

KINGDOM OF CAMBODIA

# Procurement Manual

Volume I  
Policies and Procedures

For Externally Financed  
Projects/Programs in Cambodia



September 2005

**KINGDOM OF CAMBODIA**  
**NATION – RELIGION – KING**

**MINISTRY OF ECONOMY AND FINANCE**

**PROCUREMENT MANUAL**

**Volume I**  
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**For**

**EXTERNALLY FINANCED**  
**PROJECTS/PROGRAMS IN CAMBODIA**

September 2005



- បានឃើញអនុក្រឹត្យលេខ ៣៦ អនក្រ.បក ចុះថ្ងៃទី ១៤ ខែ មិថុនា ឆ្នាំ ២០០០ ស្តីពីការគ្រប់គ្រង កម្មវិធីវិនិយោគសាធារណៈ
- បានឃើញអនុក្រឹត្យលេខ ៦០ អនក្រ.បក ចុះថ្ងៃទី ៣១ ខែ កក្កដា ឆ្នាំ ១៩៩៩ ស្តីពីការគ្រប់គ្រង លទ្ធកម្មសាធារណៈ
- បានឃើញប្រកាសលេខ ៣១៩ សហវ.ប.ប្រក ចុះថ្ងៃទី ៣១ ខែ សីហា ឆ្នាំ ១៩៩៩ ស្តីពីការអនុវត្តន៍ វិធាន និងបទប្បញ្ញត្តិក្នុងការគ្រប់គ្រងលទ្ធកម្មសាធារណៈ
- បានឃើញប្រកាសលេខ ០៤៥ សហវ.ប្រក ចុះថ្ងៃទី ៣១ ខែ មករា ឆ្នាំ ២០០៥ ស្តីពីការអនុវត្តន៍ វិសហមជ្ឈការកិច្ចលទ្ធកម្មសាធារណៈ
- បានឃើញប្រកាសលេខ ១៣២ សហវ.ហក.ប្រក ចុះថ្ងៃទី ១៨ ខែ មេសា ឆ្នាំ ១៩៩៧ របស់ ក្រសួងសេដ្ឋកិច្ច និងហិរញ្ញវត្ថុ ស្តីពីការចំណាយជំពូក ៥០ ប្រការ ០២ "ការរួមចំណែករបស់រាជ រដ្ឋាភិបាលចំពោះការវិនិយោគដោយផ្ទាល់ពីក្រៅប្រទេស (មូលនិធិបដិភាគ)"
- យោងតាមតម្រូវការចាំបាច់របស់ក្រសួង និងដោយមានការព្រមព្រៀងជាមួយធនាគារពិភពលោក និង ធនាគារអភិវឌ្ឍន៍អាស៊ី

**សំរេច**

- ប្រការ១:** ដាក់ឱ្យប្រើនូវនីតិវិធីលទ្ធកម្មរួម សំរាប់គំរោងជំនួយរបស់ធនាគារពិភពលោក និងធនាគារអភិវឌ្ឍន៍ អាស៊ី ដែលមានខ្លឹមសារដូចមានភ្ជាប់ជាមួយប្រកាសនេះ ។
- ប្រការ២:** នីតិវិធីនេះនឹងត្រូវអនុវត្តសំរាប់គំរោងហិរញ្ញប្បទានពីបរទេសផ្សេងទៀត ប្រសិនបើមានការព្រមព្រៀង ពីអ្នកផ្តល់ ។
- ប្រការ៣:** អគ្គលេខាធិការដ្ឋាន ខុទ្ទកាល័យ គ្រប់នាយកដ្ឋាន មន្ទីរចំណុះក្រសួងសេដ្ឋកិច្ច និងហិរញ្ញវត្ថុ និង គ្រប់ភ្នាក់ងារប្រតិបត្តិគំរោងពាក់ព័ន្ធ ត្រូវអនុវត្តតាមប្រកាសនេះ ឱ្យមានប្រសិទ្ធភាពចាប់ពីថ្ងៃចុះ ហត្ថលេខានេះតទៅ ។

**កន្លែងទទួល:**

- ទីស្តីការគណៈរដ្ឋមន្ត្រី
- ក្រុមប្រឹក្សាអភិវឌ្ឍន៍កម្ពុជា
- គ្រប់ក្រសួង-ស្ថាប័នពាក់ព័ន្ធ  
"ដើម្បីអនុវត្ត"
- ឯកសារ កាលប្បវត្តិ

**នេស រដ្ឋមន្ត្រី**  
**រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ច និងហិរញ្ញវត្ថុ**  
  
**នេស រដ្ឋមន្ត្រី**





ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
KINGDOM OF CAMBODIA  
Nation Religion King

ក្រសួងសេដ្ឋកិច្ច និង ហិរញ្ញវត្ថុ  
MINISTRY OF ECONOMY AND FINANCE

N°.....MEF.....

Phnom Penh, ....., 2005

**PRAKAS**  
on  
**Promulgating of the Procurement Manual for Implementing  
the World Bank and the Asian Development Bank Assisted Projects**

**Senior Minister**  
**Minister of Economy and Finance**

- Having seen the Constitution of the Kingdom of Cambodia
- Having seen the Royal Decree No. NS/RKM/0704/124, dated July 15, 2004 on the Appointment of the Royal Government of Cambodia
- Having seen the Royal Decree No. 02/NS/94 of July 20, 1994, promulgating the Law on the Organization and Functioning of the Council Ministers
- Having seen the Royal Decree No.01/NS/93 dated December 28, 1993 on the Financial System, amended by Royal Decree No.10/NS/94, dated December 31, 1994, promulgating the law for year 1995 Financial Management and amended by Royal Decree No. NS/RKM/1299/15, dated December 25, 1999 and amended by Royal Decree No.NS/RKM/1202/020 dated December 30, 2002, promulgating the Amended Law on Article 26 of the Law on Financial System
- Having seen the Royal Decree No. NS/RKM/0196/18 dated January 24, 1996 on the Establishment of the Ministry of Economy and Finance
- Having seen the Sub-Decree No. 04/ANK/BK, dated January 20, 2000 on the Establishment and Functioning of the Ministry of Economy and Finance
- Having seen the Sub-Decree No. 78/ANK/BK, dated November 18, 2004 on the Fulfillment and Restructuring the departments of the Ministry of Economy and Finance
- Having seen the Sub-Decree No. 36/ANK/BK, dated June 14, 2000 on the Management of Public Investment Program
- Having seen the Sub-Decree No. 60/ANK/BK, dated, July 31, 1995 on the Management of Public Procurement
- Having seen the Prakas No. 319/MEF/P/PR dated August 31, 1995 of the Ministry of Economy and Finance, on the Implementation of the Rule and Regulation on the Management of Public Procurement
- Having seen the Prakas No. 132/MEF/EF/PR dated April 18, 1997 of the Ministry of Economy and Finance on expenditure in chapter 50, article 02," the Royal Government's Contribution to foreign direct investment (counterpart funds)"
- Pursuant to the necessity of the ministry and the agreement with the World Bank and the Asian Development Bank

**DECIDES**

**Article 1:** To promulgate the "Procurement Manual" for implementing the assisted projects, that are financed by the World Bank and Asian Development Bank as attached to this Prakas.

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**Article 2:** This manual shall also be implemented for the other externally financed projects if agreed by other donors.

**Article 3:** General Secretariat, Cabinet, all Departments, and Services under the Ministry of Economy and Finance and all related Executing Agencies shall comply with this Prakas effective from the date of signature herein. *PLS*

**Senior Minister and Minister of  
Economy and Finance**

*Signature and Seal*

**Keat Chhon**

Recipients:

- Office of the Council of Ministers;
- Council for Development of Cambodia;
- All related line ministries and institutions  
"for implementation";
- Archives

## Foreword

The Ministry of Economy and Finance (MEF) has developed this unified Procurement Manual for the purpose of assisting and providing guidance to MEF and other line ministry personnel in the execution of projects funded by both the Asian Development Bank and the World Bank. This Manual will enable personnel to improve the procurement performance of the projects and programs funded by them. The need for this initiative has become obvious since the substantial increase in the Official Development Assistance (ODA) that has been provided to the Royal Government of Cambodia (RGC) over the past decade. Over time is expected to develop into a unified procurement manual that will govern all public procurement activity undertaken within the Kingdom of Cambodia.

This Manual supersedes the procurement provisions contained in the 1998 Project Accounting Manual for use in all ADB financed projects in Cambodia issued under *Prakas* No 467. Line ministry staff engaged in the implementation of WB financed projects on the other hand, have been preparing individual procurement management manuals, for these Projects. Noting the duplication in this regard, and recognizing the need to eliminate such unnecessary duplication, assistance was sought from our development partners to help us to develop this Manual for use in all ADB and WB funded projects and programs in the RGC.

This initiative is also in line with the RGC's recently announced "Rectangular Strategy", to improve accountability and transparency. It is also directly linked to Cambodia's commitment to the Development Assistance Committee (DAC) of the OECD, to improve the effectiveness and utilization of aid provided to the RGC.

It is also the intention of the MEF to review the implementation of this Manual after it has been in use for a period of time, and it is acknowledged that at that time, it may be necessary to modify this Manual, based on feedback provided from actual experiences on the ground.

Finally, I wish to sincerely thank the WB for providing the funding required to enable the preparation of this Manual. We also wish to thank the ADB for their support and inputs in developing this Manual.



**KEAT CHHON**  
Sr. Minister,  
Minister of Economy and Finance

# Abbreviations

ADB	-	Asian Development Bank
BD	-	Bidding Document
BDF	-	Bidding Forms
BDS	-	Bid Data Sheet
BTP	-	Bio-data Technical Proposal
CRAM	-	Consultant Recruitment Activity Monitoring
CSC	-	Consultant Selection Committee
DA	-	Donor Agency
DCS	-	Delivery and Completion Schedule
DS	-	Direct Selection
DIC	-	Department of Investment and Cooperation
EA	-	Executing Agency
EQC	-	Evaluation and Qualification Criteria
ETP	-	Evaluated Total Price
FIDIC	-	Fédération Internationale des Ingénieurs-Conseil
FP	-	Financial Proposal
FTP	-	Full Technical Proposal
GCC	-	General Conditions of Contract
ICB	-	International Competitive Bidding
ICC	-	International Chamber of Commerce
IFB	-	Invitation for Bids
Incoterms	-	International Commercial Terms
ITA	-	Instruction to Applicants
ITB	-	Instruction to Bidders
JV	-	Joint Venture
LCB	-	Local Competitive Bidding
LGRS	-	List of Goods and Related Services
MEF	-	Ministry of Economy and Finance
MOU	-	Memorandum of Understanding
NBC	-	National Bank of Cambodia
NCB	-	National Competitive Bidding
PCC	-	Particular Conditions of Contract
PQ	-	Prequalification
PRC	-	Procurement Review Committee
QBS	-	Quality based selection
QCBS	-	Quality Cost based selection
RFP	-	Request for Proposal
RGC	-	Royal Government of Cambodia
SBD	-	Standard Bidding Documents
SBQ	-	Schedule of Bidders Qualification
SCC	-	Special Conditions of Contract
SOP	-	Standard Operating Procedures
SS	-	Schedule of Supply
STP	-	Simplified Technical Proposal
TOR	-	Terms of Reference
TP	-	Technical Proposal
TS	-	Technical Specifications
WB	-	World Bank



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# 1. INTRODUCTION

In accordance with the Law to Establish the Ministry of Economy and Finance (Kram NS/RKT/0196/18) dated 24 January 1996 and the Sub Decree on The Organization and Functioning of the Ministry of Economy and Finance (04/ANK/BK) dated 20 January 2000, the Ministry of Economy and Finance has the responsibility and a mandate:

*“To participate in mobilizing aid and the preparation of plans for borrowing and payment of foreign loans and follow up and monitor the performance of such plan.....*

*.....To manage and control public procurement transactions of the ministries/institutions, provinces/municipalities and state managed or publicly owned autonomous institutions”*

This Manual is issued both ensure users are aware of the Government’s own policies on procurement funded by both the World Bank and Asian Development Bank (herein after referred to as Donor Agency(ies) or “DA”) and to provide a training and reference tool for those practicing procurement. Subject to specific agreement with other funding agencies, this manual may also be used on projects funded by such agencies.

## 1.1. GUIDING PRINCIPLES

- 1.1.1. The overriding principle in developing these processes is that the line ministries and specialized agencies must take full responsibility for the activities mandated by law under the Royal Decrees and Sub-Decrees that created them. They should be accountable and responsible for their actions in discharging their functions.
- 1.1.2. The role of MEF is to provide guidance and support and play a mentor and facilitator’s role in the identification, formulation, implementation and completion of development projects in Cambodia.
- 1.1.3. MEF will closely monitor the performance of the executing agencies and provide them with the appropriate support and guidance to enable them to be efficient and effective in the performance of their mandate.
- 1.1.4. The procurement goal of the Royal Government of Cambodia is to deliver the identified inputs, be they goods, works or services, at the right time, at the right place, at the right price, at the right quality and at the right quantity.

## 1.2. THE PURPOSE OF THIS MANUAL

- 1.2.1. The main purpose of this Manual is to improve the effectiveness and efficiency in Cambodia’s management and administration of its portfolio of externally assisted projects, under the purview of the MEF, specifically procurement, by clarifying institutional roles, responsibilities, and accountabilities, as well as streamlining related procedures and interactions between and among the institutions and officers/staff involved. The Manual aims to clarify and streamline those Government and DA procedures where

there are presently overlaps and inefficiencies so that operations are implemented more efficiently.

1.2.2. Improving aid portfolio management is intended to:

- optimize the social and economic benefits to be derived from external aid;
- expand the levels of external assistance available to Cambodia to accelerate the development process; and
- support the move from donor-led development towards development led by Cambodia and its people.

This manual sets out standard processes to be followed in the procurement. The processes for financial management can be found in the “FINANCIAL MANAGEMENT MANUAL For investment projects financed by the Asian Development Bank and the World Bank”. The benefits of following these processes will be:

- **ECONOMY** - Achieve best value through open and fair competition;
- **TRANSPARENCY** - Promote transparency in the procurement process;
- **ACCOUNTABILITY** - Ensure the accountability of those involved with the procurement process;
- **EQUITY** – through uniform policies and procedures for procurement create an equitable environment for competition
- **EFFECTIVENESS** - facilitate optimum effectiveness in procurement operations so that they deliver the desired outcomes, and
- **EFFICIENCY** – through standardized procedures and consistent application of best procurement practices minimize delays to the procurement process.
- **ETHICAL STANDARDS** – to provide staff involved with procurement a set of standards and framework under which procurement is to be undertaken that represents the highest standards of ethics and honesty.

1.2.3. Consistent application of the procedures and provisions of this Manual will:

- ◆ ***Remove or minimize the necessity for making new decisions every time a comparable situation arises;***
- ◆ ***Provide a point of reference against which principles and practices in the procurement operations can be evaluated; and***
- ◆ ***Serve as a reference and training material for staff involved with procurement, providing guidance based on best international practices.***

### **1.3. PROCUREMENT COVERED BY THIS MANUAL**

- 1.3.1. The Manual is intended for all officers and staff of the Ministry of Economy and Finance (MEF), line ministries, and specialized agencies implementing externally assisted projects that comes under the purview of MEF. The processes complement those special provisions of the Royal Government of Cambodia (hereinafter referred to as the Government) on the use of external resources.
- 1.3.2. The Manual is structured so that it takes the user through the procurement process sequentially starting with the planning of procurement. It also contains step by step guide for the procurement of goods, works and services through National Competitive Bidding<sup>1</sup> (NCB) which are shown as annexes to this manual. When relevant it should be used in conjunction with standard procurement documentation – in the case of international competition (ICB or QBS/QCBS) it should be used in conjunction with the standard bidding documents issued by the ADB and World Bank as appropriate.
- 1.3.3. The contents of the Manual and its annexes have been reviewed by both the World Bank and ADB<sup>2</sup> and agreed and accepted by them as a single harmonized procurement manual approved for use on all projects funded by them. The provisions of the manual are consistent with the spirit of both their procurement guidelines, in the event that there appears to be a conflict between the manual and the guidelines users of the manual should refer the issue to the Task Team Leader for guidance ensuring MEF are informed of the issue. In case on any conflict between the provisions of the Procurement Manual and the loan/credit agreement, which include the DA's Procurement/Consultants guidelines by cross reference, the loan/credit agreement will take precedence

### **1.4. CHANGES TO THE MANUAL**

- 1.4.1. Users of this manual are not invited or permitted to deviate from the provisions of this manual as the provisions are based upon the mandatory processes and procedures agreed between DA's and the Government.
- 1.4.2. However it is recognized that the procurement function is an evolving process and provisions that may be correct at the time this Manual is issued may not always hold true in the future. It is also possible that users of this manual when overcoming challenges in procurement will identify alternative processes to those described in this Manual that may represent in improvement in an existing process and provision. In either instance EAs and/or users are encouraged to raise the issue with MEF who will review and evaluate the provision in question for inclusion in future editions of the Manual.

### **1.5. TERMINOLOGY**

- 1.5.1. The terms and words used in this Manual are interchangeable between the Government, Asian Development Bank and World Bank. The terms Loan, Credit, Grant and Trust Funds and Technical Assistance all refer to the source

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<sup>1</sup> Called Local Competitive Bidding by the ADB

<sup>2</sup> Not in the Draft, the ADB and WB have not yet reviewed the manual or approved it.

of funds. Local, domestic and national all refer to Cambodia have the same meaning being within Cambodia. Canvassing and shopping have the same meaning as do direct contracting, direct purchase and single or sole source, i.e. procurement without competition.



## 2. PRINCIPLES OF THE GOVERNMENT'S PROCUREMENT POLICY

### 2.1. THE RECTANGULAR STRATEGY

- 2.1.1. The Government is developing a policy of public sector best practice in its procurement operations as outlined in the Government's Rectangular Strategy presented by the Prime Minister Samdech Hun Sen at the First Cabinet Meeting of the Third Legislature of the National Assembly on 16 July 2004. Improved public procurement will contribute significantly to the first of the four cornerstones of the Strategy, **Fighting Corruption** by improving effectiveness, transparency, and accountability in the management and expenditure of public financial resources.
- 2.1.2. Improved public sector procurement will also contribute to the goals expressed in the third cornerstone – **Public Administration Reform** in that it will contribute towards improving the delivery of public services relating to the expenditure of the State. The manual, with its suggested delegation of procurement authority also contributes to the transfer of authority from the upper to lower levels of the bureaucracy.

### 2.2. ECONOMY

- 2.2.1. Economy can also be referred to as value for money (VFM) and is a measure of the efficiency with which the financial resources of the Government are converted. Users of this manual should always bear in mind that value for money is represented by a number of factors, not only the price paid for the goods. Typically these factors are:
- The suitability of the goods/equipment/services purchased.
  - The useful life of the goods/equipment/services.
  - Operating, maintenance and servicing costs.
  - The administrative cost of the selected purchasing method.
  - The delivery period.
  - Onwards transportation costs.
  - Storage costs.
  - The time taken to procure the goods.
- 2.2.2. All staff engaged in procurement process shall use their best efforts to help deliver best value for money from the financial resources employed.

### 2.3. TRANSPARENCY

- 2.3.1. The people of this Kingdom, through the Government, entrust funds to the executing agencies for the delivery public services and expect, and are entitled

to expect, that the funds are used solely for the purposes for which they have been entrusted. The public therefore has a right to assurances that the correct procedures have been applied.

- 2.3.2. The primary tool used to deliver this assurance is transparency in the procurement process. Not only does transparency in procurement assure the public that the correct procedures are being employed it also encourages suppliers to compete for contracts awarded by the Government and executing agencies therefore, developing the national contracting environment, increasing levels of competition which in turn exerts downwards pressure on prices.

## **2.4. ACCOUNTABILITY**

- 2.4.1. Accountability<sup>3</sup> is a keystone of any procurement system. It is used to ensure that officials undertaking tasks within the procurement process undertake their responsibilities with the duty of care that is owed to both the Government and the people of Cambodia.
- 2.4.2. For this reason, this Manual incorporates policy provisions and procedural guidelines with checks and balances, separation of powers and functions, and delegation, approval and authorization procedures that ensures accountability in the management of procurement.

## **2.5. EQUITY**

- 2.5.1. The Government's aim is to ensure that all eligible suppliers are provided notice of all procurement opportunities under the control of the EA. The principle behind this is not only to ensure equitable grounds for competition between suppliers. It is also to ensure that all national and international bidders, suppliers, contractors and consultants, as members of Cambodian society and of DAs respectively, are provided a fair basis on which to compete for contracts funded by the Government.

## **2.6. EFFECTIVENESS**

- 2.6.1. The ultimate objectives of a specific procurement exercise should always be remembered. Procurement is only a means to achieve a specific objective. For example the objective for the procurement of textbooks is to facilitate the education of a student – any procurement of textbooks that fails to facilitate the education process is ineffective.

## **2.7. EFFICIENCY**

- 2.7.1. EAs should never overlook the need for speed and efficiency in the procurement process. The more non-essential administration there is in the procurement process the more that funds are diverted away from meeting the

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<sup>3</sup> Accountability when used in this instance means responsibility and should not be confused with the financial accounting obligations described in the financial management Manual

project's primary objective. An example of the need for speed and efficiency is demonstrated by DA assisted projects - as soon as an international loan is effective the Government starts paying interest, commitment and administration charges and incurring project management costs. Therefore the longer the procurement process takes the higher the real cost to the Government.

## **2.8. ETHICAL STANDARDS**

- 2.8.1. All involved in procurement activities covered by this Manual must comply with the following Code of Business Ethics.
- 2.8.2. No individual shall use his authority or office for personal gain. Personal gain includes accepting or requesting anything of material value from bidders, prospective bidders or suppliers for the individual, his or her spouse, parents, children or other close relatives, or for other persons from whom the individual might gain direct or indirect benefit of the gift.
- 2.8.3. An individual shall seek to maintain and enhance the reputation of the Government by:
  - i) Maintaining the highest standards of honesty and integrity in all relationships both inside and outside the Entity in which he works;
  - ii) Developing the highest possible standards of professional competence;
  - iii) Using funds and other resources for which he is responsible to provide the maximum benefit to the Government; and
  - iv) Complying both with the letter and the spirit of:
    - a. The laws and regulations of the Kingdom of Cambodia;
    - b. Accepted professional ethics; and
    - c. Contractual obligations.
- 2.8.4. Conflict of interest - An individual shall declare any personal interest that may affect or might reasonably be deemed by others to affect impartiality in any matter relevant to their duties.
- 2.8.5. Disclosure of personal relationships – an individual shall declare any relationship with a bidder, supplier, contractor or consultant and shall take no part in either the decision making process or the implementation of any contract where such a relationship exists. A personal relationship is defined as consanguinity or affinity up to the third civil degree.
- 2.8.6. Confidentiality and accuracy of information - An individual shall respect the confidentiality of information gained in the course of duty and shall not use such information for personal gain or for the unfair benefit of any bidder, supplier, contractor or consultant.

- 2.8.7. Information given by an individual in the course of their duty shall be true, fair and not designed to mislead.
- 2.8.8. Competition - All bidders, suppliers, contractors and consultants shall be treated with fairness and impartiality, and avoid any business arrangement that might prevent the effective operation of fair competition.
- 2.8.9. Business gifts - No business gifts will be accepted from current or potential Government suppliers unless such gifts are of very small intrinsic value such as a calendar or business diary.
- 2.8.10. Hospitality - An individual shall avoid any business hospitality would be viewed by others as having an influence in making a government business decision as a result of accepting that hospitality.
- 2.8.11. Reporting - All individuals have a moral and ethical responsibility to report any unethical conduct by a colleague, a bidder or a supplier to their superiors, oversight agencies DA or to the auditors.
- 2.8.12. Examples of Unethical Conduct - The following are examples of the type of conduct prohibited by this Code of Ethics:
  - i) Revealing confidential or “inside information” either directly or indirectly to any bidder or prospective bidder;
  - ii) Discussing a procurement with any bidder or prospective bidder outside the official rules and procedures for conducting procurements;
  - iii) Favoring or discriminating against any bidder, prospective bidder or consultant in the Preparing of technical specifications, terms of reference or standards or the evaluation of bids and proposals;
  - iv) Destroying, damaging, hiding, removing, or improperly changing any formal procurement document;
  - v) Accepting or requesting money, travel, meals, entertainment, gifts, favors, discounts or anything of material value from bidders or prospective bidders, suppliers, contractors or consultants;
  - vi) Discussing or accepting future employment with a bidder or prospective bidder, suppliers, contractors or consultants;
  - vii) Requesting any other person to violate the public procurement rules or procedures;
  - viii) Ignoring evidence that the Code of Ethics has been violated;
  - ix) Ignoring illegal or unethical activity by bidders or prospective bidders, suppliers, contractors or consultants including any offer of personal inducements or rewards.

### **3. FRAUD AND CORRUPTION**

Both the Asian Development Bank and the World Bank have very clear and strict policies aimed at removing fraud and corruption from the procurement process. The Government is also developing its own policies as part of its 'Rectangular Strategy' which calls for a new Anti-Corruption Law and independent body to enforce it. The development of this anti-corruption legislation is complimentary to the existing policies of the DAs. The Government shares the views of the DAs and for the purpose of procurement on externally financed projects has adopted the DAs policies without reservation as follows.

#### **3.1. THE GOVERNMENT'S POLICY**

- 3.1.1. It is the Government's and DAs' policy to require that EAs and oversight agencies, as well as bidders, potential bidders, suppliers, contractors and consultants under externally financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, the Government and the DAs:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution; and
    - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Government, and includes collusive practices among bidders and consultants (prior to or after submission of bids and proposals) designed to establish prices at artificial, noncompetitive levels and to deprive the Government of the benefits of free and open competition;
    - (iii) "collusive practices" means a scheme or arrangement between two or more bidders, designed to establish bid prices at artificial, non-competitive levels or to influence the action of any party in the procurement process or the execution of a contract;
    - (iv) "Coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.
  - (b) will reject a proposal for award if it determines that the bidder or consultant recommended for award has engaged in corrupt or fraudulent activities in competing for the contract in question;
  - (c) The DA will cancel the portion of the loan allocated to the contract if it at any time determines that corrupt, fraudulent, coercive or collusive practices were engaged in by representatives of the Government or EA during the selection process or the execution of

- that contract, without the Government having taken timely and appropriate action satisfactory to the DA to remedy the situation;
- (d) will declare a consultant or firm ineligible, either indefinitely or for a stated period of time, to be awarded a DA or Government -financed contract<sup>4</sup> if it at any time determines that the bidder, supplier, contractor or consultant has engaged in corrupt, fraudulent coercive or collusive practices in competing for, or in executing, a DA - financed contract; and
  - (e) will have the right to require that, in contracts financed by DAs, a provision be included requiring supplier, contractor or consultants to permit both the Government and the DA to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the either the DA or Government.
- 3.1.2. All staffs involved in the procurement process have a duty to report to the procurement review committee or any other agency that they feel appropriate all suspected instances of fraud, corruption and collusive or coercive practices when identified.
- 3.1.3. In the case of collusive behavior, if the evidence suggests that all bidders or consultants are involved the evidence should be reviewed and if necessary the procurement process cancelled and all of the involved firms or individuals disbarred. If the evidence shows that a proportion of the firms or individuals are implicated only those implicated will be disbarred and the procurement will continue with those that are not implicated.

## **3.2. CONFLICTS OF INTEREST**

- 3.2.1. It is the duty of all project staff and any other public employee directly or indirectly involved with the procurement process and most especially the Preparing of bidding documents, evaluation, contract negotiations, contract management and payments to declare any potential conflicts of interest. A conflict of interest will arise when the individual has a direct or indirect relationship with a bidder, consultant, contractor or supplier.
- 3.2.2. In the event that a member of the procurement review committee or an employee who is directly involved with the procurement process feels that there is the potential for a conflict of interest they should declare it to the procurement review committee and remove themselves from the procurement process unless otherwise instructed by the procurement review committee.
- 3.2.3. Bidders and consultants with potential conflicts of interest will also be considered ineligible to bid or submit a proposal. A conflict of interest will exist when a firm that has been previously hired to provide services for the project design, preparation and implementation. This firm and all of its

affiliates will not be eligible to provide goods, works or services for any contracts that relate in whole or in part to the earlier services provided by it.

### **3.3. STATEMENTS OF ETHICS AND DECLARATIONS REGARDING FRAUD AND CORRUPTION**

- 3.3.1. To promote the practice of ethical standards throughout the Kingdom's procurement operations and the Government's policy on fraud, corruption coercion and collusion each member of a procurement review committee will be required to sign a copy of the declaration shown in Annex II a of this manual. This declaration will be attached to each evaluation report and signed by each member of the procurement review committee.
- 3.3.2. All bidders and consultants are also required to adhere to the ethical standards and the Government's policies on fraud, corruption coercion and collusion set out in this manual. In support of this bidders and consultants are required to complete the declaration shown in Annex II b of this manual and submit it with their bid or proposal as may be the case

## 4. THE POLICIES OF THE WB AND ADB

In essence the procurement policies of both these development banks are the same and these policies are reflected in this manual<sup>5</sup>. Both organizations are committed to promoting open competition as the most efficient basis for public procurement. The way that both organizations implement this policy is through the advertising of procurement opportunities and the inclusion of all eligible bids for the provision of goods and works in the evaluation process. In the case of services all eligible consultants are invited to express their interest as a result of the specific advertisement for expressions of interest and a shortlist is drawn up from those that expressed interest. Both the WB and ADB are committed to harmonizing their policies and processes. There are still however some areas where they have not yet harmonized and users of this manual need to bear these in mind when undertaking procurement as they have an impact upon the process. They are outlined in the following sub-sections.

