

GUIDELINES FOR PROCUREMENT
UNDER
THE JAPANESE GRANT

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I. GENERAL

1. Introduction

These Guidelines set forth the general rules to be followed by the Government of the country which is to receive a Japanese Grant (hereafter referred to as "the Grant") in procuring products and services for a development project (hereafter referred to as "the Project") which is agreed upon in the Exchange of Notes ("the E/N") between the governments of the recipient country and Japan.

Japan International Cooperation Agency ("JICA") expedites, on behalf of the Government of Japan, the Grant's execution procedures inclusive of the above-mentioned procurement.

The rights and obligations of the Government of the recipient country, vis-à-vis tenderer(s) for the products and services to be procured for the Project, are governed by the tender documents issued by the Government of the recipient country. The Government of the recipient country is requested to keep JICA informed of the progress and the current situation of the procurement process under the Grant so that the latter can obtain assurance that the

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Project is being executed in a proper and smooth manner.

The Guidelines do not apply to the procurement of consulting services by the Government of the recipient country.

2. Eligible Source Countries

To be eligible for procurement under the Grant, products shall be those produced in eligible source countries of which scope is set forth in the E/N.

Procurement from a country other than Japan or recipient country can be made in accordance with the E/N with the prior consent of the Government of Japan.

3. Contractor

The contractor shall be Japanese nationals who are capable of carrying out the work under the Grant properly. The term Japanese nationals whenever used in these Guidelines means Japanese physical persons or Japanese juridical persons controlled by Japanese physical persons.

4. Procurement Procedures

4 - 1. Competitive Tendering

The Grant is required to be used with due attention to considerations of economy and efficiency as well as non-discrimination among tenderers who are eligible to provide the products and services.

JICA considers that Competitive Tendering is the best procedure to satisfy these principles.

4-2. Procurement Procedures other than Competitive Tendering

Alternative procedures can be used when special circumstances render Competitive Tendering to be inappropriate. The Government of the recipient country should consult with JICA regarding alternatives. These alternatives can be used under such circumstances as follows :

- (1) Where the Government of the recipient country has adequate reasons for wishing to procure spare parts for existing equipment ;
- (2) Where the Government of the recipient country has adequate reasons for wishing to maintain the continuity of services being provided under an existing contract ;
- (3) Where the number of qualified suppliers or contractors is limited ;
- (4) Where the scale of the procurement is so small that it is doubtful that potential tenderers would be interested, and the advantages of Competitive Tendering would be outweighed by the administrative burden involved, and
- (5) Where emergency procurement is required.

In the above-mentioned cases the following procurement procedures may, as appropriate, be used provided that such

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use is in a manner that complies with the Competitive Tendering procedures to the fullest possible extent:

- (1) Selective Tendering;
- (2) Direct Contracting.

5. Type of Contract

The contract should be concluded on the basis of a lump sum price.

6. Size of Contract

In the interests of obtaining the broadest possible competition, any one contract for which a tender is invited should, whenever feasible, be of a size large enough to attract tenderers. On the other hand, if it is technically and administratively possible to divide the Project into specialized contracts, and such division is likely to result in the broadest possible competition, the Project should be so divided.

7. Prequalification of Tenderers

Prequalification is advisable for large or complex work and, exceptionally, for custom-designed equipment and specialized services to insure, in advance of tendering, that the invitation to tender is extended only to those who are capable.

Prequalification should be based entirely upon the capability of potential tenderers to perform the particular

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work satisfactorily, taking into account, in particular, their (1) experience and past performance under similar contracts; (2) capabilities with respect to personnel, equipment and plant, and (3) financial position. The invitation to prequalify for a specific contract should be advertised and notified as described in paragraph 8 below. A clear statement of the scope of the contract and the requirements for qualification should be sent to all those who wish to be considered pre-qualifiable. As soon as prequalification is completed, the tender documents should be issued to the qualified tenderers. All such tenderers that meet the specified criteria should be allowed to tender.

8. Advertising

A systematic manner of advertising should be used so that all potential tenderers have ample opportunity to learn of and to participate in the tender. Invitation to prequalify or to tender therefore should be advertised in at least one newspaper in general circulation in the recipient country (or neighboring countries) or Japan and in the official gazette, if any, of the recipient country. Major items to be included in the advertisement are as follows:

- (1) Name of the Project;
- (2) Brief description of the Project;
- (3) Name of the executing agency of the Project;
- (4) Qualification required of tenderer;
- (5) Date, hour, and place of the delivery of tender.

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documents (date, hour and place of the delivery of prequalification documents, in case prequalification is used), and

(6) Other relevant, important information that may be needed to decide whether to submit a tender.

9. Language

The tender invitation, tender documents and contracts should be prepared in one of the languages customarily used in international commercial transactions: English, French or Spanish.

