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I. GENERAL

- **1.1 Purposes and objectives**

This document sets forth and explains the basic procurement policies and procedures of the Inter-American Development Bank (the "Bank"). It is intended to assist Borrowers, their contractors and associated suppliers when dealing with procurement related to Bank loans. These rules apply to the procurement of goods, works, and [related services.1](#) Services of consultants are covered in the Bank's booklet "Business Opportunities for Consulting Firms."

- **1.2 Contents**

This booklet contains seven chapters. Chapter One serves as an introduction and emphasizes the importance of the procurement process in the execution of Bank [projects.2](#) Chapter Two covers the guidelines that apply to all methods of procurement. Chapter Three describes the most important method of procurement, international competitive bidding. Chapter Four covers other methods of procurement that the Bank allows in special circumstances. Procurement in the private sector is discussed in Chapter Five. Chapter Six concerns the Bank's Procurement Committee and the procedures by which contractors may present protests. A concluding note provides sources of information on IDB activities. The final Chapter explains the system for announcing Bank loans and business opportunities pertaining to those loans. This booklet also contains an Annex that sets forth a glossary of common terms used in procurement matters.

- **1.3 Importance of procurement**

The procurement of goods, works, and services has a major impact on the successful execution of a project. To a large extent the quality, cost, and timely completion of a project depend on the management of procurement. The application of sound policies and practices, characterized by equitable, fair, and open procedures, is indispensable, not only for creating dependable and stable markets that are able to attract efficient contractors and suppliers, but also to safeguard the principle of accountability and the cost-effective use of public funds. Finally, from the viewpoint of the Bank as an international development agency, it is important that prospective bidders from the Bank's member countries have the opportunity to participate under equitable

conditions in the provision of goods, works, and services. The basic procurement policies of the Bank are intended to serve these objectives.

- **1.4 Corrupt practices**

(a) Definitions of corrupt practices: bribery, extortion or coercion, fraud, and collusion

The Bank requires that all borrowers (including grant beneficiaries) as well as suppliers, contractors and consultants participating in Bank-financed projects adhere to the highest ethical standards, both during the bidding process and throughout execution of a contract. The definitions set forth below involve the most common types of corrupt practices, but not exhaustive. For this reason, the Bank will also consider claims of a similar nature involving alleged acts of corruption, in accordance with the established procedure.

(i) Bribery

Bribery means the act of unduly offering, giving, receiving, or soliciting anything of value to influence the process of procuring goods or services, selecting consultants, or executing contracts.

(ii) Extortion or Coercion

Extortion or Coercion means the act of attempting to influence the process of procuring goods or services, selecting consultants, or executing contracts by means of threats of injury to person, property or reputation.

(iii) Fraud

Fraud means the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, selecting consultants, or executing contracts, to the detriment of the borrower or other participants.

(iv) Collusion

Collusion is an agreement between bidders designed to result in bids at artificial prices that are not competitive.

(b) Measures to be taken by the Bank

If, in accordance with the administrative procedures of the Bank, it is demonstrated that a government official, or anyone acting on his or her behalf, and/or an offeror in a procurement process or a supplier/contractor during the execution of the contract carried out in connection with a Bank-financed project has committed corrupt practices, the Bank will:

(i) reject a proposal to award a contract in connection with the respective procurement process;

(ii) declare a firm and/or its personnel directly involved in corrupt practices, temporarily or permanently ineligible to be awarded future contracts under Bank-financed projects; and/or

(iii) cancel, and/or accelerate repayment of, the portion of a loan or grant earmarked for a contract, when there is evidence that the representative of the Borrower, or Beneficiary of a grant, has not taken the adequate remedial measures within a time period which the Bank considers reasonable, and in accordance with the due process guarantees of the Borrowing country's legislation.

(c) Inspection of accounting records and financial statements

In contracts financed with IDB resources, the Bank will have the right to require that the tender documents include provisions that allow the Bank or any person which it designates, to inspect or carry-out audits of the suppliers/contractors' accounting records and financial statements pertaining to the execution of a contract.

(d) No-bribery pledge

At the request of a Borrower country, the Bank will accept that documents pertaining to public procurement financed by the Bank, include clauses that require that those who participate in such procurement or who execute the corresponding procurement contracts, expressly pledge that they will comply with the laws prohibiting corrupt practices of the country where the procurement takes place. The text of these clauses shall be agreed upon by the Bank.

II. RULES COMMON TO ALL PROCUREMENT

- **2.1 Efficient and economical use .c.of Bank resources**

The principal rule applicable to the use of the resources of the Bank, established in its charter, is that they must be used with strict attention to considerations of economy and efficiency. This rule applies to all procurement financed by the Bank. The method that best lends itself to the application of this rule is international competitive bidding. For this reason, the Bank has adopted this method for most procurement that takes place in the public sector. This booklet first analyzes the rules and basic principles of this system; it then deals with other procurement methods that may, in special

cases, be more appropriate. It also establishes basic rules applicable to private sector [Borrowers 3.](#)

- **2.2 Legal relationships**

The legal relationship between the Bank and its Borrowers is governed by loan contracts. These contracts also regulate important aspects of the procurement process. But since the legal relationship between the Borrowers and suppliers of works, goods and related services is governed by the bidding documents and the provisions of the respective contracts between those parties, no supplier or entity that is not a party to the Bank's loan contracts can derive rights or demand payments on the basis of these loan contracts.

- **2.3 Basic responsibilities**

The responsibility for execution and administration of projects rests with the Borrowers, including the entire procurement process, from the preparation of bidding documents to the awarding and management of contracts. The Bank oversees the procurement process to ensure that its rules and procedures are followed.

- **2.4 Procurement planning**

- (a) General procurement plan
Sound planning and coordination of procurement is indispensable for the adequate execution of a project. Accordingly, the Borrower must prepare a general procurement plan to be agreed upon with the Bank during the analysis of the operation. The plan must set forth in detail, as a minimum, the following information:
 - (i) the thresholds for international competitive bidding to be applied in the project;
 - (ii) all of the goods, works, and services required to carry out the project;
 - (iii) the characteristics and estimated costs of the various contracts under which the items to be procured will be grouped;
 - (iv) the source of financing and the method of procurement foreseen for each contract, giving due consideration to the rules established for each method;
 - (v) the prequalification and bidding that will be required to acquire the goods, works, and services; and
 - (vi) the estimated dates of the principal stages of the procurement process, including the completion dates of works and related services, and the delivery dates for goods.During the execution of a project, it may become necessary to modify the general procurement plan, which may only be done upon agreement with the Bank. In exceptional, generally emergency circumstances, and only when well justified, the Bank may authorize

criteria differing from those of the original plan, provided that competition and economies of scale are not adversely affected. The Bank recommends that Borrowers utilize uniform prequalification and bidding documents with variations determined by the specific conditions of each bidding.

- (b) Bidding packages (type, quantity, and amount of contracts)
The characteristics, quantities, and cost of contracts to be tendered must be such as to permit adequate management on the part of the Borrower and lead to the maximum possible competition among responsible bidders.
Ideally, goods and works required for a project should be grouped in such a manner that they may be provided from a single source, insofar as the characteristics of the manufacturing and sellers' market so permit. It is customary, however, to include in the same bid package different contracts for the provision of goods or works of a similar nature. Among other factors which may be considered in deciding how to divide goods and works to be procured into contracts, are the necessity for varying delivery dates or deliveries made in stages, and the need for homogeneity in the characteristics of certain goods or works required. In general, it is preferable to contract separately for goods and equipment, on the one hand, and for works on the other, except in the case of "turn-key" contracts mentioned in subparagraph (c), below.
Contracts for large amounts attract increased international interest and participation, but they also may impede participation of qualified small- or medium-sized firms. One reasonable option is to divide, to the extent that the project permits, the works or goods into lots to facilitate participation of small firms, while at the same time allowing bidding on a number of lots or on the entire project, to encourage participation of large firms.
Even though equipment, works, or services having similar characteristics may need to be received at different stages of the project, it may still be advisable to tender for a single contract in order to take advantage of the economies of scale. However, in special circumstances, subdivision into separate contracts for differing delivery dates may facilitate management of the project and distribute the risk of delays. These and other relevant criteria should be carefully considered in determining the size of the packages or lots to be used in bidding.
- (c) Turn-key contracts
In special circumstances, when duly justified, the Bank may accept tendering for turn-key contracts for the execution of highly complex projects. In general, this is acceptable when there is evidence that there are advantages to consolidating engineering, provision of equipment, and construction under a single contractor. Nevertheless, it is necessary to weigh these advantages against the generally higher cost of these types of contracts. In cases where a turn-key contract is being considered because the Borrower does not have sufficient capacity to coordinate the project, the Borrower should also consider using consultants to perform the coordination responsibility. As indicated in section 2.4 (b) above, once the characteristics and costs of

the contracts have been adequately justified during the study of the project, this information should be incorporated into the general procurement plan.

- **2.5 Eligibility of contractors and goods**

The Bank has strict rules as to the use of the funds provided in its loans. These funds can be disbursed only to pay for expenses resulting from the procurement of eligible goods, works, or services that comply, among other things, with rules concerning the nationality of suppliers and the origin of the goods, as described in the following paragraphs.

- **2.6 Nationality requirements for contractors for works**

In tendering for works, only contractors from member countries of the Bank, listed on the inside cover of this booklet, may participate.

