



Guidelines for the procurement of goods, works and services (other than consultancy services) funded by a loan or a cash advance from the West African Development Bank (BOAD)

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TABLE OF CONTENTS

DEFINITIONS	5
I. INTRODUCTION	10
Purpose	10
General considerations.....	10
Scope of application of guidelines.....	11
Conflicts of interests	11
Eligibility criteria.....	12
Advance procurement and retroactive financing.....	14
Groups of businesses and sub-contracting.....	14
Misprocurement.....	16
Reference to the Bank.....	16
Fraud and corruption	17
Procurement plan	19
II. INTERNATIONAL COMPETITIVE BIDDING	20
A. General provisions	20
Introduction.....	20
Nature of the various contracts and scope of services to be provided	20
Two-stage bidding.....	21
Annoncement and advertising.....	21
Pre-qualification of candidates	22
B. Bidding documents.....	23
General provisions	23
Validity of proposals and bid bond.....	24
Choice of language.....	25
Clarity of bidding documents.....	25
Standards	

Use of trade names.....	26
Pricing	26
Review of prices.....	27
Transport and insurance.....	28
Currency provisions.....	29
Bid currency	29
Conversion for purposes of comparison of proposals	29
Settlement currency.....	30
Modalities for settlement.....	30
Alternative bids	31
Contract clauses and terms.....	31
Performance guarantee and retention money.....	31
Contractual penalties and premiums.....	32
Cases of force majeure	32
Applicable law and dispute settlement	32
C. Opening, evaluation of bids and award of contract.....	32
Time limit for preparation of bids	32
Modalities for the opening of bids	33
Clarifications and changes to bids.....	33
Confidentiality of the procedure	33
Examination of bids.....	34
Evaluation and comparison of bids.....	34
Community preferences	35
Extension of validity of bids.....	35
Post-qualification of bidders	36
Award of contract.....	36
Publication of contract awards	36
Rejection of All Proposals.....	37

Debriefing by Borrower.....	38
D. Amended international competitive bidding procedure (ICB)	38
Transactions leading to an import programme.....	38
Procurement of commodities.....	39
III. OTHER PROCUREMENT METHODS.....	39
General provisions	39
Limited_ international competitive bidding.....	39
Local competitive bidding.....	40
Shopping_ of suppliers.....	41
Framework agreements.....	41
Procedure applicable to standing offer contracts	42
Procedure applicable to client-based contracts.....	42
Direct labour delivery.....	Erreur ! Signet non défini.
Procurement agents and representatives of contracting authority.....	45
Inspection and certification services	45
Procurement under loans granted to intermediary finance institutions or agencies	46
Procurement under public-private partnerships (PPP)	47
Procurement financed through loans guaranteed by the Bank	49
Community participation in the procurement process.....	49
IV. CHANGE IN THE COURSE OF PROCUREMENT PROCESS.....	50
Changes in volume of services.....	50
Non-observance of contractual time limits.....	51
SCHEDULE 1 - RECOMMENDATIONS TO BIDDERS.....	52
Prupose	Erreur ! Signet non défini.
Responsibility for procurement.....	52
Role of the Bank	52
Information on procurement	53
Role of the Bidder.....	53
Confidentiality of the procedure	54

SCHEDULE 2 – EARLY ACTIONS FOR THE PURPOSES OF PROCUREMENT (AAAs)	55
General provisions	55
Decision to resort to the AAAs.....	55
Precautions.....	55
SCHEDULE 3 – PROCUREMENT RULES AS PART OF PRIVATE SECTOR OPERATIONS	56
Application of procedures to private sector operations	56
Procurement methods	56
Conflict of interest.....	56
SCHEDULE 4 – EXAMINATION OF THE PROCUREMENT PROCESS BY THE BANK	57

DEFINITIONS

For the purposes of these guidelines, the following expressions shall mean:

- **Framework agreement:** agreement entered into between one or several contracting authorities whose purpose is to establish the terms governing contracts to be entered into during a given period, particularly with regard to prices and, where necessary, projected quantities;
- **Loan agreement or Loan contract:** any contract and its possible amendments which bind the Borrower and the Bank, on account of the Loan directly granted by the latter or funds managed by the same for the benefit of the Borrower; the loan agreement refers to a loan granted to a public sector entity; the loan contract makes reference to a loan granted to a private sector entity;
- **Competitive bidding:** The entire competitive bidding process for the purpose of the award of a contract which begins with the publication of a procurement notice and ends with its approval and notification to the successful bidder;
- **General procurement notice:** Any document providing information on the Borrower (or possible Borrower) and indicating the amount and purpose of the loan or loans, the purpose of the contracts corresponding to the Procurement Plan, as well as the name, telephone or fax number and address(es) of the agency(ies) of the Borrower(s) responsible for the procurement, together with the electronic portal address or the usual, nationally- and internationally-accessible and free Internet website on which the special procurement notices in question will be posted;
- **Competitive bidding notice:** Any document communicated to the general public in order to bring the opening of a tender process to its attention;
- **Beneficiary of a contract:** The bidder whose bid has been selected before the approval of the contract;
- **Amendment:** a document which amends the components and provisions of a contract;
- **Bank or B.O.A.D:** West African Development Bank;
- **Candidate:** the natural or legal person who shows interest in participating or is selected by a contracting authority to participate in a procurement process;
- **Application:** an act through which the applicant shows interest in participating in a procurement procedure, but the said act does not bind or impose obligations on him with regard to the contracting authority;
- **CIP:** carriage and insurance paid to : carriage paid, including insurance, up to the destination point;
- **Cofinancing:** any joint financing between the Bank and one or several other financial institutions of the same project; co-financing may be joint or parallel;
- **General terms and conditions:** general requirements which contain the administrative, financial, legal and technical contractual clauses relating to the execution of contracts of a special type;

- **Special terms:** special requirements established by the contracting authority as an integral part of the bidding documents/request for proposals, comprising the amendments to the general terms, special contractual clauses and the terms of reference (in a service contract) or the technical specifications (in a supply or works contract);
- **Conflict of interest:** any event which influences the capacity of a candidate, bidder or beneficiary to provide professional, objective and impartial advice, or prevents him from promoting the interests of the contracting authority at all times. Any consideration relating to potential future contracts, or any conflict with other past or current commitments of a candidate, bidder, allottee or beneficiary of a grant, or any conflict with his own interests. These limitations also apply to the possible sub-contractor and the personnel of the candidate, bidder or beneficiary;
- **Closing dates:** Time limits indicated in the contract which takes effect from the day after the date of the act or event selected as the point of departure for the determination of these time limits. Where the last day of the time limit is not a working day, the time limit expires at the end of the first working day after the last day of the time limit;
- **Time limit (or) period:** time limit which takes effect from the day after the date of the act or event selected as the point of departure for the determination of the time limit in question. Where the last day of the time limit is not a working day, the time limit expires at the end of the first working day after the last day of the time limit;
- **DDP :** delivery duty paid: Delivery through which the seller delivers to the buyer the supplies to be imported which have been cleared through customs and not discharged from any means of transport upon arrival at the agreed point of destination;
- **Borrower:** any beneficiary of a loan agreement or contract or any other financing arrangement granted by the Bank;
- **Firm:** any natural or legal person tasked with the execution of the works or the provision of services or goods, as part of the contract;
- **Community firm:** any firm whose head office is located in a Member State of the West African Economic and Monetary Union (UEMOA), and of which he/she is a tax-paying resident;
- **Equipement:** machines, appliances, components and all the parts to be supplied for their inclusion in the services, goods or works;
- **Community space (countries of):** countries of the WAEMU region: Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.
- **Member State:** the eight (8) countries of the West African Economic and Monetary Union (WAEMU) and the following countries: France, Germany, Belgium, India and China. The African Development Bank (AfDB), the Central Bank of West African States (BCEAO) and the European Union are stakeholder institutions of the Bank;

- **Joint financing:** any financing arrangement undertaken collectively by the Bank and one or several co-financiers for the same project or the same lots of a project, by applying the same rules for the procurement of goods, services and works;
- **Parallel financing:** any financing arrangement by the Bank and one or several co-financiers other than the Borrower, for separate batches of the same project or distinct batches of the same component of the project, each according to its own rules governing the procurement of goods, services and works;
- **Supplier:** any natural or legal person or public entity or consortium of such persons and/or agencies offering to provide products;
- **Supplies:** all goods the successful bidder must provide the contracting authority, and the ownership of which is transferred from the contractor to the contracting authority;
- **Performance security:** real or personal security to ensure the proper execution of the contract both from the technical point of view and in terms of the project execution time frame;
- **Joint group:** entity constituted by several bidders who decide to come together in order to compete for a bidding process made up transactions divided into batches. Each of its members undertakes to execute the batches which are likely to be awarded to him in the contract;
- **Group of firms:** group of firms which has subscribed to a single commitment procedure and represented by one of them who serves as a common authorized agent. The group of firms is jointly and severally liable;
- **Severally liable group:** the group is severally liable where each of its members is bound by the entire contract, whether the transaction is divided into batches or not;
- **Standing offer contract:** a contract through which the contracting authority covers his annual supply needs for which it is not possible to determine the exact volumes at the beginning of the year or which exceed storage capabilities;
- **Running contract:** a contract through which the contracting authority undertakes to give out all or part of certain categories of services defined by the prevailing regulations for a limited period not exceeding one year, with the possibility of one renewal and depending on orders placed as and when the need arises;
- **Contract:** any contract entered into between the Borrower and the successful bidding firm, and the purpose of which is the execution of services and works or the delivery of supplies, as part of the execution of the project;
- **Public contract:** any written contract entered into for a consideration by the contracting authority in order to meet its needs in the area of works, supplies or services;
- **Public works contract:** any contract which aims at either executing or jointly designing and executing works or the building of a structure;

- **Public supplies contract:** any contract which aims at proceeding with the purchasing, leasing, hiring or hire purchase with or without an option to buy goods of any nature, including raw materials, products, equipment and solid, liquid or gaseous objects, as well as ancillary services for the supply of these goods;
- **Public services contract:** the contract is neither a works contract nor a supplies contract. It also includes intellectual service contracts, i.e. a service contract whose main component cannot be quantified physically;
- **Turnkey contract:** any package contract based on a fixed price for which payments are effected in accordance with a contractual schedule of repayments. For such contracts, the Borrower only indicates the outlines of the project (i.e. the main technical parameters);
- **Disbursement:** any payment of all or part of the Loan made to the Borrower or third party designated by him, in accordance with the terms and conditions under the loan or contract agreement;
- **Proposal:** all the technical and financial components included in the bid submission document;
- **Lowest bid:** offer made in accordance with the technical and administrative provisions and the price of which is the lowest among all the offers submitted;
- **Agency governed by public law:** an agency
 - a) established to specifically meet general interest needs of a nature other than industrial or commercial,
 - b) clothed with a legal status, and
 - c) whose activity is mainly financed by the State, local authorities or other agencies governed by public law, or the management of which is subject to control by the latter, or the administrative, managerial or supervisory organ of which is made up of members half of whom are appointed by the State, the local authorities or other agencies governed by public law;
- **Work:** outcome of a set of building or civil works intended to serve an economic or technical function on its own; it can particularly include construction, reconstruction, demolition, repairs or renovation operations such as the construction of job sites, excavation work, construction, installation of equipment or plants, decoration and finishing as well as accessory works services, if the value of these services does not exceed that of the works proper;
- **Prohibited practices:** Refer to the cases of violation of the rules to be applied in the event of conflicts of interest, fraud, corrupt practices or related acts;
- **Loan:** refers to any repayable financing arrangement resulting from the Loan Agreement or Contract between the West African Development Bank and the Borrower; it is a repayable financing arrangement granted by the Bank to the State, to one of its departments or to a private sector entity;
- **Project :** any project financed directly or indirectly by the Bank;

- **National:** any natural or legal person with the nationality of a given State or is registered in the said State;
- **Bid submission:** any written commitment at the end of which a bidder makes his terms known and undertakes to comply with the applicable specifications;
- **To tender for:** to make a proposal in order to enter into the contract;
- **Tenderer:** any natural or legal person who puts in a bid for the purpose of entering into the contract or part thereof; the term "tender" is synonymous with the term "bid";
- **Sub-contractor:** the one who was either: i) included by the tenderer in his application for pre-qualification or in the proposal as a result of the special and essential experience as well as the know-how he is bringing on board, and which enabled the tenderer to meet the terms for the selection of a bid; or ii) appointed by the successful bidder during the execution of the contract;
- **Union:** West African Economic and Monetary Union (WAEMU).

I. INTRODUCTION

Purpose

1.1 The purpose of these guidelines is to define the policies and procedures governing the procurement of supplies, works and services (other than consultancy services) as part of i) mobilization payments to the States by the West African Development Bank (BOAD) or the "Bank", and ii) a project financed through a loan under the Loan Agreement or Contract between the Bank and the Borrower. The Loan Agreement or Contract governs the legal relations between the Borrower and the Bank, while the Guidelines apply to the procurement of supplies, works and services (other than consultancy services) required for the project under the terms set forth by the Loan Agreement or Contract¹. The rights and obligations of the Borrower and the bidders/successful bidders of the supplies, works and services contracts (other than consultancy services) are governed by the provisions of the documents on the bids and contracts entered into between the Borrower and the successful bidders for the supplies, works and services contracts (other than consultancy services), and not by these guidelines or the Loan Agreement or Contract. No party other than the parties to the Loan Agreement can neither assert the rights stipulated in the said agreement nor make any claim to the funds accruing from the loan.

General considerations

1.2 The Borrower is responsible for the execution of the project and, for that matter, the award and monitoring of contracts under the project². For its part, the Bank is tasked with ensuring that the funds for a project are exclusively used for the purposes for which they were granted, having duly taken economic and efficiency considerations into account and prevented extra-economic influences or considerations. Detailed procedures have been established in this regard. In practice, the procurement rules and procedures to be followed for a given project vary depending on the circumstances of the case. However, four conditions generally determine the choice of conditions required by the Bank:

- a) the need to execute the project, including supplies, works and services contracts (other than consultancy services), under good economic and efficient conditions;
- b) the desire of the Bank, in its capacity as an institution, to provide all bidders who meet the eligibility criteria with the same information and equal opportunities to compete for the supplies, works and services contracts (other than consultancy services) which it finances;

¹In the event of a divergence between the loan agreement and these guidelines, the loan agreement shall prevail.

² In certain cases, the Borrower is a mere intermediary, while the project is executed by another agency or body. In these guidelines, the term "**Borrower**" also refers to these agencies or bodies, as well as secondary borrowers in cases of onward lending agreements.