II. TENDER DOCUMENTS

1. General

Tender documents should provide all information necessary to enable preparation of his tender for the products and services to be procured. They should generally include :

- (1) Instruction to tenderers ;
- (2) Form of tender ;
- (3) Form of contract ;
- (4) Technical specifications, and
- (5) Necessary appendices, etc.

If a fee is charged for the tender documents, it should be reasonable and reflect the cost of their production, and should not be so high as to discourage potential tenderers.

Tender documents shall be prepared by the Government of the recipient country.

2. Reference to the Grant

Tender documents should refer to the Grant using the following language :

"For the purpose of contributing to the execution of (name of the Project stipulated in the E/N) by the Government of (name of the recipient country); the Government of Japan will extend a grant to the Government of (name of the recipient country) in

accordance with the E/N signed on (date of signature)."

3. Clarity of Tender Documents

Tender documents should be so worded as to permit and encourage competitive tendering. They should describe as clearly as possible the products and services to be procured, qualification required of the tenderer, eligible source countries, size of contract, the place and timing of delivery and/or installation, insurance, transportation, bond and warranty as well as other pertinent terms.

In addition, the tender documents, where appropriate, should define the tests, standards, and methods to be employed to judge conformity of the products and services to be procured to the original specifications.

Drawings should be consistent with the text of the technical specifications.

Any additional information, clarification, correction of errors or alteration of tender documents should be promptly sent to all those who have requested the original tender documents in ample time before the date of tender submission so that tenderers can take appropriate action.

4. Pricing and Currency of Tenders

Tender documents should clearly mention the following:

- (1) The tender price is to be stated in Japanese Yen on the basis of a lump sum price, in conformity

with the specification stipulated in the tender documents, and

(2) The tender price must be firm and final.

5. Tender Bond or Guarantee

The amount of tender bond or other tender guarantees, if required, should not be set so high as to discourage potential tenderers.

The tender bond or other guarantees should be released to unsuccessful tenderers as soon as possible after the award of contract.

6. Method of Tender Evaluation

Tender documents should clearly state the method of tender evaluation. This statement should include mention that the tenderer who, in compliance with the conditions and specifications stipulated in the tender documents, offers the lowest price shall be designated as the successful tenderer.

In case the tender is divided into several packages, the tender evaluation shall be done separately for each.

7. Conditions of Contract

The tender documents should clearly define the conditions of contract such as the rights and obligations of the Government of the recipient country and of the contractor.

7 - 1. Terms of Payment

The conditions of contract should state the terms of payment.

In general, the terms of payment should be as follows:

- (1) In the case of contract for supply of products other than those mentioned in (2) below, the payment will be made upon the completion of shipment of the contracted products.
- (2) In the case of a contract for complex work for construction, or shipbuilding, or custom-designed equipment, a reasonable advance payment and/or regular progress payments may be made available.

7 - 2. Warranties

The conditions of contract should clearly state the time of commencement and the period of any warranties if those warranties are required.

7 - 3. Performance Bond or Guarantee

The contractor may be required to post a performance bond or guarantee (that is, a bank guarantee). Such a bond or guarantee should be of a reasonable amount and should be released as soon as possible after the final payment.

7 - 4. Force Majeure

The conditions of contract should contain a clause stating that failure on the part of the contractor to fulfill obligations under the contract would not be considered a

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default if such failure is the result of an event of force majeure as defined in the conditions of contract.

7 - 5: Settlement of Disputes

Provisions dealing with the settlement of disputes should be included in the conditions of contract. It is advisable that the provisions be based on the "Rules of Conciliation and Arbitration" prepared by the International Chamber of Commerce.

8. Specifications

8 - 1. Clarity

Specifications should set forth as clearly and precisely as possible the work to be carried out, the products and services to be supplied and the place of delivery or installation.

Drawings should be consistent with the text of specifications; where they are not, the text shall govern.

The specifications should identify the main factors or criteria to be taken into account in evaluating and comparing tenders. The specifications should be so worded as to permit and encourage the widest possible competition.

8 - 2. Brand Names

Technical specifications should be based on relevant characteristics and performance requirements.

Reference to brand names, catalogue numbers or similar classifications should be avoided unless they are particular spare parts.

8 - 3. Standards

In the event that specifications require products to comply with industrial standards, specifications in the tender documents should state that the products meeting the Japan Industrial Standards (JIS) or other internationally accepted standards which insure an equal or higher quality than the standards mentioned, will also be accepted.

III. OPENING OF TENDERS, EVALUATION AND AWARD OF CONTRACT

1. Time Interval between Invitation and Submission of Tenders

The time allowed for preparation and submission of the tenders should be determined with due consideration of the particular circumstances of the Project and the size and complexity of the contract.

Generally, not less than 30 days from the date of invitation to tender should be allowed.