- **2.7 Criteria for establishing the nationality of contractors for works**

The Bank uses the following criteria to determine the nationality of a construction firm and its eligibility to carry out works

- (a) the firm must be constituted and operating in conformity with the provisions of the laws of the member country in which the firm has its principal domicile;
- (b) the firm must have its principal business office in the territory of a member country;
- (c) more than 50% of the firm's capital must be owned by one or more persons or legal entities of one or more member countries or by citizens or "bona fide" residents of such eligible countries;
- (d) the firm must constitute an integral part of the economy of the member country in which it is domiciled;
- (e) no arrangement may exist under which any substantial part of the net profits or other tangible benefits of the firm will accrue or be paid to natural persons who are not citizens or "bona fide" residents of member countries, or to legal entities that are not eligible in accordance with the nationality requirements set forth in this paragraph; and
- (f) in the case of a contract for the execution of works, at least 80% of the personnel who will render services in the country where the construction is to be carried out must be citizens of a member country, whether employed directly by the contractor or by a subcontractor. In making this computation with respect to a firm from a country other than that where the construction takes place, citizens or permanent residents of the country where the construction takes place shall not be counted.

The above rules are also applied to each member of a joint venture or consortium (a collaborative effort of two or more firms) and to any firm that such consortium may propose as subcontractor for part of the work.

- **2.8 Origin of goods**

Goods may be acquired only if the country of origin is a member of the Bank. The term "country of origin" means

- (a) the country in which the material or equipment has been mined, cultivated, produced, manufactured, or processed; or
- (b) the country in which, through manufacture, processing or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components. The nationality or country of origin of the firm that produces, assembles, distributes, or sells the goods or equipment is not relevant in determining their origin.

- **2.9 Transportation and insurance of goods**

The Bank finances the transportation of goods only if it is carried out by firms from eligible countries. The source is considered eligible when any of the following criteria is met

- (a) the flag of the vessel is from a member country of the Bank;
- (b) the owner of the vessel is from a member country of the Bank;
- (c) the vessel is registered in a member country of the Bank; or
- (d) the company that transports the goods and issues the bill of lading is from a member country of the Bank.

Under the criteria of sub-paragraphs (b), (c) and (d) above, it is not necessary that the vessel bear the flag of a Bank member country. Insurance for contracts financed by the Bank is eligible for Bank financing only when it is provided by insurers from member countries. The bidding documents should indicate the type and conditions of the insurance to be provided by the bidders. For civil works, the ordinary requirement is that the contractor provide all-risk insurance.

- **2.10 Joint ventures between local and foreign firms**

The Bank encourages the participation of suppliers and contractors from the Borrower's country in order to further the development of local industries. Local suppliers, industries, and contractors may bid independently or in joint ventures with foreign firms, but the Bank does not accept mandatory

formation of joint ventures, nor any other form of obligatory association, nor the establishment of obligatory percentages of local participation.

- **2.11 Eligibility of affiliated firms to submit bids**

- (a) A bidder, including its affiliates or companies belonging to the same economic or financial group, may only submit or participate in one bid for each contract. If a bidder submits or participates in more than one bid, its offers and the offers of any other party involved will not be evaluated. However, this does not limit the inclusion of the same subcontractors in more than one bid.
To this effect, companies are considered to form part of the same economic or financial group, if they have directors, shareholders (with more than 5 percent participation), or legal representatives in common, and those that subsidize or are subsidized economically or financially by another company.
- (b) No affiliate of a purchasing entity (procurement agent), including its affiliates or companies belonging to the same economic or financial group as defined above, may tender in bids where such purchasing entity participates in any form.
- (c) If a consulting firm, including its affiliates or companies belonging to the same economic or financial group as defined above, also has the capability to manufacture or supply goods or to construct works, that firm, including its affiliates or companies belonging to the same economic or financial group, cannot be a supplier of goods or works on a project for which it provides consulting services. Exceptions to this rule, such as in the case of turn-key contracts, require the prior approval of the Bank.

- **2.12 Procurement with funds from other sources**

When the procurement of goods or the execution of works is financed with resources provided by sources other than the Bank or the Borrower, the latter may use procurement procedures specified by the provider of the resources. Nevertheless, the procedures must comply, to the Bank's satisfaction, with the Borrower's obligation to carry out the project diligently and efficiently. Furthermore, the Bank must be satisfied that the goods and works to be procured are (a) of satisfactory quality and meet the technical requirements of the project; (b) delivered or completed in timely fashion; and (c) procured at market prices. The Bank may request that it be kept informed by the Borrower about the procurement procedures to be utilized and the results obtained.

- **2.13 Procurement carried out before the signature of Bank loan contracts**

In order to achieve more rapid and efficient project execution, the Bank may, as an exception, recognize as an expense to be financed from the Bank loan or by the local counterpart funding, procurement of goods or works carried out before the approval of the loan and signature of the corresponding loan contract, provided that the procurement has substantially followed the policies of the Bank. These exceptions must be justified in the loan documentation. Nevertheless, the potential Borrower carries out this advance contracting at its own risk, in the sense that if the Bank does not approve the respective operation, it will not finance the advance contracting.

- **2.14 Procedures for global credit programs**

When a Bank operation provides funds to a financial intermediary to finance sub-loans to private beneficiaries, such as small- and medium-sized enterprises, the procurement under the sub-loan is undertaken by the respective beneficiaries in accordance with normal procurement practices for private sector operations acceptable to the Bank. When the sub-loans are made to public sector beneficiaries, procurement under such sub-loans must be in accordance with the Bank's procurement rules for public sector operations.

- **2.15 Procedures for special operations**

Competitive bidding procedures, agreed to with the Bank, should be followed when the Bank advises or assists a government or public entity (with the objective of Bank financing) in contracting private operators for a public works concession, build-operate-transfer (BOT) operations, build-own-operate (BOO) operations, other similar undertakings that enjoy special or exclusive rights, or other state concessions, such as a recognized monopoly.

- **2.16 Procurement not in accordance with Bank policy**

The Bank will only finance procurement that has been carried out in compliance with the policies and procedures set forth in this publication. Accordingly, the Bank does not recognize expenses incurred when these policies are not followed.

- **2.17 Supervision by the Bank**

The Bank supervises the procurement process, and the administration of the resulting contracts. This is to safeguard the rule of economy and efficiency in the use of the Bank's resources, the effective execution of projects, and the basic principles and policies of the Bank in procurement matters. The Borrower collaborates fully with the Bank in this supervision. In this respect, as part of the orderly process of procurement, Borrowers must retain and submit to the Bank all of the documents and records related to the

procurement process as well as to the subsequent administration of the respective contracts. These documents and records constitute indispensable elements by which the Bank can verify the eligibility of a contract or of other expenses incurred for Bank financing. The Bank supervises with particular care the preparation and fulfillment of the general procurement plan, the bidding documents, reports concerning prequalification, and reports with respect to the evaluation of bids and award of contracts. In some special types of projects, the Bank's review takes place "ex post facto", that is, after the contract has been formalized by the Borrower, rather than during each of the critical stages of the bidding procedure. This may occur, for instance, in the case of projects that include numerous small works, which because of their nature or geographical distance from one another, cannot be grouped in larger bidding packages. If this review shows that Bank rules were not followed, the Bank will not finance the contract in question. In such cases, the Bank verifies that the Borrower has adequate and dependable methods for execution and supervision of procurement, which are capable of complying with Bank requirements. Supervision in these cases also focuses on any material changes related to the execution of the procurement contract, particularly changes with respect to the completion date of the contract that could involve cost increases. Finally, protests brought by contractors during any stage of the contract receive careful attention by the Bank. Chapter Six of this booklet deals specifically with this subject.

The Bank may, in exceptional cases, find it necessary to suspend disbursements of a loan. It is the responsibility of the Borrower to inform suppliers and contractors of any situation which could affect payments to them in these cases.

III. INTERNATIONAL COMPETITIVE BIDDING

- **3.1 Types of bidding; the basis for competitive bidding**

Bidding is a formal, competitive procurement procedure, by means of which offers to furnish goods, works, or services are solicited, received, and evaluated, and a contract is awarded to the bidder whose offer is most advantageous (see paragraph 3.8(i)). Bidding can be by public invitation (competitive bidding) or by limited invitation (limited bidding); competitive bidding can be international or restricted to local firms. These different types of bidding are analyzed in Chapter Four. As previously mentioned, experience indicates that international competitive bidding for goods, works, and services best assures the public sector of economy, efficiency, and openness in procurement. This is, therefore, the method the Bank has adopted. This chapter analyzes the basic principles of this procedure; the following chapter discusses procedures other than international competitive bidding which are sometimes permitted and which may be beneficial in special circumstances.

- **3.2 Basic principles of public bidding**

The Bank recognizes the following basic principles of public bidding: publicity, equal treatment of bidders, competition, and due process. The principle of competition has as its objective the participation of the maximum number of qualified bidders so that Borrowers can obtain the best conditions that the market offers. In order for effective competition to exist, the participants must be treated equally. This principle requires avoiding any type of preference or discrimination that favors or jeopardizes one bidder to the detriment or benefit of others. According to the principle of publicity, access to all information related to a bidding process must be available to all contractors, not only in the initial stages of the bidding procedure but also in the opening of bids and any subsequent clarification. Finally, local law should provide due process through procedures that ensure full discussion of controversies and permit bidders both to contest other offers and to defend their offers against objections that may be lodged against them.

