

**Procurement Guidelines for
Grant Aid for Community Empowerment**

August, 2006

Ministry of Foreign Affairs of Japan

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PART I. Basic Principles

I. Introduction

These Guidelines set forth the general rules to be followed in the procurement of products and services by the Grant Aid for Community Empowerment (hereinafter referred to as "GACE") which is agreed upon by the Exchange of Notes (hereinafter referred to as "the E/N") between the Government of Japan and the Government of the recipient country (hereinafter referred to as "the Recipient" that is defined in II. 2 below).

The application of these Guidelines shall be stipulated in the Agreed Minutes on Procedural Details (hereinafter referred to as "the A/M") signed together with the E/N between the Government of Japan and the Recipient.

The rights and obligations of the Recipient, procurement agent (hereinafter referred to as "the Agent") and the firm who supplies or provides products and services for GACE (hereinafter referred to as "the Firm" that is defined in II. 5. below) are governed by the contract concluded between the Recipient and the Agent (referred to as "employment contract" in the A/M and hereinafter referred to as "the Agent Agreement"), by the tender documents and by the contracts concluded between the Agent and the Firm, and not by these Guidelines.

II. Parties Concerned

In these guidelines, relations among the Government of Japan, the Recipient, the Agent and the Firm are as follows:

1. The Government of Japan is the provider of GACE.
2. The Recipient is the beneficiary of the Grant and is responsible for the execution of GACE.
The Recipient entrusts the Agent with the procurement of products and services.
3. JICA is designated by the Government of Japan as an organization responsible for necessary works aiming at expediting the proper execution of the Grant.
4. The Agent is an impartial and specialized organization which provides procurement services of products and services on behalf of the Recipient according to the Agent Agreement with the Recipient. The Agent is recommended to the Recipient by the Government of Japan and agreed between the two Governments in the A/M.
5. The Firm is the provider of products and services for GACE in accordance with the contract with the Agent.

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Part II. Guidelines for the Use of the Agent

I. General

1. Role of the Agent

The Agent shall conduct the procurement services of products and services for GACE on behalf of the Recipient. The Agent shall render services with due expertise and in a fair and impartial manner to ensure the smooth and proper execution of GACE in order to contribute to fulfilling the purpose of the assistance.

The Agent shall work to maintain rights and interests of the Recipient and maximize the impacts of Japan's assistance. The Agent is also required to pay attention to minimizing the burden of the Recipient.

2. Agent Agreement

The Recipient shall conclude an Agent Agreement within one month after the date of entry into force of the E/N, with the Agent in accordance with the A/M.

After the approval of the Agent Agreement by the Government of Japan in a written form, the Agent shall conduct services referred to paragraph 3 below on behalf of the Recipient.

3. Services of the Agent

The Agent shall conduct the services referred to in the Appendix II of the A/M.

II. Approval of the Agent Agreement

1. General

The Agent Agreement, which is prepared as two identical documents, shall be submitted to the Government of Japan by the Recipient through the Agent. The Government of Japan confirms whether or not the Agent Agreement is concluded in conformity with the E/N, the A/M and these Guidelines, and approves the contract.

The Agent Agreement concluded between the Recipient and the Agent shall become effective after the approval by the Government of Japan in a written form.

2. Reference to the E/N

The Agent Agreement shall refer to the E/N as follows: "the Government of Japan executes the Grant Aid for Community Empowerment to the Government of (name of recipient country) in accordance with the E/N signed on (date of signature) between the two Governments".

3. Scope of the Services

The scope of the Agent's services shall be clearly specified in the Agent Agreement. The Agent Agreement with the scope of Agent's services in conflict with the E/N and the A/M shall not be approved by the Government of Japan.

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4. Completion of the Services

The Agent Agreement shall clearly state that when the entire amount of the fund transferred from the Recipient's Account in the name of the Recipient at a Bank in Japan (hereinafter referred to as "the Recipient Account") to the Account in the name of the Agent (hereinafter referred to as "the Procurement Account") has been paid for the procurement of products and services, or when the remaining amount of the said fund has been transferred to the Recipient Account, the Agent's services shall be regarded as complete.

5. Agent's Fees

The amount and currency or calculations of Agent's fees shall be precisely and correctly stated in the Agent Agreement. The conditions and amount or calculation for additional fees to which the Agent is entitled shall be clearly stated.

6. Approval of the Agent Agreement

The Agent Agreement shall clearly state that it shall become effective after the approval by the Government of Japan in a written form.

7. Payment Methods

The Agent Agreement shall stipulate that "regarding all transfers of the fund to the Agent, the Recipient shall designate the Agent to act on behalf of the Recipient and issue a Blanket Disbursement Authorization (hereinafter referred to as "the BDA") to conduct the transfer of the fund (hereinafter referred to as "Advances") to the Procurement Account from the Recipient Account."

The Agent Agreement shall clearly state that the payment to the Agent shall be made in Japanese yen from the Advances and that the final payment to the Agent shall be made when the total Remaining Amount become less than 3 % of the Grant and its accrued interest.

