

JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)
COMISION EJECUTIVA PORTUARIA AUTONOMA (CEPA)

THE DETAILED DESIGN
ON
PORT REACTIVATION PROJECT IN LA UNION PROVINCE
OF
THE REPUBLIC OF EL SALVADOR

FINAL REPORT

(DRAFT) BIDDING DOCUMENTS

Package C: Procurement of Floating Equipment

VOLUME I-C

- Section 1 Instructions to Bidders
- Section 2 Bid Forms
- Section 3 Contract Forms
- Section 4 Conditions of Contract

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NIPPON KOEI CO., LTD.

THE DETAILED DESIGN ON
PORT REACTIVATION PROJECT IN LA UNION PROVINCE

FINAL REPORT

(DRAFT) BIDDING DOCUMENTS
Package C: Procurement of Floating
Equipment, Volume I-C

OCTOBER 2002 NIPPON KOEI

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COMISION EJECUTIVA PORTUARIA AUTONOMA (CEPA)

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ON
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OF
THE REPUBLIC OF EL SALVADOR**

FINAL REPORT

(DRAFT) BIDDING DOCUMENTS

Package C: Procurement of Floating Equipment

VOLUME I-C

<i>Section 1</i>	<i>Instructions to Bidders</i>
<i>Section 2</i>	<i>Bid Forms</i>
<i>Section 3</i>	<i>Contract Forms</i>
<i>Section 4</i>	<i>Conditions of Contract</i>

OCTOBER 2002

NIPPON KOEI CO., LTD.



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Invitation to Bid

LA UNION PORT DEVELOPMENT PROJECT

Bidding Documents for Package C : Procurement of Floating Equipment Volume I

Invitation to Bid

CONTENTS

	Page
Invitation to Bid	1

LA UNION PORT DEVELOPMENT PROJECT
PACKAGE C : PROCUREMENT OF FLOATING EQUIPMENT

INVITATION TO BID

Date: *(Date of issuance of Invitation)*

Loan No. JBIC ES-P5

Bidding No.

1. The Government of the Republic of El Salvador has received an ODA (Overseas Development Assistance) Loan from the Japan Bank for International Cooperation (hereinafter referred to as "JBIC") toward the cost of the La Unión Port Development Project, and intends to apply the proceeds of the loan to payments under this Contract. Disbursement of an ODA Loan by JBIC will be subject, in all respects, to the terms and conditions of the Loan Agreement ES-P5 dated October 25, 2001, including the disbursement procedures and the "Guidelines for Procurement under JBIC ODA Loans". No party other than the Government of the Republic of El Salvador shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, the Government of the Republic of El Salvador will take appropriate measures for financing.
2. JBIC requires that bidders and contractors, as well as the Government of the Republic of El Salvador, under contracts funded with JBIC ODA Loans and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JBIC;
 - (a) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
 - (b) will recognize a contractor as ineligible, for a period determined by JBIC, to be awarded a contract funded with JBIC ODA Loans if it at any times determines that the contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with JBIC ODA Loans or other Japanese ODA.
3. The Comisión Ejecutiva Portuaria Autónoma (CEPA), the Project executing agency of the Government of the Republic of El Salvador (hereinafter referred to as "the Purchaser") invites sealed bids from prequalified bidders for the design, manufacture, delivery and commissioning of two (2) units of tugboat (hereinafter referred to as "the Goods") with the following main features, under Package C: Procurement of Floating Equipment:
 - Design, building, official sea trial, delivery to the site, and demonstration trial of two (2) steel-hulled twin screw type tugboats, each equipped with twin diesel propulsion engines with a total output of 2,646 kW (3,600 PS) and two 360° steerable propellers (see more details in the Appendix hereto); and
 - Training of the Purchaser's personnel on the operation and maintenance of the above-mentioned tugboats.
4. Bidders may obtain further information from, and inspect and acquire the Bidding Documents at the office of the Purchaser at the following address:

Unidad de Adquisiciones y Contrataciones Institucional (UACI)
Comisión Ejecutiva Portuaria Autónoma (CEPA)
Edificio Torre Roble, 5th Floor
Boulevard de Los Héroes
San Salvador, El Salvador
Tel. No.
Fax No.

5. A complete set of Bidding Documents may be purchased by interested prequalified bidders on submission of a written application to the above office, and upon payment of a non refundable fee of US\$

Payment can be made in cash or by certified check addressed to
.....

6. All bids must be accompanied by a security of US\$ 200,000, and must be delivered to Unidad de Adquisiciones y Contrataciones Institucional, at the address indicated in Clause 4 above, not later than 9:00 a.m. on, 200... Bids will be opened immediately thereafter in the presence of bidders' representatives who choose to attend.
7. The estimated date of award is, 200...