- **3.3 Contracts that require international competitive bidding**

The Bank's loan contracts establish a threshold for works, and another for goods and related services, equal to or above which such works or goods and services must be procured through international competitive bidding procedures, whenever foreign currency funds from the Bank's loan are to be used for such procurement. These thresholds are established on a case-by-case basis. The fundamental criterion for the establishment of these thresholds is the promotion of international competition. Threshold amounts are set at levels designed to attract the participation of international contractors and suppliers of goods and services. It is necessary to take into account the fact that the establishment of low threshold amounts discourages international competition, since by definition, procurement packages tend to be set at these low amounts and are thus unable to attract international contractors. The Bank's procurement rules should not be circumvented by reducing the value of procurement contracts below the established thresholds. To help establish these thresholds, the Procurement Policy and Coordination Office of the Bank develops country/sector guidelines. In proposing the thresholds for each project, the Bank's technical team assigned to a project ('project team') takes into account, in addition to these guidelines, the following criteria, as they relate to the country/sector of the respective project:

- appropriate packaging to encourage international competition and promote economy and efficiency;
- the opinion of potential foreign suppliers or contractors specializing in the goods or works in question;
- previous foreign participation in projects requiring the goods or works in question;
- the threshold amounts established by other international organizations;
- the size, complexity, and cost of the procurement in question;
- the economy of the country; and
- the production capacity or availability of contractors at the national level and their capacity to supply the goods or execute the works in question.

The threshold amounts to be established may not exceed the equivalent of five million dollars (US\$5,000,000) for works and the equivalent of three

hundred and fifty thousand dollars (US\$350,000) for goods or related services. For contracts equal to or above these amounts, international competitive bidding is mandatory. Higher threshold amounts may be proposed for approval by the Bank's Board of Executive Directors if the project team and the Bank's Procurement Office determine that the application of the established maximum thresholds would have negative effects on international competition and that it is unlikely that said thresholds would ensure the most economic and efficient outcome of the bidding in question. In those cases, a thorough justification, based on the criteria indicated above in this sub-paragraph, must be included in the presentation to the Board. Consequently, every procurement of works or of goods and services to be financed totally or partially with foreign exchange from a Bank loan, the amount of which equals or is higher than these threshold amounts, must be carried out in accordance with international competitive bidding following the procedures established by the Bank. The same rules apply if only local currency from the Bank loan, or funds from the Borrower, or both, are used (a situation which is generally justified when foreign participation in competitive bidding is unlikely), except that, at the Borrower's option, such bidding may be restricted to the national market.

- **3.4 Procurement for amounts lower than the established limits**

Procurement of works and goods and related services below the limits specified in paragraph 3.3, above, is governed by local legislation, provided that it is not in conflict with the policies of the Bank. The Borrower should establish procedures that permit participation of various potential bidders and ensure economy, efficiency and market prices. Furthermore, whenever foreign currency from a Bank loan is used, the procedures must permit participation of potential suppliers from the Bank's member countries.

- **3.5 Language and interpretation**

Bidding documents and contracts are ordinarily drawn up in the language of the Borrower's country; it is preferable that the publicity be in one or more of the Bank's official languages (Spanish, English, French, and Portuguese) in order to facilitate competition both locally and internationally. When a document is produced in more than one language, it is necessary to indicate which language governs in case of conflict among the versions.

- **3.6 Publicity for international competitive bidding**

Publicity is one of the most important elements of public bidding because it attracts the maximum possible number of eligible bidders. The Bank's requirements for publicity in international competitive biddings are:

- **(a) General Procurement Notices (GPN)**

These notices, which are prepared by the Borrower with the collaboration of the Bank, are intended to provide advance notice to

interested parties regarding future possibilities for the procurement of works or goods under new Bank-financed projects. The GPN contains basic information about the project concerned, including the name of the country in which it will take place; reference to financing by the Bank; the amount and objective of the loan; the threshold amounts above which international competitive bidding is required; a tentative schedule of procurement of works and goods; and the address, telephone and facsimile numbers of the Borrower, in order to permit those interested to obtain more detailed information. The Bank undertakes the publication of these notices, on behalf of the Borrower, in the United Nations publication "*Development Business*." The publication of the GPN takes place well in advance of the first notice for prequalification or bidding issued with respect to the corresponding project. This may, in cases of Bank financing that is expected but not yet approved (see paragraph 2.13), require publication of the GPN before the date of approval by the Bank. GPNs are also published in the Bank's journal, IDB Projects Online.

o **(b) Notices for specific bidding opportunities (Specific Procurement Notices "SPN")**

The announcement of prequalification or registration - and the announcement of bidding, when prequalification does not take place - shall be published in the following manner:

▪ **(i) National publicity**

Every bidding for goods, works or related services includes national publicity. This publicity requires that the public notice of prequalification or registration, and that of the invitation to bid, when invitation is not restricted to prequalified firms, must be published on at least two occasions in a newspaper of wide national circulation, or at the discretion of the Borrower, on one occasion in two different newspapers of wide national circulation.

▪ **(ii) International publicity**

In the case of bidding with a value estimated to be equal to or above the thresholds set forth for international competitive bidding, in addition to the national publicity referred to in subparagraph (i) above, the Borrower must carry out international publicity. In such cases, the public notice of prequalification or registration and that of submission of bids, when there has been no prequalification, must be published in the United Nations journal *Development Business*. For large or complex works, additional publicity may be required at the discretion of the Bank and with the concurrence of the Borrower, in a newspaper or recognized technical journal of wide international circulation. (The Bank maintains a list of newspapers and technical journals it defines as having wide international circulation. Borrowers wishing to carry out international publicity in newspapers or journals not found on the list must first consult with the Bank.)

In exceptional cases, such as cases of extreme urgency (usually resulting from natural disasters), the Bank may authorize the

Borrower to publish the announcement in a recognized technical journal and/or in a newspaper of wide international circulation, instead of Development Business, which requires longer lead times in its publication schedule.

- **(iii) Content of procurement notices ("SPN")**

The text of procurement notices (which require prior approval by the Bank) must specify, as a minimum, the following:

- (aa) a description of the project, purpose of the bidding, and source of funds destined to finance the cost of the procurement of goods or works;
- (bb) the fact that the project for which bidding is being carried out is being partially financed by the Bank and that the procurement of goods or contracting of works payable from said financing will be subject to the provisions of the corresponding loan contract;
- (cc) the general description of the equipment, machinery, and materials required, as well as of the works, the volume or quantity of work, its principal parts, and the deadline for its completion;
- (dd) the office or place, date, and time at which the bidding documents, including the bidding guidelines, plans, specifications, and draft contracts, may be obtained;
- (ee) the office where the bids are to be submitted and the authority responsible for their approval and award; and
- (ff) the place, date and time at which the bids will be opened in the presence of the bidders or their representatives.

- **(c) Threshold amounts above which international publicity is required**

The amounts that the Bank establishes in its loan contracts for international competitive bidding (see paragraph 3.3) are the amounts above which international publicity must be carried out.

- **3.7 Prequalification**

- **(a) Nature of the requirement**

For large or complex works, the Bank requires that prequalification be carried out. The Borrower may also require prequalification for the procurement of very specialized goods or services, or whenever it may determine that this procedure is pertinent. Prequalification, the

objective of which is to assure that only competent firms participate in the bidding, has important advantages: it avoids a situation in which interested firms incur sizable expenses for the presentation of offers, when their offers would almost certainly be rejected because of lack of satisfactory experience; it tends to attract responsible firms and gives assurance that the bidding will not include firms with inadequate experience offering very low prices; and it gives the owner of the works a measure of the interest of the trade in bidding on the particular works, services, or goods. If the prequalification process indicates a lack of interest, the Borrower should establish more attractive conditions in order to draw greater competition. Prequalification should be based exclusively on the ability of the potential contractors to carry out the works in a satisfactory manner. The criteria to evaluate this ability are:

- (i) experience and results obtained in similar jobs;
- (ii) personnel and equipment available;
- (iii) financial soundness;
- (iv) the existence of other obligations, or of pending or future obligations, or undertakings that may compete with execution of the works involved in the bidding; and
- (v) any litigation or arbitration resulting from prior contracts or contracts under execution, during the last five years.

In the prequalification procedures, and those for registration of bidders as set forth in the next paragraph, no requirements for prequalification or registration can be established that would impede or make difficult the participation of foreign firms, or that would tend to violate the principle of equal treatment of all bidders.

o **(b)Two-envelope procedure**

Unless prohibited by national law, the Bank and the Borrower may agree to utilize a two-envelope procedure whenever, in their judgement, circumstances render it advisable. When using this procedure, which must be clearly established in the bidding documents, the following must be considered:

- (i) Bid submission - Every bidder must submit, at the time the bids are opened, two sealed envelopes containing the following:
 - (aa) Envelope No. 1 - information on the financial, legal and technical qualifications of the firms, such as: financial solvency, capacity to contract, general and specific experience, key personnel and machinery available for the project, contracts executed, ongoing contracts, and current obligations and litigation. This envelope should not make any reference to prices; and
 - (bb) Envelope No. 2 - the bid itself, with the respective price quotation.

The prequalification documents, as well as the bid itself, must be tendered in writing and in sealed envelopes.

