project Implementing Entity.* Any event specified in sub-paragraph (k) (ii), (k) (iii), (k) (iv) or (k) (v) of Section 7.02 has occurred.

(f) *Additional Event.* Any other event specified in the Loan Agreement for the purposes of this Section has occurred and continues for the period, if any, specified in the Loan Agreement (“Additional Event of Acceleration”).

**Section 7.07. *Acceleration during a Conversion Period***

If the Loan Agreement provides for Conversions, and if any notice of acceleration is given pursuant to Section 7.06 during the Conversion Period for any Conversion: (a) the Borrower shall pay a transaction fee in respect of any early termination of the Conversion, in such amount or at such rate as announced

by the Bank from time to time and in effect on the date of such notice; and (b) the Borrower shall pay any Unwinding Amount owed by it in respect of any early termination of the Conversion, or the Bank shall pay any Unwinding Amount owed by it in respect of any such early termination (after setting off any amounts owed by the Borrower under the Loan Agreement), in accordance with the Conversion Guidelines.

*Section 7.08. Effectiveness of Provisions after Cancellation, Suspension or Acceleration*

Notwithstanding any cancellation, suspension or acceleration under this Article, all the provisions of the Legal Agreements shall continue in full force and effect except as specifically provided in these General Conditions.

## **ARTICLE VIII**

### **Enforceability; Arbitration**

*Section 8.01. Enforceability*

The rights and obligations of the Bank and the Loan Parties under the Legal Agreements shall be valid and enforceable in accordance with their terms notwithstanding the law of any state or political subdivision thereof to the contrary. Neither the Bank nor any Loan Party shall be entitled in any proceeding under this Article to assert any claim that any provision of these General Conditions or of the Legal Agreements is invalid or unenforceable because of any provision of the Articles of Agreement of the Bank.

*Section 8.02. Obligations of the Guarantor*

Except as provided in Section 7.05, the obligations of the Guarantor under the Guarantee Agreement shall not be discharged except by performance, and then only to the extent of such performance. Such obligations shall not require any prior notice to, demand upon or action against the Borrower or any prior notice to or demand upon the Guarantor with regard to any default by the Borrower. Such obligations shall not be impaired by any of the following: (a) any extension of time, forbearance or concession given to the Borrower; (b) any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Borrower or in respect of any security for the Loan; (c) any modification or amplification of the provisions of the Loan Agreement contemplated by its terms; or (d) any failure of the Borrower or of the Project Implementing Entity to comply with any requirement of any law of the Member

Country.

**Section 8.03. *Failure to Exercise Rights***

No delay in exercising, or omission to exercise, any right, power or remedy accruing to any party under any Legal Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default. No action of such party in respect of any default, or any acquiescence by it in any default, shall affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

**Section 8.04. *Arbitration***

(a) Any controversy between the parties to the Loan Agreement or the parties to the Guarantee Agreement, and any claim by any such party against any other such party arising under the Loan Agreement or the Guarantee Agreement which has not been settled by agreement of the parties shall be submitted to arbitration by an arbitral tribunal as hereinafter provided ("Arbitral Tribunal").

(b) The parties to such arbitration shall be the Bank on the one side and the Loan Parties on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: (i) one arbitrator shall be appointed by the Bank; (ii) a second arbitrator shall be appointed by the Loan Parties or, if they do not agree, by the Guarantor; and (iii) the third arbitrator ("Umpire") shall be appointed by agreement of the parties or, if they do not agree, by the President of the International Court of Justice or, failing appointment by said President, by the Secretary-General of the United Nations. If either side fails to appoint an arbitrator, such arbitrator shall be appointed by the Umpire. In case any arbitrator appointed in accordance with this Section resigns, dies or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed in this Section for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within thirty days after such notice, the other party shall notify to the party instituting the proceeding the name of the arbitrator appointed by such other party.

(e) If within sixty days after the notice instituting the arbitration proceeding, the parties have not agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to the provisions of this Section and except as the parties shall otherwise agree, determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(h) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of the Arbitral Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the Loan Agreement and the Guarantee Agreement. Each party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(i) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as are required for the conduct of the arbitration proceedings. If the parties do not agree on such amount before the Arbitral Tribunal convenes, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. The Bank, the Borrower and the Guarantor shall each defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by the Bank on the one side and the Loan Parties on the other. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal.

(j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to the Loan Agreement and Guarantee Agreement or of any claim by any such party against any other such party arising under such Legal Agreements.

(k) If, within thirty days after counterparts of the award have been delivered to the parties, the award has not been complied with, any party may: (i) enter judgment upon, or institute a proceeding to enforce, the award in any

court of competent jurisdiction against any other party; (ii) enforce such judgment by execution; or (iii) pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of the Loan Agreement or Guarantee Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against the Member Country except as such procedure may be available otherwise than by reason of the provisions of this Section.

(l) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 10.01. The parties to the Loan Agreement and the Guarantee Agreement waive any and all other requirements for the service of any such notice or process.

## ARTICLE IX

### Effectiveness; Termination

#### Section 9.01. *Conditions of Effectiveness of Legal Agreements*

The Legal Agreements shall not become effective until evidence satisfactory to the Bank has been furnished to the Bank that the conditions specified in paragraphs (a) through (c) of this Section have been satisfied.

(a) The execution and delivery of each Legal Agreement on behalf of the Loan Party or the Project Implementing Entity which is a party to such Legal Agreement have been duly authorized or ratified by all necessary governmental and corporate action.

(b) If the Bank so requests, the condition of the Borrower (other than the Member Country) or of the Project Implementing Entity, as represented or warranted to the Bank at the date of the Legal Agreements, has undergone no material adverse change after such date.

(c) Each other condition specified in the Loan Agreement as a condition of its effectiveness has occurred ("Additional Condition of Effectiveness").

#### Section 9.02. *Legal Opinions or Certificates*

As part of the evidence to be furnished pursuant to Section 9.01, there shall be furnished to the Bank an opinion or opinions satisfactory to the Bank of

counsel acceptable to the Bank or, if the Bank so requests, a certificate satisfactory to the Bank of a competent official of the Member Country showing the following matters:

(a) on behalf of each Loan Party and the Project Implementing Entity, that the Legal Agreement to which it is a party has been duly authorized or ratified by, and executed and delivered on behalf of, such party and is legally binding upon such party in accordance with its terms; and

(b) each other matter specified in the Loan Agreement or reasonably requested by the Bank in connection with the Legal Agreements for the purpose of this Section ("Additional Legal Matter").

**Section 9.03. *Effective Date***

(a) Except as the Bank and the Borrower shall otherwise agree, the Legal Agreements shall enter into effect on the date upon which the Bank dispatches to the Loan Parties and the Project Implementing Entity notice of its acceptance of the evidence required pursuant to Section 9.01 ("Effective Date").

(b) If, before the Effective Date, any event has occurred which would have entitled the Bank to suspend the right of the Borrower to make withdrawals from the Loan Account if the Loan Agreement had been effective, or the Bank has determined that an extraordinary situation provided for under Section 3.08 (a) exists, the Bank may postpone the dispatch of the notice referred to in paragraph (a) of this Section until such event (or events) or situation has (or have) ceased to exist.

**Section 9.04. *Termination of Legal Agreements for Failure to Become Effective***

The Legal Agreements and all obligations of the parties under the Legal Agreements shall terminate if the Legal Agreements have not entered into effect by the date ("Effectiveness Deadline") specified in the Loan Agreement for the purpose of this Section, unless the Bank, after consideration of the reasons for the delay, establishes a later Effectiveness Deadline for the purpose of this Section. The Bank shall promptly notify the Loan Parties and Project Implementing Entity of such later Effectiveness Deadline.

**Section 9.05. *Termination of Legal Agreements on Full Payment***

The Legal Agreements and all obligations of the parties under the Legal Agreements shall forthwith terminate upon full payment of the Withdrawn Loan

Balance and all other Loan Payments due.

## ARTICLE X

### Miscellaneous Provisions

#### Section 10.01. *Notices and Requests*

Any notice or request required or permitted to be given or made under any Legal Agreement or any other agreement between the parties contemplated by the Legal Agreement shall be in writing. Except as otherwise provided in Section 9.03 (a), such notice or request shall be deemed to have been duly given or made when it has been delivered by hand or by mail, telex or facsimile (or, if permitted under the Legal Agreement, by other electronic means) to the party to which it is required or permitted to be given or made at such party's address specified in the Legal Agreement or at such other address as such party shall have designated by notice to the party giving such notice or making such request. Deliveries made by facsimile transmission shall also be confirmed by mail.

#### Section 10.02. *Action on Behalf of the Loan Parties and the Project Implementing Entity*

(a) The representative designated by a Loan Party in the Legal Agreement to which it is a party (and the representative designated by the Project Implementing Entity in the Project Agreement) for the purpose of this Section, or any person authorized in writing by such representative for that purpose, may take any action required or permitted to be taken pursuant to such Legal Agreement, and execute any documents required or permitted to be executed pursuant to such Legal Agreement, on behalf of such Loan Party (or the Project Implementing Entity, as the case may be).

(b) The representative so designated by the Loan Party or person so authorized by such representative may agree to any modification or amplification of the provisions of such Legal Agreement on behalf of such Loan Party by written instrument executed by such representative or authorized person; provided that, in the opinion of such representative, the modification or amplification is reasonable in the circumstances and will not substantially increase the obligations of the Loan Parties under the Legal Agreements. The Bank may accept the execution by such representative or other authorized person of any such instrument as conclusive evidence that such representative is of such opinion.

**Section 10.03. *Evidence of Authority***

The Loan Parties and the Project Implementing Entity shall furnish to the Bank: (a) sufficient evidence of the authority of the person or persons who will, on behalf of such party, take any action or execute any documents required or permitted to be taken or executed by it under the Legal Agreement to which it is a party; and (b) the authenticated specimen signature of each such person.

**Section 10.04. *Execution in Counterparts***

Each Legal Agreement may be executed in several counterparts, each of which shall be an original.

**Section 10.05. *Disclosure***

The Bank may disclose the Legal Agreements and any information related to the Legal Agreements in accordance with its policy on access to information, in effect at the time of such disclosure.

## **APPENDIX**

### **Definitions**

1. "Additional Condition of Effectiveness" means any condition of effectiveness specified in the Loan Agreement for the purpose of Section 9.01 (c).
2. "Additional Event of Acceleration" means any event of acceleration specified in the Loan Agreement for the purpose of Section 7.06 (f).
3. "Additional Event of Suspension" means any event of suspension specified in the Loan Agreement for the purpose of Section 7.02 (m).
4. "Additional Legal Matter" means each matter specified in the Loan Agreement or requested by the Bank in connection with the Legal Agreements for the purpose of Section 9.02 (b).
5. "Approved Currency" means, for a Currency Conversion, any Currency approved by the Bank, which, upon the Conversion, becomes the Loan Currency.
6. "Arbitral Tribunal" means the arbitral tribunal established pursuant to Section 8.04.
7. "Assets" includes property, revenue and claims of any kind.
8. "Association" means the International Development Association.
9. "Bank" means the International Bank for Reconstruction and Development.
10. "Bank's Address" means the Bank's address specified in the Legal Agreements for the purpose of Section 10.01.
11. "Borrower" means the party to the Loan Agreement to which the Loan is extended.
12. "Borrower's Address" means the Borrower's address specified in the Loan Agreement for the purpose of Section 10.01.
13. "Borrower's Representative" means the Borrower's representative specified in the Loan Agreement for the purpose of Section 10.02.

14. "Closing Date" means the date specified in the Loan Agreement (or such later date as the Bank shall establish by notice to the Loan Parties) after which the Bank may, by notice to the Loan Parties, terminate the right of the Borrower to withdraw from the Loan Account.
15. "Co-financier" means the financier (other than the Bank or the Association) referred to in Section 7.02 (h) providing the Co-financing. If the Loan Agreement specifies more than one such financier, "Co-financier" refers separately to each of such financiers.
16. "Co-financing" means the financing referred to in Section 7.02 (h) and specified in the Loan Agreement provided or to be provided for the Project by the Co-financier. If the Loan Agreement specifies more than one such financing, "Co-financing" refers separately to each of such financings.
17. "Co-financing Agreement" means the agreement referred to in Section 7.02 (h) providing for the Co-financing.
18. "Co-financing Deadline" means the date referred to in Section 7.02 (h) (i) and specified in the Loan Agreement by which the Co-financing Agreement is to become effective. If the Loan Agreement specifies more than one such date, "Co-financing Deadline" refers separately to each of such dates.
19. "Conversion" means any of the following modifications of the terms of all or any portion of the Loan that has been requested by the Borrower and accepted by the Bank: (a) an Interest Rate Conversion; (b) a Currency Conversion; or (c) the establishment of an Interest Rate Cap or Interest Rate Collar on the Variable Rate; each as provided in the Loan Agreement.
20. "Conversion Date" means, for a Conversion, the Execution Date or such other date as the Bank shall determine on which the Conversion enters into effect, as further specified in the Conversion Guidelines.
21. "Conversion Guidelines" means, for a Conversion, the "Guidelines for Conversion of Loan Terms" issued from time to time by the Bank and in effect at the time of the Conversion.
22. "Conversion Period" means, for a Conversion, the period from and including the Conversion Date to and including the last day of the Interest Period in which the Conversion terminates by its terms; provided, that

solely for the purpose of enabling the final payment of interest and principal under a Currency Conversion to be made in the Approved Currency, such period shall end on the Payment Date immediately following the last day of said final applicable Interest Period.

23. "Counterparty" means a party with which the Bank enters into a derivatives transaction in order to effect a Conversion.
24. "Currency" means the currency of a country and the Special Drawing Right of the International Monetary Fund. "Currency of a country" means the currency which is legal tender for the payment of public and private debts in that country.
25. "Currency Conversion" means a change of the Loan Currency of all or any amount of the Unwithdrawn Loan Balance or the Withdrawn Loan Balance to an Approved Currency.
26. "Currency Hedge Transaction" means, for a Currency Conversion, one or more Currency swap transactions entered into by the Bank with a Counterparty as of the Execution Date and in accordance with the Conversion Guidelines, in connection with the Currency Conversion.
27. "Default Interest Period" means for any overdue amount of the Withdrawn Loan Balance, each Interest Period during which such overdue amount remains unpaid; provided, however, that the first such Default Interest Period shall commence on the 31<sup>st</sup> day following the date on which such amount becomes overdue, and the final such Default Interest Period shall end on the date at which such amount is fully paid.
28. "Default Interest Rate" means for any Default Interest Period:
  - (a) in respect of any amount of the Withdrawn Loan Balance to which the Default Interest Rate applies and for which interest was payable at a Variable Rate immediately prior to the application of the Default Interest Rate: the Default Variable Rate plus one half of one percent (0.5%); and
  - (b) in respect of any amount of the Withdrawn Loan Balance to which the Default Interest Rate applies and for which interest was payable at a Fixed Rate immediately prior to the application of the Default Interest Rate: Default Reference Rate plus the Fixed Spread plus one half of one percent (0.5%).

29. "Default Reference Rate" means the Reference Rate for the relevant Interest Period; it being understood that for the initial Default Interest Period, Default Reference Rate shall be equal to Reference Rate for the Interest Period in which the amount referred to in Section 3.02 (e) first becomes overdue.
30. "Default Variable Rate" means the Variable Rate for the relevant Interest Period; it being understood that for the initial Default Interest Period, Default Variable Rate shall be equal to the Variable Rate for the Interest Period in which the amount referred to in Section 3.02 (e) first becomes overdue.
31. "Derivatives Agreement" means any derivatives agreement between the Bank and a Loan Party for the purpose of documenting and confirming one or more derivatives transactions between the Bank and such Loan Party, as such agreement may be amended from time to time. "Derivatives Agreement" includes all schedules, annexes and agreements supplemental to the Derivatives Agreement.
32. "Disbursed Amount" means, for each Interest Period, the aggregate principal amount of the Loan withdrawn from the Loan Account during the Interest Period.
33. "Dollar", "\$" and "USD" each means the lawful currency of the United States of America.
34. "Effective Date" means the date on which the Legal Agreements enter into effect pursuant to Section 9.03 (a).
35. "Effectiveness Deadline" means the date referred to in Section 9.04 after which the Legal Agreements shall terminate if they have not entered into effect as provided in that Section.
36. "Eligible Expenditure" means an expenditure the payment for which meets the requirements of Section 2.05 and which is consequently eligible for financing out of the proceeds of the Loan.
37. "EURIBOR" means for any Interest Period, the Euro interbank offered rate for deposits in Euro for six months, expressed as a percentage per annum, that appears on the Relevant Rate Page as of 11:00 a.m., Brussels time, on the Reference Rate Reset Date for the Interest Period.

38. “‘Euro’, ‘€’ and ‘EUR’” each means the lawful currency of the Euro Area.
39. “Euro Area” means the economic and monetary union of member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.
40. “Execution Date” means, for a Conversion, the date on which the Bank has undertaken all actions necessary to effect the Conversion, as reasonably determined by the Bank.
41. “External Debt” means any debt which is or may become payable in a Currency other than the Currency of the Member Country.
42. “Financial Center” means: (a) for a Currency other than Euro, the principal financial center for the relevant Currency; and (b) for the Euro, the principal financial center of the relevant member state in the Euro Area.
43. “Financial Statements” means the financial statements to be maintained for the Project as provided in Section 5.09.
44. “Fixed Rate” means:
  - (a) upon an Interest Rate Conversion from the Variable Rate, a fixed rate of interest applicable to the amount of the Loan to which the Conversion applies, equal to either: (i) the interest rate that reflects the fixed rate of interest payable by the Bank under the Interest Hedge Transaction relating to the Conversion (adjusted in accordance with the Conversion Guidelines for the difference, if any, between the Variable Rate and the variable rate of interest receivable by the Bank under the Interest Hedge Transaction); or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the Screen Rate; and
  - (b) upon a Currency Conversion of an amount of the Loan that shall accrue interest at a fixed rate during the Conversion Period, a fixed rate of interest applicable to such amount equal to either: (i) the interest rate that reflects the fixed rate of interest payable by the Bank under the Currency Hedge Transaction relating to the Currency Conversion; or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the interest rate

component of the Screen Rate.

45. "Fixed Spread" means the Bank's fixed spread for the initial Loan Currency in effect at 12:01 a.m. Washington, D.C. time, one calendar day prior to the date of the Loan Agreement and expressed as a percentage per annum; provided, that: (a) for purposes of determining the Default Interest Rate, pursuant to Section 3.02 (e), that is applicable to an amount of the Withdrawn Loan Balance on which interest is payable at a Fixed Rate, the "Fixed Spread" means the Bank's fixed spread in effect at 12:01 a.m. Washington, D.C. time, one calendar day prior to the date of the Loan Agreement, for the Currency of denomination of such amount; (b) for purposes of a Conversion of the Variable Rate based on a Variable Spread to a Variable Rate based on a Fixed Spread, and for purposes of fixing the Variable Spread pursuant to Section 4.02, "Fixed Spread" means the Bank's fixed spread for the Loan Currency in effect at 12:01 a.m. Washington, D.C. time on the Conversion Date; and (c) upon a Currency Conversion of all or any amount of the Unwithdrawn Loan Balance, the Fixed Spread shall be adjusted on the Execution Date in the manner specified in the Conversion Guidelines.
46. "Foreign Expenditure" means an expenditure in the Currency of any country other than the Member Country for goods, works or services supplied from the territory of any country other than the Member Country.
47. "Front-end Fee" means the fee specified in the Loan Agreement for the purpose of Section 3.01.
48. "Guarantee Agreement" means the agreement between the Member Country and the Bank providing for the guarantee of the Loan, as such agreement may be amended from time to time. "Guarantee Agreement" includes these General Conditions as applied to the Guarantee Agreement, and all appendices, schedules and agreements supplemental to the Guarantee Agreement.
49. "Guarantor" means the Member Country which is a party to the Guarantee Agreement.
50. "Guarantor's Address" means the Guarantor's address specified in the Guarantee Agreement for the purpose of Section 10.01.
51. "Guarantor's Representative" means the Guarantor's representative specified in the Loan Agreement for the purpose of Section 10.02.

52. "Incurring of debt" includes the assumption or guarantee of debt and any renewal, extension, or modification of the terms of the debt or of the assumption or guarantee of the debt.
53. "Interest Hedge Transaction" means, for an Interest Rate Conversion, one or more interest rate swap transactions entered into by the Bank with a Counterparty as of the Execution Date and in accordance with the Conversion Guidelines, in connection with the Interest Rate Conversion.
54. "Interest Period" means the initial period from and including the date of the Loan Agreement to but excluding the first Payment Date occurring thereafter, and after the initial period, each period from and including a Payment Date to but excluding the next following Payment Date.
55. "Interest Rate Cap" means a ceiling that sets an upper limit for the Variable Rate.
56. "Interest Rate Collar" means a combination of a ceiling and a floor that sets an upper and a lower limit for the Variable Rate.
57. "Interest Rate Conversion" means a change of the interest rate basis applicable to all or any amount of the Withdrawn Loan Balance, from the Variable Rate to the Fixed Rate or vice versa, or from a Variable Rate based on a Variable Spread to a Variable Rate based on a Fixed Spread.
58. "Legal Agreement" means any of the Loan Agreement, the Guarantee Agreement or the Project Agreement. "Legal Agreements" means collectively, all of such agreements.
59. "LIBOR" means for any Interest Period, the London interbank offered rate for deposits in the relevant Loan Currency for six months, expressed as a percentage per annum, that appears on the Relevant Rate Page as of 11:00 a.m. London time on the Reference Rate Reset Date for the Interest Period.
60. "Lien" includes mortgages, pledges, charges, privileges and priorities of any kind.
61. "Loan" means the loan provided for in the Loan Agreement.
62. "Loan Account" means the account opened by the Bank in its books in the name of the Borrower to which the amount of the Loan is credited.

63. "Loan Agreement" means the loan agreement between the Bank and the Borrower providing for the Loan, as such agreement may be amended from time to time. "Loan Agreement" includes these General Conditions as applied to the Loan Agreement, and all appendices, schedules and agreements supplemental to the Loan Agreement.
64. "Loan Currency" means the Currency in which the Loan is denominated; provided that if the Loan Agreement provides for Conversions, "Loan Currency" means the Currency in which the Loan is denominated from time to time. If the Loan is denominated in more than one currency, "Loan Currency" refers separately to each of such Currencies.
65. "Loan Party" means the Borrower or the Guarantor. "Loan Parties" means collectively, the Borrower and the Guarantor.
66. "Loan Payment" means any amount payable by the Loan Parties to the Bank pursuant to the Legal Agreements or these General Conditions, including (but not limited to) any amount of the Withdrawn Loan Balance, interest, the Front-end Fee, interest at the Default Interest Rate (if any), any prepayment premium, any transaction fee for a Conversion or early termination of a Conversion, the Variable Spread Fixing Charge (if any), any premium payable upon the establishment of an Interest Rate Cap or Interest Rate Collar, and any Unwinding Amount payable by the Borrower.
67. "Local Expenditure" means an expenditure: (a) in the Currency of the Member Country; or (b) for goods, works or services supplied from the territory of the Member Country; provided, however, that if the Currency of the Member Country is also that of another country from which goods, works or services are supplied, an expenditure in such Currency for such goods, works or services shall be deemed to be a Foreign Expenditure.
68. "London Banking Day" means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign Currency deposits) in London.
69. "Maturity Fixing Date" means, for each Disbursed Amount, the first day of the Interest Period next following the Interest Period in which the Disbursed Amount is withdrawn.
70. "Member Country" means the member of the Bank which is the Borrower or the Guarantor.

71. "Payment Date" means each date specified in the Loan Agreement occurring on or after the date of the Loan Agreement on which interest is payable.
72. "Preparation Advance" means the advance referred to in the Loan Agreement and repayable in accordance with Section 2.07 (a).
73. "Principal Payment Date" means each date specified in the Loan Agreement on which all or any portion of the principal amount of the Loan is payable.
74. "Project" means the project described in the Loan Agreement, for which the Loan is extended, as the description of such project may be amended from time to time by agreement between the Bank and the Borrower.
75. "Project Agreement" means the agreement between the Bank and the Project Implementing Entity relating to the implementation of all or part of the Project, as such agreement may be amended from time to time. "Project Agreement" includes these General Conditions as applied to the Project Agreement, and all appendices, schedules and agreements supplemental to the Project Agreement.
76. "Project Implementing Entity" means a legal entity (other than the Borrower or the Guarantor) which is responsible for implementing all or a part of the Project and which is a party to the Project Agreement. If the Bank enters into a Project Agreement with more than one such entity, "Project Implementing Entity" refers separately to each such entity.
77. "Project Implementing Entity's Address" means the Project Implementing Entity's address specified in the Project Agreement for the purpose of Section 10.01.
78. "Project Implementing Entity's Representative" means the Project Implementing Entity's representative specified in the Project Agreement for the purpose of Section 10.02 (a).
79. "Project Report" means each report on the Project to be prepared and furnished to the Bank pursuant to Section 5.08 (b).
80. "Public Assets" means assets of the Member Country, of any of its political or administrative subdivisions and of any entity owned or controlled by, or operating for the account or benefit of, the Member

Country or any such subdivision, including gold and foreign exchange assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for the Member Country.

81. “Reference Rate” means, for any Interest Period:
- (a) for USD and JPY, LIBOR for the relevant Loan Currency. If such rate does not appear on the Relevant Rate Page, the Bank shall request the principal London office of each of four major banks to provide a quotation of the rate at which it offers six-month deposits in the relevant Loan Currency to leading banks in the London interbank market at approximately 11:00 a.m. London time on the Reference Rate Reset Date for the Interest Period. If at least two such quotations are provided, the rate for the Interest Period shall be the arithmetic mean (as determined by the Bank) of the quotations. If less than two quotations are provided as requested, the rate for the Interest Period shall be the arithmetic mean (as determined by the Bank) of the rates quoted by four major banks selected by the Bank in the relevant Financial Center, at approximately 11:00 a.m. in the Financial Center, on the Reference Rate Reset Date for the Interest Period for loans in the relevant Loan Currency to leading banks for six months. If less than two of the banks so selected are quoting such rates, the Reference Rate for the relevant Loan Currency for the Interest Period shall be equal to the respective Reference Rate in effect for the Interest Period immediately preceding it;
  - (b) for Euro, EURIBOR. If such rate does not appear on the Relevant Rate Page, the Bank shall request the principal Euro Area office of each of four major banks to provide a quotation of the rate at which it offers six-month deposits in Euro to leading banks in the Euro area interbank market at approximately 11:00 a.m. Brussels time on the Reference Rate Reset Date for the Interest Period. If at least two such quotations are provided, the rate for the Interest Period shall be the arithmetic mean (as determined by the Bank) of the quotations. If less than two quotations are provided as requested, the rate for the Interest Period shall be the arithmetic mean (as determined by the Bank) of the rates quoted by four major banks selected by the Bank in the relevant Financial Center, at approximately 11:00 a.m. in the Financial Center, on the Reference Rate Reset Date for the Interest Period for loans in Euro to leading banks for six months. If less than two of the banks so

selected are quoting such rates, the Reference Rate for Euro for the Interest Period shall be equal to the Reference Rate in effect for the Interest Period immediately preceding it;

- (c) if the Bank determines that LIBOR (in respect of USD and JPY) or EURIBOR (in respect of Euro) has permanently ceased to be quoted for such currency, such other comparable reference rate for the relevant currency as the Bank shall determine pursuant to Section 3.02 (c); and
- (d) for any currency other than USD, Euro or JPY: (i) such reference rate for the initial Loan Currency as shall be specified or referred to in the Loan Agreement; or (ii) in the case of a Currency Conversion to such other currency, such reference rate as shall be determined by the Bank in accordance with the Conversion Guidelines and notice thereof given to the Borrower in accordance with Section 4.01(b).