Section 1

Instructions to Bidders

LA UNION PORT DEVELOPMENT PROJECT

Bidding Documents for Package C : Procurement of Floating Equipment

Volume I

Section 1: Instructions to Bidders

CONTENTS

<u>Clause</u>		<u>Page</u>
A. General		
1.	Source of Fund	1-1
2.	Scope of Bid	1-1
3.	Eligible Bidders	1-2
4.	Qualification of the Bidder	1-3
5.	One Bid per Bidder	1-5
6.	Cost of Bidding	1-6
7.	Assurance	1-6
B. Bidding Documents		
8.	Contents of Bidding Documents	1-6
9.	Clarification of Bidding Documents	1-6
10.	Amendment of Bidding Documents	1-6
C. Preparation of Bids		
11.	Language and Measurement System of Bid	1-7
12.	Documents Comprising the Bid	1-7
13.	Bid Prices	1-8
14.	Currencies of Bid and Payment	1-9
15.	Period of Validity of Bid	1-9
16.	Documents Establishing the Goods' Conformity to the Bidding Documents	1-9
17.	Bid Security	1-10

Clause	Page
18. Alternative Proposals by Bidders	1-11
19. Format and Signing of Bid	1-11
D. Submission of Bids	
20. Sealing and Marking of Bids	1-11
21. Deadline for Submission of Bids	1-12
22. Late Bids	1-12
23. Modification and Withdrawal of Bids	1-12
E. Bid Opening and Evaluation	
24. Bid Opening	1-13
25. Process to be Confidential	1-14
26. Clarification of Bids	1-14
27. Preliminary Examination of Bids	1-14
28. Evaluation and Comparison of Bids	1-15
29. Contact with the Purchaser	1-15
30. Purchaser's Right to Accept any Bid and to Reject any or all Bids	1-15
F. Award of Contract	
31. Postqualification and Award	1-16
32. Notification of Award	1-16
33. Signing of Agreement	1-16
34. Performance Security	1-17

SECTION 1. INSTRUCTIONS TO BIDDERS

A. GENERAL

- 1. Source of Funds**
- 1.1 The Government of the Republic of El Salvador has received an ODA (Overseas Development Assistance) Loan from the Japan Bank for International Cooperation (hereinafter referred to as "JBIC") toward the cost of the La Unión Port Development Project (hereinafter referred to as "the Project"), and intends to apply a portion of the proceeds of the loan to payments under this Contract. Disbursement of an ODA Loan by JBIC will be subject, in all respects, to the terms and conditions of the Loan Agreement ES-P5 dated October 25, 2001, including the disbursement procedures and the "Guidelines for Procurement under JBIC ODA Loans". No party other than the Government of the Republic of El Salvador shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, the Government of the Republic of El Salvador will take appropriate measures for financing.
- 1.2 JBIC requires that bidders and contractors, as well as the Comisión Ejecutiva Portuaria Autónoma (CEPA) of the Government of the Republic of El Salvador, under contracts funded with JBIC ODA Loans and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JBIC;
- (a) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
 - (b) will recognize a contractor as ineligible, for a period determined by JBIC, to be awarded a contract funded with JBIC ODA Loans if it at any times determines that the contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with JBIC ODA Loans or other Japanese ODA.
- 2. Scope of Bid**
- 2.1 The Comisión Ejecutiva Portuaria Autónoma (CEPA), an executing agency of the Government of the Republic of El Salvador (hereinafter referred to as "the Purchaser") wishes to receive bids for the for the supply and delivery of Floating Equipment under Package C (hereinafter referred to as "the Goods"), which consist of the following:
- Design, building, official sea trial, delivery to the site, and demonstration trial of two (2) tugboats with the following main features, including all equipment, spare parts and tools:
 - Type: Steel-hulled twin screw type, equipped with two 360° steerable propellers
 - Main engine: Twin diesel propulsion engines with a total output of 2,646 kW (3,600 PS)

- Bollard pull: Mean maximum bollard pull on sea trial condition at maximum continuous output of the engine: 441 kN (45 tonf) ahead
- Service speed: On fully loaded condition at 85% rated output of the main engines with 15% sea margin: 12.5 knots.
- Training of the Purchaser's personnel on the operation and maintenance of the above-mentioned tugboats.

2.2 All bids shall be completed and submitted to the Purchaser in accordance with these Instructions to Bidders.

2.3 The successful bidder will be expected to complete the supply and delivery of the whole Goods within 16 months from the Date of Commencement.

3. Eligible Bidders

3.1 This Invitation to Bid is open to only the prequalified bidders for the Contract as notified by the Employer, and under the following conditions.

(a) A bidder (including all members of a joint venture and specialist subcontractors) shall not be either:

- (i) a firm or an organization which has been engaged by the Employer to provide consulting services for the preparation related to procurement for or implementation of the Project; or
- (ii) an associate/affiliate (inclusive of a parent firm) of a firm or an organization mentioned in subparagraph (a) above; or
- (iii) a firm or an organization who lends, or temporarily seconds, his personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the Project, if the personnel would be involved in any capacity on the same Project.