- (ii)Opening act for Envelopes No. 1 - in the first public opening act only Envelopes No. 1 shall be opened. Envelopes No. 2 from all bidders shall remain sealed and in the custody of the Borrower until the prequalification stage is completed.
- (iii) Prequalification - based on the information supplied in Envelopes No. 1, prequalification of bidders must take place within the periods set forth in the bidding documents.
- (iv) Prequalification results - once the prequalification has been completed, the Borrower notifies the results to all participating firms simultaneously. At this time, Envelope No. 2 is returned, still sealed, to those firms that have not prequalified.
- (v) Later disqualification - once prequalified, a firm may not be disqualified from the corresponding bidding unless prequalification was based on incorrect information filed by the firm or unless compelling circumstances that would justify such a decision arise after the date of prequalification or registration.
- (vi) If protests relating to the prequalification stage should take place, such protests shall be resolved by the Borrower prior to opening Envelopes No.2.
- (vii) Opening act for Envelopes No. 2 - once prequalification has been completed, but not before five (5) calendar days after the official notification of the results of prequalification, in another public act, Envelopes No. 2 are opened, and from that point onward, the procedure is the same as in a one envelope bidding process.

- **(c) Registration of potential bidders**

The registry of bidders is a form of prequalification acceptable to the Bank. Registers must: (i) be open permanently or be opened on a frequent basis, whether for updating information on registered firms or adding new firms; (ii) be open for each bidding to be carried out for projects financed by the Bank; and (iii) include no requirements that would impede or render difficult the participation of foreign bidders.

- **(d) Time frame**

The date for presentation of prequalification documents should be at least 45 calendar days after the date of the last announcement of prequalification.

- **3.8 Bidding documents**

- **(a) Clarity and content**

The bidding documents are the means by which the Borrower informs

potential bidders of all of the requirements and conditions relative to the proposed bidding and from which interested bidders receive the information necessary to prepare their offers for the particular bidding. Clarity of the documents is especially important. These documents should describe carefully and in full detail what is required in the way of works or goods and related services to be provided; they should not include requirements which make it difficult for qualified contractors to participate and they should clearly indicate the criteria to be used in the evaluation and comparison of bids. The detail and complexity of the documents may vary according to the nature of the bidding, but in general, the documents should include: the call for bids; instructions for bidders; bid forms; guarantee or bond requirements; a model contract; technical specifications; a list of goods or a bill of quantities; and, when applicable, a table of prices.

- **(b) Price of the documents**

If a price is fixed for purchase of the bidding documents, it should reflect reproduction costs of those documents and in no case be so high as to discourage competition.

- **(c) Free access to the Borrower**

The Borrower must be available, once the bidding documents have been collected by bidders, up to a reasonable time (e.g., 10 calendar days) before the bids are opened, to answer questions or clarify the bid documents for bidders. Inquiries must be answered promptly by the Borrower, and clarifications made known to the other interested parties that have acquired the bidding documents and to the Bank. The names of the firms which requested clarifications remain confidential.

- **(d) Standards of quality**

If the bidding documents mention standards of quality that the equipment or materials must meet, the specifications should also indicate that goods complying with other recognized standards, which assure equal or higher quality than the mentioned standards, are acceptable.

- **(e) Specifications for equipment; brand names**

Specifications should not refer to brand names, catalog numbers or types of equipment from a particular manufacturer, except when it has been decided that it is necessary in order to guarantee the inclusion of a particular essential design, or characteristic of functioning, construction, or fabrication. In these cases, the references should be followed by the words "or equivalent", together with the criteria for determining such equivalence. The specifications should permit the acceptance of offers for equipment with similar characteristics that provide performance and service at least equal to that specified. In special cases and with the prior approval of the Bank, specifications may require the furnishing of an article from a designated manufacturer.

- **(f) Currency**

- **(i) Currency of the bids.** The bidding documents should establish that the bidder may express the price of his offer in the currency of his own country or at the bidder's option, in one selected by the Borrower and indicated in the bidding documents, provided that the currency selected is widely used in international commerce. A bidder who expects to incur expenses in more than one currency and desires to receive payment in the same currencies stated in his offer, should indicate this and justify the portion of the price of his offer to be paid in each currency. As an alternative, the bidder may express his offer in a single currency and indicate the percentage of the total price to be paid in other currencies and the exchange rate used in the calculations. The bidding documents shall clearly indicate the rules and procedures for making the conversion.
- **(ii) Currency for evaluation and comparison of bids.** To facilitate the evaluation and comparison of bids, the Bank requires that the currency or currencies in which the Borrower is to pay for the goods and works be converted into a single currency selected by the Borrower and identified in the bidding documents as the currency for comparison of all bids. The rate of exchange to be used in the evaluation is the selling rate of the selected currency, as published in an official source and applicable to similar transactions. The effective date of the rate of exchange should be stated in the bidding documents, but such date should not be earlier than thirty days prior to the date specified for the opening of bids.
- **(iii) Currency for payments.** In general, the currency used in payments to a contractor will be the same as that quoted in the bid. When payment is to be made in local currency as well as in foreign exchange, the bidding documents should require that the amounts to be paid in each currency be stated separately and justified. When the bid price is stated in one currency and the bidder has also requested payments in other currencies as a percentage of the bid price, the exchange rates to be used for the purpose of payments will be those used by the bidder in his bid, so as to ensure that the value of the foreign currency portions of his bid price remains the same, without any loss or gain. It is the Borrower's responsibility to establish clearly, in the bidding documents and in the contract, that the bidder must comply with the requirements stated above, and that the bidder shall not be able to obtain payment in a currency different from that specified in the bidding documents, the bid and the contract.
- **(iv) Exchange risk.** When payment to a contractor or supplier is based on the conversion of local or foreign currency, the exchange risk may not be charged to the contractor or supplier. The best way to make the conversion will depend on the specific payment provisions of the contract, which in turn are based on those in the bidding documents.

- **(g) Guarantees**

- **(i) Bid bonds.** The bid bond is intended to ensure that the bidder selected will sign the corresponding contract; that is, that his offer is responsible and that he intends to maintain it during the period stated in the bidding documents. Although the Bank does not establish an amount for the bid bond, the amount should be at least adequate to cover the cost to the Borrower of re-bidding if the bidder defaults on the bid, and at the same time it should not be so high as to discourage competition. In actual practice these bid bonds vary between 1 percent of the estimated price of the respective work, for large contracts that exceed the equivalent of US\$100 million, and 3 percent for smaller contracts. The bid bond validity must exceed the validity of the bid by enough time (at least 30 days) to allow the Borrower to effect a formal demand on the bond if the bidder defaults on the bid. Bonds should be released promptly to unsuccessful bidders once it is determined that they will not be awarded a contract.
- **(ii) Performance securities.** Performance securities are guarantees intended to protect the owner of the works against losses that may result from failure of the contractor to fulfill the conditions of the contract. Should the contractor default, the most likely losses which the Borrower would suffer (apart from delay) include: the cost of re-bidding the remaining work; the effect of any inflation occurring between the time of the original bidding and the new bidding; the potentially higher prices associated with taking over work already begun by another; and the legal and other expenses incurred if damages beyond the amount of the bond are sought by the Borrower. The most common performance securities are performance bonds and bank guarantees. An amount of 30 percent of the contract price is commonly used internationally for performance bonds. For bank guarantees, this amount varies from 5 to 10 percent of the contract price. In addition, many contracts provide for a retention by the Borrower of a percentage of money otherwise payable to the contractor as a form of security for completion of the contract work. In establishing performance securities, it is advisable to consider the comparative advantages and disadvantages of bank guarantees vis-à-vis surety company bonds, as well as the comparative advantages and disadvantages of the various types of bonds - on demand, stated breach, and proven breach. It is advisable that the performance bond run until completion of the works has been certified. If bonding of the maintenance or guarantee periods is appropriate, the performance bond may be replaced by "maintenance" or "guarantee" bonds to cover such periods.

- **(h) Margins of preference**

In international competitive bidding for the procurement of goods, the Bank allows, for up to 15 percent of the value of the corresponding bid, the application of margins of preference to goods of national or regional origin. The Bank does not recognize margins of preference for construction contracts. The purpose of allowing these margins of preference is to encourage the development of the national and regional manufacturing industry in the borrowing countries. The Borrower may, at its option, apply such margins of preference, however, their application must be explicitly stated in the bidding documents:

- **(i) National margin of preference**

The national margin of preference applies when comparing bids offering domestic goods with bids offering goods from other countries.

Where suppliers offering goods from the country of the Borrower participate in bidding, such local suppliers of goods may be granted a margin of preference of up to 15 percent or the actual import duty that a nonexempt good would have paid, whichever is less. This margin of preference is added to the adjusted CIF price of the foreign offers expressed in their local currency equivalent. The following criteria shall be used for the application of this type of preference:

- (aa) Goods shall be considered to be of local origin if the cost of the local materials, labor, and services used to produce them constitutes not less than 40 percent of their total cost.
- (bb) In comparing local and foreign offers, the bid or offered price of goods of local origin shall be the delivered price at the project site, with deductions for (1) import duties paid on significant raw materials or manufactured components, and (2) local sales, consumption and value-added taxes incorporated in the cost of the item or items being offered. Proof of the amounts to be deducted under (1) and (2) shall be established by the local bidder. The foreign bid or offered price shall be the CIF price (excluding import duties, consular fees and port taxes) to which will be added port handling charges and any local transportation from the port or border to the project site (adjusted CIF price).
- (cc) The rate of exchange to be used in such comparison shall be the selling rate of the selected currency, as published in an official source and applicable to similar transactions. The effective date of the rate of exchange should be stated in the bidding documents, but such date should not be earlier than 30 calendar days prior to the date specified for the opening of bids.

