

AP.4.2 Minutes of Discussions of the Second Field Study

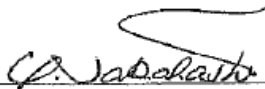
MINUTES OF DISCUSSIONS
ON
THE OUTLINE DESIGN STUDY
ON
THE PROJECT FOR COMMUNITY-BASED FLOOD DISASTER MANAGEMENT TO
ADAPT TO CLIMATE CHANGE IN THE NYANDO RIVER BASIN IN
THE REPUBLIC OF KENYA
(EXPLANATION ON DRAFT FINAL REPORT)

In December 2008, the Japan International Cooperation Agency (hereinafter referred to as "JICA") dispatched the Outline Design Study Team to the Republic of Kenya (hereinafter referred to as "Kenya") for the "Project for Community-based Flood Disaster Management to Adapt to Climate Change in the Nyando River Basin" (hereinafter referred to as the "Project") utilizing the Program Grant Aid for Environment and Climate Change, and through discussions, field survey and technical assessment of the study in Japan, JICA prepared the Draft Final Report for the Project.

In order to explain and consult with the Kenyan side on the contents of the Draft Final Report, JICA sent the Draft Final Report Explanation Team (hereinafter referred to as the "Team"), which is headed by Mr. Yoshiyuki Takahashi, Resident Representative of JICA Kenya Office, to Kenya from February 1st to 7th, 2009.

As a result of discussions, both parties confirmed the main items described on the attached sheet.

Nairobi, February 5 2009



Mr. Yoshiyuki Takahashi
Resident Representative
Kenya Office
Japan International
Cooperation Agency (JICA)



Eng. David Stower, CBS, OGW
Permanent Secretary
Ministry of Water and Irrigation
The Republic of Kenya



Eng. Philip J. Olum, HSC
Chief Executive Officer
Water Resource Management Authority
The Republic of Kenya

ATTACHMENT

1. Contents of the Draft Report

The Kenyan side agreed, in principle, on the basic contents of the Draft Report as explained by the Team.

2. Japan's Grant Aid Scheme

The Government of Kenya understood Japan's Grant Aid for Environment and Climate Change and the flow of the project budget as described in Annex I, II III.

3. Confidentiality of Project Cost

(1) Project Cost

The Team explained the Project Cost Estimation as shown in Annex IV and the Kenyan side understood that the Project budget shall not exceed the total amount of the Project Cost Estimation. If the Project cost increases beyond the Project budget due to price escalation, exchange rate fluctuation or any other unavoidable circumstances, the Project components (such as number of facilities) shall be adjusted to maintain the cost within the budget. The Kenyan side understood that the Project Cost Estimation is not final and is subject to change.

(2) Confidentiality of Project Cost Estimation

Both parties agreed that the contents of the Project Cost Estimation shall not be disclosed to any other third parties before the conclusion of all contracts for the Project.

4. Implementation Arrangements

(1) Implementing structure

Both parties confirmed that the responsible body for implementation of both construction and technical assistance components of the Project shall be the office of WRMA Lake Victoria South Catchment Area. One (1) project manager, will be assigned to the Project by WRMA. WRMA shall also be responsible to coordinate with other related organizations and assign other personnel for the smooth implementation of the Project. WRMA shall submit an implementation organizational chart before the Project starts.

(2) Implementation of Technical Assistance

The component of technical assistance under the Project shall be planned and monitored by Project Design Matrix (PDM) and Plan of Operations (PO), both of which were agreed by both parties as attached as Annex V.

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The Kenyan side strongly requested to the Team that in order to integrate the structural and non-structural measures of the Project, technical assistance shall be conducted by the same consultant who undertake the Outline Design Study, the detail design and construction management.