- c) the desire of the Bank to encourage entrepreneurs and manufacturers who are nationals of the countries within the community; and
- d) the importance of transparency in the procurement process.

1.3 Open competition is essential for an effective public procurement process. Borrowers should select the most suitable method for the specific procurement process. In most cases, the launch of an international competitive bidding (ICB) process is the best way to meet all requirements, if this process is well organized and makes room for a preferential margin for locally manufactured goods as well as for entrepreneurs within the community when certain conditions are met.

In most cases, therefore, the Bank requires its Borrowers to enter into supplies, works and services contracts (other than consultancy services) required for the project through an international competitive bidding process open to all suppliers, service providers and entrepreneurs who meet the eligibility criteria. Section II of these Guidelines spells out the procedures applicable to the ICB processes.

1.4 Where the ICB is not the appropriate method, other methods can be used.

Section III describes these other methods and the situations in which it is justifiable to adopt them. In each case, the Loan Agreement or Contract relating to the project indicates the special procedures which can apply to the procurement process. The procurement plan specifies contracts which must be financed as part of the project as well as the procurement method to be applied in accordance with the Loan Agreement or Contract, as indicated in Paragraph 1.18 of these Guidelines.

Applicability of guidelines

1.5 The procurement principles, rules and procedures described in these guidelines apply to all supplies, works and services contracts (other than consultancy services) fully or partly financed with funds from the Bank's loan³. The provisions specified in Section I apply to all the other sections of these guidelines.

In the event of joint or parallel financing, an agreement between co-financiers can be established to define the applicable procurement rules.

Where financing is done through a related financial package, the procurement procedures provided for in the agreements governing the said assistance apply.

Conflicts of interest

1.6 The rules of the Bank require all firms participating in a procurement process for projects financed by the Bank to avoid conflict of interest situations. Any firm found to be in a conflict of interest situation cannot obtain a contract. It also exposes itself to the sanctions provided for by these guidelines or any other regulation enacted by BOAD.

³ This also applies to situations where the Borrower resorts to a procurement agent or an implementing agency assigned under Paragraph 3.14 of these guidelines.

1.7 A firm must be considered to be in a conflict of interest situation during the award of a contract if:

- a) The said firm supplies goods, works or services (other than consultancy services) which are the result of or are directly related to consultancy services for the preparation or execution of a project it has provided or which have been provided by any other firm affiliated to it, which it controls directly or indirectly, which controls it or with which it is subject to common control. This provision does not apply to the various firms (consultants, contractors or suppliers) competing for the execution of the obligations of the successful bidder of a standing offer contract or a design and execution contract; or
- b) This firm submits more than one bid in an individual capacity or as a member of a group submitting another bid. In such cases, all bids linked to this candidate will be disqualified. However, this does not restrict the participation in several bids of a firm as a sub-contractor;
- c) This firm (including his staff) has a close business or family relationship with a member of the Borrower's staff (or of the staff of the entity executing the project or of a beneficiary of part of the loan):
 - i. who is directly or indirectly involved in the preparation of the bid documents or contract specifications and/or in the evaluation process for the said contract; or
 - ii. who could be involved in the execution or supervision of this same contract, except where the conflict arising out of this relationship has been settled in a manner deemed satisfactory by the Bank for the duration of the contract selection and execution process; or
- d) This firm violates any other provision relating the conflict of interest situations provided for by the standard bidding documents of the Bank applicable to procurement.

Eligibility criteria

1.8 in order to encourage competition, the Bank authorizes firms and nationals of all countries to offer supplies, works and services (other than consultancy services) as part of projects financed by the Bank.

All terms for participation in a procurement process must be limited to those which are essential and ensure that the bidder has the required capacity to execute the concerned contract. Any departure from this rule will only occur in accordance with the provisions of the Agreement on the establishment of the West African Development Bank.

1.9 Where a contract is wholly or partly financed with funds from the Bank, the Borrower can neither refuse to participate in the procurement procedure nor award a contract to a firm for reasons other than the following:

- i. the capacity and resources of this firm to successfully execute the contract, or
- ii. the conflict of interest situations provided for by paragraphs 1.6 and 1.7 above.

The Borrower can also not exclude a bidder for these same reasons. In this regard, his evaluation must pay particular attention to his technical and financial qualifications in order to ensure that he has the capacity required to execute the contract.

1.10 The following are exceptions to the principles under Paragraphs 1.8 and 1.9:

- a) Firms of a country or supplies manufactured in a country may be excluded if, pursuant to a decision taken by the United Nations Security Council under Chapter VII of the United Nations Charter, the Borrower's country prohibits any importation of supplies from the said country or any payment to natural or legal persons of the said country. Where, in pursuance of such a decision, the Borrower's country prohibits payments to a particular firm, this firm may be excluded.
- b) No firm engaged by the Borrower to provide consultancy services for the preparation or execution of a project, nor a firm affiliated to it, is ultimately allowed to provide goods, works or services which follow or are directly linked to the consultancy services of the said firm with regard to the said preparation or execution.

This provision does not apply to the various firms (consultants, contractors or suppliers) which are competing for the discharge of the obligations of the successful bidder of a standing order contract or a design and construction contract.

- c) Public firms or institutions of the Borrower's country are only allowed to participate in contracts put out to tender in the Borrower's country if they can establish the following:
 - i. that they enjoy legal and financial autonomy,
 - ii. that they are managed in accordance with the rules under commercial law, and
 - iii. that they are not agencies which depend on the Borrower or the secondary borrower⁴.

⁴ With the exception of the execution of direct labour delivery services in accordance with the provisions of paragraph 3.12. In order to meet the eligibility criteria and the conditions of the Bank, a public firm or institution of the Borrower's country must establish, by means of all documents, including its Articles of Association and any other information the Bank may request: i) that it is legal entity distinct from the State; ii) that it does not receive subsidies or substantial budgetary assistance; iii) that it is managed like any other commercial venture, and that it is, among other things, not required to transfer its financial profits to the State, that it can acquire rights and obligations, borrow funds and be responsible for the repayment of its debts, and that it can be subject to bankruptcy proceedings; and iv) that it does not bid for a contract awarded by a ministry or agency of the State which, by virtue of the applicable laws and regulations, is the authority which supervises the venture, to which it is required to report or which is in a position to influence this venture or institution.

- d) A firm excluded by the Bank, by virtue of the provisions of paragraph 1.16(d) of these guidelines, cannot be a beneficiary of a contract financed by the Bank or benefit financially or in any other manner from a contract co-financed by the Bank during the period determined by the Bank.
- e) By virtue of a decision taken by a national public procurement regulatory authority of a country of the Union or by a court of law, as a result of a breach of the procurement regulations, any firm excluded from participating in the procurement procedure can also not be a beneficiary of a contract financed by the Bank during the period determined by the said Authority or court.

Early procurement and retroactive financing

1.11 The Borrower may desire to initiate the procurement process before signing the corresponding Loan Agreement or Contract of the Bank. In such cases, the procedures followed, including those concerning advertising, must comply with these guidelines so that the resulting contracts can be financed by the Bank, while the Bank will examine the procedures used by the Borrower. The Borrower who enters into contracts in this way does so at his own risk, and the fact that the procurement procedures, documents or contract award proposals have been approved does not oblige the Bank to grant a loan for the project in question. If the contract is signed, repayment by the Bank of any sum paid by the Borrower in respect of the contract before the signing of the loan is referred to as financially retroactive and is only authorized within the limits provided for in the Loan Agreement or Contract.

Groups of firms and sub-contracting

1.12 Contractors, suppliers and service providers may submit their applications or proposals as separate or joint groups, subject to compliance with the provisions of Article 88 of the WAEMU Treaty⁵ relating to competition and its enforcement texts.

In the two forms of groups, one of the members of the service provision group, appointed as a representative in the commitment procedure, represents all the members in dealings with the contracting authority and coordinates the services of the members of the group.

In the case of separate groups, the commitment procedure is a sole document which indicates the total amount of the contract and all the services the members of the group severally undertake to perform.

In the case of joint groups, the commitment procedure is a sole document which indicates the amount and the detailed distribution of services each member of the group undertakes to perform. However, the representative remains responsible for the services of each of the members of the group in dealings with the contracting authority.

⁵ The WAEMU Treaty is available on the website of the WAEMU Commission at the following address: www.uemoa.int

The applications and bids are either signed by all the grouped firms or the representative if he can show proof of the necessary authorization to represent these firms.

The composition of the group cannot be modified between the pre-qualification of candidates and the presentation of their bids.

The legal form of the group can be determined at the pre-qualification or bid presentation stage.

In this case, it is mentioned in the pre-qualification document and the bid document. It cannot be modified.

Applicants and bidders are not allowed to present several bids for the same contract or one of its lots by acting both as individual applicants or members of one or several groups.

1.13 In the area of works, supplies and services, the successful bidder may sub-contract the execution of certain parts of his contract under the following circumstances:

- obtaining from the contracting authority the acceptance of each sub-contractor and the approval of his terms of payment, and
- this possibility should be provided for in the bidding documents.

The bidder is obliged to indicate in his proposal the nature and amount of the part of the services he intends to sub-contract.

The sub-contracting of more than forty percent (40%) of the total value of a contract is prohibited.

Sub-contracting can under no circumstance lead to a substantial alteration of the qualification of the successful bidder after the award of the contract.

Where a contract of a local authority or one of its public establishments is concerned, the applicant for the contract who intends to sub-contract at least thirty percent (30%) of the total value of the contract to a firm of the Member State in which the contract is executed may be granted a preferential margin not exceeding five percent (5%), drawn concurrently with the preference set forth under paragraph 2.55 of these guidelines.

In the event of the sub-contracting of the contract, the successful bidder remains personally responsible for all the obligations of the same.

If the national law so authorizes, the sub-contractor of the successful bidder whose participation has been authorized by the standard bidding documents of the Bank and the terms of payment approved by the Borrower is paid, at his request, directly by the Borrower for the part he is executing.

Misprocurement

1.14 The Bank does not finance expenditures relating to supplies, works and services contracts (other than consultancy services) if it finds that the contract:

- a. was not awarded in accordance with the provisions of the Loan Agreement or Contract and subsequently set forth in detail in the Procurement Plan for which the Bank has issued a no objection notice;
- b. was not awarded to the bidder who should have been selected as a result of wilful stalling practices or other actions of the Borrower which cause unjustifiable delays, the expiry of the duration of the validity of the selected bid, or the unfounded rejection of any bid, or
- c. involves a representative of the Borrower, or a beneficiary of any part of the Loan, who is engaged in corruption or fraudulent practices as defined under paragraph 1.16 (c).

In such cases, the Bank declares that the contract is irregular and, as a matter of principle, annuls the part of the loan granted for supplies, works or services (other than consultancy services) which were not procured in accordance with the agreed procedures.

The Bank may also take such other necessary sanctions against the Borrower as provided for by the Loan Agreement or Contract, these guidelines or any other internal regulation set forth by the Bank on the matter.

Even where the contract was awarded after the no objection notice of the Bank was obtained, the latter may still declare that a misprocurement has occurred, and may apply all of its policies, sanctions and redress mechanisms, whether the closing date of the loan has elapsed or otherwise, if it finds that the no objection notice was issued on the basis of incomplete, inaccurate or misleading information provided by the Borrower or that the terms of the contract were substantially amended without the no-objection notification of the Bank.

Reference to the Bank

1.15 The Borrower shall use the following text when referring to the Bank in contract documents:

« [Name of the Borrower] has received [or, where necessary, « has applied for »] a loan from the West African Development Bank [the Bank], in an amount of FCFA FCFA towards the cost of [name of project] and intends to apply this loan to settle eligible payments under this contract. Payments by the Bank will be made only at the request of [name of Borrower or designate] and upon approval by the Bank and will be subject, in all respects, to the terms and conditions of the [Loan] Agreement or Contract. The [Loan] Agreement or Contract prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities or for any import of supplies if such payment, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the

United Nations Charter. No party other than [Name of Borrower] shall derive any rights from the Loan Agreement or Contract or have any claim to the proceeds of the [Loan]. »

Fraud and corruption

1.16 It is the Bank's policy to, for the purposes of the contracts it finances, require that Borrowers (including beneficiaries of its own loans) as well as bidders, suppliers, contractors and their agents (whether declared or otherwise), sub-contractors, service providers or their suppliers, as well as the staff of these entities, observe the highest ethical standards during the selection and execution of these Bank-financed contracts⁶. In pursuance of this policy, the Bank:

- a) defines, for the purpose of the application of this provision, the expressions set forth as follows:
 - i. "**corruption**" is the offering, giving, soliciting or accepting, directly or indirectly, of anything of value to improperly influence the action of another person or entity⁷;
 - ii. "**fraudulent practice**" is an act or omission, including misrepresentation, which knowingly or recklessly misleads, or attempts to mislead, a person or entity to obtain financial or any other benefit or to avoid an obligation⁸;
 - iii. "**collusive practice**" is an arrangement between persons or entities designed to attain an illegal objective by particularly exerting improper influence on the action of other persons or entities⁹;
 - iv. "**coercive practice**" is impairing or harming, or threatening to impair or harm, directly or indirectly, a person or his property with a view to improperly influence his actions¹⁰.
 - v. "**obstructive practice**"
 - (aa) deliberately destroying, falsifying, altering or concealing evidence material to the investigation of the Bank into corrupt, fraudulent, coercive or collusive practices, or making false statements to the Bank's investigators in order to impede its enquiry; or threatening, harassing or intimidating a person to

⁶ In this context, any action aimed at influencing the selection procedure or contract execution for any undue advantage is prohibited.

⁷ The term "**another person or entity**" refers to a public official or authority acting in relation to the selection process and contract execution. In this context, this term includes the staff of the Bank and the employees of other organizations taking or reviewing decisions on the procurement process. .

⁸ The "**person or entity**" refers to any public participant; the terms "**benefit**" and "**obligation**" refer to the selection process and contract execution; and "**act or omission**" is intended to influence the selection process or contract execution.

⁹ The term "**person or entity**" refers to any participant in the procurement process (including public officials) attempting, either by themselves or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish contract prices at artificial or non-competitive levels, or are conniving with the other participants or guilty of any other breach.

¹⁰ The term "**person**" refers to any participant in the selection process or contract execution.

prevent him from disclosing information relevant to the investigation or pursuing the investigation, or

(bb) materially impeding the exercise of the Bank's inspection rights provided for under Paragraph 1.16 (e) below.