- **(ii) Regional margin of preference**

The regional margin of preference applies when comparing bids offering goods from regional countries which are members of integration agreements recognized by the Bank, with bids offering goods from countries not parties to such integration agreements. For purposes of this policy, the Bank recognizes the following subregional or regional integration agreements: (a) the Central American Common Market; (b) the Caribbean Community; (c) the Cartagena Agreement; and (d) the Latin American Integration Association. In cases in which the country of the Borrower has signed more than one integration agreement, the subregional or regional margin of preference may be applied, depending on the country of origin of the goods to be procured. The Borrower may recognize the regional margin of preference utilizing the following criteria:

- (aa) A good shall be considered to be of regional origin if it originates in a country that is party to an integration agreement to which the Borrower is also a party, and complies with the standards governing origin and other matters relating to trade liberalization programs established in the respective agreements.

(bb) The local value added in its manufacture shall not be less than that stipulated for national margin of preference.

- (cc) In comparing foreign offers, the Borrower may add to the price offered for goods originating in countries not parties to the respective integration agreement, either a maximum of 15% or the difference between the import duty applicable to such goods from countries not parties to the integration agreement and from countries which are parties to the agreement, whichever is less.

- **(i) Criteria for evaluation of bids**

Contracts will be awarded to the bidder whose offer is the most advantageous in terms of price, and in terms of other factors that should be taken into account in the comparison of bids. This offer is the "lowest evaluated bid." In order to select the lowest evaluated bid, the bidding documents should clearly establish the factors, in addition to price, which are to be taken into account in the evaluation and the weight which is to be given to each factor. These factors should preferably be expressed in monetary terms or, as a minimum, given a relative weight in the evaluation criteria of the bidding documents. Factors that can be taken into account are, among others:

transportation costs to the project site; payment schedule; schedule of delivery of the works or goods; operational costs; efficiency and compatibility of equipment; availability of maintenance service and spare parts; and proposed method of construction. The relative weights assigned to each factor should reflect the costs and benefits that the factors would bring to the project. In the evaluation of bids, no consideration may be given to factors not described in the bidding documents. Price adjustment provisions in the bid are not taken into account in the evaluation.

There may be specialized fields of procurement in which very special factors are included. For instance, in cases such as those of labor vocational training or contracting out retraining and placement services, the following factors are usually considered: the adequacy of the course contents in relation to the objectives of the project; the characteristics of the course and other services in terms of duration, frequency of classes, teaching and training methods, prerequisites, evaluation and pass/fail criteria, classroom infrastructure available, didactic materials to be used and qualification of teachers or instructors available; and the interest manifested by companies in participating in the internship phase of the Program.

- **(j) Reparable errors or omissions**

The bidding documents should distinguish between errors and omissions that are properly subject to correction and those that are not, in both prequalification and presentation of bids. A bidder should not be automatically disqualified for not having presented complete information, either unintentionally or because the requirements in the bidding documents were not clear. Provided that the error or omission in question is subject to correction -generally a situation arising in the context of issues relating to data, information of a factual or historical nature, or issues that do not affect the principle that bids should be substantially responsive to the bidding documents- the Borrower must permit the bidder to promptly provide the missing information or correct the mistake. However, there are certain basic errors or omissions which, because of their nature, are not traditionally subject to correction. Examples of these are failure to sign a bid or present a guarantee. Furthermore, the bidder may not be permitted to correct errors or omissions that alter the substance of his offer or improve it.

- **(k) Rejection of all bids**

The bidding documents should provide that the Borrower may reject all bids, pursuant to the criteria set forth in paragraph 3.10 (h).

- **(l) Protests**

The bidding documents must indicate the proper forum for due process to take place, to resolve protests or complaints that may arise up to the time the contract is signed by the winning firm, allowing at least 10 calendar days to present them.

- **(m) Contract conditions**

The form of contract to be utilized must be consistent with the type of bidding used. The contract should be drawn up with the objective of equitably distributing the obligations and risks related to the operation so as to obtain the most economical price and efficient execution of the project. The contract should include general conditions and conditions of particular application (special conditions).

- **(i) General contractual conditions.** These comprise general obligations of the contractor; requirements relating to bonds, indemnities and insurance; penalty and bonus clauses; percentages of payments to be retained; termination; advances; and the manner and currency of payment. When appropriate, the general conditions should also cover the duties and responsibilities of the consultant(s), revisions, additional funds, and any special situation at the job site that may affect the works. The following are common clauses frequently found among the general conditions:

- **(1) Eligibility of expenses for payment with Bank financing.** Contracts should provide that the contractor or supplier will not make any expenditures for the purposes of the contract in the territory of any country which is not eligible for procurement under Bank-financed projects, when such expenditures are to be financed with Bank resources.
- **(2) Payments.** Use of advance payments by the Borrower to the supplier or construction contractor for mobilization expenses, which may be authorized upon signature of the contract, should be carefully analyzed. Other advances which may be authorized, as, for example, for materials delivered to the site but not yet incorporated into the works, should be clearly described in the contract documents. When appropriate, progress payments for work performed or goods delivered should be provided for in order to avoid excessively high bids which might result from the high cost of working capital of the contractor or supplier.

At the request of the Borrower, the Bank may make disbursements for the acquisition of goods and construction services financed under a loan: (aa) by direct disbursement to the Borrower in the form of an advance or reimbursement of expenditures; (bb) by disbursement to suppliers of imported goods, or to contractors; and (cc) by means of an irrevocable agreement of the Bank to reimburse a commercial bank which has issued or confirmed a letter of credit to a supplier or contractor.

- **(3) Price adjustment clauses.** In appropriate cases, provisions may be made for adjustments (upward or

downward) in the contract price in the event of changes occurring as a result of inflation or deflation affecting prices of the major cost components of the contract, such as labor, materials and equipment. The basis for such adjustments should be clearly indicated in the bidding documents and in the contract.

- **(4) Retention of payment.** When appropriate, the bidding documents and the contract may provide for a percentage of the total payment to be retained to secure full performance by the contractor, as well as a condition for final payment.
 - **(5) Penalty and bonus clauses.** Provisions for a penalty -sometimes called liquidated damages- should be included in the contract when delays in completion may result in extra expense, loss of revenue, loss of production or inconvenience to the Borrower. Similarly, the contract may stipulate the payment of a bonus to the contractor for completion of the contract before the completion date specified in the contract, or for otherwise exceeding minimum criteria established in the contract regarding performance.
 - **(6) Force majeure.** It is desirable that the general conditions of the contract contain clauses stipulating that failure of one of the parties to perform any or all of its obligations under the contract shall not be considered a default in the performance of such obligations insofar as such failure is the result of an event of force majeure (to be defined in the general conditions of the contract).
 - **(7) Resolution of disputes.** It is advisable to include in the contract provisions with respect to the applicable law and the forum for settlement of disputes. Experience indicates that "alternative dispute resolution" (ADR) may have certain practical advantages over judicial litigation. These ADR methods include mediation, the use of dispute review boards (a panel of experts that regularly reviews potential disputes on a job site as they arise and makes recommendations for their settlement), and arbitration. Although the Bank does not serve as a resolver of disputes under any of these methods, nor does it name particular individuals who do, the Bank's staff is available to the Borrower to discuss the use of ADR.
- **(ii) Conditions of particular application.** The conditions of particular application (for works) or special conditions (for goods) include: a detailed description of the works to be constructed or the goods to be purchased; the source of financing; special requirements pertaining to matters such as

currency, payment, bonus for early completion; and any amendments to be made to the general conditions.

- **3.9 Invitation to bid**

- **(a) Following prequalification**

If prequalification has taken place, the Borrower shall send or deliver invitations to bid only to those firms that were prequalified. Prior to sending or delivering such invitations, the Borrower must transmit to the Bank, for its approval, the text of the invitation to bid, together with the bidding documents if they were not transmitted earlier. At this stage, notices need not be published.

- **(b) Without prequalification**

In the absence of prequalification, the invitation to bid must be publicized as set forth in paragraph 3.6(b). The bidding documents must clearly specify the minimum prerequisites to qualify bidders to carry out the works or supply the required goods.

- **(c) Clarification of bidding documents**

Bidders may consult or request clarification from the Borrower regarding the interpretation of the bidding documents. Consultations and replies thereto must never cause suspension of the term for presentation of bids. The requests for clarification and the respective responses must be submitted to the Bank and to all participating bidders, without identifying the bidder requesting clarification.

- **(d) Modification or amplification of the bidding documents**

Any modification or amplification of the bidding documents or the filing date for prequalifications or for submission of bids, must first be approved by the Bank and communicated, by the Borrower, to all interested parties who have officially received the bidding documents. In the event that such modification or amplification is substantial, in the opinion of either the Borrower or the Bank, there must be a reasonable interval (e.g., 30 calendar days) between the date of notice to interested parties and the date bids are opened, to permit all bidders to take appropriate action and comply with the modifications or amplifications to the bidding documents.

- **3.10 Opening and evaluation of bids**

- **(a) Time between advertising and bid opening**

For international competitive bidding, not less than 45 calendar days must be allowed from the date of publication of the last notice of invitation to bid or the date of availability of bidding documents, whichever is later, until bid opening. Where large or complex civil works are involved, not less than 90 calendar days must be allowed for contractors to familiarize themselves with local laws and working conditions, complete technical investigations and determine the availability of labor at the site. The determination whether a 45 or 90 calendar day bidding period will be followed is made during the project analysis period and incorporated in the loan documents presented to the Bank's Board of Executive Directors.