### 4.1. ELIGIBLE SOURCE COUNTRIES

- 4.1.1. This is perhaps the most significant difference between the two development banks. The World Bank recently opened up its eligibility rules to allow all countries with the following exceptions and states<sup>6</sup>

*Firms of a country or goods manufactured in a country may be excluded if, (i) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or works required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods from, or payments to, a particular country, person, or entity Where the Borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.*

- 4.1.2. Whereas the Asian Development Bank states<sup>7</sup>

*Bidding documents shall state that payments from the proceeds of Bank loans will be limited, in the case of loans from ordinary capital resources, to goods produced in, and services supplied by, member countries of the Bank, and in the case of loans from Special Funds resources, to goods produced in, and services*

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<sup>5</sup> At the current time neither organization has reviewed this manual, their final review and acceptance will render this statement correct

<sup>6</sup> See 1.6 of the WB Procurement Guidelines dated May 2004

<sup>7</sup> See 1.04 of the ADB Procurement Guidelines dated February 1999



*supplied by, developed member countries which have contributed to such resources and all developing member countries*

- 4.1.3. Both of the above extracts come from the Guidelines for goods and works, however exactly the same eligibility criteria is applicable to consultants services. On the face of it the ADB rules on eligibility may seem limiting. However users should bear in mind that the membership of ADB includes all of the major industrialized and Asian nations. Projects should ensure that they are aware of the relevant eligibility criteria when financing comes from Special Funds resources - the World Bank may at times also impose eligibility restrictions when there are restrictions on a trust fund being administered by them.
- 4.1.4. There is no explicit policy on the eligibility in terms of origin of financial institutions (normally a commercial bank) providing bid, payment and performance securities from either WB or ADB. As it is common for the bidder or consultant to choose a financial institution located either in its home country of Cambodia this issue is not expected to be common. Given that there is no contract between the financing institution and the purchaser/employer or client generally there is not restriction placed on the origin of financing institutions. In the event that a bidder or consultant does provide a guarantee for an institution in an ineligible country the guidance of the DA should be sought on a case by case basis.

## **4.2. ELIGIBILITY AND FIRMS DECLARED INELIGIBLE**

- 4.2.1. In addition to eligibility on the grounds of nationality neither DA will consider any firm that has been declared ineligible by it for the time period determined by the DA at the time of declaration on ineligibility. For the purposes of this manual any firm declared by either bank will be regarded as ineligible for any contract award regardless of the source of funds when the procurement is undertaken by any method other than ICB or international QBS/QCBS.
- 4.2.2. When procurement is undertaken by ICB or international QBS/QCBS each banks specific eligibility guidelines will apply, i.e. a firm will only be ineligible for a WB financed contract if the WB has declared it ineligible and likewise for the ADB. Therefore a firm declared ineligible by the WB may still be considered eligible for a contract financed by the ADB and vice-versa.

## **4.3. REGISTRATION OF FIRMS AND INDIVIDUALS**

- 4.3.1. There is not requirement on the part of the DAs for firms (suppliers, contractors or consultants) to be registered with any agency other than for the purpose of legal incorporation in firms' country of origin. No other requirement to be registered with any other agency either inside or outside of Cambodia will be used as eligibility criteria.
- 4.3.2. In the event that the EA insists on registration, any requirement for registration must form part of the contract awarding procedure, not eligibility,

evaluation or post qualification. Any firm required to register as part of the awarding process must be allowed sufficient time and all reasonable assistance to complete the registration process. The period for contract signature and the provision of any securities shall be extended to allow for any registration process.

#### **4.4. STATE OWNED ENTERPRISES**

- 4.4.1. Government owned enterprises and corporations will only be considered eligible if they are legally and financially autonomous (they receive no public funds from the budget), operate under the prevailing commercial law and are not dependant agencies of either the MEF or the EA (or its parent Ministry) undertaking the project. The EA is regarded as the parent body of the project implementing unit

#### **4.5. STANDARD BIDDING DOCUMENTS**

- 4.5.1. Both the ADB and WB insist that their own standard bidding documents, as harmonized between themselves, are used for the procurement of goods and works on an ICB basis. They also insist that their own standard services bidding document (Request for Proposals, RFP) is used for all international services procurement through Quality Cost Based Selection (QCBS) and Quality Based Selection (QBS).
- 4.5.2. A current list of each organizations standard bidding documents can be found on the following pages. Users of this manual should check from time to time at the following websites – [www.adb.org](http://www.adb.org) and [www.worldbank.org](http://www.worldbank.org) as both from time to time update the existing documents and in the case of the World Bank develop bidding documents for specialized procurement.

### World Bank Standard Bidding Documents

<b>Document</b>	<b>Date of Issue</b>	<b>Description</b>	<b>Use</b>
<i>Standard Request for Proposals, Selection of Consultants</i>	<i>May 2004</i>	Complex Time based and lump sum consulting services through QBS and QCBS	Mandatory over the threshold stated in Annex V
<i>Works Prequalification Document,</i>	<i>May 2004</i>	For use when pre-qualification is used in conjunction with ICB	Mandatory for ICB prequalification. Can be modified for use with NCB prequalification
<i>Standard Bidding Document for the procurement of Goods</i>	<i>May 2004</i>	For use with all World Bank funded ICB for goods	Mandatory for ICB Procurement
<i>Standard Bidding Document for Health Sector Goods</i>	<i>May 2004</i>	For the ICB procurement of pharmaceuticals, vaccines, contraceptives, nutritional supplements	Mandatory for Procurement of the listed products. Should be modified for procuring the same commodities on an NCB basis
<i>Standard Prequalification Document for Health Sector Goods</i>	<i>April 2002</i>	For the prequalification of suppliers	Not listed as mandatory, however should be considered as so if pre-qualification is undertaken. Can be adapted for the national environment

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<i>Standard Bidding Document for the Supply and Installation of Plant and Equipment</i>	<i>May 2004</i>	For the supply through ICB of high value specially engineered plant and equipment that requires elaborate testing, pre-commissioning, commissioning and acceptance procedures	The document allows for both single and two stage bidding. Its use is mandatory for complex high value plant and equipment
<i>Standard Bidding Document for the Procurement of Works</i>	<i>May 2004</i>	For the procurement of large works on an Admeasurement basis. Used only after pre-qualification	Mandatory for use over \$10 million unless other SBD expressly agreed
<i>Standard Bidding Documents Procurement of Small Works</i>	<i>May 2004</i>	For all lower value ICB works procurement. Lump sum and admeasure bidding and contracting options	Mandatory under \$10 million
<i>Standard Bidding Document for the procurement of information systems</i>	<i>March 2003</i>	For single stage supply and installation of information systems and system engineering services	Mandatory for all but the most complex IT systems
<i>Standard Bidding Document for the procurement of IT systems</i>	<i>March 2003</i>	For two stage supply and installation of information systems and system engineering services	Mandatory for the purchase of complex IT Systems. Allows a greater freedom for innovation from bidders than the single stage process

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<i>SBD for the Performance based Management and Maintenance of Roads</i>	<i>February 2002, revised March 2003</i>	Output based service level agreement for the management and maintenance of roads	Not mandatory and Not recommended under 5 million and for roads requiring major rehabilitation works
<i>Standard Bidding Documents for the Procurement of Textbooks and Reading Materials</i>	<i>September 2002, revised March 2003</i>	For the procurement of textbooks and reading materials through ICB	Although listed as a trial edition its use is mandatory for all WB funded procurement of this type.
<b>Asian Development Bank Standard Bidding Documents</b>			
<i>Standard Bidding Document, Procurement of Goods, Single-Stage, One-Envelope Bidding Procedure</i>	<i>January 2002</i>	For single stage single envelope procurement of goods	Its use is mandatory for all ICB funded procurement above the threshold state in Annex V unless one of the other variants is selected
<i>Standard Bidding Document, Procurement of Goods, Single-Stage, Two-Envelope Bidding Procedure</i>	<i>January 2002</i>	For single stage two envelope procurement of goods	Allows for bids to be evaluated on purely technical grounds prior to considering price
<i>Standard Bidding Document, Procurement of Goods, Two-Stage Bidding Procedure</i>	<i>January 2002</i>	For two stage single envelope procurement of goods	Allows a greater freedom for innovation from bidders than the single stage process

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<i>Standard Bidding Document, Procurement of Goods, Two-Stage, Two-Envelope Bidding Procedure</i>	<i>January 2002</i>	For two stage two envelope procurement of goods	Allows a greater freedom for innovation from bidders than the single stage process Allows for bids to be evaluated on purely technical grounds prior to considering price
<i>Standard Bidding Documents for Works without Prequalification</i>	<i>June 2004</i>	For large and complex civil works contracts, turnkey contract	
<i>Standard Bidding Documents for Works with Prequalification</i>	<i>June 2004</i>	For large and complex civil works contracts, turnkey contract	
<i>Standard Bidding Documents for Design-Build and Turnkey Contracts</i>	<i>April 1999</i>	For large or complex Design-Build and Turnkey projects	
<i>Standard Bidding Document for the Prequalification of Bidders (Works)</i>	<i>June 2003</i>	For when pre-qualification is required	

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<i>Standard Bidding Document, Procurement of Civil Works, Small Contracts</i>	<i>April 1999</i>	For small works	ADB does not define what is small. Suggest \$10 million in line with WB
<b>National Standard Bidding Documents</b>			
<i>Standard National Bidding Documents for the Procurement of Works</i>	<i>January 2005</i>	Single stage national competitive bidding documents without pre-qualification. For use with both lump sum and ad measurements contracting	Mandatory for all national works procurement below the threshold stated in Annex V and above the threshold for works shopping
<i>Shopping Documents The Procurement of Works</i>	<i>January 2005</i>	Open competitive shopping documents for the procurement of works with provincial or national advertising or no advertising depending on value.	Mandatory for all works valued below the threshold stated in Annex V
<i>Standard National Bidding Documents for the Procurement of Goods</i>	<i>January 2005</i>	Single stage national competitive bidding documents for goods	Mandatory for all national goods procurement below the threshold stated in Annex V and above the threshold for goods shopping
<i>Shopping Documents The Procurement of Goods</i>	<i>January 2005</i>	Open competitive shopping documents for the procurement of goods with provincial or national or no advertising depending on value	Mandatory for all goods valued below the threshold stated in Annex V

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<i>Standard Request for Proposals For procurement of services in the Kingdom of Cambodia</i>	<i>January 2005</i>	Standard request for proposals for use with Quality Based, Quality Cost Based Least Cost, Fixed Budget, Consultants Qualifications selection when the short list is composed of national firms only	Mandatory for all national services procurement below the threshold stated in Annex V.
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4.5.3. The Government has developed, in consultation with the Asian Development Bank and the World Bank, a complete set of harmonized national bidding documents for use when on projects funded by both ADB and WB. These documents form annexes to this Manual and their use is mandatory. As these are the first editions of these documents users are encouraged to comment on their use and on areas that they feel the documents require strengthening. Any comments will be accepted with thanks and should be addressed to MEF.

## **5. TRANSPARENCY**

Both the Government as part of its Rectangular Strategy and DAs recognize that transparency in the procurement process is essential to ensure that the correct procedures are being employed, to encourage firms in competing for contracts and to provide an invaluable check against corrupt and collusive practices. There are currently two tools in use to help build transparency into the procurement process. The first being the advertising of procurement opportunities and the second being the publication of evaluation results and contract awards. As the public IT infrastructure grows it is expected that various public information websites will also contribute towards increasing transparency in the procurement process.

Users of this manual who are already familiar with WB and ADB will note that the advertising requirements set out below are more stringent than those required by either of DAs and are the Government's own policy. The Government's policy is not in conflict with the Guidelines of either DA and therefore these procedures must be followed in full.

Users of this manual should note that unlike the Guidelines of DAs' all shopping opportunities must be advertised (with the exception of procurement below the values stated in Annex V) and the invitations sent to all who respond without limitation. This is not a conflict with DAs' Guidelines and is the policy of the Government of Cambodia and as such must be followed.

### **5.1. ADVERTISING OF OPPORTUNITIES**

- 5.1.1. There are two types of advert required under projects funded by DAs. The first is the General Procurement Notice (GPN) that appears at the start of each project and should be updated annually to reflect all procurement that has not yet been complete. These must appear in UN Development Business online and Development Gateway's dgMarket (in the case of WB) and ADB's website which can be found at [www.adb.org](http://www.adb.org). The GPN shall list all ICB, all procurement of services that is expected to require international expertise or advertising, and all contracts values in excess of US\$ 1 Million irrespective of the procurement method. The GPNs should also appear simultaneously in one English language and one Khmer language newspaper of national circulation within Cambodia.
- 5.1.2. The second type of required advert is the specific procurement notice. Each time there is a procurement requirement it must be advertised as follows:

<i>Specific Procurement Notices</i>	
All International Competitive Bidding Goods and Works, All consultant services procurement exceeding the international advertising threshold stated in Annex V, and all procurement over \$1,000,000 (ADB)	<i>UN Development Business and Development Gateway's dgMarket - WB, www.adb.org- ADB</i> One English language and one Khmer language newspaper
National Competitive Bidding, Goods, Works and Services	One Khmer language newspaper of national circulation
Shopping, Goods and Works above The threshold stated in Annex V	One Khmer language newspaper national or provincial circulation
All services requirements below the international advertising threshold stated in Annex V.	One English language and one Khmer language newspaper, if funded by WB <i>Development Gateway's dgMarket</i>

5.1.3. There is no requirement on the part of the ADB or WB to publish a specific advertisement more than once, however if the EA wishes to do so the advertisement can be published as many times as it is felt necessary. As stated above all procurement must be advertised, there are however a few exceptions these are:

- Direct Contracting of goods and works
- Single Source Selection of Consultants,

However all evaluations and contract awards including those not originally advertised through a specific procurement notice must still be made public as described in the following sub-sections.

## **5.2. RECORDING EXPRESSIONS OF INTEREST**

5.2.1. All expressions of interest received as a result of the GPN should be recorded in an expressions of interest (EOI) register and placed in one of three EOI files (one for goods, works and services). Firms that express interest as a result of the GPN do not have to be sent copies of specific procurement notices, however any expressions of interest received will provide the project useful information on possible sources of supply.

5.2.2. The Expressions of interest register will be in three sections, one each for goods, works and services. And will take the format shown below:

Expressions of Interest Register, Services							
Name	Address	Contact	Fax and Email	SPN Sent Date and Ref	SPN Sent Date and Ref	SPN Sent Date and Ref	SPN Sent Date and Ref
Agro Consulting	57 Amok Street Middle Wallop Gloucestershire England	Brian Thugee	+208 123 456 7891 bthugee@agro .com	16 Feb 2005 QCBS#001	1 April 2005 QCBS#002		

The register should be drawn up using either MS Word or Excel so that it is easy to update. A hard copy of the template can be found at Annex I a.

### **5.3. CONTRACT AND EVALUATION SUMMARIES AND PUBLICATION OF CONTRACT AWARDS<sup>8</sup>**

- 5.3.1. To help deliver increased transparency all PMUs are required to compile the following two reports: Summary of Evaluation and Contracts Register. Templates of these reports can be found at Annexes I b and I c respectively. Samples of both of these are shown on the following page.
- 5.3.2. When the funding is from the WB and the procurement method involves international competition the Summary of Evaluation must be published by the Project in Development Business online (*UNDB Online*) and *dgMarket* within 14 days of receiving the WB's no objection to the recommendation for award. The only exception to this is Direct Contracting, Selection Based on Consultants Qualifications and Single Source Selection of Consultants where the project may consolidate the information and publish it on a quarterly basis. Additional instructions can be found at <http://procurement.worldbank.org>
- 5.3.3. All Contracts funded by both the ADB and WB in addition to the above requirement will be advertised locally. Within 14 days of the completion of each evaluation report (and after the no objection when required) the project shall post the Summary of Evaluation on the Project and/or the EAs website (when the project or EA has one) and in a prominent public place within the EA. The summary of evaluation shall include all firms or individuals who submitted bids and will contain the information shown on the following page and the template shown at Annex I b of this Manual.
- 5.3.4. In addition to compiling and publishing the results of each evaluation the project shall also compile a Register of Contracts, i.e. a list of all contracts placed since the start of the project. The format and information shall be in accordance with the example on the following page and template shown in Annex I c of this Manual. The Register shall be updated each time a contract is placed and an up to date Register shall be posted on the Project and/or EAs website (when the project or EA has one) at the end of each month
- 5.3.5. At the end of each quarter the project shall issue a notice to the general public through a Khmer language newspaper of national circulation. The notice shall invite any interested party to review and inspect all Summaries of Evaluation

and Register of Contracts published by the project. The wording of the notice shall use the following wording:

The \_\_\_\_\_ *[insert name of EA]* invites any interested member of the general public to inspect the Contracts Register for contracts placed by \_\_\_\_\_ *[insert name of project]*. Members of the public may also inspect Summaries of Evaluation for all contracts placed by the project. Anyone wishing for a hard copy of the Contracts Register may request one in person or by written request. Summaries of Evaluation will also be provided in hard copy either by request in person or through a written request identifying which specific Evaluation Summary is required.

The location where the Contracts Register and Summaries of Evaluation may be inspected and the address for written requests is:

\_\_\_\_\_ *[insert name address, with contact name and contact number]*

- 5.3.6. The following pages show examples of the report templates that must be published each time an evaluation is completed

## Summary of Evaluation, Goods and Works Contracts for Publication of Awards

<b>Name of Project</b>		<b>Project ID</b>
<b>Bid/Contract Description</b>		<b>Scope of Contract</b>
<b>Procurement Method</b>		<b>Contract Signature Date</b>
<b>Awarded Bidder</b>		
<b>Name of Awarded Bidder</b>	<b>Bid Price at Opening</b>	<b>Final Bid Price</b>
<b>Evaluated Bidder(s)</b>		
<b>Name of Evaluated Bidder(s)</b>	<b>Bid Price at Opening</b>	<b>Bid Price of Evaluated Bid</b>
<b>Rejected Bidder(s)</b>		
<b>Name of Rejected Bidder(s)</b>	<b>Bid Price at Opening</b>	<b>Reason(s) for Rejection</b>

## Summary of Evaluation, Services Contracts

<b>Name of Project</b>				<b>Project ID</b>	
<b>Bid/Contract Description</b>				<b>Scope of Contract</b>	
<b>Procurement Method</b>				<b>Contract Signature Date</b>	
<b>Name of consultant/Firm</b>	<b>Technical Score</b>	<b>Financial Score</b>	<b>Financial Proposal Amount</b>	<b>Total Score</b>	<b>Final Ranking</b>



## **6. DEBRIEFING OF BIDDERS AND CONSULTANTS**

- 6.1.1. All bidders and consultants whose offers are unsuccessful have the right to request a de-briefing from the Project Manager, however no debriefing will be delivered until after the award of contract has been notified. The debriefing will be limited to the content of the bidder's bid or consultants' proposal and in no way will cover the content of any other firms offer or provide any information on the details of such other than information in the public domain such as minutes of opening and the Summary of Evaluation. The reasons for this are four-fold:
- 1) It increases the levels of transparency in the procurement process,
  - 2) It will provide essential guidance (especially to local firms) on the relative strengths and weaknesses in their offers. Local firms will be able to take the opportunity to strengthen their bids and proposals in the future leading to a more competitive local market.
  - 3) The more equitable potential bidders and consultants feel the process to be the more likely they are so submit bids or pursue shortlisting again increasing the overall levels of competition.
  - 4) It will provide a benchmark for the losing bidders and consultants, i.e. they will become aware of the quality and pricing levels required to win contract awards.
- 6.1.2. The overall goal of this debriefing process is to improve competition both from international and national sources. The primary benefit of increasing both national and international competition as stated above is increasing the level and quality of competition. Another important aspect is that when national firms become more competitive especially in terms of successfully competing with international suppliers, contractors and consultants is that the money being spent by the Project will have a greater positive knock on effect to the national economy.
- 6.1.3. When de-briefing bidders and consultants care should be taken to ensure that no commercial confidences are breached. i.e. it is acceptable to give an indication of where a bid or proposal was weak but not acceptable to disclose details of other bids and proposals received. Debriefing's should be requested in writing and may either be delivered in writing or a meeting chaired by the Project Manager at the Project Manager's option. If a meeting is held it must be minuted and signed by both parties and a copy of the minutes of the meeting placed on the relevant contract file.
- 6.1.4. To facilitate the de-briefing process simultaneously to the notice of award or award of contract (services) being sent to the successful bidder or consultant,



all un-successful bidders and consultants will be sent a in a Notice of an Awarded Contract, the following details:

- The name of each bidder or consultant submitting an offer
- Bid prices as read out at bid opening<sup>9</sup>
- When services the technical points score of each consultant
- The name and evaluated price of each bid or proposal and in the case of services the financial score
- The name of bidders or consultants whose bids or proposals were rejected and the grounds for the rejection
- Name of the winning bidder or consultant, the amount of the contract, the duration and final scope of the contract.
- Details of how to request a de-briefing from the Project.
- The following wording will also be contained in the covering letter

*“An unsuccessful bidder or may request a de-briefing from [insert name and address of the Project Manager]. Who will either respond in writing within five working days or schedule a de-briefing meeting.*

*In the event that the response from the Project Manager does not satisfy the unsuccessful bidder or consultant or there is no response within 14 days the issue should be referred to MEF with a copy sent to the Task Team Leader [insert address of the Task Team Leader], Country Director, and in the case of the World Bank the Regional Procurement Advisor.*

*In addition to the above an unsuccessful bidder or consultant feels that is has valid grounds for a complaint regarding the procurement process is may lodge a complaint in accordance with the process outlined in the Bidding Document or Request for Proposals as the case may be. The submission of a complaint under this procedure is without prejudice to any other recourse or remedies available under the laws of Cambodia”*

- 6.1.5. Users of this manual who are employed on projects funded by the World Bank should also take note that the details listed above (except the final point) must also be published in *UNDB online* and *dgMarket* in accordance with Section 5.3 of this Manual.

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<sup>9</sup> Excepting Quality Based Selection of Services where only the highest ranked firms financial proposal is opened.

## 7. COMPLAINTS PROCEDURE

- 7.1.1. From time to time, with and without justification bidders, suppliers, contractors and consultants will wish to lodge a complaint about the procurement process. When a contract exists between there are established mechanisms up to and including the courts to resolve disputes.
- 7.1.2. A formal mechanism to satisfactorily respond to complaints has to be followed. The steps in the complaints procedure will be attached to the Notice of an Awarded Contract.
- 7.1.3. There is now a complaints mechanism built into the NCB documents for goods works and services. However the standard ICB and requests for proposal documents of both the DAs do not contain such a mechanism for a bidder or consultant to lodge a complaint. Therefore the wording detailed below must be inserted into the bidding documents at the appropriate point in the Bid Data Sheet, Bidding Data or Proposal Data Sheet as appropriate.

*“A bidder or consultant has the right to submit a written and signed complaint at any stage in the procurement process. The complaint will be addressed to the procuring entity (insert name, title and address of the responsible officer within the procuring entity). The Procuring Entity will review the complaint within 14 calendar days. If the complaint is submitted during bid evaluation the procuring entity will only acknowledge receipt and take the merits of the complaint into consideration in the evaluation process. The procuring entity will respond to the complaint immediately after contract award. In cases of contracts subject to prior review by the DA the complaint will be referred to the DA as part of the prior review process.*

*If the bidder or consultant is not satisfied with the answer received from the procuring entity within 14 calendar days of the procuring entity’s receipt of a complaint, the bidder or consultant has the right to appeal within a further 10 calendar days and have the Procuring Entity’s decision reviewed by the Department of Public Procurement in MEF. The DPP will respond within 14 days.”*

*The findings of the DPP with regard to the complaint shall be final but without prejudice to any other recourse or remedies available under the laws of Cambodia”*

## **8. PROCUREMENT ROLES AND RESPONSIBILITIES**

Roles and responsibilities in terms of project management are defined in the “Manual on Standard Operating Procedures for Foreign Assisted Projects Under the Purview of the Ministry of Economy and Finance, Royal Government of Cambodia” (SOPs).

The following section deals with the roles of the MEF, EAs, DA’s and committees with regard to the procurement process and is supplemental and complimentary to the SOPs.

The primary body in the procurement decision making process is the Procurement Review Committee. Once the Committee has made its decision no further approvals are deemed necessary from either the EA or MEF. The only exception to this is the no objection of the DA when required.

### **8.1. THE MINISTRY OF ECONOMY AND FINANCE**

- 8.1.1. Depending on the value of procurement being undertaken and the type (goods, works or consultant’s services) the MEF will also undertake an oversight role. This oversight role will be delivered through MEF representation on the Procurement Review Committee. When MEF do not participate as members of the Procurement Review Committee because the procurement is of low value or MEF advises that they will not be attending the Committee’s deliberations no further approval needs to be sought from MEF for the decision under review. The only exception to this is set out in the following paragraph.
- 8.1.2. When the procurement is for single sourcing, direct contracting or force account in addition to any ADB or WB approvals required, MEF approval is required.

### **8.2. LINE MINISTRIES AND IMPLEMENTING AGENCIES**

- 8.2.1. As set out under project agreement, subsidiary loan agreements, TA agreements and similar contracting documents between the DA and the Government, the different line ministries, specialized agencies and administrative offices of the Government are designated EAs and assume responsibility for the implementation, management and administration of specific projects under their area of expertise and function as mandated to them under their respective Royal Decree or Sub-Decrees.
- 8.2.2. The members of the Procurement Review Committee from both inside and outside of the line Ministry or implementing agency are individually and jointly responsible for all decisions made by them within the thresholds set out in this Manual. In support of this all of the deliberations of the Committee

must be recorded in writing in the form of agreed minutes and all minutes signed by each Committee member who was in attendance.

- 8.2.3. The division of procurement roles and responsibilities and the delegated levels of authority and review thresholds, i.e. the financial limit at which procurement decisions can be taken by the Project Director, Minister or Head of the EA, Minister of the MEF etc. shall be determined at the beginning of each project and sufficient authority shall be delegated to ensure that procurement decisions can be made in a timely and efficient manner. Where such authority is not delegated the approving official shall ensure that reviews and approvals when requested and required are granted in such a way that the procurement process is not unduly delayed.
- 8.2.4. Consultants, unless hired expressly as project and contract managers or as procurement and inspection agents shall have no formal approving authority unless such authority is included in their terms of reference and contract.

### **8.3. PROJECT MANAGEMENT UNITS**

- 8.3.1. On a project by project basis depending on the capacity of the EA and the agreement with the DA the EA will establish a Project Management Unit (PMU) with the delegated authority to implement the project or TA in an efficient and effective manner. The PMU acts as the focal point for project implementation and carries out the day-to-day project management and administration. It undertakes all of the core procurement activity required by the project.
- 8.3.2. Some projects use different terms to those used in this Manual and the SOP. In certain cases the various expertise requirements listed in this Section can also be found within various departments of the agency and government and can be relied upon for project implementation without the creation of a PMU. These terms are interchangeable and should be regarded as follows:
- Project Director – the senior official in overall charge of the project
  - Project Manager – the full time manager of the project with day to day responsibility for the project’s activities
  - Administration Officer – the individual in charge of all administrative and support functions
  - The Project Financial Officer – the person in charge of keeping and maintaining the project accounts and effecting payments
  - The Project Technical Officer – the senior engineer or technical specialist employed by the project (but not a consultant).
  - The Procurement Officer – the individual responsible for undertaking procurement activity under the project.
- 8.3.3. Detailed terms of reference (TOR) outlining the duties and responsibilities of each PMU officer position must be prepared and approved by the EA

management. The TOR should include the following procurement responsibilities:

**a) Project Director**

- 1) Approves and signs contracts, invoices and other important procurement documents within thresholds specified by the MOA.
- 2) As a member of a Procurement Review Committee participates in the review of evaluations for goods and works evaluation reports and undertakes the evaluation of services proposals as a committee member within the thresholds specified by MOA.
- 3) Has overall responsibility for ensuring that the Government and DA's procurement Guidelines are followed and the correct procurement documents are used.
- 4) Ensures that all mandatory reports are issued in a timely fashion.
- 5) Ensuring that all auditable records in respect to procurement are compiled in accordance with Section 25 of this Manual and that these records are passed to the EA on the completion of the project.

**b) Project Manager**

- 1) Approves and signs contracts, invoices and other important procurement documents within thresholds specified by the MOA.
- 2) As a member of a Procurement Review Committee participates in the review of evaluations for goods and works evaluation reports and undertakes the evaluation of services proposals as a committee member within the thresholds specified by the MOA.
- 3) Is responsible for ensuring that the Government and DA's procurement Guidelines are followed and the correct procurement documents are used.
- 4) Is the primary conduit for all formal communications relating to procurement with the EA and bidders, contractors, suppliers and consultants.
- 5) Ensures that all procurement monitoring and reporting is undertaken in a timely and accurate fashion.
- 6) Leads all negotiations with contractors, suppliers and consultants.
- 7) Chairs and supervises all bid openings.

**c) Senior Administrative Officer**

- 1) Assists the Procurement Officer to draft the over all project procurement plan.
- 2) Assists the Procurement Officer in the monthly updating of the overall project procurement plan.
- 3) Ensuring that all records relating to procurement are compiled in conformance with the provisions of Section 25 of this Manual.

**d) Chief Financial Officer**

- 1) Supervises the management and administration of all financial transactions and payments under the project.
- 2) As part of the procurement review committee undertaking financial pre or post qualification of potential suppliers, contractors and consulting firms prior to recommending an award.
- 3) Attend bid openings checking and noting the presence or otherwise of any securities that may be required.
- 4) To verify the bona-fides of, and receive record and arrange for the safe keeping of all securities received from suppliers, contractors and consultants.