- b) will reject a proposal for the award of the contract if it establishes that the bidder recommended for the award, or any of his staff, or his representatives or suppliers, contractors, or subcontractors (and/or their employees), has directly or indirectly engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that the representatives of the Borrower or of a recipient of part of the proceeds of the loan were engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during the selection process or execution of the contract in question, without the Borrower having taken timely and appropriate action to the satisfaction of the Bank to address this situation, including failure to inform the Bank when he became aware of the said practices;
- d) will sanction a firm or an individual at any time, in accordance with the sanctions procedures of the Bank¹¹, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time:
 - i) to be awarded a Bank-financed contract, and
 - ii) to be possibly selected as a sub-contractor, consultant, supplier or service provider of an otherwise eligible firm from being awarded a Bank-financed contract, and
- e) will require that the a provision be included in the bidding documents and in contracts financed by a Bank loan which will request bidders, suppliers, consultants, contractors and their sub-contractors, representatives, personnel, servive providers or suppliers to authorize Bank to inspect all accounts, accounting records, statements and other documents relating to the submission of proposals and contract performance, and to have them audited by auditors appointed by the Bank. The Bank will have the right to also request that contracts financed with loans from the Bank contain a clause which requires the Borrower and his agents, his co-contractors and sub-contractors to:

¹¹ A firm or an individual may be declared ineligible to be awarded a Bank-financed contract upon: i) completion of the Bank's sanctions procedures, including, inter alia, cross debarment as agreed with the other international financial institutions, including multilateral development banks, and ii) temporary suspension in connection with the on-going implementation of the sanctions procedures.

- i. keep all documents and records relating to activities financed by the Bank for ten (10) years after the completion of the works provided for in the contract in question;
- ii. to provide all documents necessary for an investigation on allegations of Prohibited Practices; and to make available to the Bank employees or agents of the consultant who have knowledge of the activities financed by the Bank to answer the questions asked by the staff of the Bank or by any investigator, agent, auditor or consultant duly appointed to carry out the investigation. If the consultant, his agent, the staff, the sub-contractor, service provider or supplier does not cooperate and/or comply with the requests of the Bank or, in any manner whatsoever, obstructs any investigation by the Bank, only the Bank can exercise discretion in taking any appropriate measure against the consultant, his agent, his staff, sub-contractor, service provider or supplier.

1.17 For Bank-financed contracts, the Borrower may, with the express consent of the Bank, include in the proposals model, a provision which will require bidders to make an undertaking to bid for and to execute these contracts by observing the laws of the country against fraud and corruption (including illegal payments), as listed in the bidding documents¹². The Bank accepts the introduction of such an undertaking at the request of the Borrower's country, provided it has been able to ensure that the arrangements governing the said undertaking are satisfactory to the Bank.

Procurement plan

1.18 The preparation of a realistic procurement plan¹³ for a project is critical for its successful monitoring and implementation. As part of the preparation of the project, the Borrower shall prepare a preliminary procurement plan, however tentative, for the entire scope of the project. At the very least, the Borrower shall prepare a detailed and comprehensive procurement plan, including all all contracts for which procurement procedures will be carried out within the first eighteen (18) months of project implementation. An agreement with the Bank shall be reached at the latest during loan negotiations. Throughout the duration of the project, and at least once a year, the Borrower shall update procurement plans for previously awarded contracts and those to be procured in the next twelve (12) months. This procurement plan is the basis for the preparation of a general procurement notice which is also updated

¹² This commitment may be worded as follows: "we undertake to prepare and present our proposal (and, if the contract is awarded to us, to execute same) in strict accordance with the laws against fraud and corruption prevailing in the country of the [Buyer] [Contracting Authority], laws whose list has been included by the [Buyer] [the Contracting Authority] in the bidding documents relating to the said contract."

¹³ The public procurement plan, as well as its updates, shall at least establish i) a brief description of supplies, works and/or services (other than consultancy services) necessary for the project and which shall be subject to a procurement procedure during the period in question; ii) the proposed public procurement methods, as authorized in the Loan Agreement; iii) any provision relating to the application of the preferential margin in accordance with paragraph 2.55, and iv) the main public procurement schedules, and any other information the Bank may reasonably request.

Similar and smaller contracts may be grouped.

annually. All procurement plans as well as general notices, their updates and alterations shall be subject to prior review and the Bank's no objection notice. After the loan negotiations, the Bank shall arrange the publication of on its public Internet website of the initial Procurement Plan and the subsequent updates once it has issued a no-objection notice.

II. OPEN INTERNATIONAL COMPETITIVE BIDDING

A. General considerations

Introduction

2.1 The procedures for open international competitive bidding (OICB) described in these guidelines aim at providing all candidates who possibly meet all the eligibility criteria with adequate real time information on the needs of the Borrower as well as giving all of them equal opportunities to compete for the supplies, works or services contracts (other than consultancy services).

Nature of the various contracts and scope of services to be provided

2.2 The bidding documents shall indicate the nature of the contract to be awarded and the contractual provisions. The most common contracts are lump-sum contracts, unit price contracts and cost reimbursement contracts, or a combination of the various categories. The Bank only accepts cost reimbursement contracts in exceptional circumstances, e.g. where the transaction presents serious risks or that the costs cannot be determined in advance with sufficient accuracy. These contracts shall include incentives which ensure that expenditures are minimized.

2.3 The importance of each of the contracts will particularly depend on the scope, nature and location of the project. Where the project requires a whole range of supplies and works, separate contracts are generally awarded for the delivery and/or installation of various plants and equipment¹⁴ and for works.

2.4 In certain cases, particularly for large-scale industrial works and power plants, the Bank may accept or require a package contract arrangement whereby units of equipment or works are grouped under a package deal¹⁵. A package contract may be a turnkey contract¹⁶ whereby an entity assumes full responsibility for the supply of industrial installations or a wholly equipped facility which is ready for use. Contracts

¹⁴ For the purposes of these guidelines, the term "equipment" refers to machines, devices, components and all parts to be provided for their inclusion in the services, goods or works.

¹⁵ Generally, package contracts include plants, equipment, machines, various materials or parts of materials, and include all procurement activities – from the supply and assembly and/or installation of equipment to the full construction of specialized works meant to be included in the edifice. Such contracts may be Supplies and Installation contracts for which the Borrower prepares and remains responsible for basic and detailed technical studies, then the design, or design, supply and installation contracts for which the Borrower prepares and assumes responsibility for technical studies and design.

¹⁶ A turnkey contract is a package contract based on a lump sum price and for which payments are effected based on a contractual repayment schedule. For such contracts in general, the Borrower only indicates the main thrusts of the project (i.e. the main technical parameters).

relating to installation or assembly as well as related services may also be awarded to contractors in the form of interior design contracts¹⁷.

2.5 For a project requiring distinct components, but similar equipment or works, proposals may be invited as part of an allotted procedure which could be of interest to both small and big firms. The latter may be permitted to opt for either individual batches or groups of batches. All proposals and combinations of proposals shall meet the same submission deadlines and be open and evaluated simultaneously in order to determine the proposal or combination of proposals which presents the least evaluated cost for the Borrower¹⁸.

Two-stage bid submission

2.6 In the case of contracts for:

- a. big and complex works awarded as part of a package contract (including turnkey contracts), a Design, Supply and Installation contract, or a package contract for the supply and installation of a facility or plant;
- b. works of a special complex nature, or
- c. a complex technology subject to rapid technological advances – it is not always desirable or practical to finalize in advance full technical specifications. Due to the complex nature of such contracts, and in order to avoid deviations from the specifications prepared by the Borrower, the Bank may require recourse to a two-stage bid submission process.

The Borrower first invites candidates to submit technical proposals based on general design principles or performance standards, and subject to further technical and commercial details and adjustments. At the second stage, candidates are, based on the review of the bidding documents¹⁹, invited to present final technical proposals and prices charged.

Announcement and advertising

2.7 For all competitive bids, it is essential to announce the possibility to submit bids in a timely manner. The Borrower is required to prepare and submit a general procurement notice to the Bank. This general procurement notice shall provide information on the Borrower (or possible Borrower) and indicate the amount and purpose of the loan, the purpose of the contracts corresponding to the Procurement Plan, as well as the name, telephone or fax number and the address(es) of the

¹⁷ In the area of construction, the interior designer (management contract) generally does not execute the works himself, but assigns them to other firms he supervises, by bearing all liabilities and risks relating to the cost of these works, their quality and execution within the prescribed time limit. On the other hand, a representative of an owner acts as a consultant or representative of the Borrower, but does not bear the above-mentioned risks. If their funding is ensured by the Bank, the services of the representative of the owner shall be subject to a contract entered into in accordance with the Guidelines relating to consultancy contracts.

¹⁸ See Paragraphs 2.49 to 2.54 for the proposal evaluation procedures.

¹⁹ During the review of the bidding documents for the second stage, the Borrower shall respect the confidential nature of the technical proposals of bidders submitted during the first stage, in accordance with the provisions relating to transparency and intellectual property rights.

agency(ies) of the Borrower responsible for procurement as well as the address of the common and widely used electronic portal or Internet website with free national and international access where the specific procurement notices in question will be posted. The notice shall, where it is known, state the date on which the pre-qualification documents will be available. Depending on the case, the pre-qualification and bidding documents shall not be put at the disposal of the general public before the date on which the notice was published.

2.8 Depending on the case, each contract shall provide for the publication of a special pre-qualification or bidding notice which will be placed in a widely circulated national newspaper of the Borrower's country and on the Internet website of the Bank in French and, where necessary, on the widely used electronic portal with free national and international access in French.

The notices shall be published well in advance so that interested firms will have enough time to buy the pre-qualification and bidding documents, and to prepare their pre-qualification application or proposal. The Bank shall be responsible for the simultaneous publication of all special procurement Notices prepared and forwarded by Borrowers on its public Internet website. Furthermore, contract bids whose estimated cost is equal to or higher than the community publication thresholds defined by the WAEMU Commission shall be published on the WAEMU website and all other means indicated by the Commission. In such cases, the WAEMU Commission shall publish the contract notices latest twelve (12) working days after they were received by the Commission. In emergency situations, this deadline shall be reduced to five (5) working days.

Pursuant to the regulations of the Borrower, the publication of notices shall not be done before the publication by the WAEMU Commission.

However, where the WAEMU Commission fails to publish them within the timeframes provided for by these guidelines, the Borrower may proceed with the publication.

Pre-qualification of candidates

2.9 It is generally necessary to proceed with the pre-qualification of candidates for complex or large-scale works, or in any other situation where the high cost of the preparation of a detailed proposal would risk discouraging competition, for example, in the case of plants to be manufactured to order, industrial equipment, specialized services, certain complex information technologies and package contracts (including turnkey contracts), design and execution or internal design. The pre-qualification will also ensure that the bid notice is only addressed to firms with the required capacity and resources. The pre-qualification shall only be done on the basis of the ability of interested eligible candidates to satisfactorily execute the targeted contract, given the objective and measurable factors such as i) their significant, general and special experience, prior satisfactory performance and successful execution of similar

contracts for a given period, ii) their financial position; and, where appropriate, iii) capacity in terms of the construction and/or manufacture of their installations.

2.10 The pre-qualification notice concerning a contract or group of contracts of the same nature shall be published and communicated in accordance with the provisions of paragraphs 2.7 and 2.8 above. All firms which respond to the notice shall receive information on the scope of services to be provided, as well as a specific description of the conditions to be met in order to be selected. The Borrower shall use the standard pre-qualification document published by the Bank and only make necessary changes accepted by the Bank. All candidates who meet the pre-qualification criteria shall be allowed to submit a proposal. The Borrower shall communicate the results of the pre-qualification process to all the firms which participated in it. As soon as the pre-qualification process is completed, the bidding documents shall be made available to interested selected candidates. Where the pre-qualification has to do with a group of contracts whose procurement is related and spread in time, it is, depending on the capacity of the candidate, possible to restrict the number or overall value of contracts which may be awarded to any candidate, depending on his technical capacity and financial resources necessary to meet the combined qualification criteria. Where more than twelve (12) months have elapsed between the decision of the Borrower to draw up the list of pre-qualified firms and the publication of the bid notice, the Bank may request a restart of the pre-qualification procedure through a fresh publication. The verification of information based on which candidates were pre-qualified, including their on-going commitments as well as their capacity in terms of staff and equipment, shall be conducted again at the time of the award of a contract. The award may be declined where it is considered that a candidate no longer has the necessary financial resources to successfully execute the contract. Where no candidate or very few candidates are pre-qualified, a situation which constitutes a lack of competition, the Borrower may publish a revised pre-qualification notice after receiving the no objection notice of the Bank.

B. Bidding documents

General considerations

2.11 The bidding documents shall contain all the information a possible candidate may need to prepare a proposal for the requested supplies, works or services (other than consultancy services). The full details and complex nature of documents vary depending on the scope and nature of the proposed contract. However, the documents generally contain: the bid notice; instructions for bidders and special bidding data; a model or letter of offer; contract model; general administrative conditions of contract and special administrative conditions of contract; specifications and design engineering; relevant technical data (including data of a geological and environmental nature); the list of supplies or bill of quantities; delivery or completion timelines; specifications, plans and the necessary appendices, such as the models of the various guarantees to be provided. The criteria to be applied for the evaluation

of proposals and the determination of the lowest evaluated bid shall be clearly specified in the instructions to the bidders and/or specifications.

Where the bidding documents are not free, the amount charged shall be reasonable and solely correspond to the costs incurred to publish and reproduce or to publish it in an electronic format, and to hand them over to interested firms in a manner that does not discourage applications.

Subject to it being deemed adequate by the Bank, the Borrower may resort to an electronic system for the distribution of the bidding documents. Where the bidding documents are distributed electronically, the electronic system shall be protected to avoid alterations to the bidding documents and restriction of access to the bidding documents by bidders. The following paragraphs contain indications relating to the essential components of the bidding document.

2.12 Borrowers shall use the standard bidding documents (SBDs) published by the Bank and shall only make alterations with the consent of the Bank, and these must be strictly essential to suit them to the special conditions of the project. These changes shall be introduced exclusively through special data on the bidding or contract process, or the special administrative conditions of contract, and not through modifications to the general provisions of standard documents. If the Bank does not publish the appropriate SBD, the Borrower shall use other standard documents and contract models recognized and deemed acceptable by the Bank.