- **(b) Procedures for opening bids**

Bids should be presented in writing in sealed envelopes and must be safeguarded in a secure place. They must be signed by legal representatives of the bidder and comply with the requirements established in the bidding documents. Bids must be opened in public at locations, dates and hours previously announced. Representatives of bidders and of the Bank must be permitted to be present at the opening of bids. Bids received after the date and hour established for presentation of bids must be returned unopened. The name of each bidder, the price of each offer, and the time period and amount of its guarantees must be read aloud. Any substantial modification that has been presented separately within the proper time period should also be read during the public session but after the presentation of the principal offer. Minutes of the complete proceedings must be prepared and signed by the representative of the Borrower and by those representatives of the bidders who desire to do so.

- **(c) Clarification of bids**

The Borrower may ask bidders for clarifications regarding their bids. The clarifications that are requested and presented may change neither the contract nor price of the offer, nor violate the principle of equal treatment of the bidders. The requests for clarification and the respective responses should be communicated to all participating bidders, without identifying the bidder who requested the clarification.

- **(d) Confidentiality**

Except as may be required by local law, after the public opening of the bids and until the official announcement of the successful bidder has been made, no information relating to the examination, tabulation, clarification, and evaluation of bids, nor to the recommendations concerning awards, should be communicated to any bidder or persons not officially involved in the evaluation process.

- **(e) Analysis of bids**

To analyze the bids, the Borrower should verify that:

- (i) the bids are duly signed;

- (ii) the required bonds and guarantees are included;
- (iii) the bids comply substantially with the requirements of the bidding documents;
- (iv) the bids comply with requirements concerning nationality of civil works contractors, and origin of goods as established by the Bank; and
- (v) the bids contain no calculation errors.

○ **(f) Comparison of bids**

The purpose of bid evaluation is to determine the cost of each bid to the Borrower in a manner that will permit a valid comparison of bids in order to select the lowest evaluated bid. In order to do this, the procedure should follow the criteria for evaluation referred to in paragraph 3.8(i), above. Bidders may not be requested nor permitted to change their bids; also, new conditions not foreseen in the bidding documents may not be imposed as conditions for award of the contract. The contractual conditions should be substantially the same as those set forth in the model contract included in the bidding documents. The Borrower should submit to the Bank for approval the detailed report that it prepares concerning the evaluation and comparison of bids; this report should include the factors on which the recommendation for award of the contract is based.

○ **(g) Extension of validity of bids**

Borrowers must complete bid evaluation and award within the initial period of bid validity. An extension of bid validity, if justified by exceptional circumstances, must be requested in writing from all bidders before the expiration date, and the Bank must be notified. The extension requested must be for the minimum period required to complete the evaluation and award the contract. If, due to very exceptional circumstances, more than one extension becomes necessary, the request for extension from all bidders should be accompanied by a price adjusting formula that reflects only the changes in costs due to the period extension. In any case, bidders may not be allowed to change the quoted base price (unit prices) or other conditions of the original offer. Bidders have the right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid will be required to provide a suitable extension of bid security.

○ **(h) Rejection of bids**

Bids that do not fulfill the requirements of the bidding documents or that contain irreparable errors or omissions pursuant to the criteria set forth in Section 3.8(j), above, should be returned without being evaluated. The Borrower may reject all bids. Such rejection is justified if no bid complies with the bidding documents, prices offered are not reasonable, or where there is evidence of collusion or lack of competition. Calls for new bids for reasons of price are discouraged in

cases where bids are only slightly higher than the original cost estimates. Borrowers may, however, after consultation with the Bank, reject all bids if lowest bids exceed the official estimate by amounts sufficient to provide reasonable justification for such action. In such cases new bids should be requested from, at least, all those who were invited to submit bids in the first instance, and adequate time should be allowed for submission of new bids. Individual bids may be rejected in cases where the particular bid is so much lower than the official estimate that it is reasonable to conclude that the bidder will not be able to complete the job or supply the product within the time specified at the price offered. Once the envelopes containing the bid prices are opened, the Borrower must justify any decision to reject all offers. The rejection of one or more bids, no matter what the reason, requires the Bank's prior non objection.

- **3.11 Award of contract**

The award should be made to the bidder whose offer has been determined to be the lowest evaluated bid and has been determined to be substantially responsive to the bidding documents, and which meets standards of capacity and financial responsibility. The Bank's approval is required prior to the awarding of the contract. If the Bank determines that the proposed award is not in accordance with the terms of the loan contract signed with the Borrower, the Borrower must be notified promptly of the Bank's determination, including the reasons therefor, and the contract corresponding to the bid will not be eligible for financing by the Bank. The Bank may cancel the amount of the loan which, in its opinion, corresponds to the amount of the ineligible expenditures. The definitive bid award creates in favor of the recipient the right to formalize the corresponding contract. Once such award has taken place, the Borrower may no longer award to another bidder or declare the bidding invalid, unless there has been fraud or some other illegality, or the Borrower becomes aware of facts not known to it at the time of prequalification or evaluation that could materially affect the ability of the successful bidder to perform the contract.

- **3.12 Contract signature**

Signature of a contract between the successful bidder and the Borrower completes the bidding process. Signature of this contract should take place within a short time after the formal award has taken place. The bidding documents and the offer are usually included as part of this contract. The contract may not contain any provisions that conflict with those established in the model contract, nor in any of the other components of the bidding documents, nor in the terms of the offer on the basis of which the bid was awarded.

- **3.13 Local legislation**

The Borrower may supplement formal requirements or procedural details covered by local legislation and not included in this document, only if its application does not oppose the main principles of economy and efficiency, nor the basic principles of publicity, equality, competition and due process, nor any policy of the Bank on the subject.

- **3.14 Procurement agents**

In cases of particular complexity in the acquisition and contracting of a project or when the Borrower lacks the necessary expertise or experience to undertake such a bidding procedure, the Borrower may employ a firm specializing in handling international procurement as its agent, so as to undertake this procedure and act on its behalf. The agent must strictly follow all the procurement policies and procedures of the Bank. A proper justification for the employment of such an agent must be included in the loan documents, where, among other things, the amount and source of financing for this undertaking should be shown.

IV. OTHER METHODS OF PROCUREMENT

- **4.1 Exceptions to international competitive bidding**

As discussed above, international competitive bidding is the procedure established by the Bank for procurement by the public sector. Nevertheless, special circumstances may exist in which this procedure may not be the most appropriate. In these exceptional cases, the Bank authorizes other procedures, based on justification provided in loan documents, as discussed below:

- **(a) Competitive bidding restricted to local firms**

The Borrower may restrict bidding to local firms only when the bid to be awarded will be financed: (i) exclusively with local currency from the Bank loan; (ii) exclusively with the Borrower's funds; or (iii) with a combination of the Borrower's funds and local currency proceeds from the Bank's loan. This occurs in situations in which there is little probability of foreign participation in a given bidding. Generally, this procurement method is governed by national legislation, if it is not in conflict with the Bank's policies and procedures. The Borrower should establish procedures that permit the participation of several bidders and should pay special attention to aspects of economy, efficiency and

reasonable prices. Under these conditions the Borrower may establish a period of 30 calendar days to submit bids.

○ **(b) Limited international bidding**

While similar to international competitive bidding, limited international bidding involves express invitations to predetermined firms rather than a public announcement. These firms must be qualified firms, selected in a nondiscriminatory manner, including eligible foreign firms, when available. The Borrower must invite a sufficient number of firms to ensure competitive prices. In general, the same principles and policies are applied to limited bidding as to competitive bidding except, as mentioned above, with regard to publicity. In addition, the rules for margins of preference do not apply. Limited bidding, which must be authorized in advance by the Bank, may be appropriate in cases such as:

- (i) contracts for small quantities;
- (ii) the failure of competitive public bidding;
- (iii) the acquisition of highly complex or specialized products;
- (iv) a limited number of suppliers of a specific article or service;
- (v) an urgent need for key materials; or
- (vi) the need to standardize equipment.

○ **(c) International/local shopping**

In this type of limited bidding, price quotations are obtained, generally from three or more national or foreign suppliers, with the goal of obtaining the most competitive price. Formal bidding documents are not required. This method may be appropriate for the procurement of off-the-shelf goods that are warehoused and readily available to the public, for goods of standard specifications or low value, or for the contracting of small and uncomplicated works.

○ **(d) Direct contracting**

Direct contracting consists of the contracting of a firm without following a competitive procedure. Direct contracting may be appropriate in circumstances such as the expansion of contracts for works or the acquisition of goods, when compatibility of equipment and spare parts is required, or in emergency cases.

○ **(e) Force account**

Force account is not, properly considered, a method of procurement. Rather, force account is the procedure under which the Borrower itself undertakes a specific construction task, utilizing its own personnel and equipment. The Bank accepts this method if it will clearly produce savings, such as when:

- (i) the quantities of work involved cannot be defined in advance;
- (ii) works are small and scattered or in remote locations where mobilization costs for contractors would be unreasonably high;
- (iii) work must be carried out without disrupting ongoing operations;
- (iv) the risks of unavoidable work interruption are better borne by the Borrower than by a contractor; or

- (v) no contractor is interested in carrying out the works.

In these cases the Bank must approve the corresponding budget.