**e) Technical Officer**

- 1) Manage and administer the implementation of contracts.
- 2) Preparing, or supervising the Preparing of, all specifications, scopes of work and terms of reference.
- 3) Assisting the Procurement Officer in selecting the most appropriate evaluative criteria, special conditions of contract and contractual performance indicators for inclusion in bidding documents.
- 4) Undertakes and certifies (or otherwise) the technical compliance of all bids for goods and works received
- 5) Monitors and evaluates progress and performances of technical staff, consultants, and contractors.

**f) Procurement Officer**

The following text outlines the Procurement Officer's general responsibilities, more detailed descriptions of each task is contained in the succeeding sections of this manual.

- 1) Preparing the project's general procurement notice (GPN) updating it on an annual basis, and submitting it through

- the Project Manager for national and international publication.
- 2) Collating by area of expertise all expressions of interest received in response to the GPN.
  - 3) Quantify the goods works and services required by the project.
  - 4) Group the goods works and services required into packages so that they will attract the maximum of competition
  - 5) Preparing the overall project procurement plan.
  - 6) Update the overall project procurement plan at the end of each month.
  - 7) Preparing specific bidding documents, using agreed standard bidding documents.
  - 8) Prepare and issue through the Project Manager specific procurement notices
  - 9) When the DA's prior review of the bidding document is required, submit the document through the Project Manager to the relevant DA for its review and 'no objection'.
  - 10) Distribute copies of the Invitation for Bids to all relevant firms that expressed interest in response to the General Procurement Notice.
  - 11) Distribute the bidding documents to all firms purchasing the same.
  - 12) Through the project manager, acting as purchaser/client/ employer receive and respond to all clarification requests received during the bidding period.
  - 13) Ensure that the venue for bid opening is adequate and that all logistical arrangements are in place.
  - 14) Receive all bids and proposals ensuring their secure storage.
  - 15) With the supervision of either the Chief Financial Officer or Project Manager undertake the public opening of bids.
  - 16) Review and pass all bid securities to the Financial Officer for secure storage, recording amounts and validities ensuring that validities do not expire prior to notification of award and requesting extensions as and when required.
  - 17) Under the guidance of the Procurement Review Committee undertake preliminary evaluation of all bids and proposals received.

- 18) Facilitate with the assistance of the Technical Officer and any other available resources such as consultants, the technical evaluation of all bids and proposals received.
- 19) Through the Project Manager seek clarifications to bids and proposals as required to complete the evaluation
- 20) Draft the Bid Evaluation Report for review and approval by the Procurement Review Committee
- 21) Respond, through the Project Manager, to any queries raised on the evaluation report from oversight agencies or DAs.
- 22) Draft contracts in accordance with the recommendation for award contained in the 'no objected' evaluation report and in the case of consultants services in accordance with the minutes of contract negotiation.
- 23) Ensure that the relevant oversight agencies are provided with copies of contracts and in the case of prior review submitting copies of draft contracts to the reviewing agency with a request for 'no objection'.
- 24) Issue the notification of award to the winning bidder/consultant/contractor requesting the pre-requisite performance and advance payment securities.
- 25) With the assistance of the Financial Officer draft the documentary requirement for any letter of credit to be issued in a supplier's/contractor's/consultant's favor.
- 26) Monitor, with the support of the Technical Officer and any other resources available such as consultants, suppliers/contractors/consultants performance against the contract.
- 27) Review all payment requests received from a supplier/contractor/consultant confirming (or otherwise) that the contractual payment is due obtaining validation and approval of the payment request as necessary and confirming that the conditions of contract triggering the payment have been met.
- 28) Ensure that either the performance security or retention monies are in place to adequately protect the Government for the period of the supplier's warranty period or a contractor's defects liability period.
- 29) In the event that the period for contractual performance is extended or the amount of the contract changed ensure that



any performance securities held are amended to reflect the change in the conditions of the contract

30) Ensure that all performance securities and retention monies are passed to the supplier or contractor upon the satisfactory expiry of their contractual obligations.

31) Act as Secretary to the Procurement Review Committee.

32) Compiling pre and post contract files in accordance with Section 25 of this Manual

In the event that the Project or EA has a separate unit for the management of contracts, all of the Procurement Officer's responsibilities after the award of contract shall pass to this unit.

g) **The Procurement Assistant**

Larger projects with significant amounts of procurement may include one or more procurement assistants. The procurement assistant is to work under the direct supervision of the procurement officer and provide assistance with the tasks set out above as directed by the procurement officer.

## **9. THE PROCUREMENT REVIEW COMMITTEE**

### **9.1. THE DUTIES OF THE PROCUREMENT REVIEW COMMITTEE**

9.1.1. The duty of the Procurement Review Committee is to:

- i. Review the scope of each procurement package prior to commencement of any procurement activity. The purpose of this review is to ensure that requirements have not been split (disaggregated) or consolidated to either avoid process and review thresholds or place the procurement activity at an inappropriate level.
- ii. Review all bidding documents and requests for proposals produced under the project. In this respect the Committee will focus upon adherence to the procurement guidelines rather than the technical specifications.
- iii. Attend and supervise the public opening of bids and proposals
- iv. Review evaluation and approve evaluation reports for goods and works produced under the project.
- v. In the case of consulting services procurement, each committee member will individually and independently undertake the evaluation of proposals as part of the evaluation committee.

9.1.2. The Procurement Review Committee is responsible for reviewing the evaluation reports for goods and works procurement and not preparing the evaluation itself. The Committee shall not review the detailed technical aspects of each bid or the preliminary evaluation but shall focus on adherence to the guidelines and the reviewing grounds for the rejection of any bid to establish if the deviation is major and that all other bids have been treated equally. The Procurement Review Committee will review each evaluation report for goods and works paying particular attention to the recommendation for award and the winning proposal and any proposals that are rejected.

9.1.3. However, for consulting services, the evaluation of consultants' proposals will be undertaken by the Committee itself as outlined in 9.1.1. v above, and the Committee will serve as the evaluation committee.

9.1.4. MEF representative(s) will be empowered to approve bidding documents, evaluation reports and awards of contract, or seek approval from the relevant official at MEF, and no further approval need be obtained before awarding a contract (or in the case of services holding negotiations) other than the no objection of the DA when required.

9.1.5. Decisions of a Procurement Review Committee will be unanimous for an evaluation report and recommendation to award a contract to be considered approved. Once a properly constituted Procurement Review Committee has approved a procurement transaction no further approval from the EA or MEF

is considered necessary, the only exception to this will be the no objection of the DA when required.

- 9.1.6. A Procurement Review Committee may call on any resources available to it such as EA staff, experts in the items being procured from other agencies or consultants. None of these parties are considered members of the Procurement Review Committee and will advise solely on the basis of their own areas of expertise.
- 9.1.7. The Procurement Officer will fill the role of Secretary to the Committee. The Secretary of the Committee will be responsible for the coordination and calling of all Committee meetings and shall in all but exceptional circumstances when directed by the Project Director, provide a minimum of five working days notice in writing of any scheduled meetings to all members of the Committee. The Secretary of the Committee will also be responsible for the recording of all minutes and obtaining the signature of all members of the committee on the agreed version of the minutes. The minutes will be distributed to all members of the Committee within five working days of the meeting.
- 9.1.8. When the Committee is undertaking the evaluation of consultants' proposals the Chair must ensure that at least three of the Committee members are knowledgeable in the field of the services being procured. In this event the Chair may agree, with the approval of MEF a different composition for the Committee. Each committee member will individually and independently undertake the evaluation of consultants' proposals, as part of the evaluation committee. The Committee will be responsible for preparing the evaluation report and negotiating the proposed contract in accordance with applicable DA procedures.

## **9.2. PROCUREMENT REVIEW COMMITTEE FORMATION AND THRESHOLDS**

9.2.1. Each project will form three procurement review committees as follows

9.2.2. Committee on minor procurement

The Committee on minor procurement will be empowered to review and approve all goods, works and services procurement to the values set out in Annex V of this manual.

The committee will be chaired by the Project Manager, or their fully authorized representative, and include the Project Technical Officer and the Project Financial Officer. At the discretion of the MEF the Project Financial Offer may be replaced by a representative of the MEF.

9.2.3. General committee on procurement

The general committee on procurement will be empowered to review and approve all goods, works and services procurement to the values set out in Annex V of

this Manual. This Committee must also approve all bid packages prior to the commencement of any procurement activity.

The committee will be chaired by the Project Director, or their fully authorized representative. The members will be the Project Manager, one representative from the EA (and not a member of the PMU) and one representative from MEF and the Project Financial Officer. At the discretion of the MEF the Project Financial Offer may be replaced by a second representative of the MEF.

9.2.4. Major Committee on Procurement

The Major Committee on procurement will be empowered to review all goods, works and services procurement above the limits of the General Committee. The Committee will be chaired by the Head of the EA or a representative duly authorized to act upon their behalf. The members will be the Project Director and one other representative appointed by the head of the EA and two representatives from the MEF.

9.2.5. In the event that the individual project's design means that there is no project manager or other such staff member as described above, the Project Director shall appoint an official from the EA to fill the position on the procurement committee.

9.2.6. The Project Director or MEF may invite any number of observers to the meetings of each Procurement Review Committee meeting, however these observers shall take no part in the decision making process.

9.2.7. In the event that authority or approval is required by a Committee member from their parent organization, the Chair of the Committee will set a deadline for obtaining the decision or approval of the parent organization. Should the Committee member be unable to obtain the decision on or before the deadline, they will advise the Chair in writing stating the reason for the delay and the time by which the decision will be made or approval granted.

9.2.8. The composition of each procurement review committee is summarized in the following page:

<b>Committee on Minor Procurement</b>				
<b>Membership</b>				
Project Manager, or authorized representative, Chair	Project Technical Officer	Project Financial Officer (or MEF representative)		
<b>General Committee on Procurement</b>				
<b>Membership</b>				
Project Director, or authorized representative, Chair	Project Manager	EA Representative	MEF Representative	Project Financial Officer (or MEF representative)
<b>Major Committee on Procurement</b>				
<b>Membership</b>				
Head of EA or authorized representative, Chair	Project Director	Representative appointed by EA	MEF Representative	MEF Representative

**9.3. MEF REPRESENTATION**

- 9.3.1. The MEF at their sole discretion may replace the Project Financial Officer serving on the Minor and General Procurement Review Committee. This is expected to be on an exceptional basis rather than as a standard practice.
- 9.3.2. The project must notify the MEF’s Department of International Cooperation (DIC) of each scheduled meeting of the Procurement Review Committee. For Minor Committee meetings the notification must be sent and received by MEF at least three working days prior to the meeting. In the case of the General and Major Committee the notification must be sent to and be received by the MEF at least five working days prior to the scheduled meeting.
- 9.3.3. When MEF do not respond to an invitation to attend a meeting the project will assume that there will be no MEF representation. Irrespective of whether MEF take part in the Committee’s meeting and decision making process the decision of the Committee will be final and not subject to further MEF review. The only exception to this is if MEF is not notified in accordance with the above time frames. In this instance the MEF may suspend the procurement process to facilitate a review of the procurement being undertaken.
- 9.3.4. In the procurement of consulting services, the invitation to attend the Committee’s meeting for evaluation of consultants' proposals must include supporting information necessary to enable the Committee members to undertake the evaluation of proposals, such as the RFP, Terms of Reference, copies of all proposals received, the CV’s in case of individual consultants under evaluation.

- 9.3.5. A sample invitation to MEF is shown on the following page and should be sent to the DIC each time Committee meets. The invitation may be sent by letter, email or fax and must be delivered at least three working days prior to the scheduled meeting in the case of the minor Committee and five working days prior to any General or Major Committee meeting.

Dear Sirs,

Invitation to Participate In the Review of Procurement  
*Insert Name of the Project*

You are invited to attend the meeting of the *Major/General/Minor [insert as appropriate]* Procurement Review Committee. The meeting will be held at *[insert time date and location]*.

The Committee will be undertaking *[select as appropriate]*  
*A review of the Procurement plan*  
*A review of the Bidding Documents*  
*A review of the Request for Proposals*  
*The public opening of Bids or Proposal*  
*A review of the Evaluation Report for goods or works*  
*The Technical Evaluation of Consulting Services*  
*The Financial Evaluation of Consulting Services*  
*A review of the Contract]*

For *[insert contract name and reference]*. The estimated cost is *[insert estimated cost in US\$]*

The following documents are attached for your information *[select as appropriate:*  
*The Procurement Plan*  
*The Bidding Documents*  
*The Request for proposals*  
*The Evaluation Report*  
*The Draft Contract]*

Please advise by return the names and designation of your representatives who will be attending. We understand that if you do not respond to this invitation that the Procurement Review Committee is to undertake its deliberations without the attendance of MEF. Any decision reached will be regarded as final and not subject to a separate MEF approval.

Yours faithfully

Signed  
Chairperson of the Procurement Review Committee

## **10. METHODS OF PROCUREMENT AND THEIR USE**

### **10.1. INTRODUCTION**

10.1.1. This section briefly describes the various methods of procurement and how a method should be selected to suit each procurement exercise. The methods of procurement applicable to each project are specified in the loan/credit agreement and procurement plan which will govern all procurement under the project and will take precedence in case of any conflicts with the procurement manual.

10.1.2. Procurement is divided into three major categories, being:

- The Procurement of Goods
- The Procurement of Civil Works
- The Procurement of Consulting Services

10.1.3. Each category of procurement uses slightly different processes and documentation to arrive at a contract and require different contract management methodologies to manage the resulting contract. However the same fundamental principles apply to each category, being those described in detail in Section 2 of this manual.

10.1.4. The basic rule that must be followed is that all procurement is to be subject to open competition, be fair and transparent.

10.1.5. In addition to the three categories mentioned above, the estimated value and complexity of the procurement will also have and impact upon what procurement processes will be used. Obviously hiring an individual consultant for a short term basis and hiring a firm of civil engineering consultants for a major construction project will, whilst the fundamental principles remain unchanged, require a different approach. The various methods of procurement are described in the following sub-sections.

10.1.6. Users of this Manual from World Bank funded projects should ensure that they ensure that they are familiar to the NCB Annex to the legal agreement covering their project. The NCB annex will list the changes to be made to the national procurement procedures and to this manual and the process described herein to make it acceptable to the World Bank and broadly consistent with their Guidelines. In the case of a conflict between this Manual and the NCB Annex, the NCB Annex shall take precedence.

### **10.2. THE PROCUREMENT OF GOODS**

10.2.1. There are four primary methods to procure goods under a project which will be used in all but exceptional circumstances. These are:

- International Competitive Bidding (ICB)



- National Competitive Bidding (NCB<sup>10</sup>)
- Shopping <sup>11</sup>
- Procurement using petty cash or purchase orders

**10.2.2. International Competitive Bidding (ICB)** In most cases, International Competitive Bidding (ICB), properly administered, and with the allowance for preferences for domestically manufactured goods under prescribed conditions is the most appropriate method. ICB is the preferred method of procurement as it will provide users a wide range of choices from competing suppliers and provide the suppliers (or potential suppliers) adequate, fair and equal opportunity for the goods and works being procured. Its use is mandatory when the estimated contract value(s) exceed the threshold stated in Annex V. ICB is advertised both nationally and internationally and is open to all who purchase the bidding document. The ICB process is fully described step by step guides published by the ADB and WB respectively. When ICB is to be used both the respective bidding documents of the World Bank or the ADB the must be used. These are listed in Section 4.5 of this Manual.

**10.2.3. National Competitive Bidding.** National competitive bidding follows the national procedures of the government and uses the governments own documentation. For World Bank Financed Projects in Cambodia, an NCB annex is provided in the legal agreement for each project, listing the applicable improvements in national procedures which are required to make them broadly consistent with the World Bank's Procurement Guidelines, the NCB Annex can be found at Annex III f of this Manual. NCB must be used when the estimated contract value(s) are below the threshold set for ICB and above the threshold set for shopping as indicated in Annex V. Bid securities are not required and the Bid Securing Declaration takes its place. It is advertised as with ICB except that it needs only be advertised in a National Newspaper. All suppliers both foreign and national are eligible to bid, however no domestic preference is applicable. The standard National Competitive Bidding document which is shown at Annex III. The use of this document for NCB is mandatory for all externally assisted projected funded by either the ADB or WB. The minimum period for the availability of documents is 30 days. The document cannot be sold on the day of Bid Opening.

**10.2.4. Shopping** this method (also known as canvassing). Shopping simply compares the priced quotations, selecting the lowest evaluated, responsive and qualified bidder for award. Its use is mandatory for all procurement where the estimated contract value(s) are below that stated in Annex V. The standard document for goods shopping can be found at Annex III to this Manual and its

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<sup>10</sup> The ADB guidelines refer to Local Competitive Bidding, however it is in essence identical to National Competitive Bidding

<sup>11</sup> Sometimes known as canvassing

use is mandatory. It will be advertised in the Khmer language in a provincial or national newspaper of wide circulation that has been continuously published for a period of not less than two years, with all that express interest invited to submit a sealed quotation requested and a public opening held. The minimum period for the availability of the documents is 14 days and the document will be issued free of charge. In addition a short list of not less than three suppliers, international or national may also be invited and sent the invitation directly.

10.2.5. When the value is estimated at below that indicated in Annex V, the requirement is not advertised. A minimum of three known sources of supply and invite them to submit their quotations by letter or facsimile<sup>12</sup>. The minimum period allowed for firms to prepare their quotations shall be 7 days.

10.2.6. **Procurement Using Petty Cash or a Purchase Order System.** From time to time it may be appropriate to purchase items valued at below the threshold shown in Annex V using either petty cash or a purchase order system. In this instance the Procurement Officer will canvas at least three sources of supply and record the name and address of each source and their process for the item(s) and the prices recommending the least cost one. The Project Manager will countersign the recommendation and the purchase will be made. The canvassing will be undertaken either over the telephone or through informal visits to the appropriate retail outlets. It is not necessary to set up the Procurement Review Committee for procurement using petty cash funds for purchase of goods below the threshold shown in Annex V.

10.2.7. In exceptional circumstances and subject to the provisions of the DA's procurement guidelines, the loan or development credit agreement and any procurement plan attached thereto and subject to their specific prior no objection the following procurement methods may be used:

- Limited International Bidding (LIB)<sup>13</sup>
- Direct Contracting (DC)<sup>14</sup>

10.2.8. **Limited International Bidding.** This method is almost identical to ICB, the same standard document of either the World Bank or ADB is used modified (basically removing the invitation for bids and any provision for domestic preference) LIB is not advertised. The grounds for using LIB could be that are only a limited number of suppliers, in which case all suppliers capable of performing the resulting contract shall be invited. As the only difference between LIB and ICB is the Invitation for Bids users should refer to the step-by-step guide for ICB published by the relevant DA.

10.2.9. **Direct Contracting (DC),** as a procurement method DC is used as little as possible as it does not provide for either transparency or competition. It

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<sup>12</sup> Email is not an acceptable for of quotation as the format does not protect against alteration.

<sup>13</sup> Sometimes referred to as limited source bidding

<sup>14</sup> Also known as direct purchasing, single or sole sourcing

always requires the no objection of both the DA and the MEF before it is used. A single supplier is contacted for an offer and a contract negotiated based on that offer. Direct Contracting is the only procurement method for goods where negotiations on price are permitted. It may be suitable when:

1. Standardization of equipment available from only a single proprietary source<sup>15</sup>
2. In exceptional cases such as in response to a natural disaster
3. The goods, works or services represent the natural continuation of an ongoing or recently completed contract and it can be demonstrated that lower prices will not be obtained through further bidding.

### **10.3. THE PROCUREMENT OF WORKS**

10.3.1. The methods of procuring works are very similar to those of procuring goods. There are three primary methods of procuring works that shall be used in all but exceptional circumstances. These are set out below;

- International Competitive Bidding (ICB)
- National Competitive Bidding (NCB)
- Shopping (Small Works)

10.3.2. **International Competitive Bidding (ICB)** In most cases, International Competitive Bidding (ICB), properly administered, and with the allowance for preferences for domestic contractors for works under prescribed conditions is the most appropriate method. ICB is the preferred method of procurement as it will provide users a wide range of choices from competing contractors and potential contractors adequate, fair and equal opportunity for the works being procured. Its use is mandatory when the estimated contract value(s) exceed the threshold stated in Annex V. ICB is advertised both nationally and internationally and is open to all who purchase the bidding document (civil works contractors registration is not a pre-condition to bidding but may be to contract award). The ICB process is fully described in a step by step guide issued by the respective DA. When ICB is to be used both the WB and the ADB require that their standard bidding documents are used.

10.3.3. **National Competitive Bidding (NCB)**. National competitive bidding usually follows the national procedures of the government and uses the governments own documentation. For World Bank Financed Projects in Cambodia, an NCB annex is provided in the legal agreement for each project, listing the applicable improvements in national procedures which are required to make them broadly consistent with the World Bank's Procurement Guidelines, the NCB Annex can be found at Annex III f of this Manual. NCB must be used when the estimated contract value(s) are below the threshold set for ICB and

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<sup>15</sup> Many spare parts, especially those for vehicles, are not proprietary items and can be purchased from a number of sources such as 'genuine' (from the vehicle manufacturer), 'OEM' (original equipment manufacturer) and 'replacement' (when the parts are not proprietary) parts

above the threshold set for shopping as indicated in Annex V. Bid securities are not required and the Bid Securing Declaration takes its place. It is advertised as with ICB except that it needs only be advertised in a National Newspaper. All suppliers both foreign and national are eligible to bid, however no domestic preference is applicable. The use of the National Competitive Bidding document which is shown at Annex III is mandatory. The minimum period for the availability of documents is 30 days. The document cannot be sold on the day of Bid Opening.

- 10.3.4. **Shopping** (sometimes referred to as “small works”) Shopping simply compares the priced quotations, selecting the lowest evaluated, responsive and qualified bidder for award and its use is mandatory for all procurement where the estimated contract value(s) are below that stated in Annex V. The standard document for works shopping can be found at Annex III to this Manual must be used. If the estimated value is above threshold stated in Annex V it will be advertised in the Khmer language in a provincial or national newspaper of wide circulation that has been continuously published for a period of not less than two years, with all that express interest invited to submit a sealed quotation requested and a public opening held, in addition to those who express interest a shortlist of not less than three national or international firms may be invited. In this instance the minimum period for preparing quotations shall be 14 days. The document will be issued free of charge.
- 10.3.5. If the value is estimated at below the threshold stated in Annex simply select a minimum of three known contractors and invite them to submit their quotations by letter or facsimile<sup>16</sup>. The minimum period allowed for firms to prepare their quotations shall be 7 days.
- 10.3.6. In exceptional circumstances and subject to the provisions of the DA’s procurement guidelines, the loan or development credit agreement and any procurement plan attached thereto and subject to their specific prior no objection the following procurement methods may be used:
- Direct Contacting (DC)
  - Force Account
- 10.3.7. **Direct Contracting (DC)**, which shall always require the DA’s and MEF’s prior no objection and should be used as little as possible as it does not provide for either transparency or competition. A single contractor is contacted for an offer and a contract negotiated based on that offer. Direct Contracting is the only procurement method for works where negotiations on price are permitted. It may be suitable for use when the works to be procured are a natural continuation of a completed or ongoing contract or in exceptional cases such as in response to a natural disaster

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<sup>16</sup> Email is not an acceptable for of quotation as the format does not protect against alteration.

10.3.8. **Force Account** This method is when the Government's own workforce, equipment and resources are used to complete a works project. It always requires the DA's and MEF's prior no objection. It may be suitable when:

1. The quantities of works cannot be defined in advance
2. the works are small and at scattered locations that competent construction firms are unlikely to bid for at reasonable prices
3. the works need to be undertaken without interrupting ongoing operations
4. the risk of delay is better born by the Government rather than an individual contractor
5. there is a natural disaster or similar emergency needing immediate attention

#### **10.4. TWO STAGE PROCUREMENT**

10.4.1. At times it is not possible or desirable to prepare comprehensive specifications in advance as they may prevent bidders from preparing their best technical offer harnessing the bidder's expertise and technical know how such as turnkey contracts for large complex facilities, plant or works of a special nature or complex information communication technology systems.

10.4.2. When this is the case two-stage procurement can be used for both goods and works as it offers particular advantages when the items being procured are particularly complex such as large turnkey or complex works or complex information technology systems where bids are likely to be technically diverse and impossible to compare on a like-for-like basis. When two stage bidding is used, bidders are required to submit their un-priced technical bids. These will then be evaluated technically. Each technical proposal is then reviewed and clarified through formal correspondence with each bidder as necessary.

10.4.3. Taking care to ensure that the specifications remain as open as possible the project will then amend the bidding document and re-issue it to all of the bidders inviting technical and priced bids. Thereafter the evaluative process is identical to the normal ICB methods.

10.4.4. During two stage procurement it is preferable to hold two pre-bid meetings. One within three weeks of the issue of the first bidding documents, at this meetings bidders will be obtain information that will increase their understanding of the requirement. The second meeting should be held three weeks after the issue of the revised bidding document so that bidders can further refine their understanding of the requirement and the revised specification.

10.4.5. In essence what two stage bidding does is harness the bidders' technical know-how to develop a draft technical specification into one that capture the current cutting edge of the technologies involved.

## 10.5. TURNKEY CONTRACTING

10.5.1. Turnkey is a contract type rather than a method of procurement in itself and can be either ICB or NCB and the specific ICB documents issued by the DA should be used to cover turnkey procurement.

10.5.2. Turnkey is a method of contracting by which a civil works contractor is made responsible for the design, supply and installation of a complete facility or works. This type of contract will only be used on an exceptional basis when the facility or works involved are both of high value and high complexity.

## 10.6. THE PROCUREMENT OF SERVICES

10.6.1. The procurement of services is distinct from the procurement of goods and works, primarily due to the significant differences between goods or structures which are relatively simply to quantify in absolute terms and the challenge of quantifying a consultant service. Because of this difference consultants services procurement differs from the procurement of goods and works. The primary difference is that a significant emphasis is placed on quality rather than price alone (although price is often still a factor). Also, rather than submitting 'bids', consultants submit 'proposals and therefore the standard bidding documents are called a 'request for proposals'. The primary methods of procuring consultants services are:

- Quality Based Selection (QBS)
- Quality Cost Based Selection (QCBS)
- Selection Under a Fixed Budget (FBS)
- Least Cost Based Selection (LCS)
- Selection Based Upon Consultants Qualifications (CQS)
- Single Source Selection (SSS)
- Selection of Individual Consultants

10.6.2. All services procurement with the exception of single source must be advertised nationally. Services procurement above the threshold stated in Annex V must also be advertised internationally. When the procurement review committee determines that there will not be a sufficient number of appropriate skilled national consultants to guarantee competition, irrespective of the value of the procurement, it may instruct the PMU to place an international advertisement even if the value is below the threshold stated in Annex V.

10.6.3. Irrespective of the amount and method used the following stages in the procurement of services must, in addition to any DA approval, be reviewed and approved by the MEF representative in the Procurement Review Committee:

- The method of procurement

- The terms of reference
- The request for proposals
- The evaluation report
- The final draft contract.

The approval of the MEF will usually be granted by its representative who forms part of each services procurement review committee.

10.6.4. The ADB Guidelines for services procurement only formally recognizes QBS, QCBS SSS and the selection of individual consultants. FBS, LCS and CQS should not be employed on projects funded by the ADB.

10.6.5. There is little difference in the processes for QBS, QCBS, FBS, LCS, CQS, and SSS -the WB proposes the same standard document for all types of procurement excepting individual consultants and procurement of relatively low value. ADB has the same standard document for both QCBS and QBS.

10.6.6. **Quality Based Selection** QBS this method is appropriate when quality is the most important consideration in the selection process. The assignment will be advertised both internationally and internationally and a shortlist will be drawn up from those firms that expressed interest. Consultants are then asked to submit only their technical proposal and each proposal is ranked in terms of its technical score against a set of criteria included in the request for proposals. To guide firms in preparing their proposals the RFP will normally include either an estimate of the person months the assignment is estimated to take or the funds available. It is recommended that the funds available normally be indicated as this information is already in the public domain through the DA's various publications. The firm with the highest technical score is invited to submit its financial proposal and a contract is negotiated on the basis of the firm's technical and priced proposal. It is suitable for:

1. National economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms
2. Assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies
3. Assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).

10.6.7. **International Quality Cost Based Selection (QCBS)** is the standard form of procurement of services and with the exception of those circumstances where QBS has been approved by the DA and MEF and is used QCBS should be

employed for all services procurement over the threshold stated in Annex V. It is advertised both nationally and internationally and a shortlist is drawn up. Quality will be evaluated in the same manner as QBS, i.e. each of the technical proposals will be ranked against the criteria listed in the RFP. There will also be a financial weighting assigned of which shall normally be 20 marks, the balance of 80 marks being available for the technical marks. In exceptional cases 30 marks may be made available for the financial weighting when the consulting assignment is very simple. For highly complex assignments 10 marks may be available for the financial weighting – both of these instances require the prior concurrence of the DA. After the ranking (evaluation of quality) is complete and the DA's no objection is obtained, if required by specific project agreements, a public opening is scheduled and the firms representatives invited to attend. At this public opening the firm's technical scores are announced and their financial proposals (which will have been held still sealed in a secure location) are opened and their financial proposals are read out. After the opening of financial proposals they are checked for errors and an overall technical and financial score determined for each of the proposals. That with the highest score is the one recommended for a contract award and the consultants invited to negotiate a contract.