2. Procedures for Opening of Tenders

The date, hour and place of the latest receipt as well as of the opening of tenders should be announced at the time of invitation. All tenders should be opened in the presence of tenderers or their representatives at the fixed time and place.

Tenders received after the announced time of the latest receipt should be returned unopened.

The names of the tenderers and total amount of each tender should be read aloud and recorded.

3. Clarification or Alteration of Tenders

No tenderer should be permitted to alter his tender

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after the tenders have been opened. Clarifications not changing the substance of the tender may be accepted.

The Government of the recipient country may ask any tenderer for a clarification of his tender but should not ask any tenderer to change the substance or price of his tender.

4. Process to be Confidential

After the public opening of the tenders, information relating to the examination, clarification and evaluation of tenders and recommendations concerning award should not be disclosed to tenderers or other persons not officially concerned with this process, until the award of contract is announced.

5. Examination of Tenders

Following the opening of tenders, it should be ascertained that (1) computations are free of material errors, (2) the tenders are substantially responsive to the tender documents, (3) the required certificates have been provided, (4) the required securities have been provided, (5) documents have been properly signed, and (6) the tenders are otherwise generally in order. If a tender does not substantially conform to the specifications, or contains inadmissible reservations or is otherwise not substantially responsive to the tender documents, it should be rejected. A technical analysis should then be made to evaluate each

responsive tender and to enable tenders to be compared.

6. Evaluation of Tenders

Tender evaluation shall be consistent with the terms and conditions stated in the tender documents.

Those tenders which substantially conform to the technical specifications, and are responsive to other stipulations of the tender documents, shall be judged on the basis of the submitted price, and the tender with the lowest submitted price shall be designated as the successful tenderer.

7. Evaluation Report

A detailed evaluation report of tenders, giving the reasons for the acceptance or rejection of tenders, shall be prepared by the Government of the recipient country.

8. Rejection of Tenders

All tenders should not be rejected nor a new tender be invited using the same specifications solely for the purpose of obtaining lower prices in the new tender, except in the case where the lowest tender exceeds the cost estimates. Rejection of all tenders may only be justified when tenders do not comply with the tender documents.

If all tenders are rejected, the Government of the recipient country should review the causes of the rejection.

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and consider revision of the specifications called for in the original invitation to tender.

9. Award of Contract

The contract shall be awarded, within the period specified for the validity of tender, to the tenderer who, in compliance with the conditions and specifications stipulated in the tender documents, offers the lowest price.

No tenderer should be required, as a condition of the award, to undertake responsibilities or work not stipulated in the tender documents.

IV. CONTRACT AND VERIFICATION

1. General

In executing the Project, so as to procure products and services, the Government of the recipient country concludes, in accordance with the E/N, contract (s) with Japanese contractor (s). The contract thus concluded becomes effective only after the verification by the Government of Japan. The contract, which is prepared as two identical documents, shall be submitted by the Government of the recipient country to JICA for examination. Through this pre-verification process, JICA confirms that the contract is eligible for the Grant. The Government of Japan verifies the contract in accordance with the E/N after pre-verification by JICA.

2. Reference to the Exchange of Notes

The contract shall refer to the E/N as follows ;

"The Government of Japan extends its grant to the Government of (name of the recipient country) on the basis of the Exchange of Notes signed on (day, month, year) between the two Governments concerning the (name of the Project)."

3. Scope of Work

The contract shall clearly state all the products and

services to be procured under the Grant.

In case a contract involves products or services which are not covered by the E/N, such a contract cannot be verified by the Government of Japan.

4. Period of Execution

The contract shall clearly stipulate the period of execution of work; that period shall not extend beyond the date until when the Grant is available in accordance with the E/N in its original or amended form.

5. Contract Price

The total amount of contract prices shall not exceed the amount referred to in the E/N.

The contract price shall be precisely and correctly stated in Japanese Yen in the contract using both words and figures. If there is a difference between the price in words and that in figures, the price in words is deemed correct.

6. Payment Method

The contract shall, in accordance with the E/N, state that payment shall be made through an authorized foreign exchange bank of Japan in Japanese Yen under an Authorization to Pay (A/P) issued by the Government of the recipient country or its designated authority.

7. Responsibilities and Obligations of the Government of the Recipient Country

The contract shall clearly state the responsibilities and obligations of the Government of the recipient country in accordance with the E/N.

8. Validity of Contract

The contract shall clearly state that it shall become effective upon its verification by the Government of Japan.

9. Amendment

If the contract requires amendment, it shall be done in the form of a contract of amendment, referring to the contract presently in force.

The contract of amendment shall clearly state that:

- (1) All the clauses except that which is or are amended, remain unchanged.
- (2) The contract of amendment shall become effective upon its verification by the Government of Japan.

**If application of the Guidelines is inconsistent with the laws and regulations of the Government of the recipient country, the Government of the recipient country is requested to consult with JICA.*