82. "Reference Rate Reset Date" means:

- (a) for USD and JPY, the day two London Banking Days prior to the first day of the relevant Interest Period (or: (i) in the case of the initial Interest Period, the day two London Banking Days prior to the first or fifteenth day of the month in which the Loan Agreement is signed, whichever day immediately precedes the date of the Loan Agreement; provided that if the date of the Loan Agreement falls on the first or fifteenth day of such month, the Reference Rate Reset Date shall be the day two London Banking Days prior to the date of the Loan Agreement; and (ii) if the Conversion Date for a Currency Conversion of an amount of the Unwithdrawn Loan Balance to either USD or JPY falls on a day other than a Payment Date, the initial Reference Rate Reset Date for the Approved Currency shall be the day two London Banking Days prior to the first or fifteenth day of the month in which the Conversion Date falls, whichever day immediately precedes the Conversion Date; provided, that if the Conversion Date falls on the first or fifteenth day of such month, the Reference Rate Reset Date for the Approved Currency shall be the day two London Banking Days prior to the Conversion Date);
- (b) for Euro, the day two TARGET Settlement Days prior to the first day of the relevant Interest Period (or: (i) in the case of the initial

Interest Period the day two TARGET Settlement Days prior to the first or fifteenth day of the month in which the Loan Agreement is signed, whichever day immediately precedes the date of the Loan Agreement; provided that if the date of the Loan Agreement falls on the first or fifteenth day of such month, the Reference Rate Reset Date shall be the day two TARGET Settlement Days prior to the date of the Loan Agreement; and (ii) if the Conversion Date of a Currency Conversion of an amount of the Unwithdrawn Loan Balance to Euro falls on a day other than a Payment Date, the initial Reference Rate Reset Date for the Approved Currency shall be the day two TARGET Settlement Days prior to the first or fifteenth day of the month in which the Conversion Date falls, whichever day immediately precedes the Conversion Date; provided that if the Conversion Date falls on the first or fifteenth day of such month, the Reference Rate Reset Date for the Approved Currency shall be the day two TARGET Settlement Days prior to the Conversion Date);

- (c) if, for a Currency Conversion to an Approved Currency, the Bank determines that market practice for the determination of the Reference Rate Reset Date is on a date other than as set forth in sub-paragraphs (a) or (b) of this Section, the Reference Rate Reset Date shall be such other date as further specified in the Conversion Guidelines; and
  - (d) for any currency other than USD, Euro and JPY: (i) such day for the initial Loan Currency as shall be specified or referred to in the Loan Agreement; or (ii) in the case of a Currency Conversion to such other currency, such day as shall be determined by the Bank and notice thereof given to the Borrower in accordance with Section 4.01(b).
83. “Relevant Rate Page” means the display page designated by an established financial market data provider selected by the Bank as the page for the purpose of displaying the Reference Rate for deposits in the Loan Currency.
84. “Respective Part of the Project” means, for the Borrower and for any Project Implementing Entity, the part of the Project specified in the Legal Agreements to be carried out by it.
85. “Screen Rate” means:

- (a) for an Interest Rate Conversion from the Variable Rate to the Fixed Rate, the fixed rate of interest determined by the Bank on the Execution Date on the basis of the Variable Rate and market rates displayed by established information vendors reflecting the Conversion Period, the Currency amount and the repayment provisions of the amount of the Loan to which the Conversion applies;
- (b) for an Interest Rate Conversion from the Fixed Rate to the Variable Rate, the variable rate of interest determined by the Bank on the Execution Date on the basis of the Fixed Rate and market rates displayed by established information vendors reflecting the Conversion Period, the Currency amount and the repayment provisions of the amount of the Loan to which the Conversion applies;
- (c) for a Currency Conversion of an amount of the Unwithdrawn Loan Balance, the exchange rate between the Loan Currency immediately prior to the Conversion and the Approved Currency, determined by the Bank on the Execution Date on the basis of market exchange rates displayed by established information vendors;
- (d) for a Currency Conversion of an amount of the Withdrawn Loan Balance, each of: (i) the exchange rate between the Loan Currency immediately prior to the Conversion and the Approved Currency, determined by the Bank on the Execution Date on the basis of market exchange rates displayed by established information vendors; and (ii) the fixed rate of interest or the variable rate of interest (whichever applies to the Conversion), determined by the Bank on the Execution Date in accordance with the Conversion Guidelines on the basis of the interest rate applicable to such amount immediately prior to the Conversion and market rates displayed by established information vendors reflecting the Conversion Period, the Currency amount and the repayment provisions of the amount of the Loan to which the Conversion applies; and
- (e) for the early termination of a Conversion, each of the rates applied by the Bank for the purpose of calculating the Unwinding Amount as of the date of such early termination in accordance with the Conversion Guidelines on the basis of market rates displayed by

established information vendors reflecting the remaining Conversion Period, Currency amount and repayment provisions of the amount of the Loan to which the Conversion and such early termination apply.

86. "Special Commitment" means any special commitment entered into or to be entered into by the Bank pursuant to Section 2.02.
87. "TARGET Settlement Day" means any day on which the Trans European Automated Real-Time Gross Settlement Express Transfer system is open for the settlement of Euro.
88. "Taxes" includes imposts, levies, fees and duties of any nature whether in effect at the date of the Legal Agreements or imposed after that date.
89. "Umpire" means the third arbitrator appointed pursuant to Section 8.04 (c).
90. "Unwinding Amount" means, for the early termination of a Conversion:  
(a) an amount payable by the Borrower to the Bank equal to the net aggregate amount payable by the Bank under transactions undertaken by the Bank to terminate the Conversion, or if no such transactions are undertaken, an amount determined by the Bank on the basis of the Screen Rate, to represent the equivalent of such net aggregate amount; or (b) an amount payable by the Bank to the Borrower equal to the net aggregate amount receivable by the Bank under transactions undertaken by the Bank to terminate the Conversion, or if no such transactions are undertaken, an amount determined by the Bank on the basis of the Screen Rate, to represent the equivalent of such net aggregate amount.
91. "Unwithdrawn Loan Balance" means the amount of the Loan remaining unwithdrawn from the Loan Account from time to time.
92. "Variable Rate" means a variable rate of interest equal to the sum of: (1) the Reference Rate for the initial Loan Currency; plus (2) the Variable Spread, if interest accrues at a rate based on the Variable Spread, or the Fixed Spread if interest accrues at a rate based on the Fixed Spread; provided, that:
  - (a) upon an Interest Rate Conversion from a Variable Rate based on the Variable Spread to a Variable Rate based on a Fixed Spread, the "Variable Rate" applicable to the amount of the Loan to which

- the Conversion applies shall be equal to the sum of: (i) the Reference Rate for the Loan Currency; plus (ii) the Fixed Spread;
- (b) upon an Interest Rate Conversion from the Fixed Rate, the "Variable Rate" applicable to the amount of the Loan to which the Conversion applies shall be equal to either: (i) the sum of: (A) the Reference Rate for the Loan Currency; plus (B) the spread to the Reference Rate, if any, payable by the Bank under the Interest Hedge Transaction relating to the Conversion (adjusted in accordance with the Conversion Guidelines for the difference, if any, between the Fixed Rate and the fixed rate of interest receivable by the Bank under the Interest Hedge Transaction); or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the Screen Rate;
  - (c) upon a Currency Conversion to an Approved Currency of an amount of the Unwithdrawn Loan Balance, and upon withdrawal of any of such amount, the "Variable Rate" applicable to such amount shall be equal to the sum of: (i) the Reference Rate for the Approved Currency; plus (ii) the Variable Spread if such amount accrues interest at a rate based on the Variable Spread, or the Fixed Spread if such amount accrues interest at a rate based on the Fixed Spread; and
  - (d) upon a Currency Conversion to an Approved Currency of an amount of the Withdrawn Loan Balance that accrues interest at a variable rate during the Conversion Period, the "Variable Rate" applicable to such amount shall be equal to either: (i) the sum of (A) the Reference Rate for the Approved Currency; plus (B) the spread to the Reference Rate, if any, payable by the Bank under the Currency Hedge Transaction relating to the Currency Conversion; or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the interest rate component of the Screen Rate.
93. "Variable Spread" means, for each Interest Period: (1) the Bank's standard lending spread for Loans in effect at 12:01 a.m. Washington, D.C. time, one calendar day prior to the date of the Loan Agreement.; (2) minus (or plus) the weighted average margin, for the Interest Period, below (or above) the Reference Rate for six-month deposits, in respect of the Bank's outstanding borrowings or portions thereof allocated by it to fund loans that carry interest at a rate based on the Variable Spread; as reasonably

determined by the Bank and expressed as a percentage per annum. In the case of a Loan denominated in more than one Currency, "Variable Spread" applies separately to each of such Currencies.

94. "Variable Spread Fixing Charge" means, for a Conversion of all or any portion of the Loan that accrues interest at a rate based on the Variable Spread, the Bank's charge for such a Conversion in effect 12:01 a.m. Washington, D.C. time, one calendar day prior to the execution of the Conversion.
95. "Withdrawn Loan Balance" means the amounts of the Loan withdrawn from the Loan Account and outstanding from time to time.
96. "Yen", "¥" and "JPY" each means the lawful currency of Japan

## GUIDELINES

### On Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants

Dated October 15, 2006 and Revised in January, 2011

#### Purpose and General Principles

1. These Guidelines are designed to prevent and combat fraud and corruption that may occur in connection with the use of proceeds of financing from the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA) during the preparation and/or implementation of IBRD/IDA-financed investment projects. They set out the general principles, requirements and sanctions applicable to persons and entities which receive, are responsible for the deposit or transfer of, or take or influence decisions regarding the use of, such proceeds.
2. All persons and entities referred to in paragraph 1 above must observe the highest standard of ethics. Specifically, all such persons and entities must take all appropriate measures to prevent and combat fraud and corruption, and refrain from engaging in, fraud and corruption in connection with the use of the proceeds of IBRD or IDA financing.

#### Legal Considerations

3. The Loan Agreement<sup>1</sup> providing for a Loan<sup>2</sup> governs the legal relationships between the Borrower<sup>3</sup> and the Bank<sup>4</sup> with respect to the particular project for which the Loan is made. The responsibility for the implementation of the project<sup>5</sup> under the Loan

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<sup>1</sup>References in these Guidelines to "Loan Agreement" include any Guarantee Agreement providing for a guarantee by the Member Country of an IBRD Loan, Financing Agreement providing for an IDA Credit or IDA Grant, agreement providing for a project preparation advance or Institutional Development Fund (IDF) Grant, Trust Fund Grant or Loan Agreement providing for a recipient-executed trust fund grant or loan in cases where these Guidelines are made applicable to such agreement, and the Project Agreement with a Project Implementing Entity related to any of the above.

<sup>2</sup>References to "Loan" or "Loans" include IBRD loans as well as IDA credits and grants, project preparation advances, IDF grants and recipient-executed trust fund grants or loans for projects to which these Guidelines are made applicable under the agreement providing for such grant and/or loan, but excludes development policy lending, unless the Bank agrees with the Borrower on specified purposes for which loan proceeds may be used.

<sup>3</sup>References in these Guidelines to the "Borrower" include the recipient of an IDA credit or grant or of a trust fund grant or loan. In some cases, an IBRD Loan may be made to an entity other than the Member Country. In such cases, references in these Guidelines to "Borrower" include the Member Country as Guarantor of the Loan, unless the context requires otherwise. In some cases, the project, or a part of the project, is carried out by a Project Implementing Entity with which the Bank has entered into a Project Agreement. In such cases, references in these Guidelines to the "Borrower" include the Project Implementing Entity, as defined in the Loan Agreement.

<sup>4</sup>References in these Guidelines to the "Bank" include both IBRD and IDA.

<sup>5</sup>References in these Guidelines to the "project" means the Project as defined in the Loan Agreement.

Agreement, including the use of Loan proceeds, rests with the Borrower. The Bank, for its part, has a fiduciary duty under its Articles of Agreement to “make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.”<sup>7</sup> These Guidelines constitute an important element of those arrangements and are made applicable to the preparation and implementation of the project as provided in the Loan Agreement.

### **Scope of Application**

4. The following provisions of these Guidelines cover fraud and corruption that may occur in connection with the use of Loan proceeds during the preparation and implementation of a project financed, in whole or in part, by the Bank. These Guidelines cover fraud and corruption in the direct diversion of Loan proceeds for ineligible expenditures, as well as fraud and corruption engaged in for the purpose of influencing any decision as to the use of Loan proceeds. All such fraud and corruption is deemed, for purposes of these Guidelines, to occur “in connection with the use of Loan proceeds”.

5. These Guidelines apply to the Borrower and all other persons or entities which either receive Loan proceeds for their own use (e.g., “end users”), persons or entities such as fiscal agents which are responsible for the deposit or transfer of Loan proceeds (whether or not they are beneficiaries of such proceeds), and persons or entities which take or influence decisions regarding the use of Loan proceeds. All such persons and entities are referred to in these Guidelines as “recipients of Loan proceeds”, whether or not they are in physical possession of such proceeds.<sup>8</sup>

6. The Bank’s specific policy requirements on fraud and corruption in connection with the procurement or execution of contracts for goods, works or services financed out of the proceeds of a Loan from the Bank, are covered in the Procurement Guidelines<sup>9</sup> and the Consultant Guidelines<sup>10</sup>, as each such Procurement Guidelines and Consultants Guidelines are applicable to a particular Loan.

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<sup>7</sup> IBRD’s Articles of Agreement, Article III, Section 5(b); IDA’s Articles of Agreement, Article V, Section 1(g).

<sup>8</sup> Certain persons or entities may fall under more than one category identified in paragraph 5. A financial intermediary, for example, may receive payment for its services, will transfer funds to end users and will make or influence decisions regarding the use of loan proceeds.

<sup>9</sup> *Guidelines: Procurement under IBRD Loans and IDA Credits*, May 2004, as revised October 2006 and May 2010, and *Guidelines: Procurement of Goods, Works and Non-Consulting Services Under IBRD Loans And IDA Credits & Grants By World Bank Borrowers* dated January 2011, as such Procurement Guidelines may be amended from time to time.

<sup>10</sup> *Guidelines: the Selection and Employment of Consultants by World Bank Borrowers*, May 2004, as revised October 2006 and May 2010, and *Guidelines: Selection and Employment of Consultants Under IBRD Loans and IDA Credits & Grants by World Bank Borrowers* dated January 2011, as such Consultant Guidelines may be amended from time to time.

## Definitions of Practices Constituting Fraud and Corruption

7. These Guidelines address the following defined practices when engaged in by recipients of Loan proceeds in connection with the use of such proceeds:<sup>11</sup>

- a) A “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.<sup>12</sup>
- b) A “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly<sup>13</sup> misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- c) A “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.
- d) A “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- e) An “obstructive practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information.<sup>14</sup>

8. The above practices, as so defined, are sometimes referred to collectively in these Guidelines as “fraud and corruption”.

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<sup>11</sup> Unless otherwise specified in the Loan Agreement, whenever these terms are used in the Loan Agreement, including in the applicable General Conditions, they have the meanings set out in paragraph 7 of these Guidelines.

<sup>12</sup> Typical examples of corrupt practice include bribery and “kickbacks”.

<sup>13</sup> To act “knowingly or recklessly”, the fraudulent actor must either know that the information or impression being conveyed is false, or be recklessly indifferent as to whether it is true or false. Mere inaccuracy in such information or impression, committed through simple negligence, is not enough to constitute fraudulent practice.

<sup>14</sup> Such rights include those provided for, *inter alia*, in paragraph 9(d) below.

**Borrower Actions to Prevent and Combat Fraud and Corruption in connection with the Use of Loan Proceeds**

9. In furtherance of the above-stated purpose and general principles, the Borrower will:

- (a) take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices in connection with the use of Loan proceeds, including (but not limited to) (i) adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the proceeds of the Loan are used only for the purposes for which the Loan was granted, and (ii) ensuring that all of its representatives<sup>15</sup> involved with the project, and all recipients of Loan proceeds with which it enters into an agreement related to the Project, receive a copy of these Guidelines and are made aware of its contents;
- (b) immediately report to the Bank any allegations of fraud and corruption in connection with the use of Loan proceeds that come to its attention;
- (c) if the Bank determines that any person or entity referred to in (a) above has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in connection with the use of Loan proceeds, take timely and appropriate action, satisfactory to the Bank, to address such practices when they occur;
- (d) include such provisions in its agreements with each recipient of Loan proceeds as the Bank may require to give full effect to these Guidelines, including (but not limited to) provisions (i) requiring such recipient to abide by paragraph 10 of these Guidelines, (ii) requiring such recipient to permit the Bank to inspect all of their accounts and records and other documents relating to the project required to be maintained pursuant to the Loan Agreement and to have them audited by, or on behalf of, the Bank, (iii) providing for the early termination or suspension by the Borrower of the agreement if such recipient is declared ineligible by the Bank under paragraph 11 below; and (iv) requiring restitution by such recipient of any amount of the loan with respect to which fraud and corruption has occurred;
- (e) cooperate fully with representatives of the Bank in any investigation into allegations of fraud and corruption in connection with the use of loan proceeds; and
- (f) in the event that the Bank declares any recipient of Loan proceeds ineligible as described in paragraph 11 below, take all necessary and appropriate action to give full effect to such declaration by, among other things, (i) exercising the Borrower's right to terminate early or suspend the agreement between the Borrower and such recipient and/or (ii) seeking restitution.

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<sup>15</sup> References in these Guidelines to "representatives" of an entity also include its officials, officers, employees and agents.

### **Other Recipients of Loan Proceeds**

10. In furtherance of the above-stated purpose and general principles, each recipient of Loan proceeds which enters into an agreement with the Borrower (or with another recipient of Loan proceeds) relating to the Project will:

- (a) carry out its project-related activities in accordance with the above-stated general principles and the provisions of its agreement with the Borrower referred to in paragraph 9 (d) above; and include similar provisions in any agreements related to the Project into which it may enter with other recipients of Loan proceeds;
- (b) immediately report to the Bank any allegations of fraud and corruption in connection with the use of loan proceeds that come to its attention;
- (c) cooperate fully with representatives of the Bank in any investigation into allegations of fraud and corruption in connection with the use of loan proceeds;
- (d) take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices by its representatives (if any) in connection with the use of loan proceeds, including (but not limited to): (i) adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the proceeds of the loan are used only for the purposes for which the loan was granted, and (ii) ensuring that all its representatives receive a copy of these Guidelines and are made aware of its contents;
- (e) in the event that any representative of such recipient is declared ineligible as described in paragraph 11 below, take all necessary and appropriate action to give full effect to such declaration by, among other things, either removing such representative from all duties and responsibilities in connection with the project or, when requested by the Bank or otherwise appropriate, terminating its contractual relationship with such representative; and
- (f) in the event that it has entered into a project-related agreement with another person or entity which is declared ineligible as described in paragraph 11 below, take all necessary and appropriate action to give full effect to such declaration by, among other things, (i) exercising its right to terminate early or suspend such agreement and/or (ii) seeking restitution.

## Sanctions and Related Actions by the Bank in Cases of Fraud and Corruption

11. In furtherance of the above-stated purpose and general principles, the Bank will have the right to sanction in accordance with prevailing Bank's sanctions policies and procedures, any individual or entity<sup>16</sup> other than the Member Country<sup>17</sup>, including (but not limited to) declaring such individual or entity ineligible publicly, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; (ii) to benefit from a Bank-financed contract, financially or otherwise, for example as a sub-contractor; and (iii) to otherwise participate in the preparation or implementation of the project or any other project financed, in whole or in part, by the Bank,

(a) if at any time the Bank determines<sup>18</sup> that such individual or entity has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in connection with the use of Loan proceeds;<sup>19</sup>

(b) if another financier with which the Bank has entered into an agreement for the mutual enforcement of debarment decisions has declared such individual or entity ineligible to receive proceeds of financings made by such financier or otherwise to participate in the preparation or implementation of any project financed in whole or in part by such financier as a result of a determination by such financier that the individual or entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of a financing made by such financier; or

(c) if the Bank's General Services Department has found the individual or entity to be non-responsible on the basis of fraud and corruption in connection with World Bank Group corporate procurement.

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<sup>16</sup> As in the case for bidders in the procurement context, the Bank may also sanction individuals and entities which engage in fraud or corruption in the course of applying to become a recipient of Loan proceeds (e.g., a bank which provides false documentation so as to qualify as a financial intermediary in a Bank-financed project) irrespective of whether they are successful.

<sup>17</sup> For purposes of these Guidelines, "Member Country" includes officials and employees of the national government or of any of its political or administrative subdivisions, and government owned enterprises and agencies that are not eligible to: (i) bid under paragraph 1.8(b) of the *Guidelines: Procurement under IBRD Loans and IDA Credits*, May 2004, as revised October 2006 and May 2010, and paragraph 1.10(b) of the *Guidelines: Procurement of Goods, Works and Non-Consulting Services Under IBRD Loans And IDA Credits & Grants By World Bank Borrowers* dated January 2011; or (ii) participate under paragraph 1.11(b) of the *Guidelines: the Selection and Employment of Consultants by World Bank Borrowers*, May 2004, as revised October 2006 and May 2010, and paragraph 1.13(b) of the *Guidelines: Selection and Employment of Consultants Under IBRD Loans and IDA Credits & Grants by World Bank Borrowers* dated January 2011.

<sup>18</sup> The Bank has established a Sanctions Board, and related procedures, for the purpose of making such determinations. The procedures of the Sanctions Board sets forth the full set of sanctions available to the Bank.

<sup>19</sup> The sanction may, without limitation, also include restitution of any amount of the loan with respect to which sanctionable conduct has occurred. The Bank may publish the identity of any individual or entity declared ineligible under paragraph 11.

## **Miscellaneous**

12. The provisions of these Guidelines do not limit any other rights, remedies<sup>20</sup> or obligations of the Bank or the Borrower under the Loan Agreement or any other document to which the Bank and the Borrower are both parties.

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<sup>20</sup> The Loan Agreement provides the Bank with certain rights and remedies which it may exercise with respect to the Loan in the event of fraud and corruption in connection with the use of Loan proceeds, in the circumstances described therein.

CLASSIFICATION: PUBLIC

GUIDELINES  
SELECTION AND EMPLOYMENT  
OF CONSULTANTS  
UNDER IBRD LOANS AND IDA CREDITS &  
GRANTS  
BY WORLD BANK BORROWERS

January 2011  
Revised July 2014

July 2014 Revision

Paragraph 3.14 – **Procurement under loans Guaranteed by the Bank** has been revised to include provisions for payment obligations.

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## Acronyms

CDD	Community Driven Development
CPAR	Country Procurement Assessment Report
CQS	Selection Based on Consultants' Qualifications
EOI	Expression of Interest
FBS	Selection under a Fixed Budget
FPA	Fiduciary Principles Accord
IBRD	International Bank for Reconstruction and Development (World Bank)
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IDC	Indefinite Delivery Contract
IFC	International Finance Corporation
INT	Integrity Vice Presidency
ITC	Instructions to Consultants
LCS	Least-Cost Selection
LOI	Letter of Invitation
MDTF	Multi Donor Trust Fund
MIGA	Multilateral Investment Guarantee Agency
MOS	Monthly Operational Summary
NGO	Nongovernmental Organization
PAD	Project Appraisal Document
PPA	Project Preparation Advance
PPR	Procurement Post Review
PID	Project Information Document
QBS	Quality-Based Selection
QCBS	Quality- and Cost-Based Selection
REOI	Request for Expressions of Interest
RFP	Request for Proposal
SA	Special Account
SSS	Single-Source Selection
SWAp	Sector Wide Approach
TOR	Terms of Reference
UCS	Use of Country Systems
UN	United Nations
UNDB	United Nations Development Business

## I. INTRODUCTION

### Purpose

1.1 The purpose of these Guidelines is to define the Bank's policies and procedures for selecting, contracting, and monitoring consultants required for projects that are financed in whole or in part by a loan from the International Bank for Reconstruction and Development (IBRD), a credit or a grant from the International Development Association (IDA),<sup>1</sup> a project preparation advance (PPA), a grant from the Bank, or a trust fund<sup>2</sup> administered by the Bank and executed by the recipient.

1.2 The Loan Agreement governs the legal relationships between the Borrower and the Bank, and these Guidelines apply to the selection and employment of consultants for the project as provided in the Loan Agreement. The rights and obligations of the Borrower<sup>3</sup> and the consultant are governed by the specific Request for Proposals (RFP)<sup>4</sup> issued by the Borrower and by the contract signed by the Borrower with the consultant, and not by these Guidelines or the Loan Agreement. No party other than the parties to the Loan Agreement shall derive any rights therefrom or have any claim to loan proceeds.

1.3 For the purpose of these Guidelines, the term "consultants" includes a wide variety of private and public entities, including consulting firms, engineering firms, Construction Managers, management firms, Procurement Agents, inspection service providers, auditors, United Nations (UN) agencies and other multinational organizations, investment and merchant banks, universities, research institutions, government agencies, nongovernmental organizations (NGOs), and individuals.<sup>5</sup> Bank Borrowers use these entities as consultants to help in a wide range of activities, such as policy advice; institutional reforms; management; engineering services; construction supervision; financial services; procurement services; social and environmental studies; and identification, preparation, and implementation of projects to complement Borrowers' capabilities in these areas.

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<sup>1</sup> Requirements of IBRD and IDA are identical. References in these Guidelines to "the Bank" include both *IBRD* and *IDA*, and references to "loans" include IBRD loans, as well as IDA credits or grants, grants from the Bank, trust funds administered by the Bank and executed by the recipient, and project preparation advances (PPAs).

References to "Loan Agreement" include the legal agreement between the Bank and Borrower, and may include the project agreement between the Bank and project implementing entity.

References to "Borrower" include loan, credit, grant, and PPA recipients that execute such projects, and may include sub-borrowers or project implementing entities.

<sup>2</sup> To the extent that the agreement providing for such trust funds or grants to be administered by the Bank does not conflict with these provisions as exceptions, including under the UN Fiduciary Principles Accord (FPA) or a Multi Donor Trust Fund (MDTF) in emergency situations.