8. Force Majeure

The Agent Agreement shall contain the clause stipulating "failure on the part of the Agent to fulfill obligations under the Agent Agreement would not be considered a default if such a failure is the result of an event of force majeure defined in the conditions of the Agent Agreement."

9. Responsibilities and Obligations of the Recipient

The Agent Agreement shall clearly state the responsibilities and obligations of the Recipient in accordance with the E/N.

10. Amendment of the Agent Agreement

If an amendment of the Agent Agreement is required, the amended Agent Agreement shall clearly state that:

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- (1) all the clauses except that which is amended, remain unchanged.
- (2) the amendment of the contract shall become effective only after the approval by the Government of Japan in a written form.



Part III. Guidelines for the Procurement of Products and Services

I. General

1. Products and Services Eligible for Procurement

Products and services to be procured shall be selected from those defined in the E/N and the A/M.

The guidelines issued by the Agent shall be applied to the selection of consultants (persons or juridical persons including universities, NGOs, and others with expertise and experience) necessary for implementation of the projects in the Grant Aid.

2. Firms

In principles, a Firm of any nationality could be contracted as long as the Firm satisfies the conditions specified in the tender documents.

3. Misprocurement

The Government of Japan requires that, under contracts funded by the Grant, tenderers and Firms observe the highest standard of ethics during the procurement and execution of such contracts. In this regard, the Government of Japan shall demand that the Recipient and the Agent shall reject a tender if it determines that the tenderer has engaged in corrupt or fraudulent practices in competing for the contract in question. The Government of Japan shall recognize a Firm as ineligible, for a period determined by the Government of Japan, to be awarded a contract funded by the Grant if it at any time determines that the Firm has engaged in corrupt or fraudulent practices in competing for, or in executing any other contracts funded by the Grant or other Japanese ODA.

When the authorities concerned of the Government of Japan decide to impose against a firm such administrative sanctions as debarment, exclusion of goods manufactured, etc., from Japanese governmental procurement, the Government of Japan may ask the Recipient and the Agent to exclude the goods manufactured by the sanctioned firm from the procurement under the Grant, for the period of the sanctions by such authorities concerned of the Government of Japan.

II. Procurement Procedures

1. Transfer of the fund

The Agent shall take necessary measures for transferring the fund necessary for the procurement of products and services from the Recipient Account to the Procurement Account prior to the procurement procedures (The fund transferred to the Procurement Account is called "the Advances").

2. Method of Procurement

(1) Competitive Tendering

In implementing procurement, sufficient attention shall be paid so that there is no



unfairness among tenderers who are eligible for the procurement of products and services.

For this purpose, competitive tendering¹ shall be employed in principle.

(2) Other Procurement Methods

If competitive tendering is deemed inappropriate or impractical due to any of the following special situations, the Agent is permitted to proceed with procurement on selective tendering², international shopping³ or direct contracting⁴:

- 1) When spare parts or accessories, etc. for existing equipment or equipment manufactured by specified manufacture are procured (In this case direct contracting is expected).
- 2) When there are adequate reasons to maintain uniformity and continuity of the products and services provided under an existing contract (In this case direct contracting is expected).
- 3) When the number of firms to satisfy the conditions is limited (In this case selective tendering or international shopping is expected).
- 4) When it is quite doubtful that the prospective tenderers would be interested in participating in competitive tendering, and thereby the advantages of competitive tendering would be outweighed by the administrative burdens involved (In this case selective tendering or international shopping is expected).
- 5) Part or all of the tender procedure was not successfully completed and re-tendering is implemented (In this case selective tendering or international shopping is expected).
- 6) When emergency procurement is required for the assistance for natural disasters or humanitarian assistance.
- 7) When consultants are to be selected (In this case, competitions among contents of Technical Proposals or direct contracting with the consultant recommended by JICA is expected)⁵

When procurement method other than competitive tendering are employed, the Agent shall implement procedures in such a manner as to comply with the competitive tendering

¹ Competitive tendering is a procurement method in which tender opportunity is publicized and open to all potential tenderers who are qualified for the tender, and the contract is awarded to the tenderer who offers the most advantageous conditions for the contracting entity.

² Selective tendering is a form of competitive tendering based on a direct invitation of tenderers without an initial tender publicity, according to certain qualifications obtained from several tenderers to ensure competitive prices.

³ International shopping is a contract method based on the comparison of quotations obtained from several firms to ensure competitive prices.

⁴ Direct contracting is a contract method based on negotiation directly with a firm before contracting.

⁵ Ways of selecting consultants are described in the guidelines issued by the Agent.

 

procedures described in these Guidelines to the fullest possible extent, in order to ensure the transparency of the selecting procedures.

(3) Additional Procurement

If there is a balance in the Procurement Account including accrued interest after the selection of firms, and the Recipient would like an additional procurement, the Agent is allowed to conduct an additional procurement, following the points mentioned below:

1) Procurement of the same products and services

The additional procurement may be implemented by a direct contracting with the successful tenderer of the initial tender when a competitive tendering is judged to be disadvantageous or uneconomical in such cases where the products and services to be additionally procured are identical with the initial tender and also the quantity to be additionally procured is limited, or there was no other participants than the successful tenderer in the initial tender. When a direct contracting with the same firm is not necessarily advantageous or appropriate in such case where a portion of the balance is relatively large, firms shall be selected through a new tendering procedure.