Validity of bids and bid bond

2.13 Candidates shall submit proposals which shall remain valid for an adequate length of time indicated in the bidding documents to enable the Borrower to compare and evaluate the proposals, as well as to obtain all the necessary approvals from the Borrower's agency responsible for procurement and the no objection notice of the Bank for the recommendations relating to the award of the contract during this period.

2.14 Borrowers may require candidates to provide a bid bond and specify the amount and form in the bidding documents²⁰. If provision is made for it, the bid bond shall generally remain valid for four (4) weeks longer than the proposal in order to provide the Borrower with enough time to act in the event where he has to call them. The bonds of unsuccessful candidates shall be returned to them when the contract is signed with the successful bidder. In lieu of a bid bond, the Borrower may require bidders to sign a declaration to acknowledge that in the event where they withdraw or alter their proposals during the validity period or where the contract is awarded to one of them, but he does not sign it or submit a performance bond before the

²⁰ The bid security format shall be in accordance with the SBD, and it shall be issued by a bank or a known financial institution like an insurance, guaranty or underwriting company selected by the bidder. If the security is issued by a financial institution in a location other than the Borrower's country, this financial institution shall have a corresponding financial institution in the Borrower's country to give an undertaking that the security may be called. Candidates shall be authorized to submit bank securities directly issued by the bank of their choice situated in any admissible country.

deadline specified in the bidding documents, the bidder shall be excluded for the duration specified in the bidding documents for contracts of the agency which issued the bid.

Choice of language

2.15 The pre-qualification documents and the bidding documents shall be prepared in French.

Bidders shall not be requested or permitted to sign contracts in more than one language.

Clarity of bids

2.16 The drafting of the bidding documents shall be done in such a manner as will ensure and encourage international competition; it shall clearly and precisely state the works to be carried out and their location, goods to be supplied and the place of delivery or installation, performance deadlines, minimum performance standards, maintenance and technical guarantee conditions, as well as all other necessary conditions and modalities. Furthermore, the bidding documents shall, where necessary, specify trials, standards and methods which will help to determine whether the equipment delivered or works carried out conform to the specifications. The plans shall be compatible with the text of the specifications, and the documents shall specify the order of priority between the plans and specifications in the event of a conflict.

2.17 The bidding documents shall indicate all factors which, in addition to the price, shall be considered during the evaluation of the proposals and specify how these factors shall be quantified or evaluated. Where the candidates are permitted to present alternative bids for the plans, materials, performance deadlines, terms of payment, etc., the documents shall expressly indicate the conditions under which these alternative bids shall be accepted as well as the method for their evaluation.

2.18 All possible candidates shall receive the same information and shall be allowed to obtain additional information in time. The Borrower shall make it possible for them to visit the location of the project. In the event of complex works or supplies, particularly in the case of contracts involving the rehabilitation of existing capital works or equipment, possible candidates may be invited to a preparatory meeting during which they may seek clarifications (in person or on-line) from the Borrower's representatives. The minutes of the meeting shall be communicated to all the possible candidates, with a copy to the Bank (either in the form of a hardcopy or softcopy). All alterations to the bidding documents, including those relating to additional information, further details, corrections and modifications, shall be communicated to all those who requested the initial documents and all candidates registered within an adequate time frame prior to the deadline for the submission of proposals in order to enable them to take the required measures. Any alteration to the bidding documents shall be introduced in the form of an amendment. Where necessary, the deadline shall be postponed. The Bank shall receive a copy (either in

the form of a hard copy or soft copy) and shall be consulted for the purposes of the issuance of a no objection notice.

Standards

2.19 The technical standards and specifications mentioned in the bidding documents shall encourage competition as much as possible, and ensure that the requested supplies and/or works meet the basic performance criteria and the required criteria. As much as possible, the Borrower shall determine the standards to be set for equipment, materials and modes of execution with regard to international standards like those of the World Standards Organization. Where no international standards exist or where the international standards are inappropriate, the Borrower may specify national standards. In all cases, the bidding documents shall indicate that the equipment, materials or modes of execution meeting other standards shall also be accepted, on condition that the same ensure that a substantially equivalent quality is at least assured.

Use of Trade names

2.20 The specifications shall be defined in accordance with the required characteristics and/or performance criteria. All references to trade names, catalogue numbers or similar classifications shall be avoided. Where it is necessary to mention a trade name or catalogue number of a particular manufacturer in order to complement a specification which would otherwise have not been specific enough, the words "or the equivalent" shall be added after the said trade name or catalogue number. The specifications shall ensure that proposals for supplies which have similar characteristics and whose performance is at least substantially equivalent to that of the specified supplies are accepted. The consideration and issuance of a no objection notice of the Bank shall be required before the Borrower publishes the bidding documents for supplies with a specific trade name which has no equivalent, particularly for technological information systems. The Borrower shall provide comprehensive proof indicating factors establishing compatibility with existing systems and previous investments in the branded product.

Pricing

2.21 For supplies contracts, candidates shall be invited to present their bids based on CIP prices²¹ (agreed destination point) for supplies manufactured abroad and meant for import. For supplies which have been previously imported, candidates shall be invited to present their bids based on CIP prices (agreed destination point) by

²¹ For more details on these commercial terms, see INCOTERMS 2010, or their subsequent versions, published by the International Chamber of Commerce (ICC), 38 Cours Albert 1^{er}, 75008 Paris, France. The term CIP means "carriage paid", including insurance up to the "destination point". This term may be used whatever the mode of transport, including multimodal transport. The CIP price does not include import duties and other import taxes whose payment is the responsibility of the Borrower. The said taxes deal with supplies which have already been or are to be imported. For already imported supplies, a distinction should be made between the set CIP price and the import historical cost of these supplies declared through customs; the CIP price including any discount or margin of the agent or local representative as well as all local costs, with the exception of import duties and taxes whose payment is borne by the Borrower.

separately indicating the amount of already paid customs and import duties. For supplies manufactured or assembled in the Borrower's country, candidates shall be invited to present their bids based on EXW prices²² (ex-factory and ex-warehouse) plus domestic transport and insurance costs up to the destination point. Bidders shall be permitted to have recourse to any firm which meets the eligibility criteria for transport, maritime or others, supplies and insurance. Where the bidder is obliged to take responsibility for the installation, commissioning or other similar services, like the case of "Supply and Installation" contracts, he shall indicate the price of the said services.

2.22 In the case of package contracts (including turnkey contracts), bidders shall indicate the price of the equipment or capital works once their installation on the project site has been completed, taking into account all the costs related to the supply of equipment, maritime and domestic transport services and their insurance, installation and commissioning, as well as corresponding works and all other services included in the contract (design, maintenance, use, etc.). Unless the bidding documents provide otherwise, a turnkey price shall include all duties and taxes²³.

2.23 For works and services contracts (other than consultancy services), bidders shall indicate the unit or lump sum prices of the execution of works and services (other than consultancy services), and the said prices shall include all duties and taxes. Bidders shall be allowed to have recourse to any supplier who meets the eligibility criteria to obtain all inputs they may need (with the exception of unskilled labour) for them to be able to submit the most competitive proposal possible.

Review of prices

2.24 The bidding documents shall indicate whether the bid must be presented i) based on firm prices or ii) based on prices subject to modification; the review shall be applied in the event of (upward or downward) variations of the main components of the market price (labour, equipment materials, fuel, etc.). It shall generally not be necessary to insert a price review clause into simple contracts providing for the delivery of supplies or the execution of works in less than eighteen (18) months.

The bidding documents for contracts of a shorter duration may include a similar provision relating to the review of prices where strong inflation is anticipated at the national or international level. However, for certain categories of equipment, it shall be usual to charge firm prices, whatever the delivery deadline; in this case, it shall not be necessary to include a price review clause in the contract.

²² The EXW price shall include all duties and taxes on sales and other imports paid or to be paid for on components and raw materials used for the manufacture or assembly of equipment which are part of the proposal. Manufactured products include assembled products.

²³ Supplies in turnkey contract proposals may be requested on "**delivered duty paid**" basis or DDP (name of agreed destination point) and bidders shall, during the preparation of their proposals, be free to choose an optimal combination between imported supplies or supplies manufactured in the Borrower's country.

2.25 Prices shall be reviewed with a formula (or several formulae) according to which the total contract price is broken down into components adjusted on the basis of indices of specified prices for each of them. The bidding documents shall clearly define the method to be used, the selected formula (where necessary) and the date selected for the calculations.

If the currency for the settlement is different from the currency of the country of origin of the considered input and the corresponding index, the formulae used shall include an adjustment factor in order to prevent the price revision from arriving at a wrong adjustment. In exceptional circumstances, the bidding documents may provide for a price review based on written proof (including receipts) produced by the supplier or contractor.

Transport and insurance

2.26 The bidding documents shall permit suppliers and contractors to have recourse to firms of their choice to obtain the transport and insurance services they may need, on condition that they meet the eligibility criteria. They shall also specify the types of insurance policy the candidate shall take out as well as their modalities. For all contracts, the contractor shall generally take out a comprehensive insurance policy. For supplies and package contracts, payable compensation for transport insurance shall be at least 110% (one hundred and ten percent) of the amount of the CIP prices of the goods to be imported in the currency of the contract or a freely convertible currency in order to ensure that lost or damaged supplies are quickly replaced. For big construction or supply and installation projects involving several contractors on the same site, the Borrower may take out a comprehensive policy covering the entire project; for this purpose, he shall initiate the competitive process in accordance with procedures deemed acceptable by the Bank in the event where the insurance costs shall be financed by the Bank.

2.27 In exceptional cases, where the Borrower does not intend to take out an insurance policy and intends to take his own measures or intends to assign the transport and insurance of imported supplies to national firms or other designated firms, he shall satisfactorily prove to the Bank that i) resources are available to quickly pay for the necessary compensation following the replacement of lost or damaged supplies, and ii) risks are adequately covered. Furthermore, in the case of imported supplies, the Borrower shall require candidates to provide the free carrier or FCA price (name of agreed shipment point) or the CPT price (name of the agreed destination point)²⁴ in addition to the CIP price (agreed destination point) specified under paragraph 2.21. The choice of the lowest evaluated bid shall be done based on the CIP price (destination point), but the Borrower may sign the free carrier or CPF contract and take the necessary measures himself to transport and/or insure supplies.

²⁴ INCOTERMS 2010 for free carrier (name of agreed point) and carriage paid (name of agreed destination point) respectively

In such a case, Bank financing shall be limited to the free carrier or CPT price of the contract.

Currency provisions

2.28 The bidding documents shall indicate the currency or currencies in which candidates shall quote their prices, the method to be followed to convert prices expressed in various currencies into a single currency for the purposes of the comparison of bids, and the currencies in which the contract price shall be settled. The following provisions (paragraphs 2.29 to 2.33) shall be intended to do as follows:

- i. make it possible for candidates to minimize any exchange risk relating to the bid currency, and, therefore, offer the best price possible;
- ii. make it possible for candidates of countries with weak currencies to use a strong currency and to set their bid price on a firmer basis, and
- iii. act in such a manner as to ensure an equitable and transparent evaluation process.

Bid currency

2.29 The bidding documents shall indicate that the candidate may quote the price of his bid in any currency of his choice. Candidates desirous of presenting one bid corresponding to the sum of amounts quoted in several foreign currencies may do so, on condition that the number of foreign currencies used does not exceed three. Furthermore, the Borrower may require candidates to quote the part of the price of their bids representing domestic expenditures incurred in the currency of the Borrower's country.

2.30 In respect of works, the Borrower may require candidates to quote the full price of their bids in the national currency and to indicate payments to be effected in a maximum of three (3) foreign currencies for inputs originating from a country other than that of the Borrower, by expressing them as a percentage of the bid price and specifying the exchange rates used for the calculations.

Conversion for purposes of comparison of bids

2.31 The bid price shall be the sum of all payments requested in various currencies by the bidder. In order for them to be compared, the proposed prices shall be converted into a single currency selected by the Borrower (national currency or freely convertible foreign currency) and specified in the bidding documents. To effect this conversion, the Borrower shall use the selling rate provided by an official source (eg the Central Bank), or a commercial bank or through an international publication for similar transactions on a date chosen in advance; the bidding documents shall specify the said source of information and the said date, which shall neither be before four (4) weeks from the deadline for the receipt of submissions, nor after the date of expiry of the initial bid validity period.

Settlement currency

2.32 The contract price shall, in accordance with paragraph 2.29, be settled in the currency or currencies in which payment was requested in the successful bid. However, note should be taken of the exchange regulations likely to forbid foreign exchange payments to firms domiciled within the community, except where the said payments are to be made to suppliers based outside the community.

2.33 Where the bidder is obliged to quote his bid price in the national currency, and that he has requested to be paid in a foreign currency for certain payments expressed in the form of a percentage of the bid price, the exchange rates to be applied for the purposes of the payment shall be those that the candidate has specified in his bid, and in such a manner that the value of the fraction of the bid price in foreign currencies is maintained on a no-profit/no-loss basis.

Settlement modalities

2.34 The settlement modalities shall comply with the international commercial practices applicable to the supplies, works and services (other than consultancy services) considered.

- a. For supplies contracts, settlement shall be effected in full upon delivery at the point agreed in the contract after the purchased supplies have been inspected, where necessary; for contracts providing for the installation and commissioning of these supplies, a fraction of the total amount of the loan may be withheld until the supplier discharges all his contractual obligations. As a general rule, the Bank requires the use of documentary credit because it ensures that the supplier is paid quickly. For heavy equipment and materials contracts, provision should be made for the granting of adequate mobilization payments, while provision is made for payments in tranches during the manufacturing or assembly period for long-term contracts.
- b. For works contracts, provision should be made for mobilization payments, advances for the equipment and materials of the contractor and provision for reasonable bond deductions when the contractor has discharged his obligations under the contract.

2.35 Any advance paid by way of mobilization and related costs paid after the signing of a supplies, works and services contract (other than consultancy services) shall be calculated based on the estimated amount of these expenditures and specified in the bidding documents. The amount and payment schedule of the other mobilization payments to be made (for example, for the purchase of equipment to be delivered at the site and to be used for the execution of works) shall also appear in the bidding documents, which shall also state how the required guarantees will be provided for these mobilization payments.

2.36 The bidding documents shall indicate the selected conditions and methods of payment, specify whether other provisions shall be accepted and, in this case, the extent to which the conditions may influence the evaluation of bids.

Alternative bids

2.37 Where bidders are permitted to present alternative bids, the bidding documents shall clearly indicate how these bids shall be submitted, how the price of these bids shall be determined and the basis on which the alternative bids shall be evaluated.