(b) Any bidder (including all members of a joint venture and specialist subcontractors) shall not be in any of the following situations:

- (i) To have been condemned previously through firm sentence, and not being entitled to his rights, due to crimes against the Public Treasury, and the ones considered in the Ley Contra el Lavado de Dinero y de Activos (Law against Money and Assesment Washing);
- (ii) To have been declared in status of suspension of payments for his obligations or declared in bankruptcy or in credit incapacity, if he is not rehabilitated;
- (iii) To have been declared guilty for the termination of any contract concluded with any organizations, during the last five years counting from the captioned declaration;

- (iv) To have failed to fulfill fiscal, municipal and social security obligations;
 - (v) To have provided false information required in the Bidding Documents;
 - (vi) Bidding as a foreign legal person but not being legally constituted in conformity with the regulations of his country, or has not complied with national law and regulations applicable to his operation; and
 - (vii) To have evaded the responsibility under other contracts, by any machination, legal contrivance or fact.
- (c) Notwithstanding the conditions set forth in Item (c) above, no one of the following is allowed to bid:
- (i) Members of the Council of Ministers;
 - (ii) Public officials or employees of organizations where they are owners, partners or stockholders with a value of shares higher than 25% of the social capital of the company, or administrators, managers, directors or legal representatives of bidders for the works, goods or services; and
 - (iii) The spouse or person living together, and persons who have any link or relationship up to second grade of affinity and fourth grade of blood relationship, with the public officials mentioned above.

3.2 Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser as the Purchaser may reasonably request.

4. Qualification of the Bidder

4.1 To be qualified for award of Contract, bidders shall:

- (a) submit a written power of attorney authorizing the signatory of the bid to commit the bidder (Form A4); and
- (b) update any information submitted with their applications for Prequalification, which has changed, and update in any case the minimum information indicated below, establishing that the bidder is still meeting the minimum threshold criteria set out in the Prequalification Documents and having adequate experience, financial capacity and technical capability to undertake the Contract.

As a minimum, bidders shall update the following information (Form A5):

- (i) evidence of access to lines of credit and availability of other financial resources;
- (ii) financial predictions for the current year and the two (2) following years, including the effect of known commitments;
- (iii) work commitments acquired since Prequalification; and

(iv) current litigation information.

- 4.2 Bidders shall also submit supplementary documents comprising at least the forms provided in Section 2 (Forms B1 to B10) and any other information deemed necessary to demonstrate the bidder's capabilities to fulfill his duties under the Contract, in accordance with the Specifications and within the time specified in the Bidding Documents.
- 4.3 The prequalified bidder shall retain his shipbuilders and specialist subcontractors unchanged from the prequalification stage. Furthermore, the prequalified bidder as a joint venture or consortium shall not be allowed to change/alter any member of the joint venture or consortium proposed in his Prequalification Documents.
- 4.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements:
- (a) The bid shall include all the information and documents listed in Sub-Clauses 4.1 and 4.2 above;
 - (b) The bid, and in case of a successful bid, the Form of Agreement, shall be signed so as to be legally binding on all partners;
 - (c) One of the partners shall be authorized to be in charge; and this authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners;
 - (d) The partner in charge shall be authorized to incur liabilities, receive payments and receive instructions for and on behalf of any or all partners of the joint venture;
 - (e) All partners of the joint venture shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Bid Form and the Form of Agreement (in case of a successful bid); and
 - (f) A copy of the authenticated agreement entered into by the joint venture partners shall be submitted with the bid (Public Document that proves the existence of an agreement for joint venture of several bidders, or through joint document as required in the origin country).
- 4.5 All documents issued in foreign countries and that will become a part of the bid shall be legalized through one of the following three processes:
- (a) The "APOSTILLE" process established by the Pact No. 12 "Pact Abolishing the Requirements of Legalization for Foreign Public Documents" dated October 5, 1961 in The Hague

Conventions on Private International Law.

- (b) The process established by Article 261 of the Code of Civil Procedures of the Republic of El Salvador which requires that:
 - (i) the documents shall be authenticated by the representative of the Diplomatic Mission or Consulate Office of the Republic of El Salvador in the country where they are issued; and
 - (ii) the documents shall be signed by the Ministry of Foreign Affairs of the country where they are issued and shall be authenticated by the representative of the Ministry of Foreign Affairs of the Republic of El Salvador.
- (c) In the case the documents are issued in the countries that are not listed as Members of The Hague Convention on Private International Law (as described by case (a)), or where there is not a Diplomatic Mission or Consulate Office of the Republic of El Salvador (as described by case (b) above), the documents then shall be legalized by a Diplomatic Mission or Consulate Office of the Republic of El Salvador located in a nearest country.