2) Other procurements

When products and services other than those mentioned above in (1) are to be procured, the procurement should be implemented through a competitive tendering. In this case, the products and services for additional procurement shall be selected from among those in accordance with the E/N and the A/M.

3. Size of Tender Lot

If a possible tender lot may be technically and administratively divided and such a division is likely to result in the broadest possible competition, the tender lot should be divided into two or more. On the other hand, in the interest of obtaining the broadest possible competition, any one lot for which a tender is invited should, whenever possible, be of a size large enough to attract tenderers.

4. Tender Conditions

The Agent shall fully study and consider technical specifications, construction period, required technical standards, prices, manufacturing, transportation, trade regulations, etc. regarding goods and services to be procured and finalize appropriate tender and Procurement Conditions after obtaining confirmation by the Recipient. Also, the price expected for the procurement (referential price) shall be set in advance for reference in the selection of firms.

5. Tender Publicity

Tender Publicity shall be carried out in an appropriate manner so that all qualified and interested tenderers shall have fair opportunity to learn about and participate in the tender.

The tender notice should be publicized at least in a newspaper of general circulation in the



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recipient country (or neighboring countries) or in Japan, and in the easily accessible webpage operated by the Agent. The main items to be contained in the public announcement are as follows:

- (1) Name of the Grant
- (2) Names of products and services to be procured
- (3) Name of the Agent and contact information including a location of its webpage (written as an Agent for the Recipient)
- (4) Required qualifications of tenderers
- (5) Other relevant information considered to be necessary for firms to determine whether to participate in the tender

The Agent is only required to publicize information from (1) to (3) above in the newspapers if other details including (4) and (5) above are advertised on the webpage of the Agent.

6. Language

The tender invitation, tender documents and contracts should be prepared in English, French or Spanish.

III. Tender Documents

1. General

- (1) The tender documents should contain all information necessary to enable tenderers to prepare valid offers for the products and services to be procured under GACE.
- (2) The rights and obligations of the Recipient, the Agent and the Firms of the products and services should be stipulated in the tender documents to be prepared by the Agent. The tender documents shall be prepared in consultation with the Recipient.
- (3) The tender documents shall clearly state that " the Government of Japan shall extend Non-Project Grant Aid to the Government of (name of recipient country) in accordance with the E/N signed on (date of signature)."
- (4) The tender documents shall clearly state that "The Government of Japan requires that, under contracts funded by the Grant, tenderers and Firms observe the highest standard of ethics during the procurement and execution of such contracts. In this regard, the Government of Japan shall demand that the Recipient and the Agent shall reject a tender if it determines that the tenderer has engaged in corrupt or fraudulent practices in competing for the contract in question. The Government of Japan shall recognize a Firm as ineligible, for a period determined by the Government of Japan, to be awarded a contract funded by the Grant if it at any time determines that the Firm has engaged in corrupt or fraudulent practices in competing for, or in executing any other contracts funded by the Grant or other Japanese ODA.

When the authorities concerned of the Government of Japan decide to impose against a firm such administrative sanctions as debarment, exclusion of goods manufactured, etc.,

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from Japanese governmental procurement, the Government of Japan may ask the Recipient and the Agent to exclude the goods manufactured by the sanctioned firm from the procurement under the Grant, for the period of the sanctions by such authorities concerned of the Government of Japan.”

2. Contents of the Tender Documents

The tender documents should consist of the following documents:

- (1) Instruction to Tenderers
- (2) Procurement Conditions
- (3) Form of the tender
- (4) Draft of the contract

If a fee is charged for the tender documents, it should be reasonable and reflect the cost of implementation of the tender procedure.

3. Major Items Related to the Instruction to Tenderers

- (1) The instruction to tenderers should clearly describe the procedure for question & answers, and correction regarding the tender documents, tender procedures, tender evaluations, and the other relevant issues of the tendering process.
- (2) The instruction to tenderers should clearly describe the products and services to be procured, qualifications required of tenderers, existence of local agents, elimination of disqualified firms from the tender, eligible source countries, place and date of the delivery, insurance, transportation, bond, warranty and other pertinent items.
- (3) The instruction to tenderers should clearly describe that the tender price shall be stated in figures and words as firm and final, and if there is a difference between the price in words and that in figures, the price in words is deemed correct.

4. Procurement Conditions

(1) Clarity and Accuracy of Conditions

The Procurement Conditions should specify clearly and in detail the services to be performed, the products and services to be supplied and the relevant terms such as contents of the products and services, technical specifications, the place of delivery, etc.

The Procurement Conditions should identify the main factors or criteria to be taken into account in evaluation and comparison of tenders. The Procurement Conditions should be prepared so as to secure the broadest possible competitive tendering.

(2) Impartiality of the Technical Specifications

The technical specifications supplied with Procurement Conditions should be based on the related characteristics and required capacities of the products and services to be procured.