<sup>3</sup> In some cases, the Borrower acts only as an intermediary, and the project is carried out by another agency or entity. References in these Guidelines to the Borrower include such agencies and entities, as well as Sub-Borrowers under "on-lending arrangements."

<sup>4</sup> See Appendix 2.

<sup>5</sup> See paragraphs 3.15 -3.21 for particular types of consultants, and Section V for individual consultants.

## **General Considerations**

1.4 The Borrower is responsible for preparing and implementing the project, and therefore for selecting the consultant, and awarding and subsequently administering the contract. The Bank, for its part, is required by its Articles of Agreement (Bank's Articles of Agreement, Article III, Section 5(b); and IDA's Articles of Agreement, Article V, Section 1(g)) to "ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations," and it has established detailed procedures for this purpose. While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, five main considerations guide the Bank's policy on the selection process:

- (a) the need for high-quality services,
- (b) the need for economy and efficiency,
- (c) the need to give all eligible consultants an opportunity to compete in providing the services financed by the Bank,
- (d) the Bank's interest in encouraging the development and use of national consultants in its developing member countries, and
- (e) the need for transparency in the selection process.

1.5 The Bank considers that, in the majority of cases, these considerations can best be addressed through competition among qualified short-listed firms in which the selection is based on the quality of the proposal and, where appropriate, on the cost of the services to be provided. Sections II and III of these Guidelines describe the different methods of selection of consultants accepted by the Bank and the circumstances in which they are appropriate. Since Quality- and Cost-Based Selection (QCBS) is the most commonly recommended method, Section II of these Guidelines describes in detail the procedures for QCBS. However, QCBS is not the most appropriate method of selection for all cases; therefore, Section III describes other methods of selection and the circumstances in which they are more appropriate.

1.6 The particular methods that may be followed for the selection of consultants under a given project are provided for in the Loan Agreement. The specific contracts to be financed under the project, and their method of selection, consistent with the provisions of the Loan Agreement, shall be specified in the Procurement Plan as indicated in paragraph 1.25 of these Guidelines.

## **Applicability of Guidelines**

1.7 The consulting services to which these Guidelines apply are of an intellectual and advisory nature. These Guidelines do not apply to other types of services for which the

physical aspects of the activity predominate, are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied, such as drilling, aerial photography, satellite imagery, mapping, and similar operations, as well as construction of works, manufacture of goods, and operation and maintenance of facilities or plant.<sup>6</sup>

1.8 The principles, rules, and procedures outlined in these Guidelines apply to all contracts for consulting services financed in whole or in part from Bank loans.<sup>7</sup> The provisions described under this Section I apply to all other Sections of these Guidelines. In procuring consulting services not financed from such sources but included in the project scope of the loan agreement, the Borrower may adopt other rules and procedures. In such cases, the Bank shall satisfy itself that: (a) the procedures to be used will fulfill the Borrower's obligations to diligently and efficiently implement the project, and will result in the selection of consultants who have the required qualifications; (b) the selected consultant will carry out the assignment in accordance with the agreed schedule; and (c) the scope of the services is consistent with the needs of the project.

### **Conflict of Interest**

1.9 Bank policy requires that consultants provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Borrower. Without limitation on the generality of the foregoing, consultants shall not be hired under the circumstances set forth below:

- (a) Conflict between consulting activities and procurement of goods, works, or non-consulting services (i.e., services other than consulting services covered by these Guidelines<sup>8</sup>): A firm that has been engaged by the Borrower to provide goods, works, or non-consulting services for a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide

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<sup>6</sup> These latter services are bid and contracted on the basis of performance of measurable physical outputs and procured in accordance with the current *Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants*, referred to herein as the "*Procurement Guidelines*".

<sup>7</sup> This includes the selection of consultants by a Procurement Agent or Construction Manager employed by the Borrower under paragraph 3.17 of these Guidelines. The Bank may agree to the use of the public procurement systems of the Borrower country — referred to as the Use of Country System (UCS)—for the selection of consultants (including individuals) under paragraph 3.12 of these Guidelines. In such cases, the Loan Agreement between the Borrower and the Bank shall describe the applicable selection procedures of the Borrower, and the full application of Section I and any other parts of these Guidelines as may be deemed relevant by the Bank.

<sup>8</sup> See paragraph 1.7 of these Guidelines.

consulting services for the preparation (before Loan effectiveness) or implementation of a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from subsequently providing goods, works, or services (other than consulting services covered by these Guidelines) resulting from or directly related to the consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and build contract.

- (b) Conflict among consulting assignments: Neither consultants (including their personnel and sub-consultants), nor any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants assisting a client in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.
- (c) Relationship with Borrower's staff: Consultants (including their experts and other personnel, and sub-consultants) that have a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who are directly or indirectly involved in any part of: (i) the preparation of the TOR for the assignment, (ii) the selection process for the contract, or (iii) the supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Bank throughout the selection process and the execution of the contract.
- (d) A consultant shall submit only one proposal, either individually or as a joint venture partner in another proposal. If a consultant, including a joint venture partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a consulting firm to participate as a sub-consultant, or an individual to participate as a team member, in more than one proposal when circumstances justify and if permitted by the RFP.

#### **Unfair Competitive Advantage**

1.10 Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Borrower shall make available to all the short-listed consultants, together with the request for proposals, all information that would in that respect give a consultant a competitive advantage.

## **Eligibility**

1.11 To foster competition, the Bank permits consultants (firms and individuals) from all countries to offer consulting services for Bank-financed projects.<sup>9</sup> Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question.

1.12 In connection with any contract to be financed in whole or in part from a Bank loan, the Bank does not permit a Borrower to deny participation in a short-listing or selection process or award to a consultant for reasons unrelated to: (i) its capability and resources to successfully perform the contract; or (ii) the conflict of interest situations covered under paragraph 1.9 above.

1.13 As an exception to the foregoing paragraphs 1.11 and 1.12:

- (a) Consultants may be excluded if: (i) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with the consultant's country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the procurement of the consulting services required; or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any payments to any country, person, or entity. Where the Borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.
- (b) Government-owned enterprises or institutions of the Borrower's country may participate in the Borrower's country only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Borrower or Sub-Borrower.<sup>10</sup>
- (c) As an exception to (b), when the services of government-owned universities or research centers or other institutions in the Borrower's country are of unique and exceptional nature including because of the absence of a suitable private sector alternative, and their participation is critical to project implementation, the Bank may agree on the hiring of those institutions on a case-by-case basis. On the same basis, university professors or scientists from research institutes can be contracted individually under Bank financing.

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<sup>9</sup> The Bank permits firms and individuals from Taiwan, China to offer consulting services for Bank-financed projects.

<sup>10</sup> To be eligible, a government-owned enterprise or institution shall establish to the Bank's satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government; (ii) does not currently receive any subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution.

- (d) Government officials and civil servants of the Borrower's country may only be hired under consulting contracts in the Borrower's country, either as individuals or as members of the team of experts proposed by a consulting firm, provided that such hiring does not conflict with any employment or other laws or regulations, or policies of the Borrower's country and if they (i) are on leave of absence without pay, or have resigned or retired; (ii) are not being hired by the agency they were working for before going on leave of absence without pay, resigning, or retiring<sup>11</sup>; and (iii) their hiring would not create a conflict of interest (see paragraph 1.9).
- (e) A firm or an individual sanctioned by the Bank in accordance with paragraph 1.23(d) of these Guidelines or in accordance with the World Bank Group anti-corruption policies and sanctions procedures<sup>12</sup> shall be ineligible to be awarded a Bank-financed contract, or to benefit from a Bank-financed contract, financially or in any other manner, during such period of time as the Bank shall determine.

### **Advance Contracting and Retroactive Financing**

1.14 In certain circumstances, such as to accelerate project implementation, the Borrower may, with the Bank's no objection, wish to proceed with the selection of consultants before the related Loan Agreement is signed. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Guidelines, and the Bank shall review the process used by the Borrower. A Borrower undertakes such advance contracting at its own risk, and any no objection issued by the Bank with regard to the procedures, documentation, or proposal for award does not commit the Bank to make a loan for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to loan signing is referred to as retroactive financing and is only permitted within the limits specified in the Loan Agreement.

### **Associations between Consultants**

1.15 Consultants may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a

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<sup>11</sup> In the case of resignation or retirement, for a period of at least 6 (six) months, or the period established by statutory provisions applying to civil servants in the Borrower's country, whichever is longer. Professors or staff and experts in specialized fields from universities, educational institutions, and research institutes can be contracted individually on a part-time basis provided that they have been full-time employees of their institutions for a year or more before being contracted and such hiring is justified for the services required.

<sup>12</sup> For purposes of this paragraph, the relevant World Bank Group Anti-Corruption policies are set forth in the *Guidelines On Preventing and Combating Fraud and Corruption in Projects financed by IBRD Loans and IDA Credits and Grants*, and in the *Anti-Corruption Guidelines for IFC, MIGA, and World Bank Guarantee Transactions*. The Bank's sanctions procedures are publicly disclosed on the Bank's external website.

specific assignment. If the Borrower employs an association in the form of a joint venture, the association shall appoint one of the firms to represent the association; all members of the joint venture, or their representative with a power of attorney, shall sign the contract. All members of the joint venture shall be jointly and severally liable for the entire assignment. Once the short list is finalized, and Requests for Proposals (RFP) are issued, any association in the form of joint venture or sub-consultancy among short-listed firms shall be permissible only with the approval of the Borrower. Borrowers shall not require consultants to form associations with any specific firm or group of firms or include any particular individual in their proposals, but may encourage association with qualified national firms.

### **Bank Review, Assistance, and Monitoring**

1.16 The Bank reviews the Borrower's hiring of consultants to satisfy itself that the selection process is carried out in accordance with the provisions of these Guidelines. The review procedures are described in Appendix 1.

1.17 Under exceptional circumstances, when the Borrower is unable to prepare a short list or long list and in response to its written request, the Bank may assist the Borrower in creating short lists<sup>13</sup> or long lists<sup>14</sup> of firms that the Bank expects to be capable of undertaking the assignment. The provision of such lists does not represent an endorsement of the consultants. The Borrower retains the responsibility to verify the eligibility and qualifications of the listed firms, and may delete any name or add other names as it wishes; however, the final short list shall be submitted to the Bank for its no objection before the Borrower issues the RFP.

1.18 The Borrower is responsible for supervising the consultants' performance and ensuring that they carry out the assignment in accordance with the contract. Without assuming the responsibilities of the Borrower or the consultants, Bank staff shall monitor the quality of the consultants' work as necessary to satisfy themselves that it is being carried out according to appropriate standards and is based on reliable data. As appropriate, the Bank may take part in discussions between the Borrower and consultants and, if necessary, may help the Borrower in addressing issues related to the assignment. If a significant portion of the assignment is being carried out in the consultants' home offices, the Bank may, with the Borrower's agreement, visit these offices to review the consultants' work.

### **Misprocurement**

1.19 The Bank does not finance expenditures under a contract for consulting services if the Bank concludes that such contract: (a) has not been awarded in accordance with the

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<sup>13</sup> Short List: see paragraph 2.6, 2.7, and 2.8.

<sup>14</sup> Long List: a preliminary list of potential firms from which the short list will be established.

agreed provisions of the Loan Agreement and as further elaborated in the Procurement Plan<sup>15</sup> to which the Bank provided no objection; (b) could not be awarded to the consultant otherwise determined successful due to willful dilatory conduct or other actions of the Borrower resulting in unjustifiable delays, or the successful proposal being no longer available, or the wrongful rejection of any proposal; or (c) involves the engagement of a representative of the Borrower, or a recipient of any part of the proceeds of the Loan, in fraud and corruption as per paragraph 1.23(c). In such cases, whether under prior or post review, the Bank will declare misprocurement, and it is the Bank's policy to cancel that portion of the loan allocated to the services 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 and apply in full its policies and remedies regardless of whether the loan has closed or not, if it concludes that the no objection was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower or that the terms and conditions of the contract had been substantially modified without the Bank's no objection.

#### **Reference to the Bank**

1.20 The Borrower shall use the following text<sup>16</sup> when referring to the Bank in the RFP and contract documents:

*"[Name of the Borrower] has received [or, 'has applied for'] a [loan] from the [International Bank for Reconstruction and Development] (the "Bank") in an amount equivalent to US\$\_\_\_, toward the cost of [name of project], and intends to apply a portion of the proceeds of this [Loan] to eligible payments under this Contract. Payments by the Bank will be made only at the request of [name of Borrower or designate] and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the [Loan] Agreement. The [Loan] Agreement prohibits a withdrawal from the [Loan] Account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than [name of Borrower] shall derive any rights from the [Loan] Agreement or have any claim to the proceeds of the [Loan]."*

#### **Training or Transfer of Knowledge**

1.21 If the assignment includes an important component for training or transfer of knowledge to Borrower staff or national consultants, the TOR shall indicate the objectives,

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<sup>15</sup> See paragraph 1.25.

<sup>16</sup> To be suitably modified in the case of a credit from IDA or a grant or a trust fund.

nature, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the consultant's contract and in the budget for the assignment.

### **Language**

1.22 The RFP and the proposals shall be prepared in one of the following languages, selected by the Borrower: English, French, or Spanish. In addition to one of the above languages, the Borrower has the option to issue translated versions of these documents in another language which should either be: (i) the national language of the Borrower; or (ii) the language used nation-wide in the Borrower's country for commercial transactions, hereinafter each is called the "National Language".<sup>17</sup> When the short list only comprises nationals as per paragraph 2.7, the Bank may agree that the Borrower issue the RFP only in the National Language. If the RFP is issued in two languages, consultants shall have the option to submit proposals in either of the two languages in which the RFP is issued. The contract signed with the winning consultant shall always be written in the language in which its proposal was submitted which shall be the language that governs the contractual relations between the Borrower and the consultant. If the contract is signed in the National Language, the Borrower shall provide the Bank with an accurate translation of the contract in English, French, or Spanish when submitting the original contract as per Appendix 1. Consultants shall neither be required nor permitted to sign contracts in more than one language.

### **Fraud and Corruption**

1.23 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), consultants, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the selection and execution of Bank-financed contracts.<sup>18</sup> In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:

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<sup>17</sup> The Bank shall be satisfied with the language to be used. The Borrower shall take full responsibility for the correct translation of the documents in the National Language. In case of any discrepancy with the documents in English, French, or Spanish the text in the latter shall prevail.

If the Borrower has more than one National Language and a national law requires official acts to be issued in all national languages, the Borrower shall use one National Language in the RFP and may issue translated versions in the other languages.

<sup>18</sup> In this context, any action taken by a consultant or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers, and/or their employees, to influence the selection process or contract execution for undue advantage is improper.

- (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;<sup>19</sup>
- (ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;<sup>20</sup>
- (iii) “collusive practices” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;<sup>21</sup>
- (iv) “coercive practices” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;<sup>22</sup>
- (v) “obstructive practice”
  - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.23(e) below.
- (b) will reject a proposal for award if it determines that the consultant recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the Loan allocated to a contract if it determines at any time that representatives of the Borrower or of a

<sup>19</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the selection process or contract execution. In this context “public official” includes World Bank staff and employees of other organizations taking or reviewing selection decisions.

<sup>20</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>21</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish contract prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

<sup>22</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

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recipient of any part of the proceeds of the Loan were engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the selection process or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

- (d) will sanction a firm or an individual, at any time, in accordance with prevailing Bank's sanctions procedures,<sup>23</sup> including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated<sup>24</sup> sub-consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract;
- (e) will require that a clause be included in the RFP and in contracts financed by a Bank loan requiring consultants, and their agents, personnel, sub-consultants, sub-contractors, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of proposals and contract performance, and to have them audited by auditors appointed by the Bank; and
- (f) will require that, when a Borrower selects a United Nation (UN) agency to provide technical assistance services in accordance with paragraph 3.15 under an agreement signed between the Borrower and the UN agency, the above provisions of this paragraph 1.23 regarding sanctions on fraud or corruption shall apply in their entirety to consultants and their sub-consultants, suppliers, service providers, contractors, sub-contractors, and their employees, that signed contracts with the UN agency. As an exception to the foregoing, paragraphs 1.23(d) and (e) will not apply to the UN agency and its employees, and paragraph 1.23(e) will not apply to the contracts between the UN agency and its suppliers and service providers. In such cases, the UN agencies will apply their own rules and regulations for investigating allegations of fraud or corruption subject to such terms and conditions as the Bank and the UN agency may agree, including an obligation to periodically inform the Bank of the decisions and actions taken. The Bank retains the right to require the Borrower to invoke remedies such as suspension or termination. UN agencies shall consult the Bank's list of firms and individuals suspended or debarred. In the event a UN agency

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<sup>23</sup> A firm or individual may be declared ineligible to be awarded a Bank-financed contract upon: (i) completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 12 and paragraph 8 of Appendix 1 of these Guidelines.

<sup>24</sup> A nominated sub-consultant, supplier, or service provider is one which has been either: (i) included by the consultant in its proposal because it brings specific and critical experience and know-how that are accounted for in the technical evaluation of the consultant's proposal for the particular services; or (ii) appointed by the Borrower.

signs a contract or purchase order with a firm or an individual suspended or debarred by the Bank, the Bank will not finance the related expenditures and will apply other remedies as appropriate.

1.24 With the specific agreement of the Bank, a Borrower may introduce, into the RFP for contracts financed by the Bank, a requirement that the consultant include in the proposal an undertaking of the consultant to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the RFP.<sup>25</sup> The Bank will accept the introduction of such a requirement at the request of the Borrowing country, provided the arrangements governing such undertaking are satisfactory to the Bank.

### **Procurement Plan**

1.25 The preparation of a realistic Procurement Plan<sup>26</sup> for a project is critical for its successful monitoring and implementation. As part of the project preparation, the Borrower shall prepare a preliminary Procurement Plan, however tentative, for the entire scope of the project. At a minimum, the Borrower shall prepare a detailed and comprehensive Procurement Plan including all contracts for which the selection of firms and individuals is to take place in the first 18 (eighteen) months of project implementation. An agreement with the Bank shall be reached at the latest during loan negotiations. The Borrower shall update Procurement Plans throughout the duration of the project at least annually by including contracts previously awarded and to be procured in the next 12 (twelve) months. All Procurement Plans and their updates or modifications shall be subject to the Bank's prior review<sup>27</sup> and no objection before implementation. After loan negotiations, the Bank shall arrange the publication on its external website of the agreed initial Procurement Plan and all subsequent updates once it has provided a no objection.

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<sup>25</sup> As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will observe the laws against fraud and corruption in force in the country of the Client, as such laws have been listed by the Client in the RFP for this contract."

<sup>26</sup> The Procurement Plan including their updates shall set forth at a minimum (i) a brief description of consulting services required for the project for which invitations for proposals are to be issued during the period in question; (ii) the proposed methods of selection as permitted under the loan agreement; (iii) the Bank review requirements and thresholds; and (iv) the time schedule for key selection activities, and any other information that the Bank may reasonably require. For projects, or their components, that are demand driven in nature such as Community Driven Development (CDD), Sector Wide Approaches (SWAs), etc. where specific contracts, or their time-schedules, cannot be identified in advance, a suitable template of the Procurement Plan shall be agreed with the Bank for the monitoring and implementation of the selection of consultants. If the project includes the procurement of goods, works, and non consulting services, the Procurement Plan should also include the methods for their procurement in accordance with the *Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers*.

<sup>27</sup> See Appendix 1.

## II. QUALITY- AND COST-BASED SELECTION (QCBS)

### The Selection Process

2.1 QCBS uses a competitive process among short-listed firms that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.

2.2 The selection process shall include the following steps:

- (a) preparation of the TOR;
- (b) preparation of cost estimate and the budget, and short-listing criteria;
- (c) advertising;
- (d) preparation of the short list of consultants;
- (e) preparation and issuance of the RFP (which should include: the Letter of Invitation (LOI), Instructions to Consultants (ITC), the TOR, and the proposed draft contract);
- (f) receipt of proposals;
- (g) evaluation of technical proposals: consideration of quality;
- (h) public opening of financial proposals;
- (i) evaluation of financial proposal;
- (j) final evaluation of quality and cost; and
- (k) negotiations and award of the contract to the selected firm.

### Terms of Reference (TOR)

2.3 The Borrower shall be responsible for preparing the TOR for the assignment. The TOR shall be prepared by a person(s) or a firm specialized in the area of the assignment. The scope of the services described in the TOR shall be compatible with the available budget. The TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of the number of staff to be trained, and so forth, to enable consultants to estimate the required resources. The TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys, etc.). However, the TOR should not be too detailed and inflexible, so that competing consultants may propose their own methodology and staffing. Firms shall be encouraged to comment

on the TOR in their proposals. The Borrower's and consultants' respective responsibilities should be clearly defined in the TOR.

### **Cost Estimate (Budget)**

2.4 Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Borrower's assessment of the resources needed to carry out the assignment: experts' time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used), and (b) reimbursable items, and further divided into foreign and local costs. The cost of experts' time inputs shall be estimated based on a realistic assessment of required international and national expertise. The RFP shall indicate the estimated level of experts' time inputs or the estimated total cost of the contract, but not detailed estimates such as fees.

### **Advertising**

2.5 For all projects, the Borrower is required to prepare and submit to the Bank a General Procurement Notice. The Bank will arrange for its publication in *UN Development Business online (UNDB online)* and on the Bank's external website.<sup>28</sup> To obtain expressions of interest (EOIs), the Borrower shall include a list of expected consulting assignments in the General Procurement Notice, and shall advertise a request for expressions of interest (REOI) for each contract for consulting firms in the national gazette, provided that it is of wide circulation, or in at least one newspaper, or technical or financial magazine, of national circulation in the Borrower's country, or in a widely used electronic portal with free national and international access in English, French, or Spanish.<sup>29</sup> In addition, assignments expected to cost more than US\$300,000 shall be advertised in *UNDB online*.<sup>30</sup> Borrowers may also in such cases advertise REOIs in an international newspaper or a technical or financial magazine. The information requested shall be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage consultants from expressing interest. REOIs shall at a minimum include the following information applicable to the assignment: required qualifications and experience of the firm, but not individual experts' bio data; short-listing criteria; and conflict of interest provisions. No less than 14 (fourteen) days from date of posting on *UNDB online* shall be provided for responses, before preparation of the short list. The late

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<sup>28</sup> *UNDB online* is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 10163-5850, USA (website: [www.devbusiness.com](http://www.devbusiness.com); e-mail: [dbsubscribe@un.org](mailto:dbsubscribe@un.org)). World Bank External Website: [www.worldbank.org](http://www.worldbank.org).

<sup>29</sup> In addition, at the option of the Borrower, in the National Language as defined under paragraph 1.22.

<sup>30</sup> Exceptionally, when the Bank has agreed to a short list comprising only national consultants, the Bank may agree that the Borrower does not publish in the *UNDB online* contracts above US\$300,000. US Dollar thresholds indicated throughout these Guidelines include all taxes and duties, if applicable.

submission of a response to an REOI shall not be a cause for its rejection unless the Borrower has already prepared a short list, based on received EOIs, that meets the conditions set below in paragraph 2.6. The Bank will arrange the simultaneous publication of all REOIs prepared and submitted by the Borrowers on the Bank's external website.

### **Short List of Consultants**

2.6 The Borrower is responsible for preparing short lists. The Borrower shall give first consideration to those firms expressing interest that possess the relevant qualifications. Short lists shall comprise six firms with a wide geographic spread, with (i) no more than two firms from any one country unless there are no other qualified firms identified to meet this requirement;<sup>31</sup> and (ii) and at least one firm from a developing country, unless no qualified firms from developing countries could be identified. When any of the above requirements cannot be met on the basis of received EOIs, the Borrower may directly solicit interest from qualified firms based on its own knowledge, or request Bank assistance in accordance with paragraph 1.17. Exceptionally, the Bank may agree to short lists comprising a smaller number of firms when there are not enough qualified firms having expressed interest for the specific assignment, when enough qualified firms could not be identified, or when the size of the contract or the nature of the assignment does not justify wider competition. Once the Bank has issued a no objection to a short list, the Borrower shall not modify it without the Bank's no objection. Firms that expressed interest, as well as any other firm or entity that specifically requests so, shall be provided the final short list of firms by the Borrower.

2.7 The short list may comprise entirely national consultants (firms registered or incorporated in the country), if the assignment is below the ceiling (or ceilings) established in the Procurement Plan approved by the Bank,<sup>32</sup> a sufficient number of qualified national firms is available for having a short list of firms with competitive costs, and when competition including foreign consultants is prima facie not justified or foreign consultants have not expressed interest. These same ceilings will be used in Bank lending operations supporting Sector Wide Approaches (SWAs)<sup>33</sup> (in which government and/or donor funds are pooled) as the threshold below which short lists will be composed entirely of national

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<sup>31</sup> For the purpose of establishing a short list, the nationality of a firm is that of the country in which it is registered or incorporated, and, in the case of Joint Ventures, the nationality of its lead partner.

<sup>32</sup> Dollar ceilings shall be determined in each case, taking into account the nature of the project, the capacity of national consultants, and the complexity of the assignments. The ceiling (or ceilings) shall normally not exceed the amount defined in the Country Procurement Assessment Report (CPAR) for the Country of the Borrower or other similar assessments conducted by the Bank. The dollar ceilings for each borrowing country will be posted on the Bank's external website.

The Bank may agree, if requested by the Borrower, that the RFPs for such assignments include a clause rendering ineligible for Bank financing a firm 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 has engaged in fraud or corruption and the judicial proceeding afforded the firm adequate due process.

<sup>33</sup> SWAs represent an approach by development agencies to support country-led programs whose scale is greater than a single project. It typically encompasses an entire sector or large portions of one.

firms selected under procedures agreed with the Bank. However, if foreign firms express interest, they shall be considered.

2.8 The short list should normally comprise consultants of the same category with similar business objectives, corporate capacity, experience and field of expertise, and that have undertaken assignments of a similar nature and complexity. Government-owned enterprises or institutions and not-for-profit organizations (NGOs, Universities, UN Agencies, etc.) should not normally be included in the same short list along with private sector firms, unless they operate as commercial entities meeting the requirements of paragraph 1.13(b) of these Guidelines. If mixing is used, the selection should normally be made using Quality-Based Selection (QBS) or Selection Based on the Consultants' Qualifications (CQS) (for small assignments).<sup>34</sup> The short list shall not include Individual Consultants. Finally, if the same firm is considered for inclusion in short lists for concurrent assignments, the Borrower shall assess the firm's overall capacity to perform multiple contracts before including it in more than one short list.

#### **Preparation and Issuance of the Request for Proposals (RFP)**

2.9 The RFP shall include: (a) a Letter of Invitation, (b) Instructions to Consultants and Data Sheet, (c) the TOR, and (d) the proposed type of contract. Borrowers shall use the applicable standard RFPs issued by the Bank with minimal changes, acceptable to the Bank, as necessary to address project-specific conditions. Any such changes shall be introduced only through the RFP data sheet. Borrowers shall list all the documents included in the RFP. The Borrower may use an electronic system to distribute the RFP, provided that the Bank is satisfied with the adequacy of such system. If the RFP is distributed electronically, the electronic system shall be secure to avoid modifications to the RFP and shall not restrict the access of short-listed consultants to the RFP.