4.6 Prospective bidders shall, within 7 days from the date of the Invitation for Bids, send by fax (hereinafter, the term "fax" is deemed to include electronic transmission means such as facsimile, cable, and telex) or registered mail, or deliver by hand against receipt, to the Purchaser at the address indicated in the Invitation for Bids a signed "Declaration of Intent to Bid" using the form provided in Section 2 (Form A1).

4.7 Within the period of bid validity, a bidder, either as a company or as a partner in a joint venture, will be disqualified or his bid will be rejected if:

- (a) his parent company, his holding company, his subsidiary company, his Subcontractor (or its parent company/holding company /subsidiary company) is qualified as other bidder for the same package of the Project, either as a company or as a partner in a joint venture; or
- (b) his Subcontractor (or its parent company/holding company /subsidiary company) is named as a Subcontractor/supplier/manufacture in another bid for the same package of the Project.

Notwithstanding the above conditions, however, specialist subcontractors are allowed to participate in several bids.

5. One Bid per Bidder

5.1 Each bidder shall submit only one bid either by himself, or as a partner in a joint venture. A bidder who submits or participates in more than one bid will be disqualified. The bid shall cover the whole of the Goods under Package C. Separate bids for any part or section of the Goods will not be accepted.

6. Cost of Bidding

6.1 The bidder shall bear all costs associated with the preparation and submission of his bid and the Purchaser will in no case be responsible or liable for those costs.

7. Assurance 7.1 The successful bidder will be required to give satisfactory assurance of his ability and intention to deliver the Goods, pursuant to the Contract, within the time set forth therein.

B. BIDDING DOCUMENTS

8. Contents of Bidding Documents 8.1 The Bidding Documents are those stated below and shall be read in conjunction with any Addendum issued in accordance with Clause 10:

Volume I-C Invitation to Bid

Section 1 Instructions to Bidders

Section 2 Bid Forms:
Bid Form, Bid Security, Power of Attorney, Updated Prequalification Information, Joint Venture Agreement, Subcontracting Agreement, and Bid Supplementary Documents

Section 3 Contract Forms:
Contract Agreement, Performance Security, Warranty Security, and Advance Payment Security

Section 4 Part I: General Conditions of Contract
Part II: Special Conditions of Contract

Volume II-C Part I: Bill of Quantities
Part II: Specifications

- 8.2 The bidder is expected to examine carefully the contents of the Bidding Documents. Failure to comply with the requirements of bid submission will be at the bidder's own risk. Pursuant to Clause 16, bids which are not fulfilling completely the requirements of the Bidding Documents will be rejected.

9. Clarification of Bidding Documents 9.1 A prospective bidder requiring any clarification of the Bidding Documents may notify the Purchaser in writing or by fax at the Purchaser's address indicated in the Invitation to Bid.

The Purchaser will respond to any request for clarification which he receives not later than 28 calendar days prior to the deadline for submission of bids. Copies of the Purchaser's response will be forwarded to all purchasers of the Bidding Documents, including a description of the inquiry.

10. Amendment of Bidding Documents 10.1 At any time earlier than 15 days prior to the deadline for submission of bids, the Purchaser may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective bidder, modify the Bidding Documents by issuing addenda.

- 10.2 Any addendum thus issued shall be part of the Bidding Documents pursuant to Sub-Clause 8.1, and shall be communicated in writing or by fax to all purchasers of the Bidding Documents. Prospective bidders shall acknowledge receipt of each addendum by fax to the Purchaser.

- 10.3 To afford prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Purchaser may, at his discretion, extend the deadline for submission of bids, in accordance with Clause 21.

C. PREPARATION OF BIDS

11. Language and Measurement System of Bid

- 11.1 The bid, and all correspondence and documents related to the bid and exchanged between the bidder and the Purchaser shall be written in the English language. Supporting documents and printed literature furnished by the bidder may be in another language provided that they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the bid, the translation shall prevail.
- 11.2 The Metric System of Units shall be employed in the bid, and in all correspondence and documents related to the bid and exchanged between the bidder and the Purchaser
- 11.3 Any documents and certificates issued in foreign countries shall be legalized as specified in Sub-Clause 4.5.

12. Documents Comprising the Bid

- 12.1 The bid submitted by each bidder shall comprise the following:
- (a) Duly filled-in Bid Form (Form A2)
 - (b) Bid Security (Form A3) furnished in accordance with Clause 19
 - (c) Power of Attorney (Form A4) as provided for in Sub-Clause 4.1.(a) or 4.4.(c) as the case may be;
 - (d) Updated information or changes since Prequalification (Form A5) as provided for in Sub-Clause 4.1.(b);
 - (e) Joint Venture/Consortium Agreement (Form A6) as provided for in Sub-Clause 4.4(f), in the case the bidder is a joint venture or consortium;
 - (f) Subcontracting Agreement, if any;
 - (g) Priced Bill of Quantities (Volume II-C, Part I); and
 - (h) Supplementary documents as prescribed in Sub-Clause 4.2.
 - (i) The documents listed in Volume I-C, Section 2 and Volume II-C Part I shall be filled in without exception.
- 12.2 The bid shall be contained in two envelopes as prescribed below:
- Envelope 1: Technical Proposal containing
 - Bid Security (Item (b) above);
 - Power of Attorney (Item (c) above);
 - Updated prequalification information (Item (d) above);
 - Joint Venture/Consortium Agreement (Item (e) above), if any;
 - Subcontracting Agreement (Item (f) above), if any; and
 - Supplementary documents (Item (h) above).