(3) Establishment of Project Coordinating Committee

Both parties agreed to establish a Project Coordinating Committee (hereinafter referred to as "the Committee") for smooth and proper implementation of the Project. The Terms of Reference of the Committee was settled in Minutes of Discussions signed by both parties on December 10, 2008. The members of the Committee are as follows:

- Permanent Secretary of MWI (Chair)
- Chief Executive Officer of WRMA
- Director of Water Resources, MWI
- Representative of Embassy of Japan in Kenya
- Representative of JICA Kenya

The first meeting of the Committee will be held immediately after the beginning of the Project. Following meetings will be held upon the request made from either the Kenyan side or the Japanese side.

5. Budget provisions by the Kenyan side

As agreed in the Minutes of Discussions signed on December 10, 2008, the Kenyan side will bear the total of 4,500 thousand Ksh (6.26 million Japanese Yen). The breakdown is as follows:

- 1) Salary of counterparts: 3,520 thousand Ksh (4.89 million Japanese Yen)
- 2) Land for construction yard: 880 thousand Ksh (1.23 million Japanese Yen)
- 3) Banking commission: 100 thousand Ksh (0.14 million Japanese Yen)

* This cost estimate is provisional and will be further examined at a later stage.

6. Tax exemptions

Kenya shall undertake necessary measures to ensure exemption of customs duties, internal taxes, and other fiscal levies related to the implementation of the Project.

7. Banking arrangement

Having understood the procedures of the Banking Arrangement (B/A) and Blanket Disbursement Authorization (BDA), the Kenyan side shall make the necessary banking arrangements with the Bank of Mitsubishi-Tokyo UFJ, Ltd. immediately after the signing



of E/N and G/A.

By signing the BDA, the Government of Kenya designates the procurement Agent as the representative authorized to act in the name of the Kenyan side concerning all transfers of the Grant and any interest earned to the Procurement Account.

8. Approval of Bidding Plan

The Kenyan side shall take necessary measures to approve the Bidding Plan after the revision of the Outline Design Study is concluded as required. The approval of the Bidding Plan shall accord to "The Procurement Guidelines of Japan's Grant Aid for Environment and Climate Change (provisional)," attached as Annex VI.

9. Procurement Procedure

The procurement procedure shall accord to the "The Procurement Guidelines of Japan's Grant Aid for Environment and Climate Change (Annex VI)."

10. Schedule of the Outline Design Study

(1) Pending items

Regarding "(3) Procurement for the Non-Structural Measures" on page 2-20, both parties agreed that the method of selecting the consulting firm will be decided after the Team has returned to Japan. The contents of "(5) Assignment of Personnel" on page 2-28 and "Figure 2.3 Implementation Schedule for Non-structural Measures" will be revised accordingly.

(2) Final Report for Outline Design Study

JICA shall complete the final report reflecting the confirmed issues and sent it to the Government of Kenya before March 2009.

11. Other issues

(1) Operation and Maintenance (O&M) of constructed structures

Both parties agreed that the facilities to be constructed in the Project will be maintained by the following arrangements:

- Daily maintenance and repair are the responsibility of the relevant community organizations.
- WRMA is responsible to call upon relevant government agencies and/or contractors to make necessary works of the facilities for maintenance and repair works beyond the capacity of the communities.

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MP

(2) EIA approval

The EIA certificate for the Project was granted by NEMA on February 5, 2009 as attached in Annex VII.

END

Annex I	Programme Grant Aid for Environment and Climate Change of the Government of Japan (provisional)
Annex II	Flow of funds for implementation under the Grant Aid for Environment and Climate Change
Annex III	Chart of project implementing organizations under the Grant Aid for Environment and Climate Change
Annex IV	Project Cost Estimation
Annex V	Draft Project Design Matrix and Plan of Operation
Annex VI	The Procurement Guidelines of Japan's Grant Aid for Environment and Climate Change (provisional)
Annex VII	EIA Certificate



**Programme Grant Aid for Environment and Climate Change
of the Government of Japan
(Provisional)**

The Grant Aid provides the Government of Kenya with non-reimbursable funds to procure the facilities, equipment, and services (engineering services and transportation of the products, etc.) for economic and social development of the country under principles in accordance with relevant laws and regulations of Japan. The Grant Aid is not supplied through the donation of materials as such.