- 10.6.8. **National Quality Cost Based Selection** is to be used for all services procurement valued below the threshold stated in Annex V when the shortlist will be made up of only national consultants unless MEF and the DA approval is given for the use of any other type of procurement listed in this section. It is identical to international QCBS excepting that it uses the National standard document that can be found at Annex III and that the opportunity only needs to be advertised nationally.
- 10.6.9. **Selection Under a Fixed Budget (FBS)** This selection method can only be used on WB funded project not those funded by the ADB. The assignment is advertised both nationally and internationally (depending on its value, if it is below the threshold stated in Annex V it may only be advertised nationally). A shortlist is drawn up of those that express interest and the RFP is sent to them. The RFP will disclose the budget available and firms will be invited to submit their best technical proposal within that budget. The technical proposals are then evaluated as with QBS and QCBS. After the technical evaluation is completed and the evaluation report is no objected (if necessary) there is a public opening of the firms financial proposals. Again these proposals will have been held sealed at a secure location. At the opening the firms technical scores are announced and financial proposals opened. All firms that are above the stated budget are rejected, the firm with the highest technical score and within budget is invited to negotiate a contract. This method of selection is appropriate when the services are straightforward and the budget is fixed.
- 10.6.10. **Least Cost Based Selection (LCS)** This selection method can only be used on WB funded project not those funded by the ADB This method is suitable for very well defined and standard consulting services such as



standard audits and engineering design of non-complex works where well established standards already exist. It is advertised nationally and internationally (if it is over the threshold stated in Annex V) and a short list is drawn up. The RFP will establish a minimum technical qualifying mark. The proposals are then evaluated and all those who do not reach the minimum qualifying mark are rejected. The remained have their financial proposals opened in public and a contract is negotiated with the lowest cost consultants.

- 10.6.11. **Selection Based upon Consultants Qualifications (CQS).** This method can be used for small and simple assignment where the estimated contract value is below the threshold specified in Annex V. An advertisement is placed nationally (and internationally only if the requirement requires international expertise) calling for expressions of interest with detailed information on the consultants' experience and competence relevant to the assignment. The most qualified is selected and a contract negotiated.
- 10.6.12. **Single Source Selection (SSS)** This method of procurement is recognised by both the ADB and WB, it requires their express prior no objection before it is used. This type of procurement can also be used to selected and hire individual consultants. It is not common and should only be used in exceptional circumstances as it does not have any competitive element to it and it is not transparent. The circumstances where it may be appropriate are:
- For tasks that represent a natural continuation of previous work carried out by the firm<sup>17</sup>,
  - In emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency, or
  - When only one firm is qualified or has experience of exceptional worth for the assignment.
- 10.6.13. **Selection of individual consultants.** Advertising is an effective way of securing expressions of interest from individual consultants. Therefore; advertising to invite CVs for the selection of individual consultants is required. The evaluation and selection of the individual will not involve a proposal (either technical or financial) but will be based on the assessment of the individuals qualifications for the assignment, judged on the basis of relevant academic background, experience, and, as appropriate, knowledge of the local conditions, such as language, culture, administrative system, and government organization. The individual judged best qualified from a minimum of three relevant candidates will then be invited to negotiate a contract based on the Individuals Contract Form shown at Annex IV. Recruitment of incremental operating support staff such as limited number of cleaner and/or driver, where allowed for project purposes, is not governed by the procedures for selection of individual consultants in this Manual, but instead by RGC's competitive administrative procedures.

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<sup>17</sup> And only if the original RFP mentioned the possibility of down stream assignments

## **10.7. PROCUREMENT PROCESS THRESHOLDS**

10.7.1. Both the ADB and the WB set process thresholds for types of procurement. These are separate from both the prior review thresholds and the thresholds for Procurement Review Committees discussed in Section 9.2. The project documents will all have procurement thresholds which dictate the method of procurement dependant on the estimated value. Generally speaking they will follow the amounts set out in Annex V.

## **10.8. SELECTING THE RIGHT BIDDING DOCUMENTS**

10.8.1. For the purposes of this section the term bidding document also includes services documents (RFPs). The first task is to determine what it is we are actually setting out to procure, i.e. is it goods works or services as each have their own specific bidding documents. This is normally but not always a very simple task – for example when does the procurement of goods with an element of installation services cease to be the procurement of goods and become the procurement of works? There is no hard and fast answer; however the simplest way to answer the question will usually be who do I expect to bid – suppliers, contractors or consultants? Depending on the answer you give yourself you will have identified the procurement of either goods works or services.

10.8.2. The next issue to address is what the estimated cost of the procurement is. If the procurement is over the thresholds stated in Annex V the use of the ADB or the WBs' Goods/Works ICB document or RFP is mandatory. There are a number of options for works ICB, especially high value complex works (see Section 4.5) – each of the standard bidding documents should be assessed to see which one is the most suitable. Normally this will be the document for small works without pre-qualification.

10.8.3. If the funding is from the WB and medical supplier, text books or IT systems their standard ICB bidding documents should be used. For the same commodities funded by the ADB consideration should also be given to modifying the WB documents to meet with the ADB guidelines. This should be only undertaken in consultation with the ADB.

10.8.4. If the procurement is for goods, works or services and the value is below the thresholds stated in Annex V, the standard National Competitive Bidding Documents shown in Annex III a – Goods NCB, Annex III c Works NCB and Annex III e Services NCB should be used.

10.8.5. For estimated values below the thresholds stated in Annex V for goods or works the shopping documents shown in Annex III b and III respectively should be used.

## **11. PACKAGING OF PROCUREMENT AND BIDDING STRATEGY**

### 11.1.1. Definitions:

- A procurement lot is an item or number of similar items that are collected into one lot for the purpose of letting one single contract
- A procurement package is a number of lots – that again will be similar grouped together to be treated as one procurement exercise (included in the same bidding document).

For example, if the requirement is for the building of ten rural health centers scattered throughout the country it would be sensible to divide the ten centers into individual lots so that small contractors near the location of the proposed center will be able to offer. The ten centers are the package and the lots are the each center individually.

11.1.2. The identification of lots and their packaging is only generally used to refer to goods and works procurement, however it can be applied in part to the procurement of services if we regard each output of a set of terms of reference as an individual item then the integration of these outputs into a single terms of reference becomes the lot.

11.1.3. The identification of procurement requirements will normally come about in one of two ways. The first and simplest is through the project or loan documents. The Government along with the DAs will have undertaken a comprehensive appraisal of the project in advance of the project being agreed and financing identified and made available. This appraisal will, in most circumstances, have already identified most or all significant procurement requirements. The second and less common way is for the requirements to flow from implementing agencies – such as livelihood projects where the appraisal documents will have identified the requirement in a general sense but not specific items.

11.1.4. Once a requirement has been identified a decision needs to be on the most appropriate bidding strategy. If all of the items to be purchased are of a similar nature (e.g. similar types of furniture or a small number of simple works in close proximity etc.), it may only be necessary to form them into one lot.

11.1.5. However, the items to be purchased may include a wide range of different items such as stationery and vehicles. In this instance it is practical to divide the items into separate lots as each of the groups is fundamentally different. Each is likely to attract competition from specialist suppliers; also each will attract differing contractual terms and conditions. For example stationery does not require extensive warranty and after-sales service conditions whereas vehicles will.

11.1.6. Combining and separating items for inclusion in single or multiple bidding exercises is called packaging items into biddable lots.

## 11.2. PACKAGING ITEMS INTO BIDDABLE LOTS

11.2.1. The following general rules should be followed when packaging and separating items into biddable lots.

- i) Items that are to be procured by the same procurement method may be allocated to the same bidding exercise.
- ii) Items that are subject to the same conditions of contract may be allocated to the same bidding exercise.
- iii) Items that are ready for procurement at the same time may be allocated to the same bidding exercise.
- iv) Items of a similar nature or that are for delivery to the same end-user may be allocated to the same bidding exercise.

11.2.2. Breakdown of items in biddable lots. Once that it has been decided which items will be procured under a procurement exercise, it is then necessary to decide the contracting strategy. Should bidding result in one or many contracts? Should each item be contracted separately?

11.2.3. Lots are always to be packaged so that they attract the maximum of competition. Desegregation into small lots to avoid procurement process and review thresholds is strictly prohibited. Also artificially consolidating of lots to avoid delegation to decentralized units is prohibited.

## 11.3. CONTRACTING STRATEGY

11.3.1. Bidding exercise it is necessary to determine how many lots<sup>18</sup> there will be. For example, in the case of a competitive bid:

- Option 1 – Each item to be evaluated and compared with other bids separately and hence recommended for contract award separately; or
- Option 2 - All items to be grouped together to form one complete Lot that will be awarded to one bidder to form one complete contract; or
- Option 3 - Similar, or low-value items, to be grouped together to form several Lots that will each be awarded as separate contracts.

There are advantages and disadvantages to each of the above strategies.

11.3.2. **Option 1 – Separate Contracts for each Item** This will probably result in many contracts causing a high management and administration cost. However, as each item will be compared separately, the lowest overall procurement

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<sup>18</sup> A Lot is a group of items that will be evaluated and contracted as a group.

spend may be achieved. Furthermore, as each line item will be technically evaluated separately, the comparison may be of only those items that are fully compliant with the required specification, e.g. evaluators will not have to reject an otherwise competitive bid if it fails to offer or meet the requirements of one item.

11.3.3. **Option 2 – One Contract** This will achieve the minimum management and administration cost as only one contract will be placed. However, if the items are too dissimilar this option will attract trading houses (non-manufacturers) that specialize in supplying many diverse items after adding a premium. For this reason, it will probably result in the highest overall procurement spend. Furthermore, the Purchaser of Client may also have to accept items that are not fully compliant with the required technical specification, as it is unlikely that one bid will include a fully responsive offer for each item.

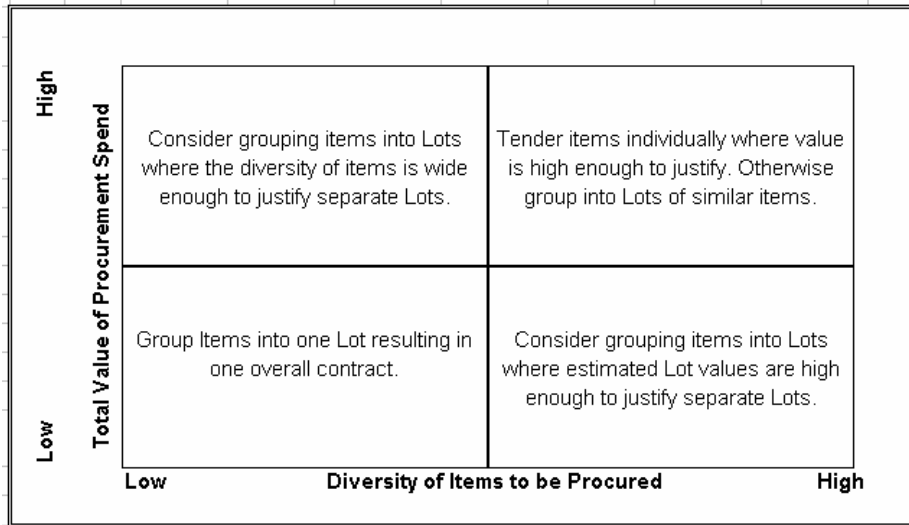
11.3.4. **Option 3 – Several Contracts grouping like Items** This is a compromise of the above two options and is likely to be the most appropriate option in the majority of cases.

**11.4. DECISION CRITERIA**

11.4.1. The criteria for deciding upon the most appropriate contracting strategy shall include the following:

- Total value of procurement spend
- Diversity of items to be procured.

This is demonstrated in the following diagram



11.4.2. Other criteria which may need to be considered are as follows:

- Technical complexity of items to be procured;
- Speed of delivery required;
- After-sales servicing requirements;

- Competitiveness of supply market.
- Critical Milestones especially if the procurement is part of a larger project plan (e.g. supplies for a hospital).

## **12. PLANNING FOR PROCUREMENT**

### **12.1. MANDATORY PROCUREMENT PLANS**

- 12.1.1. The next step after identifying a requirement, forming the requirement into lot(s) is to draft a specific procurement plan.
- 12.1.2. When ADB is funding a project the baseline Project Procurement Plan (PPP) can be found in both the Project Appraisal Report and the Project Administration Manual. When the funding is WB it is normally the borrower's responsibility to prepare a Project Procurement Plan as a condition of loan effectiveness or a procurement plan will be included in the Operations manual for the project.
- 12.1.3. The PPP is to be updated on a monthly basis to show the projects progress and it is the responsibility of the Procurement Officer to ensure that they are prepared and the Project Manager to ensure that they are issued as follows:
- i. The Project Director
  - ii. The Project Manager
  - iii. MEF representative
  - iv. DA representative
- 12.1.4. The reasons for creating and managing procurement on the basis of pre-prepared plans are:
- ❖ They enable PMUs to effectively manage and track procurement.
  - ❖ They can be used to report to end-users.
  - ❖ Procurement can be tracked back from the delivery date required ensuring that procurement activities start at the right time.
  - ❖ Once procurement is planned managers can manage limited cash resources.
  - ❖ They show peaks and troughs of work so that managers can assign appropriate resources.
  - ❖ They identify delays and weaknesses in procurement that can then be eliminated or strengthened.

### **12.2. SPECIFIC PROCUREMENT PLANS**

- 12.2.1. In order to create a meaningful Project Procurement Plan each procurement package must have its own Specific Procurement Plan, the summary details of which are then included in the PPP:
- 12.2.2. To prepare a Specific Procurement Plan (SPP) the Procurement Officer will first need to analyze each step in the procurement process specific to the

Project, an indicative list of steps in the procurement process and a samples of Specific Procurement Plans are set out in the following pages.



**PROJECT PROCUREMENT TRACKING FORMS**

**12.3. CONTRACTS FOR CONSULTANTS' SERVICES (QCBS)**

Project name: .....

DA Loan/Credit/Grant No.....

Prepared date: .....

No.	Contract No.	Description of Services	Prior (P) or Post Review (PR)	Method of Selection +	TOR/EOI				Shortlist and Request for Proposals				Technical Evaluation		Final Evaluation (technical-financial)				Contract								
					PIU sent to DA for NOL (Date) #	PIU received DA's NOL (Date) #	PIU issued EOI (Date) #	PIU received EOI (Date) #	PIU sent to DA for NOL (Date) #	PIU received DA's NOL (Date) #	RFP Issued - (Date)	Proposals Received (Date)	PIU sent to DA for NOL (Date) #	PIU received DA's NOL - (Date) #	Financial proposal Publicly Opened (Date)	PIU sent to PRC for approval - (Date)	Approved by PRC (Date)	PIU sent to DA for NOL (Date) #	PIU received DA's NOL - (Date) #	PIU sent to PRC for approval- (Date)	Approved by PRC (Date)	PIU sent to DA for NOL (Date) #	PIU received DA's NOL - (Date) #	Contract Signed - (Date)	Consultant 's Name	Contract Amount	Completion Date
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
				QCBS																							
				QCBS																							



**PROCUREMENT MANUAL**

**12.4. CONTRACTS FOR CONSULTANTS' SERVICES (METHODS OTHER THAN QCBS)**

Project name: .....

DA Loan/Credit/Grant No.....

Prepared date: .....

No.	Contract No.	Description of Services	Prior (P) or Post Review (PR)	Method of Selection +	TOR/EOI				Shortlist and Request for Proposals				Technical Evaluation		Final Evaluation (technical-financial)				Contract								
					PIU sent to DA for NOL (Date) #	PIU received DA's NOL (Date) #	PIU issued EOI (Date) #	PIU received EOI (Date) #	PIU sent to DA for NOL (Date) #	PIU received DA's NOL (Date) #	RFP Issued - (Date)	Proposals Received (Date)	PIU sent to DA for NOL (Date) #	PIU received DA's NOL - (Date) #	Financial proposal Publicly Opened (Date) &	PIU sent to PRC for approval - (Date)	Approved by PRC (Date)	PIU sent to DA for NOL (Date) #	PIU received DA's NOL - (Date) #	PIU sent to PRC for approval- (Date)	Approved by PRC (Date)	PIU sent to DA for NOL (Date) #	PIU received DA's NOL - (Date) #	Contract Signed - (Date)	Consultant 's Name	Contract Amount	Completion Date
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28

+ In case of firms, state QBS/LCS/FBS/CQS/SSS etc. - as required in DCA. In case of individual, state IC, and only fill in columns 1-9, 17-28  
 # Applicable only in case of contracts subject to 'Prior Review' by DA - as per DCA  
 & Public Opening of financial proposals is not applicable in case of QBS, CQS & SSS methods

## PROCUREMENT MANUAL

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**Acronyms:** PRC : Procurement Review Committee  
PIU : Project Implementation Unit  
NOL : No Objection Letter  
DA : Donor Agency

TOR : Terms of Reference  
EOI : Expression of Interest  
SSS : Single-Source Selection  
QBS : Quality-Based Selection

LCS : Least-Cost Selection  
CQS : Selection Based on Consultants' Qualification  
RFP : Request for Proposal

**PROCUREMENT MANUAL**

**12.5. CONTRACTS FOR GOODS/WORKS (ICB)**

**Project name:** .....

DA Loan/Credit/Grant No.....

**Prepared date:** .....

No.	Contract No.	Description of Goods/Works	Prior (P) or Post Review (PR)	Procurement Method +	Design and Cost Estimate			Pre-qualification (PQ procedure to be followed only when agreed with the DA)				Bidding Documents and Bidding Process				Bid Evaluation / contract award recommendations				Contract			
					PIU sent to DA for NOL - (Date) #	PIU received DA's NOL - (Date) #	Cost Estimate (Amount.)	PQ Invitation Issued - (date)	PQ Received (Date)	PIU sent to DA for NOL - (Date) #	PIU received DA's NOL - (Date) #	PIU sent BD to DA for NOL - (Date) #	PIU received DA's NOL - (Date) #	Bid Invitation Issued (Date)	Bids Opened (Date)	PIU sent to PRC for approval - (Date)	Approved by PRC (Date)	PIU sent to DA for NOL - (Date) #	PIU received DA's NOL - (Date) #	Contract Signed (Date)	Contractor's Name	Contract Amount	Completion Date
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
				ICB																			
				ICB																			
				ICB																			
				ICB																			

## PROCUREMENT MANUAL

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+ State ICB as per DCA  
# Applicable only in case of contracts subject to 'Prior Review' by DA - as required in DCA.

**Acronyms:** PRC : Procurement Review Committee      BD : Bidding Documents  
PIU : Project Implementation Unit                      ICB : International Competitive Bidding  
DA : Donor Agency    NOL: No Objection Letter

**PROCUREMENT MANUAL**

**12.6. CONTRACTS FOR GOODS/WORKS (METHODS OTHER THAN ICB)**

Project name: .....

DA Loan/Credit/Grant No.....

Prepared date: .....

No.	Contract No.	Description of Goods/Works	Prior (P) or Post Review (PR)	Procurement Method +	Design and Cost Estimate			Bidding Documents and Bidding Process				Bid Evaluation / contract award recommendations				Contract			
					PIU sent to DA for NOL - (Date) #	PIU received DA's NOL - (Date) #	Cost Estimate (Amount.)	PIU sent BD to DA for NOL - (Date) #	PIU received DA's NOL - (Date) #	Bid Invitation Issued (Date)	Bids Opened (Date)	PIU sent to PRC for approval - (Date)	Approved by PRC (Date)	PIU sent to DA for NOL - (Date) #	PIU received DA's NOL - (Date) #	Contract Signed (Date)	Contractor's Name	Contract Amount	Completion Date
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20

## PROCUREMENT MANUAL

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- + State NCB/IS/NS/SW/FA/UN/DC/CP etc. - as per DCA
- # Applicable only in case of contracts subject to 'Prior Review' by DA - as required in DCA.

**Acronyms:**

PRC : Procurement Review Committee	NCB : National Competitive Bidding	UN : Procurement from United Nation Agencies
PIU : Project Implementation Unit	NS/IS : National Shopping/International Shopping	LIB : Limited International Bidding
NOL : No Objection Letter	SW : Small Works (at least 3 quotations)	DC : Direct Contracting (exceptionally cases with DA's prior approval)
DA : Donor Agency	FA : Force Account	CP : Community Participation
BD : Bidding Documents	FA : Force Account	



- 12.2.3. Updating and using the Specific Procurement Plan. The SPP shows the estimated or planned dates for completion of each task in the procurement process. It is fairly common for plans to need revision at various times in the procurement process as tasks will often be completed either earlier or later than originally planned. This has a knock on effect on all subsequent tasks and ultimately the delivery of the goods, works or services. E.g. if there is a delay in the issue of a bidding document to bidders we cannot simply reduce the time allocated to the other tasks or impose an un-realistic delivery period on bidders. Therefore we have to update the SPP to reflect the overall impact of a delay.
- 12.2.4. The actual date for commencing the task should be input into the actual/revised start and finish dates fields. Actual dates should be shown in bold, revised dates should be shown in italics. If a report is being prepared manually i.e. not with a computer one color pen should be used for actual and another for revised dates – a revised date being one that has not yet happened but has been changed from the original plan because an earlier task has been completed earlier or later than originally planned. Below is an example of an updated SPP.
- 12.2.5. Different methods of procurement and different values of procurement require greater and lesser time periods for each stage of the procurement process depending on value and complexity. Guideline time periods based on value and what is being procured (goods, works or services) are contained in Annex I d.
- 12.2.6. For the purposes of this manual, mandatory reports only need to be prepared in the format of the sample procurement plan shown on the preceding page<sup>19</sup>. Templates for goods, works and services procurement plans can be found at Annex I d.
- 12.2.7. Once the specific procurement plan is prepared for each procurement package on the project (or estimated number of packages if the exact procurement profile is uncertain) all active procurement packages must be updated on a monthly basis. An active procurement package is one for which a specific requirement has been identified. In some instances the requirement will be identified in the loan or credit agreement in advance of project start up, in others the project itself will identify the requirement.

## **12.7. PREPARING AND UPDATING THE PROJECT PROCUREMENT PLAN**

- 12.7.1. Specific Procurement Plans will be represented on the overall Project Procurement Plan as a horizontal line on a time axis. A sample of the Project procurement plan can be found on the following page.

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<sup>19</sup> The more advanced users of this manual may, for more complex project choose to present specific procurement plans using proprietary project management software such as MS Project™.

- 12.7.2. The length of the horizontal line is determined by the date the requirement is identified and ends with contract completion - not the expiry of the warranty or latent defects period - rather inspection and acceptance of the goods, the issue of the taking over certificate for works or the acceptance of the consultants' final report.
- 12.7.3. The first input on the PPP should be the line representing the planned procurement. Once the planned procurement is input into the plan it is never changed as the main point of the plan is to show actual progress against the original plan. Below the line for planned procurement another line should be shown showing actual and revised procurement activity showing the revised or actual start date through to the revised or actual date of contract completion.
- 12.7.4. The example on the following page shows users how to determine the length of both the planned time line and the Actual/Revised time line.

PROCUREMENT MANUAL

Specific Procurement Plan, PMO Office Equipment, PMO 1 as at 28 January 2005						
Procurement Method		Estimated amount		Contract Value		
Activity	Responsibility	Duration	Planned Start	Planned Finish	Actual/Revised Start	Actual/Revised Finish
Requirement Identified	Project as a whole	0d	1-Jan		1-Jan	
Drafting Bidding Document	Procurement Officer	2w	1-Jan	14-Jan	1-Jan	14-Jan
Prepare Technical Specifications	Technical Officer	1w	7-Jan	14-Jan	7-Jan	28-Jan
Review Bidding Document	Procurement Officer	1d	15-Jan	21-Jan	28-Jan	5-Feb
DA Review	DA		21-Jan	4-Feb		9-Feb
Issue Advertisement	Procurement Officer		5-Feb			
Copy Lead Time	Newspaper	3w	5-Feb	28-Feb	20-Feb	13-Mar
Bidding Period	Procurement Officer	4w	28-Feb	28-Mar	13-Mar	13-Apr
Evaluation Period	Procurement Committee			13-Apr	14-Apr	28-Apr
Committee Review	Procurement Committee			20-Apr	28-Apr	6-May
DA Review	DA			5-May	7-May	21-May
Notification of Award issued	Procurement Officer	2d	5-May	6-May	21-May	22-May
Contract Finalized	Procurement Officer/Supplier	1w	6-May	13-May		
Letter of Credit Established	Procurement Officer/Financial Officer	2w	4-May	28-May		
Make Advance Payment	Procurement Officer/Financial Officer	1w	14-May	21-May	30-May	6-Jun
Delivery Period	Procurement Officer/Supplier	8w	28-May	28-Jul	14-Jun	14-Aug
Inspection and Acceptance	Inspection Committee	1w	28-Jul	5-Aug	14-Aug	21-Aug

This is the start of the time line for 'planned'

This is the start of the time line for Actual/Revised

This is the end of the time line for 'planned', so the line should be shown as 1 Jan to 5 Aug.

This is the end of the time line for Actual/Revised, so the time line should be shown as 1 Jan to 21 Aug

The sample Project Procurement Plan on the following page shows how a Specific Plan is summarized on the PPP.

PROCUREMENT MANUAL

Project Procurement Plan, Second Road Rehabilitation Project as at todays date

			2005												2006											
Package	Ref		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Office Equipment for PMO	PMO1	Planned																								
		Actual/Revised																								
Project Vehicles	PV1	Planned																								
		Actual/Revised																								
Engineering Consultant	EC1	Planned																								
		Actual/Revised																								
Road Rehab Package 1	RR1	Planned																								
		Actual/Revised																								
Road Rehab Package 2	RR2	Planned																								
		Actual/Revised																								
Road Rehab Package 3	RR3	Planned																								
		Actual/Revised																								
Road Rehab Package 4	RR4	Planned																								
		Actual/Revised																								
Bridge Construction 1	BC1	Planned																								
		Actual/Revised																								
Bridge Construction 2	BC2	Planned																								
		Actual/Revised																								
Bridge Construction 3	BC3	Planned																								
		Actual/Revised																								
Bridge Construction 4	BC4	Planned																								
		Actual/Revised																								

These two dates are the 'Planned' dates shown on a specific plan and are never changed

These two dates are the 'Actual/Revised' dates shown on a specific plan

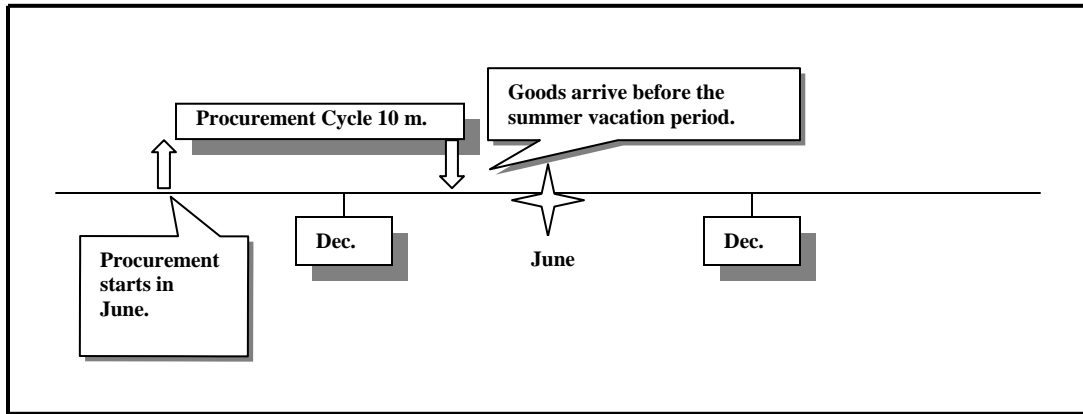
## 12.8. THE BASICS OF PROCUREMENT PLANNING

- 12.8.1. **Identify each step in the procurement process.** The first stage in preparing any procurement plan is to identify each step in the procurement process can be identified in advance. Procurement can be broken down into four main stages as follows.
1. Preparation;
  2. Bidding;
  3. Evaluation, and
  4. Contracting
- 12.8.2. The specific procurement plan templates contained in Annex I d of this manual offer users' a generic list of procurement. However users should take care that these templates are modified to suit their own project. Each project is unique and may have additional tasks that are not included in the templates.
- 12.8.3. Estimates of Task Durations. The time periods quoted shown in the templates are simple estimates of how long a task might take. When preparing a specific plan the user should consider the complexity of what is being purchased, the value and the method. For example for large turnkey civil engineering procurement the time allowed for preparing technical specifications or scopes of work should be much longer than a simple farm to market road. Also greater time should be allocated for review by both the Procurement Review Committee and the DA for complex and high value procurement.
- 12.8.4. Experience will provide solid data on which to base estimates, therefore users should update the estimates and their own templates for each of the tasks identified to reflect the actual time taken at their location.
- 12.8.5. Consultation with Stakeholders is an essential part of the procurement planning process is consultation with other stakeholders, especially those who take an active part, such as the Procurement Review Committee, the DAs and any external resources that will be used to support the procurement process. As a project normally has no direct control over these organizations it must agree with them in advance how much time to allow for a task.
- 12.8.6. Once the planning process has been undertaken actual performance should be monitored against the plan.
- 12.8.7. Plan for when the Inputs are Required Assuming an academic year (school year) starts in June, and we are buying text books the procurement cycle, and we know that the ICB procurement cycle takes ten months. The books should be delivered to school sites before they are needed, e.g. before June as textbooks are designed for use over a complete academic year, this means that they should available at the start of the school year.
- 12.8.8. We also need to consider the delivery site. The ultimate delivery point is the school irrespective of who is undertaking the final delivery. During vacation

period, say for the six weeks before June, many schools are closed with no one available to receive goods. The deliveries should be planned so that they arrive during school time unless exceptional arrangements for receiving goods have been made in advance.

12.8.9. The figure shown below demonstrates that for goods to arrive before the summer vacation procurement needs to start in June of the preceding year.