- Envelope 2: Financial Proposal containing

- Bid Form (Item (a) above); and
- Priced Bill of Quantities (Item (g) above) including Schedule of Daywork.

13. Bid Prices

13.1 Unless stated otherwise in the Bidding Documents, the Contract shall be for the whole of the Goods as described in Sub-Clause 2.1, based on the schedule of unit rates and prices submitted by the bidder.

13.2 Prices quoted in the Bill of Quantities shall be entered separately as follows.

(a) For Goods to be supplied from outside the Republic of El Salvador:

- (i) the price of the Goods, quoted CIF port of entry in the Republic of El Salvador;
- (ii) the price of inland transportation, insurance and other local costs incidental to delivery of the Goods from the port of entry to their final destination;

(b) For Goods to be supplied from within the Republic of El Salvador:

- (i) the price of the Goods, quoted ex-factory, ex-warehouse or off-the-shelf, as applicable; and
- (ii) the price of inland transportation, insurance and other local costs incidental to delivery of the Goods to their final destination.

13.3 The rates and prices quoted in the Bill of Quantities shall be inclusive of all relevant foreign taxes and duties but exclusive of all taxes, duties and levies imposed in the Republic of El Salvador with regard to the procurement of equipment and materials and the execution of works under the Contract.

13.4 The estimated amounts of all local taxes, duties and levies payable under the Contract including, but not limited to, IVA (Impuesto al Valor Agregado), business income tax, municipal tax, customs and import duties shall be indicated in the appropriate columns and sections in the Bill of Quantities, as instructed in the Preamble to Bill of Quantities.

The mayoral tax on the Goods or works or services under the Contract will be borne by the Purchaser.

Customs and import duties levied on temporarily imported equipment and materials for the Contract will be exempted in accordance with Decree No. 43 dated May 18, 1994 of the Central American Uniform Customs Code (CAUCA). Payment or exemption of IVA and other taxes and duties shall be decided during the contract negotiation between the Purchaser and the successful bidder, and incorporated in the final Contract Price.

Bidders shall, at their own responsibility, inquire about all local taxes and duties imposable on them under the Contract so as to calculate accurately the amounts of taxes and duties in their bids.

13.5 Prices quoted by the bidder shall remain fixed and valid until completion of the Contract performance and will not be subject to variation on any account except as provided for in Sub-Clauses 3.2 and 15.1 of the General Conditions of Contract (Section 4).

14. Currencies of Bid and Payment

14.1 The unit rates and the prices shall be quoted by the bidder separately in:

- (a) US Dollar for those components which the bidder expects to supply from outside the Republic of El Salvador (referred to as "the foreign currency requirements"); and
- (b) US Dollar for those components which the bidder expects to supply from within the Republic of El Salvador.

14.2 Payment of the contract price shall be made in US Dollar.

15. Period of Validity of Bid

15.1 Bids shall remain valid for a period of 180 calendar days after the date of bid opening specified in Sub-Clause 24.1.

15.2 Notwithstanding Sub-Clause 15.1 above, prior to expiry of the original bid validity period, the Purchaser may request the bidders to extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by fax. A bidder may refuse the request without forfeiting his bid security. A bidder agreeing to the request will not be required or permitted to modify his bid, but will be required to extend the validity of his bid security for the period of the extension, and in compliance with Clause 17 in all respects.

16. Documents Establishing the Goods' Conformity to the Bidding Documents

16.1 The bidder shall furnish in his bid documentary evidence of the Goods' conformity to the Bidding Documents. Such evidence may be in the form of literature drawings, photos, catalogues and data, and shall include:

- (a) a detailed description of the Goods' essential technical and performance characteristics;
- (b) a list, giving full particulars, including available sources and current prices, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods for a period of two years; and
- (c) a clause-by-clause commentary on the Specifications, demonstrating the Goods' responsiveness to those Specifications or a statement of deviations and exceptions to the provisions of the Specifications.

For purposes of the commentary to be furnished pursuant to subparagraph (c) above, the bidder shall note that standards for workmanship, material and equipment, and references to brand names or catalogue numbers, designated by the Purchaser in the Specifications, are intended to be descriptive only and not restrictive. Equipment or materials meeting the Japan Industrial Standards or

other internationally accepted standards which ensure quality to or higher than the standards specified will also be accepted. The bidder may substitute other authoritative standards, brand names and/or catalogue numbers in his bid, provided that it demonstrates to the Purchaser's satisfaction that the substitutions are equivalent or superior to those designated in the Specifications.