Contract conditions and clauses

2.38 The contract documents shall clearly define the works to be carried out, goods and services (other than consultancy services) to be provided, rights and obligations of the Borrower and supplier or contractor, as well as, where necessary, the functions and powers of the engineering consultant, architect or representative of the contracting authority with regard to the supervision and monitoring of the execution of the contract. The general administrative conditions of contract shall always be complemented by special administrative conditions of contract applicable to supplies, works or services (other than consultancy services) which are the object of the contract as well as to the project installation site. The conditions of the contract shall provide for the balanced distribution of risks and liabilities.

Performance security and retention money

2.39 For works contracts and package contracts, the contract shall require the provision of an adequate amount of security to protect the Borrower in the event where the contractor fails to discharge his contractual obligations. The modalities and amount of the performance security shall be adequate, as specified by the Borrower in the bidding documents. The amount of the security may vary and depend on the nature of the security provided as well as the nature and size of the works or capital works. A fraction of this performance security (referred to as a performance bond) shall remain valid during the period of the technical or maintenance security until final receipt by the Borrower.

Where the contract has a security time limit, part of each payment may be deducted by the Borrower as retention money to cover the performance bond and kept until final receipt. The share of payments retained by the Borrower may not exceed five percent (5%) of the amount of payments. It shall be stated in the specifications. Contractors may be permitted to replace this retention money by an equivalent bank guarantee after provisional receipt.

2.40 For supplies contracts, the obligation to provide a performance security shall depend on the contract conditions and prevailing commercial practices for the targeted supplies. To protect himself from suppliers/manufacturers who fail to discharge their contractual obligations, the Borrower may require them to provide a reasonable and appropriate guarantee. The Borrower may also require that the guarantee should cover the technical guarantee obligations as well as the obligations

to be discharged for the purposes of installation and commissioning, in accordance with the applicable SBD.

Contractual penalties and premiums

2.41 The clauses and conditions of the contract shall make provision for reasonable penalties or other financial sanctions in the event where a delay in the delivery of supplies or completion of works, or the non-compliance of supplies, works or services (other than consultancy services) with the specifications cause the Borrower additional costs or loss of income or other benefits. Conversely, where the Borrower stands to benefit, they may make provision for the payment of a premium to suppliers who deliver supplies or to contractors who complete works before the time limits specified in the contract.

Cases of force majeure

2.42 The clauses and conditions of the contract shall stipulate that failure on the part of the parties to discharge their obligations under the contract shall not be considered as an offence where it results from a case of force majeure, in accordance with the definition provided in the said clauses and conditions.

Applicable law and dispute settlement

2.43 The clauses and conditions of the contract shall indicate the applicable law and competent authority for the settlement of disputes. In comparison with other modes of dispute resolution, international commercial arbitration in a neutral venue presents certain practical advantages. That is why the Bank requires Borrowers to resort to this form of arbitration for supplies, works and services contracts (other than consultancy services), except where the Bank expressly accepts to waive this requirement for well-founded reasons, such as the equivalence of the national provisions and arbitration procedure or where the contract was awarded to a bidder from the Borrower's country. The Bank shall neither be appointed as an arbitrator nor requested to appoint one. In the case of works, Supply and Installation as well as package contracts (including turnkey contracts), the dispute resolution provisions shall also make provision for the recourse to conciliatory and mediation mechanisms introduced for the speedy resolution of disputes.

C. Opening of proposals, evaluation of proposals and award of contract

Time limit for preparation of proposals

2.44 The time limit granted for the preparation and submission of proposals shall be set based on the project's own conditions and the scope and complex nature of the contract. As a general rule, for a national competitive bidding (NCB), provision should be made for at least thirty (30) calendar days as from the date of the competitive bidding or the date of publication of the bidding documents for contracts exceeding the national thresholds, and forty-five (45) calendar days in the case of contracts exceeding the community thresholds.

Bidders may send their proposals by post or in person. Borrowers may also resort to a system which permits bidders to submit their proposals by electronic means, on condition that the Bank deems the said system adequate. The system shall, inter alia, maintain the integrity, confidentiality and authenticity of the proposals as well as resort to an electronic signature system or its equivalent to keep bidders bound to their proposals. In such a case, the time limits for the receipt of proposals may be shortened by seven (7) calendar days.

The competitive bidding notice shall specify the time limit for submission and place of submission of proposals.

Modalities for the opening of proposals

2.45 The opening of proposals shall take place on the date set for the submission of proposals; the date and place of the opening process shall be specified in the competitive bidding notice. The Borrower shall, whatever the number of proposals received by the deadline, open all proposals received by the deadline for the submission of proposals at the place specified in the competitive bidding notice. During the opening of proposals, the Borrower shall neither make a pronouncement on the merits of the proposals, nor reject any of the same. The opening of proposals shall be made in public, i.e. bidders or their representatives may attend (in person or on-line where the proposals are submitted electronically). The name of each bidder and the total amount of each proposal, and any alternative proposal he may have authorized or have been requested to present, shall be read out aloud (and posted on-line where proposals are submitted electronically), and recorded in the minutes of the session. Copies of the said minutes shall, as early as possible, be sent to the Bank and all bidders who have submitted proposals within the time limit. It shall also be published immediately. Proposals received after the time limit, as well as those which were not opened and read out aloud during the opening session shall be rejected.

Clarifications and alterations to proposals

2.46 Except as otherwise provided in paragraph 2.65 of these guidelines, no candidate shall be requested or permitted to alter their proposals, including any wilful increase or decrease in the price of the proposal, after the time limit for the receipt of proposals.

The Borrower may request any bidder to provide details on any aspect of his proposal for the purposes of the evaluation. However, he shall neither request nor permit him to alter its content or price after the opening of the proposals. The requests for clarifications and answers of the bidders shall be communicated in writing, in the form of a hard copy or through an electronic system satisfactory to the Bank.

Confidentiality of procedure

2.47 After the public opening of proposals, no information on the proposal evaluation, the requested details, or recommendations on the contract award shall be

communicated to bidders or any other person who has no capacity to participate in the selection procedure when the contract award has not been published.

Examination of proposals

2.48 The Borrower shall check whether the proposals i) meet the criteria on origin set forth in paragraphs 1.8, 1.9 and 1.10 of these guidelines; ii) are duly signed; iii) are accompanied by the requested guarantees or a signed declaration, as specified in paragraph 2.14 of these guidelines; iv) basically comply with the provisions of the bidding documents, and) are admissible. With regard to the required bid security, any proposal which does not basically comply with the clauses, conditions, and specifications of the bidding documents, insofar as it presents substantial differences from the latter, or contains serious reservations, shall be rejected. Once proposals are opened, bidders shall neither be permitted nor requested by the Borrower to adjust or delete the differences or serious reservations.

Evaluation and comparison of proposals

2.49 The evaluation shall ensure the determination of the cost of each proposal for the Borrower and to compare the proposals on this basis. Subject to the provisions of paragraph 2.58, the successful proposal is the one with the lowest evaluated cost.

2.50 The price of the proposal read publicly during the opening session shall be adjusted to take calculation errors into account. For the purposes of the evaluation, adjustments shall also be made to take any non-essential difference or reservation which can be costed into account. The price review clauses applying to the period of the execution of the contract shall not be taken into account during the evaluation.

2.51 The evaluation and comparison of proposals shall be conducted on the basis of the CIP price until the destination point for imported supplies²⁵, and on that of the EXW plus the cost of domestic transport and insurance up to the destination point for supplies manufactured in the Borrower's country, as well as take account of the prices of all requested installation, training, commissioning and other similar services (other than consultancy services).

2.52 The bidding documents shall indicate criteria other than the prices which shall be taken into account in the proposal evaluation and specify the manner in which they shall be applied to determine the lowest evaluated proposal. For supplies and equipment, these criteria may particularly be the payment schedule, delivery time limit, operating costs, performance and compatibility of equipment, after-sales service and the possibility to procure spare parts, and the benefits with regard to the training offered, safety and the environment.

²⁵ Borrowers may only request prices on a CIF basis (and compare proposals on the same basis) when supplies are transported by sea and are not in containers. This method may not be used for a means of transport other than sea transport. In the case of manufactured products, it is most unlikely that the choice of the CIF will be suitable because supplies are generally shipped in containers. The CIP price may be used for any other mode of transport, including sea and multimodal transport.

Issues other than the price which will be used to determine the lowest evaluated proposal shall as much as possible be expressed in monetary terms, depending on the criteria defined in the provisions of the bidding documents concerning the evaluation.

The evaluation of proposals shall not take the following into account: (a) customs duties and other taxes charged on imported supplies based on the CIP price (which does not include customs duties), and (b) sales and other similar taxes charged for the sale or delivery of supplies.

2.53 In the case of works and turnkey contracts, all duties and taxes shall be borne by contractors, and candidates shall take note of the same when they are preparing their proposals. It is on this basis that the evaluation and comparison of proposals shall be conducted. The evaluation of proposals relating to works contracts shall be strictly conducted in monetary terms.

Any procedure whereby proposals exceeding or lower than a previously set value are automatically rejected shall be unacceptable. Where the date of delivery or time limit for execution is essential, the advantage an early completion of services presents to the Borrower may be taken into account on the basis of the criteria defined in the bidding documents, but only where the clauses and conditions of the contract provide for proportionate penalties in the event of non-compliance.

2.54 The Borrower shall prepare a detailed report on the evaluation and comparison of proposals indicating the specific aspects he relied on to recommend the award of contracts. At the very least, Borrowers shall provide the information required on the standard form of the Bank relating to the proposal evaluation report as well as all other information deemed relevant by the Bank.

Community preferences

2.55 During the public procurement process, preference may be given to the proposal presented by a community firm. This preference shall replace the existing national preferences of Member States. It shall be quantified in the form of a percentage of the proposal amount. Such a percentage shall under no circumstance exceed fifteen (15) percent. The community preferential margin shall be provided for in the bidding documents.

2.56 Where a preferential margin is applied, the evaluation and comparison of proposals shall follow the methods and stages described in the evaluation report model developed by the Bank.

Extension of the validity of proposals

2.57 Borrowers shall successfully conduct the proposal evaluation and contract award before the expiry of the initial proposal validity period in order to avoid the need to make a request for extensions. Any request for extension, if justified by exceptional circumstances, shall be made available in writing to all candidates before the expiry date of the initial period. The duration of the requested extension shall be restricted

to the time limit strictly necessary for the completion of the proposal evaluation, obtaining the required no objection notices, and award of the contract. In the case of fixed price contracts, any request for extension may, with the exception of the first case, only be granted where the Borrower has, in accordance with the provisions of the standard bidding documents (SBDs) of the of the Bank, provided for a price update mechanism to adjust the retained proposal price in order to take into account any increase in the cost of inputs necessary for the execution of the contract which occurred during the extension period. Candidates shall, on this occasion, neither be requested nor permitted to alter the (base) price or other conditions of their proposals. They shall be entitled to reject the requested extension. Where the bidding documents make provision for a bid security, bidders may exercise their right to reject an extension without losing their bid security and getting disqualified. However, those who accept to extend the validity of their proposals shall also consequently extend the security.

Post-review of candidates' capacity

2.58 Where there is no pre-qualification, the Borrower shall determine whether the bidder whose proposal is the lowest evaluated one has the necessary capacity to execute the contract in the manner indicated in the proposal. The criteria to be met would have been specified in the bidding documents, and in the event where the bidder does not respond to it, his proposal shall be rejected. In such a case, the Borrower shall follow the same procedure for the next ranked bidder.

Award of contract

2.59 The Borrower shall, during the proposal validity period, award the contract to the bidder who meets the relevant capacity and resource criteria and whose proposal has been i) deemed essentially compliant with the provisions of the bidding documents, and ii) considered as the lowest evaluated proposal. The bidder shall neither be permitted nor obliged to, as a condition to obtain the contract, provide services which do not appear in the bidding documents or alter his initial proposal in any manner whatsoever.

Publication of the award of contract

2.60 As soon it makes its choice, the proposal evaluation commission shall prepare minutes stating its decision which shall be signed immediately. The document, which is a provisional contract award record, shall be published after validation by the Bank.

2.61 Within two (2) weeks after receipt of the no objection notice of the Bank recommending the award of the contract, the Borrower shall ensure the publication of the results with the identification of the bid and the lot numbers as well as the following information in a widely circulated national newspaper or on the Bank's Internet website or, where necessary, on the WAEMU Commission website for contracts exceeding the community threshold:

- a. name of each bidder making a proposal;

- b. proposal prices as read out aloud during the opening of proposals;
- c. name and evaluated prices of each proposal which has been evaluated;
- d. names of bidders whose proposals have been rejected and the reasons for their rejection, and
- e. name of the beneficiary and the price he offered, as well as the duration and summary of the awarded contract.

2.62 The Borrower shall ensure that the procedure for the publication of the contract award described in paragraph 2.61 is complied with.

Rejection of all proposals

2.63 Generally, the bidding documents provide that the Borrower may reject all received proposals. The rejection of proposals shall be justified where true competition has not taken place, or that all the received proposals do not basically comply with the provisions of the bidding documents, or that none of the candidates meets the qualification criteria, or that the price of the lowest evaluated proposal is clearly higher than the estimated cost of the available budget updated by the Borrower. Where he rejects all the proposals, the Borrower shall analyze the reasons for his decision to reject all of them and make appropriate alterations to the bidding documents²⁶ before relaunching the competitive bidding process. The alteration of the qualification criteria may only be justified where the latter were too restrictive.

2.64 Where the rejection of the proposals was due to lack of competition, the invitation to tender shall be given wider publication.

2.65 The rejection of all proposals and the request for new ones based on the same bidding and contract documents for the sole purpose of obtaining lower prices shall not be allowed. Where the compliant proposal which is adjudged to be the lowest evaluated proposal considerably exceeds the cost estimates established and updated by the Borrower, the latter shall, in accordance with the provisions of the preceding paragraphs, find the causes of this overrun and consider the relaunch of the bidding process. He may either initiate negotiations with the candidate who submitted the lowest evaluated proposal in order to endeavour to obtain a satisfactory contract based on the scaling down of the scope of services and/or a substantial alteration of the distribution of the risks and liabilities likely to cause a reduction in the contract price. However, a substantial scaling down of the scope of the contract or a substantial alteration of the contract documents may justify the relaunch of the competitive bidding process.

2.66 The Borrower shall obtain the prior no-objection notification of the Bank before proceeding with the rejection of all proposals, re-invitation of proposals or the

²⁶ Such alterations may concern the scope or clauses and conditions of the contract, or the minimum post verification criteria of the capacity of candidates (post-qualification in the absence of pre-qualification), or design and specifications, etc., or a combination of the latter.

commencement of negotiations with the candidate who submitted the lowest evaluated proposal.