#### **Letter of Invitation (LOI)**

2.10 The LOI shall state the intention of the Borrower to enter into a contract for the provision of consulting services, the source of funds, the details of the client, and the date, time, and address for submission of proposals.

#### **Instructions to Consultants and Data Sheet (ITC)**

2.11 The ITC shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors, their respective weights, and the minimum passing quality score. The ITC shall indicate either an estimate of the key experts' inputs (in person-

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<sup>34</sup> Dollar thresholds defining "small" shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$300,000 other than in exceptional cases such as emergency situations declared by the Borrower and recognized by the Bank.

months) required of the consultants or the estimated budget, but not both. Consultants, however, shall be free to prepare their own estimates of experts' time to carry out the assignment and to offer the corresponding cost in their proposals. When, under time-based contracts, the services are of a routine nature or do not require an innovative approach, the Borrower may, subject to the Bank's no objection, require the consultants to include in their proposal the same level of experts' time inputs as indicated in the RFP, failing which their financial proposal shall be adjusted for the purpose of comparison of proposals and decision for award. The ITC shall specify the proposal validity period, which should be adequate for the evaluation of proposals, decision on award, Bank review, and finalization of contract negotiations. A detailed list of the information that should be included in the ITC is provided in Appendix 2.

### **Contract**

2.12 Section IV of these Guidelines briefly outlines the most common types of contracts. Borrowers shall use the appropriate Standard Form of Contract issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address specific country and project issues. Any such changes shall be introduced only through Contract Data Sheets or through Special Conditions of Contract and not by introducing changes in the wording of the General Conditions of Contract included in the Bank's Standard Form. These forms of contract cover the majority of consulting services. When these forms are not appropriate (for example, for pre-shipment inspection, procurement services, training of students in universities, advertising activities in privatization, or twinning), Borrowers shall use other contract forms acceptable to the Bank.

### **Receipt and Opening of Proposals**

2.13 The Borrower shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks or more than three months (for example, for assignments requiring establishment of a sophisticated methodology, preparation of a multidisciplinary master plan). During this interval, the firms may request clarifications about the information provided in the RFP. The Borrower shall provide these clarifications in writing and copy them to all firms on the short list (who intend to submit proposals). If necessary, the Borrower shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposal shall be accepted after the deadline, although amended proposals may be submitted before such deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. A committee of officials drawn by the Borrower from the relevant departments (technical, finance, legal, as appropriate), shall open all technical proposals received by the deadline for the submission of proposals at the designated place stipulated in the RFP irrespective of the number of proposals received by such deadline. At the opening of technical proposals, in the presence of consultants wishing to attend, the Borrower shall neither reject nor discuss the merits of any proposal.

All proposals received after the deadline shall be declared late and rejected and promptly returned unopened. The committee shall read aloud the names of the consultants that submitted proposals, the presence or absence of duly sealed financial envelopes, and any other information deemed appropriate. The financial proposals shall remain sealed and shall be deposited with a reputable public auditor or independent authority<sup>35</sup> until they are opened in accordance with paragraph 2.23. Borrowers may use electronic systems permitting consultants to submit proposals 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 proposals submitted; and uses an electronic signature system or equivalent to keep consultants bound to their proposals.

#### **Clarification or Alteration of Proposals**

2.14 Except as otherwise provided in paragraphs 2.27 to 2.29 of Section II and paragraph 1(p) of Appendix 2 of these Guidelines, consultants shall neither be requested nor permitted to alter their proposals in any way after the deadline for the submission of proposals. While evaluating proposals, the Borrower shall conduct the evaluation solely on the basis of the submitted technical and financial proposals, and shall not ask consultants for clarifications, except for perfunctory queries with the prior no objection of the Bank.

#### **Evaluation of Proposals: Consideration of Quality and Cost**

2.15 The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any Bank reviews and no objection, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

#### **Evaluation of the Quality**

2.16 Given the need for high quality services, the quality of the evaluation of technical proposals is paramount. The Borrower shall evaluate each technical proposal using an evaluation committee of at least 3 (three), and normally no more than 7 (seven), members including qualified specialists in the sector of the assignment under consideration. Each member of the committee shall not be in a conflict of interest situation as per paragraph 1.9(c), and certify to that effect before participating in the evaluation. When the Bank determines that the technical evaluation is inconsistent with the RFP or does not properly evaluate the strengths or weaknesses of the proposals, and the committee fails to address the situation in a timely manner, the Bank may require the Borrower to form a new evaluation committee, including international experts in the sector of the assignment, if necessary.

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<sup>35</sup> An independent entity shall have no direct or indirect interest or involvement with the assignment in question.

2.17 The technical evaluation shall take into account the criteria indicated in paragraph 2.18 and the sub-criteria indicated in paragraphs 2.19 and 2.20 as reflected in the RFP. The RFP shall describe each such criterion and sub-criterion along with their relative maximum scores and disclose the overall minimum technical score below which a proposal will be rejected as nonresponsive. The indicative range for the overall minimum technical score is 70 to 85 (seventy to eighty-five) on a scale of 1 to 100 (one to one hundred). The maximum score for each criterion and the minimum overall technical score shall be determined based on the nature and complexity of the specific assignment.

2.18 The criteria shall include: (a) the consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, (c) the qualifications of the key experts proposed, (d) the transfer of knowledge, if required in the TOR, and (e) the extent of the participation of nationals among key experts in the performance of the assignment. They shall be within the indicative range of scores specified below, except with the no objection of the Bank. The maximum score for the "Participation by national experts" as indicated below shall not exceed 10 (ten).

Consultant's specific experience:	0 to 10
Methodology:	20 to 50
Key experts:	30 to 60
Transfer of knowledge: <sup>36</sup>	0 to 10
Participation by national experts: <sup>37</sup>	0 to 10
Total:	100

2.19 The Borrower shall normally divide these criteria into sub-criteria. Each criterion shall then be scored on the basis of the weights assigned to respective sub-criteria. For example, sub-criteria under methodology might be *innovation* and *level of detail*. However, the number of sub-criteria should be kept to the essential. The Bank recommends against the use of exceedingly detailed lists of sub-criteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. The weight given to experience can be relatively modest, since this criterion has already been taken into account when short-listing the consultant. More weight shall be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

2.20 Only the key experts should be evaluated. Since they ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment

<sup>36</sup> Transfer of knowledge may be the main objective of some assignments; in such cases, it shall be indicated in the TOR and, only with Bank prior no objection, may be given a higher weight to reflect its importance.

<sup>37</sup> As reflected by the participation of nationals among key experts (whether presented by foreign or national firms), and calculated as the ratio of key national experts' time (in person-months) to the total number of key experts' time (in person-months) in the proposal.

is complex. The Borrower shall review the qualifications and experience of proposed key experts in their *curricula vitae*, which must be accurate, complete, and signed by an authorized official of the consulting firm and the individual proposed. The individuals shall be rated in the following three sub-criteria, as relevant to the task:

- (a) general qualifications: general education and training, length of experience, positions held, previous assignments as team expert, experience in developing countries, and so forth;
- (b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and
- (c) experience in the region: knowledge of the local language, culture, administrative system, government organization, and so forth.

2.21 Borrowers shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it fails to comply with important aspects described in the RFP. Technical proposals containing any material financial information shall be declared nonresponsive.

2.22 The members of the evaluation committee shall evaluate proposals in accordance with the evaluation criteria specified in the RFP, independently of each other, and without any external influence from any person or entity. A proposal shall be rejected if it fails to achieve the overall minimum technical score specified in the RFP. At the end of the evaluation process, the Borrower shall prepare a Technical Evaluation Report using the Bank's standard form of evaluation report or another report acceptable to the Bank. The report shall substantiate the results of the evaluation and justify the total technical scores assigned to each proposal by describing the relative strengths and weaknesses of the proposals. Large differences in the individual scores given to a proposal for the same criterion or sub-criterion by different members shall be addressed and a justification be provided in the technical evaluation report. In the case of contracts subject to prior review, the technical evaluation report including the detailed evaluation sheets of each committee member shall be submitted to the Bank for its review and no objection. All records relating to the evaluation, such as individual score sheets, shall be retained in accordance with paragraphs 2(k) and 5 of Appendix 1.

#### **Opening of Financial Proposals and Evaluation of Cost**

2.23 After the Technical Evaluation Report is completed (and for prior review contracts, after the Bank has issued its no objection), the Borrower shall inform consultants whose proposals did not meet the minimum qualifying technical score or were considered nonresponsive to the RFP and TOR that their financial proposals will be returned unopened after the signature of the contract. In addition, the Borrower shall inform each of the above consultants of their overall technical score as well as scores obtained for each criterion and sub-criterion if any. The Borrower shall simultaneously notify the consultants that have secured the minimum overall technical score of the date, time, and place set for

opening the financial proposals. The opening date shall be set allowing sufficient time for consultants to make arrangements to attend the opening of the financial proposals. The financial proposals shall be opened in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical scores, including the break-down by criterion, and the offered total prices shall be read aloud (and posted online when electronic submission of proposals is used) and recorded when the financial proposals are opened. The Borrower shall also prepare the minutes of the opening and a copy of this record shall be promptly sent to the Bank and to all consultants who submitted proposals.

2.24 The Borrower shall then evaluate and compare the financial proposals in accordance with the following procedures. Prices shall be converted to a single currency selected by the Borrower (local currency or fully convertible foreign currency) as stated in the RFP. The Borrower shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions. The RFP shall specify the source of the exchange rate to be used and the date of that exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal. For a time-based contract,<sup>38</sup> any arithmetical errors shall be corrected, and prices shall be adjusted if they fail to reflect all inputs that are included in the respective technical proposals. For a lump-sum contract, the consultant is deemed to have included all prices in its financial proposal, so neither arithmetical corrections nor price adjustments shall be made, and the total price, net of taxes understood as per paragraph 2.25 below, included in the financial proposal shall be considered as the offered price.

2.25 For the purpose of evaluation, the offered prices shall exclude local identifiable indirect taxes<sup>39</sup> on the contract and income tax payable to the country of the Borrower on the remuneration of services rendered in the country of the Borrower by non-resident experts and other personnel of the consultant. In exceptional circumstances, when indirect taxes cannot be fully identified by the Borrower when evaluating the financial offers, the Bank may agree that prices, for the purpose of evaluation only, include all taxes payable to the country of the Borrower. The offered total price shall include all consultants' remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. The proposal with the lowest offered total price may be given a financial score of 100 (one hundred) and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology

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<sup>38</sup> Refer to Section IV on forms of contracts.

<sup>39</sup> All indirect taxes levied on the contract invoices, at National, State (or Provincial), and Municipal levels, such as sales tax, VAT, excise tax, and similar taxes and levies.

may be used in allocating the scores to the financial proposals. The methodology to be used shall be described in the RFP.

### **Combined Quality and Cost Evaluation**

2.26 The total score shall be obtained by weighting the quality and cost scores and adding them. The weight for the “cost” shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. Except for the type of services specified in Section III, the weight for cost shall normally be 20 (twenty) points out of a total score of 100 (one hundred). The proposed weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

### **Negotiations and the Award of Contract**

2.27 Negotiations shall include discussions of the TOR, the methodology, Borrower’s inputs, and special conditions of the contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the estimated cost or available budget. The final TOR and the agreed methodology shall be incorporated in the “Description of Services” which shall form part of the contract.

2.28 The selected firm should not be allowed to substitute key experts, unless both parties agree that undue delays in the selection process make such substitution unavoidable or that such changes are critical to meet the objectives of the assignment.<sup>40</sup> If this is not the case and if it is established that key experts were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key experts proposed for substitution shall have qualifications equal to or better than the key experts initially proposed.<sup>41</sup>

2.29 Financial negotiations shall include clarification of the consultants’ tax liability in the Borrower’s country (if any) and how this tax liability has been or would be reflected in the contract. Payments under lump-sum contracts are based on the delivery of outputs (or products), hence the offered price shall include all costs (experts’ time, overhead, travel, hotel, etc.). Consequently, if the selection method for a lump-sum contract included cost as a factor in evaluation, the offered price shall not be negotiated. In the case of time-based contracts, payment is based on inputs (experts’ time and reimbursables) and the offered price shall include experts’ rates and an estimation of the amount of reimbursables. When the selection method includes cost as a factor in evaluation, negotiations of experts’ rates shall not take place, except in special circumstances, like for example, experts’ rates offered are much higher than typically charged rates by consultants for similar contracts.

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<sup>40</sup> Defining realistic proposal validity periods in the RFP and carrying out an efficient evaluation minimizes this risk.

<sup>41</sup> Refer to Appendix 2 paragraph 1(p) for more details.

Consequently, the prohibition of negotiation does not preclude the right of the client to ask for clarifications, and, if the fees are very high, to ask for their change, after due consultation with the Bank. Reimbursables are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore are not subject to negotiations. However, if the client wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates), they should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.

2.30 If the negotiations with the highest ranked consultant fail, the Borrower shall inform the concerned consultant in writing of all pending issues and disagreements, and provide them a final opportunity to respond in writing. Contract negotiations shall not be terminated only for budget considerations. If there is still disagreement, the Borrower shall inform the consultant in writing of its intention to terminate negotiations. Negotiations may then be terminated after obtaining the Bank's no objection, and the next ranked consultant invited for negotiations. The Borrower shall furnish to the Bank for review the minutes of negotiations and all relevant communications, as well as the reasons for such termination. Once negotiations have commenced with the next ranked firm, the Borrower shall not reopen the earlier negotiations. After negotiations are successfully completed and the Bank has issued its no objection to the initialed negotiated contract, the Borrower shall promptly notify other firms on the short list that they were unsuccessful.

#### **Publication of the Award of Contract**

2.31 The procedure for publication of the award of contract is specified in paragraph 7 of Appendix 1.

#### **Debriefing by the Borrower**

2.32 In the publication of contract award referred to in paragraph 2.31, the Borrower shall specify that any consultant who wishes to ascertain the grounds on which its proposal was not selected should request an explanation from the Borrower. The Borrower shall promptly provide in writing an explanation of why such proposal was not selected. If a consultant requests a debriefing meeting, the consultant shall bear all their costs of attending such a debriefing meeting.

#### **Rejection of All Proposals, and Re-invitation**

2.33 The Borrower will be justified in rejecting all proposals only if: (i) all proposals are nonresponsive because they fail to respond to important aspects of the TOR or present major deficiencies in complying with the TOR in accordance with paragraph 2.21; or (ii) all proposals fail to achieve the minimum technical score specified in the RFP; or (iii) if the offered price of the successful proposal is substantially higher than the available budget or a recently updated cost estimate. In the latter case, as an alternative to re-invitation, the feasibility of increasing the budget or scaling down the scope of services with the firm should be investigated in consultation with the Bank. However, in accordance with

paragraph 2.27, any substantial reduction in the scope of services will not be acceptable and will require a re-invitation. If cost is a factor in the evaluation for a time-based contract, the number of person-months proposed by the consultant may be negotiated, provided that it does not compromise quality or adversely affect the assignment. Even in such cases, the experts' rates shall not normally be negotiated, as per paragraph 2.29.

2.34 Before all the proposals are rejected and new proposals are invited, the Borrower shall notify the Bank, indicating the reasons for rejection of all proposals, and shall obtain the Bank's no objection before proceeding with the rejection and the new process. The new process may include revising the RFP, including the TOR, the short list, and the budget. These revisions shall be agreed upon with the Bank.

### **Confidentiality**

2.35 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the publication of the award of contract, except as provided in paragraphs 2.23 and 2.30.

### III. OTHER METHODS OF SELECTION

#### General

3.1 This Section describes the selection methods other than QCBS, and the circumstances under which they are acceptable. All provisions of Section II (QCBS) shall apply for other methods of selection under Section III unless a different provision has been specifically identified in Section III, in which case, the latter shall apply.<sup>42</sup> Borrowers shall use the applicable standard RFP issued by the Bank with minimal changes, acceptable to the Bank, as necessary to address project-specific conditions, except as otherwise provided in paragraphs 3.8, 3.12, 3.13, 3.14, and 3.15 of this Section.

#### Quality-Based Selection (QBS)

3.2 QBS is appropriate for the following types of assignments:

- (a) complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sector feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);
- (b) assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
- (c) assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).

3.3 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP shall provide either the estimated budget or the estimated time of key experts, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

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<sup>42</sup> For example, a Borrower: (i) using a one-envelope rather than a two-envelope procedure under the QBS method; (ii) not indicating in the RFP the estimated number of person-months under an FBS method; (iii) not using an EOJ under an SSS method or not advertising EOIs on UNDB under the CQS method; (iv) not using the Bank's standard RFP and form of contract for very small value contracts (refer to footnote 46) under methods such as CQS; (v) conducting price negotiations as allowed under a QBS, CQS, or SSS method, or Commercial Practices; (vi) selecting a consultant under the Use of Country Systems piloting program in accordance with paragraph 3.12; (vii) using a higher than 20% (twenty percent) price factor when hiring a Procurement Agent, an Inspection Agent, an Investment Bank, or an Auditor; (viii) not following QCBS procedures under Commercial Practices; etc.

3.4 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the Borrower shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The Borrower and the consultant shall then negotiate the financial proposal<sup>43</sup> and the contract. All other aspects of the selection process shall be identical to those of QCBS, including the publication of the award of contract as described in paragraph 2.31 and paragraph 7 of Appendix 1, except that only the contract price of the winning firm is published. If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS to ensure that the financial proposal of only the selected firm is opened and the rest returned unopened, after the negotiations are successfully concluded.

#### **Selection under a Fixed Budget (FBS)**

3.5 This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. The TOR should be particularly well-prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. The RFP shall clearly indicate whether the budget includes taxes or levies payable in the Borrower country, and the price of any inputs provided by the client. The evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the financial proposals shall be opened as stipulated in paragraph 2.23. Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract. The award of contract shall be published as described in paragraph 7 of Appendix 1.

#### **Least-Cost Selection (LCS)**

3.6 This method is generally appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist. Under this method, a "minimum" qualifying mark for the "quality" is established. Proposals, to be submitted in two envelopes, are invited from a short list. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark<sup>44</sup> are rejected, and the financial proposals of the rest shall be opened as stipulated in paragraph 2.23. The firm with the lowest price shall then be selected. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on

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<sup>43</sup> Financial negotiations under QBS include negotiations of all consultant's remuneration and other expenses.

<sup>44</sup> This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of very standard and routine technical nature where the intellectual component is minor. For this method, the minimum qualifying mark shall be 70 (seventy) points or higher.

“cost”. The minimum qualifying mark shall be stated in the RFP. The award of contract shall be published as per paragraph 7 of Appendix 1.

### **Selection Based on the Consultants’ Qualifications (CQS)**

3.7 This method may be used for small<sup>45</sup> assignments or emergency situations declared by the Borrower and recognized by the Bank for which the need for issuing an RFP, and preparing and evaluating competitive proposals is not justified. In such cases, the Borrower shall prepare the TOR and obtain expressions of interest that include information on their experience and qualifications, eventually through an REOI as may be needed, from as many firms as possible, and at least three qualified firms with relevant experience. Firms having the required experience and competence relevant to the assignment shall be assessed and compared, and the best qualified and experienced firm shall be selected. Only the selected firm shall be asked to submit a combined technical and financial proposal and, if such proposal is responsive and acceptable, be invited to negotiate a contract. Both technical and financial aspects of the proposal may be negotiated. If the negotiations fail with the selected firm, the provisions of paragraph 2.30 apply. The minutes of negotiations shall be prepared and signed by both parties. Awards of contract shall be published as per paragraph 7 of Appendix 1.

### **Single-Source Selection (SSS)**

3.8 Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases. The justification for single-source selection shall be examined in the context of the overall interests of the client and the project, and the Bank’s responsibility to ensure economy and efficiency and provide equal opportunity to all qualified consultants.

3.9 Single-source selection may be appropriate in the following cases, and only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm (see next paragraph); (b) in exceptional cases, such as, but not limited to, in response to natural disasters and for emergency situations both declared by the Borrower and recognized by the Bank; (c) for very small<sup>46</sup> assignments; or (d) when only one firm is qualified or has experience of exceptional worth for the assignment. In all such cases, the Borrower is not required to issue an RFP and shall submit to the Bank for its review and no objection the TOR of the assignment, a sufficiently detailed justification including the rationale for single-source selection instead of a competitive selection process, and the basis for recommending a

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<sup>45</sup> Dollar thresholds defining “small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$300,000, other than in exceptional cases.

<sup>46</sup> Dollar thresholds defining “very small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$100,000, other than in exceptional cases.

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particular firm, 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.

3.10 When continuity for downstream work is essential, the initial RFP shall outline this prospect, and, if practical, the factors used for the selection of the consultant shall take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the Borrower shall ask the initially selected consultant to prepare technical and financial proposals on the basis of the TOR furnished by the Borrower, which shall then be negotiated.

3.11 If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or if the downstream assignment is substantially larger in value, a competitive process acceptable to the Bank shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. The Bank will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable. The award of contract shall be published as per paragraph 7 of Appendix 1.

#### **Use of Country Systems**

3.12 The Use of Country Systems (UCS) refers to the methods for selecting consultants (including individuals) contemplated in the public procurement system in place in the country of the Borrower that have been determined to be acceptable to the Bank under the Bank's Use of Country Systems Piloting Program.<sup>47</sup> They may be used by Borrowers in pilot projects that have been approved by the Bank under such Piloting Program.

#### **Selection of Consultants 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) 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 sub-projects, the selection of consultants 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.<sup>48</sup> When loan funds are on-lent to public sector beneficiaries or for large and complex

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<sup>47</sup> 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.

<sup>48</sup> For other details, refer to paragraph 3.13 (Procurement in Loans to Financial Intermediary Institutions and Entities) of the *Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers*.

assignments, consideration shall be given to the use of competitive methods set forth in these Guidelines.

### **Selection of Consultants under Loans and Payment Obligations Guaranteed by the Bank**

3.14 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 consulting services financed by the said loan or said payment obligation shall be procured with due attention to principles and procedures that meet the requirements of paragraph 1.8. The Bank may conduct a review of the procurement transactions financed on this basis.

### **Selection of Particular Types of Consultants**

3.15 *Selection of UN Agencies.* Agencies of the UN<sup>49</sup> may be single-sourced by Borrowers when they are uniquely or exceptionally qualified to provide technical assistance and advice in their area of expertise. The Bank may agree that UN agencies follow their own procedures for: (a) the selection of their sub-consultants and individual experts, and the supply of the minimum necessary goods to perform the contract; (b) small assignments as defined in footnote 45 of paragraph 3.7 of these Guidelines; and (c) under certain circumstances in response to natural disasters and for emergency situations declared by the Borrower and recognized by the Bank. The Borrower shall use the Bank's standard form of Agreement between a Borrower and a UN agency for the provision of technical assistance agreed by the Bank. The Borrower shall submit to the Bank for its no objection a complete justification and the draft form of Agreement with the UN agency before signing it. UN agencies shall not receive any preferential treatment when participating in a competitive selection process, except that Borrowers may accept the privileges and immunities granted to UN agencies and their staff under existing international conventions and may agree with UN agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the Bank. To neutralize the privileges of UN Agencies, as well as other advantages such as tax exemption, facilities, and special payment provisions, the QBS method, or the CQs method for small assignments (see footnote 45), shall be used.

3.16 *Use of Nongovernmental Organizations (NGOs).* NGOs are not for profit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the short list if they express interest and provided that the Borrower and the Bank are satisfied with their qualifications. For assignments that emphasize participation and

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<sup>49</sup> 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 complete justification and the draft form of agreement with the UN agency.

considerable local knowledge, the short list may entirely comprise NGOs. If so, an appropriate selection method (QCBS, FBS, LCS, or CQS), based on the nature, complexity, and size of the assignment, shall be followed, and the evaluation criteria shall reflect the unique qualifications of NGOs, such as local knowledge, scale of operation, and prior relevant experience. Borrowers may select the NGO on a single-source basis, provided the criteria outlined in paragraph 3.9 of these Guidelines are fulfilled.

*3.17 Procurement Agents and Construction Managers.* When a Borrower lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ, as its agent, a firm that specializes in handling procurement. When Procurement Agents are specifically used as “agents” handling the procurement of specific items and generally working from their own offices, they are usually paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee. In such cases, Procurement Agents shall be selected using QCBS procedures with cost being given a weight up to 50% (fifty percent). However, when Procurement Agents provide only advisory services for procurement or act as “agents” for a whole project in a specific office for such project, they are usually paid on a time basis, and in such cases, they shall be selected following the appropriate procedures for other consulting assignments using QCBS procedures and time-based contract specified in these Guidelines. The Agent shall follow all the procurement procedures outlined in the Loan Agreement and in the Procurement Plan approved by the Bank on behalf of the Borrower, including use of Bank *Standard Request for Proposals*, review procedures, and documentation. The above provisions apply as well to Construction Managers.

*3.18 Inspection Services.* Borrowers may wish to employ inspection service providers to inspect and certify goods prior to shipment or on arrival in the Borrower country. The inspection usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection service providers shall be selected using QCBS procedures giving cost a weight up to 50% (fifty percent) and using a contract format with payments based on a percentage of the value of goods inspected and certified.

*3.19 Banks.* Investment and commercial banks, financial firms, and fund managers hired by Borrowers for the sale of assets, issuance of financial instruments, and other corporate financial transactions, notably in the context of privatization operations, shall be selected under QCBS. The RFP shall specify selection criteria relevant to the activity—for example, experience in similar assignments or network of potential purchasers—and the cost of the services. In addition to the conventional remuneration (called a “retainer fee”), the compensation includes a “success fee”; this fee can be fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP shall indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee shall be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores shall be based on the success fee. For the combined evaluation (notably for large contracts), cost may be accorded a weight higher than recommended in paragraph 2.26.

The RFP shall specify clearly how proposals will be presented and how they will be compared.

3.20 *Auditors*. Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They shall be selected according to QCBS, with cost as a substantial selection factor (40–50 points) or by the “Least-Cost Selection” outlined in paragraph 3.6. For small<sup>50</sup> assignments, the CQS method may be used.

3.21 *Service Delivery Contractors*. Projects may involve hiring large numbers of individuals who deliver services on a contract basis. Their selection, as individual consultants or through a firm, shall be carried out in accordance with Section V of these Guidelines. The job descriptions, minimum qualifications, terms of employment, the selection methods when through a contract with a firm, and the extent of Bank review of this documentation and methods shall be described in the project documentation. The contract shall be included in the Procurement Plan to be reviewed by the Bank.

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<sup>50</sup> See footnote 45.

## IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS

### Types of Contracts

4.1 *Lump-Sum Contract.*<sup>51</sup> This type of contract is used mainly for assignments in which the scope and the duration of the services and the required output of the consultants are clearly defined. It is widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables) such as reports, drawings, bills of quantities, bidding documents, and software programs. The contract shall include a fixed price for the activities to be carried out by the consultant and shall not be subject to any price adjustment, except as provided in paragraph 4.7 of these Guidelines. Lump-sum contracts are easy to administer because they operate on the principle of fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones.

4.2 *Time-Based Contract.*<sup>52</sup> This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. It is widely used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for experts (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for experts include remuneration, social costs, overhead, profit, and, where appropriate, special allowances. The contract shall include a ceiling amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen services and duration, and a provision for price adjustment for inflation as provided in paragraph 4.7 of these Guidelines. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate.

4.3 *Retainer and/or Contingency (Success) Fee Contract.* Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

4.4 *Percentage Contract.* These contracts are commonly used for procurement and inspection service providers. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods

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<sup>51</sup> Standard form of *Contract for Consultants' Services (Lump-Sum Remuneration)*.

<sup>52</sup> Standard form of *Contract for Consultants' Services (Complex Time-Based Assignments)*. These documents are available on the Bank's website at [www.worldbank.org/procure](http://www.worldbank.org/procure).

procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated person-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (but not, for example, works supervision).

*4.5 Indefinite Delivery Contract (IDCs) or Price Agreement.* IDCs are used when Borrowers need to have quick and continuing access to “on call” specialized advisory services for a particular activity, the extent and timing of which cannot be defined in advance. IDCs are commonly used to retain “advisers”, expert adjudicators, members of panels, or experts to participate in the design or implementation of sub-projects or complex tasks during the execution of Bank-financed projects (for example, dam panel, dispute resolution boards, institutional reforms, procurement advice, technical troubleshooting, evaluation of safeguard issues, and so forth), normally for a period of at least a year. The services are offered by qualified firms through a list of proposed experts they commit to make available in letters of intent in response to an REOI setting selection criteria focusing on the relevant qualifications and expertise of the required experts. Borrowers shall then establish a long list of qualified experts. The Borrower and the firms agree on pre-established fee rates to be paid for the experts and on standard conditions of contract, and payments are made on the basis of the time actually spent. Experts shall be selected from the long list on the basis of a “call off” request with specific TOR for the assignment, based on the qualitative evaluation/comparison of the CVs of the proposed experts or the fees level, and a specific contract is signed for each assignment.

#### **Important Provisions**

*4.6 Currency.* RFPs shall clearly state that firms may express the price for their services in any fully convertible currency. If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided the proposal includes no more than three foreign currencies. The Borrower may require consultants to state the portion of the price representing local costs incurred in the currency of the Borrower’s country. Payment under the contract shall be made in the currency or currencies in which the payment is requested in the proposal.

*4.7 Price Adjustment.* To adjust the remuneration rates in a time-based contract for foreign and/or local inflation, a price adjustment provision shall be included in the contract if its duration is expected to exceed 18 (eighteen) months. Time-based contracts of a shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable. Lump-sum contracts shall not generally be subject to automatic price adjustment when their duration is expected to be less than 18 (eighteen) months, except for small-value multi-year contracts (for example, with auditors). The price of a lump-sum contract may be exceptionally amended when the scope

of the services is extended beyond what was contemplated in the original TOR and contract.

4.8 *Payment Provisions.* Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during contract negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump-sum contracts). Payments for all advances (for example, for mobilization costs) shall be secured by an advance payment security or guarantee, except in the case of small value contracts as defined in footnote 34. If the amount of the advance is 10% (ten percent) of the contract amount or less, the Borrower may decide not to require such a security or guarantee, in which case this should be specified in the draft contract included in the RFP.

4.9 Payments shall be made promptly in accordance with the contract provisions. To that end:

- (a) consultants can be paid directly by the Bank at the request of the Borrower or exceptionally through a Letter of Credit;
- (b) only disputed amounts shall be withheld, with the remainder of the invoice paid in accordance with the contract; and
- (c) the contract shall provide for the payment of financing charges if payment is delayed due to the client's fault beyond the time allowed in the contract; the rate of charges shall be specified in the contract.

4.10 *Proposal and Performance Securities, and Liquidated Damages.* Proposal and performance securities are not recommended for consultants' services, but shall, if required, be in a reasonable amount. Their enforcement is often subject to judgment calls, they can be easily abused, and they tend to increase the costs to the consulting industry without evident benefits, which are eventually passed on to the Borrower. In addition, because the timely delivery of services of an intellectual and advisory nature is contingent in many ways upon actions by the client, thereby rendering difficult establishing the sole responsibility of the consultant, when there are delays, the application of liquidated damages is not recommended for consulting services.

4.11 *Borrower's Contribution.* The Borrower may assign members of its own professional staff to the assignment in different capacities. The contract between the Borrower and the consultant shall give the details governing such staff, known as counterpart staff, as well as facilities that shall be provided by the Borrower, such as housing, office space, secretarial support, utilities, materials, and vehicles. The contract shall indicate measures the consultant can take if any of the items cannot be provided or have to be withdrawn during the assignment, and the compensation the consultant will receive in such a case.

4.12 *Conflict of Interest.* The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consulting or other activities that conflict with the interest of the client

under the contract. The contract shall include provisions limiting future engagement of the consultant for other services resulting from or directly related to the firm's consulting services in accordance with the requirements of paragraphs 1.9 and 1.10 of these Guidelines.

4.13 *Professional Liability.* The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the Borrower will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that (a) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (b) the consultant's liability to the Borrower may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the special conditions of the contract (the amount of such limitation will depend on each specific case),<sup>53</sup> and (c) any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability toward third parties.

4.14 *Substitution of Experts.* During an assignment, if substitution is necessary (for example, because of ill health or because an expert proves to be unsuitable or becomes otherwise ineligible), the consultant shall propose other experts of at least the same level of qualifications for approval by the Borrower.

4.15 *Applicable Law and Settlement of Disputes.* The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Consultants' contracts shall always include a clause for 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 awarded to foreign consultants unless the Bank has specifically agreed to waive this requirement for justified reasons, such as equivalent national regulations and arbitration procedures. The Bank shall not be named an arbitrator or be asked to name an arbitrator.<sup>54</sup>

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<sup>53</sup> The Borrower is encouraged to secure insurance for potential risks above these limits. The multiplier should be more than 1 (one). Where there may be no need for professional liability requirements, the Borrower shall explain the reasons in seeking the Bank's no objection to the RFP.

<sup>54</sup> 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.

## V. SELECTION OF INDIVIDUAL CONSULTANTS

5.1 Individual consultants<sup>55</sup> are employed on assignments for which (a) a team of experts is not required, (b) no additional outside (home office) professional support is required, and (c) the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm. When qualified individual consultants are unavailable or cannot sign a contract directly with a Borrower due to a prior agreement with a firm, the Borrower may invite firms to provide qualified individual consultants for the assignment.

5.2 Advertisement for seeking expressions of interest (EOI) is encouraged, particularly when the Borrower does not have knowledge of experienced and qualified individuals or of their availability, or the services are complex, or there is potential benefits from wider advertising, or if it is mandatory under national law. It may not, however, be required in all cases and should not take place for small value contracts.<sup>56</sup> All invitations for EOIs should specify selection criteria that are solely based on experience and qualifications. When firms are invited to propose individual consultants, EOIs shall clarify that only the experience and qualifications of individuals shall be used in the selection process, and that their corporate experience shall not be taken into account, and specify whether the contract would be signed with the firm or the proposed individuals.

5.3 Individual consultants are selected on the basis of their relevant experience, qualifications, and capability to carry out the assignment. They do not need to submit proposals and shall be considered if they meet minimum relevant requirements which shall be determined by the Borrower on the basis of the nature and complexity of the assignment, and assessed on the basis of academic background and relevant specific experience, and, as appropriate, knowledge of local conditions such as national language, culture, administrative systems, and government organization. The selection shall be carried out through the comparison of the relevant overall capacity of at least three qualified candidates among those who have, directly or through a firm, expressed interest in the assignment or have been approached directly by the Borrower. Individuals selected to be employed by the Borrower shall be the most experienced and best qualified, and shall be fully capable of carrying out the assignment. The Borrower shall negotiate a contract with the selected individual consultant, or the firm as the case may be, after reaching

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<sup>55</sup> Individual consultants whose services are required in the context of the Bank's UCS piloting program will be selected in accordance with the methodology referred to in paragraph 3.12, and provided that the assignment falls below the ceiling determined by the Bank.

<sup>56</sup> Advertising for EOIs shall not normally take place for individual contracts below US\$50,000. Such threshold shall, however, be determined in each case, taking into account the nature, complexity, and risks of the assignment. The Bank may agree, if requested by the Borrower, that such assignments be subject to ineligibility for Bank financing of individuals of the Borrower country who are 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 individual has engaged in fraud or corruption and the judicial proceeding afforded the individual adequate due process.

agreement on satisfactory terms and conditions of the contract, including reasonable fees and other expenses.

5.4 The selection of individual consultants is normally not subject to prior review. The Borrower shall, however, obtain the Bank's no objection: (a) when it has not been able to compare at least three qualified candidates before hiring, in which case it shall provide the reasons; (b) before it invites firms to offer the services of individual consultants as per paragraph 5.1 of these Guidelines; (c) in case negotiations with the selected individual fail before proceeding to negotiate with the next best individual, or firm as the case may be; and (d) in case of single-source selection as per paragraph 5.6 of these Guidelines. The Bank also requires prior review of the selection of certain categories of individual consultants.<sup>57</sup>

5.5 When a contract is signed with a consulting firm to provide individual consultants, either its permanent staff or associates or other experts it may recruit, the conflict of interest provisions described in these Guidelines shall apply to the parent firm. No substitution of any individual who was initially proposed and evaluated shall be permitted, and in such a case, the contract will be signed with the next ranked consultant.

5.6 Individual consultants may be selected on a single-source basis with due justification in exceptional cases such as: (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; (b) assignments with a total expected duration of less than 6 (six) months; (c) urgent situations; and (d) when the individual is the only consultant qualified for the assignment. The Borrower shall submit to the Bank for its review and no objection the TOR of the assignment, a sufficiently detailed justification, including the rationale for single-source selection instead of a competitive selection process, and the basis for recommending a particular individual consultant 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.

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<sup>57</sup> Those being hired for long-term technical assistance or advisory services for the duration of the project (above the prior review threshold set forth in the Loan Agreement or Procurement Plan), and (without regard to the prior review threshold) those being hired for legal work or project-related procurement activities. The prior review of TOR of individual consultants by the Bank is mandatory except as may be determined by the Bank Regional Procurement Managers for limited, simple, and small value assignments.

## **APPENDIX 1: REVIEW BY THE BANK OF THE SELECTION OF CONSULTANTS AND PUBLICATION OF AWARDS OF CONTRACTS**

### **Scheduling the Selection Process**

1. The Bank shall review<sup>58</sup> Procurement Plans and their updates prepared by the Borrowers in accordance with provisions under paragraph 1.25. They shall be consistent with the Project Implementation Plan, the Loan Agreement, and these Guidelines.

### **Prior Review**

2. With respect to all contracts<sup>59</sup> that are subject to the Bank's prior review:

- (a) Before inviting proposals, the Borrower shall furnish to the Bank for its review and no objection the proposed cost estimate and RFP (including the short list). The Borrower shall make such modifications to the short list and the documents as the Bank reasonably requests. Any further modification shall require the Bank's no objection before the RFP is issued to the short-listed consultants.<sup>60</sup>
- (b) After the technical proposals have been evaluated, the Borrower shall furnish to the Bank, in sufficient time for its review, a technical evaluation report (prepared, if the Bank shall so request, by experts acceptable to the Bank pursuant to paragraph 2.16) and a copy of the proposals, if requested by the Bank. If the Bank determines that the technical evaluation is inconsistent with the provisions of the RFP, it shall promptly inform the Borrower and state the reasons for its determination; otherwise, the Bank shall issue a no objection to the technical evaluation. The Borrower shall also request the Bank's no objection if the evaluation report recommends rejection of all proposals.
- (c) The Borrower may proceed with the opening of the financial proposals only after receiving the Bank's no objection to the technical evaluation. When cost is a factor in the selection of the consultant, the Borrower may then proceed with the financial evaluation in accordance with the provisions of the RFP. The Borrower shall furnish to the Bank the final evaluation report along with its recommendation of the successful consultant. The Borrower shall notify the firm that received the highest total score in the final evaluation of its intention to award the contract to the firm and shall invite the firm for negotiations. If the Bank notes any discrepancies in the financial evaluation pursuant to its own review or due to a complaint, it shall

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<sup>58</sup> 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.

<sup>59</sup> The total value of the contract including all taxes and duties shall be the basis to determine whether a contract should be subject to prior or post review by the Bank.

<sup>60</sup> In the case of contracts to be awarded under paragraph 3.11 where a new competitive process is not practicable, the Borrower shall not initiate negotiations without first furnishing to the Bank for its consideration the required justification and receiving the Bank's no objection, and shall otherwise follow the requirements of this paragraph 2 above in all relevant respects.

promptly notify the Borrower which shall address promptly all issues raised to the satisfaction of the Bank before proceeding for negotiations with the successful consultant or suspend negotiations if already commenced. In such cases, further action shall not be taken until the Bank has given its no objection to the Borrower's recommendation.

- (d) If the Borrower requires an extension of the validity of the proposals to complete the evaluation, obtain necessary internal clearances or Bank no objection, or make the award, it should seek the Bank's prior no objection for the first request of extension if such is for a period longer than four weeks, and for all subsequent requests for extension, irrespective of the duration of the period.
- (e) If the Borrower receives complaints from consultants, it shall promptly send to the complainant an acknowledgment, and to the Bank for review and comments a copy of the complaint, the Borrower's comments on each issue raised in the complaint, and a copy of the proposed response to the complainant.
- (f) If as a result of the analysis of a complaint, or any other reason, 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 this Appendix. If the negotiations fail with the successful consultant, the Borrower shall furnish to the Bank for review the minutes of negotiations and reasons for failure. After completion of the procedure outlined in paragraph 2.30 of these Guidelines, and obtaining the Bank's no objection, the negotiations may be terminated and the next ranked firm be invited for negotiations.
- (g) After negotiations are completed, or in the case of single-source selection, the Borrower shall furnish to the Bank, in sufficient time for its review, a copy of the negotiated contract proposed to be signed by the Borrower which has been initialed by the successful consultant. If the negotiated contract resulted in substitution of key experts or any changes in the TOR and original proposed contract, the Borrower shall highlight the changes and provide an explanation of why these changes are necessary and acceptable to the Borrower.
- (h) If the Bank determines that the final evaluation report, the recommendation for award, and/or the negotiated contract are inconsistent with the provisions of the RFP, it shall promptly inform the Borrower and state the reasons for its determination. Otherwise, the Bank shall provide its final no objection to the contract award. The Borrower shall confirm the award and sign the contract only after receiving the no objection from the Bank.
- (i) One conformed copy of the contract 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), a copy of the contract shall be

furnished to the Bank prior to the making of the first payment out of the SA in respect of such contract.

- (j) The description and amount of the contract, together with the name and address of the consultant, except if an individual, shall be subject to public disclosure by the Bank in accordance with paragraph 2(i) above upon receipt of the signed copy of the contract from the Borrower.
- (k) 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 proposals, all documents and correspondence related to the selection of and implementation of the contract, including those in support of the evaluation of the proposals (including individual score sheets), and the recommendation for award made to the Bank; and (iii) payment invoices or certificates. For contracts awarded on the basis of an SSS method, the documentation shall include the justification for using the method, the qualifications and experience of the selected consultant, and the signed original of the contract. The Borrower shall furnish such documentation to the Bank upon request for examination by the Bank or by its consultants/auditors.

3. *Modification of the Signed Contract.* In the case of contracts subject to prior review, before agreeing to: (a) an extension of the stipulated time for performance of a contract; (b) any substantial modification of the scope of services, substitutions of key experts, or other significant changes to the terms and conditions of the contract; or (c) the proposed termination of the contract, the Borrower shall seek the Bank's no objection. If the Bank determines that the proposed modifications would be inconsistent with the provisions of the Loan Agreement and/or Procurement Plan, it shall promptly inform the Borrower and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to the Bank for its record.

4. *Translations.* If a contract is subject to prior review and is written in the National Language,<sup>61</sup> the Borrower has the responsibility to furnish to the Bank an accurate translation of the technical and combined evaluation reports and the initialed negotiated draft contract in the internationally used language specified in the RFP (English, French, or Spanish). An accurate translation shall also be furnished to the Bank for any subsequent modifications of such contracts.

#### **Post Review**

5. Procurement Post Reviews (PPRs) are normally carried out by the Bank. The Borrower shall retain all documentation with respect to each contract not governed by paragraph 2 of this Appendix during project implementation and up to two years after the

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<sup>61</sup> Refer to paragraph 1.22.

closing date of the Loan Agreement. This documentation would include, but not be limited to, the signed original of the contract and all subsequent amendments or addenda, the original proposals, the technical evaluation report and the combined evaluation report, the recommendation for award, and the payment invoices or certificates for examination by the Bank or by its consultants/auditors. For contracts awarded on the basis of single-source selection, it shall include the record of justification, the qualifications and experience of the consultants, and the signed original of the contract. The Borrower shall also furnish such documentation to the Bank upon request. The Bank may declare misprocurement for any of the reasons provided in paragraph 1.19 of these Guidelines, including if it determines that the contract was not awarded in accordance with the agreed procedures and methods reflected in the Loan Agreement and further elaborated in the Procurement Plan to which the Bank gave its no objection, or the contract itself is not consistent with such procedures and methods. The Bank shall promptly inform the Borrower of the reasons for such determination. The Bank may also, depending on risks and the scope of the project (e.g., involving many small value and simple contracts), agree with the Borrower that they appoint independent entities to carry out PPRs, in accordance with terms, conditions and reporting procedures acceptable to the Bank. In such cases, the Bank will review the reports submitted by the Borrower, and retains its right to directly conduct post reviews during project implementation as may be needed.

#### **Change from Post Review to Prior Review**

6. A contract whose cost estimate was below the Bank's prior review threshold indicated in the Procurement Plan shall fall under prior review rather than post review if the financial offer of the selected firm exceeds such threshold. All related procurement documentation already processed, including the evaluation report and recommendation for award, shall be submitted to the Bank for its prior review and no objection before award of the contract. When, to the contrary, the financial offer of the selected firm falls below the prior review threshold, the prior review process shall continue. Under certain circumstances, the Bank may require the Borrower to follow a prior review process for a contract under the prior review threshold set in the Procurement Plan, for example, in the case of a complaint that the Bank has determined to be of a serious nature. Also, when the selection method requires change due to higher or lower cost estimates than previously assessed, the procurement plan shall be modified by the Borrower and submitted to the Bank for review and no objection.

#### **Publication of Awards of Contracts**

7. The Borrower shall publish information on *UNDB online* for all contracts when the short list included any foreign firm and all single-source selection contracts awarded to

foreign firms, and in the *National* press<sup>62</sup> all contracts where the short list comprises only National firms and all single-source selection contracts awarded to National firms. Such publication shall be within two weeks after receiving the Bank's no objection for award of the contract as per paragraphs 2(h) and 2(j) of this Appendix for contracts subject to the Bank's prior review, and within two weeks of successful negotiations with the selected firm for contracts subject to the Bank's post review. Publications shall include the following information as relevant and applicable for each method: (a) the names of all consultants in the short list, specifying those that submitted proposals; (b) the overall technical scores and scores assigned for each criterion and sub-criterion to each consultant; (c) the prices offered by each consultant as read out and as they have been evaluated; (d) the final combined scores and the final ranking of the consultants; and (e) the name of the successful consultant and the total price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals. The Bank will arrange the publication of the award of contracts under prior review on its external website upon receipt from the Borrower of a conformed copy of the signed contract in accordance with paragraph 2(i) above.

#### **Due Diligence concerning the Bank's Sanctions Policies and Procedures**

8. When conducting the evaluation of proposals, the Borrower shall check the eligibility of consultants from the lists of firms and individuals debarred and suspended, pursuant to paragraph 1.23(d) of these Guidelines and/or paragraph 1.16(d) of the Procurement Guidelines, by the Bank that are posted on the Bank's external website. The Borrower shall apply additional due diligence by closely supervising and monitoring any on-going contract (whether under prior or post review) executed by a firm or individual which has been sanctioned by the Bank after such contract was signed. The Borrower shall neither sign any new contracts nor sign an amendment, including any extension of time for completion, to an on-going contract with a suspended or debarred firm or individual after the effective date of the suspension or debarment without the Bank's prior review and no objection. The Bank will only finance additional expenditures if they were incurred before the completion date of the original contract or the completion date as revised: (i) for prior review contracts, in an amendment to which the Bank has given its no objection; and (ii) for post review contracts, in an amendment signed before the effective date of suspension or debarment. The Bank will not finance any new contract, or any amendment or addendum introducing a material modification to any existing contract that was signed with a suspended or debarred firm or individual on or after the effective date of suspension or debarment.

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<sup>62</sup> In a national newspaper of wide circulation and/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, in the National Language as defined under paragraph 2.15.

## **APPENDIX 2: INSTRUCTIONS TO CONSULTANTS AND DATA SHEET (ITC) OF THE RFP<sup>63</sup>**

1. The Borrower shall use the standard RFPs issued by the Bank, which include the ITC, covering relevant instructions as applicable for most of the methods of selection. If under exceptional circumstances, the Borrower needs to amend the standard ITC, it shall do so through the technical data sheet and not by amending the main text. The ITC shall include adequate information on the following aspects of the assignment:

- (a) a very brief description of the assignment;
- (b) standard formats for the technical and financial proposals;
- (c) the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;
- (d) details of the selection procedure to be followed, including: (i) a description of the two-stage process, if appropriate; (ii) a listing of the technical evaluation criteria and weights given to each criterion; (iii) the details of the financial evaluation; (iv) the relative weights for quality and cost in the case of QCBS; (v) the minimum pass score for quality; and (vi) the details on the opening of financial proposals;
- (e) an estimate of the level of key experts' inputs (in person-months) required of the consultants or the total budget, but not both;
- (f) indication of minimum experience, academic achievement, and so forth, expected of key experts;
- (g) details and status of any external financing;
- (h) information on negotiations and financial and other information that shall be required of the selected firm during negotiation of the contract;
- (i) the deadline for submission of proposals;
- (j) currency(ies) in which the costs of services shall be expressed, compared, and paid;
- (k) reference to any laws of the Borrower's country that may be particularly relevant to the proposed consultants' contract;
- (l) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the Bank's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
- (m) the method in which the proposal shall be submitted, including the requirement that the technical proposals and financial proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;

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<sup>63</sup> This Section does not apply in the case of contracts to be awarded using the UCS Piloting Program described in paragraph 3.12.

- (n) a request that the invited firm (i) acknowledges receipt of the RFP and (ii) informs the Borrower whether or not it will be submitting a proposal;
- (o) the short list of consultants being invited to submit proposals and whether or not associations between short-listed consultants are acceptable;
- (p) the period for which the consultants' proposals shall be held valid and during which the consultants shall undertake to maintain, without change, the proposed key experts, and shall hold to both the proposed rates and total price; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal. If the consultants agree to extend the validity of their proposal, they shall do so without any change in their original proposals and also confirm the availability of all key experts as originally proposed except as provided hereunder. If any of the key experts is unavailable at this time and the consultants, while extending the validity of their proposal, request to replace such expert with another one, they shall provide adequate justification and evidence to the satisfaction of the Borrower. The proposal shall be rejected if it is established that the unavailable expert was proposed without his/her confirmation, if the provided reasons for the replacement or the justification is unacceptable, or the qualifications and experience of the replacement expert are not equal or better to those of the originally proposed expert. If acceptable, no other changes in the technical or financial proposal shall be permitted. The technical evaluation scores based on key experts, the financial proposals, and other details of the original proposal shall remain un-changed.
- (q) the anticipated date on which the selected consultant shall be expected to commence the assignment;
- (r) a statement indicating (i) whether or not the consultants' contract and personnel shall be tax-free or not; and if not, (ii) what the likely tax burden will be or where this information can be obtained in a timely basis and a statement requiring that the consultant shall include in its financial proposal a separate amount clearly identified, to cover taxes;
- (s) if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the Borrower;
- (t) phasing of the assignment, if appropriate, and likelihood of follow-up assignments;
- (u) the procedure to handle clarifications about the information given in the RFP; and
- (v) any conditions for subcontracting part of the assignment.

## APPENDIX 3: GUIDANCE TO CONSULTANTS

### Purpose

1. This appendix provides guidance to consultants wishing to participate in Bank-financed consulting services.

### Responsibility for the Selection of Consultants

2. The responsibility for the implementation of the project, and therefore for the payment of consulting services under the project, rests solely with the Borrower. The Bank, for its part, is required by its Articles of Agreement to ensure that funds are paid from a Bank loan only as expenditures are incurred. Disbursements of the proceeds of a loan or a grant are made only at the Borrower's request. The Borrower submits withdrawal applications to the Bank together with required supporting documentation to demonstrate that the funds have been or are being used in accordance with the Loan Agreement and the Procurement Plan.<sup>64</sup> As emphasized in paragraph 1.4 of these Guidelines, the Borrower is responsible for the selection and employment of consultants. It invites, receives, and evaluates proposals and awards the contract. The contract is between the Borrower and the Consultant. The Bank is not a party to the contract.

### Bank's Role

3. As stated in these Guidelines (Appendix 1) the Bank reviews the RFP, the evaluation of proposals, award recommendations, and contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Loan Agreement and further elaborated in the Procurement Plan. For all contracts subject to the Bank's prior review, the Bank reviews the documents before they are issued, as described in Appendix 1. Also, if at any time in the selection process (even after the award of contract) the Bank concludes that the agreed procedures were not followed in any substantial respect, the Bank may declare misprocurement, as described in paragraph 1.19. 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 corrupt or fraudulent practices were engaged in by representatives of the Borrower or of the consultant, the Bank may impose the applicable sanctions set forth in paragraph 1.23 of these Guidelines.

4. The Bank publishes standard RFPs and contracts for different types of consulting services. As stated in paragraphs 2.9 and 2.12 of these Guidelines, it is mandatory for the Borrower to use these documents, with minimum changes acceptable to the Bank to

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<sup>64</sup> For additional information about the Bank's disbursement policies and procedures see *The World Bank Disbursement Guidelines for Projects and Disbursement Handbook for World Bank Clients* (available on the Bank's website at [www.worldbank.org/projects](http://www.worldbank.org/projects)).

address project-specific issues. The Borrower finalizes and issues these documents as part of the RFP.

### **Information on Consultant Services**

5. Information on consultant services, including a brief description of the nature of services, timing, estimated cost and experts' time inputs, and so forth, will be, in the first instance, included in the Project Information Document (PID), which describes projects under preparation. At the same time, similar information will also be included in the description of each project in the Monthly Operational Summary (MOS). Such information will be continuously updated. Each project requires the publication of a General Procurement Notice in the *United Nations Development Business* (UNDB online)<sup>65</sup> which will include a more detailed description of the required services, the client agency, and the budgeted cost. In the case of large-value contracts,<sup>66</sup> this will be followed by a specific notice seeking "expression of interest" in *UNDB online*. The Project Appraisal Document (PAD) will provide yet more detailed information.

