

GUIDELINES FOR PROCUREMENT UNDER UNTIED LOANS BY JAPAN BANK FOR
INTERNATIONAL COOPERATION

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I . General Considerations

1.1 Introduction

- a. The proceeds of untied loans for projects extended by Japan Bank for International Cooperation (such loans subsequently referred to as “loans” and Japan Bank for International Cooperation, as “JBIC”) under Item (4), Article 11, of the Japan Bank for International Cooperation Act, shall be with due attention to economy, efficiency, fairness in international competition in accordance, in principle, with the procurement procedures set out in these Guidelines. The procedures to use loans will be stipulated in other documents such as a loan agreement and its attachment between JBIC and the borrower.
- b. As these Guidelines indicate only general concept of procurement, the procedures including actual rights and obligations of the borrower and bidders in individual procurement shall be stipulated in its bidding documents prepare by the borrower. The borrower shall be responsible for its procurement procedure as well as its results.
- c. Wherever possible the borrower shall obtain goods or services through International Competitive Bidding (ICB). Article II of these Guidelines provides such procurement procedures.
- d. Where the borrower does not effect the procurement directly, the borrower shall make such arrangements as necessary to ensure that the purchaser complies with these Guidelines.
- e. Retroactive financing, which covers a portion of signed contracts prior to conclusion of loan agreement between JBIC and the borrower, may be available as far as the

procurement procedures of that portion were not in conflict with these Guidelines.

f. Where a contract contains expenditures for goods or services which have not been procured in accordance with the agreed procedures, this may be followed by rebidding or cancellation of loan to such a contract.

1.2 Eligibility

All countries and areas are eligible sources for the supply of goods and services financed out of the proceeds of the loan. (eligible source countries).

1.3 Procurement in “Two-Step Loan” (Credit Line Type)

Where the loan provides funds to a financial intermediary (borrower), to be re-lent to sub-borrowers for the financing of sub-projects, the procurement is usually undertaken by the respective sub-borrowers in accordance with established commercial practices. However, even in these situations, international competitive bidding may be recommended for the purchase of large single items or in cases where large quantities of like goods can be grouped together for bulk purchasing. In any cases, such a financial intermediary has responsibility for supervising appropriate methods of procurement.

1.4 References to JBIC

References to JBIC in bidding documents shall be made in the following manner: “(name of borrower) has received a loan from JBIC (Note: in case of co-financing with Japanese commercial banks, “and a number of Japanese commercial banks” to be added) equivalent to (loan amount) toward the cost of (object of financing), and it is intended that the proceeds of this loan will be applied to payments under the contract (contracts) for which this invitation to bid is issued. Payment by JBIC (see note above) will be made only in accordance with the items and conditions of Loan Agreement concluded on (date) between JBIC (see note above) and (name of borrower).”

II . Procedures for International Competitive Bidding

2.1 Size of Contracts

In order to foster widespread competition, individual contracts for which bids are invited shall, whenever feasible, be of a size large enough to attract bids on an international basis. On the other hand, if it is technically and administratively possible to divide a project into contracts of a specialized character and such division is likely to be advantageous to the borrower and to allow broader international competitive bidding, the project shall be so divided. Single contracts for engineering, equipment and construction (commonly known as “Turn-key contracts”) may be used if they offer overall advantages to the borrower country within technical and economic

considerations.

2.2 General Conditions of Contract

Contracts shall contain general conditions which shall cover, wherever appropriate, definitions, the contractor's general obligations, payment terms, provisions for performance bonds and guarantees, indemnities and insurance, penalties and bonus, force majeure, and so forth. These provisions shall be made in accordance with international custom and practice.

2.3 Advertising

Invitations to prequalify or to bid shall be advertised in at least one newspaper of general circulation in the recipient country. Copies of such invitations, or the advertisement thereof, shall be also transmitted to local representatives, such as embassies, of eligible countries that are potential suppliers of the goods and services required. Publication of the invitations in the United Nation's *Development Business* is also encouraged. For large and important contracts, it is recommended that advertisements shall be placed in well-known technical magazines and trade publications of wide international circulation. Copies of those invitations or advertisement shall be sent to JBIC as well.

2.4 Prequalification of Bidders

If prequalification is used, it shall be based entirely upon ability to perform satisfactorily, taking into account (i) the experience of the firm on similar work, (ii) its capabilities with respect to personnel, equipment and plant, and (iii) its financial position and integrity. Advertisement of the prequalification procedure shall be carried out in accordance with the procedure described in paragraph 2.3 above. Abbreviated specifications shall be made available to contractors desiring to be considered for qualification. When prequalification is employed, all firms which are found to be qualified shall be permitted to bid.

2.5 Languages

Bidding documents and contracts shall be prepared in English or in other languages accepted by JBIC and shall provide that the text of the documents in English or in other languages accepted by JBIC is authoritative when the documents are also prepared in the language other than the above.