Debriefing by the Borrower

2.67 Notification of the award shall be communicated to the successful bidder. The other bidders shall be informed of the rejection of their proposals and, where necessary, their bond shall be refunded to them.

The contracting authority shall communicate in writing to all unsuccessful bidders the reasons for the rejection of their proposals, the amount of the contract awarded, the name of the beneficiary, as well as a copy of the award minutes within a period of five (5) working days from the receipt of his written request.

The contracting authorities shall observe a minimum time limit of fifteen (15) days after the publication referred to in paragraph 2.61 above before the signing of the contract and its submission to the relevant authorities for approval.

Within this time limit, the bidder shall, under penalty of debarment, have recourse to the appeal mechanisms in accordance with Articles 11 and 12 of Directive 05/CM/UEMOA of 9 December 2009 on the control and regulation of public procurement and the delegation of public services.

Any candidate who is unsuccessful at the end of the pre-qualification process may also request the contracting authority to communicate to him the reasons for the rejection of his proposal.

Where a bidder requests a debriefing meeting, he shall bear all the costs of attending such a meeting.

D. Amended international competitive bidding procedure (ICB)

Transactions leading to an import programme

2.68 Where the loan is intended to finance an import programme, an ICB with simplified publicity and currency-related provisions may be used for high value contracts, in accordance with the conditions under the Loan Agreement or Contract²⁷.

2.68 According to these simplified rules, it shall not be necessary to publish a general public procurement notice. Special notices shall be published for each contract in a widely circulated newspaper of the Borrower's country (or, where necessary, in the Official Journal or on a commonly used internet website or electronic portal with free national and international access) as well as on the WAEMU website and the Bank's official website. The time limit granted for the submission of proposals of forty-five (45) days may be reduced to thirty (30) days. The Borrower may request that proposals should be denominated, and that payments for the purposes of the

²⁷Lower value contracts are normally entered into in accordance with the procedures of the public or private agency in charge of imports, or in accordance with other commercial practices deemed acceptable by the Bank, as indicated in Paragraph 3.17.

contract shall be effected in a single currency which is commonly used for international trade.

Procurement of commodities

2.68 In the case of commodities like grains, feed, edible oil, fuel, fertilizers and metals, market prices fluctuate in accordance with the trends of supply and demand. Many of these products are quoted on the stock markets. Public procurement often implies multiple awards, with each dealing with part of the total amount in order to ensure the security of supplies, while procurements are spread over time in order to take advantage of the favourable market conditions and to maintain low levels of stocks. It is possible to draw up a list of pre-qualified candidates to whom periodic procurement notices will be sent. Candidates may be requested to propose a price linked to the prevailing market rate at a date earlier than the date of shipment or on the date of shipment. The proposal validity periods should also be as short as possible. The currency in which transactions in this product are generally conducted may be chosen as the sole currency for supplies and settlements with regard to the contract. This choice should be indicated in the bidding documents. The bidding documents may allow the submission of proposals by telex or fax or by electronic means. In this case, either no bid security is required or pre-qualified candidates have provided a valid security during a given period. For these contracts, standard contract documents and models corresponding to the normal relevant trade practices will be used.

III. OTHER PROCUREMENT METHODS

General Considerations

3.1 This Section describes procurement methods which may be used when the ICB is neither the most economical nor effective procurement method, and proposes that other procedures may serve a better purpose²⁸. Paragraphs 3.2 to 3.5 and Paragraph 3.7 describe the most frequently used methods in order of preference. The following paragraphs describe the methods used in special cases.

Limited International Bidding

3.2 Basically, limited international competitive bidding (LICB) corresponds to an ICB. However, candidates are directly requested to present proposals, but bidding notices are not published. This method can only be chosen where, as a result of their special nature, goods, works or services can only be provided by a limited number of suppliers, contractors or service providers. Borrowers shall then contact an adequate number of suppliers to obtain competitive prices; all suppliers shall be contacted where there are only a few of them. Except with regard to advertising, including the

²⁸Contracts shall not be sliced and packaged to exclude them from the ICB procedure.

publication of contract award, as indicated in these guidelines, the procedures to be followed are similar to those governing open international competitive bidding.

National competitive bidding

3.3 National competitive bidding (NCB) is the competitive public procurement procedure used in the Borrower's country, and this method may be the most adequate means for the procurement of supplies, works or services (other than consultancy services) which, as a result of their nature or scope, have few chances of being of interest to foreign candidates. For it to be acceptable in the case of Bank financed contracts, this procedure shall be examined and altered if necessary to ensure that the procurement process is economical, effective and transparent, and that it is generally in keeping with the provisions of Section I of these Guidelines. This method may be made more suitable where the participation of foreign candidates is unlikely due to: a) the size and value of the contract; b) the fact that the works are geographically dispersed or spread in time; c) the fact that the works are labour-intensive, or d) the fact that the goods, works and services (other than consultancy services) may be provided locally at prices lower than those on the international market. This method may also be chosen where the advantages of an ICB are clearly cancelled out by the resultant administrative or financial charges.

3.4 The full text of the contract announcement in French shall be published in a widely circulated national newspaper, as defined in paragraph 2.15 and, where necessary, on a commonly used Internet website or electronic portal with free national and international access. The announcement shall be published well in advance to provide interested firms with enough time to procure the necessary documents. The currency for the proposals and settlements shall generally be the franc CFA (XOF). Furthermore, the bidding documents shall provide clear instructions on how the proposals and their prices are to be submitted as well as the place and time of the submission of proposals. With effect from the publication of the notice, the time limit for the receipt of applications or proposals shall not be less than thirty (30) calendar days for contracts exceeding the national thresholds. The procedures shall ensure adequate competition so that the Borrower can obtain reasonable prices, while the methods used for the evaluation of proposals and the award of contracts shall be objective and communicated to all candidates in the bidding documents and not applied in an arbitrary manner. The comparison of all proposals and the award of contracts may be based on the total destination cost, including all customs duties and taxes. In accordance with paragraph 7 of Schedule 1, the procedures shall also include the public opening of proposals as well as the publication of the results of the proposals and contract award. Borrowers shall have an independent and effective appeal mechanism which will enable bidders to make real time claims. Where foreign firms are desirous of presenting proposals for a NCB, they shall be permitted to do so in accordance with the NCB terms and conditions applicable to national bidders.

Consultation of suppliers

3.5 Consultation shall consist of the comparison of quotations obtained from several suppliers (in the case of products or services other than consultancy services) or from several contractors (in the case of civil works) in order to ensure that competitive prices are obtained. There may be three or more of the said suppliers and contractors. Where the efficiency and cost considerations do not justify the use of more competitive methods, this method is suitable for limited quantities of supplies which are generally available in the trade sector, low value standard products or simple low value civil works. Where the Borrower was not able to obtain at least three quotations, he shall provide the Bank with the reasons and justification for which no other method can be considered. He shall also obtain a no objection notice before simply continuing with the procedure on the basis of the responses received up to that point. The requests for quotations shall describe the required supplies by indicating the required quantity or works specifications as well as the date and place of delivery (or completion). The quotations may be sent in the form of a letter, fax or electronic means, and the buyer shall evaluate them in accordance with the same principles as those for the open competitive bidding process. The retained proposal conditions shall be indicated in the purchase order.

Framework agreements

3.6 A framework agreement (FA) is a long standing agreement entered into with suppliers of goods, works and services (other than consultancy services). The FA shall determine the terms and conditions of subsequent individual procurement contracts which may be awarded during the duration of the agreement. As a general rule, the framework agreements shall be based on previously set prices, or prices set during the re-tendering process or through a procedure which enables its alteration without re-tendering²⁹. The FAs may be allowed as alternatives to the methods for the consultation of suppliers and NCBs for:

- a. supplies available in the trade sector or for common everyday products with standard specifications;
- b. simple and non-complex services (other than consultancy services) which may be requested periodically by the agency (or various agencies) of the Borrower, or
- c. low value works in the area of emergency operations.

²⁹ Borrowers have adopted various terminologies and various AC models. The three most used models, based on closed and open competitive methods in one or two stages, are : i) the "closed AC", based on pre-established criteria, including for the award of subsequent individual contracts based on the AC, signed with one or several suppliers and not allowing new entrants during the period of the Agreement ; ii) the "closed AC" together with the same restriction for new entrants, but implemented in two stages: the first is meant to select more than one supplier, while the second one is for the competitive bidding of suppliers selected during the first stage and the award of the contract which presented the least evaluated proposal with regard to the proposed price and delivery conditions, and iii) the "open AC" which is also organized in two stages, but without restrictions concerning the participation of new entrants.

The Borrower shall, for the purposes of a no objection notice, submit to the Bank the circumstances and justification of the use of an FA, the adopted approach and model, the selection and award procedures, and the contract clauses and conditions. The FAs shall not restrict access by foreign firms and shall be limited to a maximum duration of three (3) years. The FA procedures applicable to the project shall be those deemed acceptable by the Bank and described in the Loan Agreement or Contract. The total maximum amount of contracts signed under an FA shall be set in the public procurement Plan and comply with the risks arrangement. It shall be agreed upon with the Bank. The FAs shall comply with the NCB procedures and guidelines provided for under paragraphs 3.3 and 3.4, including but not restricted to the advertisement procedures, fair and open competition, an independent and effective appeal mechanism as well as the criteria for the transparent selection and evaluation of proposals.

The publication of the award of the FA shall comply with the procedure described in these guidelines with regard to the publication of contract awards.

Procedure applicable to standing offer contracts

3.7 The provisions of these guidelines shall apply to standing offer procurement contracts which aim at enabling the Borrower to cover his current annual supply needs whose actual extent is not possible to anticipate at the beginning of the year or which exceed the storage capabilities.

Standing order contracts, the duration of which shall not exceed one year and which shall be subject to renewable once, shall indicate the maximum and minimum limits of the overall service to be delivered, with these limits being expressed either in quantity or in value.

Their award shall be done based on the necessary quantities projected for the initial year of the conclusion of the contract.

The renewal of standing order contracts shall be subject to the authorization of the Bank.

Procedure applicable to running contracts

3.8 The provisions of these guidelines shall apply to running procurement contracts through which the Borrower shall undertake to assign for a limited period not exceeding one year and which period shall be renewable once, the execution of all or part of certain categories of service delivery defined by the national regulations, depending on orders made as and when the need arises.

During the re-tendering process, it shall be appropriate for the Borrower to specify the quantities of the service used during an elapsed period whose duration, if possible, shall be the same as that for which plans have been made in order to enable candidates to present a seriously studied price quotation.

Each of the parties may request a periodic review of the contract conditions or terminate the contract in the event of a disagreement on the said review.

The renewal of the running contract shall be submitted to the Bank for approval.

Direct contracting

3.9 The contract shall be entered into through a direct contracting arrangement where the Borrower informally initiates discussions he deems useful with a contractor, supplier or service provider.

Recourse to a direct contracting procedure through a waiver of the commencement of the competitive bidding processes shall be justified by the Borrower and expressly accepted by the Bank. The latter shall particularly check whether the resultant contract complies with the initial estimates and the commonly quoted prices, and whether its contractual conditions are fair and reasonable.

3.10 Direct contracting may only be opted for in one of the following restrictive cases:

- a) with re-tendering by candidates likely to execute the contract.
 - in cases of extreme emergency, for works, supplies or services the contracting authority shall have executed in place of the defaulting contractor, supplier or provider;
 - in cases of pressing emergencies caused by unforeseen circumstances or cases of force majeure which hinder compliance with the time limits set forth in the bidding procedures, and which cases require immediate attention in the event where the contracting authority was unable to foresee the circumstances causing the need, and
 - where delivery of works, supplies or services were limited to research, trials or improvements.
- b) without re-tendering by candidates likely to execute the contract
 - where needs can only be met through a service provision which requires the use of letters patent, licence or exclusive rights held by a sole contractor, a sole supplier or a sole provider;
 - where contracts can only be awarded to a determined provider for technical and artistic reasons;
 - an additional supplies, works or services contract (other than consultancy services) awarded in accordance with procedures deemed acceptable by the Bank may be extended for the procurement of additional and similar supplies, works or services (other than consultancy services). In such a circumstance, it shall be established to the satisfaction of the Bank that a fresh competitive bidding process will be of no benefit and that the prices obtained during the extension of the contract are reasonable. Where the renewal is predictable from the outset, the final contract shall contain provisions to this effect;
 - it may be justifiable to contact the initial supplier in the event where the additional procurements deal with standardized equipment or spare parts which shall be compatible with the already commissioned equipment. In order

for this procedure to be justified, the performance of the initial equipment shall be satisfactory, the quantity of new supplies shall generally be lower than that of already procured supplies, while the offered price shall be reasonable; a study shall also have been conducted into the advantages of the choice of another brand or source of supply. This solution must have been rejected for reasons deemed acceptable by the Bank;

In the two latter cases, the aggregate amount of these contracts shall not exceed 50% of the amount of the main contract.

Direct contracting shall only be entered into with contractors, suppliers or service providers who accept to subject themselves to specific price control during the delivery of services.

The contracts shall specify the accounting obligations to be discharged by the successful bidder, particularly the obligation to present his statements, income and expenditure accounts as well as his cost accounting records or, failing that, all documents likely to ensure the establishment of manufacturing costs.

3.11 The procedure applicable to the publication of the contract award is described under paragraph 2.61 of these Guidelines.

Direct labour delivery

3.12 Direct labour delivery, i.e. the execution of works like the construction and installation of equipment and the supply of services (other than consultancy services) by an Authority of the Borrower's country using its own personnel and equipment³⁰, may be the only possible method for the execution of works or delivery of services in special circumstances. The use of direct labour delivery requires the Borrower to fix the total maximum amount allocated to the direct delivery arrangement, for which the Bank shall issue a no objection notice, and to apply the quality controls and inspections with the same strictness as it does for contracts awarded to third parties. Direct labour delivery shall be justified and may only be used after the no objection notice of the Bank and under the following circumstances:

- a) The quantities of construction and installation works to be executed cannot be specified in advance.
- b) The construction and installation works are small and dispersed or located in hard-to-reach areas, to the extent that qualified firms are not likely to present proposals with reasonable prices.
- c) The construction and installation works must be executed without interfering with ongoing operations.

³⁰ A public construction department which does not enjoy administrative, legal and financial autonomy shall be considered as a direct labour delivery department.