6. The PID and the MOS are available on the Internet and from the InfoShop<sup>67</sup> in the Bank. The PAD is available after the loan is approved. UNDB is available through online subscription.

### **Consultants' Role**

7. When consultants receive the RFP, and if they can meet the requirements of the TOR and the commercial and contractual conditions, they should make the arrangements necessary to prepare a responsive proposal (for example, visiting the country of the assignment, seeking associations, collecting documentation, setting up the preparation team). If the consultants find in the RFP documents—especially in the selection procedure and evaluation criteria—any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they should seek clarification from the Borrower, in writing, within the period specified in the RFP for seeking clarifications.

8. In this connection, it should be emphasized that the specific RFP issued by the Borrower governs each selection, as stated in paragraph 1.2 of these Guidelines. If consultants feel that any of the provisions in the RFP are inconsistent with these Guidelines, they should also raise this issue with the Borrower.

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<sup>65</sup> *UNDB online* is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 10163-5850, USA (website: [www.devbusiness.com](http://www.devbusiness.com); e-mail: [dbsubscribe@un.org](mailto:dbsubscribe@un.org)).

<sup>66</sup> Contracts expected to cost more than US\$300,000 equivalent, except when the short list only comprises national consultants (see paragraphs 2.5 and 2.7 of these Guidelines).

<sup>67</sup> The InfoShop address is also the World Bank address: 1818 H Street, N.W., Washington, D.C. 20433, USA. The Project Database is available at [www.worldbank.org/projects](http://www.worldbank.org/projects).

9. Consultants should ensure that they submit a fully responsive proposal including all the supporting documents requested in the RFP. It is essential to ensure accuracy in the *curricula vitae* of key experts submitted with the proposals. The *curricula vitae* shall be signed by the consultants and the individuals and dated. Once technical proposals are received and opened, consultants shall not be required nor permitted to change the substance, the key experts, and so forth. Noncompliance with important requirements will result in rejection of the proposal. Similarly, once financial proposals are received, consultants shall not be required or permitted to change the quoted fee and so forth, except at the time of negotiations carried out in accordance with the provisions of the RFP. If an extension of validity of proposals was the reason that key experts were not available for a company, a change of key experts with equivalent or better qualification might be possible as per paragraph 2.28 of these Guidelines and paragraph 1(p) of Appendix 2.

#### **Confidentiality**

10. As stated in paragraph 2.35, the process of proposal evaluation shall be confidential until the publication of contract award, except for the disclosure of the technical points as indicated in paragraphs 2.23 and 2.30. Confidentiality enables the Borrower and the Bank's reviewers to avoid either the reality or perception of improper interference. If, during the evaluation process, consultants wish to bring additional information to the notice of the Borrower, the Bank, or both, they should do so in writing.

#### **Action by the Bank**

11. If consultants wish to raise issues or questions about the selection process, they may send the Bank copies of their communications with the Borrower, or they may write to the Bank directly when the Borrower does not respond promptly or when the communication is a complaint against the Borrower. All such communications should be addressed to the Task Team Leader for the project, with a copy to the Country Director for the borrowing country and to the Regional Procurement Manager. Names of the Task Team Leaders are available in the PAD.

12. Communications received by the Bank from short-listed consultants prior to the closing date for submission of the proposal shall be, if appropriate, referred to the Borrower with the Bank's comments and advice for action or response.

13. Communications, including complaints, the Bank receives from consultants after the opening of the technical proposals will be handled as follows. In the case of contracts not subject to prior review by the Bank, any communication or its relevant extracts, as deemed appropriate, will be sent to the Borrower for due consideration and appropriate action. The Borrower shall provide all relevant documentation to the Bank for review and comments. In the case of contracts subject to prior review, the Bank shall examine the communication, in consultation with the Borrower, and if it needs additional information, shall request it

from the Borrower. If additional information or clarification is required from the consultant, the Bank shall ask the Borrower to obtain it and comment on or incorporate it, as appropriate, in the evaluation report. The Bank's review will not be completed until the communication is fully examined and considered. Communications received from consultants involving allegations of fraud and corruption<sup>68</sup> may warrant a different treatment due to reasons of confidentiality. In such cases, the Bank shall apply due care and discretion in sharing information deemed appropriate with the Borrower.

14. Besides acknowledging receipt of communications, the Bank shall not enter into discussion or correspondence with any consultant during the selection and review process, until award of the contract is published.

#### **Debriefing by the Bank**

15. If after contract award, a consultant wishes to ascertain the grounds on which its proposal was not selected, it should address its request to the Borrower as indicated in paragraph 2.32. If the consultant is not satisfied with the written explanation given and/or debriefing by the Borrower, and wishes to seek a meeting with the Bank, it may address the Regional Procurement Manager for the borrowing country, who will arrange a meeting at the appropriate level and with the relevant staff. The purpose of such meeting is only to discuss the consultant's proposal, and neither to reverse the Bank's position that has been conveyed to the Borrower nor to discuss the proposals of competitors.

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<sup>68</sup> Reporting on suspected fraud and corruption can be done directly to the Bank Integrity Vice Presidency (INT) by email: [investigations\\_hotline@worldbank.org](mailto:investigations_hotline@worldbank.org); through the World Bank website; through the 24-hour hotline operated by a third party: toll free +1-800-831-0463, collect calls +1-704-556-7046 (interpreters are available, anonymous calls accepted); or by contacting INT at the Bank's Headquarter office in Washington, D.C.: +1-202-458-7677.

CLASSIFICATION: PUBLIC

GUIDELINES

PROCUREMENT OF GOODS, WORKS, AND  
NON-CONSULTING SERVICES

UNDER IBRD LOANS AND IDA CREDITS &  
GRANTS

BY WORLD BANK BORROWERS

January 2011  
Revised July 2014

July 2014 Revision

Paragraph 3.18 – **Procurement under loans Guaranteed by the Bank** has been revised to include provisions for payment obligations.

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## Acronyms

BOO	Build, own, operate
BOOT	Build, own, operate, transfer
BOT	Build, operate, transfer
CDD	Community Driven Development
CIF	Cost, Insurance, and Freight
CIP	Carriage and Insurance Paid (place of destination)
CPT	Carriage Paid To (named place of destination)
DDP	Delivered Duty Paid
EXW	Ex works, Ex factory, or Off-the-Shelf
FA	Framework Agreements
FCA	Free Carrier (named place)
FPA	Fiduciary Principles Accord
GNP	Gross National Product
IBRD	International Bank for Reconstruction and Development (World Bank)
ICB	International Competitive Bidding
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFC	International Finance Corporation
LIB	Limited International Bidding
MDTF	Multi Donor Trust Fund
MIGA	Multilateral Investment Guarantee Agency
NCB	National Competitive Bidding
NGO	Nongovernmental organization
PAD	Project Appraisal Document
PPA	Project Preparation Advance
PPP	Public Private Partnership
PPR	Procurement Post Review
SA	Special Account
SBDs	Standard Bidding Documents
SWAp	Sector Wide Approach
UCS	Use of Country Systems
UN	United Nations
UNDB	United Nations Development Business

## I. INTRODUCTION

### Purpose

1.1 The purpose of these Guidelines is to inform those carrying out a project that is financed in whole or in part by a loan from the International Bank for Reconstruction and Development (IBRD), a credit or grant from the International Development Association (IDA),<sup>1</sup> a project preparation advance (PPA), a grant from the Bank, or a trust fund administered by the Bank and executed by the recipient,<sup>2</sup> of the policies that govern the procurement of goods, works, and non-consulting services<sup>3</sup> required for the project. The Loan Agreement governs the legal relationships between the Borrower and the Bank, and the Guidelines are made applicable to procurement of goods, works, and non-consulting services for the project, as provided in the agreement. The rights and obligations of the Borrower and the providers of goods, works, and non-consulting services for the project are governed by the bidding<sup>4</sup> documents, and by the contracts signed by the Borrower with the providers of goods, works, and non-consulting services, 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.

### General Considerations

1.2 The responsibility for the implementation of the project, and therefore for the award and administration of contracts under the project, rests with the Borrower.<sup>5</sup> The Bank, for its part, is required by its Articles of Agreement to "ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations,"<sup>6</sup> and it has established detailed procedures for this purpose. While in practice the specific procurement rules and procedures to be followed in the implementation of a project depend on the circumstances of the particular case, four considerations generally guide the Bank's requirements:

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<sup>1</sup> Procurement requirements of IBRD and IDA are identical. References in these Guidelines to "the Bank" include both IBRD and IDA, and references to "loans" include IBRD loans, as well as IDA credits or grants, grants from the Bank, trust funds administered by the Bank and executed by the recipient, and project preparation advances (PPAs). References to "Loan Agreement" include the legal agreement between the Bank and Borrower, and may include the project agreement between the Bank and project implementing entity. References to "Borrower" include loan, credit, grant, and PPA recipients that execute such projects, and may include sub-borrowers or project implementing entities.

<sup>2</sup> To the extent that the agreement providing for such trust funds to be administered by the Bank does not conflict with these provisions as exceptions, including under the UN Fiduciary Principles Accord (FPA) or a Multi Donor Trust Fund (MDTF) in emergency situations.

<sup>3</sup> References to "goods" and "works" in these Guidelines include related services such as transportation, insurance, installation, commissioning, training, and initial maintenance. "Goods" includes commodities, raw material, machinery, equipment, vehicles, and industrial plant. The provisions of these Guidelines also apply to non-consulting services for which the physical aspects of the activity predominate, are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied, such as drilling, aerial photography, satellite imagery, mapping, and similar operations. These Guidelines do not refer to consulting (e.g., advisory) services, to which the current Guidelines: *Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers* apply (referred to herein as Consultant Guidelines).

<sup>4</sup> For the purposes of these Guidelines, the words "bid" and "tender" shall have the same meaning.

<sup>5</sup> In some cases, the Borrower acts only as an intermediary and the project is carried out by another agency or entity. References in these Guidelines to the Borrower include such agencies and entities, as well as Sub-Borrowers under on-lending arrangements.

<sup>6</sup> The Bank's Articles of Agreement, Article III, Section 5(b); and IDA's Articles of Agreement, Article V, Section 1(g).

- (a) the need for economy and efficiency in the implementation of the project, including the procurement of the goods, works, and non-consulting services involved;
- (b) the Bank's interest in giving all eligible bidders from developed and developing countries<sup>7</sup> the same information and equal opportunity to compete in providing goods, works, and non-consulting services financed by the Bank;
- (c) the Bank's interest in encouraging the development of domestic contracting and manufacturing industries in the Borrowing country; and
- (d) the importance of transparency in the procurement process.

1.3 Open competition is the basis for efficient public procurement. Borrowers shall select the most appropriate method for the specific procurement. In most cases, International Competitive Bidding (ICB), properly administered, and with the allowance for preferences for domestically manufactured goods and, where appropriate, for domestic contractors<sup>8</sup> for works under prescribed conditions is the most appropriate method. In most cases, therefore, the Bank requires its Borrowers to obtain goods, works, and non-consulting services through ICB open to eligible suppliers, service providers, and contractors.<sup>9</sup> Section II of these Guidelines describes the procedures for ICB.

1.4 Where ICB is not the most appropriate method of procurement, other methods of procurement may be used. Section III describes these other methods of procurement and the circumstances under which their application would be more appropriate. The particular methods that may be followed for procurement under a given project are provided for in the Loan Agreement. The specific contracts to be financed under the project, and their method of procurement, consistent with the Loan Agreement, are specified in the Procurement Plan as indicated in paragraph 1.18 of these Guidelines.

#### **Applicability of Guidelines**

1.5 The principles, rules, and procedures outlined in these Guidelines apply to all contracts for goods, works, and non-consulting services financed in whole or in part from Bank loans.<sup>10</sup> The provisions described under this Section I apply to all other Sections of the Guidelines. For the procurement of those contracts for goods, works, and non-consulting services not financed in whole or in part from a Bank loan, but included in the project scope of the loan agreement, the Borrower may adopt other rules and procedures. In such cases, the Bank shall be satisfied that the procedures to be used will fulfill the Borrower's obligations to cause the project to be carried out diligently and efficiently, and that the goods, works, and non-consulting services to be procured:

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<sup>7</sup> See paragraphs 1.8, 1.9, and 1.10.

<sup>8</sup> For purposes of these Guidelines, "Contractor" refers only to a firm providing construction services.

<sup>9</sup> See paragraphs 1.8, 1.9, and 1.10.

<sup>10</sup> This includes contracts procured by a Procurement Agent or Construction Manager employed by the Borrower under paragraph 3.11 of these Guidelines.

The Bank may agree to the use of the public procurement systems of the Borrower's country—referred to as the Use of Country System (UCS)—for procurement under paragraph 3.20 of these Guidelines. In such cases, the Loan Agreement between the Borrower and the Bank shall describe the applicable procurement procedures of the Borrower, and the full application of Section I and any other parts of these Guidelines as may be deemed relevant by the Bank.

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- (a) are of satisfactory quality and are compatible with the balance of the project;
- (b) will be delivered or completed in timely fashion; and
- (c) are priced so as not to affect adversely the economic and financial viability of the project.

### **Conflict of Interest**

1.6 Bank policy requires that a firm participating in a procurement process under Bank-financed projects shall not have a conflict of interest. Any firm found to have a conflict of interest shall be ineligible for award of a contract.

1.7 A firm shall be considered to have a conflict of interest in a procurement process if:

- (a) such firm is providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and built contract;<sup>11</sup> or
- (b) such firm submits more than one bid, either individually or as a joint venture partner in another bid, except for permitted alternative bids. This will result in the disqualification of all bids in which the Bidder is involved. However, this does not limit the inclusion of a firm as a sub-contractor in more than one bid. Only for certain types of procurement, the participation of a Bidder as a sub-contractor in another bid may be permitted subject to the Banks' no objection and as allowed by the Bank's Standard Bidding Documents applicable to such types of procurement; or
- (c) such firm (including its personnel) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract; or
- (d) such firm does not comply with any other conflict of interest situation as specified in the Bank's Standard Bidding Documents relevant to the specific procurement process.

### **Eligibility**

1.8 To foster competition, the Bank permits firms and individuals from all countries to offer goods, works, and non-consulting services for Bank-financed projects. Any

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<sup>11</sup> See paragraph 2.4.

conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question.<sup>12</sup>

1.9 In connection with any contract to be financed in whole or in part from a Bank loan, the Bank does not permit a Borrower to deny participation in a procurement process or award to a firm for reasons unrelated to: (i) its capability and resources to successfully perform the contract; or (ii) the conflict of interest situations covered under paragraphs 1.6 and 1.7 above.

1.10 As exceptions to the foregoing paragraphs 1.8 and 1.9:

- (a) Firms of a country or goods manufactured in a country may be excluded if, (i) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods, works, and non-consulting services required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods from, or payments to, a particular country, person, or entity. Where the Borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.
- (b) Government-owned enterprises or institutions of the Borrower's country may participate in the Borrower's country only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Borrower or Sub-Borrower.<sup>13</sup>
- (c) A firm sanctioned by the Bank in accordance with paragraph 1.16(d) of these Guidelines, or the World Bank Group Anti-Corruption policies and sanctions procedures,<sup>14</sup> shall be ineligible to be awarded a Bank-financed contract or to benefit from a Bank-financed contract, financially or in any other manner, during the period of time determined by the Bank.

### **Advance Contracting and Retroactive Financing**

1.11 The Borrower may wish to proceed with the initial steps of procurement before signing the related Bank loan. In such cases, the procurement procedures, including advertising, shall be in accordance with the Guidelines in order for the eventual contracts

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<sup>12</sup> The Bank permits firms and individuals from Taiwan, China to offer goods, works, and non-consulting services for Bank-financed projects.

<sup>13</sup> Other than Force Account units, as permitted under paragraph 3.9.

To be eligible, a government-owned enterprise or institution shall establish to the Bank's satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government; (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution.

<sup>14</sup> For the purpose of this sub-paragraph, the relevant World Bank Group Anti-Corruption policies are set forth in the *Guidelines On Preventing and Combating Fraud and Corruption in Projects financed by IBRD Loans and IDA Credits and Grants*, and in the *Anti-Corruption Guidelines for IFC, MIGA, and World Bank Guarantee Transactions*. The Bank's sanctions procedures are publicly disclosed on the Bank's external website.

to be eligible for Bank financing, and the Bank shall review the process used by the Borrower. A Borrower undertakes such advance contracting at its own risk, and any concurrence by the Bank with the procedures, documentation, or proposal for award does not commit the Bank to make a loan for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to loan signing is referred to as retroactive financing and is only permitted within the limits specified in the Loan Agreement.

### **Joint Ventures**

1.12 Any firm may bid independently or in joint venture either with domestic firms and/or with foreign firms. A joint venture may be for the long term (independent of any particular bid) or for a specific bid. The joint venture shall appoint one of the firms to represent it, and all its members shall sign the contract and be jointly and severally liable for the entire contract. The Bank does not accept conditions of bidding or contracting which require mandatory joint ventures or other forms of mandatory association between firms.

### **Bank Review**

1.13 The Bank reviews the Borrower's procurement procedures, documents, bid evaluations, award recommendations, and contracts to ensure that the procurement process is carried out in accordance with the agreed procedures. These review procedures are described in Appendix 1. The Procurement Plan approved by the Bank<sup>15</sup> shall specify the extent to which these review procedures shall apply in respect of the different categories of goods, works, and non-consulting services to be financed, in whole or in part, from the Bank loan.

### **Misprocurement**

1.14 The Bank does not finance expenditures under a contract for goods, works, or non-consulting services if the Bank concludes that such contract: (a) has not been awarded in accordance with the agreed provisions of the Loan Agreement and as further elaborated in the Procurement Plan to which the Bank provided no objection; (b) could not be awarded to the bidder otherwise determined successful due to willful dilatory conduct or other actions of the Borrower resulting in unjustifiable delays, the successful bid being no longer available, or the wrongful rejection of any bid; or (c) involves the engagement of a representative of the Borrower, or a recipient of any part of the Loan proceeds, in fraud and corruption as per paragraph 1.16(c). In such cases, whether under prior or post review, the Bank will declare misprocurement, and it is the Bank's policy to cancel that portion of the loan allocated to the goods, works, or non-consulting services 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 and apply in full its policies and remedies regardless of whether of the loan has closed or not, if it concludes that the no objection was issued on the basis of incomplete, inaccurate, or misleading

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<sup>15</sup> See paragraph 1.18.

information furnished by the Borrower or the terms and conditions of the contract had been substantially modified without the Bank's no objection.

### Reference to Bank

1.15 The Borrower shall use the following text<sup>16</sup> when referring to the Bank in procurement documents:

"[Name of Borrower] has received [or, 'has applied for'] a [loan] from the [International Bank for Reconstruction and Development] (the "Bank") in an amount equivalent to US\$\_\_\_\_, toward the cost of [name of project], and intends to apply a portion of the proceeds of this [Loan] to eligible payments under this Contract. Payments by the Bank will be made only at the request of [name of Borrower or designate] and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the [Loan] Agreement. The [Loan] Agreement prohibits a withdrawal from the [Loan] Account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.<sup>17</sup> No party other than [name of Borrower] shall derive any rights from the Loan Agreement or have any claim to the proceeds of the [Loan]."<sup>18</sup>

### Fraud and Corruption

1.16 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.<sup>19</sup> In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;<sup>20</sup>
  - (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;<sup>21</sup>

<sup>16</sup> To be suitably modified in the case of a credit from IDA or a grant or a trust fund.

<sup>17</sup> IBRD's General Conditions Applicable to Loans and Guarantee Agreements; Article V; Section 5.01 and IDA's General Conditions Applicable to Development Credit Agreements; Article V; Section 5.01.

<sup>18</sup> Substitute "credit," "International Development Association," and "Credit Agreement," as appropriate.

<sup>19</sup> In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

<sup>20</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>21</sup> For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

- (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;<sup>22</sup>
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;<sup>23</sup>
- (v) “obstructive practice” is
  - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.16(e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s sanctions procedures,<sup>24</sup> including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be

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<sup>22</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

<sup>23</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution.

<sup>24</sup> A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank’s sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines.

awarded a Bank-financed contract; and (ii) to be a nominated<sup>25</sup> sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract;

- (e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank; and
- (f) will require that, when a Borrower procures goods, works or non-consulting services directly from a United Nations (UN) agency in accordance with paragraph 3.10 of these Guidelines under an agreement signed between the Borrower and the UN agency, the above provisions of this paragraph 1.16 regarding sanctions on fraud or corruption shall apply in their entirety to all suppliers, contractors, service providers, consultants, sub-contractors or sub-consultants, and their employees that signed contracts with the UN agency.

As an exception to the foregoing, paragraphs 1.16(d) and (e) will not apply to the UN agency and its employees, and paragraph 1.16(e) will not apply to the contracts between the UN agency and its suppliers and service providers. In such cases, the UN agencies will apply their own rules and regulations for investigating allegations of fraud or corruption subject to such terms and conditions as the Bank and the UN agency may agree, including an obligation to periodically inform the Bank of the decisions and actions taken. The Bank retains the right to require the Borrower to invoke remedies such as suspension or termination. UN agencies shall consult the Bank's list of firms and individuals suspended or debarred. In the event a UN agency signs a contract or purchase order with a firm or an individual suspended or debarred by the Bank, the Bank will not finance the related expenditures and will apply other remedies as appropriate.

1.17 With the specific agreement of the Bank, a Borrower may introduce, into bid forms for contracts financed by the Bank, an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the bidding documents.<sup>26</sup> The Bank will accept the introduction of such undertaking at the request of the Borrowing country, provided the arrangements governing such undertaking are satisfactory to the Bank.

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<sup>25</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

<sup>26</sup> As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in the country of the [Purchaser] [Employer], as such laws have been listed by the [Purchaser] [Employer] in the bidding documents for this contract."

## Procurement Plan

1.18 The preparation of a realistic procurement plan<sup>27</sup> for a project is critical for its successful monitoring and implementation. As part of the project preparation, the Borrower shall prepare a preliminary procurement plan, however tentative, for the entire scope of the project. At a minimum, the Borrower shall prepare a detailed and comprehensive procurement plan including all contracts for which procurement action is to take place in the first 18 (eighteen) months of project implementation. An agreement with the Bank shall be reached at the latest during loan negotiations. The Borrower shall update procurement plans throughout the duration of the project at least annually by including contracts previously awarded and to be procured in the next 12 (twelve) months. All procurement plans and their updates or modifications shall be subject to the Bank's prior review<sup>28</sup> and no objection before implementation. After loan negotiations, the Bank shall arrange the publication on its external website of the agreed initial procurement plan and all subsequent updates once it has provided a no objection.

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<sup>27</sup> The Procurement Plan, including their updates, shall set forth at a minimum (i) a brief description of goods, works, and/or non-consulting services required for the project for which procurement action is to take place during the period in question; (ii) the proposed methods of procurement as permitted under the Loan Agreement; (iii) any provision for the application of domestic preference in accordance with paragraph 2.55; (iv) the Bank review requirement and thresholds; and (v) the time schedule for key procurement activities, and any other information that the Bank may reasonably require. Large numbers of small and similar contracts may be clubbed. For projects or their components that are demand driven in nature such as Community Driven Development (CDD), Sector Wide Approaches (SWAs), etc. where specific contracts or their time-schedules cannot be identified in advance; a suitable template of the Procurement Plan shall be agreed with the Bank for monitoring and implementation of procurement. If the Project includes the procurement of consulting services, the Procurement Plan should also include the methods for their selection in accordance with the *Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers*.

<sup>28</sup> See Appendix 1.

## II. INTERNATIONAL COMPETITIVE BIDDING

### A. General

#### Introduction

2.1 The objective of International Competitive Bidding (ICB), as described in these Guidelines, is to provide all eligible prospective bidders<sup>29</sup> with timely and adequate notification of a Borrower's requirements and an equal opportunity to bid for the required goods, works, and non-consulting services.

#### Type and Size of Contracts

2.2 The bidding documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate therefor. The most common types of contracts provide for payments on the basis of a lump-sum, unit prices, reimbursable cost plus fees, or combinations thereof. Reimbursable cost contracts are acceptable to the Bank only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Such contracts shall include appropriate incentives to limit costs.

2.3 The size and scope of individual contracts will depend on the magnitude, nature, and location of the project. For projects requiring a variety of goods and works, separate contracts generally are awarded for the supply and/or installation of different items of equipment and plant<sup>30</sup> and for the works.

2.4 In certain cases, in particular for large industrial and power plants and facilities, the Bank may accept or require a single responsibility contract in which discrete items of equipment and works are grouped into a contract package.<sup>31</sup> A single responsibility contract may be a turnkey contract in which one entity assumes total responsibility to provide an industrial plant or facility fully-equipped and ready for operation (at the "turn of the key").<sup>32</sup> Contracts involving construction, installation or assembly, and related services may also be awarded to contractors under management contracts.<sup>33</sup>

2.5 For a project requiring similar but separate items of equipment or works, bids may be invited under a slice and package procedure that would attract the interest of both small and large firms, which could be allowed, at their option, to bid for individual

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<sup>29</sup> See paragraphs 1.8, 1.9, and 1.10.

<sup>30</sup> For purposes of these Guidelines, "plant" refers to installed equipment, as in a production facility.

<sup>31</sup> Typically, such single responsibility contracts include various plants, equipment, machinery, materials or parts thereof, and include all procurement activities, the supply and assembly and/or installation of equipment, the construction of a complete facility or specialized works to be incorporated in the facility. Such contracts could be a Supply and Installation contract where the Borrower prepares and remains responsible for basic and detailed engineering and design, or a Design, Supply, and Installation contract where the Contractor prepares and is also responsible for the engineering and design.

<sup>32</sup> A turnkey contract is a single responsibility contract based on a "lump-sum" price under which payments are made as per contractual milestones when they are met. For such contracts, usually only the basic design (i.e. the main parameters of the engineering project) is provided by the Employer.

<sup>33</sup> In construction, a Management Contractor usually does not perform the work directly but contracts out and manages the work of other contractors, taking on the full responsibility and risk for price, quality, and timely performance. Conversely, a Construction Manager is a consultant for, or agent of, the Borrower, who does not take on such risks. If financed by the Bank, the Construction Manager shall be selected under the Consultant Guidelines (paragraph 3.11).

contracts (slices) or for a group of similar contracts (package). All bids and combinations of bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest evaluated cost to the Borrower.<sup>34</sup>

### **Two-Stage Bidding**

2.6 In the case of contracts for: (a) large complex facilities awarded as single responsibility (including as turnkey) contracts for the design, supply and installation, or single responsibility contracts for the supply and installation of a facility or plant; (b) works of a complex and special nature; or (c) complex information and communication technology that are subject to rapid technology advances, it may be undesirable or impractical to prepare complete technical specifications in advance. Due to the complex nature of such contracts and in order to avoid deviations from the Borrower's specifications, the Bank may require the use of a two-stage bidding procedure. First, un-priced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents<sup>35</sup> and the submission of final technical and priced bids in the second stage.