- **4.2 Exceptions expressly allowed by the Bank**

The Bank recognizes that there are special circumstances in which competitive bidding may not be the most appropriate procurement method. For these cases, the Bank may agree, upon request by the Borrower, on one of the methods described in paragraph 4.1, above. Such circumstances include cases in which:

- (a) there is a need to standardize equipment in order to ensure compatibility with previously acquired equipment and spare parts;
- (b) due to an emergency situation in the country or project area, the first invitation for bids has been voided, and it is concluded that a new invitation for bids would not be successful, or there exist sufficient grounds for expecting that an initial invitation would not be successful;
- (c) it is considered advisable to expand a works contract originally entered into as a result of international competitive bidding;
- (d) it is apparent that there have been unforeseeable market changes which have created a scarcity of certain products, or it is desirable to ensure adequate maintenance of equipment or machinery to be acquired; or
- (e) there are other identifiable and demonstrable special circumstances.
- **4.3 Goods for education, scientific, technical, and conservation projects**

International competitive bidding is not required for the acquisition of specialized instruments, equipment, material, books and publications for education, scientific and technological projects or research, as well as for the procurement of goods and contracting of works related to the restoration and preservation of cultural or natural tourist attractions. Other procedures consistent with the objectives of the loan will be approved by the Bank.

V. RULES FOR PROCUREMENT BY THE PRIVATE SECTOR

- **5.1 Application of policies to the private sector**

According to Bank rules, private sector enterprises are those in which there is no Government participation in the capital of the enterprise or those in which Government participation represents less than 50% of the total capital of the enterprise. In general, the Bank's procurement policies also apply to the private sector, whether the entity is a Borrower of the Bank or it is a recipient of a Bank guarantee. In particular, the Bank's policies regarding the appropriate use of loan funds and the eligibility of goods, works, and services, as well as its policies regarding economy and efficiency, apply to the private sector.

- **5.2 Limited bidding**

As a general rule, the Bank permits private sector Borrowers to utilize limited bidding procedures for its procurement which follow market practices for the procurement in question.

- **5.3 Special methods of procurement**

In certain circumstances, the Bank may authorize special methods of procurement. Nevertheless, the Bank is careful to ensure that private sector Borrowers utilize competitive methods which guarantee that the procurement of goods and services is achieved at market prices and corresponds to the requirements of the project. In evaluating a private sector Borrower's procurement method, it is important for the Bank that such method reflect the needs and characteristics of the Borrower.

- **5.4 Conflict of interest**

Contracts awarded by private sector Borrowers should be negotiated on an arm's-length basis, taking into account the financial interests of the Borrower rather than the interests of its parent firm. When a shareholder of a private sector Borrower also acts as contractor to the Borrower, it should be demonstrated to the Bank that the costs of the acquisition are approximately equivalent to budget estimates and market prices, and that the conditions of the contract are equitable and reasonable. The Bank will not finance acquisitions that exceed market prices.

VI. THE PROCUREMENT COMMITTEE AND PROCEDURES FOR SUBMISSION OF PROTESTS AND COMPLAINTS OF CORRUPTION

• 6.1 Procurement Committee of the Bank

All aspects of procurement are important to the Bank, not only with respect to their influence on efficiency and on the results of projects financed by the Bank, but also because the outcome of procurement affects the Bank's ability to obtain resources. Also involved are relations between the Bank and its members, as well as between the Bank and the contractors that participate in the projects. This importance is reflected in the senior level of Bank officials concerned with procurement matters. The Bank's Board of Executive Directors is responsible for approving all basic procurement policies. In addition, the Bank has a Procurement Committee, consisting of six managers representing the Departments most involved with procurement. The Committee is charged with continually reviewing all Bank rules and policies relating to procurement, as well as resolving major procurement-related issues arising during the execution of projects. Among other issues, the Committee reviews: exceptions to the system of international competitive bidding; deviations from the established procurement norms in loan contracts; awards to bidders whose bids were not evaluated as the lowest; and all protests by bidders submitted during the procurement process. The decisions of the Committee are adopted by a vote of at least four of its six members. If a majority decision is not reached, the issue is submitted for resolution by the Executive Vice-President of the Bank. It should be noted that the Committee is not a court and, therefore, representatives of the Borrower or the contractor do not appear before it. In order to resolve protests submitted by bidders, the Committee analyzes the following basic documents:

- (a) the bidding documents, including the draft contract;
- (b) the bidding procedures set forth in the loan agreement;
- (c) applicable local law;
- (d) a copy of the protest and supporting documents submitted by the protesters;
- (e) the response submitted by the Borrower;
- (f) any other documents pertinent to the case; and
- (g) recommended course of action submitted by the Bank's respective Country Office.

The Committee can resolve the case, by either upholding the request of the Borrower, or, when the decision proposed by the Borrower is not legally acceptable or is incompatible with Bank policy, by rejecting it. The Committee's decisions cannot be appealed. The Committee publishes an annual summary of its decisions, which contains a brief description of the cases decided, as well as statistical information. The publication is available to the general public from the Bank's Procurement Policy and Coordination Office, which is described in paragraph 6.2, below.

• 6.2 Other units of the Bank

The Procurement Policy and Coordination Office handles matters related to procurement policies, rules, and training. It is responsible for reviewing procurement provisions in loan documents before they are presented to the Bank's Board of Executive Directors; monitoring procurement activities of Borrowers to ensure compliance with Bank requirements; providing assistance and training to Bank and Borrower personnel; providing assistance and support to the Procurement Committee; and managing the Bank's procurement-related information system. The Bank's Legal Department also contains a unit responsible for addressing legal issues related to procurement, including those concerning the tender procedures which form a part of the Bank's loan contracts, and for preparing the present publication. The Office of the External Relations Advisor is charged with providing information about Bank loans to the public. It organizes seminars on business opportunities for interested parties.

- **6.3 Procedure for submitting protests**

Since the primary legal relationship created with respect to a particular acquisition is between the Borrower and the contractor, the Bank expects, as a matter of principle, that these parties resolve any disputes which may arise between them. To assist this, bidding documents should indicate the time limits to submit protests, as set forth in paragraph 3.8(I), and the appropriate forum for the resolution of disputes in the event informal resolution is not successful. Nevertheless, because the Bank must be assured that procurement which it finances is carried out in accordance with its policies and procedures, it will consider protests submitted by contractors at any stage of the bidding process. The Bank officially recognizes a protest when a complaint, objection, impugnation, rejection, or other manifestation of disagreement has been submitted in writing and within the established time limits by the contractor to the competent authority of the country of the Borrower or to the Bank itself. If a protest has been submitted, the procurement process is suspended until the protest is resolved in accordance with the principles hereunder stated. The Bank recommends that the protest be submitted to the Borrower, who is usually responsible for resolving the dispute in the first instance, with a copy to the Bank's appropriate Country Office. The Country Office will send a report covering the case to the Secretary of the Procurement Committee, with its recommendation, as well as the documents referred to in paragraph 6.1, above, for review by the Committee. Once the Committee or the Executive Vice-President, as the case may be, has reached a decision to uphold or not uphold the protest, its decision will be communicated to the authorities of the Borrower. While such decisions do not obligate the Borrower, the Bank will not finance procurement which has not been adjusted or resolved in accordance with its decision. The Borrower is responsible for notifying the parties involved regarding the Bank's decision.

- **(a) Review mechanisms**

The Bank verifies the existence of local regulations that ensure the legal protection of bidders, and permit, within reasonable time frames, the use of the review mechanisms necessary to guarantee such protection.

- **(b) Submission of protests**

The Borrower may not impose conditions that would impede, restrict or increase the cost of submission of protests by firms participating in bidding for the acquisition of goods or execution of works with resources of the Project.

- **6.4 Procedure for submission of complaints of corruption**

The Inter-American Development Bank has established the following administrative procedure for dealing with complaints of corrupt practices in the procurement process for goods, works, and related services financed in whole or in part by the Bank, or in the execution of contracts awarded thereunder.

Once the Bank receives a complaint, either at Headquarters or in its Country Offices, the complaint will be referred to the Procurement Committee together with all available evidence. The Committee, in accordance with the time frame set forth in its Rules of Procedure, will consider all complaints presented in writing within three years from the alleged corrupt occurrences. Complaints not set forth in writing will not be accepted. Signed complaints will be examined by the Committee even if not supported by *prima facie* evidence. Anonymous complaints will also be considered by the Committee provided that they are supported by *prima facie* evidence. *Prima facie* evidence means evidence which creates a presumption of an occurrence, in the absence of other evidence. This presumption should be sufficient to establish that a fact has occurred, but can be rebutted or contradicted by other evidence.

If the Committee determines that the alleged acts could constitute a corrupt practice, it may refer the complaint to the government of the country of the Borrower or Beneficiary, and the country of the firm(s) or individual(s) involved, along with all available evidence, and/or it may proceed to carry out an administrative investigation of the alleged occurrences directly, either on its own or through a specialized agency giving notice of such action to the government(s) involved. Even though the Bank may initially have decided to refer the matter to the government of the country of the Borrower or Beneficiary, it also reserves the right to carry out its own investigation in appropriate cases, following notice to the government(s) concerned.

If, as a result of the investigation, the government of the Borrower or Beneficiary and/or the Bank find that corrupt practices were committed, the Bank may, without prejudice to any sanctions which such authorities may impose, request suspension of the bidding processes or contract(s) awarded regardless of their state of execution, and/or take its own measures as set forth in Clause 1.4(b) of this document. If the Bank were to request the suspension of the bidding processes or contract(s) awarded, and this were not to happen, the Bank reserves the right not to finance the contract(s) resulting from that bid.