Making reference to trademark names, catalogue numbers or similar classifications should be avoided unless in the case of the procurement of particular spare parts, etc.

(3) Standards

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

5. Forms of Tender

The following forms of tender should be clarified: 1) tender qualification certificates, 2) tender specifications and 3) the tender price.

6. Draft of the Contract

The draft contract should clearly state "the contract terms" such as "the rights and obligations of the Recipient, the Agent and the firm, etc." and the following items:

- (1) Terms of payment
- (2) Warranty period
- (3) Performance bond
- (4) Non-performance of the contract
- (5) Force majeure
- (6) Settlement of disputes

IV. Implementation of Tender

1. Preparatory Period for the Tender

The allowable period for the preparation and submission of the tender should be determined with due consideration to the particular circumstances related to GACE in the recipient country and the scale and complexity of the tender lots. Sufficient period before the date of tender should be allowed from the date when the documents are made available for potential tenderers.

2. Guarantee for the Tender

The Agent may request that the tenderers submit bid bond (e.g. bank guarantees) for the tender. The amount of the bid bond, however, should not be so high as to discourage potential tenderers. The bid bonds submitted from the unsuccessful tenderers should be returned immediately after the award of the contract.

3. Questions and Answers regarding the Tender Documents

The Agent, for the purpose of the smooth implementation of the tender, should accept questions about the tender documents from the purchasers of the documents and provide answers to the questions, in accordance with the following points:

- (1) A reasonable period should be set, respectively for accepting questions and providing answers to those questions.
- (2) The answers should be given to all those who have purchased the tender documents well

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in advance of the date of tender so that the prospective tenderers can take proper measures.

4. Correction and Alteration of the Tender Documents

Any additional information, supplementary explanations, correction of errors and alterations related to the tender documents should be notified to all those who have purchased the tender documents well in advance of the date of tender so that prospective tenderers can take proper measures.

5. Pre-qualification Examination of Tenderers

(1) The Agent may conduct a pre-qualification examination of tenderers in advance of the tender so that the invitation to the tender can be extended only to eligible firms.

(2) The pre-qualification examination should be performed only with respect to whether or not the prospective tenderers have the capability of accomplishing the contracts concerned without fail.

(3) In this case, the following points should be taken into consideration:

- 1) Experience and past performance in contracts of a similar kind
- 2) Property foundation or financial credibility
- 3) Existence of local offices, etc. to be specified in the tender documents

6. Tender Procedures

(1) The tender documents should clearly indicate the deadline of the date and time for accepting the tendering as well as the date and place for opening the tender.

(2) The tenderer shall be instructed to submit the following necessary tender documents:

- 1) Tender qualification certificates
- 2) Tender specifications
- 3) Tender price

(3) All tenders should be opened in the presence of the Agent and tenderers or their representatives at the fixed date, time and place. The presence of tenderers is not requirement and tenderers who do not attend the tender opening shall not be disadvantaged in the respect of selection procedure.

(4) Any tender submitted after the specified deadline is not acceptable as a valid tender.

(5) In opening tenders with the attendance of tenderers, the name of each tenderer and the tender price concerned should be read aloud and recorded.

7. Supplementary Explanation and Modification of the Tender during Evaluation

(1) No tenderers shall be permitted to modify the contents of the tenders after the tenders have been opened.

(2) The Agent may request any tenderers to make a supplementary explanation but not permitted to request them for a substantial modification of the contents of the tenders

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during tender evaluation.

8. Confidentiality of Tender Process

Until notification of the award has been sent to the successful tenderer, the Recipient and the Agent shall not disclose to the tenderers and to other people who are not officially concerned with the tender procedures, any information on the examination of the tenders, supplementary explanations and evaluations, or any information related to the recommendation of a successful tenderer.

9. Examination of Tenders

The Agent shall examine the following items with regard to the submitted tenders:

- (1) Serious errors in calculation
- (2) Attachment of requested documents
- (3) Attachment of requested certificates
- (4) Attachment of requested guarantees
- (5) Attachment of proper signatures to the documents
- (6) Conformity of the submitted tenders with the instruction of the tender documents

In examining the tenders, 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 disqualified.

After the above examination, each tender that satisfies the conditions should be technically examined for evaluation and comparison, in principle beginning with those submitted from the tenderer with the lowest tender price.

10. Tender Evaluation

- (1) The tender evaluation should be implemented on the basis of the conditions specified in the tender documents.
- (2) Those tenders which substantially conform to the technical specifications, and are responsive to other stipulations of the tender documents, shall be judged in principle on the basis of the submitted price, and the tenderer who offers the lowest price shall be designated as the successful tenderer. In case the selection of successful tenderer solely based on the submitted prices is not appropriate or irrational in the respect of the natures of the products or services to be procured, other elements than the price such as length of delivery or construction periods, superiority of technical specifications, etc might be considered by qualifying their degrees and evaluated comprehensively together with the price competitiveness. In such cases, method and standard of tender evaluation shall be clearly explained in the tender documents.
- (3) In cases where satisfactory results in the respect of price or other relevant elements, if any, are not offered in the tender, the Agent may negotiate with the most advantageous tenderer (if this fails to obtain satisfactory results, the second ranking tenderer) to try and conclude a

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satisfactory contract (a contract ad libitum).