2.6 Clarity of Bidding Documents

Bidding documents shall set forth as clearly and precisely as possible the work to be accomplished and the equipment and services to be supplied. Drawings shall be consistent with the text of the specifications; where they are not, the text shall govern. The bidding documents shall identify the basis for evaluations and comparison of bids

which will be taken into account in evaluating and comparing bids. The bidding documents shall be so worded as to permit and encourage ICB.

Any additional information, clarification or correction of error and alterations of specifications and invitations to bid shall be communicated promptly to those who requested the original tender documents.

2.7 Standards

National standards to which equipment or materials must comply shall, in principle, not be cited; if, however, they are cited, the specifications shall state that goods meeting internationally accepted standards and complying with the performance requirements of the specifications with also be accepted.

2.8 Use of Brand Name and Phrase “or equal”

Equipment specifications shall be based on performance capability. In particular descriptions contained in specifications shall not prescribe brand names, catalogue numbers, processes, or types of equipment of a specific manufacturer unless it has been determined that this is necessary to include certain essential features. In the latter case, the reference shall be followed by the words “or equal” and the specifications shall permit offers of alternative equipment, articles or materials with have similar characteristics and provide equal performance and quality to those specified.

2.9 Limits on Disbursements

Bidding documents shall state that disbursements from the proceeds of JBIC loans will be limited to financing goods and services provided from eligible source countries.

2.10 Currency

a. Currency used for Payments

Cost of goods and services procured under the loans shall be expressed and payable in the national currency of the bidder or a currency widely used in international trade. However, any portion spent in the borrower’s country may be stated in such a country’s currency.

The tender documents shall accordingly make provision of payment in conformity with above requirement.

b. Indication of Currencies

Whenever expenditures in both local currency and foreign currency are involved, the tender document shall require that the amounts of these expenditures be shown separately.

c. Rate of Exchange

Under contracts requiring expenditure in more than one currency or in cases where it is expected that bidders from several countries will submit bid expressed, in part or in whole, in their national currencies, it will be necessary that, for the purpose of comparison of bids, all currencies be converted into a single currency at a specified rate (or rates) of exchange. Such rates shall be fixed as of a reasonable date prior to the date fixed for the opening of the bids.

2.11 Bid Bonds or Guarantees

Bidders shall be required to submit bid bonds or bidding guarantees. But those shall not be set so high as to discourage bidders. Such securities shall be released to unsuccessful bidders once it is determined that they will not be awarded a contract.

2.12 Settlement of Disputes

The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration may have practical advantages over other methods for the settlement of disputes. Borrowers shall, therefore, consider providing for this type of arbitration in contracts for the procurement of goods and works. JBIC shall not be named arbitrator or be asked to name an arbitrator.

2.13 Time Interval between Invitation and Submission of Bids

The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than 45 days from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for international bidding. Where large works or complex items of equipment are involved, this period shall generally be not less than 90 days to enable prospective bidders to conduct investigations before submitting their bids.

2.14 Bid Opening Procedures

The time for the bid opening shall be the same as for the latest delivery of bids or promptly thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. The borrower shall open all bids at the stipulated time. Bids shall be opened in public; i.e., bidders or their representatives shall be allowed to be present. The name of the bidder and total amount of each bid, and those of any alternative bids of they have been requested or permitted, shall be read aloud and recorded when opened. Bids received after the time stipulated shall not be considered.

2.15 Clarifications or Alterations of Bids

No bidder shall be permitted to alter his bid after the tender closing date. Only

clarifications not changing the substance of the bid may be made. The borrower shall not ask any bidder to change the substance of his bid.

2.16 Confidentiality of Procedures

Except as may be required by law, information relating to the examination, clarification and evaluation of bids and recommendations concerning awards shall not be communicated after the public opening of bids to any persons other than JBIC, the borrower, the purchaser, the consultant or any other persons who are officially concerned with the procedures before the announcement of the award of a contract to the successful bidder.

2.17 Examination of Bids

Following the opening, it shall be ascertained whether material errors in computation have been made in the bids, whether the bids are fully responsive to the terms of the specifications, whether the required guarantees and sureties have been provided, whether documents have been properly signed and whether the bids are otherwise generally in order. If a bid does not substantially conform to the specifications or is not otherwise substantially responsive to the invitation, it shall be rejected.

2.18 Evaluation of Bids

Bid evaluations shall be consistent with the terms and conditions set forth in the bid invitation and specifications and any modifications thereof prior to the closing dates for tender submission. For the purpose of determining the lowest evaluated bid, factors other than price, such as the time of completion of construction or other work, the efficiency and reliability of the equipment, the time of its delivery and the availability of service and spare parts, shall also be taken into consideration and shall, to the largest possible extent, be expressed in monetary terms.