FIGURE 1, PLAN FOR WHEN GOODS ARE REQUIRED



## **13. PREPARING SPECIFICATIONS AND TERMS OF REFERENCE**

### **13.1. THE TECHNICAL SPECIFICATION**

- 13.1.1. The “Technical Specifications” is the section of the Bidding Document that communicates to the prospective bidders the Project’s exact requirements with regard to each item to be supplied or works to be completed. The Technical Specifications section should include a full commentary of the intended use of the items as well as a list of all the required attributes, variables and parameters.
- 13.1.2. Specifications must as open as possible, i.e. so that they attract the widest possible competition, however they must not be so open that the required standards of workmanship, materials, and performance of the goods and services are compromised.
- 13.1.3. A Technical Specification can simply be described as one or more of the following:
  - A statement of attributes of a product, a service or a process;
  - The communication of a requirement;
  - A means which enables the “like-for-like” comparison of bids;
  - A description of the required performance

### **13.2. PREPARATION OF THE TECHNICAL SPECIFICATIONS**

- 13.2.1. A Technical Specification is used to communicate to prospective bidders the Project’s exact requirements with regard to each item to be supplied. Unless a Two-Stage Bidding strategy is being followed – see relevant section of this manual) a conformance specification is usually used for this purpose.
- 13.2.2. Where the required level of technical expertise resides within the Project staff, such as the technical officer or consultants, they will be responsible for preparing the specifications. If there is not expertise in the Project for the particular goods, works or services being procured the project should first approach their MEF counterparts to establish if other Projects have purchased similar items and if they have, consider using these specifications modified accordingly. If the MEF are unable to assist the Project, with the agreement of the MEF and DA should consider the hiring of a consulting firm or individual to draft the specifications bearing in mind that the consultant should also be retained to assist with the technical aspects of the evaluation.
- 13.2.3. When Preparing, and checking, the technical the following should be born in mind:

**i) Completeness**

Where applicable the specification should include:

- i. a full commentary of the intended use of each item;
- ii. the required performance; and
- iii. a full description of all the required attributes, variables and parameters (including local operating conditions).

Where appropriate, drawings, including site plans should be attached to the specifications

**ii) Clarity**

Precise and clear specifications will allow bidders to respond accurately, realistically and competitively to the requirements without qualifying their bids.

**iii) Competition**

Care must be taken in preparing specifications to ensure that they are not unnecessarily restrictive to competition.

In the context of competitive bidding, the specifications must be drafted to permit the widest possible competition.

**iv) References to Brand and Trade Names**

References to brand names, catalogue numbers or similar classifications should be avoided whenever possible as the potentially limit competition. When there is no other alternative to clarify an otherwise incomplete specification, the words "or equivalent" must be added after such reference.

When the specifications refer to trade or brand names the bidding document and specification must make it clear that the purchaser or employer will accept items that have similar characteristics and which provide performance at least substantially equivalent to those specified.

### **13.3. FORMAT OF THE TECHNICAL SPECIFICATIONS**

13.3.1. The Technical Specification for goods works and associated services should follow the format shown on the next page:



**TECHNICAL SPECIFICATION FORMAT**

<b>Item</b>	<b>Specification</b>	<b>Statement of Compliance</b> * Bidders must enter hereunder ‘comply’ or ‘non-comply’ against each paragraph of this specification, comment as necessary on non-compliances, and sign and stamp each page.
1) 2)	<i>Item 1 specification to be inserted here.</i> <i>Item 2 specification to be inserted here.</i>	

The left-hand column to specify the item number

The middle column to specify the technical specification

The final column to be left blank. The bidder shall be required to make a compliance statement, in this column, against each line of the technical specifications.

**13.4. STANDARDS**

13.4.1. When standards are used, as they will need to be especially in the case of works contracts, the specifications must present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Metric units should be used whenever possible

13.4.2. Recognizable and accessible standards for equipment, materials, and workmanship, recognized international standards should be used as much as possible, such as those issued by the International Standards Organization (ISO). National standards, unless they have a direct equivalent international standard, should not be used. When they are used both the national and international standard should be included in the specification.

13.4.3. When any standard is used the specifications should state that equipment, materials, and workmanship that meet other authoritative standards, and which ensure at least a substantially equal quality to the standards mentioned, will also be acceptable.

**13.5. LATEST TECHNOLOGY (WHEN APPLICABLE)**

13.5.1. The specifications should always state that all goods and materials to be incorporated in the goods be new, unused, and of the most recent or current models.

13.5.2. The specifications should incorporate all recent improvements in design and materials unless provided for otherwise in the contract. The two statements are

incorporated in the standard warranty clause in the GCC of the ICB documents.

### 13.6. SAMPLES

13.6.1. For certain items (e.g. printed items, uniforms) it may be appropriate to send the bidders a sample of the item(s) to be procured. This is sometimes the best way of achieving exact compliance with the specification.

### 13.7. TYPES OF TECHNICAL SPECIFICATION

#### 13.7.1. Conformance Specification

A Conformance Specification is generally as described in 13.2.1 above and is usually the most appropriate type of specification. It does offer both advantages and disadvantages as can be seen below:

#### *Conformance Specifications*

<i>Advantages</i>	<i>Disadvantages</i>
<i>Comprehensively communicate the requirement;</i>	<i>Can be extremely lengthy and detailed, and therefore time-consuming to prepare, if they are to fully communicate the requirement;</i>
<i>Makes bids easier to evaluate and compare;</i>	<i>Do require the Project to undertake all of the design work.</i>

#### 13.7.2. Performance Specification

A Performance Specification is a description of the required use and performance of an item without the inclusion of a full description of all the required attributes, variables and parameters (i.e. as is included in a conformance specification). The characteristics of a performance specification are:

#### *Performance Specification*

<i>Advantages:</i>	<i>Disadvantages</i>
<i>They encourage innovation, which will enhance the bidder's ability to provide innovative solutions that offer added value (and quality) and save the Government both time and cost, in both the short and the long term</i>	<i>Make bids more difficult to evaluate and compare (unable to compare like with like) and can introduce subjectivity into the evaluation process.</i>
<i>Require the bidder to undertake all design work.</i>	

Performance Specifications are usually used in Two-Stage Bidding where bidders are first asked to submit un-priced technical proposals based on a performance specification. These are reviewed and second stage priced bids

invited on the basis of an agreed specification with each bidder. See the relevant section in this manual.

### **13.8. THE TERMS OF REFERENCE**

13.8.1. As stated above consulting services are distinct from both goods and works in that they present different challenges when we try to quantify them. Instead of using a specification “Terms of Reference” are used. Terms of reference are broken down into six standard parts:

- i) *Background,*
- ii) *Objectives,*
- iii) *Scope of the Services,*
- iv) *Training (when appropriate),*
- v) *Outputs and Time Schedule, and*
- vi) *Data, Local Services, Personnel, and Facilities to be provided by the Client.]*

Each of these aspects will now be described in greater detail in the following sub-sections:

13.8.2. The background should describe the circumstances and the environment in which the services are required. For example the terms of reference to draft a procurement manual for Cambodia will first outline the current challenges facing the procurement process in Cambodia which might include a brief history of the UN transitional administration and the subsequent elected administrations. Then going on to describe the Government’s procurement policy, MEF’s overall role in procurement and the DA’s current involvement.

13.8.3. The background should also mention the source of funds for the particular assignment. If other assignments of a similar nature have already been completed these should be described with the outputs of the assignment. If the terms of Reference have been drafted as a result of another assignment or set of recommendations specific reference should be made to the report or document that the recommendation arose from and when possible the report or document should be annexed to the terms reference (if the document is available on the web, simply refer to the website). A sample introduction can be seen in the following example:

1. *Background*

*The Royal Government of Cambodia (the RGC) has received a grant from the International Development Association (IDA) for Project Management Capacity Building. It is intended to apply part of these funds to the recruitment of an experienced international procurement consultant (the Consultant) to prepare a manual of Project Procurement Management (PPM) which will be incorporated in a manual of Standard Operating Procedures (SOP) which is being prepared by another consultant under separate Terms of Reference (TOR).*

*At present the projects that are being financed by ADB, the World Bank and other International Financial Institutions (IFIs) use different procurement manuals and procedures for each project financed by the agencies.*

*The need for a single procurement manual was identified in the recent Country Procurement Assessment Report prepared jointly by the ADB and WB. This CPAR will prove a useful reference point to the consultants undertaking the assignment.*

- 13.8.4. Objectives. This is what we expect the assignment to achieve. To use the example of a procurement manual for Cambodia again, the objectives could be to improve procurement performance through the provision of a comprehensive step-by-step guide to the procurement process. Also to further develop procurement capacity by developing training materials based upon the content of the procurement manual.

2. *Objectives*

The overall objective of these TORs is to improve upon project procurement performance through the design of a standard manual of Project Procurement Management which will be used by all externally funded projects. The procurement capacity of the projects will also be increased by the design and delivery of procurement training based upon the final version of the manual.

- 13.8.5. Scope of the Services. This section will describe the specific areas that we expect the services to address. It is important to be as precise as possible in this section as the information it contains will indicate to the consultants how much effort or person days the assignment is expected to take.

3. Scope of Work

The consultant is required to refer to, and become familiar with, all relevant RGC laws and implementing rules and regulations that relate to public procurement and also donor procedural guidelines on procurement. The Consultant will be required to undertake a number of presentations and training sessions to ensure that RGC staff who are involved in procurement activities on externally funded projects are able to effectively utilize the PPM manual in their specific projects. To this end, he/she will develop a short-term and long-term training program together with the training materials for the programs

13.8.6. Training. Often training will form an important aspect of the assignment and it is important to list and quantify what training is expected to be delivered from the assignment. Some assignments will not include training – for example audit services will not. Whenever possible it is always preferable to have a large training component (but never so that it detracts from an assignments focus on its overall objectives). The reason for this is that it will increase the skills and knowledge within Cambodia decreasing the levels of long term dependence on expensive foreign consulting firms and individuals.

4. Training

For the duration of the assignment the consultant will be assigned two counterparts. The consultant will train these counterparts throughout the development of the manual ensuring that they become familiar with all aspects of it so that at the end of the assignment the counterparts can take ownership of the manual and continue with its development over time.

In addition to the training of the counterparts the consultant will also be required to develop training materials based upon the manual and deliver two one week courses to procurement staff in the Project Management Units in workshops of 30 delegates each.

13.8.7. Outputs and Time Schedule. The outputs of an assignment are normally quantified by documents, often inception, monthly and final reports coupled with specific reports that contain recommendations. In the case of the example we are using the key output (or deliverable) a procurement manual. Ensure that the outputs are quantified as precisely as possible as it will make the resulting contract much easier to manage. The time schedule for relatively straight forward assignments such as the one used as an example are fairly easy to set down. More complex assignments that involve various stakeholder and client approvals beyond the direct control of the consultants have to allow more time. However the mechanisms for managing these more complex timelines can be dealt with through contractual conditions

5. Outputs and Time Schedule

Within the first two weeks of the assignment the consultants shall produce a work plan (inception report) outlining the scheduled activities under the assignment.

At the end of the first month of the assignment the consultants will issue a draft manual for project procurement management for stakeholder review and comment.

Within two weeks of receiving the stakeholders comments the consultants shall issue a final draft manual addressing the comments made by the stakeholders.

Concurrent to the preparation of the final draft manual the consultants shall develop training materials based on the draft for presentation, review and acceptance of the MEF

With the assistance of two MEF counterpart staff the consultant shall deliver two workshops of five working days duration to procurement and project management staff from the PMUs

The expected duration of the assignment will be two calendar months

13.8.8. Services and Facilities to be provided by the Client. This section will deal with what; if anything will be provide by the project or Government to the consultants to assist them in delivering the assignment. There is always a temptation to place the entire responsibility with the consultants. This should be avoided when possible as consultants, especially international ones will be unaware of the local conditions and are likely to estimate costs on the higher side to cover all eventualities therefore increasing the overall assignments. The more the project can support the consultants the better, however when specifying the services and facilities that the client will provide always make sure that they are actually available – if they are not, or are not available when required, there is a danger that a number of expensive consultants could sit around doing nothing or at least not working as effectively as they could.

6. Services and Facilities to be provided by the Client

The Client shall make available office accommodation with air conditioning, administrative equipment (computer, printer, photocopier, fax machine, email and internet connection) and office supplies.

The Client will meet all international communications costs associated with the assignment.

The Client will provide official transportation between the consultants residence in Phnom Penh and the offices of MEF for any other official travel necessary during the course of the assignment.

The Client will provide a suitable venue (and refreshments) for the delivery of the assignment and reproduce the training materials for distribution to delegates

13.8.9. The example of the terms of reference for preparing a procurement manual is a fairly simple one, however it does indicate the way that the terms of reference should be structured irrespective of the complexity, duration and scope of any assignment.

## **14. PREPARING THE BIDDING DOCUMENTS**

### **14.1. INTRODUCTION**

- 14.1.1. The basic method for preparing a bidding document is the same irrespective of which document is selected (see 10.8). Each document has a number of sections that are to be used un-amended and each has sections and data sheets where the project and procurement specific details are input.
- 14.1.2. For all forms of ICB procurement, QCBS and QBS users should refer to the notes contained on the draft documents and the user guides published by both the World Bank and ADB for goods, works and services available at their websites. For the Preparing of national procurement documents user's should refer to Annex II to IV for a step by step guides for completing and using the documents.
- 14.1.3. The Bidding Document or Request for Proposals is the most important document in the procurement process. It translates requirements into specifications, terms of reference and contractual conditions. It should contain all the information necessary for a prospective bidder or consultant to prepare its offer. The content, detail and complexity will vary with the size and nature of whatever is being procured and according to the procurement method selected.
- 14.1.4. The qualities, numbers, competitiveness of bids and proposals received will all rely on how effectively the bidding document or RFP to communicates the requirements. If it is unclear offers will vary significantly based on each bidder or consultant's unique interpretation rendering it impossible to evaluate the offers received in an objective manner.
- 14.1.5. Where applicable, the bidding documents will define the tests, standards, and methods of inspection and assessment that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications.
- 14.1.6. All drawings shall be consistent with the text of the specifications, and an order of precedence between the two shall be specified.
- 14.1.7. The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating and comparing bids and proposals, and how such factors will be quantified or otherwise evaluated.
- 14.1.8. If bids based on alternative designs, materials, completion schedules, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.
- 14.1.9. All prospective bidders and consultants shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. The project shall provide reasonable access to



project sites for visits by prospective bidders and consultants and if necessary arrange for a pre-bid conference.

## 14.2. INSTRUCTIONS

14.2.1. The Instructions to bidders and consultants are intended to provide the information necessary needed by bidders to prepare responsive bids and proposals, in accordance with the requirements of the project, including information on submission, opening, evaluation and comparison and award of contract

14.2.2. As a minimum they should include the following information:

- A general description of the goods, equipment and services to be purchased
- A description of the Government and the DA's policies in respect to fraud, corruption, coercion and collusion
- The scope of bids and proposals, e.g. if bidding, evaluation and contracting is to be on a per-item, per-lot or per-package basis.
- The procedures for submission.
- Dates time and venues for submission and opening.
- The number of original and copies required.
- The validity periods.
- The procedures for contract formation.
- The method and criteria for evaluation.
- The venue, time and date of the pre-bid or proposal conference.
- Instructions for completing forms.
- Acceptable currencies and methods of conversion.
- Documentation required establishing eligibility of goods, works, consultants and suppliers.
- Procedures for clarifying and amending the bidding documents and request for proposals.
- Instructions for the sealing and marking of bids and proposals.
- Details of bid and proposal modification.
- The opening procedures followed by the project.
- The projects right to vary quantities.
- Conditions for contract effectiveness.

### 14.3. GENERAL CONDITIONS OF CONTRACT

14.3.1. Attached to all of the Standard Bidding Documents is a standard set of general conditions of contract to be used without modification for all of the Project's contracts for the supply of goods works and services.

14.3.2. The benefits of employing one single standard set of general conditions are:

- Procurement staff will gain a firm understanding of the contract conditions.
- Contracted parties will become used to accepting standard conditions and not seek opportunities to amend contract conditions thus weakening the contract.
- Bidding documents and RFPs will be easier to compile, as a significant portion will remain the same for each and every exercise.
- The Project will be able to ensure that it has the appropriate level of contractual safeguards for each and every contract that it enters into.
- A greater degree of consistency will be introduced into the Project and Government's procurement operations.

14.3.3. These general conditions of contract should as a minimum contain standard clauses covering the following:

- Legal definitions
- The status of the general conditions versus other parts of the bidding document and contract document.
- The contracting parties and the DA's rights and obligations in respect to fraud, corruption, coercion and collusion
- Origin of the goods, works and services.
- The use of standards
- The Government's right to undertake or commission audits
- The supplier's obligation to treat all information received during the course of the contract in the strictest confidence.
- Indemnification of the Government by the supplier for any infringement of patent rights.
- The performance security
- The test and inspect the goods and works.
- Packing and marking of goods.
- Delivery terms.
- Insurance to be taken out.

- Transportation.
- Incidental services.
- Spare Parts.
- General warranty obligations.
- Terms of payment.
- Contract prices.
- Change orders
- Contract amendments.
- Assignment.
- Sub-contracting
- Delays in performance.
- Liquidated damages
- Termination for default.
- Termination for convenience.
- Termination for insolvency.
- Force Majeure.
- Resolution of disputes.
- Governing language
- Notices.
- Taxes and duties.

#### **14.4. SPECIAL CONDITIONS OF CONTRACT**

- 14.4.1. General conditions of contract should always be used un-amended; however each procurement exercise is a unique one and will require specific terms and conditions that will only apply to one contract. There is therefore a clear need for a method of introducing specific clauses into the documents.
- 14.4.2. The most effective way of doing this is through the use of special conditions of contract that are used to supplement those in the general conditions of contract, taking precedence over the general conditions in the event of a conflict between the two.
- 14.4.3. A set of generic special conditions should be employed. Users should select from the generic conditions those that apply to the particular procurement exercise amended them to suit. The list of clauses that should be selected from is as follows:

- Definitions

- Country of Origin
- Performance Security
- Inspections and Tests
- Packing
- Delivery and Documents
- Insurance
- Incidental Services
- Spare Parts
- Warranty
- Payment
- Prices
- Liquidated Damages
- Settlement of Disputes
- Governing Language
- Applicable Law
- Notices

## **15. THE BIDDING PROCESS**

### **15.1. THE COST OF THE DOCUMENT**

15.1.1. Bidding documents for ICB and NCB are normally sold to prospective bidders to offset the costs of production, Request for Proposals are issued to the shortlisted firms at not cost. The cost of the documents should be a reflection of the actual cost of production. The following is to be used only as a guide:

- For shopping no charge
- For NCB 20 cents per page plus \$15 per document covering binding, advertising and distribution.
- For ICB 20 cents per page plus \$50 to cover binding, advertising and international courier costs.

15.1.2. Therefore a 100-page NCB document would be sold at \$35 and a 100-page ICB document at \$70. The project director may, at his own discretion waive the fee for the bidding document and make it available free of charge to all who request it.

15.1.3. In the event that a bidder is unable to obtain the bidding document through the project the bidder may approach the MEF who will contact the project and undertake to provide the bidding document directly to the bidder.

15.1.4. If there are special printing requirements such as civil works drawings that cost more than 20 cents per page to reproduce, the cost of reproduction should also be added to the overall cost of the bidding document.

15.1.5. It is important that any who wish to review the document are allowed to do so. There are two reasons for this:

- Potential Bidder's should not be forced into purchasing documents before reviewing them – if once they purchase them they find that the products are outside of their manufacturing or supply capabilities they will be reluctant to purchase documents in the future perhaps depriving the Project of a competitive source, and
- Members of the general public should be actively encouraged to take an interest in the procurement process as a means of promoting greater transparency and providing a useful check helping to ensure that the Government's procurement regulations are being followed.

15.1.6. Every time a document is sold the following data must be recorded:

- a) The name and address of the company.
- b) The telephone and facsimile numbers and email address (plus website if applicable).
- c) The name of the representative purchasing the document.

- d) The name and address of the sales contact within the suppliers organization responsible for preparing the bid.
- e) The date that the document was dispatched to the supplier.
- f) The receipt number issued to the supplier.

This information must be collected; firstly as the inwards remittance for the sale of the document must be recorded, and secondly it may be necessary to issue bid clarifications or amendments after the document has been sold. It is also useful as it can be used by the Department to build a supplier database.

- 15.1.7. Funds collected from the sale of bidding documents to the bidders shall be deposited in a Government/MEF's bank account.

## **15.2. AVAILABILITY OF DOCUMENTS**

- 15.2.1. For international procurement of goods, works and services the absolute minimum should be six weeks – and longer if the assignment, goods or works is particularly complex. Six weeks may seem a long time especially when a project is working to tight deadlines. In reality it is not: - approximately two weeks have to be allowed for international couriers; in the case of civil works contractors and consulting firms, both will need to visit Cambodia to assess and address the local components of their bid or proposal.
- 15.2.2. The minimum for shopping should be one week when advertisement is not required and 14 days when advertisement is required; for National Competitive Bidding should be 30 days.
- 15.2.3. Forcing bidders and consultants to meet tight deadlines could deprive them of the time needed to compile and submit their best offer (as they need time to negotiate with their sub-suppliers/contractors and investigate transport and shipping costs etc.).
- 15.2.4. The date set for bid opening that will involve international firms should never be set on the first working day of the week or a day following a public holiday. The international courier companies will collect documents arriving over the weekend and public holidays but will only deliver on the first working day. If this is not taken into account there is a danger that a number of bids will be delivered late and rejected.

## **15.3. THE CONTENT OF THE ADVERTISEMENT**

- 15.3.1. For international procurement Projects must follow the Invitation for Bids (IFB) or call for expressions of interest that are provide in the DA's standard bidding documents and requests for proposals. The sample text for other methods of procurement is included in each of the templates that can be found at Annex III.

## 15.4. CLARIFICATIONS AND AMENDMENTS

- 15.4.1. Ideally there should be no need to clarify or amend a bidding document or request for proposals. However from time to time for a number of reasons it will be necessary to either clarify or amend a document after it has been issued to firms. Often it will be because a bidder or consultant does not understand a certain part of the requirement, or sometime because there is a simple mistake in the document.
- 15.4.2. If a bidder or consultant raises the issue whilst reviewing the document, or informally on the telephone they should be instructed to put their question to the Project in writing – no answer should ever be given verbally as that will give the bidder or consultant in question an unfair advantage over the other firms. In fact as far as possible there should be no informal correspondence with any bidder or consultant during the time for preparation of bids and proposals (and none whatsoever during the evaluation process) as this could easily be misconstrued as a bidder or consultant trying to influence the outcome of the bidding process.
- 15.4.3. Irrespective of the issue that requires clarification or amendment it is very important that all the potential bidders and consultants involved are treated equally and fairly when the response is made. A standard process must be employed for all types of procurement.
- 15.4.4. The process, which is also reflected in the bidding document, should outline that request for clarification must be made at least 14 days before the deadline for submission. The project will then reply within 7 days to all of the firms that purchased or were issued the documents detailing the content (but not the source) of the clarification request and the Project's response. The response must be in writing and transmitted simultaneously by the fastest available means (facsimile) and confirmation of receipt demanded.
- 15.4.5. Frequently a request for clarification identifies the need to make an amendment i.e. actually change something in the document. The approach is identical to clarifications. Any amendment made must be made in writing amendments should be numbered sequentially. The amendment should be clear, concise, numbered and dated and include specific reference to the clause or portion of the document being amended. If the amendment being made is straight forward such as a change to a date or unit quantity a simple statement to that effect should form the basis for the amendment. When the amendment is to a contractual clause, drawing or part of the specification the amendment should delete the existing provision or wording and replace it with wording detailed in the amendment.
- 15.4.6. Sample wording for a clarification, a simple amendment and a complex amendment can be seen in the following figures:

SAMPLE CLARIFICATION OF BIDDING DOCUMENT

**Name of Procuring Ministry/Agency**  
**Clarification To Bid** *Insert Bid Reference and Clarification Number*  
*Insert Date*

A bidder has raised the following query:

*“Insert the exact wording of the bidder’s question without identifying the bidder using quotation marks”*

Our clarification is as follows:

*Insert the Project’s response to the bidder’s question*

Yours faithfully

[signed]  
Project Manager

SIMPLE AMENDMENT TO BIDDING DOCUMENT

**Name of Procuring Ministry/Agency**  
**Amendment To Bid** *Insert Bid Reference and Amendment Number*  
*Insert Date*

In accordance with Clause 7 of Instructions to Bidders, Amendment of Bidding Documents, the Department hereby amends the following Clause:

The Deadline for Submission of Bids, ITB Clause 19.1 is hereby amended to read 10 AM December 25 2006.

According the time and date of Bid Opening in accordance with ITB Clause 22.1 is also amended to read 10 AM December 25 2006.

All other terms, conditions and instructions remain unchanged.

You are required to acknowledge receipt by facsimile [to number (02) ### #####] of this Amendment Number \_\_\_ within 48 hours of receipt.

Yours faithfully

[signed]  
Project Manager



COMPLEX AMENDMENT TO BIDDING DOCUMENTS

**Name of Procuring Ministry/Agency**  
**Amendment To Bid** *Insert Bid Reference and Amendment Number*  
*Insert Date*

In accordance with Clause 7 of Instructions to Bidders, Amendment of Bidding Documents, the Department hereby amends the following Clause:

Clause 4 of the Special Conditions of Contract (GCC Clause 8) Inspection and Tests is hereby deleted and replaced with the following:

“Inspections and tests will be conducted at the delivery sites, i.e. at public elementary and secondary schools as defined in Section VI, Schedule of Requirement, by the Ministry’s Authorized Representative. The Ministry’s right to inspect the goods in no way relieves the supplier of its performance and warranty obligations under the contract.”

All other terms, conditions and instructions remain unchanged.

You are required to acknowledge receipt by facsimile [to number (02) ### #####] of this Amendment Number \_\_\_ within 48 hours of receipt.

Yours faithfully

[signed]  
Project Manager

15.4.7. It is important to recognize the difference between a clarification and an amendment. A clarification is the provision of additional information that will assist the bidders in completing their bids. Clarifications are often used to provide additional technical information to bidders, and example would be:

Bidder’s Question: *“The dimensions of the table are shown in metric measurements (centimeters), our manufacturing process uses timber that is sized with imperial measurements (inches). Is the imperial equivalent measurement acceptable?”*

Response *Our understanding is the timber produced to imperial standard measurements has its exact equivalent to a metric standard. Therefore provided that the exact imperial equivalent to the metric dimensions is used the dimensions will be accepted.*

15.4.8. Projects and procurement officers should note that if the original document was subject to prior review by either the World Bank or ADB they should also be sent a copy of any amendment made and their no objection requested.

15.4.9. In the event that a clarification or amendment has a significant impact upon what is being purchased (changing specifications, terms of reference delivery

points etc.) the Project must also consider if the deadline for submission is OK as it is or should be extended to allow bidders or consultants additional time to address the clarification or amendment.

### **15.5. RECEIPT AND STORAGE OF BIDS**

- 15.5.1. What should be done when a bid or proposal is received? The first step, if the document is delivered by hand is issue a simple receipt describing the package and from whom it has been received (international courier companies will simply ask the recipient to sign their receipt). Once a bid or proposal is received the Project has a duty to ensure that they are kept in a safe and secure location where they cannot be tampered with.
- 15.5.2. The documents should be secured in a metal (or solid wood) lockable box into which packages can be posted much like a post box with only the project manager or director having a key. A spare key should be lodged with the head of the agency in case the original is lost<sup>20</sup>.
- 15.5.3. If there is more than one exercise running at the same time, separate boxes should be used for each exercise to avoid mixing up the bids and proposals and inadvertently opening the wrong one at a bid opening. The common term for this box is a “Tender Box” and all Projects, if they do not have one, should purchase one or more depending on the amount of procurement they are undertaking. On or before the issue of the Invitation for Bids or the request for proposals the tender box should be sealed in such a way that any evidence of tampering will be obvious – such as the pasting of a signed length of paper signed and dated by the project manager and procurement officer across both the lock and opening. The tender box should also be clearly marked to indicate what is being stored within i.e. the procurement reference and bid opening date.
- 15.5.4. As an interim measure bids may be stored in a lockable cabinet, however as only the project director or manager should have the key there will be no way of depositing bids and proposals received when they are absent from the office. Also the cabinet would have to be re-sealed each and every time a new bid or proposal is received.
- 15.5.5. The tender box should be transferred on the day of bid opening, still sealed, to the location selected for the bid opening – make sure that any bids delivered to the Project office on the day of bid opening and before the deadline are transferred to the tender box.

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<sup>20</sup> if the original key is lost the lock should be changed as soon as possible

## **16. BID OPENING PROCEDURES**

- 16.1.1. This is a very important aspect of the whole procurement process. It is through public opening that the public, whose money is funding the procurement, can see that the Government and Project is following its obligation to ensure the maximum of free and fair competition in procurement. Public Bid Openings should always be exactly that, i.e. Public - with anyone who wishes to attend allowed doing so (even if they may just be sheltering from a rain shower).
- 16.1.2. Public bid openings are also important in that they help to reassure bidders and consultants that the procurement process is being undertaken fairly and that all who submit an offer has an equal chance of securing a contract – This encourages the participants to compete fully resulting in a higher number of more competitive bids
- 16.1.3. The time set for bid opening should without exception be that set as the deadline for submission with no gap between the two.
- 16.1.4. Bid opening should never be on a Monday or a day immediately preceding a public holiday as many foreign bidders will chose to submit their bids through an international courier company. These companies will collect the bids and proposals over the weekend or holiday period but they will not deliver them until the next working day. Therefore time should be allowed for the courier company to make the delivery to the project.
- 16.1.5. The Bid Opening Committee should be chaired by the Chair of the Procurement Review Committee assisted by the Procurement Officer and Chief Financial Officer of the Project. The Chair is responsible for reading out the relevant details of each bid or proposal. The Procurement Officer for physically opening the bids and passing them to the Chair and recording details in the minutes (if there are a large number of bids another person from the Project can be tasked with taking down the minutes). The Financial Officer will be responsible for checking the presence, amount and form of any securities that are required.