- (4) If the tender is divided into several lots, the tender evaluation should be performed for each lot.

11. Tender Evaluation Report

The Agent shall prepare a detailed tender evaluation report clarifying the reasons for the successful tender and the disqualification, and submit it to the Recipient to obtain confirmation before concluding the contract with the successful tenderer. The Agent shall submit a detailed evaluation report of tenders to JICA for its information, while the notification of the results to the tenderers will not be premised on the confirmation by JICA.

12. Notification to the results

- (1) The Agent, within the validity period specified in the tender documents, should notify all the tenderers of the results of the tender. In case notification of result within the validity period is not possible, the Agent shall notify all the tenderers of the extension of the period before the expiry of the original period.
- (2) No tenderers shall be required, as a condition to be successful tenders, to bear responsibilities or obligations that are not described in the tender documents.

13. Rejection of Tenders and re-tender

- (1) The Agent shall not implement the re-tendering with the same specifications merely for the purpose of reducing the price except when the lowest tender price has exceeded the referential price. The rejection of all tenders may only be justified in the following cases:
- 1) Successful tender was not given even after the result of negotiation with the advantageous tenderers in such case where offer prices extremely exceed the referential price.
 - 2) All tenders do not comply with the tender documents as a result of the examination and evaluation of the tenders.
 - 3) It is clear that competition is impeded in the process.
 - 4) There is a rational reason to believe that the aim of procurement shall not be achieved by continuing the ongoing tender procedure.
- (2) In case all the tenders are to be rejected and the re-tender to be called, the Agent should examine the causes and consider revising the specifications and other conditions specified in the original tender documents as well as procurement methods.

V. Conclusion of the Contract

1. General

In order to procure products and services in accordance with the E/N and the A/M, the Agent shall conclude contracts with firms selected by tendering or other methods. If more than one lot is awarded to the same contractor, the contracts may be combined into one.

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2. Reference to the E/N

The contract shall clearly state that "the Government of Japan executes (name of grant aid) the Grant Aid to the Government of (name of recipient country) in accordance with the E/N signed on (date of signature) between the two Governments".

3. Contents of the Products and Services

The contract shall clearly state the contents of the products and services to be procured. The contract with the contents of the procurement of products and services which are not covered by the E/N shall not be concluded.

4. Contract Price

The amount of all contract prices including the Agent's services shall not exceed the Grant and its accrued interest.

Each contract price shall be precisely and correctly stated in words and figures side by side. If there is any difference between prices in words and those in figures, the prices in words are considered to be correct.

5. Terms of Payment

The contract shall clearly state the terms of payment. The Agent shall make payment from the "Advances", against the submission of the necessary documents from the Firm on the basis of the conditions specified in the contract, after the obligations of the Firm have been fulfilled. When the services are the object of procurement, the Agent may pay certain portion of the contract amount in advance to the firms on the conditions that such firms submit the advance payment guarantee worth the amount of the advance payment to the Agent.

6. Warranty

The contract shall clearly state the contents and the period of warranty if warranty is provided to products and services to be procured from the providers of such products and services.

7. Performance Guarantee

The Firms may be requested to submit performance guarantees. Such a performance guarantee shall be of an appropriate amount, and it shall be returned immediately after delivery of the products and completion of all services.

8. Non-performance of the Contract

The contract shall clearly state that if the performance of a contract by the Firm is delayed from the contracted period of execution or results in non-performance due to other reasons including bankruptcy, etc., the Agent is permitted to claim the payment of indemnities,

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forfeiture of the Performance Guarantee, or cancellation of the contract against the Firm.

9. Force Majeure

The contract shall contain a clause to the effect that failure on the part of the Firm to fulfill obligations under the contract would not be considered a default if such failure is the result of an event of force majeure as defined in the terms of the contract.

10. Settlement of Disputes

The contract shall contain clauses dealing with the settlement of disputes.

11. Responsibilities and Obligations of Each Party

The contract shall clearly state the responsibilities and obligations of the Recipient, the Agent and the Firms.

12. Applicable Law

The contract shall clearly state the applicable law by which the contract is governed and interpreted.

13. Effectuation of the Contract

The contract shall become effective only after the signing of the contract between the Agent and the Firm.

14. Reporting to JICA

The Agent shall submit the copy of the contract with the Firm to JICA for its information.

15. Amendment of the Contract

If an amendment of the contract is required, the Agent, obtaining the consent of the Recipient in advance, shall conclude a contract for the amendment with the Firm. The amended contract shall clearly state that "All clauses except that which is or are amended, remain unchanged". Also, the Agent shall submit the copy of the amended contract to JICA for its information.

16. Announcement of Results of contracts

The Agent shall, as soon as the conclusion of contracts, announce information on the contract such as name of item, name of firm, amount of contract and date of contract on the webpage of the Agent.