2.19 Rejection of Bids

Bidding documents may provide for the rejection by the purchaser of all bids where the bids do not meet the intent of the specifications, where there is evidence of lack of competition, or when the low bids exceed the cost estimates by an amount sufficient to justify such action. In such cases the borrower may enter into negotiations with one or more of the apparent low bidders to ascertain the causes for such events and the reasons for the difference between the low bid and the cost estimates. Negotiated contracts reflecting changes in the specifications, leading to economies in the cost of the project, may be acceptable, provided the changes do not alter substantially the nature of the project. Where changes are substantial, rebidding may be appropriate.

2.20 Post qualifications of Bidders

If bidders have not been prequalified, the borrower shall determine whether the bidder whose bid has been evaluated the lowest has the capability and financial responsibility to carry out the contract concerned.

2.21 Awards of Contract

The award of a contract shall be made to the bidder whose bid has been determined to be the lowest evaluated bid (taking into account the factors mentioned in paragraph 2.18).

III . Procurement Methods other than ICB

There are circumstances where international competitive bidding would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate. JBIC may consider those other methods acceptable such as in the following cases.

3.1 Limited International Bidding (LIB)

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

3.2 Local Competitive Bidding (LCB)

Competitive bidding advertised locally and in accordance with local procedures may be the most efficient and economical way of procuring goods or works which, by their nature or scope, are unlikely to attract foreign competition. LCB may be the preferred method of procurement where foreign bidders are not expected to be interested because (i) the contract values are small; (ii) works are scattered geographically or spread over time; (iii) works are labor intensive; or (iv) the goods or works are available locally at prices below the international market. LCB procedures may also be used where the advantages of international competitive bidding are clearly outweighed by the administrative or financial burden involved.

3.3 International and Local Shopping

Shopping is a procurement method based on comparing price quotations obtained from several foreign or local suppliers, usually at least three, to ensure competitive prices. It requires no formal bidding documents, and is an appropriate

method for procuring readily available off-the-shelf goods or standard specification commodities that are small in value and, in some cases, small simple works.

3.4 Direct Contracting

Direct contracting without competition may be an appropriate method under the following circumstances:

- a. An existing contract for goods or services, may be extended for the construction or provision of additional works or goods of a similar nature. In such cases it shall be proved 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 having another make of equipment shall have been denied;
- c. The required equipment is proprietary and obtainable only from one source;
- d. The contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of his guarantee of performance;
- e. In certain cases, the need for early delivery of particular goods may justify direct contracting in order to avoid costly delays, although shopping is usually preferable to obtain the best price; and
- f. A negotiated civil works contract may be acceptable in certain circumstances where competitive bidding procedures, including rebidding have failed to produce a contractor able and willing to carry out the required works at a reasonable price.

3.5 Force Account

Force Account, i.e., Construction by the use of the borrower's own personnel and equipment, may be the only practical method for constructing some kinds of works. The use of force account may be justified where:

- a. quantities of work involved cannot be defined in advance;
- b. works are small and scattered or in remote locations where mobilization costs for contractors would be unreasonably high;
- c. work must be carried out without disrupting ongoing operations;
- d. the risk of unavoidable work interruption are better borne by the borrower than by a contractor; or
- e. no contractor is interested in carrying out the works.

IV . Guidelines for the Use of Consultants

4.1 In cases where it is desirable to make use of specialized consultants in view of the nature of the project to be financed, the borrower will, at his own responsibility, enter into a consulting service contract with consultants.

4.2 Consultants to be employed in relation to a project financed under the loans shall be independent in the sense that their advice and the designs, specifications and tender documents prepared by them shall be free of national, commercial or industrial bias.

Consultants who are associated with contracting or manufacturing firms shall be used only if they disqualify themselves and their associates from future bidding on any part of the project.

4.3 Invitations to submit proposals shall be sent to at least three firms in at least two eligible source countries. The borrower shall analyze proposals received and choose a firm as most suitable by evaluating the competence and experience of the firm and the personnel to be assigned, the quality of the proposal, the client/consultant relationship, and financial terms in some cases.

V . Grievances

The borrower shall make provision for the hearing and investigation of complaints arising in connection with the issuance of tenders, the submission of bids and the award of contracts. In case of purchases conducted under the procedures set out in these guidelines, substantive complaints regarding restrictive commodity specification or other restrictive terms of the invitation, made prior to the bid closing date, shall be resolved before the opening of bids. If necessary, the bid closing date shall be postponed for an appropriate period.

VI . Misprocurement

It is JBIC's policy to require that bidders and contractors, as well as borrowers, under contracts funded by JBIC, observe the highest standard of ethics during the procurement and execution of such contracts.

In case the borrower or the contractor under contracts funded by JBIC shall be charged with or prosecuted for a criminal offence to:

- (a) commit or attempt or conspire to commit, a bribery;
- (b) aid, abet or authorize a bribery by any other person; or
- (c) request, receive, accept, or attempt to request, receive or accept any undue pecuniary or other advantage offered, given or promised by any person as a bribery,