Brand names shall be specified only when specific spare parts are required or standardization is necessary.

17. Bid Security

- 17.1 The bidder shall furnish, as part of his bid, a bid security in the amount of US Dollars Two Hundred Thousand (US\$ 200,000).
- 17.2 The Bid Security shall, be in the form of a bond or guarantee from a reputable bank or a bonding or insurance company authorized by the Financial System Superintendence (Superintendencia del Sistema Financiero) of the Republic of El Salvador. The format of the bank guarantee shall be in accordance with the form of Bid Security (Form A3) given in Section 2. The Bid Security shall remain valid for a period of 28 days beyond the original validity period for the bid, and beyond any period of extension subsequently requested under Sub-Clause 15.2.
- 17.3 Any bid not accompanied by an acceptable Bid Security, in accordance with the Clause 17.1 and 17.2, will be rejected by the Purchaser as non-responsive.
- 17.4 The Bid Security of a joint venture shall define as "bidder" all the joint venture partners and list them in the following manner: a joint venture consisting of " _____ " and " _____ ".
- 17.5 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than 28 calendar days after the expiration of the period of bid validity.
- 17.6 The Bid Security of the successful bidder will be returned when the bidder has signed the Agreement and furnished the required Performance Security.
- 17.7 The bid security may be forfeited
- (a) If the bidder withdraws his bid during the period of bid validity period; or
 - (b) If the bidder does not accept the correction of his bid price, pursuant to Sub-Clause 27.3; or
 - (c) In the case of a successful bidder, if it fails within the specified time limit to:
 - (i) Sign the Agreement, or
 - (ii) Furnish the required Performance Security.

18. Alternative

- 18.1 Bids shall be submitted in strict conformity with the requirements and

**Proposals by
Bidders**

specifications of the Bidding Documents. Alternative bids will not be considered. The attention of bidders is drawn to the provisions of Sub-Clause 27.5, regarding the rejection of bids which are not substantially responsive to the terms and conditions and specifications of the Bidding Documents.

**19. Format and
Signing of Bid**

19.1 The bidder shall prepare one (1) original and five (5) copies of the Bidding Documents comprising the bid as described in Clause 12 of these Instructions to Bidders, clearly marked "ORIGINAL" and "COPY" as appropriate. In the event of discrepancy between them, the original shall prevail.

19.2 The original and all copies of the bid shall be typed or written in indelible ink (in the case of copies, photocopies are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder, pursuant to Sub-Clauses 4.1.(a) or 4.4.(c), as the case may be. All pages of the Bid shall be numbered and stamped. The person or persons signing the bid shall initial all pages of the bid where entries or amendments have been made.

In the case the bid is submitted by a joint venture or a consortium, as stipulated in Sub-Clause 4.4, the Bid Form (Form A2) shall be signed by each member of the joint venture or consortium.

19.3 The bid shall contain no alterations, omissions or additions, except those to comply with instructions issued by the Purchaser, or as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

D. SUBMISSION OF BIDS

**20. Sealing and
Marking of Bids**

20.1 The bidder shall seal the original and each copy of the Envelope 1 and Envelope 2 specified in Sub-Clause 12.2 in an inner envelope and an outer envelope, duly marking the envelopes as "ORIGINAL" or "COPY".

20.2 The inner and outer envelopes shall

(a) be addressed to the Purchaser at the following address:

Unidad de Adquisiciones y Contrataciones Institucional (UACI)
Comisión Ejecutiva Portuaria Autónoma (CEPA)
Edificio Torre Roble, 5th Floor
Boulevard de Los Héroes
San Salvador, El Salvador

and

(b) bear the following identification:

- ENVELOPE 1 or ENVELOPE 2
- BID FOR PACKAGE C: PROCUREMENT OF
FLOATING EQUIPMENT FOR LA UNION PORT
DEVELOPMENT PROJECT

- BID REFERENCE NO.
- DO NOT OPEN BEFORE(time and date for bid opening defined in Sub-Clause 24.1).