### **16.2. PREPERATION**

- 16.2.1. The venue should be checked on the day before bid opening to ensure that everything thing is in order for the following day. The top table where the bids will be opened should be arranged so that it is facing the attendees. The nearest chairs for attendees should be at least three meters away from the top table – so that they cannot read confidential details of their competitors' bids.
- 16.2.2. Ensure that there is adequate lighting and ventilation, and if a PA system is available that it works properly. It is not possible to know in advance how many people will turn up to a public bid opening, it depends of the amount of commercial and public interest the procurement has generated. As a rule of thumb allow for three chairs for each of the bidding documents sold

- 16.2.3. Make sure that signs describing the bid opening with directions to the room are shown on all the entrances to the building and compound (in both the Khmer and English languages) where the opening is taking place. Also ensure that any security personnel who control access to the location are instructed to admit anyone who wishes to attend – for his reason sensitive locations should not be closed for bid openings as access must not be restricted.
- 16.2.4. On the day of the bid opening, twenty minutes before the deadline, the tender box should be transferred still locked and sealed to the venue for bid opening – make sure that someone stays at the box’s original location up to the deadline for submission so that any bidder or consultant delivering by hand can be directed to the tender box at the bid opening venue.
- 16.2.5. Make sure, that at the entrance to the room where bid opening is being held, that there is a table and chair and prepare a register in advance as the name, title, address email and facsimile number of each attendee needs to be recorded –so that they can be sent copies of the minutes of bid opening.

### **16.3. BID OPENING**

- 16.3.1. At exactly the time scheduled for the deadline for submission of bids, the Chairman of the Bid Opening should declare the expiry of the deadline for submission of bids and that no further bids will be accepted or considered. From this moment on no new bids can be accepted for any reason whatsoever. Late bids will not be accepted but will be returned to the bidder.
- 16.3.2. Attendees should be invited to inspect the tender box to ensure that its seals remain intact, but they should not be allowed to touch the box. Once this review is completed and the attendees are seated the Chairman should announce the start of Bid Opening and break the seals on the tender box, unlocking it.
- 16.3.3. The Chairman or Procurement Officer should the remove each package from the tender box carefully examining the seals of the packages to make sure that they have not been tampered with holding up each package so that attendees can see that it remains unopened. Each unopened package will then be placed on the top table until the tender box is empty. Any attendee that wants to take a closer look at any of the envelopes submitted may do so. However attendees should never be allowed to touch any of the bids or enter into a conversation with any member of the Opening Committee that cannot be clearly heard by all and recorded in the bid opening minutes.
- 16.3.4. The outer packaging and envelope of each bid will then be removed making sure that no documents are discarded that should be retained like courier dockets or outer envelopes as evidence of how a bid was marked and sealed. The unopened original and copy bid envelopes of each bidder will be placed in a pile together with the original on top and copies underneath.
- 16.3.5. The Procurement Officer will identify any envelopes marked either “WITHDRAWAL” or “MODIFICATION”, removing the outer packing and

envelope in the same way as the main bids discarding nothing that should be retained like courier dockets or outer envelopes as evidence of how a bid was marked and sealed and place the unopened inner envelope with the corresponding Bid.

- 16.3.6. The Procurement Officer will then open in turn each envelope (if any) marked “WITHDRAWAL”. Any bid with what appears to be a valid withdrawal notice will not be opened and the original and all copies of the bid will be returned unopened to the bidder. If there is a representative of the bidder present he or she should be asked to confirm that the bid is to be withdrawn.
- 16.3.7. The Procurement Officer will then open each original bid in turn passing it the Chair who will announce the following details in the presence of all those who are present:
- Name of the bidder or consultant.
  - Country of the bidder or consultant.
  - Which lot(s) are offered.
  - Details of any modifications or withdrawals.
  - Total bid price (for goods and works only).
  - Discounts offered, if any.
  - The presence of absence of the bid securing declaration or bid security (as applicable).

The Chair will then pass the bid to the financial officer who will announce the type and amount of the bid security, if applicable.

- 16.3.8. Except for the late Bids, no bid is to be rejected at bid opening even if it appears to contain a major deviation such as the absence of a bid securing declaration or bid security, but any apparent major deviation that is noted during the bid opening should be announced and minuted. Late bids, received after the stipulated deadline for bid submission, shall be rejected and returned unopened to the bidder.

## **16.4. CONSULTANTS PROPOSALS**

- 16.4.1. Users should take note that only the technical envelopes of consultants proposals should be opened at the first opening – the financial envelopes, still sealed, must be placed with a reputable third party such as a public auditor. Only when the technical evaluation is completed will the envelopes be requested from the third party with whom they were placed and all consultants who submitted a proposal invited to attend a public opening of the financial envelopes.
- 16.4.2. When inviting consultants to the public opening of financial proposals they should be informed of their technical points score based on the evaluative criteria in the RFP and whether or not their financial proposal will be opened

– for QCBS, least cost selection and selection under a fixed budget<sup>21</sup> all financial proposals achieving the minimum points score required will be opened. In the case of QBS only the highest ranked technical proposal will have its financial proposal opened but the financial proposals of other consultants are retained until a contract is satisfactorily agreed with the winner.

## **16.5. PAGES TO BE INITIALLED**

16.5.1. Once a bid or proposal has been opened and its contents announced, the original should be initialled by the Chair, Procurement Officer and Financial Officer and members of the Procurement Review Committee as follows:

- a) Goods and Works
  - The Bid Form.
  - The Price Schedule.
  - The Covering Letter.
  - Any other pages that are deemed necessary.
- b) Services, Technical Proposals
  - Covering Letter
  - Each page of the Workplan
  - The first page of each CV submitted
  - Any other pages that are deemed necessary
- c) Services, Financial Proposal
  - Financial Proposal Submission Form
  - Breakdown of costs by activity
  - Any other pages that are deemed necessary

16.5.2. The reading should be from the original version of each bid and proposal, and the actual amounts and other key details read-out should be circled for later verification.

16.5.3. The Bid Security must never be marked in any way. Certain types of financial documents become invalid if they are marked, annotated or amended in any way from their original state.

## **16.6. QUESTIONS FROM ATTENDEES**

16.6.1. Representatives will sometimes ask for the details to be re-announced. This shall be complied with within reason. The opening committee team should be aware that representative may take notes and that it is therefore essential that information should be conveyed and recorded clearly.

16.6.2. A brief time shall be allowed after the envelopes have been opened for questions from the audience/attendees of the public bid opening.

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<sup>21</sup> ADB does not allow the use of selection under a fixed budget and least cost selection

- 16.6.3. However, questions regarding the specific details of any bid shall not be answered unless it is simply a request to repeat an earlier announcement. Specific discussions should not be entered into with any of the representatives concerning any of the bids or proposals. It is acceptable, if asked, to provide a general timeframe of how long the evaluation may take
- 16.6.4. Any question to which the answer is given in the bidding documents should be answered only with the simple statement: "Please refer to the bidding documents".

## **16.7. THE END OF THE OPENING AND MINUTES OF BID/PROPOSAL OPENING**

- 16.7.1. Before the session is declared closed and representatives asked to leave the Procurement Officer should carefully check all discarded packaging, envelopes, boxes etc. to ensure that not documents have been overlooked. In the event that an important document, modification etc. or entire bid has been overlooked it cannot be subsequently included in the evaluation unless it was identified and the appropriate announcements made during the bid opening
- 16.7.2. When the details of the last bid and proposals and all questions answered the Chair should declare the Opening complete.
- 16.7.3. Before conclusion of the bid opening proceedings, the Procurement Officer must prepare minutes documenting all the information announced and any questions asked and responses given, in accordance with the provisions of the above paragraphs. The minutes shall be signed in original by all those present at the bid opening. At the end of the bid opening session, copies of the minutes shall be provided to the bidders and community representatives present at the bid opening.
- 16.7.4. In addition to the above, within 24 hours of the bid opening, a copy of the minutes shall be (i) sent to all bidders or consultants that did not attend the opening but either purchased or were issued the document (even if they did not submit a bid or proposal), (ii) submitted to the DA and MEF counterparts, and (iii) posted on a notice board at a conspicuous place accessible to the general public outside the EA office. The Minutes must remain on display until the Summary of Evaluation is posted.
- 16.7.5. The attendees should be encouraged to leave the room as quickly as possible and members of the Opening Committee should not engage in any formal or informal discussions with them as now as the evaluation process is underway there should be no contact whatsoever with bidders or consultants other than written requests for clarification and responses to these requests.
- 16.7.6. The opened bids, which are highly confidential should now be transferred to the Project Office and placed under lock and key until the evaluation process starts.

## 17. BID AND PROPOSAL EVALUATION

17.1.1. The basic principles of evaluation are really quite simple. It can only be undertaken on the basis of the criteria stated in the bidding document or RFP. Even if an additional criterion suggests itself during the evaluation process that would be desirable to apply it cannot be used. Therefore it is essential that the criteria expressed in the document is correct and covers all the important aspects of the bids and proposals received.

17.1.2. There are three types of evaluation methodology that can be used and these will depend entirely on the criteria stated in the bidding documents or requests for proposals. The methodologies are:

- **Conformance**
- **Performance**
- **Merit Points**

17.1.3. It should be noted that merit point systems should not be used for the procurement of goods or works and a simple pass fail (conformance) methodology is suitable for almost all procurement of goods and works. The only exception to this is the procurement of highly complex integrated industrial plant or for complex information technology systems when a merit point evaluation might be suitable. Merit point evaluation of goods and works should only be considered in consultation with, and with the agreement of the DA and MEF.

17.1.4. Sample conformance and merit point evaluation criteria can be found in Annexes II to IV Each of the methodologies and their uses are described in greater detail further on in this Section. Step by step guides for the evaluation of goods, works and services are contained in the same Annexes.

### 17.2. THE EVALUATION REPORT

17.2.1. To facilitate the evaluation process, just as standard bidding documents are used a standard is used for evaluation. The evaluation should use the ADB or WB standard depending on the funding.

17.2.2. In the case of goods and works procurement the evaluation will be drafted by the Procurement and Technical Officers calling on the support external resources and consultants if required and available. The draft evaluation report will then be presented to the Procurement Review Committee for review and approval.

17.2.3. When services are being procured and a merit point system is used all of the members of the Procurement Review Committee will undertake the evaluation and the Procurement Officer will consolidate the Committee's evaluation consolidating its findings into the evaluation report.



### **17.3. PRELIMINARY EXAMINATION (GOODS AND WORKS)**

- 17.3.1. The evaluation process should begin immediately after bid opening. The purpose of preliminary examination is to identify and reject bids and proposals that are incomplete, invalid or substantially non-responsive to the documents and therefore are not to be considered further. To this end the evaluator shall ascertain whether the bids and proposals received:
- Meet the eligibility requirements specified in the ITB.
  - Have been properly signed.
  - Are accompanied by the required securities.
  - Include all pre-requisite eligibility documents.
  - Are substantially responsive.
  - Are otherwise generally in order.
- 17.3.2. If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions and specifications in the bidding documents or RFP, it shall not be considered further. The bidder or consultant shall not be permitted to correct or withdraw material deviations or reservations after opening.
- 17.3.3. An evaluator must check that the bid is a properly authorized bid from a bidder that has intentionally committed itself to the terms and conditions of the bidding process and to the GCC and SCC in the event that a contract is awarded.
- 17.3.4. Attention should be directed toward deficiencies that, if accepted, would provide unfair advantages to the bidder, and a bid or proposal containing such deficiencies should be rejected as non-responsive. Sound judgment must be used: for example, simple omissions or mistakes or errors should not be grounds for rejection of the bid if they can be corrected using the methods prescribed in the bidding documents. Rarely is a bid perfect in all respects.
- 17.3.5. The validity of the bid itself and signatures, must not be in question.
- 17.3.6. If the bidder is a joint venture, the draft joint venture agreement initialled by all parties should be submitted.
- 17.3.7. If the bidder is an agent, an authorization from the manufacturer should be provided as required (except in the case of common off the shelf goods) in the ITB.
- 17.3.8. All copies of the bid should be compared with the original and corrected accordingly, if necessary. Thereafter, the original should be kept in a safe location, and only copies should be used in evaluation.
- 17.3.9. If the procurement is funded by the ADB particular attention must be paid to eligibility as the ADB has a less inclusive list of eligible bidders, consultants, goods, works and services. Evaluators must also check that the firm or individual is not on either Development Bank's list of disbarred firms.

Inclusions on either list are grounds for rejection of a bid as ineligible irrespective of which organization is funding a particular contract. Details can be found at [www.worldbank.org](http://www.worldbank.org) and [www.adb.org](http://www.adb.org).

- 17.3.10. **Bid Security and Bid Securing Declaration** (where either has been requested). The purpose is to determine the compliance of the submitted bid security or declaration. When one has been requested but not submitted, the bid must be rejected. The bid security or declaration must conform to the requirements of the ITB, and it must accompany the bid. The submission of a copy is not acceptable.
- 17.3.11. **Completeness of Bid.** The purpose is to establish that the bid is a complete bid in accordance with the Project's requirement.
- 17.3.12. Unless the bidding documents have specifically allowed partial bids, permitting bidders to quote for only select items or for only partial quantities of a particular item, bids not offering all of the required items should ordinarily be considered non-responsive.
- 17.3.13. If any erasures, interlineations, additions or other changes have been made, the bidder should have initialled these before bid submission.
- 17.3.14. Missing pages in the original copy of the bid may be cause for rejection of the bid, as can contradictions in model numbers or other designations of critical supply items.

#### **17.4. DETERMINATION OF SUBSTANTIAL RESPONSIVENESS (GOODS AND WORKS)**

- 17.4.1. Only those bids that pass preliminary examination need to be examined in this phase. The purpose is to establish the substantial responsiveness in accordance with the Project's requirement. All other bids are rejected and not considered further. If there are a large number of works or goods bids still under consideration at this stage, in the interests of efficiency the determination of substantial responsiveness and detailed evaluation should focus on the three lowest priced bids (and if one of these is rejected include the fourth, and so on so that the evaluation identifies the three lowest fully compliant bids).
- 17.4.2. Major deviations to the commercial requirements and technical specifications are a basis for the rejection of bids. As a general rule, major deviations are those that, if accepted, would not fulfil the purposes for which the bid is requested, or, will prevent a fair comparison with bids that are properly compliant with the bidding documents. Examples of major deviations include:
- Stipulating price adjustment when fixed price bids were called for.
  - Failing to respond to specifications by offering instead a different design or product that does not offer substantial equivalence in critical performance parameters or in other requirements.

- Phasing of contract start-up, delivery, installation or construction not conforming to required critical dates or progress markers.
- Subcontracting in a substantially different amount or manner than permitted.
- Refusing to bear important responsibilities and liabilities allocated in the bidding documents, such as performance guarantees and insurance coverage.
- Taking exception to critical provisions such as applicable law, taxes and duties, and dispute resolution procedures.
- Those that are specified in the ITB to require rejection of the bid (such as failure to submit an acceptable bid security).

17.4.3. If the bid fails preliminary acceptance, the reasons must be clearly explained to the Bidder, in the evaluation report and the periodic contract summary described in Section 5.3.

## **17.5. DETAILED EXAMINATION OF BIDS (GOODS AND WORKS)**

17.5.1. Corrections for Errors. The methodology for correction of computational errors should be adequately described in the ITB and followed in the evaluation of the bids. Generally, computational errors occur when bidders make mistakes in the multiplication of the unit price with the quantity, or when aggregating the totals of each line item to form the total bid price. The general rule for correcting such errors is to recalculate the total line item prices and the total bid price on the basis of the unit price for each item specified by the Bidder in the price schedule and the quantity requested by the Project in the schedule of requirements.

*For example*, the bidder offers a quantity of 10 telephones at a unit price of US\$ 50.00 and at a total price of US\$50.00. In correcting this error the evaluators will recalculate the total line item price to US\$500.00. The Total Bid Price will be corrected accordingly.

17.5.2. The corrections, if made in accordance with the procedure outlined in the bidding document, are considered binding on the bidder. All corrections should be explained in footnotes of the evaluation report.

17.5.3. Corrections for Provisional Sums Bids may contain provisional sums set by the Project for contingencies or for nominated subcontractors, etc. especially in the case of larger works contracts. As these sums are the same for all bids, they should be subtracted from the bid prices for a proper comparison of bids in subsequent steps.

17.5.4. Modifications and Discounts. In accordance with the ITB, bidders are allowed to submit, prior to bid opening, modifications to their original bid. The impact of modifications should be fully reflected in the examination and evaluation of the bids. These modifications may include either increases or discounts to the

bid amounts that reflect last-minute business decisions. Accordingly, the original bid prices should be modified at this point in the evaluation.

- 17.5.5. Discounts offered in accordance with the ITB that are conditional on the simultaneous award of other contracts or lots of the contract package (“cross-discounts”) shall not be incorporated until the completion of all other evaluation steps. The effect of unconditional discounts must be shown in the evaluation report.
- 17.5.6. Evaluation Currency. Bids received under national competitive bidding procedures must be in US\$, however ICB bids may be in a number of currencies (up to three) Exchange rate details are recorded in the evaluation report and their effect shown.
- 17.5.7. The exchange rates to be used in the calculations are to be listed in the evaluation report. If multiple exchange rates exist for a particular currency (for commercial, government transactions, etc.), indicate which exchange rate applies with reasons for the choice. The choice should be made in accordance with the exchange rate type specified in the bidding documents.
- 17.5.8. Additions Bids that offer deviations may be considered substantially responsive - at least as to the issue of fairness - if the deviations can be assigned a monetary value (an Addition) that would be added as a penalty during the detailed evaluation process and if such deviations would be acceptable in the eventual contract. Therefore, additions may sometimes be made to bids, for evaluation and comparison purposes, to compensate for omissions by adding the estimated costs for remedying the deficiency.
- 17.5.9. Where items missing in some bids are present in others the highest of the quoted prices should be used to complete incomplete bids always provided that the omitted item is not a major deviation – if it is the bid should be rejected.
- 17.5.10. Adjustments The ITB specifies what, if any, performance or service factors will be taken into account in the bid evaluation (only adjustments already specified either the evaluation criteria in the ITB or in the technical specifications can be applied). The methodology used in evaluation of these factors should be precisely described and should be fully consistent with the ITB provisions. The value of adjustments must be expressed in terms of cost and should be shown in the evaluation report and expressed in the evaluation currency
- 17.5.11. Bonuses or additional credits that reduce the evaluated bid price will not be given in the bid evaluation for features that exceed the requirements stated in the bidding documents, unless specifically provided for in the ITB.<sup>22</sup>

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<sup>22</sup> Similarly, a bid offering a choice of different product models is evaluated on the basis of the lowest price offered by the bidder from among the models meeting the requirements of the bidding document.

- 17.5.12. Priced Deviations. Bids with minor deviations may be considered substantially responsive if their further consideration assigns a monetary cost or penalty to the bid for the purpose of bid comparison.
- 17.5.13. Requests for deviations that are expressed by the bidder in vague terms, such as “we would like an increase in the amount of mobilization advance” or “we wish to discuss changes in the completion schedule” should ordinarily be ignored in bid evaluation. However, a categorical statement by the bidders taking exception to a requirement in the bidding documents should be treated as a deviation which should either lead to the rejection of the bid or the pricing of the deviation to facilitate evaluation.
- 17.5.14. If a bid requires a faster payment stream than specified in the bidding documents, the penalty is based on the prospective benefit to the bidder. This situation assumes use of a discounted cash flow using the prevailing commercial interest rates for the currencies of the bid, unless the ITB foresees the eventuality and specifies a rate.
- 17.5.15. If a bid provides for a delivery or completion that is beyond the date specified in the bidding documents but that is nonetheless acceptable, the time disadvantage should be assessed a penalty already specified in the evaluation criteria, if one is not provided, the deviation must either be accepted without reservation or the bid rejected.

## **17.6. EVALUATION OF CONSULTANTS PROPOSALS**

- 17.6.1. The evaluation of consultants’ proposals represents a different challenge to evaluators. The compliance or otherwise of a bid for goods or works can be assessed in absolute terms, i.e. a piece of equipment or structure either does or does not meet with the specifications set out in the bidding document. The assessment of a consultants’ Workplan, methodology, CVs of key staff etc. cannot be evaluated in such terms (other than minimum levels of experience and qualifications).
- 17.6.2. Therefore a different approach to the evaluation of proposals is required. Based on the evaluation criteria an evaluation committee (formed from the Procurement Review Committee or by the Chair of the Procurement Review Committee if there is not sufficient knowledge or capacity within the Procurement Committee) should be formed. The evaluation committee must include a minimum of three members knowledgeable about the type of services being procured.
- 17.6.3. The Procurement Officer should draw up evaluation spread sheets based on the evaluative criteria in the Request for Proposals and issue each of the evaluation committee a copy.
- 17.6.4. After an initial briefing of evaluators by the Procurement Review Committee each evaluator should commence their evaluation independently of each other – it is important that evaluators do not discuss specific points of each firm’s proposal during the evaluation with each other as this will lead to subjectivity.

- 17.6.5. It is recommended that evaluators find a quiet place away from their normal desks and day to day distractions to undertake the technical evaluation. Generally it will take a week or more of continuous work to evaluate five reasonably complex technical proposals and therefore they should agree this time away from their usual duties with their line managers. For particularly complex, high value and strategically important assignments the evaluation should be undertaken “in retreat” i.e. outside of the office and the home, perhaps at a hotel.
- 17.6.6. Evaluators should first ensure that they are familiar with the terms of reference and request for proposals before reading any of the submissions. They should then read each proposal once, just making general notes but not awarding any points.
- 17.6.7. At the second reading of the proposal each evaluator should then award points for each of the individual CVs, the Workplan, methodology, firms experience and training program in accordance with the points allocated to each in the RFP.
- 17.6.8. Once this has been completed for each proposal the evaluator should then add up the total points awarded for each proposal and read each one again, adjusting scores awarded in each category as necessary to ensure that the basis for awarding points is consistent across all of the proposals.
- 17.6.9. Once all of the evaluators have completed their technical evaluation the Chair of the Procurement Review Committee will collate all of the scores and call a meeting of all of the evaluators. Each evaluator will present their evaluation of each proposal. Evaluators are not required to make changes to any of their scores but will be expected to justify any particularly high or low scores.
- 17.6.10. All of the scores from each evaluator for each category are then added together and divided by the number of evaluators. This will give the final overall score for each firm and proposal. The individual evaluators’ scores and written justifications for particularly high or low scores will be retained by the Procurement Review Committee as a mater of record.
- 17.6.11. The Procurement Officer will then use the collated scores to complete the technical evaluation report using the DA’s standard forms. Normally at this stage, after review and final approval by the Procurement Review Committee, the report will be submitted to the DA for its prior review and approval.
- 17.6.12. Subject to receiving any no objection that may be required the procedure will now differ depending on the procurement method used.
- 17.6.13. QBS – the Procurement Review Committee will request from the third party holding the financial proposals the financial proposal of the highest ranked firm only. It will write to all of the consultants informing them of their respective technical scores and the scores of the other firms inviting them all to the public opening of the highest ranked firms technical proposal. The Procurement Review Committee will then proceed and negotiate a contract on the basis of the highest ranked firms technical and financial proposal.

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17.6.14. QCBS – The Procurement Review Committee will request the financial proposals of all the firms achieving the minimum technical score from the third part holding the financial proposals. Then write to all of the consultants informing them of their respective technical scores and the scores of the other firms inviting them all to the public opening of the financial proposals of all firms that achieve scores above the minimum set out in the RFP. The based upon the respective weightings the technical and financial scores will then be combined.

*An example* based on the weighting of .80 technical and 20 financial with four proposals can be seen below:

- Firm A Technical Score 83 Points
- Firm A Financial Proposal US\$ 700,000
- Firm B Technical Score 85 Points
- Firm B Financial Proposal US\$ 850,000
- Firm C Technical Score 78 Points
- Firm C Financial Proposal US\$ 680,000
- Firm D Technical Score 91 Points
- Firm D Financial Proposal US\$ 1,100,000

Technical Score	Financial Score	Total Score
Firm A, 83 points x .8 66.4	<u>680,000</u> x .2 <u>700,000</u> 19.4	85.8
Firm B, 85 points x .8 68.0	<u>680,000</u> x .2 <u>850,000</u> 16.0	84.0
Firm C, 78 points x .8 62.4	<u>680,000</u> x .2 <u>680,000</u> 20.0	82.4
Firm D, 91 points x .8 72.8	<u>680,000</u> x .2 <u>1,100,000</u> 12.3	85.1

Based on these weightings firm A would be invited to negotiate a contract.

- ❖ Using the same example as above for selection under a fixed budget and assuming the budget to be US\$ 1,000,000 firm D would be rejected as its financial proposal exceeded the stated budget and firm B selected to negotiate a contract as it achieved the highest technical score within the stated budget.
- ❖ If the selection was based on least cost firm C would be invited to negotiate a contract as it submitted the least cost financial proposal.
- ❖ Selection based upon consultants qualifications. This evaluation method should only be used for small assignments and a shortlist of firms should be sent the terms of reference and a request that they submit details of their qualifications to undertake the assignment. The details should include their experience as a firm and the availability of appropriate skills and qualifications amongst their staff.



## **18. CONTRACT AWARD, GOODS AND WORKS**

### **18.1. AWARD CRITERIA GOODS AND WORKS**

18.1. The EA will award the contract to the bidder:

Whose bid has been determined to be:

- Substantially responsive.
- Lowest Responsive Bid

AND

- That is determined to be qualified to be able to perform the contract.

The EA may vary the quantity of items ordered subject to the conditions specified in the bidding documents.

A bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

### **18.2. NEGOTIATION, GOODS AND WORKS**

18.2.1. In general terms there are no grounds for negotiation in the procurement of goods and works. Price negotiations with bidders on a competitive bid are not allowed. When procurement is undertaken on the basis of direct contracting (DC) the EA will determine the prevailing market rate for the goods or works based on evidence of; the price previously paid by the EA; the price paid for similar goods or works; or the cost of the same goods or works supplied to a different purchaser. The EA will only hold negotiations on price under direct contracting when the evidence suggests that the price quoted is not in line with the prevailing market rate.

18.2.2. The purchaser or employer's right to vary quantities prior to contract award is not a negotiable issue. Either it is exercised within the tolerances allowed in the bidding documents or it is not. The Purchaser's right to vary quantities and the percentage limit for increase or decrease in quantities must be specified in the bidding documents.

18.2.3. No change to the substance of the bidders bid is ever sought or permitted – if the bid requires significant negotiations to render it acceptable it should have been rejected during the evaluation as non-responsive.

18.2.4. Negotiations are not permitted that:

- Alter the scope, substance terms of conditions of the bid or bidding documents.
- Would make a non-responsive bid responsive.
- Alter unit prices in anyway;

- Alter the contract price beyond that allowed in the bidding documents for variation in quantities
- Change the technical specifications offered in the bid;
- Alter the delivery schedule, unless the bidder agrees to accelerate delivery at no cost – however a bidder may refuse to do so;
- Significantly alters the project or delivery sites – minor changes such as a change of location within the same city or town is acceptable, delivery to a different city or town is not.

18.2.5. The limitations on negotiations do not mean that the contract can be awarded at unreasonably high prices. If the proposed contract price exceeds the pre-bid cost estimate by a substantial margin, the possible causes for the cost differential should be assessed by the EA and approval of the Procurement Review Committee and, where required of the DA, should be obtained on the proposed next steps, which may include re-invitation of bids after revision of in the bidding documents to address the identified causes

18.2.6. Face to face negotiations can only be conducted by the Procurement Committee and minutes of negotiation must be taken and signed by both the EA and the bidder. Negotiations conducted through correspondence must pass through the Chair of the Procurement Committee and be signed by them.

18.2.7. The evaluation report must include details and scope of any proposed negotiations before negotiations can be conducted.

### **18.3. THE NOTIFICATION OF AWARD/LETTER OF ACCEPTANCE**

18.3.1. The award must be notified (or bid accepted in the case of works) to the successful bidder prior to the expiry of the period of bid validity. The form of the notification of award for goods should follow the wording below:

*[letterhead paper of the Purchaser]*

*[insert date]*

Identification No and Title of Contract: *[insert identification number and title of the Contract]*

To: *[insert name and address of the Supplier]*

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert name of the Contract and identification number, as given in the SCC]* for the Contract Price of *[insert currency and amount in numbers and words]* as corrected and modified in accordance with the Instructions to Bidders is hereby accepted.

You are hereby instructed to (a) sign and return the attached Contract Documents, and (b) forward the performance security within 14 days after receipt of this Letter notification of award.

Authorized Signature: \_\_\_\_\_  
Name and Title of Signatory: \_\_\_\_\_  
Name of Purchaser: \_\_\_\_\_

18.3.2. The letter of acceptance for works is included in the bidding document.

18.3.3. The Notification of Award/issue of the letter of acceptance will constitute the acceptance of the bidder's bid and represents the formation of the contract. In the absence of any other conditions of contract effectiveness such as the opening of a letter of credit or advance payment, the date of the supplier or contractors receipt of the notification/acceptance will be the effective date of the contract, i.e. the date from which both parties contractual obligations start such as delivery periods.

## **18.4. PREPARATION OF THE CONTRACT**

18.4.1. The form is included in the bidding documents is always the basis of the actual contract as it is the basis on which bidders prepared their bids.

18.4.2. The Procurement Officer will edit the Contract Form to:

- Include the date of the Contract Form.
- The name and address of the Purchaser or Employer.
- The name and address of the Supplier or Contractor.

- A brief description of the goods, works and services to be contracted.
- The Total Contract Price in words and figures.
- Any other specific information required paying particular attention to the special conditions of contract ensuring that contract specific information is inserted such as the name of the employer's project manager, the recipient of notices on the part of a supplier or contractor etc.