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Annex 9



JICS GUIDELINES
FOR
THE PROCUREMENT
OF
CONSULTANT SERVICES

APRIL 2006

JAPAN INTERNATIONAL COOPERATION SYSTEM

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Part I Basic Principles

Section 1.01 Application

"JICS Consultant Services Procurement Guideline" is applicable to contracts which the Japan International Cooperation System (hereinafter referred to as "JICS") concludes for employment of a consultant on behalf of the government of the recipient country in implementation of the projects stipulated in Article 4 of "The Articles of Foundations of Japan International Cooperation System (JICS)" with persons or juridical persons (including universities, NGOs, and others) with expertise and experience regarding grant aid projects utilizing funds provided for recipient countries (hereinafter referred to as "Consultants", including candidates for the selection of Consultants as the context requires). In this Guideline, the "Contract" refers to any such contract. This Guideline shall be applied except in the case where guidelines issued by the Ministry of Foreign Affairs of Japan or other institutions prevail.

Section 1.02 Purpose

The purpose of this Guideline is to set forth the general rules to be followed by JICS when JICS requires the services procurement of a Consultant for the implementation of a project. The general rules are stipulated for the proper selection of a Consultant and the full utilization of his/her expertise, as well as ensuring the impartiality of the same.

Section 1.03 Need for Services Procurement of a Consultant

A recipient country (the government or the executing agency of the recipient country) and JICS will retain a Consultant in cases where the recipient country and JICS agree on the need to retain a Consultant, for the efficient and proper preparation and implementation of a project.



Part II Consulting Services

Section 2.01 Services of a Consultant

The services of a Consultant comprise the services related to the following as to the preparation and implementation of a project:

- (1) Studies for planning a project;
- (2) Studies and designing;
- (3) Procedures for procurement and construction work;
- (4) Supervision of procurement and construction work;
- (5) Monitoring after procurement or construction is completed; and
- (6) Others if necessary.

Section 2.02 Responsibilities of a Consultant

- 1 JICS shall ensure that a Consultant is at all times to exercise all reasonable skill, care and diligence in the discharge of their duties, and to be responsible for the quality and performance of his/her work.
- 2 JICS shall have a Consultant act as a faithful adviser to JICS on professional matters.

Section 2.03 Fairness and Impartiality of a Consultant

- 1 JICS shall request the Consultant that the goods and services used for a project are suitable and their costs are reasonable, and JICS shall also request the Consultant that designs and specifications of such project in no way limit competition, and that the Consultant on a project managed by JICS shall be fair and impartial to all the parties concerned in the competition.
- 2 JICS shall disqualify a Consultant and any of his/her associates/affiliates (inclusive of parent firms) from working in any other capacity on the same project, other than in the continuation of the Consultant's earlier consulting services as further described in Section 3.04.



Section 2.04 Misprocurement

- 1 JICS shall request that a Consultant observes the highest standards of ethics in providing services for a project financed by Japan's Official Development Assistance (ODA).
- 2 JICS shall not conclude a Contract with a Consultant who is deemed to be engaged, or have been engaged, in fraudulent or corrupt practices in ODA projects.

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Part III Selection Procedures

Section 3.01 Rules for Selection of a Consultant

JICS sets forth the proper rules for selection of a Consultant for entering into a Contract for a project, for which qualifications such as special knowledge and expertise are essential, taking into consideration the competence of the Consultant and the costs needed for the performance of the services.

Section 3.02 Establishment of a Consultant Selection Committee

JICS shall establish a consultant selection committee (hereinafter referred to as the "Committee"), comprised of three or more members, for selection of a Consultant.

Section 3.03 Selection Procedures

Procedures for selecting a Consultant for the contact party are, as a rule, as follows:

- (1) Preparation of terms of reference;
- (2) Public announcement for invitation to submit proposals (technical proposals);
- (3) Prequalification;
- (4) Preparation of a short list of consultants to submit proposals;
- (5) Invitation to submit proposals;
- (6) Evaluation of proposals;
- (7) Contract negotiation; and
- (8) Award and conclusion of a Contract.

Section 3.04 Selection of a Specific Consultant

JICS may select a Specific Consultant for the contact party after evaluation by the Committee, without going through the procedures specified in Section 3.03, in any of the following cases:

- (1) Where a candidate Consultant has a special intellectual property such as a copyright or an industrial property right which is necessary for the implementation of consulting services.

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- (2) Where it extends the services procurement of a Consultant who has been retained, through the stipulated selection procedures, for the provision of certain services, in the event that it requires a further period to implement the whole process of the services under the Contract with such Consultant.
- (3) Where it is necessary that a Consultant cooperates successively for the projects of the related parties and the related parties recommend such Consultant who has participated in the said project for the contract party.
- (4) Where there is a special reason such as a need for emergency procurement.