- 20.3 In addition to the identification required in Sub-Clause 20.2, the inner envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared "late" pursuant to Clause 22.
- 20.4 If the outer envelope is not sealed and marked as prescribed above, the Purchaser will assume no responsibility for the misplacement or premature opening of the bid.
- 21. Deadline for Submission of Bids**
- 21.1 Bids must be received by the Purchaser at the address specified in Clause 20.2 no later than 9:00 a.m. (El Salvador Standard Time) on ~~.....~~ 200.....
- 21.2 The Purchaser may, at his discretion, extend the deadline for submission of bids by issuing an Addendum in accordance with Clause 10, in which case all rights and obligations of the Purchaser and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.
- 22. Late Bids**
- 22.1 Any bid presented by the bidder after the deadline for submission of bids prescribed in Clause 21 will be rejected and returned unopened to the bidder.
- 23. Modification and Withdrawal of Bids**
- 23.1 Bidders may modify or withdraw their bids after bid submission, provided that written notice of the modification or withdrawal is received by the Purchaser prior to the deadline for submission of bids.
- 23.2 The bidder's modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of Clause 20, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL", as appropriate. A withdrawal notice may also be sent by fax but must be followed by a signed confirmation copy.
- 23.3 No bid may be modified subsequent to the deadline for submission of bids.
- 23.3 Withdrawal of a bid during the interval between the deadline for submission of bids and the expiration of the period of bid validity specified in the Form of Bid may result in the forfeiture of the bid security pursuant to Clause 17.

E. BID OPENING AND EVALUATION

- 24. Bid Opening**
- 24.1 The Purchaser will open the Envelopes 1 of the bids, including modified bids made pursuant to Clause 23, in the presence of bidders' designated representatives who choose to attend, at the time, date, and place indicated below:
- Time and date: 9:15 a.m. (El Salvador Standard Time),

Place: Unidad de Adquisiciones y Contrataciones Institucional (UACI),
Comisión Ejecutiva Portuaria Autónoma (CEPA)
at the address indicated in Sub-Clause 20.2

The bidders' representatives who are present shall sign a register evidencing their attendance.

24.2 The envelopes marked "WITHDRAWAL" will be opened first and the name of the bidders read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 will not be opened.

24.3 The bidder's name, the name and number of Bid Package, the presence or absence of the Bid Security, the Power of Attorney, the Envelope 2, the documents listed in Sub-Clause 12.2 for the Envelope 1, and any such other details as the Purchaser may consider appropriate, will be announced and recorded by the Purchaser at the opening.

Any bid submitted without one of the documents listed below will be rejected at the bid opening:

- (a) Bid Security
- (b) Power of Attorney
- (c) Envelope 2

24.4 The Purchaser will prepare a Minutes of Bid Opening, including the information disclosed to those present in accordance with Sub-Clause 24.3. The bidders' representatives will be requested to sign the Minutes.

24.5 The Envelope 2 of each bidder will be signed by the representatives of all bidders and will be kept unopened by the UACI.

24.6 The Purchaser will first evaluate the Technical Proposal in the Envelope 1 and inform the evaluation results to all the bidders, after approval of such results by JBIC. The bidders whose Technical Proposals have been determined to conform to the specifications will then be invited to attend the opening of the Envelope 2: Financial Proposal.

24.7 Upon opening of the Envelope 2, the bidder's name, the name and number of Bid Package, the Bid Prices indicated on the Bid Form, including any alternative Bid Price or deviation, any discounts, the presence or absence of the Priced Bill of Quantities and other documents specified in Sub-Clause 12.2 for Envelope 2, and the proposed Completion Time will be announced and recorded on the Minutes of Bid Opening which will be signed by the members of the UACI Bid Reception and Opening Committee and by the representatives of all the bidders concerned.

25. Process to Be Confidential

25.1 Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of the Contracts shall not be disclosed to bidders or any other persons not

officially concerned with such process until the award to the successful bidder has been announced.

Any effort by a bidder to influence the Purchaser's processing of bids or award decisions shall result in the rejection of the bidder's bid.

26. Clarification of Bids

26.1 To assist in the examination, evaluation and comparison of bids, the Purchaser may, at his discretion, ask any bidder for clarification of his bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by fax, but no change in the price or substance of the bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the bids in accordance with Sub-Clause 27.2.

27. Preliminary Examination of Bids

27.1 The Purchaser will examine the bids to determine whether they are complete, whether any computational errors have been made, whether the required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.

27.2 Arithmetical errors will be rectified on the following basis: If there is a discrepancy between the amounts in figures and in words, the amount in words shall prevail. If there is a discrepancy between the unit price and the total price per item that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price per item will be corrected. If there is a discrepancy between the Total Amount and the sum of the total price per item, the sum of the total price per item shall prevail and the Total Amount will be corrected.

27.3 The amount stated in the Bid Form will be adjusted by the Purchaser in accordance with the above procedure for the correction of errors and shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of bid, his bid will be rejected, and the bid security may be forfeited in accordance with Sub-Clause 17.7 (b).

27.4 Prior to the detailed evaluation, pursuant to Clause 28, the Purchaser will determine the substantial responsiveness of each bid to the Bidding Documents including acceptable quality of the Goods proposed, pursuant to Clause 16. A substantially responsive Bid is one which conforms to all the terms and conditions of the Bidding Documents without material deviation.

27.5 A Bid determined as not substantially responsive will be rejected by the Purchaser and may not subsequently be made responsive by the bidder by correction of the non-conformity.