- d) The Borrower is in a better position than the contractor to deal with the risks associated with the inevitable interruption of works.
- e) Specialized services (other than consultancy services), such as mapping and aerial surveys, can only be carried out by a specialized State department due to considerations like national security imposed by the law or regulations of the Borrower's country.
- f) Emergency repairs requiring quick attention in order to avoid the occurrence of additional damages, or works to be executed in conflict areas in which private firms may not be interested.

Procurement agents and representatives of contracting authority

3.13 Where they have neither the necessary means nor experience, Borrowers may wish to engage (or the Bank may require them to engage) a firm specializing in procurements as an agent. The representatives of the contracting authority may similarly be tasked, in return for a fee, with procurement contracts for diverse construction, reconstruction, repair or rehabilitation works in emergency and post-conflict situations, or where there are many small contracts, or where the capacity of the Borrower is limited. Procurement agents or representatives of the contracting party shall apply all the procurement procedures specified in the Loan Agreement or Contract and set forth in detail in the procurement plan approved by the Bank, including the examination procedures and documentation with regard to the use of the standard bidding documents approved by the Bank. This obligation shall also apply to cases where the agent is a UN institution. The Borrower shall include such capacity strengthening measures as have been agreed upon with the Bank in the contract³¹.

Inspection and certification services

3.14 In order to protect himself, the Borrower may ensure the inspection and certification of supplies before their shipment, particularly where big import programmes are concerned.

Generally, inspection and certification focus on the quantity and quality of supplies as well as their prices in order to determine whether they are reasonable. In the case of supplies procured through ICB, the inspection shall exclusively target quality and quantity, rather than prices.

However, supplies which were not procured through ICB may also be subject to price verification. Physical inspection services may also be included. Inspection and certification services are normally paid for through the payment of fees calculated on

³¹ The guidelines relating to Consultants shall, where the Loan Agreement or Contract and public procurement plan so stipulate, apply to the choice of agents tasked with public procurement and inspection. The cost or fees of these agents shall be payable from the loan of the Bank, on condition that their selection and recruitment conditions are deemed acceptable by the Bank.

the basis of the value of the supplies. The cost of the certification of imports is not factored into the evaluation of proposals received in response to an ICB.

Procurement under loans granted to intermediary funding institutions or agencies

3.15 Where the loan funds are meant for an intermediary funding institution or entity (or its appointed representative), for example, an agricultural credit fund, a development financing company or an infrastructure development fund, which will in turn assign them to beneficiaries – individuals, private firms, small- and medium-scale enterprises or autonomous public companies managed on a commercial basis – for the partial financing of sub-projects, it is the beneficiaries themselves who generally enter into the supplies, works and services contracts (other than consultancy services). The usual public procurement methods of commercial public companies or private companies of the country deemed acceptable by the Bank are used for these contracts. However, even in such cases, a national or international and limited or open competitive bidding process may be more suitable for the procurement of supplies with a high unit cost or where large quantities of similar supplies may be grouped and procured in bulk³². Where the loan funds are meant for public sector beneficiaries or complex and huge contracts, the use of the competitive procurement methods provided for by these guidelines shall be taken into account. Where the funds are meant for a venture executed as part of a public-private partnership arrangement (PPP), paragraphs 3.16 and 3.17 below shall apply.

The loan agreement shall describe the guidelines applicable to procurement and deemed acceptable by the Bank. These principles shall, inter alia, include mandatory provisions which forbid loan beneficiaries from assigning the contracts to their mother company or affiliated companies, except where there is an agreement or established situation that full competition will be assured. The loan agreement shall also define the main responsibilities of intermediary funding institutions or entities (or their appointed representatives) such as:

- i. evaluating the capacity of beneficiaries to implement the procurement procedures effectively;
- ii. approving acceptable plans for supplies, works and services procurement contracts (other than consultancy services), and, where necessary, the

³² The Bank shall check the methods and procedures for public procurement and the selection of consultants of commercial public firms or private firms of the Borrower's country. The procedures and practices of private firms shall only be subject to the same control where public funds are called up, and they shall be based on a simple and unique decision-making process which requires less documents. The Bank shall normally only accept procedures which at least meet the national requirements established by the Chamber of Commerce, recognized private firms, the Central Bank or the relevant authorities which are very conversant with customs or import licencing. It shall not be necessary to specify the financial thresholds for recourse to contracts in the Loan Agreement or Contract or in the public procurement Plans, whatever the procurement methods and the commercial practices adopted. Due to the participatory nature of such projects, it is not always possible to prepare public procurement plans in accordance with paragraph 1.18, in particular when the selection of consultants is done by the beneficiaries. Where possible, simplified public procurement plans shall be prepared based on an indicative list of admissible activities which have to be implemented.

selection of consultants; accepting the arrangements relating to supervision and monitoring for each of the sub-loans (in accordance with the provisions of the Bank's loan) of the procurement procedures which have to be implemented by beneficiaries in order to ensure compliance with the methods of the private sector and agreed commercial practices, and

- iii. keeping all documents relevant for auditing by the Bank, where necessary.

The intermediary funding institution or entity (or its appointed representative) shall check whether the prices of contracts awarded by beneficiaries are reasonable for the sector in question by engaging an independent agency or auditors, where necessary.

Procurement under public-private partnerships (PPP)

3.16 Where the Bank participates in the funding of a project or contract which is supposed to lead to a public-private partnership (PPP) such as a BOO, BOT, BOOT³³, concessions or other similar expressions of the private sector, the Borrower shall use either of the following procedures for the award of the contract, which shall be described in the Loan Agreement or Contract and set forth in detail in the Procurement Plan approved by the Bank:

- a) the firm or concessionary company with which a BOO/BOT/BOOT or similar contract is entered into is chosen by the Borrower after an open competitive bidding process which follows the procedures deemed acceptable by the Bank³⁴, in accordance with the procedures provided for under Guideline³⁵ n°04/2005/UEMOA on the award, execution and regulation of procurement contracts and the outsourcing of WAEMU public services available on the website of the WAEMU Commission, and which may involve several stages to arrive at an optimal combination of evaluation criteria, such as the cost and amount of funding offered, performance specifications and standards of proposed installations, the price to be charged the end user, revenues that the equipment will yield for the concessionary company or the firm and the depreciation period of the equipment. The firm so chosen is then free to enter into supplies, works or services contracts (other than consultancy services)

³³ In English, BOO (Build, Own, Operate), BOT (Build, Operate, Transfer), and BOOT (Build, Own, Operate, Transfer); in French, *CPE (Construction-Propriété-Exploitation)*, *CET (Construction-Exploitation-Transfert)* and *Construction-Propriété-Exploitation-Transfert (CPET)*. These expressions are grouped below under the concessions with financial support.

³⁴ For example, projects aimed at the construction of toll roads, tunnels, harbour equipment, bridges, power plants, purification plants or water distribution systems. Competitive bidding means: 1) open international competitive bidding, or 2) national competitive bidding for contracts whose value is lower than the thresholds defined by the Bank. Furthermore, a method enabling candidates to be invited directly, such as limited international competitive bidding, may be considered. All these methods shall be subject to examination by the Bank before they are accepted.

³⁵ Available on the WAEMU website: www.uemoa.int

which he will require for the execution of the installations requested from sources which meet the eligibility criteria, by using its own procedures.

In such a case, the Loan Agreement or Contract shall specify those of the expenditures of the concessionary company or the firm which will be covered by the loan funds of the Bank, or

- b) where the said firm or concessionary company is not chosen in the manner indicated in paragraph 3.16 (a) above, the supplies, works or services contracts (other than consultancy services) required for the execution of installations which are supposed to be covered by Bank funding shall be signed in accordance with the open or limited international competitive bidding procedures specified in Section II of these Guidelines for high value contracts, and in accordance with any other procurement method deemed acceptable by the Bank for lower value contracts and for consultancy services, in accordance with the guidelines relating to the selection of consultants.

3.17 Through a waiver of paragraph 3.16 (b), the Bank may, in exceptional cases such as the small-scale extensions of the existing system managed by a concessionary company or by an existing private or public status, and where a competitive method is not justified, accept the use of the procurement procedures of such a firm, on condition that:

- i. the agency meets the criteria under paragraph 1.10 (b) of these guidelines;
- ii. in the opinion of the Bank, the capacity, practices and procedures of the firm for the purposes of its normal commercial activities are acceptable;
- iii. subject to the provisions of paragraph 1.7 (a), the agency may give preference or award contracts to its mother company, an affiliated company or the stakeholders controlling it, and
- iv. the procurement procedures ensure fair competition as well as efficiency, cost effectiveness, quality and transparency. The Bank shall conduct post examinations at any stage of execution in order to check whether the procurement capacity and practices remain acceptable, and whether procurement procedures agreed upon for the purposes of the loan are being complied with.

Performance-based public procurement

3. 18 Performance-based public procurement also called results-based contracts,³⁶ refers to competitive public procurement (ICB, LICB or NCB) which leads to a contractual relationship whereby payments are based on measured results rather than the traditional way of dealing with deployed resources, including the manner in

³⁶ Recourse to results-based public procurement as part of projects financed by the Bank shall be, as accepted by the Bank, preceded by a satisfactory technical analysis of the various available options and shall be submitted for the prior approval of the Bank in order to be included in the public procurement plan.

which they would be measured. These results tend to meet a functional need in terms of quality, quantity and reliability. Payments are effected on the basis of the quality of results obtained, on condition that they met desired quality requirement. Payments may be based on a reduction of the tax base (or tax reduction) where results are of a lower quality and, in some cases, premiums may be paid when the quality of results is higher. Normally, the bidding documents neither specify the resources to be deployed nor the method of work to be used by the Contractor. The latter is free to propose the most appropriate solution based on proven and conclusive experience, and he shall provide proof to the effect that the level of quality specified in the bidding documents will be attained.

3.19 Results-based public procurement may deal with the following:

- i. the provision of services (other than consultancy services) to be paid for on the basis of results obtained;
- ii. the design, supply, construction (or modernization) and commissioning of an installation to be used by the Borrower, or
- iii. the design, supply construction (or modernization) of an installation and services (other than consultancy services) for the purposes of their use and maintenance for a previously determined number of years after commissioning³⁷.

In the where supply and/or construction are required, two-stage pre-qualification and competitive bidding, as described under paragraph 2.6, shall apply in principle.

Procurement financed through loans guaranteed by the Bank

3.2 Where the Bank guarantees the repayment of a loan granted by another financial backer, supplies, works and services contracts (other than consultancy services) funded by this loan shall be entered into in an efficient and cost-effective manner, in accordance with procedures meeting the criteria spelt out under paragraph 1.5. The Bank may review the public procurement procedures under the Loan until the expiry of the latter.

Community participation in the procurement process

3.21 Where for the purposes of increasing the chances of success of the project or attaining some of its social objectives, the Borrower deems it desirable in the case of the attainment of certain components of the project i) to request the participation of local communities and/or non-governmental organizations (NGOs) for civil works and the provision of services (other than consultancy services) or ii) to encourage the use of local know-how, supplies and materials, or iii) to use labour-intensive methods and

³⁷ Below are examples of this of this type of public procurement: (i) in the case of service contracts: supply of medical services, i.e. payment for specific services like pre-established visits and laboratory trials, etc. ; (ii) in the case of the public contracts for installations : design, procurement, construction and commissioning of a thermal plant to be used by the Borrower; (iii) in the case of the procurement of an installation and services : design, procurement, construction (or rehabilitation) of a road and use and maintenance of the road for five (5) years after construction.

other appropriate technologies, these considerations shall be factored into the choice of public procurement procedures, the definition of specifications and the determination of the contents of contracts, as long as these methods are acceptable by the Bank. The proposed procedures and activities to be carried out with the participation of the community are indicated in the Loan Agreement or Contract, stated in detail in the Procurement Plan approved by the Bank and made available to the public by the Borrower. Due to the participatory nature of these projects, it is not always possible, during negotiations, to prepare detailed public procurement plans, as required by paragraph 1.18, for the component of the project executed with the participation of the community, particularly where the procurement procedures or activities themselves are directly implemented by the community. Where possible, simplified procurement plans may be prepared from an indicative list of activities which could be implemented³⁸.

IV. CHANGE IN THE COURSE OF CONTRACT EXECUTION PROCESS

Changes in volumes of services

4.1 The signing of an amendment shall be mandatory as soon as there is a change in the volume of works, supplies or services, pursuant to the conditions determined by the national regulations and mentioned in the specifications.

It shall be subject to the authorization of the national administrative entity tasked with the monitoring of the public contracts of the Borrower. It shall then be forwarded to the Bank which shall issue a no objection notice.

Where the increase in the volume of works exceeds an amount of thirty percent (30%), the amount of the contract calculated on the basis of the initial prices, or in the event of successive amendments, the amount of the last amendment to be concluded brings the total aggregate of amendments to more than thirty percent (30%) of the amount of the contract, a new contract shall be entered into.

The award of the new contract shall be subject to the provisions of these guidelines.

The normal practice of reviews pursuant to the contractual clauses shall not require the signing of amendments.

³⁸ Community participation projects generally focus on a high number of low value contracts for supplies, consultancy services and services other than consultancy services, as well as a high number of small works dispersed in the remote areas. The generally used public procurement procedures include the consultation of suppliers, local competitive bidding for supplies and works contracts for the attention of potential candidates present in and close to the local community, low value direct contracting for supplies, works and services (other than consultancy services) and the recourse to the labour and resources of the community. The Loan Agreement shall provide an adequate and detailed description of all the procurement methods and procedures, including the roles, responsibilities and extent of participation of the community in general (including in certain circumstances and, where necessary, the community public procurement committees), simplified stages for all the applicable procurement methods, provisions for any technical assistance or any other form of assistance requested by the community, payment procedures, document keeping procedures, simplified standard documents to be used, monitoring roles and functions of the agency responsible for execution, etc. The arrangements of the Bank relating to the supervision of the procurement procedure, including technical and financial examinations and audit requirements, shall be indicated in the Loan Agreement or Contract and the simplified public procurement Plan. The audit shall cover the verification of the quality and quantity of supplies, works and services as well as the sound use of funds.

However, where the application of the formula for the variation of prices leads to a variation exceeding twenty percent (20%) of the initial contract amount or the amount of the part of the contract to be executed, the contracting authority or successful bidder may request the termination of the contract.

Whatever the case, where the execution of the contract leads to an unforeseen circumstance duly brought to the attention of the Bank, an amendment may also be concluded after the Bank issues a no objection notice.