### **Notification and Advertising**

2.7 Timely notification of bidding opportunities is essential in competitive bidding. The Borrower is required to prepare and submit to the Bank a General Procurement Notice. The Bank will arrange for its publication in *UN Development Business online* (*UNDB online*) and on the Bank's external website.<sup>36</sup> The General Procurement Notice shall contain information concerning the Borrower (or prospective Borrower), amount and purpose of the loan, scope of procurement reflecting the Procurement Plan, and the name, telephone (or fax) number, and address(es) of the Borrower's agency(ies) responsible for procurement, and the address of a widely used electronic portal with free national and international access or website where the subsequent Specific Procurement Notices will be posted. If known, the scheduled date for availability of prequalification or bidding documents should be indicated. The related prequalification or bidding documents, as the case may be, shall not be released to the public earlier than the date of publication of the General Procurement Notice.

2.8 Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices in at least one newspaper of national circulation in the Borrower's country, or in the official gazette, or on a widely used website or electronic portal with free national and international access, in English, French, or Spanish, or at the option of the Borrower, in a national language as defined under paragraph 2.15. Such invitations shall also be published in *UNDB online*. Notification shall be given in

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<sup>34</sup> See paragraphs 2.49 - 2.54 for the bid evaluation procedures.

<sup>35</sup> In revising the bidding documents in the second stage, the Borrower shall respect the confidentiality of the bidders' technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights.

<sup>36</sup> *UNDB online* is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GPO Box 5850, New York, NY 10163-5850, USA (website: [www.devbusiness.com](http://www.devbusiness.com); e-mail: [dbsubscribe@un.org](mailto:dbsubscribe@un.org)). World Bank External Website: [www.worldbank.org](http://www.worldbank.org).

sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.<sup>37</sup> The Bank will arrange the simultaneous publication of all Specific Procurement Notices prepared and submitted by the Borrowers on the Bank's external website.

### **Prequalification of Bidders**

2.9 Prequalification is usually 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 single responsibility (including turnkey), design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Prequalification shall be based entirely upon the capability and resources of prospective eligible bidders to perform the particular contract satisfactorily, taking into account objective and measurable factors, including: (a) relevant general and specific experience, and satisfactory past performance and successful completion of similar contracts over a given period; (b) financial position; and, where relevant, (c) capability of construction and/or manufacturing facilities.

2.10 The invitation to prequalify for bidding on specific contracts or groups of similar contracts shall be advertised and notified as described in paragraphs 2.7 and 2.8 above. The scope of the contract and a clear statement of the requirements for qualification shall be sent to those who responded to the invitation. The Borrower shall use the Standard Prequalification Document issued by the Bank with minimum changes as may be necessary and acceptable to the Bank. All such applicants that meet the specified criteria shall be allowed to bid. Borrowers shall inform all applicants of the results of prequalification. As soon as the prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. For prequalification for groups of contracts to be awarded either at the same time or over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's technical capability and financial resources to meet qualification criteria for the combined contracts. When the time elapsed between the Borrower's decision with regard to the list of prequalified firms and the issuance of bid invitations is longer than 12 (twelve) months, the Bank may require that the a new prequalification process be conducted through re-advertisement. The verification of the information upon which bidders were prequalified, including their current commitments, shall be carried out at the time of the award of contract, along with their capability with respect to personnel and equipment. The award may be denied to a bidder that is judged to no longer meet the required qualification criteria with respect to technical capability and financial resources to successfully perform the contract. If none or very few applicants are found to be prequalified, which would result in a lack of competition, the Borrower may issue a revised prequalification invitation subject to the Bank's prior no objection.

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<sup>37</sup> See paragraph 2.44.

## **B. Bidding Documents**

### **General**

2.11 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods, works, and non-consulting services to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders and bid data sheet; form or letter of bid; form of contract; conditions of contract, both general and particular; specifications and drawings; relevant technical data (including of geological and environmental nature); list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. 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. If a fee is charged for the bidding documents, it shall be reasonable and reflect only the cost of their typing, printing or publishing in an electronic format, and delivery to prospective bidders, and shall not be so high as to discourage qualified bidders. The bidding documents for works may indicate the estimated total cost of the contract, but shall not indicate detailed Borrower's cost estimates such as priced bills of quantities. The Borrower may use an electronic system to distribute bidding documents, provided that the Bank is satisfied with the adequacy of such system. If bidding documents are distributed electronically, the electronic system shall be secure to avoid modifications to the bidding documents and shall not restrict the access of Bidders to the bidding documents. Guidance on critical components of the bidding documents are given in the following paragraphs.

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

### **Validity of Bids and Bid Security**

2.13 Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable the Borrower to complete the comparison and evaluation of bids, and obtain all the necessary approvals within the Borrower's entity and the Bank's no objection to the recommendation of award (if required in the Procurement Plan) so that the contract can be awarded within that period.

2.14 Borrowers have the option of requiring a bid security. When used, the bid security shall be in the amount and form specified in the bidding documents<sup>38</sup> and shall remain

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<sup>38</sup> The format of the bid 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 that is 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.

valid for a period (generally 4 (four) weeks beyond the validity period for the bids) sufficient to provide reasonable time for the Borrower to act if the security is to be called. Bid securities shall be released to unsuccessful bidders once the contract has been signed with the winning bidder. In place of a bid security, the Borrower may require bidders to sign a declaration accepting that if they withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents, the bidder will be suspended for the period of time specified in the bidding documents from being eligible to bid for any contract with the entity that invited bids.

### **Language**

2.15 Prequalification and bidding documents shall be prepared in one of the following languages, selected by the Borrower: English, French, or Spanish. In addition to one of the above languages, the Borrower has the option to issue translated versions of these documents in another language which should either be: (a) the national language of the Borrower; or (b) the language used nation-wide in the Borrower's country for commercial transactions, hereinafter both are called the "National Language".<sup>39</sup> If these documents are issued in two languages, firms shall have the option to submit their prequalification application or bid, as the case may be, in any one of the two languages in which these documents are issued. The contract signed with the winning bidder shall always be written in the language in which its bid was submitted, which shall be the one that governs the contractual relations between the Borrower and the bidder. If the contract is signed in the National Language, the Borrower shall provide the Bank with an accurate translation of the contract in English, French, or Spanish when submitting the original contract in accordance with Appendix 1. Bidders shall neither be required nor permitted to sign contracts in more than one language.

### **Clarity of Bidding Documents**

2.16 Bidding documents shall be so worded as to permit and encourage international competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications. Drawings shall be consistent with the text of the specifications, and an order of precedence between the two shall be specified.

2.17 The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or

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<sup>39</sup> The Bank shall be satisfied with the language to be used. The Borrower shall take full responsibility for the correct translation of the documents in the National Language. In case of any discrepancy with the documents in English, French, or Spanish, the text in the latter shall prevail.

If the Borrower has more than one National Language and a national law requires official acts to be issued in all national languages, the Borrower shall use one National Language in the prequalification or bidding documents, and may issue translated versions in the other languages.

otherwise evaluated. If bids based on alternative designs, materials, completion schedules, payment terms, etc. are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

2.18 All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. Borrowers shall provide reasonable access to project sites for visits by prospective bidders. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with Borrower representatives to seek clarifications (in person or online). Minutes of the conference shall be provided to all prospective bidders with a copy to the Bank (in hard copy or sent electronically). All modifications of bidding documents, including with regard to additional information, clarifications, and corrections of errors, shall be sent to each recipient of the original bidding documents and all bidders on record in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. Any modification to the bidding documents shall be introduced in the form of an addendum. If necessary, the deadline shall be extended. The Bank shall receive a copy (in hard copy or sent electronically) and be consulted for issuing a no objection when the contract is subject to prior review.

#### **Standards**

2.19 Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. As far as possible, the Borrower shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship shall comply. Where such international standards are unavailable or are inappropriate, national standards may be specified. In all cases, the bidding documents shall state that equipment, material, or workmanship meeting other standards, which promise at least substantial equivalence, will also be accepted.

#### **Use of Brand Names**

2.20 Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified. Before the Borrower issues bidding documents for specific goods with a brand name that does not have any equivalent, especially for Information Technology Systems, it shall submit to the Bank for review and no objection a comprehensive justification, including grounds of compatibility with existing systems and previous investments in the branded item.

## Pricing

2.21 Bids for goods shall be invited on the basis of CIP<sup>40</sup> (place of destination) for all goods manufactured abroad and to be imported. Bids for goods that were previously imported shall be invited on the basis of CIP (place of destination) separately indicating the actual amount of customs duties and import taxes already paid. Bids for goods manufactured in the Borrower's country shall be invited on the basis of EXW<sup>41</sup> (ex works, ex factory, or off-the-shelf) plus cost of inland transportation and insurance to the place of destination. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source.<sup>42</sup> Where installation, commissioning, or other similar services are required to be performed by the bidder, as in the case of supply and installation contracts, the bidder shall be required to quote for these services.

2.22 In the case of single responsibility (including turnkey) contracts, the bidder shall be required to quote the price of the installed facility or plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Unless otherwise specified in the bidding documents, a turnkey contract price shall include all duties, taxes, and other levies.<sup>43</sup>

2.23 Bidders for works and non-consulting services shall be required to quote unit prices or lump sum prices for the performance of the works or non-consulting services, and such prices shall include all duties, taxes, and other levies. Bidders shall be allowed to obtain all inputs (except for unskilled labor) from any eligible source so that they may offer their most competitive bids.

## Price Adjustment

2.24 Bidding documents shall state either that (a) bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within 18 (eighteen) months, but shall be included in contracts which extend beyond 18 (eighteen) months. The bidding documents for contracts of shorter duration may also include a similar provision for price adjustment

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<sup>40</sup> Refer for further definitions to the current *Incoterms 2010*, or as revised from time to time, published by the International Chamber of Commerce (ICC), 38 Cours Albert 1<sup>er</sup>, 75008, Paris, France. CIP is carriage and insurance paid to (named place of destination). This term may be used irrespective of the mode of transport, including multimodal transport. CIP term is for custom duties and other import taxes unpaid, payment for which is the responsibility of the Borrower, either for goods previously imported or that will be imported. For previously imported goods, the quoted CIP price shall be distinguishable from the original import value of these goods declared to customs and shall include any rebate or mark-up of the local agent or representative and all local costs except import duties and taxes, which will be paid by the purchaser.

<sup>41</sup> The EXW price shall include all duties, sales, and other taxes already paid or payable for the components and raw materials used in the manufacture or assembly of the equipment offered in the bid. Manufactured goods include assembled goods.

<sup>42</sup> See paragraphs 1.8, 1.9, and 1.10.

<sup>43</sup> Goods in bids for turnkey contracts may be invited on the basis of DDP (named place of destination) and Bidders should be free to choose the best arrangement between imported goods or goods manufactured in the country of the Borrower, in the preparation of their bids.

when future local or foreign inflation is expected to be high. However, it is standard practice to obtain firm prices for some types of equipment regardless of the delivery time and, in such cases, price adjustment provisions are not needed.

2.25 Prices shall be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component. The formula(e) and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formulae, to avoid incorrect adjustment. Under exceptional circumstances, bidding documents may provide for price adjustment on the basis of documentary evidence (including actual invoices) provided by the Supplier or Contractor.

### **Transportation and Insurance**

2.26 Bidding documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. For all contracts, usually an All Risk form of policy shall be specified. For goods and for single responsibility contracts, the indemnity payable under transportation insurance shall be at least 110% (one hundred ten percent) of the CIP price of the goods to be imported in the currency of the contract or in a freely convertible currency to enable prompt replacement of lost or damaged goods. For large construction or supply and install projects with several contractors on a site, a "wrap-up" or total project insurance arrangement may be obtained by the Borrower, in which case the Borrower shall seek competition for such insurance under procedures acceptable to the Bank if the cost of insurance is to be financed by the Bank.

2.27 As an exception, if a Borrower does not wish to obtain insurance coverage through the contract, and wishes to make its own arrangements or to reserve transportation and insurance to national companies or other designated sources, it shall provide evidence satisfactory to the Bank that (a) resources are readily available for prompt payment, in a freely convertible currency among the currencies of payment of the contract, of the indemnities required to replace lost or damaged goods, and (b) risks are adequately covered. In addition, for the import of goods, bidders shall be asked to quote FCA (named place of dispatch) or CPT (named place of destination)<sup>44</sup> prices in addition to the CIP (place of destination) price specified in paragraph 2.21. The selection of the lowest evaluated bid shall be on the basis of the CIP (place of destination) price, but the Borrower may sign the contract on FCA or CPT terms and make its own arrangements for transportation and/or insurance. Under such circumstances, Bank financing shall be limited to the FCA or CPT cost of the contract.

### **Currency Provisions**

2.28 Bidding documents shall state the currency or currencies in which bidders are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the

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<sup>44</sup> *Incoterms 2010* for free carrier (named place) and for carriage paid to (named place of destination), respectively.

contract price will be paid. The following provisions (paragraphs 2.29–2.33) are intended to (a) ensure that bidders have the opportunity to minimize any exchange risk with regard to the currency of bid and of payment, and hence may offer their best prices; (b) give bidders in countries with weak currencies the option to use a stronger currency and thus provide a firmer basis for their bid price; and (c) ensure fairness and transparency in the evaluation process.

### **Currency of Bid**

2.29 Bidding documents shall state that the bidder may express the bid price in any currency. If the bidder wishes to express the bid price as a sum of amounts in different foreign currencies, they may do so, provided the price includes no more than three foreign currencies. Furthermore, the Borrower may require bidders to state the portion of the bid price representing local costs incurred in the currency<sup>45</sup> of the country of the Borrower.

2.30 In bidding documents for works, the Borrower may require bidders to state the bid price entirely in the local currency, along with the requirements for payments in up to three foreign currencies of their choice for expected inputs from outside the Borrower's country, expressed as a percentage of the bid price, together with the exchange rates used in such calculations.

### **Currency Conversion for Bid Comparison**

2.31 The bid price is the sum of all payments in various currencies required by the bidder. For the purpose of comparing prices, bid prices shall be converted to a single currency selected by the Borrower (local currency or fully convertible foreign currency) and stated in the bidding documents. The Borrower shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance, with such source and date to be specified in the bidding documents, provided that the date shall not be earlier than 4 (four) weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity.

### **Currency of Payment**

2.32 Payment of the contract price shall be made in the currency or currencies in which payment has been requested in the bid of the successful bidder as per paragraph 2.29.

2.33 When the bid price is required to be stated in the local currency but the bidder has requested payment in foreign currencies expressed as a percentage of the bid price, the exchange rates to be used for purposes of payments shall be those specified by the bidder in the bid, so as to ensure that the value of the foreign currency portions of the bid is maintained without any loss or gain.

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<sup>45</sup> Hereafter referred to as "local currency".

### **Terms and Methods of Payment**

2.34 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods, works, and non-consulting services.

- (a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the Supplier has complied with all its obligations under the contract. The Bank normally requires the use of letters of credit so as to assure prompt payment to the Supplier. In major contracts for equipment and plant, provisions shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.
- (b) Contracts for works shall provide, in appropriate cases for mobilization advances, advances on Contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract.

2.35 Any advance payment for mobilization and similar expenses, made upon signature of a contract for goods, works, and non-consulting services, shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other advances to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. The bidding documents shall specify the arrangements for any security required for advance payments.

2.36 Bidding documents shall specify the payment method and terms offered, whether alternative payment methods and terms will be allowed, and, if so, how the terms will affect bid evaluation.

### **Alternative Bids**

2.37 The bidding documents shall clearly indicate when bidders are allowed to submit alternative bids, how alternative bids should be submitted, how bid prices should be offered, and the basis on which alternative bids shall be evaluated.

### **Conditions of Contract**

2.38 The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the services to be provided, the rights and obligations of the Borrower and of the Supplier or Contractor, and the functions and authority of the Engineer, Architect, or Construction Manager, if one is employed by the Borrower, in the supervision and administration of the contract. In addition to the general conditions of contract, any particular conditions for the specific goods, works, and non-consulting services to be procured and the location of the project shall be included. The conditions of contract shall provide a balanced allocation of risks and liabilities.

### **Performance Security and Retention Money**

2.39 Contracts for works and single responsibility contracts shall require security in an amount sufficient to protect the Borrower in case of breach of contract by the Contractor.

This security shall be provided in an appropriate form and amount, as specified by the Borrower in the bidding document.<sup>46</sup> 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

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<sup>46</sup> 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.<sup>47</sup> 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 promptly<sup>48</sup> 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

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<sup>47</sup> 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.

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

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.<sup>49</sup>

### **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.<sup>50</sup>

### **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,<sup>51</sup> 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 goods<sup>52</sup> and EXW prices, plus cost of inland transportation and insurance to the place of destination, for goods manufactured within the Borrower's

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<sup>49</sup> See paragraph 2.44.

<sup>50</sup> See paragraph 2.50 regarding corrections.

<sup>51</sup> See paragraph 2.52.

<sup>52</sup> 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.<sup>53</sup>

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.<sup>54</sup>

2.53 Under works and turnkey contracts, contractors are responsible for all duties, taxes, and other levies,<sup>55</sup> 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 GNP<sup>56</sup> 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.

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<sup>53</sup> 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

<sup>54</sup> 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.

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

<sup>56</sup> 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.<sup>57</sup> 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

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<sup>57</sup> 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 documents<sup>58</sup> 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 Imports<sup>59</sup>**

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.<sup>60</sup>

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<sup>58</sup> 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.

<sup>59</sup> Also see paragraph 3.12.

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.

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<sup>60</sup> 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 appropriate<sup>61</sup> 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 modified<sup>62</sup> as necessary to assure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of these Guidelines.<sup>63</sup> 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.

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<sup>61</sup> 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.

<sup>62</sup> 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.

<sup>63</sup> 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 value<sup>64</sup> 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

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<sup>64</sup> 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.<sup>65</sup> 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.

- (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

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<sup>65</sup> 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.

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,<sup>66</sup> 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;

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<sup>66</sup> 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 agencies<sup>67</sup> 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

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<sup>67</sup> 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.<sup>68</sup>

### **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.<sup>69</sup> 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

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<sup>68</sup> 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.

<sup>69</sup> 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,<sup>70</sup> 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,<sup>71</sup> 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

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<sup>70</sup> BOO: Build, Own, Operate; BOT: Build, Operate, Transfer; BOOT: Build, Own, Operate, Transfer.

<sup>71</sup> 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.

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 Procurement<sup>72</sup>, 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.<sup>73</sup> 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.

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<sup>72</sup> 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.

<sup>73</sup> 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.<sup>74</sup>

### **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 Program<sup>75</sup>.

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<sup>74</sup> 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.

<sup>75</sup> 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.

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

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

**Scheduling of Procurement**

1. The Bank shall review<sup>76</sup> 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 contracts<sup>77</sup> 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

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<sup>76</sup> 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.

<sup>77</sup> 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.

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,

and the recommendation for award made to the Bank; and (iii) the payment invoices or certificates, as well as the certificates for the inspection, delivery, completion, and acceptance of goods, works, and non-consulting services. For contracts awarded on the basis of direct contracting, the documentation shall include the justification for using the method, the technical and financial capacity of the firm, and the signed original of the contract. The Borrower shall furnish such documentation to the Bank upon request for examination by the Bank or by its consultants/auditors.

- (k) The Bank may declare misprocurement for any of the reasons provided in paragraph 1.14 of the Guidelines, including if it determines that the goods, works, or non-consulting services were not procured in accordance with the agreed procedures and methods reflected in the Loan Agreement and further detailed in the Procurement Plan to which the Bank gave its no objection, or that the contract itself is not consistent with such procedures. The Bank shall promptly inform the Borrower of the reasons for such determination.

3. *Modifications of the signed contract.* In the case of contracts subject to prior review, before agreeing to (a) a material extension of the stipulated time for performance of a contract; or (b) any substantial modification of the scope of services or other significant changes to the terms and conditions of the contract; or (c) any variation order or amendment (except in cases of extreme urgency) which, singly or combined with all variation orders or amendments previously issued, increase the original contract amount by more than 15% (fifteen percent); or (d) the proposed termination of the contract, the Borrower shall seek the Bank's no objection. If the Bank determines that the proposal would be inconsistent with the provisions of the Loan Agreement and/or Procurement Plan, it shall promptly inform the Borrower and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to the Bank for its record.

4. *Translations.* If a contract awarded under ICB procedures is subject to prior review and is written in the National Language,<sup>78</sup> the Borrower has the responsibility to furnish to the Bank an accurate translation of the bid evaluation report and the initialed draft contract in the internationally used language specified in the bidding documents (English, French, or Spanish). An accurate translation shall also be furnished to the Bank for any subsequent modifications of such contracts.

#### **Post Review**

5. Procurement Post Reviews (PPRs) are normally carried out by the Bank. The Borrower shall retain all documentation with respect to each contract not governed by paragraph 2 of this Appendix during project implementation and up to two years after the closing date of the Loan Agreement. This documentation would include, but not be limited to, the signed original of the contract and all subsequent amendments or addenda, the bids, the bid evaluation report and the recommendation for award, the payment invoices or certificates, as well as the certificates for inspection, delivery, completion and acceptance of goods, works, and non-consulting services, for examination by the Bank or

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<sup>78</sup> Refer to paragraph 2.15.

by its consultants/auditors. The Borrower shall also furnish such documentation to the Bank upon request. The Bank may declare misprocurement for any of the reasons provided in paragraph 1.14 of the Guidelines, including if it determines that the goods, works, or non-consulting services were not procured in accordance with the agreed procedures and methods reflected in the Loan Agreement and further detailed in the Procurement Plan to which the Bank gave its no objection, or that the contract itself is not consistent with such procedures and methods. The Bank shall promptly inform the Borrower of the reasons for such determination. The Bank may also, depending on risks and the scope of the project (e.g., involving many small value and simple contracts), agree with the Borrower that they appoint independent entities to carry out PPRs, in accordance with terms, conditions, and reporting procedures acceptable to the Bank. In such cases, the Bank will review the reports submitted by the Borrower, and retains its right to directly conduct post reviews during project implementation as may be needed.

#### **Change from Post Review to Prior Review**

6. A contract whose cost estimate was below the Bank's prior review threshold indicated in the Procurement Plan shall fall under prior review if the price of the lowest evaluated bidder exceeds such threshold. All related procurement documentation already processed, including the evaluation report and recommendation for award, shall be submitted to the Bank for its prior review and no objection before the award of contract. When, to the contrary, the price of the selected bidder falls below the prior review threshold, the prior review process shall continue. Under certain circumstances, the Bank may require the Borrower to follow a prior review process for a contract below the Bank's prior review threshold in the case of a complaint it has determined to be of a serious nature. Also, when the procurement method requires change due to higher or lower cost estimates than previously assessed, for example from NCB to ICB or inversely, the Procurement Plan shall be modified by the Borrower and submitted to the Bank for review and no objection.

#### **Publication of the Award of Contract**

7. The Borrower shall publish information on *UNDB online* for all contracts under ICB and LIB, contracts with concessionaires under PPP arrangements and sub-projects under Loans to Financial Intermediary Institutions and Entities, and all direct contracts, except as hereunder, and in the *National press*<sup>79</sup> for all contracts under NCB, including those awarded under Framework Agreements and under Force Account, and small value direct contracts (see footnote 64). Such publication shall be within two weeks of receiving the Bank's no objection to the award recommendation for contracts subject to the Bank's prior review, and within two weeks of the Borrower's award decision for contracts subject to the Bank's post review. Publications shall include the bid, lot numbers, and the following information, as relevant and applicable for each method: (a) the name of each bidder that submitted a bid; (b) bid prices as read out at bid opening; (c) evaluated prices of each bid that was evaluated; (d) the names of bidders whose bids were either rejected as nonresponsive or not meeting qualification criteria, or not evaluated,

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<sup>79</sup> In a national newspaper of wide circulation and/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, in the National Language as defined under paragraph 2.15.

with the reasons thereof; and (e) the name of the winning bidder, the final total contract price, as well as the duration and summary scope of the contract. The Bank will arrange the publication of the awards of contract under prior review on its external website upon receipt from the Borrower of a conformed copy of the signed contract and the performance security if applicable in accordance with paragraph 2(h) above.

**Due Diligence concerning the Bank's Sanctions Policies and Procedures**

8. When conducting the evaluation of bids, the Borrower shall check the eligibility of bidders from the lists of firms and individuals debarred and suspended, pursuant to paragraph 1.16(d) of these Guidelines and/or paragraph 1.23(d) of the Consultants Guidelines, by the Bank that are posted on the Bank's external website. The Borrower shall apply additional due diligence by closely supervising and monitoring any on-going contract (whether under prior or post review) executed by a firm or individual which has been sanctioned by the Bank after such contract was signed. The Borrower shall neither sign any new contracts nor sign an amendment, including any extension of time for completion or a change or variation order, to an on-going contract with a suspended or debarred firm or individual after the effective date of the suspension or debarment without the Bank's prior review and no objection. The Bank will only finance additional expenditures if they were incurred before the completion date of the original contract or the completion date as revised (i) for prior review contracts, in an amendment to which the Bank has given its no objection, and (ii) for post review contracts, in an amendment signed before the effective date of suspension or debarment. The Bank will not finance any new contract, or any amendment or addendum introducing a material modification to any existing contract that was signed with a suspended or debarred firm or individual on or after the effective date of suspension or debarment.

## APPENDIX 2: DOMESTIC PREFERENCES

### Preference for Domestically Manufactured Goods

1. The Borrower may, with the agreement of the Bank, grant a margin of preference in the evaluation of bids under ICB procedures to bids offering certain goods manufactured in the country of the Borrower, when compared to bids offering such goods manufactured elsewhere. In such cases, bidding documents shall clearly indicate any preference to be granted to domestically manufactured goods and the information required to establish the eligibility of a bid for such preference. The nationality of the manufacturer or Supplier is not a condition for such eligibility. The methods and stages set forth hereunder shall be followed in the evaluation and comparison of bids.
2. For comparison, responsive bids shall be classified in one of the following three groups:
  - (a) Group A: bids exclusively offering goods manufactured in the country of the Borrower if the bidder establishes to the satisfaction of the Borrower and the Bank that (i) labor, raw material, and components from within the country of the Borrower will account for 30% (thirty percent) or more of the EXW price of the product offered, and (ii) the production facility in which those goods will be manufactured or assembled has been engaged in manufacturing/assembling such goods at least since the time of bid submission.
  - (b) Group B: all other bids offering goods manufactured in the country of the Borrower.
  - (c) Group C: bids offering goods manufactured abroad that have been already imported or that will be directly imported.
3. The price quoted for goods in bids of Groups A and B shall include all duties and taxes paid or payable on the basic materials or components purchased in the domestic market or imported, but shall exclude the sales and similar taxes on the finished product. The price quoted for goods in bids of Group C shall be on CIP (place of destination), which is exclusive of customs duties and other import taxes already paid or to be paid.
4. In the first step, all evaluated bids in each group shall be compared to determine the lowest bid in each group. Such lowest evaluated bids shall be compared with each other and if, as a result of this comparison, a bid from Group A or Group B is the lowest, it shall be selected for the award.
5. If as a result of the comparison under paragraph 4 above, the lowest evaluated bid is a bid from Group C, all bids from Group C shall be further compared with the lowest evaluated bid from Group A after adding to the evaluated price of goods offered in each bid from Group C, for the purpose of this further comparison only, an amount equal to 15% (fifteen percent) of the respective CIP bid price for goods to be imported and already imported goods. Both prices shall include unconditional discounts and be corrected for arithmetical errors. If the bid from Group A is the lowest, it shall be selected for award. If not, the lowest evaluated bid from Group C shall be selected as per paragraph 4 above.