Section 3.05 Evaluation by the Committee

JICS shall have the Committee evaluate the following items for selection of a Consultant for the contract party:

- (1) Consultant selection method;
- (2) Terms of reference;
- (3) Public announcement;
- (4) Prequalification;
- (5) Evaluation method of proposals;
- (6) Presentation by Consultants on their proposals;
- (7) Preparation of a short list of Consultants for submission of proposals;
- (8) Proposal evaluation and priority ranking for contract negotiation; and
- (9) Others if necessary.

Section 3.06 Preparation of Terms of Reference

The terms of reference presented to Consultants shall describe the following.

- (1) Contents of the consulting services such as the background, purpose, target area, scope of the consulting services, procedures for preparation of reports, and others;
- (2) Conditions under which the consulting services shall be performed such as process, estimated quantity of services, convenience provided by the target country, list of materials to be rented, and others;
- (3) Evaluation method of proposals;
- (4) Method of submission of estimated prices and the basis for estimation; and
- (5) Others (procedures for submission of proposals, contract procedures, notice for submission of proposals in cases where it is deemed necessary to invite presentation of proposals from Consultants according to Section 3.05 (6)).

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Section 3.07 Public Announcement for Submission of Proposals

To commence the selection procedures, JICS shall post a public announcement as regards information on such matters as the name of the project, the outline of the project, qualifications of the Consultant, the method for submitting a Letter of Intent, etc. To post the announcement, JICS shall pay due attention to establishing an adequate interval between the announcement and the deadline for submission of proposals and also to utilize proper media to reach prospective Consultant candidates.

Section 3.08 Prequalification

JICS is entitled to prequalify certain Consultants who have submitted a Letter of Intent, according to the public announcement stipulated in Section 3.07 and are registered in a list of prospective Consultants. Prequalification shall be conducted to examine whether such Consultants have the capability and resources to perform the Contract taking into account, *inter alia*, the following:

- (1) Their experience of and past performance on similar projects;
- (2) Their capabilities with respect to human resources; and
- (3) Their financial position.

Section 3.09 Preparation of a Short List of Consultants for Submission of Proposals

- 1 JICS shall register the said Consultants on a short list of Consultants for submission of proposals after conducting Prequalification as stipulated in Section 3.08.
- 2 Provided that the Committee deems it necessary, JICS may, without following the procedures of public announcement of the project, appoint Consultants who are regarded as appropriate and register them on a short list of Consultants for submission of proposals considering the following criteria as a whole:
 - (1) Technical capabilities for implementation of the project, such as knowledge, experience, and skill;
 - (2) Experience of project execution in or near the country concerned, or similar countries;
 - (3) Experience of projects similar to the project concerned; and
 - (4) Financial position and credit status.



- 3 As a rule, not less than three Consultants shall be registered on a Short List of Consultants for submission of proposals.

Section 3.10 Preparation of Letter of Invitation

- 1 The following items shall be mentioned in the letter of invitation to submit proposals:
 - (1) Items stipulated in the terms of reference;
 - (2) The selection of a Consultant to be invited to negotiate a Contract will be made on the basis of evaluation of competence of the firms and the quality of their proposals regarding approach and methodology, as well as any information on the estimated cost or financial terms of their services; and
 - (3) The details of the selection procedure to be followed, including the technical evaluation categories and an indication of the weight to be distributed to each of the technical evaluation categories and estimated cost.
- 2 The invitation shall allow an adequate interval for preparing a proposal from the date of the actual mailing of the letter of invitation to the deadline for submission of proposals.
- 3 The letter of invitation shall also request Consultants to notify JICS within a specified time whether or not they intend to submit proposals.

Section 3.11 Sending a Letter of Invitation to Consultants

After preparing a short list, a letter of invitation and the terms of reference in accordance with the provisions of the foregoing sections, JICS shall invite all the Consultants on the short list to submit proposals by mailing to each of them the letter of invitation with the terms of reference attached to it.

Section 3.12 Submission of Proposals

- 1 JICS shall ensure that proposals to be submitted by Consultants mention, but are not limited to, the following matters:
 - (1) Experience and capabilities of the Consultant
Past performance, experience of similar projects, experience of project execution in or near the country concerned, or similar countries, information on the project, technical staff information, financial position

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and other information serving as a reference for implementation of the services;

(2) Policy for implementation of the services

Basic policy for implementation of the services, method for implementation of the services, work plan, staffing plan, contents of the work assigned to each staff member (domestic and overseas), support system, and equipment necessary for on-site service;

(3) Experience and capabilities of the staff members to be assigned to the work

Each staff member's experience of similar projects, experience of overseas studies, experience of project execution in or near the country concerned, or similar countries, familiarity with the language required, education, diploma, and qualification. As for a responsible person, experience and capability as the responsible person are required; and

(4) Estimated price and the calculation thereof.

- 2 Consultants shall submit their proposals attaching the documents stated in the foregoing paragraphs from (1) through (3), and the document stated in (4) separately put in the envelopes that are then properly sealed. A Consultant may modify or withdraw the whole or part of his/her proposal before the deadline for submission of proposals.
- 3 JICS shall not receive more than one proposal from a single Consultant.