## **18.5. SIGNING OF THE CONTRACT**

- 18.5.1. Three copies of the contract should be prepared, each contract should be signed by either the Project Manager or the Project Director, the approval of the evaluation report by the Procurement Review Committee empowers these individuals to sign the contract on behalf of the EA, i.e. there is no requirement to seek additional approvals from any organization or individual once the evaluation report has been approved with the exception of any no objection that may be required from a DA.
- 18.5.2. The contract, already signed, will accompany the notification of award. Suppliers and contractors are required to sign and witness all three copies, retaining one original copy for their own records, returning the other two to the EA. National suppliers and contractors will be allowed one week to return the signed contract forms and international ones will be allowed three weeks. In the event that the supplier or contractor is an international one the contract form shall be sent to them via a reputable international courier.
- 18.5.3. One original copy of the contract is to be filed with other original contracts in a secure fire proof location at a separate site to the Project office. The second original is to be stored in a secure fire proof location within the project office.

## **18.6. THE PERFORMANCE SECURITY**

- 18.6.1. Procurement of goods and works by both ICB and NCB methods requires suppliers and contractors to provide performance securities in the form and amount set out in the bidding documents.
- 18.6.2. The performance security is required to ensure that the supplier or contractor fulfills its obligations under the contract and is intended to protect the EA against default on the part of the supplier or contractor.
- 18.6.3. The amount will be determined in the special conditions of contract and as a general note the amount of the security should be the maximum amount deductible for liquidated damages for delay.
- 18.6.4. The notification of award shall outline the requirements in respect of the performance security in terms of amount, form and validity. Depending on what has been stated in the bidding documents the security will:

- Be in a fixed amount, expressed as a percentage of the contract value valid 30 days beyond the expiry of any warranty or latent defects period;
- Be in a fixed amount, expressed as a percentage of the contract value valid for thirty days beyond the delivery date or the works completion date, and then in a lesser amount valid for 30 days beyond the expiry of any warranty or latent defects period, or
- Be in a fixed amount, expressed as a percentage of the contract value valid for thirty days beyond the delivery date or the works completion date to be replaced with retention monies taken from stage payments made to the supplier or contractor.

18.6.5. Other forms of procurement for goods and works such as shopping do not require the supplier or contractor to provide a security although shopping does require the bidder to provide a bid and performance securing declaration at the time of bidding.

18.6.6. The successful bidder is should be required to provide the performance security within 21 days of receipt of the notification of award/letter of acceptance in the case of international suppliers/contractors. National suppliers/contractors will be allowed 14 days as there is no international transit time to take into account.

## **18.7. FAILURE OF A BIDDER TO SIGN THE CONTRACT OR PROVIDE THE PERFORMANCE SECURITY**

18.7.1. Failure of the successful Bidder to return the signed contract or provide a performance security when one is required constitutes sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid Securing Declaration as appropriate. In which event the Procurement Committee may, after review of the evaluation report and obtaining DA no objection, recommend award of the contract to the next lowest evaluated and qualified bidder if the price is reasonable, or re-invitation of bids.

18.7.2. When the procurement has been undertaken on the basis of NCB or shopping using the documents contained as annexes to this Manual, the bidders failure to sign the contract will result in the execution of the bid and performance securing declaration and the bidder being disbarred from all public procurement for a period of three years or the bidder paying a penalty of 2% of the contract award value to compensate the EA. Once again the Procurement Committee may, after review of the evaluation report and obtaining DA no objection, recommend award of the contract to the next lowest evaluated bidder if the price is reasonable, or reinvitation of bids.

## **18.8. ADVANCE PAYMENTS**

18.8.1. From time to time the contract will allow for an advance payment to be made to a supplier or contractor. No advance payment must ever be made without

first securing an advance payment guarantee (except in the case of individual consultants, who are not expected to provide an advance payment guarantee).

- 18.8.2. The advance payment amount will be stated in the bidding documents and should generally not be more than 15% of a contract's value and should be an accurate estimate of the supplier or contractor's mobilization and start up expenses.
- 18.8.3. Advance payments are amortized, i.e. set off in equal amounts, against following payments until fully off-set.

## **18.9. NOTIFICATION OF THE UNSUCCESSFUL BIDDERS**

- 18.9.1. Upon receipt of the signed contract forms and the successful bidder's performance security (when required) the Project will:
- Notify the unsuccessful bidders that their bids have been unsuccessful.
  - Return the bid securities of the unsuccessful bidders.

## **18.10. PUBLISHING THE AWARD**

- 18.10.1. Information on contract awards shall be published in accordance with Para. 5.3 of this Manual, and using the sample forms provided in Annex 1(b) of this Manual.
- 18.10.2. All other information of the evaluation process should be held in the strictest confidence and not released to any third party with the exception of the MEF, oversight agencies and the DA.

## **18.11. DE-BRIEFING UNSUCCESSFUL BIDDERS**

- 18.11.1. The de-briefing of unsuccessful bidders is important, especially for national bidders as it will enable them to recognize weaknesses in their bids and address them on future opportunities increasing the overall levels of competition.
- 18.11.2. It is also an important factor making procurement more efficient. The de-briefing process is described in Section 6 of this manual and the NCB and shopping documents included as Annexes.
- 18.11.3. The project an EA is also obliged to publish quarterly reports in accordance with Section 5.3 of this Manual that summarizes all evaluations.

## **19. CONTRACT AWARD, CONSULTANTS SERVICES**

### **19.1. GENERAL**

- 19.1.1. Contracts for consulting services and their formation will follow a different process for that shown for goods and works because of the fundamental differences in what is being purchased.
- 19.1.2. For the purposes of this section the term “client” is used to describe the EA/PIU so that it is consistent with the DAs’ standard request for proposals and the NCB document for services.
- 19.1.3. Unlike goods and services it is usual to enter into some form of negotiation with consultants when procuring services. One principle that must always be adhered to is that there is no negotiation on price when price has been a factor in the selection process. When price has not been a factor in the negotiation process it may be subject to negotiation subject to the provisions contained in the request for proposals and the provisions of this Manual and its annexure.

### **19.2. THE NEGOTIATION PROCESS**

- 19.2.1. For larger contracts that are advertised internationally the usual practice is to hold face to face formal negotiations with the selected consulting firm which will normally last between two and five working days. The aim of these negotiations is to arrive at a draft contract acceptable to both the consultants and the client. All aspects of these negotiations must be recorded in the form of minutes of negotiation which will be prepared for each day of negotiations and agreed at the start to the following day by the parties to the negotiations. The templates for international procurement funded by both the DAs are attached as Annex IV of this Manual.
- 19.2.2. The templates must be followed during the negotiation process and the details of the negotiations recorded and included in the contract file. The templates contain guidance notes for clients in italics which are for information only – these comments should be deleted and not shown to the consultants.
- 19.2.3. Negotiations will include discussion on the terms of reference in light of any suggestions that the consulting firm made on them in its proposal. The firms proposed methodology, the workplan and staffing proposed, identifying and refining the roles and responsibilities of counterparts (if any), the services, facilities and exemptions to be provided by the client and any other significant issue identified during the evaluation process. The negotiations shall not fundamentally alter the terms of reference, workplan, and methodology or team composition as included in the original proposal. The client shall not propose the replacement of any of the consultants’ personnel without the prior agreement of the DA.
- 19.2.4. When price is a factor in selection, negotiation on offered unit prices is not permissible. Also no alterations in the workplan, methodology or inputs shall be made during negotiations that reduce or increase the consultants’ original

financial proposal by more than 15% without first obtaining the prior agreement of the DA.

- 19.2.5. In the event that the DA agrees and the client intends to reduce or increase the proposed inputs beyond this limit the invitation to the consultants to commence negotiations must mention the approximate percentage by which the client intends amending the scope of the assignment. This is to enable the consultants' to prepare for negotiations or, in the case of a reduction, decline the invitation – as such a reduction may have a significant impact upon the consultants' financial arrangements with individual consultants, associates and sub-consultants.

### **19.3. LOW VALUE CONTRACTS**

- 19.3.1. The previous section deals with high value contracts with consulting firms that are advertised internationally and are the subjects of a formal negotiated process. The process needed for low value consultants contracts that are based on other methods of selection such as consultants' qualifications and individual consultants require a different approach.
- 19.3.2. These forms of procurement do not necessarily use a standard request for proposals and therefore no standard contract. Once the consultant has been selected and a no objection granted to the selection process a contract form must be selected. A sample contract form for this type of contract is included in the NCB documents for consulting services included in Annex IV of this manual. It can be used for both ADB or WB funded assignments.
- 19.3.3. For the employment of individual consultants the contract form included in Annex IV should be used. The client should request the details required from the consultant such as their address and bank details and send the draft contract with the details completed by email to the consultant for their review and acceptance. In the event that the consultant accepts the contract they should print and sign three copies of the invoices and send them to the client along with any advance payment invoice that may be required.
- 19.3.4. Individual consultants are not expected to provide advance payment guarantees. The advance payment made should be sufficient to cover airfares and the total DSA amount up to the expected date of them receiving the subsequent payment but should not include any advance payment for fees.
- 19.3.5. There will be no face to face negotiations unless a consultant who is already in Cambodia (or who has representation) is selected. It is therefore important that all negotiations are recorded and the email and any other correspondence included in the contract file.

## **20. CONTRACT MANAGEMENT**

### **20.1. GENERAL**



- 20.1.1. Effective management of contracts is essential to ensure that the objectives of the procurement process are achieved and that all contractual obligations and activities are completed efficiently by both parties to the contract.
- 20.1.2. The PIU must ensure that routine monitoring of all current contracts is maintained so that swift remedial can be taken when problems arise, or preventative action taken when problems are foreseen.
- 20.1.3. There are many post-contract issues that need to be dealt with, monitored and resolved before the contract reaches its conclusion including:
- i) Contract Effectiveness;
  - ii) Delivery and Inspections of Goods;
  - iii) Insurance Claims;
  - iv) Payments to the Supplier or Contractor;
  - v) Performance Monitoring for Services and Works;
  - vi) Contractual Disputes;
  - vii) Delays in Performance;
  - viii) Claims for Damages;
  - ix) Initial and Final Takeover of construction works;
  - x) Installation and Commissioning of Equipment;
  - xi) Acceptance of Consultants' Deliverables;
  - xii) Release of Performance Securities and Retentions;
  - xiii) Contract Closure

## **20.2. CONTRACT EFFECTIVENESS**

- 20.2.1. Although the Contract Form may have been signed by both parties, the legal effectiveness of the Contract may be dependent on one or more of the following conditions:
- i) Receipt by the PIU of the Performance Security;
  - ii) Receipt by the PIU of an Advance Payment Security;
  - iii) The no objection of the DA;
  - iv) Receipt by the Supplier/Contractor/Consultant of the Advance Payment; or
  - v) Receipt by the Supplier/Contractor of an acceptable Letter of Credit.
- 20.2.2. If a bidder for goods or works fails to provide the performance security or refuses to attend sign the contract as requested, the EA will call the proceeds

of the bidder's bid security or execute its bid securing declaration as appropriate and award the contract with the next best evaluated bidder.

- 20.2.3. In the event that the bidding document allows for an advance payment and the supplier or contractor wishes to avail of the advance payment, the supplier or contractor will be paid the advance once the advance payment bank guarantee is received reviewed and accepted by the Entity. The advance payment guarantee must be in the form and amount laid out in the bidding document. The advance payment will be amortized (reduced pro rata) against the future payments until it is completely off-set at the rate described in the bidding document and special conditions of contract. The advance must be off-set before a maximum of eighty percent of the contract amount is paid to the contractor or supplier.

### **20.3. CONTRACT SUPERVISION AND ADMINISTRATION - GOODS**

- 20.3.1. Contract supervision and administration for goods will be undertaken by the Project or the Contracts Management Unit (when there is one) as appropriate. Supervision and administration is straightforward in most procurement of goods but monitoring delivery schedules, processing of documents and the inspection of goods are all essential to ensure that the correct goods are delivered on time. The Project will:

- i) Monitor the delivery schedules of all purchases to ensure that they are dispatched, delivered or collected on time.
- ii) Receive reports on pre-shipment inspection of goods and contact the Supplier in writing requesting rectification of any discrepancies or deficiencies.
- iii) Contact the Supplier or shipper to identify the causes of any delay in delivery;
- iv) Coordinate the receipt and inspection of goods;
- v) Initiate and supervise any process for claims against insurance or the supplier.
- vi) Report to the Project any failure by the Supplier in his contractual obligations;
- vii) Issue the goods to the User Department after delivery.

### **20.4. PRE-SHIPMENT INSPECTION OF GOODS**

- 20.4.1. In the event that the goods being purchased are of high value, being purchased for a foreign supplier and or are of a complex nature the use of a third party inspection agent is recommended. The decision of whether to have inspection or not rests with the Procurement Review Committee

- 20.4.2. The instances when pre-shipment inspection of foreign suppliers is recommended are:

- i) For all contracts with foreign suppliers that exceed the equivalent of US\$1,000,000 in value.
- ii) All purchases of drugs that exceed US\$100,000 in value
- iii) The purchase of all second hand and re-conditioned equipment when allowed.

20.4.3. The actual scope of the pre-shipment inspection required will vary depending on the goods. For example bulk commodities such as basic foodstuffs will only require a simple quantity check and a random sample tested for quality.

20.4.4. Drugs will also require a quantity check, in addition to this the packing and marking will have to be verified as correct and analysis of a number of random samples undertaken to ensure that the active ingredient is present in the amounts stated in the contract.

20.4.5. Complex engineered equipment may be subject to staged inspection and testing during the manufacturing process as otherwise it is impossible to verify that the some of the specified components in terms of capacity and quality are being used in the assembly of the final item.

20.4.6. It is also recommended that all second hand reconditioned engineered equipment irrespective of value be inspected to ensure its proper functioning before shipment.

20.4.7. The bidding documents will, when pre-shipment inspection is required, instruct the bidder to nominate a reputable pre-shipment inspection company acceptable to the tender committee based at or close to the location of the goods to be supplied, it will also specify the type of inspection and tests to be carried out. The cost of the pre-shipment inspection will be shown in the bidders bid as a separate item and included in any resulting contract but not be included in the evaluation of bids. The pre-shipment inspection of drugs must include random sampling and analysis. The pre-shipment inspection of second hand and re-conditioned equipment must include the start up and running of the equipment.

20.4.8. For basic pre-shipment inspection the inspector (who must be experienced and appropriately skilled) will carry out the following tests – on a random sampling basis where appropriate - to ensure that the goods and packing are in strict conformity with the requirements. Pre-shipment Inspection may include but not be limited to:

- i) Obtaining and verify Suppliers' Certificates of Analysis or Compliance to verify physical characteristics and chemical details, type, batch numbers and shelf life as appropriate.
- ii) Where appropriate, check that the consignment has a shelf life not less than that specified in the contract from arrival in Cambodia, and that all necessary instructions and manuals are enclosed and are printed in the required language.

- iii) Check that all packages are serially numbered and complete and that labeling and marking is exactly as specified in the contract.
- iv) Check that dimensions of the packing are as specified in the contract and that pallet markings and handling descriptions are clearly displayed to ensure proper handling in transit and at the delivery destination.
- v) Check that all individual items, internal packing and external packages are exactly as specified in the contract.
- vi) Check that the primary packing is not damaged, opened or tampered with and that the shipping mark requirements are correct.
- vii) Check the packing against appropriate transportation and commodity regulations, and ensure that it is adequate for the safe shipment of goods by the contracted mode of transport.
- viii) Check the stability of cartons/pallets and that all waterproofing of the packing is sufficient if the consignment is to be transported by open truck, or left exposed during transit.
- ix) Prepare a detailed report against each of the above items and arrange for those present at the inspection to sign the report in agreement of the findings.
- x) Take photographs wherever possible and relevant and attach these to the report.
- xi) Submit the report immediately to the EA.

NB: Any discrepancies found in the course of the inspection must be reported immediately.

## **20.5. COLLECTING GOODS FROM THE PORT OF ENTRY**

20.5.1. Physical collection and customs clearance of goods at the Port of Entry may be necessary in some circumstances depending on the Incoterm used. **Before accepting the consignment:**

- i) Carefully examine the packages to check they are all present according to the Shipping Documents or Airway Bill and to look for signs of any physical damage.
- ii) Look also for signs of tampering with any of the packages e.g. cases with broken seals, loose or open tops.
- iii) Have the packages re-weighed if there is any suspicion that items have been removed, and compare the result with the shipping documents.

- iv) Note any deficiency either in quantity or in condition on the receipt given in exchange for the goods (a claused receipt).
- v) If there are shortages, in addition to a claused receipt, a short-landed or discrepancy certificate should also be obtained to assist claims against the Supplier or insurances (see Section 24).

## **20.6. RECEIPT AND INSPECTION AND ISSUE OF GOODS**

20.6.1. The Project is responsible for the receipt of goods except under works contracts where construction materials are delivered direct to the site. On delivery by a Supplier or carrier, the recipient will:

- i) Receive the goods into temporary storage.
- ii) Examine the apparent condition of the goods and packing.
- iii) Issue an interim receipt, noting the apparent condition, of the goods.
- iv) Receive and register the invoices pending processing for payment.

20.6.2. Within three days following the arrival of the goods the procurement officer or technical officer (or any other individual authorized by the Project), in the presence of the Supplier's representative if they choose to attend, will:

- i) Examine the documentation and packaging for compliance with the contract.
- ii) Ask the Supplier to open the packages (or arrange opening of the packages at the Supplier's expense).
- iii) Examine and analyze the goods for conformity with the contract specifications and/or the samples provided.
- iv) Reject all goods that are damaged or do not conform with the required specifications or samples.
- v) Prepare a report and three copies, recording the delivery, and descriptions, specifications and quantities of the goods examined, and the reasons for accepting or rejecting the goods.

## **20.7. PAYMENT FOR GOODS**

20.7.1. For simple payments against invoices, the Project will, following the processes set out in Section 11 of the Financial Management Manual:

- i) Review the request for payment/invoice/payment certificate ensuring the deduction of any advance payments, retentions or damages are calculated.
- ii) As appropriate, attach the:
  - Original invoice from the Supplier;
  - Shipping documents or airway bill;

- Original of the Inspection Report;
  - Original Stores Receipt;
  - Results of any laboratory analysis;
  - Calculation of any penalties for rejected goods not removed by the Supplier and liquidated damages if allowable under the contract;
  - Copies of relevant information from the contract document, records of approval and financial authorizations.
- iii) Submit the payment for approval to the Project manager or Director, who once approved will forward the documents to the Project Accountant for payment.
- 20.7.2. Payments by Letter of Credit will depend on the contract agreement between the Supplier and the Project for the terms and wording of the LC. The Procurement Officer will draft the documentary requirements for the letter of credit based upon the payment conditions listed in the special conditions of contract. Refer to Section 23 for guidance on letter of credit.

## **20.8. CONTRACT SUPERVISION AND ADMINISTRATION - WORKS CONTRACTS**

- 20.8.1. Contract supervision and administration of works contracts is often complex due to factors which could not be foreseen at the start of the work. This requires the appointment of project managers as stipulated in the contract documents to manage the project site and day to day activities of the contractor. This individual may be the Project Technical Officer but also may be a specialized consultant recruited for this purpose or another appropriately skilled individual from the EA. The Project must ensure that it is kept informed of progress and problems which arise through routine reports.
- 20.8.2. Day to day supervision of a works contract is carried out by the Supervising Project Manager who acts for the Project to supervise and administer the contract. For large contracts this may involve a team of engineers, inspectors, quantity surveyors etc.
- 20.8.3. The Project Manager usually acts at the first level in settlement of disputes and he should ensure that the Project and the EA are informed of any disputes and their resolution. Any serious disputes which may require an amendment or addendum to the original contract must be reported immediately to the Project.
- 20.8.4. Claims by Contractors for additional work or costs which are not covered under the terms of the existing contract and total contract value, must be referred to the Procurement Review Committee.

20.8.5. Claims for extension of time, with or without additional costs, or for additional payment to the contractor must be resolved quickly, subject to the approval of the Procurement Review Committee.

## **20.9. PAYMENT FOR WORKS**

20.9.1. Payment for works contracts will normally be made against Payment Certificates approved by the Project Manager as named in the contract. For all works contracts materials delivered to the site but not yet used being unutilized materials will be excluded from the measurement approved and the value of Payment Certificates.

20.9.2. The contract's Project Manager will ensure that:

- i) Any retention is deducted from the value of the Certificate before payment;
- ii) Agreed deductions in respect of the repayment schedule for any advance payment are deducted from the value of the Certificate before payment;
- iii) On issue of an interim takeover the performance security is returned to the contractor;
- iv) On issue of a final takeover certificate by the Inspection and Acceptance Committee issues, the balance of the retention monies of the contract value is paid to the contractor.

20.9.3. Attach to the payment certificate;

- i) The report of any ad-hoc inspection committee formed for interim or final takeover (if appropriate);
- ii) Calculations of any retentions, liquidated damages or other penalties applicable under the contract;
- iii) Copies of relevant information from the contract document, records of approval and financial authorizations.
- iv) Submit the payment for approval to the Project Manager or Director, who once approved will forward the documents to the Project Accountant for payment.

## **20.10. CONTRACT SUPERVISION AND ADMINISTRATION - CONSULTANTS CONTRACTS**

20.10.1. The contract may specify payments on the basis of inputs (time), deliverables, retainers, unit rates or commission fees, and administrative and supervision activities must therefore be based on the specific terms of each contract.

20.10.2. The Procurement Officer, Technical Officer or any other individual nominated by the Project will:

- i) Monitor the activity and performance in accordance with the contract to ensure that levels of service are maintained and that deliverables are submitted or completed on time. For consultancy services the contract may specify key reports to be submitted, or timesheets and routine reports to be submitted on a monthly or quarterly basis.
- ii) Ensure that all contractual obligations of the EA are performed promptly and efficiently.
- iii) Ensure that all deliverables (and especially reports) are reviewed immediately and responded to in writing where necessary.
- iv) Contact the Consultants' to identify the causes of any failings in performance or failure to meet targets.
- v) Issue a formal letter to the Consultants' when necessary detailing the complaint if the explanation given is unsatisfactory or if performance is not improved within a reasonable period of time.
- vi) Report to the Project Manager any continued breach by the Consultants' of their contractual obligations.

## **20.11. PAYMENT FOR SERVICES**

20.11.1. Payment for service contracts will be made according to the specific terms of each contract against invoiced claims by the Consultants'.

20.11.2. The Procurement Officer will ensure that:

- i) The invoice claim is justified by the evidence of timesheets, submission and acceptance of deliverables, or other criteria as specified in the contract;
- ii) Agreed deductions in respect of the repayment schedule for any advance payment are deducted from the value of the invoice before payment and in any event advance payments must be offset in their entirety before more than 80% of the services are completed;
- iii) Any retention sum specified in the contract is deducted from the value of the invoice before payment.
- iv) Submit the payment for approval to the Project Manager or Director, who once approved will forward the documents to the Project Accountant for payment.

20.11.3. The Procurement Officer will attach to the invoice;

- i) Calculations of any retentions, liquidated damages or other penalties applicable under the contract;
- ii) Copies of relevant information from the contract document, records of approval and financial authorizations.



## **20.12.DELAYS IN PERFORMANCE**

20.12.1. Delivery of goods, construction of works and the performance of services should be completed by the Supplier or Contractor in accordance with the time schedule prescribed in the Schedule of Requirements. Where this is not the case:

- i) In accordance with the contract conditions, the Supplier, Contractor, or its subcontractor, must notify the Project in writing of the conditions delaying performance, including full details of the delay, the likely duration and the cause(s).
- ii) The Project will immediately assess the situation, and may at its discretion extend the Supplier or Contractor's time for performance, with or without liquidated damages as specified in the Contract.
- iii) If the time for performance is extended, both parties shall ratify such extension by a formal addendum to the Contract.
- iv) A delay by the Supplier or Contractor in the performance of his obligations will render him liable to liquidated damages, except where the delay is as a result of Force Majeure.

## **21. TERMINATION OF CONTRACTS**

### **21.1. GOODS CONTRACTS**

21.1.1. Neither of the parties to the contract normally have the right to terminate the contract unless for breach on the part of the other party.

21.1.2. The grounds under which the Government may normally terminate a contract are as follows:

- i) If the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract plus the maximum period allowed for liquidated damages or within any extension that may have been granted provided that the delay was not caused by force majeure; or
- ii) If the Supplier fails to perform any other obligation(s) under the Contract such as commissioning of equipment and training if so required in the contract.
- iii) If the Supplier has engaged in corrupt, fraudulent coercive or collusive practices in competing for or in executing the Contract.

21.1.3. In the event the Government terminates the Contract in whole or in part for any of the reasons listed above the Government may procure Goods or Services replacing those undelivered, and the Supplier shall be liable to the Government for any excess costs the goods and services. If the contract is only terminated in part the Supplier will continue to be liable for the performance of the un-terminated portion of the contract. Any supplier who has a contract terminated in whole or part for any of the reasons listed above will be black listed for a period of not less than two years.

21.1.4. The Government may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Government

21.1.5. If the Government decides to terminate for convenience the following steps must be taken:

- i) The Government, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Government's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

- ii) The Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the Government at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
  - a) to have any portion completed and delivered at the Contract terms and prices; and/or
  - b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.

21.1.6. To protect the Government, the advice of the Ministry of Economy and Finance should always be sought if the Project is considering such action. Contracts should not normally be terminated without examining all possible alternatives, unless the termination is agreed by all parties to the contract. Examine the Contract carefully to be aware of all contract conditions and penalties relating to the Termination of Contract.

## **21.2. WORKS CONTRACTS**

21.2.1. There is no right to terminate for convenience in NCB works contracting. The right to terminate for convenience (if any) is laid out in the specific ICB contract forms of the respective DA. Generally a contract may be terminated in the following circumstances

- i) If the Contractor abandons the Works, refuses or fails to comply with a valid instruction of the Project Manager or fails to proceed expeditiously and without delay or is, despite a written complaint, in breach of the Contract, the Entity may give notice referring to the clause in the contract document, stating the default.
- ii) If the Contractor has not taken all practicable steps to remedy the default within 14 days after the Contractor's receipt of the Project Manager's notice, the Project Manager may, by a second notice given within a further 21 days, terminate the Contract. The Contractor shall then demobilize from the Site leaving behind Materials and Plant and any Contractor's Equipment which, as the Project Manager instructs in the second notice, which the Employer will retain until the completion of the Works.

21.2.2. Termination for Insolvency, by the Government. If the Contractor is declared insolvent under any applicable law, the other Entity may by notice terminate the Contract immediately. The Contractor shall then demobilize from the Site leaving behind any Contractor's Equipment which the Entity instructs in the notice is to be used until the completion of the Works.

21.2.3. The Contractors right to terminate. If the Project fails to pay in accordance with the Contract, or is, despite a written complaint, in breach of the Contract,

the Contractor may give notice referring to the Contract and stating the default. If the default is not remedied within 7 days after the Project's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works. If the payment is not made, or the reason for non-payment established and not within the contractual rights of the Project to withhold, within 28 days after the Project's receipt of the Contractor's notice, the Contractor may, by a second notice given within a further 21 days, terminate the Contract. The Contractor shall then demobilize from the Site

21.2.4. Termination for reasons of Force Majeure. If a Party is or will be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately. If necessary, the Contractor shall suspend the execution of the Works and, to the extent agreed with the Entity, demobilize the Contractor's Equipment. If the event continues for a period of 84 days, either Party may then give notice of termination, which shall take effect 28 days after the giving of the notice.

21.2.5. Payment On Termination. After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- i) If the contract has been terminated for reasons of default or insolvency on the part of the Contractor, The Project shall be entitled to a sum equivalent to 10% of the value of those parts of the Works not executed at the date of the termination.
- ii) If the Contract has been terminated for reasons of default on the part of the Project the Contractor shall be entitled to the Cost of his suspension and demobilization together with a sum equivalent to 10% of the value of those parts of the Works not executed at the date of termination.
- iii) If the contract was terminated for reasons of force majeure after termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site the plus the Cost of his suspension and demobilization less any sums that may be due to the Project such as the balance of any unutilized advance or stage payments.

### **21.3. CONSULTANTS CONTRACTS**

21.3.1. If a Contract has not become effective within any time period after the date of the Contract signed by the Parties specified in the Contract, either Party may, by not less than four (4) weeks' written notice to the other Party, declare the Contract to be null and void, neither Party shall have any claim against the other Party

21.3.2. The Project may, by not less than thirty (30) days' written notice of termination to the Consultants may terminate a Contract in any of the following circumstances:

- i) If the Consultants fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension, within thirty (30) days of receipt of such notice of suspension or within such further period as the Project may have subsequently approved in writing.
- ii) If the Consultants fail to comply with any final decision reached as a result of arbitration proceedings
- iii) If the Consultants submit to the Project a statement which has a material effect on the rights, obligations or interests of the Project and which the Consultants know to be false.
- iv) If the Consultant, in the judgment of the Client, has engaged in corrupt, fraudulent collusive or coercive practices in competing for or in executing the Contract.
- v) As the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days
- vi) If the Consultants become (or, if the Consultants consist of more than one entity, if any of their Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary

21.3.3. Termination for Convenience by the Government. The Project may, by a written notice of not less than sixty (60) days at its sole discretion and for any reason whatsoever, may terminate a Contract.

21.3.4. The Consultants may, by not less than thirty (30) days' written notice to the Entity, such notice to be given after the occurrence of any of the events specified below, terminate a Contract

- i) if the Project fails to pay any money due to the Consultants not subject to dispute within forty-five (45) days after receiving written notice from the Consultants that such payment is overdue;
- ii) If the Project is in material breach of its obligations under the Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultants may have subsequently approved in writing) following the receipt by the Project of the Consultants' notice specifying such breach;

- iii) If, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- iv) if the Project fails to comply with any final decision reached as a result of arbitration

21.3.5. Payment for Termination Upon termination The Project shall pay to the consultants remuneration for Services satisfactorily performed prior to the effective date of termination;

- i) Reimbursable actually incurred prior to the effective date of termination; and
- ii) Except in the case of termination in accordance with i), through iv) of 21.3.2, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Personnel and their eligible dependents.