Non-observance of contractual time limits

4.2 In the event where the contractual time limits set by the contract have been exceeded, the successful bidder shall be liable to penalties, on condition that the conditions for the imposition of these penalties are provided for in the contract.

These penalties shall not exceed the amount set in the general administrative conditions of contract for each category of contracts.

Where the amount indicated under the preceding paragraph is attained, the representative of the contracting authority may request the termination of the contract. A full or partial reduction in the penalties may be granted by the immediate superior of the contracting authority.

Unexpected difficulties caused by force majeure shall exempt the successful bidder from the resultant penalties.

SCHEDULE 1 - RECOMMENDATIONS TO BIDDERS

Purpose

1. This schedule is intended for suppliers and contractors who are desirous of competing for the award of contracts funded by loans granted by the Bank.

Responsibility for procurement

2. The Borrower shall bear full responsibility for the execution of the project and for that matter of payment for supplies, works and services (other than consultancy services) under this project. For its part, the Bank shall ensure that funds from its loans are solely released as and when expenditures are incurred. Disbursements of a loan shall only be effected upon the request of the Borrower. The latter shall submit his request for the release of funds to the Bank, together with documents to prove that the funds are being or have been used in accordance with the Loan Agreement or Contract and the public procurement plan. As emphasized by paragraph 1.2 of these guidelines, the Borrower shall be the legal entity responsible for the public procurement process. He shall launch the competitive bidding process, receive and evaluate proposals as well as award the contract. The contract shall bind the Borrower and the supplier or contractor. The Bank shall not be party to the contract.

Role of the Bank

3. As provided for under paragraph 1.2 of these guidelines, the Bank shall examine the public procurement procedures, documents, evaluation of proposals and recommendations relating to the award of contracts in order to ensure compliance with the agreed procedures, in accordance with the provisions of the Loan Agreement or Contract. For all contracts, documents shall be examined by the Bank before they are made available to candidates, in accordance with the guidelines relating to the control of the Bank. Where, at any stage of the process (and even after the contract has been awarded), the Bank makes a determination to the effect that the procedures agreed upon with the Borrower have basically not been complied with, it may ascertain whether the procurement process has not complied with the agreed public procurement procedure, as indicated under paragraph 1.14 of the guidelines. However, where the Borrower awarded the contract after receiving the Bank's no-objection, the Bank shall only declare that the procurement process is irregular if it gave this notice on the basis of the communication of incomplete, erroneous or wilfully inaccurate information by the Borrower. Furthermore, where the Bank establishes that representatives of the Borrower or the bidder engaged in corrupt practices or fraudulent acts, it may apply the sanctions under paragraph 1.16 of these guidelines.

4. The Bank published standard bidding documents for various categories of contracts. As specified under paragraphs 2.10 and 2.12 of the guidelines, the Borrower shall use these documents and only make essential minimum alterations to meet the special requirements of the project or country. The shortlisting and

competitive bidding documents shall be finally developed and published by the Borrower.

Information on procurement

5. Information on contract opportunities under the ICB arrangement may be obtained from the general public procurement notice and the specific public procurement notices described in paragraphs 2.7 and 2.8 of these guidelines.

Role of the candidate

6. When he receives the pre-qualification or bidding documents, the candidate shall carefully study same in order to determine whether it would be possible for him to meet the various technical, commercial and contractual conditions and, if so, start to prepare his proposal. At this stage, it is recommended that candidates should analyse the documents very closely to detect any ambiguity, omission or internal contradiction, or any part of the specifications or other clauses he may find unclear, discriminatory or restrictive; in such a case, the candidate shall submit a written request for clarifications to the Borrower within the time limit specified to this effect in the bidding documents.

7. The criteria and method for the selection of the bidder to whom the contract will be awarded shall be indicated in the bidding documents and generally in the instructions to bidders and contract specifications. Any clarification deemed necessary shall similarly be requested from the Borrower.

8. In this regard, it should be stressed that, as stated under paragraph 1.1 of these guidelines, each contract shall be governed by the bidding documents published by the Borrower for the award of the particular contract. Where they think that any of the provisions of these documents are incompatible with these Guidelines, candidates shall also apply to the Borrower.

9. It is the responsibility of candidates to report any ambiguity, contradiction, omission, etc., before submitting their proposals in such a manner as to present proposals which are fully compliant with the provisions of the bidding documents, together with all the documents requested in these documents. Proposals which do not comply with the basic (technical and commercial) provisions shall be rejected. Candidates who wish to depart from the provisions of the documents where a non-essential point is concerned or propose an alternative bid shall strictly apply the instructions provided by the specific provisions of the bidding documents of the Borrower relating to these issues, particularly those relating to deviations. The alternative bids shall only be proposed where they are allowed by the bidding documents. Unless the bidding documents clearly identify the mandatory and non-mandatory technical and commercial requirements, candidates shall bear full responsibility for any deviation or conditions attached to their proposals which may be deemed substantial and lead to the rejection of their proposals. After proposals have been received and opened in public, bidders shall neither be requested nor permitted to alter the price or contents of their proposals.

Confidentiality of the procedure

10. As indicated under paragraph 2.47 of these guidelines, no information shall be disseminated on the ongoing evaluation before the publication of the contract award.

This outright reservation is essential for the protection of those participating in the evaluation on behalf of the Borrower and the examination of this evaluation on behalf of the Bank from any real or perceived possibility of inappropriate interference. At this stage, bidders who are desirous of providing the Borrower and/or the Bank with additional information shall do so in writing.

SCHEDULE 2 – EARLY ACTIONS FOR THE PURPOSES OF PROCUREMENT (AAAs)

General considerations

1. In certain circumstances or in the case of major projects, where it is clearly demonstrated that early award of contracts for the procurement of goods and works shall be a crucial factor for the rapid execution of the project, the Borrower may, with the prior agreement of the Bank, be authorized to issue invitations to tender and to even sign the corresponding contracts before the approval of the project by the Board of Directors. In such situations, the Bank shall require the Borrower to submit for approval all documents and all stages of the selection process, in accordance with these Guidelines.

Decision to resort to AAAs

2. Generally, with the exception of pre-investment studies, AAAs shall only be considered after the completion of the project preparation or evaluation stage in order to ensure that the Bank is satisfied with the general design of the project and has identified components to be funded as well as factors deemed acceptable for AAAs, should the Borrower so require.

Precautions

3. The following precautions shall be recommended for an AAA, and shall be clearly indicated to and discussed with possible Borrowers who wish to initiate an AAA:
- a. The Borrower shall be fully aware that an AAA is initiated at his own risk and does not in any way oblige the Bank to fund the project.
 - b. The Borrower shall be perfectly aware that in order to benefit from Bank financing, procurement made under an AAA shall be done in accordance with the procedures of the Bank.
 - c. In the case of an AAA, advertisements shall indicate that the Borrower has requested Bank financing, and that any disbursement under the signed contract shall be subject to the approval of the loan by the Bank.

SCHEDULE 3 – PROCUREMENT RULES AS PART OF PRIVATE SECTOR OPERATIONS

Application of procedures to private sector operations

1. Generally, the rules of the Bank on public procurement shall also apply to the private sector, whether the entity is a Borrower of the Bank or a beneficiary of a Bank guarantee. In particular, the rules of the Bank governing the appropriate application of loan funds, the eligibility of goods, works and services, and the principles relating to the cost effectiveness and performance of the project, shall apply to the private sector.

Procurement methods

2. Private sector borrowers shall use procurement procedures which are compliant with the prevailing commercial practices of the private sector deemed acceptable by the Bank. The Bank shall ensure that such procedures lead to competitive prices for goods and works, and that they meet the needs of the project.

In some cases, and depending on the size of the project, the Bank may, for the purposes of private agencies and private sector borrowers who do not have public procurement structures, consider the possibility of resorting to specialized consultancy firms for the procurement of goods and services which could be of assistance to them or initiate procedures in their stead.

Conflict of interest

3. Contracts entered into by private sector Borrowers shall be negotiated under market conditions, taking into account the financial interests of the Borrower rather than the interests of the mother company. Where the shareholder of a private sector Borrower is also acting as a contractor of the Borrower, it shall be proved to the Bank that procurement costs are approximately equivalent to the budget estimates and market price, and that the conditions of the contract are fair and reasonable. The Bank shall not finance procurements exceeding the market price.

SCHEDULE 4 – EXAMINATION OF THE PROCUREMENT PROCESS BY THE BANK

Public procurement schedule

1. The Bank shall examine the selection modalities proposed by the Borrower in the public procurement plan to ensure that they comply with the Loan Agreement or Contract and these guidelines. The public procurement plan shall cover a minimum initial period of eighteen (18) months. The Borrower shall update the public procurement plan every year covering previously awarded contracts and those to be awarded within the following twelve (12) months. This public procurement plan shall serve as the basis of the formulation of the general public procurement notice also submitted for examination by the Bank and which is to be updated annually. Any proposal for the review of the public procurement plan shall be subject to prior examination by the Bank.

2. All contracts shall be subject to prior examination by the Bank:

- a) Where pre-qualification is required, the Borrower shall, before issuing the pre-qualification notice, communicate to the Bank the documents he proposes to use, including the pre-qualification notice, pre-qualification questionnaire and the evaluation method, as well as a description of the advertising procedures he proposes to follow, and make all such necessary alterations to the said documents as the Bank may reasonably require. Before notifying his decision to the candidates, the Borrower shall, for the purposes of observations, communicate to the Bank the report on the evaluation of applications received by the Borrower, list of proposed pre-qualified candidates, together with a description of their capacity and a statement of the reasons for which they were chosen and for which the other candidates were rejected. The Borrower shall revise this list by making additions, deletions or alterations that they Bank may reasonably require.
- b) Before initiating the competitive bidding process, the Borrower shall, for the purposes of observations, communicate to the Bank the draft bidding documents including the competitive bidding notice, instructions to bidders, including proposal evaluation and contract award criteria, the administrative and technical clauses applicable, depending on the case, to civil works, supplies or installation of equipment, etc., as well as the description of the advertising procedure he proposes to follow for competitive bidding (where there was no pre-qualification), and the Borrower shall make all such necessary alterations to the said document as the Bank may reasonably require. Any subsequent alteration shall be subject to the issuance of a no objection notice of the Bank before being communicated to possible bidders.
- c) After proposals have been received and evaluated, and before a final decision is taken on the award, the Borrower shall, in order to enable it to examine these documents well in advance, furnish the Bank with a detailed report (prepared by experts where the Bank so requests and deems acceptable) on the

evaluation and comparison of received proposals (for each stage of the case of two-stage proposals or a framework agreement), the recommendations on the award of the contract and all other information that the Bank may reasonably require. Where the Bank determines that the award under consideration is incompatible with the provisions of the Loan Agreement and/or Public Procurement Plan, it shall as soon as possible advise the Borrower accordingly by indicating the reasons for its decision, otherwise the Bank shall issue its no-objection notification with regard to the recommendation on the award of the contract. The Borrower shall only award the contract after receiving the no objection notice of the Bank.

- d) Where it becomes necessary to extend the validity of proposals in order to complete their evaluation, obtain internal authorizations and the required no objection notices of the Bank as well as to award the contract, the Borrower shall obtain the prior approval of the Bank as soon as the first request for extension is made, where the requested deferment exceeds four (4) weeks, and for any other request, whatever the duration of the requested additional time.
- e) Where after the publication of the contract award, the Borrower receives protests or complaints from bidders, a copy of the complaint, comments of the Borrower on each contentious point raised in the complaint and a copy of the response prepared by the Borrower shall be communicated to the Bank for it to examine and comment on these documents.
- f) Where after the analysis of the protest, the Borrower decides to alter his recommendation on the contract award, the reasons for this decision and a revised evaluation report shall be submitted to the Bank for the issuance of its no objection notice. The Borrower shall ensure a fresh publication of the contract award.
- g) The clauses and conditions of the contract shall, where the Bank has not issued its prior no objection notice, not differ substantially from those provided for in the bidding documents or, where necessary, the documents on the pre-qualification of contractors.
- h) Where they are required, a certified true copy of the contract, guarantee to repay the cash advance and performance security shall be made available to the Bank as soon the first request for disbursement of funds from the Loan Account for the said contract is made and before the same is submitted to the Bank. Where payments for the purposes of the contract are supposed to be effected through funds from a special account, copies of the contract, agreement to reimburse mobilization funds and performance security shall, where they are required, be made available to the Bank before the first disbursement of funds from the Special Account for the purposes of the said contract.

- i) All evaluation reports shall be accompanied by a summary public procurement statement prepared in accordance with the model provided by the Bank. The description and amount of the contract as well as the name and address of the successful bidder shall be published by the Bank, in accordance with paragraph 2(h) above and upon receipt of a signed copy of the contract addressed by the Borrower.
 - j) The Borrower shall keep all documents on each contract during the execution of the project and until two (2) years after the closing date of the Loan Agreement. These documents shall include but not be limited to the following:
 - i) the signed original of each of the contracts and all their subsequent amendments and additional clauses; ii) the originals of proposals, all documents and correspondence relating to the public procurement procedure and the execution of the contract, including those on proposal evaluation and the contract award recommendation forwarded to the Bank; and iii) bills or payment certificates, as well as inspection, delivery, completion receipt of supplies, works execution and service delivery assurances (other than consultancy services). For direct contracting, the documents shall include the justification of the recourse to this method, technical and financial capacity of the firm and the signed original of the contract. The Borrower shall provide these documents at the request of the Bank for them to be examined by the Bank or its consultants/auditors.
 - k) The Bank may declare that the procurement process is irregular for any of the reasons set forth under paragraph 1.14 of these guidelines. This includes establishing whether the supplies, works or services contracts (other than consultancy services) were not awarded in accordance with the agreed procedures and methods, as specified in the Loan Agreement and set forth in detail in public procurement plan for which the Bank had issued a no objection notice, or whether the contract itself is not compatible with the said procedures. The Bank shall communicate these reasons to the Borrower as soon as possible.
3. *Alterations to the signed contract:* for all contracts, before accepting a) an extension of the time limit for the execution of the contract; b) any substantial alteration to the nature of services or any other significant change in the clauses and conditions of the said contract; c) any change through a notice to proceed or any amendment (except in extreme emergencies), or d) change of the date of the end of contract, the Borrower shall request a no-objection notice from the Bank. Where the Bank decides that the alteration is incompatible with the provisions of the Loan Agreement and/or public procurement plan, it shall promptly advise the Borrower by indicating the reasons behind its decision. A copy of all changes made to the contract shall be submitted to the Bank for registration.