Section 3.13 Evaluation of Proposals

Evaluation of proposals shall be carried out according to the documents stated in the foregoing paragraphs from (1) through (3), technical aspects; and (4), estimated price. In this case, evaluation of proposals shall be carried out based on the weight distribution of technical evaluation points and price evaluation points, which is otherwise stipulated.

Section 3.14 Ranking of Proposals for Contract Negotiation

JICS shall evaluate received proposals according to a stipulated method to establish a priority ranking order for contract negotiation starting from the proposal which obtained the highest evaluation points to the one with the lowest.

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Section 3.15 Contract Negotiations

- 1 JICS shall enter into negotiations with the highest-ranked Consultant on a Contract amount and other necessary matters to conclude a Contract within the stipulated period.
- 2 In contract negotiations, the Contract amount shall be reasonable in light of the contents of the services and the terms of validity of the offered price shall be properly set.
- 3 If the two parties are unable to reach agreement on a Contract within a reasonable period of time, JICS shall terminate the negotiations with the first Consultant and invite the Consultant who ranked second in the evaluation to enter into contract negotiations. This procedure shall be followed until an agreement is reached.

Section 3.16 Informing Unsuccessful Consultants

Promptly after completion of negotiations with the selected Consultant, JICS shall notify those Consultants who submitted proposals but were not selected that they have been unsuccessful.

Section 3.17 Announcement of the Result of the Contract

After concluding a Contract with the selected Consultant, upon obtaining approval by the donor of the grant, JICS may announce the outline of the project (its name and purpose of the services etc.), the name of the contracted party, the date of conclusion, the Contract amount and other matters if necessary.

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Part IV Contract

Section 4.01 General

The Contract between JICS and the Consultant shall be prepared in such detail as to adequately protect the interests of each party to the Contract.

Section 4.02 Contract

The Contract shall describe the clauses outlined below.

- (1) Scope of the project and the consulting services
The Contract shall describe the scope of the project and of the consulting services to be rendered by the Consultant.
- (2) Duration of the Contract
The Contract shall specify the dates for the beginning and the completion of the Consultant's services.
- (3) Responsibilities of the parties
The Contract shall clearly state the responsibilities of JICS and of the Consultant and the relationship between them. In the case where the Consultant is a joint venture, the scope of responsibilities among member companies shall also be stated.
- (4) Contract amount
The Contract shall state clearly the total amount to be paid to the Consultant.
- (5) Description of contract amount
The Contract shall describe the costs necessary for the fulfillment of the consulting services.
- (6) Conditions of payment
The Contract shall specify the conditions of payment such as the schedule and methods of payment. In the case where an advance payment is allowed, the Contract shall specify an advance payment bond.
- (7) Performance bond
JICS is entitled to collect a performance bond or other performance security in order to guarantee a faithful performance and completion of the Contract. When the Contract is completed, the performance bond or other performance security shall be immediately returned to the Consultant.
- (8) Ownership and disposal of equipment
The Contract shall describe the ownership of equipment to be procured, and the manner of disposal of any equipment remaining after the services have been completed.
- (9) Privileges and immunities of the Consultant

The Contract shall describe clearly what privileges and immunities the Consultant will be accorded, especially as regards visas and work permits, corporate and personal income taxes and other dues, customs duties, etc.

(10) Reports

The Contract shall specify the scope, number, type (reports such as monthly reports and overall reports) and frequency of the reports to be submitted by the Consultant to JICS.

(11) Confidentiality

The Consultant shall not disclose confidential information obtained during the term of the Contract and thereafter.

(12) Protection of personal information

The Consultant shall not disclose personal information obtained during the term of the Contract and thereafter.

(13) Copyright

JICS shall retain copyrights in all drawings, specifications and other documents prepared by the Consultant under the Contract.

(14) Force majeure

The Contract shall clearly establish JICS's and the Consultant's rights and obligations under the conditions of force majeure, and the procedures to be followed by the Consultant regarding determination and notification of any such conditions.

(15) Examination by JICS

JICS shall examine whether the project is completed in accordance with the Contract or other related documents.

(16) Settlement of disputes

The Contract shall describe the procedures to be followed in the event of a dispute arising between the parties in connection with the Contract.

(17) Cancellation of the Contract

The Contract shall describe the conditions and procedures to be taken for cancellation of the Contract.

(18) Applicable laws

The Contract shall specify the law which governs the Contract between the parties.

(19) Language

The Contract shall be prepared in English. If another language is used in the Contract, a full English text shall be incorporated in the Contract and it shall be clearly stipulated that such language governs.

Part V Supervision of Consulting Services

Section 5.01 Supervision of Consulting Services

- 1 JICS shall supervise the consulting services, through close communication with the parties concerned during the contract period, to make sure that the consulting services stipulated in the Contract are properly executed.
- 2 JICS shall request the Consultant to submit reports such as monthly reports and overall reports.

Section 5.02 Examination of Consulting Services

JICS shall conduct the following examination within the scope stipulated in the Contract:

- (1) Confirmation of completion of the services as described in the Contract or other relevant documents;
- (2) Confirmation of delivery period, delivery site, quantity and other things based on the Contract or other relevant documents; and
- (3) Other things if necessary.