21.3.6. To protect the Project, the advice of the Ministry of Economy and Finance should always be sought if the Project is considering such action.

21.3.7. Contracts should not normally be terminated without examining all possible alternatives, unless the termination is agreed by all parties to the contract. The Project should

21.3.8. Examine the Contract carefully to be aware of all contract conditions and penalties relating to the Termination of Contract.

21.3.9. Follow the advice of the Ministry of Economy and Finance in the preparation of any correspondence and settlement of any contractual penalties.

## **22. CONTRACT AMENDMENT**

### **22.1. GENERAL**

- 22.1.1. Contract amendment may become necessary as a result of the application of price variations specified in the contract, the resolution of disputes, additional or reduced requirements, agreements to extend the time schedule, or from accepted increases or decreases in prices. All amendments that change the contract value except for those already provided for in the contract must be reviewed by the Procurement Review Committee and if necessary the DA prior to their issue.
- 22.1.2. The Procurement Officer/Project Manager/Client Coordinator nominated in the contract is responsible for assessing the effect and impact on the components of the Contract and time period and either make a decision them self or refer the matter to the Procurement Review Committee.
- 22.1.3. In the event that the deliberations cause a delay in the execution of the Contract the Project will assess the period of the delay and add the corresponding time period and amend the contract accordingly.
- 22.1.4. The Project will:
- i) Identify and agree with the Supplier, Contractor or Consultants the specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply;
  - ii) Prepare a draft contract amendment document for approval by the Procurement Review Committee together with a report justifying the reasons for the amendment:
- 22.1.5. Following approval by the Procurement Review Committee, the Procurement Officer will:
- i) Record any change in contract value in the Commitment Register and in the Contract Register;
  - ii) Record any other contractual changes in the Contract Register;
  - iii) Obtain from the supplier/contractor/consultants any necessary addition or extensions to the performance and advance payment security;
  - iv) Arrange for signature of the contract amendment in three copies;
  - v) Distribute copies in the same way as the original contract,

### **22.2. PROCEDURES SPECIFIC TO WORKS**

- 22.2.1. The nature of works contracts mean that during the course of execution there is often the need to address minor variations and introduce minor amendments in the contract to ensure the smooth completion of the works. To facilitate this, the SBD's and the terms and conditions of the contract specify specific

mechanisms for introducing changes to the contract. These are described below:

- 22.2.2. **Testing for Defects.** The Project manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect
- 22.2.3. If the Project Manager instructs the Contractor to carry out a test not specified in the Contract to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a paid for by the Project.
- 22.2.4. **Variations.** The Contractor shall provide the Project with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 22.2.5. If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Entity, the quantity of work above the limit of a single item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the approved quotation by the Contractor shall be in the form of new rates for the relevant items of work.
- 22.2.6. If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and recommend to the Procurement Review Committee a change to the Contract Price, which shall be based on the Project's own forecast of the effects of the Variation on the Contractor's costs.
- 22.2.7. If the Project decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event and the contractor paid at cost. The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 22.2.8. **Compensation Events.** The following events will result in the contractor being paid additional sums or the Contract being amended as appropriate:
- i) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract.
  - ii) The Project Manager modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.



- iii) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- iv) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- v) The Project Manager unreasonably does not approve a subcontract to be let.
- vi) Ground conditions are substantially more adverse than could reasonably have been assumed before issue of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- vii) The Project Manager gives an instruction for dealing with an unforeseen condition, or additional work not reasonably foreseeable required for safety or other reasons.
- viii) Other contractors, public authorities, utilities, or the Employer do not perform work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor
- ix) The advance payment is delayed.
- x) The effects on the Contractor of any of the Employer's Risks.
- xi) The Employer unreasonably delays issuing a Certificate of Completion.

If and of the events described in a) through k) above would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

## 23. LETTERS OF CREDIT

### 23.1. DEFINITION

23.1.1. A Letter of Credit (or documentary credit) is a written undertaking given by the Entity's bank to pay a Supplier for goods shipped or services rendered, provided specified documents are presented in compliance with the credit terms. Usually the authority is given by the Project's bank (**the issuing bank**) to another bank (**the intermediate or respondent bank**) in the Supplier's country, to pay, accept or negotiate bills of exchange, or offer deferred payment terms, against presentation of the documents. The terms **confirming or advising bank** are used to identify the intermediate bank or a third bank when they agree to undertake one of the confirming or advising roles.

23.1.2. Payment of suppliers using letters of credit for goods is not encouraged and no contracts with Cambodian suppliers should include payment by letter of credit.

23.1.3. However when an open tender is issued on an international basis payment by letter of credit must be allowed for in the bidding document and foreign suppliers generally will not bid unless payment is assured through an irrevocable letter of credit. In these instances to ensure competition on an equal basis both foreign and Cambodian suppliers should be allowed avail of payment by letter of credit at their own option. The bidding document must state that all letter of credit charges both inside and outside of Cambodia will be to the beneficiaries (supplier's) account and will be deducted from the value of payments made.

## **23.2. ADVANTAGES OF A LETTER OF CREDIT (L/C)**

23.2.1. By issuing a credit through the banking system, the Project ensures that no payment is made for goods or services unless the specified documents are presented.

23.2.2. Suppliers are guaranteed payment by a bank against presentation of the specified documents and therefore the supplier is not solely dependent on the Project's willingness or ability to pay. Letters of Credit are normally "Irrevocable" and cannot be cancelled or amended without the consent of all concerned parties. All presentations for payment will be honored by the issuing bank provided the terms and conditions of the credit are met.

23.2.3. Under a Letter of Credit, banks deal in documents and not in goods - any disputes over goods are matters for the Project and the Supplier to resolve and should not involve the banks concerned.

## **23.3. ISSUE OF A LETTER OF CREDIT**

23.3.1. Once the Project and Supplier have signed the Contract for which payment is to be by Letter of Credit:

- i) The Project will instruct its bank (the Issuing Bank) to prepare a credit in favor of the Supplier to be advised through the Intermediate Bank.
- ii) The Project and Supplier will have agreed on the terms of settlement as stated in the Contract, whether this be:
  - By payment at sight or acceptance at tenor or usance <sup>23</sup>;
  - Negotiation at sight or tenor; or
  - On deferred payment terms.

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<sup>23</sup> Usance and Tenor can be used interchangeably and mean "payment at some future date".

## **23.4. PAYMENT UNDER A LETTER OF CREDIT**

- 23.4.1. The Supplier will present all the required documents to the advising bank and receive payment of the amount due under the terms of the Letter of Credit.
- 23.4.2. Alternatively, the Supplier may discount the Letter of Credit with the advising bank and receive early payment in a reduced sum, but must still present all the required documents to the bank when they become available.
- 23.4.3. The Project's bank account will be debited directly by the issuing bank unless the Commitment Procedures as described in the Financial Management Manual have been followed in which case the negotiating or advising bank will make payment to the supplier directly and receive reimbursement from the DA.

## **23.5. AMENDING A LETTER OF CREDIT**

- 23.4.1. Irrevocable credits cannot be amended without the consent of all parties.
- 23.4.2. Amendments are rarely refused simply because they are essential to the working of a credit. Reasons for amendments may include the following:
  - The Project may require more goods and wish to increase the amount and quantity of the credit;
  - The Supplier cannot ship goods or present documents within the existing latest shipment and expiry dates;
  - Something essential may have been omitted from the original credit, such as a document or an instruction.
  - Most credits are amended at least once during their validity.

Revocable credits may be amended or cancelled by the Project almost at will, but are therefore unlikely to be accepted by the Supplier as a means of payment.

## **24. INSURANCE FOR GOODS**

### **24.1. GENERAL**

- 24.1.1. Under all 'C' terms, that is CIF, CIP etc. as defined in INCOTERMS, the risk and title of the goods pass to the purchaser when the goods pass into the custody of the first carrier, i.e. the purchaser takes ownership of the goods at this point, not when the goods arrive at their intended destination. The first carrier is normally the truck that collects the goods for delivery to an airport or seaport from the supplier's facility. Under CIF and CIP the supplier is responsible for taking a contract of carriage and a contract of insurance in the name of the purchaser. As goods in transit are at the highest risk and under C terms are owned by the Purchaser insurance must be taken out to cover the risks involved, such as "Fire", "Strikes", "War" and "Warehouse to Warehouse". The Purchaser is responsible for all customs duties, tariffs taxes and handing charges after the goods leave the country of the supplier, including any that may be levied in transit and customs clearance in Cambodia.
- 24.1.2. If the goods are contracted on ex-works the purchaser will have to arrange for packing, collection and transit of the goods and insurance. If the Goods are contracted on FOB terms the supplier is responsible for loading the goods on the vessel nominated by the purchaser, all other costs such as sea freight, insurance all customs duties, tariffs taxes and handing charges after the goods leave the country of the supplier, including any that may be levied in transit and customs clearance in Cambodia will be to the account of the purchaser.
- 24.1.3. Evidence of insurance cover is provided by an original copy of the Certificate of Insurance.
- 24.1.4. Insurance worldwide is arranged through 'Lloyds of London' which takes its name from a 17<sup>th</sup> Century London coffee house where merchants used to meet to agree to arrange insurance of cargoes on the high seas from the East and West Indies and American Colonies. It has now evolved into the worldwide stock market that deals in insurance policies and insurance cover. As a result insurance companies worldwide float their insurance policies at Lloyds of London either directly if they are a 'Name', a name basically being an authorized broker at Lloyds or through an intermediary company represented by a name.
- 24.1.5. As London is the location for all major insurance policies (some Governments and a few massive multi-national companies self insure) all insurance companies issue policies that include the standard London Institute of Underwriters Clauses. Lloyds also maintains a worldwide network of agents in all major ports and airports to assess insurance claims.

## **24.2. PERIODS OF INSURANCE COVER**

- 24.2.1. Normally insurers are on risk until delivery at the final destination (the place mentioned in the Shipping Mark) or on the expiry of 60 days from offloading from the ocean vessel if this is before actual delivery.
- 24.2.2. For airfreight shipments, only 30 days after arrival of the aircraft is allowed.
- 24.2.3. If the Project decides to purposely halt the normal course of transit at an intermediate point before delivery at final destination, insurance cover may also stop at that particular point.
- 24.2.4. Where or when insurance cover ends can sometimes be modified by agreement prior to commencement of the journey.

## **24.3. INSURANCE CLAIMS**

- 24.3.1. Where there is loss or damage to imported goods, and the Supplier is directly responsible for insurance, write immediately to request replacement or repair of the goods.
- 24.3.2. If the Government has directly arranged the insurance, write a claim letter to the local insurance company to inform them of the loss or damage.
- 24.3.3. Under the more usual circumstances of CIF or CIP terms, immediately write to the local office of the Shipping Company, or to their local agent, holding them responsible.
- 24.3.4. Claims letters should include the following:
  - i) An exact explanation what was wrong with the consignment;
  - ii) A clear statement that they are being held responsible;
  - iii) A request for an amount of money in compensation. (If the actual amount is not known at the time, state that a valued claim will follow when the details are known);
  - iv) A request that the letter is acknowledged in writing.
- 24.3.5. Attach the following documents:
  - A copy of the Bill of Lading/Air Waybill for reference purposes;
  - A copy of the claused receipt and/or the short-landed or discrepancy certificate;
  - If the claim is likely to exceed the equivalent of GBP £1,000 an original copy of the Lloyds Survey Report will be required.
- 24.3.6. When serious or very expensive damage is apparent, invite the carrier to be present during a joint inspection survey.
- 24.3.7. It is usual to pay for the Survey Fee in the first instance, but this cost may be added to the claim against insurance.

24.3.8. The Lloyds agent may also assist with the claims procedure; send the Lloyds agent the Original Lloyds Survey Report (where appropriate) together with copies of all other claim documents that may be available, e.g. copy receipts, copy correspondence to and from the carrier, repair estimates etc.

24.3.9. It is essential to act quickly when a claim is necessary, otherwise it may be rejected by the carrier or the insurers because it has become time-barred.

#### **24.4. CLAIMS AGAINST A SEA CARRIER**

24.4.1. Only three days are allowed to report any loss or damage that was not apparent at the time of collection (when a clean receipt may have been given).

24.4.2. Where a claused receipt or discrepancy certificate was given, nine months is usually allowed from the date of cargo offloading from the ocean vessel to lodge a claim against the carrier.

24.4.3. Claims not resolved within this period may become time barred unless a time extension has been agreed with the carrier before actual expiry of the nine months period.

24.4.4. The nine-month claim period is sometimes extended to 12 months depending on the conditions printed on the Bill of Lading.

#### **24.5. CLAIMS AGAINST AN AIR CARRIER**

24.5.1. Where there are shortages in the number of packages received or in the case of damage, claims should be made within 7 days from the arrival of the aircraft.

24.5.2. For non-delivery of the whole consignment, written claims must be made within 120 days from the date of the Air Waybill.

24.5.3. All air claims must normally be resolved within 2 years.

## **25. RECORDS MANAGEMENT**

The Procurement Officer under the supervision of the Administrative Officer will compile pre and post contract files of all procurement exercises. The Project Director has overall responsibility for ensuring that these files are passed to the EA at the completion of each project. These files are a matter of public record and may be the subject of audit by the DA or government and must be retained by the EA for ten years after the project's completion.

### **25.1. THE PRE-CONTRACT FILE**

- 25.1.1. The pre-contract file must contain a copy of both the general and specific procurement notice as published in the newspaper. In addition to this the file will contain a copy of the bidding document or request for proposals as issued to firms and copies of the no objection issued by the Procurement Review Committee and when appropriate the DA.
- 25.1.2. The pre-contract file will contain copies of all amendments issued to the bidding document, the minutes of bid opening and the evaluation report complete with all the clarification requests issued and received, Minutes from the Procurement Review Committee's review and any subsequent no objection issued by the DA. The file must also contain the Summary of Evaluation as published by the project. Attached to the file by webbing straps if necessary should be a copy of all of the bids received including the winning bid including copies of bid securities when required (the originals must be returned to the bidders).

### **25.2. THE POST CONTRACT FILE**

- 25.2.1. Copies of any complaints received and their response must also be included in the pre-contract file.
- 25.2.2. The post contract file must include a copy of the contract and copies of all contractual correspondence including consultants' reports, letters of credit issued, shipping documents, invoices contract amendments, insurance certificates, taking over and warranty certificates.

# **ANNEX I**

# **Report Templates**



## **ANNEX I a**

# **Expression of Interest Register**



## **ANNEX I b**

# **Summary of Contract Award - for Publication**

## Goods and Works

Name of Project	Project ID
Bid/Contract Description	Scope of Contract
Procurement Method	Contract Signature Date

Awarded Bidder		
Name of Awarded Bidder	Bid Price at Opening	Final Bid Price
Evaluated Bidder(s)		
Name of Evaluated Bidder(s)	Bid Price at Opening	Bid Price of Evaluated Bid
Rejected Bidder(s)		
Name of Rejected Bidder(s)	Bid Price at Opening	Reason(s) for Rejection

## Services

Name of Project				Project ID	
Bid/Contract Description				Scope of Contract	
Procurement Method				Contract Signature Date	
Name of consultant/Firm	Technical Score	Financial Score	Financial Proposal Amount	Total Score	Final Ranking

## **ANNEX I c**

# **Summary of Contracts in Execution**



## **ANNEX I d**

# **Procurement Plan Templates**

**PROCUREMENT MANUAL**

**Sample Procurement Plan, Procurement of Services**

Project name: _____		As At _____ <i>[insert date]</i>				
Contract No. _____		Prior or Post Review _____				
WB/ ADB Loan/Credit _____		Method of Selection QCBS/QBS/LCS/FBS/CQS/SSS				
Description of Services _____		Consultants Name _____		Amount _____		
Activity		Time Period Int./Nat	Planned Start	Planned Finish	Actual Start	Actual Finish
EOI/ToR	<i>ToR and Request for EOIs sent to Bank for NOL</i>	1d				
	<i>Bank's NOL</i>	1w				
	Request for EOI issued	1w				
	EOI Closing date	6w/4w				
	Evaluation of EOI and drafting of RFP	3w/2w				
Shortlist and RFP	<i>Shortlist and RFP sent to Bank</i>	1d				
	<i>Bank's NOL</i>	1w				
	RFP Issued	1d				
	Proposals Received	6w/4w				
Technical Evaluation	Technical Evaluation of Proposals	4w/2w				
	<i>Technical Evaluation sent to Bank</i>	1d				
	<i>Bank's NOL</i>	1w				
	Firms Invited to Financial Opening	2w/1w				
Financial Evaluation	Financial proposal Publicly Opened	1d				
	Financial Evaluation	1w				
	<i>Financial Evaluation sent to Bank</i>	1d				
	<i>Bank's NOL</i>	1w				
	Recommended Firm invited to Negotiate	3w/1w				
Contract Formation	Contract negotiations	1w				
	Draft Contract Approved	1w				
	<i>Draft Sent to Bank</i>	1d				
	<i>Bank's NOL</i>	1w				
	Contract Signature and advance payment security requested	3w/1w				
	Advance Payment Security Received	1d				
	Advance Payment Made	3w				
	Consultants Mobilize	3w/1w				
Contract Implementation	Inception Report Issued					
	Progress Report #1					
	Progress Report #2					
	Progress Report #3					
	Draft Final Report Issued					
	Final Report Accepted					
	Final Payment Made					

Those activities shown in italics are only applicable to prior review and should not be considered when the contract is subject to post review. The above standard time periods



are applicable to international procurement. When procurement is undertaken only with national consulting firms the recommended time period is shown as the second period.

**PROCUREMENT MANUAL**

**Sample Procurement Plan, Procurement of Goods and Works by ICB/NCB**

Project name: _____		As At _____ <i>[insert date]</i>			
Contract No. _____					
WB/ ADB Loan/Credit _____		<b>Prior or Post Review</b> _____			
<b>Description of Goods or Works</b> _____		Procurement Method ICB/NCB			
<b>Activity</b>		Time Period Int./Nat	Planned Start	Planned Finish	Actual Start Actual Finish
<b>Preparation</b>	Specification and cost estimate prepared	3w/1w			
	Bidding Document drafted	3w/1w			
	Bidding Document Approved by Committee	1w			
	<i>Bidding Document Submitted to Bank</i>	1w			
	<i>NOL Issued</i>	1d			
<b>Pre-qual (When applicable)</b>	Advertisement issued	1d/NA			
	Invitation to pre-qualification period	6w/NA			
	Applications received	1d/NA			
	Applications evaluated	2w/NA			
	Pre-qualification evaluations sent to Bank	1d/NA			
	<i>NOL Issued</i>	1w/NA			
<b>Bidding Period</b>	Specific Procurement Notice Issued	1d			
	Bidding Period	6w/4w			
	Bid Closing Date	1d			
	Bid Opening Minutes Distributed	1d			
<b>Evaluation</b>	Evaluation of Bids	4w/2w			
	Procurement Committee Review	2w/1w			
	<i>Evaluation Sent to Bank</i>	1w			
	<i>NOL Issued</i>	1d			
<b>Contract Formation</b>	Notification of Award Issued	1d			
	Performance Security Received	3w			
	Contract Signed	1d			
	Letter of Credit Established	2w/NA			
	Special Commitment Applied for	2w/NA			
	Special Commitment Issued	1d/NA			
	Contract Effective	1d			
<b>Contract Implementation</b>	Delivery Period				
	Goods delivered/Taking Over Cert Issued				
	Final Acceptance (goods)	2w			
	Start of Warranty/Latent Defects				
	Expiry of Warrant/Latent Defects				

Those activities shown in italics are only applicable to prior review and should not be considered when the contract is subject to post review. The above standard time periods

are applicable to international procurement. When procurement is undertaken through NCB the second period is to be used. Pre qualification will only be used in exceptional cases and with the Bank's no objection.

**PROCUREMENT MANUAL**

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**Sample Procurement Plan, Procurement of Goods and Works by Shopping**

Project name: _____		As At _____ <i>[insert date]</i>				
Contract No. _____						
WB/ADB Loan/Credit _____		Prior or Post Review _____				
Description of Goods or Works _____						
<b>Activity</b>		Time Period Int./Nat	Planned Start	Planned Finish	Actual Start	Actual Finish
<b>Preparation</b>	Specification and cost estimate prepared	1w				
	Bidding Document drafted	1w				
	Bidding Document Approved by Committee	1w				
	<i>Bidding Document Submitted to Bank</i>	1w				
	<i>NOL Issued</i>	1d				
<b>Bidding Period</b>	Specific Procurement Notice Issued	1d				
	Invitation Issued to Shortlisted Firms	1d				
	Closing Date	3w				
	Opening of Quotations	1d				
	Minutes distributed	1d				
<b>Evaluation</b>	Evaluation	1w				
	Procurement Committee Review	1w				
	<i>Evaluation Sent to Bank</i>	1w				
	<i>NOL Issued</i>	1d				
<b>Contract Formation</b>	Contract reviewed by Committee					
	Contract issued					
	Contract Signed	1w				
	Contract Effective	1d				
<b>Contract Implementation</b>	Delivery Period					
	Goods delivered/Taking Over Cert Issued					
	Final Acceptance (goods)	2w				
	Start of Warranty/Latent Defects					
	Expiry of Warrant/Latent Defects					

Those activities shown in italics are only applicable to prior review and should not be considered when the contract is subject to post review

**ANNEX II**  
**Declarations on Ethical  
Conduct and Fraud and  
Corruption**

## **ANNEX II a**

# **Procurement Committee Declaration on Ethical Conduct and Fraud and Corruption**

*This statement is to be signed by all members of the procurement committee undertaking the evaluation.*

### **Statement on Ethical Conduct and Fraud and Corruption**

We the undersigned confirm that:

1. During the procurement process and the evaluation of bids and proposals, that we have adhered to the ethical standards set out in the Harmonized Procurement Manual for Goods, Works and Services for Externally Assisted Projects.
2. We have gained in the execution of our duties, no benefit either monetary or in kind from any outside agency, bidder or consultant other than the official remuneration that we have received as public servants
3. To the best of our knowledge that no colleague, associate or relative has received any benefit monetary or in kind from any outside agency, bidder or consultant other than official remuneration.
4. We are unaware of any fraudulent, corrupt, collusive or coercive practices that have taken place during this procurement process and fully understand our moral and ethical obligation to report such should we be aware of it.
5. No conflict of interest exists either on our part or the part of the bidder or consultant recommended for an award of contract, or as far as we are aware the part of our immediate colleagues, associates and relatives.

Signature 1    Signature 2    Signature 3    Signature 4    Signature 5

Name                      Name                      Name                      Name                      Name

## **ANNEX II b**

# **Bidders/Consultants Declaration on Ethical Conduct and Fraud and Corruption**



*This statement is already included in the harmonized NCB and shopping documents. It should also be introduced into the WB and ADB standard ICB and Request for proposal documents through the instruction data sheets and all bidders and consultants are required to submit a signed statement with their bid or proposal.*

## **Statement on Ethical Conduct and Fraud and Corruption**

We the undersigned confirm in the preparation of our bid or proposal, that:

1. Neither we, nor any of our employees, associates, agents, shareholders, consultants, partners or their relatives or associates have any relationship that could be regarded as a conflict of interest as set out in the bidding document.
2. Should we become aware of the potential for such a conflict will report it immediately to the procuring organization.
3. That neither we, nor any of our employees, associates, agents, shareholders, partners consultants or their relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our bid or proposal.
4. We understand our obligation to allow the Government or the funding agency be they the Asian Development Bank or World Bank to inspect all records relating to the preparation of our bid or proposal and any contract that may result from such irrespective of if we are awarded a contract or not.
5. That no payments in connection with this procurement exercise have been made by us our associates, agents, shareholders, partners or their relatives or associates to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process on behalf of the purchaser, client or employer.

Signed

Name

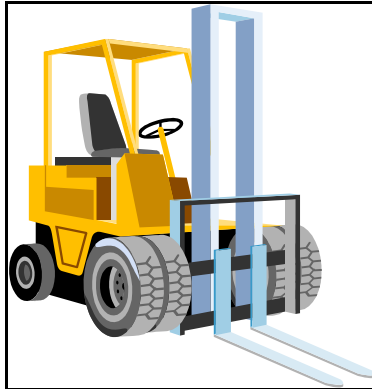
## **Annex III National Standard Bidding Documents (SBDs)**

***(The SBDs are in the separate  
Publication)***

## Annex III a

# Standard National Competitive Bidding Documents

## The Procurement of Goods



**Kingdom of Cambodia**

**(These SBDs are in the separate  
Publication)**

## **Annex III b**

# **National Shopping Documents**

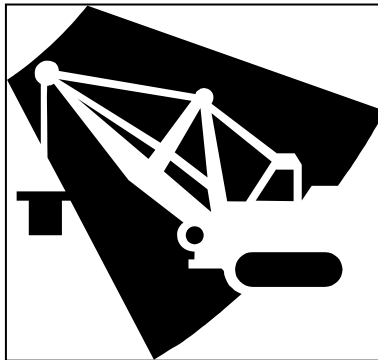
# **The Procurement of Goods**

***(These SBDs are in the separate  
Publication)***

# **Annex III c**

## **Standard National Competitive Bidding Documents**

### **The Procurement of Works**



**Kingdom of Cambodia**

***(These SBDs are in the separate  
Publication)***

## Annex III d

# National Shopping Documents

## The Procurement of Works

**(These SBDs are in the separate  
Publication)**

# **Annex III e Standard Request for Proposals**

## **The Procurement of Services**

**For procurement of services in the  
Kingdom of Cambodia**

***(These RFPs are in the separate  
Publication)***

# **ANNEX III f**

## **World Bank NCB Annex**



## **Annex IV**

# **Minutes of Negotiation Guides and Templates**

**(These Templates are in the separate  
Publication with Annex III)**

**Annex IV a**  
**Minutes of Negotiation Template, ADB Funded**  
**Consultancy Services Assignments Employing the**  
**QCBS Contract**

**Annex IV b**  
**Minutes of Negotiation Template, WB Funded**  
**Consultancy Services Assignments Employing the**  
**WB Lump Sum Contract**

**Annex IV c**  
**Minutes of Negotiation Template, WB Funded**  
**Consultancy Services Assignments Employing the**  
**WB Time Based Contract**

# **Annex IV d**

## **Contract for Individual Consulting Services**

# **Annex V**

## **Procurement Process and Review Thresholds**

**PROCUREMENT MANUAL**

<b>Committee on Minor Procurement</b>				
<b>Membership</b>				
Project Manager, Chair	Project Technical Officer		Project Financial Officer (or MEF representative)	
<b>Thresholds</b>				
Goods Up to \$25,000	Works Up to \$50,000	Services up to \$5,000		
<b>General Committee on Procurement</b>				
<b>Membership</b>				
Project Director, Chair	Project Manager	EA Representative	MEF Representative	Project Financial Officer (or MEF representative)
<b>Thresholds</b>				
Goods from \$25,000 to \$500,000	Works from \$50,000 to \$3,000,000	Services Up to From \$5,000 to \$500,000		
<b>Major Committee on Procurement</b>				
<b>Membership</b>				
Head of EA or representative, Chair	Project Director	Representative appointed by EA	MEF Representative	MEF Representative
Goods above \$500,000	Works above \$3,000,000	Services above \$500,000		

## Goods Procurement Thresholds

Process	Threshold
International Competitive Bidding	All procurement above US\$100,000
Limited International Bidding	Only when specifically allowed under the Project's legal agreements or specifically no objected by the DA and MEF on an exceptional basis
National Competitive Bidding	All procurement above US\$20,000 and below US\$ 100,000
Shopping With Advertising	All procurement above US\$5,000 and below US\$20,000
Shopping Without Advertising	All procurement below US\$5,000
Petty cash/purchase order	Procurement below US\$500
Direct Contracting	Only when specifically allowed under the Project's legal agreements or specifically no objected by the DA and MEF on an exceptional basis



## Works Procurement Thresholds

Process	Threshold
International Competitive Bidding	All procurement above US\$300,000
National Competitive Bidding	All procurement above US\$40,000 and below US\$ 300,000
Shopping With Advertising	All procurement above US\$5,000 and below US\$40,000
Shopping Without Advertising	All procurement below US\$5,000
Direct Contracting	Only when specifically allowed under the Project's legal agreements or specifically no objected by the DA and MEF on an exceptional basis
Force Account	Only when specifically allowed under the Project's legal agreements or specifically no objected by the DA and MEF on an exceptional basis

## Services Procurement Thresholds

Process	Threshold
All services procurement requirements above \$100,000 must be advertised internationally. All contract awards must be advertised in accordance with the DA's procedures.	
Quality Based Selection	Only when specifically allowed under the Project's legal agreements or specifically no objected by the DA and MEF on an exceptional basis
Quality Cost Based Selection, International	All procurement above US\$100,000
Quality Cost Based Selection, National	All procurement below US\$100,000 and above \$50,000 and only when the shortlist comprises of national consultants qualified to undertake the assignment.
Selection Under a Fixed Budget	Not used on ADB funded projects, No threshold. Only when specifically allowed under the Project's legal agreements or specifically no objected by the DA and MEF on an exceptional basis
Least Cost Based Selection	Not used on ADB funded projects. Only when specifically allowed under the Project's legal agreements or specifically no objected by the DA and MEF on an exceptional basis
Selection Based Upon Consultants Qualifications	All procurement below US\$50,000
Single Source Selection	Only when specifically allowed under the Project's legal agreements or specifically no objected by the DA and MEF on an exceptional basis
Selection of Individual Consultants	Only when specifically allowed under the Project's legal agreements or specifically no objected by the DA and MEF on an exceptional basis

**In the event of a conflict between the values stated above for goods, works and services and the project specific agreements, the project specific agreement shall prevail.**

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