6. No margin of preference shall apply to turnkey contracts for the supply of a number of discrete items of equipment as well as assembly, installation, and/or construction as defined in paragraph 2.4 of Section II.<sup>80</sup> However, with the Bank's no objection, bids for turnkey contracts may be invited and evaluated on the basis of DDP<sup>81</sup> (named place of destination) prices for goods manufactured abroad.

7. In the case of single responsibility (other than turnkey) contracts for large industrial plants and facilities as defined in paragraph 2.4 of Section II, the margin of preference shall not be applied to the whole package but only to the locally manufactured equipment. Equipment offered from abroad shall be quoted CIP and equipment offered locally shall be quoted EXW. All other components, such as design, construction, local transportation, and insurance to the place of destination, assembly, installation, and supervision, as applicable, shall be quoted separately. Bids will not be classified into Groups A, B, or C. In the comparison of bids, only the CIP price of each bid of the equipment offered from outside the Borrower's country shall be increased by 15% (fifteen percent). No preference shall be applied for any associated or non-consulting services or works included in the package. The bid determined to be the lowest evaluated in accordance with the bid evaluation criteria including domestic preference, if applicable, and applied as above, shall be selected for award.

#### **Preference for Domestic Contractors**

8. For contracts for works to be awarded on the basis of ICB, eligible Borrowers may, with the agreement of the Bank, grant a margin of preference of 7.5% (seven and one-half percent) to domestic contractors,<sup>82</sup> in accordance with, and subject to, the following provisions:

- (a) Contractors applying for such preference shall be asked to provide, as part of the data for qualification,<sup>83</sup> such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Borrower and accepted by the Bank, a particular contractor or group of contractors qualifies for a domestic preference. The bidding documents shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of bids to give effect to such preference.

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<sup>80</sup> This does not refer to the supply of goods with supervision of installation in the same contract which is considered a contract for the supply of goods, and therefore eligible for the application of domestic preference to the goods component.

<sup>81</sup> DDP in *Incoterms 2010* stands for "Delivered Duty Paid" where the seller delivers the goods to the buyer, cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods thereto including, where applicable, any duty for import in the country of destination, and unloading at final destination as part of the turnkey contract. In countries that exempt bidders on imports under contracts financed by the Bank, comparison for bid evaluation purposes shall be made on the basis of non-exemption of duties and taxes on importation of goods manufactured abroad and the bidding documents may indicate that, before contract signature, the purchaser and the winning bidder will identify the amount of taxes payable for importation of the goods offered resulting from that exemption. However, the contract amount to be signed will not include the identified total amount of exempted duties and taxes.

<sup>82</sup> Preference for domestic contractors is applicable only in countries which qualify.

<sup>83</sup> At the prequalification and/or at the bidding stage.

- (b) After bids have been received and reviewed by the Borrower, responsive bids shall be classified into the following groups:
  - (i) Group A: bids offered by domestic contractors eligible for the preference.
  - (ii) Group B: bids offered by other contractors.

9. All evaluated bids in each group shall, as a first evaluation step, be compared to determine the lowest bid, and the lowest evaluated bids in each group shall be further compared with each other. If, as a result of this comparison, a bid from Group A is the lowest, it shall be selected for the award. If a bid from Group B is the lowest, as a second evaluation step, all bids from Group B shall then be further compared with the lowest evaluated bid from Group A. For the purpose of this further comparison only, an amount equal to 7.5% (seven and one-half percent) of the respective bid price corrected for arithmetical errors, including unconditional discounts but excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each bid from Group B. If the bid from Group A is the lowest, it shall be selected for award. If not, the lowest evaluated bid from Group B based on the first evaluation step shall be selected.

## APPENDIX 3: GUIDANCE TO BIDDERS

### Purpose

1. This Appendix provides guidance to potential bidders wishing to participate in Bank-financed procurement.

### Responsibility for Procurement

2. The responsibility for the implementation of the project, and therefore for the payment of goods, works, and non-consulting services under the project, rests solely with the Borrower. The Bank, for its part, is required by its Articles of Agreement to ensure that funds are paid from a Bank loan only as expenditures are incurred. Disbursements of the proceeds of a loan are made only at the Borrower's request. The Borrower submits withdrawal application to the Bank together with required supporting documentation to demonstrate that the funds have been or are being used in accordance with the Loan Agreement and the Procurement Plan.<sup>84</sup> As emphasized in paragraph 1.2 of these Guidelines, the Borrower is legally responsible for the procurement. It invites, receives, and evaluates bids, and awards the contract. The contract is between the Borrower and the Supplier or Contractor. The Bank is not a party to the contract.

### Bank's Role

3. As stated in paragraph 1.13 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 Appendix 1.<sup>85</sup> 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 may declare misprocurement, as described in paragraph 1.14. 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 corrupt or fraudulent practices were engaged in by representatives of the Borrower or of the bidder, the Bank may impose the applicable sanctions set forth in paragraph 1.16 of these Guidelines.

4. The Bank has published SBDs for various types of procurement. As stated in paragraphs 2.10 and 2.12 of the Guidelines, it is mandatory for the Borrower to use these documents, with minimum changes to address country- and project-specific issues. The prequalification and bidding documents are finalized and issued by the Borrower.

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<sup>84</sup> For additional information about the Bank's disbursement policies and procedures see *The World Bank Disbursement Guidelines for Projects and Disbursement Handbook for World Bank Clients* (available on the Bank's website at [www.worldbank.org/projects](http://www.worldbank.org/projects)).

<sup>85</sup> Except in the context of procurement conducted under the UCS Piloting Program described in paragraph 3.20, where all contracts will be subject to the Bank's post review.

### **Information on Bidding**

5. Information on bidding opportunities under ICB may be obtained from the General Procurement Notice and the Specific Procurement Notices as described in paragraphs 2.7 and 2.8 of these Guidelines. General guidance on participation, as well as advance information on business opportunities in upcoming projects, may be obtained from the World Bank website<sup>86</sup> as well as from the InfoShop<sup>87</sup>. PADs are also available from the InfoShop and on the Bank's website upon approval of the loan.

### **Bidder's Role**

6. Once a bidder receives the prequalification or bidding document, the bidder should 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 should 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 should seek clarification from the Borrower, in writing, within the time period specified in the bidding documents for seeking clarifications.

7. 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 should be similarly sought from the Borrower.

8. In this connection, it should be emphasized that the specific bidding documents issued by the Borrower govern each procurement process, as stated in paragraph 1.1 of these Guidelines. If a bidder feels that any of the provisions in the documents are inconsistent with the Guidelines, it should also raise this with the Borrower.

9. It is the responsibility of the bidder to raise any issue of ambiguity, contradiction, omission, etc., prior to the submission of its bid, to ensure 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 non-critical requirement or propose an alternative solution, it should strictly follow instructions on these aspects given in the Borrower's bidding documents in particular provisions dealing with deviations. Alternative solutions should be offered only when authorized in the bidding documents. Unless the bidding document clearly identified mandatory and non-mandatory technical and commercial requirements, the bidder assumes full responsibility that any deviations or conditions in its bid may be deemed material and result in the rejection of its bid. Once bids are received and publicly opened, bidders will not be required or permitted to change the price or substance of a bid.

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<sup>86</sup> [www.worldbank.org](http://www.worldbank.org).

<sup>87</sup> The InfoShop address is the World Bank address at 1818 H Street, N.W., Washington, D.C. 20433, U.S.A. The Project Database is available at [www.worldbank.org/projects](http://www.worldbank.org/projects).

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## **Confidentiality**

10. As stated in paragraph 2.47 of these Guidelines, the process of bid evaluation shall be confidential until the publication of the award of contract. This is essential to enable the Borrower and Bank reviewers 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 should do so in writing.

## **Action by the Bank**

11. Bidders are free to send copies of their communications on issues and questions with the Borrower to the Bank or to write to the Bank directly, when Borrowers do not respond promptly, or the communication is a complaint against the Borrower. All such communications should be addressed to the Task Team Leader for the project, with a copy to the Country Director for the borrowing country and to the Regional Procurement Manager. Names of Task Team Leaders are available in the PAD.

12. Communications received by the Bank from potential bidders, prior to the closing date for submission of the bids, will, if appropriate, be referred to the Borrower with the Bank's comments and advice for action or response.

13. Communication, including complaints, received from bidders after the opening of the bids, will be handled as follows. In the case of contracts not subject to prior review by the Bank, the communication or its relevant extracts, as deemed appropriate, will be sent to the Borrower for due consideration and appropriate action. The Borrower shall provide to the Bank all relevant documentation for the Bank's review and comments. In the cases of contracts subject to the prior review process, the communication will be examined by the Bank, in consultation with the Borrower. If additional data is required to complete this process, these will be obtained from the Borrower. If additional information or clarification is required from the bidder, the Bank will ask the Borrower to obtain it and comment or incorporate it, as appropriate, in the evaluation report. The Bank's review will not be completed until the communication is fully examined and considered. Communications received from bidders involving allegations of fraud and corruption<sup>88</sup> may warrant a different treatment due to reasons of confidentiality. In such cases, the Bank shall apply due care and discretion in sharing with the Borrower information deemed appropriate.

14. Except for acknowledgment, the Bank will not enter into discussion or correspondence with any bidder during the evaluation and review process of the procurement, until the award of contract is published.

## **Debriefing by the Bank**

15. As stated in paragraph 2.65, if, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Borrower. If the bidder is not satisfied with the written explanation given and wishes

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<sup>88</sup> Reporting on suspected fraud and corruption can be done directly to the Bank Integrity Vice Presidency (INT) by email: [investigations\\_hotline@worldbank.org](mailto:investigations_hotline@worldbank.org); through the World Bank website; through the 24-hour hotline operated by a third party: toll free +1-800-831-0463, collect calls +1-704-556-7046 (interpreters are available, anonymous calls accepted); or by contacting INT at the Bank's Headquarter office in Washington D.C.: +1-202-458-7677.

to seek a meeting with the Bank, it may do so by addressing the Regional Procurement Manager for the Borrowing country, who will arrange a meeting at the appropriate level and with the relevant staff. The purpose of such meeting is only to discuss the bidder's bid, and neither to reverse the Bank's position that has been conveyed to the Borrower nor to discuss the bids of competitors.



THE WORLD BANK

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DISBURSEMENT  
GUIDELINES  
FOR PROJECTS

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MAY 2006

**WORLD BANK**  
**DISBURSEMENT GUIDELINES**  
**FOR PROJECTS**



**LOAN DEPARTMENT**  
**May 1, 2006**

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The International Bank for Reconstruction and Development/  
THE WORLD BANK  
1818 H Street, N.W.  
Washington, D.C. 20433, U.S.A.

First Printing: July 2006

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# World Bank Disbursement Guidelines for Projects

May 1, 2006

## 1. Purpose

1.1 The purpose of these Guidelines is to set out the Bank's procedures for disbursement of loan proceeds for projects.<sup>1</sup> Specifically, the Guidelines explain (a) the different methods used by the Bank to disburse loan proceeds, (b) the requirements for withdrawal from the Loan Account, (c) the types of supporting documentation that the borrower may be required to provide to demonstrate the use of loan proceeds for eligible expenditures, (d) the criteria for establishing designated accounts, (e) the terms and conditions applicable to advances, (f) the types of actions that the Bank may take if it determines that loan proceeds are not needed or have been used for ineligible purposes, and (g) the consequence of refunds.

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<sup>1</sup> "Bank" includes IBRD and IDA; "loan" includes credit and grant; "borrower" includes the borrower of an IBRD loan, IDA credit, or Project Preparation Facility advance and the recipient of a grant; and "Loan Agreement" includes the agreement with the Bank providing for a credit, grant, or advance. These Disbursement Guidelines apply to all loans, credits, advances under the Project Preparation Facility, and grants financed under the Institutional Development Fund and Global Environment Facility unless otherwise provided in Operational Policy 10.20, *Global Environment Facility Operations* (forthcoming). These Guidelines also apply to other recipient-executed grants financed from trust funds unless, exceptionally, the terms of the agreement with the donor make provision for different requirements. They do not apply to Development Policy loans.



## 2. Disbursement Methods

- 2.1** The Bank establishes disbursement arrangements for an operation in consultation with the borrower and taking into consideration, *inter alia*, an assessment of the borrower's financial management and procurement arrangements, the procurement plan and cash flow needs of the operation, and its disbursement experience with the borrower.
- 2.2** The Bank disburses proceeds from the Loan Account established for each loan, to or on the order of the borrower, using one or more of the disbursement methods set forth below, as determined by the Bank.
- (a) **Reimbursement:** The Bank may reimburse the borrower for expenditures eligible for financing pursuant to the Loan Agreement ("eligible expenditures") that the borrower has prefinanced from its own resources.
  - (b) **Advance:** The Bank may advance loan proceeds into a designated account of the borrower to finance eligible expenditures as they are incurred and for which supporting documents will be provided at a later date (see section 5, "Designated Accounts").
  - (c) **Direct Payment:** The Bank may make payments, at the borrower's request, directly to a third party (e.g., supplier, contractor, consultant) for eligible expenditures.
  - (d) **Special Commitment:** The Bank may pay amounts to a third party for eligible expenditures under special commitments entered into, in writing, at the borrower's request and on terms and conditions agreed between the Bank and the borrower.

## 3. Withdrawal of Loan Proceeds

- 3.1 Authorized Signatures.** Before loan proceeds may be withdrawn or committed from the Loan Account, the au-

thorized representative of the borrower (as designated in the Loan Agreement) must furnish to the Bank (a) the name(s) of the official(s) authorized to sign applications for withdrawal and applications for a special commitment (collectively, “Applications”), and (b) the authenticated specimen signature(s) of the official(s). The borrower must indicate clearly if more than one signature is required on Applications and must notify the Bank promptly of any changes in signature authority.

**3.2 Applications.** Applications must be provided to the Bank in such form and include such information as the Bank may reasonably request. Application forms are available online from the Client Connection Web site at <http://clientconnection.worldbank.org> or from the Bank upon request.

**3.3** For withdrawal from the Loan Account for advances, the borrower should provide an original signed application for withdrawal. For withdrawal from the Loan Account for reimbursements and direct payments and for reporting on the use of advances, the borrower should provide an original signed application for withdrawal together with one copy of supporting documents (see section 4, “Supporting Documentation Requirements”). For a special commitment from the Loan Account, the borrower should provide an original signed application for a special commitment together with one copy of the letter of credit. The Bank reserves the right not to accept or review duplicate copies of Applications and supporting documents and may at its discretion return or destroy the duplicates.

**3.4 Electronic Delivery.** The Bank may authorize the borrower to use electronic means, in a manner and on terms and conditions specified by the Bank, to deliver Applications and supporting documentation to the Bank. Applications and supporting documentation delivered in accordance with this subsection will be deemed to have been provided to the Bank for the purposes of satisfying the requirements of subsections 3.2 and 3.3 of these Guidelines.



- 3.5 *Minimum Value of Applications.*** The Bank establishes a minimum value for Applications for reimbursement, direct payment, and special commitment. The Bank reserves the right not to accept Applications that are below such minimum value.
- 3.6 *Loan Disbursing Period.*** The Bank processes Applications only after the Loan Agreement has been declared effective in accordance with the terms of the Loan Agreement. The expenditures for which the Applications are made must be:
- (a) *paid* for (i) on or after the date of the Loan Agreement, or (ii) in the case of operations that permit retroactive financing, on or after the earlier date specified in the Loan Agreement for that purpose; and
  - (b) *incurred* on or before the closing date specified or referred to in the Loan Agreement (“Closing Date”), except as otherwise specifically agreed with the Bank.
- 3.7** The loan disbursing period ends on the final date established by the Bank for receipt by the Bank of applications for withdrawal and supporting documentation (the “Disbursement Deadline Date”). The Disbursement Deadline Date may be the same as the Closing Date, or up to four months after the Closing Date. Normally, to support orderly project completion and closure of the Loan Account, the Bank does not accept applications for withdrawal or supporting documentation received after the Disbursement Deadline Date. The borrower should promptly inform the Bank of any expected implementation delays or exceptional administrative issues before these dates. The Bank notifies the borrower of any exception that the Bank may make to the Disbursement Deadline Date.
- 3.8 *Disbursement Conditions.*** If the Loan Agreement contains a disbursement condition for a specific expenditure category, the Bank will disburse loan proceeds for that category only after the disbursement condition has been fulfilled and the Bank has notified the borrower to this effect.

## 4. Supporting Documentation Requirements

- 4.1 The borrower provides supporting documentation to the Bank to show that loan proceeds have been or are being used to finance eligible expenditures.
- 4.2 For special commitments, the commercial bank provides its confirmation directly to the Bank that conditions for release of payments committed for withdrawal have been met.
- 4.3 *Types of Supporting Documentation.* The Bank requires either copies of the original documents evidencing eligible expenditures (“Records”) or summary reports of expenditure (“Summary Reports”) in such form and substance as the Bank may specify. Records include such documents as invoices and receipts. A Summary Report may be either (a) the interim un-audited financial report required under the Loan Agreement (“Interim Financial Report”) or (b) a statement of expenditure summarizing eligible expenditures paid during a stated period (“Statement of Expenditure”). In all cases, the borrower is responsible for retaining the original documents evidencing eligible expenditures and making them available for audit or inspection.
- 4.4 The Bank determines the types of supporting documentation that the borrower should provide, taking into consideration the disbursement method used. The supporting documentation may be the following:
- (a) *For applications for reimbursement:* (i) Interim Financial Reports, (ii) Statements of Expenditure, (iii) Records, or (iv) Records required by the Bank for specific expenditures and Statements of Expenditure for all other expenditures;
  - (b) *For reporting on the use of advances:* (i) Interim Financial Reports, (ii) Statements of Expenditure, (iii) Records, or (iv) Records required by the Bank for specific expenditures and Statements of Expenditure for all other expenditures;



- (c) *For applications for direct payments:* Records; and
- (d) Any other supporting documentation that the Bank may request by notice to the borrower.

**4.5 *Failure to Provide Audited Financial Statements.*** If the borrower fails to provide any of the audited Financial Statements required in accordance with, and within the period of time specified in, the Loan Agreement, the Bank may at its discretion decide not to accept applications for withdrawal supported by Summary Reports, even if such reports are accompanied by Records.

## **5. Designated Accounts**

- 5.1** The borrower may open one or more designated accounts into which the Bank may, at the borrower's request, deposit amounts withdrawn from the Loan Account for the purpose of paying for eligible expenditures as they are incurred ("Designated Account"). Before the Bank authorizes establishment of a Designated Account, the borrower must have adequate administrative capability, internal controls, and accounting and auditing procedures to ensure effective use of the Designated Account.
- 5.2** The Bank may decide not to permit the use of Designated Accounts in new projects if the borrower has failed to refund undocumented advances in the Designated Account of any other loan to, or guaranteed by, the borrower within two months after the Disbursement Deadline Date for such loan.
- 5.3 *Type of Designated Account.*** A Designated Account may be established in one of the two ways set out below, as appropriate for the operation concerned, as determined and notified by the Bank.

- (a) *Segregated Account*: this is an account of the borrower into which only proceeds of the loan may be deposited; or
- (b) *Pooled Account*: this is an account of the borrower into which the loan proceeds and proceeds of other financing for the operation (e.g., borrower resources and/or financing by other development partners) may be deposited.

**5.4 *Currency of the Designated Account.*** Designated Accounts must be in a currency acceptable to the Bank. In countries that have a freely convertible currency, Designated Accounts may be held in the currency of the borrower or any freely convertible currency. The Bank may also agree to local currency Designated Accounts when, *inter alia*, the country's currency (even if not freely convertible) is stable and the expenditures to be financed are primarily in local currency. The borrower bears all risks associated with foreign exchange fluctuations between (a) the currency of denomination of the loan and that of the borrower's Designated Account, and (b) the currency of denomination of the borrower's Designated Account and the currency or currencies of project expenditures.

**5.5 *Financial Institution.*** Designated Accounts must be opened and maintained in a financial institution acceptable to the Bank on terms and conditions acceptable to the Bank. To be acceptable to the Bank, the financial institution proposed by the borrower should generally meet all the following requirements:

- (a) be financially sound;
- (b) be authorized to maintain the Designated Account in the currency agreed between the Bank and the borrower;
- (c) be audited regularly, and receive satisfactory audit reports;



- (d) be able to execute a large number of transactions promptly;
- (e) be able to perform a wide range of banking services satisfactorily;
- (f) be able to provide a detailed statement of the Designated Account;
- (g) be part of a satisfactory correspondent banking network; and
- (h) charge reasonable fees for its services.

**5.6** The Bank reserves the right not to accept a financial institution for the opening and/or maintenance of a Designated Account if such institution has asserted or asserts a claim to set off, seize, or attach the proceeds of any Bank loan on deposit in a Designated Account maintained by it.

## **6. Terms and Conditions Applicable to Advances**

**6.1 *Ceiling.*** The Bank notifies the borrower of the maximum amount of loan proceeds that may be on deposit in a Designated Account (the "Ceiling"). The Bank, at its discretion, may establish the Ceiling as either (a) a fixed amount, or (b) an amount that is adjusted from time to time during project implementation based on periodic forecasts of project cash flow needs.

**6.2 *Applications for Advances.*** The borrower may apply for an advance in an amount up to the Ceiling less the aggregate amount of those advances previously received by the borrower for which the borrower has not yet provided supporting documentation. Normally, to support orderly closure of the Loan Account, the Bank does not advance loan proceeds into the Designated Account after the Closing Date.

**6.3 *Frequency of Reporting Eligible Expenditures Paid from the Designated Account.*** The borrower reports on the use of loan proceeds advanced to the Designated Account

at intervals specified by the Bank by notice to the borrower (“Reporting Period”). The borrower should ensure that all amounts deposited in the Designated Account are accounted for and their use reported prior to the Disbursement Deadline Date. After this date, the borrower must refund to the Bank any advances still unaccounted for or remaining in the Designated Account.

**6.4 *Withholding Advances.*** The Bank is not required to make any deposit into the Designated Account if:

- (a) The Bank determines that payment of the deposit would result in exceeding the Ceiling (see subsection 6.2, “Applications for Advances”);
- (b) The Bank is not satisfied that the borrower’s planned project expenditures justify the deposit. The Bank may, by notice to the borrower, adjust the amount it deposits or withhold further deposits into the Designated Account until it is satisfied that the financial needs of the project warrant further deposits;
- (c) The borrower fails to take the action required pursuant to the determinations made by the Bank under subsections 7.1 and 7.2 of these Guidelines;
- (d) The borrower fails to provide any of the audited Financial Statements required in accordance with, and within the period of time specified in, the Loan Agreement;
- (e) The Bank determines that all further withdrawals of loan proceeds should be made by the borrower directly from the Loan Account; or
- (f) The Bank has notified the borrower of its intention to suspend in whole or in part the borrower’s right to make withdrawals from the Loan Account.

**6.5 *Excess Advances.*** If at any time the Bank determines that any amount deposited in the Designated Account will not be required to cover further payments for eligible expenditures (“Excess Amount”), it may, at its discretion, require the borrower to take one of the two actions listed below. Upon



notification by the Bank, the borrower must promptly take the action requested:

- (a) Provide evidence satisfactory to the Bank within a period specified by the Bank that the Excess Amount will be used to pay for eligible expenditures. If the evidence is not furnished within the time period specified, the borrower must promptly refund the Excess Amount to the Bank; or
- (b) Refund the Excess Amount promptly.

## **7. Ineligible Expenditures**

**7.1 *Ineligible Expenditures Generally.*** If the Bank determines that any amount of the loan was used to pay for an expenditure that is not eligible pursuant to the Loan Agreement (“ineligible expenditure”), the Bank may, at its discretion, require the borrower to take one of the two actions listed below. Upon notification by the Bank, the borrower must promptly take the action requested:

- (a) Refund an equivalent amount to the Bank; or
- (b) Exceptionally, provide substitute documentation evidencing other eligible expenditures.

**7.2 *Ineligible Expenditures Paid from the Designated Account.*** If the Bank determines that any payment out of the Designated Account was not justified by the evidence furnished to the Bank or was made for an ineligible expenditure, the Bank may, at its discretion, require the borrower to take one of the actions listed below. Upon notification by the Bank, the borrower must promptly take the action requested:

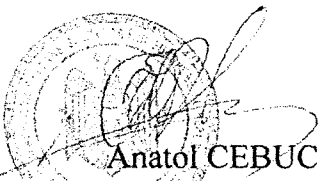
- (a) Provide the additional evidence requested by the Bank;
- (b) Deposit an equivalent amount into the Designated Account;

- (c) Refund an equivalent amount to the Bank; or
- (d) Exceptionally, provide substitute documentation evidencing other eligible expenditures.

## **8. Refunds**

- 8.1 *Borrower Decision to Refund.*** The borrower may, upon notice to the Bank, refund all or any amount of the loan on deposit in the Designated Account to the Bank for credit to the Loan Account.
- 8.2 *Consequence of Refunds.*** The Bank shall determine whether refunds made to the Bank in accordance with sections 6 and 7 and subsection 8.1 of these Disbursement Guidelines will be credited to the Loan Account for subsequent withdrawal or for cancellation. Borrowers should be aware that refunds of loan proceeds may result in swap termination fees and/or unwinding costs for amounts for which the interest rate basis or currency has been converted or hedged.
- 8.3 *Other Obligations Unaffected by Refunds.*** Refunds of amounts of the loan do not affect any remedies of the Bank under the Loan Agreement.

Prin prezenta confirm că textul alăturat este copia autentică de pe traducerea oficială a Acordului de finanțare (a doua finanțare adițională) dintre Republica Moldova și Asociația Internațională pentru Dezvoltare în vederea realizării Proiectului „Agricultura Competitivă” (Chișinău, 8 iulie 2016), originalul fiind depozitat la Arhiva Tratatelor a Ministerului Afacerilor Externe și Integrării Europene.

  
Anatol CEBUC,  
Șef al Direcției Generale Drept  
Internațional a Ministerului Afacerilor  
Externe și Integrării Europene al  
Republicii Moldova