28. Evaluation and Comparison of Bids

28.1 The Purchaser will evaluate and compare only the bids determined to be fully responsive in accordance with Clause 27 and qualified for award of Contract in accordance with Clause 4.

28.2 The Purchaser's evaluation of a Bid will exclude and not take into account:

- (a) in the case of Goods to be provided from outside the Republic of El Salvador, customs duties and other similar import duties

and taxes which may be levied on the Goods; and

- (b) in the case of Goods partially or wholly manufactured within the Republic of El Salvador or Goods of foreign origin already located in this country, sales and other similar taxes which may be levied on the finished Goods.

28.3 The comparison will be based on:

- (a) the CIF port-of-entry price and transport and delivery costs of the Goods to be supplied from outside the Republic of El Salvador; and
- (b) the ex-factory / ex-warehouse / off-the-shelf price and transport and delivery costs of the Goods to be supplied from within the Republic of El Salvador.

28.4 The evaluation will also take into account the price and other commercial features of the bid. In addition, it may also take into account such other criteria as:

- (a) Contractual and commercial deviations;
- (b) Delivery schedule;
- (c) Operating costs of the proposed Goods;
- (d) Functional guarantee of the proposed Goods;
- (e) Local handling and transportation;
- (f) Proposed prices of optional spare parts; and
- (g) Availability of spare parts and maintenance service facilities.

29. Contact with the Purchaser

29.1 Except for the purpose of bid clarification as provided in Clause 26, no bidder will contact the Purchaser on any matter relating to his bid, from the time of bid opening to the time of Contract award.

29.2 Any effort by a bidder to influence the Purchaser in his decision in respect of bid evaluation, bid comparison or Contract award may result in the rejection of the bidder's bid and his Bid Security may be forfeited

30. Purchaser's Right to Accept any Bid and to Reject any or all Bids

30.1 Notwithstanding Sub-Clause 31.4, the Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of the Contracts, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the Purchaser's action.

30.2 A bidder whose bid is not accepted shall have no recourse against the Purchaser nor receive any indemnity whatsoever.

F. AWARD OF CONTRACT

31. Postqualification and Award

31.1 The Purchaser will determine to his satisfaction whether the bidder selected as having submitted the lowest-evaluated and responsive Bid,

is qualified to satisfactorily perform the Contract. The examination shall be carried out in accordance the following sub-paragraphs 31.2 to 31.4 and Annex 1 of the Procurement Guidelines of JBIC ODA Loans.

- 31.2 The determination will take into account the bidder's financial, technical and production capabilities, and the Goods' quality. It will be based upon an examination of the updated prequalification information pursuant to Sub-Clause 4.1(b) and the documentary evidences submitted by the bidder, pursuant to Clause 16, as well as such other information as the Purchaser deems necessary and appropriate.
- 31.3 An affirmative determination will be a prerequisite for award of the Contract to the bidder. A negative determination will result in rejection of his bid.
- 31.4 The Purchaser will award the Contract to the successful bidder whose bid has been determined to the lowest evaluated, responsive bid, provided further that the bidder is determined to be qualified to satisfactorily perform the Contract.
- 32. Notification of Award**
- 32.1 Prior to expiration of the period of bid validity prescribed by the Purchaser, the Purchaser will notify the successful bidder by registered letter, or by fax confirmed by registered letter, that his bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") shall name the sum which the Purchaser will pay the Supplier in consideration of the execution and completion of the Contract by the Supplier as prescribed by the Contract (hereinafter and in the Conditions of Contract called "the Contract Price").
- 32.2 The notification of award will constitute the formation of the Contract.
- 33. Signing of Agreement**
- 33.1 At the same time that the Purchaser notifies the successful bidder that his bid has been accepted, the Purchaser will send to the successful the Form of Contract Agreement provided in the Bidding Documents, incorporating all agreements between the parties.
- 33.2 Within 14 days of receipt of such Form of Contract Agreement, the successful bidder shall sign and date and return it to the Purchaser together with the Performance Security pursuant to Sub-Clause 34.1.
- 33.3 The successful bidder will be required to pay the stamp duty, if any, at the time of signing of the Agreement.
- 33.4 Upon fulfillment of Sub-Clause 33.2 above, the Purchaser will promptly notify the other bidders that their bids have been unsuccessful, and their Bid Security will be returned as promptly as possible, in accordance with Sub-Clause 17.5.
- 34. Performance Security**
- 34.1 Within 28 days of the receipt of Notification of Award from the Purchaser, the successful bidder shall furnish to the Purchaser a Performance Security in an amount equivalent to 10% percent of the Contract Price in accordance with Clause 11 of the Conditions of Contract (Section 4). The form of Performance Security provided in

Section 3 of the Bidding Documents shall be used.

- 34.2 Failure of the successful bidder to comply with the requirements of Clauses 33 or 34 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security.