When the Procurement Committee decides that the evidence submitted does not constitute *prima facie* evidence, or that the facts do not support an allegation of corrupt practices, it will reject the complaint.

VII. ANNOUNCEMENTS OF LOANS AND BUSINESS OPPORTUNITIES

- **7.1 Project information**

The Bank makes available information concerning its loan and technical cooperation operations, including related business opportunities, throughout the various phases of the project cycle. Documents are made available from the time of formal inclusion of an operation in the Official Program of the Bank until the operation is approved by the Board. Publicity continues with publication of the general procurement notices described in paragraph 3.6, above. These notices are published by the Office of External Relations. In addition, the Bank has established public information centers at its headquarters in Washington, D.C., in its offices located in borrowing countries and in its offices in Paris, France and Tokyo, Japan. The information is available to the public in printed form and on the Bank's World Wide Web site on the Internet at "<http://www.iadb.org>".

Information regarding loan and technical cooperation operations that are being processed prior to being considered by the Board of Executive Directors is published in the monthly publication, IDB Projects. This publication covers information on the following aspects of each project: the sector of operation, a description of the project, the stage of processing, the total amount of the project, the amount of Bank financing, any anticipated procurement, and the probable executing agency. IDB Projects also provides details about recently approved projects. In addition, the United Nations journal Development Business has information about projects being considered by the Bank.

Subscriptions to IDB Projects can be requested directly from:

IDB Projects
The Johns Hopkins University Press
P.O. Box 19966
Baltimore, MD 21211, USA
Tel: (410) 516-6987
Fax: (410) 516-6968
E-Mail: jlorder@jhunix.hcf.jhu.edu

Subscriptions to Development Business can be requested directly from:

Development Business
P.O. Box 5850
Grand Central Station
New York, NY, 10163-5850, USA
Tel: (212) 963-1515
Fax: (212) 963-1381; or

Development Business Liaison Unit
The World Bank
Room P-8032
1818 "H" Street, N.W.
Washington, D.C. 20433, USA
Tel: (202) 458-2397
Fax: (202) 334-0019

- **7.2 Announcement of Approved Loans**

The approval of a loan by the Bank's Board of Executive Directors is announced in two types of public notices: press releases and project summaries.

- **(a) Press releases**
As soon as loans are approved by the Board of Executive Directors, the Office of External Relations issues a press release which is distributed widely.
- **(b) Project summaries**
Persons or firms wishing to be included in the open list that the Bank maintains to receive press releases, or other publications, may make a request to:

Press Section
Office of External Relations
Inter-American Development Bank
1300 New York Ave., N.W.
Washington, D.C. 20577, USA
Tel: (202) 623-1371
Fax: (202) 623-3810
- **(c) General Procurement Notice**
The Bank publishes a General Procurement Notice in Development Business, for each project, within an appropriate time frame prior to the first bidding for a project. Section 3.6(a), above, provides additional information regarding this notice.
- **(d) Specific Procurement Notice ('SPN')**
The Borrower publishes an SPN for each international public bidding in the periodical Development Business. Additional information regarding such Notice is found in paragraph 3.6(b).
- **(e) IDB Projects**
As stated above, the Bank publishes a monthly journal, IDB Projects, where basic information is provided regarding projects being considered to receive funding and those that are already in the

execution stage. Section 7.2, above, provides additional information on this publication.

ANNEX

GLOSSARY OF TERMS FREQUENTLY USED IN PROCUREMENT

Award:

the action taken by the Borrower, after examining and comparing bids, through which it: (i) selects the bid that is determined to be substantially responsive to the bidding documents and is the most advantageous (i.e., the lowest evaluated bid); and (ii) officially notifies the bidders of the decision as to the award of the contract. It is the most important stage of the bidding process, since it accomplishes its main objective, that is, selection of the firm which is to carry out the works or services or provide the goods that are the object of the bidding. After the formal announcement of the award decision, the Borrower may not cancel the tender, except in very special circumstances or where there has been fraud or other forms of illegality. In effect, the award completes the contract cycle; the "offer" made by the bidder is "accepted" by the Borrower in making the award.

Bid bond:

also called a guarantee of maintenance of bid, it is a guarantee of payment in favor of the Borrower if the bidder that is selected for award fails to sign the offered contract. In other words, it is a guarantee that the offer will remain effective for the period stipulated in the contract documents. (See performance guarantee.)

Bidding documents:

these constitute the set of documents issued by the Borrower which establish the object of the bidding (the technical specifications), specify proposed contract conditions and establish the bidding procedure to be followed. In a broader sense, this is the group of documents that determines the contractual conditions to be established between the supplier or contractor and the Borrower.

Bidder:

the entity that submits a bid. Other terms are tenderer, offeror, contractor, supplier, etc.

Bidding:

any formal and competitive procurement procedure through which offers are requested, received, and evaluated for the procurement of goods, works, and services, and as a consequence of which an award is made to the bidder whose offer is the most advantageous, i.e., the lowest evaluated bid. Bidding may be competitive (public) or limited, and competitive bidding may be international or restricted to the local market.

Borrower:

the entity that receives a Bank loan and carries out the relevant procurement. See definition for Owner.

Competitive bidding:

also referred to as "public bidding," the formal, public, and competitive procedure during which offers are requested, received and evaluated for goods, works, or services and after which the related contract is awarded to the lowest evaluated bidder. It is called a procedure because it involves a

series of stages, acts or steps that must follow rules prescribed in the bidding documents. The procedure consists of: (i) a public invitation directed to all those with a possible interest in presenting offers; followed by (ii) an evaluation stage to select the offer most advantageous to the owner, i.e., the lowest evaluated bid; and finally (iii) the award of the corresponding contract.

Direct contracting:

contracting with a firm that is selected without competition.

Force Account:

procedure under which the Borrower carries out the works with its own personnel and equipment.

International competitive bidding:

competitive bidding that is open to the participation of bidders who are foreign with respect to the Borrower's country regardless of whether the procedures of the Bank were followed. Distinction shall be made between international public bidding which followed the procedures of the Bank and that which did not, since the Bank shall only finance bidding conducted according to its procedures.

International publicity:

is the publicity carried out for each project as a whole, by means of the General Procurement Notices as well as the publicity that takes place for specific bidding opportunities in order to attract international competition. It is carried out through media that are available to foreign contractors. Local publicity is also required.

Limited bidding:

a method similar to competitive bidding, except that the invitations to bid are not issued to the public in general but only to firms selected by the Borrower. In general, the same procedures are used as for competitive bidding except that margins of preference are not applicable.

Local bidding:

competitive bidding in which the Borrower only permits the participation of firms from its own country. This procedure is only used when there is little likelihood of the participation of foreign firms and is only permitted when the procurement is to be financed: (i) entirely from local currency from the loan; (ii) entirely from the Borrower's own funds; or (iii) with a combination of funds from these two sources.

Local publicity:

the procedure under which the Borrower issues the announcement of calls for prequalification or bids in its own country. Local publicity is obligatory for all types of procurement (local and international) and is carried out in the national press. Lowest evaluated bid: the most advantageous offer, which is selected for award of the contract. The term "advantageous" refers to the strict application of the evaluation criteria set forth in the bidding documents. The evaluation takes into account not only price but also other factors (such as delivery dates, operating costs, efficiency, and compatibility of equipment). Such factors, as well as their relative weight, must be clearly set forth in the bidding documents.

Owner:

the party that calls for bids. For convenience, in this booklet, the term "Borrower" is often used synonymously. Other synonymous terms are: tendering entity, buyer, purchaser, employer, etc.

Performance guarantee:

also called a performance bond, a guarantee presented by the contractor to the Borrower, which insures the latter against losses in the event that the

contractor fails to complete the works in accordance with the terms of the contract. (See bid bond.)

Prequalification:

a step in the bidding process in which the Borrower first selects the firms to whom invitations to bid will later be issued. This pre-selection is based solely on the capability of the contractors to carry out the works satisfactorily, and is normally used only for major or complex works or for acquisition of highly specialized goods. The factors analyzed are the contractors- technical and financial competence.

Price-quotations (shopping):

a form of limited bidding appropriate for acquisition of goods of relatively low value and which are readily available to the public on an off-the-shelf basis. The procedure may also be used for small uncomplicated civil works for which formal bidding documents are not necessary. This method is also called "comparison of prices at an international or local level".

Procurement:

refers to all purchases of goods or contracting for services or works carried out by the Borrower for the purpose of implementing a project partially financed by the Bank.

Protest:

any complaint, objection, impugnation, rejection or other manifestation of disagreement presented in writing by a contractor or bidder during any phase of the procurement process either to the appropriate authority in the country where the procurement takes place or directly to the Bank.

Register for prequalification:

a form of prequalification, sometimes required by local law or adopted voluntarily by certain public agencies. Under this procedure, firms desiring to bid for contracts with a public agency for supplying goods, services or works must be listed in the register along with the firms' technical and financial data. The register may classify firms according to the branch of activity and include information on the technical capacity of such firms and data on completion of previous contracts. The purpose of the register is to centrally maintain information with respect to potential contractors.

Turn-key contracts:

those contracts, generally covering complex works, in which a single contractor is responsible for completing the entire work including design, procurement of equipment, and construction.