Based on the “Cool Earth Partnership” initiative of the Government of Japan, the Programme Grant Aid for Environment and Climate Change (“GAEC”) aims to mitigate effects of global warming by reducing Green House Gas emission (mitigation; e.g. improvement of energy efficiency) and to take adaptive measures (adaptation; e.g. measures against disasters related to climate change, including disaster prevention such as enhancing disaster risk management).

GAEC may contain multiple components that can be combined to effectively meet these needs. The contractors and suppliers may not be confined to Japanese firm and construction, in principle, can be conducted by utilizing local standards.

1. Procedures for GAEC

GAEC is executed through the following procedures.

- Application (Request made by the Government of Kenya)
- Study (Outline Design Study conducted by Japan International Cooperation Agency (JICA))
- Appraisal & Approval (Appraisal by the Government of Japan and Approval by the Cabinet)
- Commitment of Implementation (Exchange of Notes (“E/N”) between the Government of Japan and the Government of Kenya and Grant Agreement (“G/A”) between JICA and the Government of Kenya)

Firstly, the application or request for a GAEC project submitted by the Government of Kenya is examined by the Government of Japan (the Ministry of Foreign Affairs) to

determine whether it is eligible for GAEC. If the request is deemed appropriate, the Government of Japan assigns JICA to conduct a study on the request.

Secondly, JICA conducts the Outline Design Study (the "Study") with Japanese consulting firms.

Thirdly, the Government of Japan appraises the project to see whether it is suitable for Japan's GAEC, based on the Study report prepared by JICA, then the result is submitted to the Cabinet for approval.

Fourthly, the project, once approved by the Cabinet, becomes official with the E/N signed by the Governments of Japan and the Government of Kenya. Simultaneously, the Grant will be made available by concluding a G/A between the Government of Kenya and JICA.

JICA is designated by the Government of Japan as the organization responsible for necessary works for proper execution of the Grant.

Procurement Management Agent (the "Agent") is designated to conduct the procurement services of products and services (including fund management, preparing tenders, contracts) for GAEC on behalf of the Government of Kenya. The Agent is an impartial and specialized organization that shall render services according to the Agent Agreement with the Government of Kenya. The Agent is recommended to the Government of Kenya by the Government of Japan and agreed between the two Governments in the Agreed Minutes ("A/M").

2. Outline Design Study

1) Contents of the Study

The purpose of the Study, conducted by JICA on a requested project ("the Project"), is to provide the basic documents necessary for the appraisal of the Project by the Government of Japan. The contents of the Study are as follows:

- (1) Confirmation of background, objectives, and benefits of the Project and institutional capacity of agencies and communities concerned of Kenya necessary for project implementation.
- (2) Evaluation of relevance of the Project to be implemented under the Grant Aid

Scheme for community empowerment from a technical, social, and economic point of view.

(3) Confirmation of items agreed upon by both parties concerning the basic concept of the Project.

(4) Preparation of the outline design of the Project.

(5) Estimation of cost for the Project.

The contents of the original request will be modified, as found necessary, in the outline design of the Project according to the guidelines of Japan's Grant Aid scheme.

The Government of Japan requests the Government of Kenya to take whatever measures necessary to ensure its responsibility in implementing the Project. Such measures must be guaranteed even if they may fall outside the jurisdiction of the implementing organization. This has been confirmed by all relevant organizations of the Government of Kenya through the Minutes of Discussions.

2) Selection of Consultants

For the smooth implementation of the Study, JICA will conduct the Study with JICA-registered consulting firms. JICA selects the firms based on proposals submitted by firms with interest in implementing the Study. The firms selected will carry out the Outline Design Study and prepare a report, based on the terms of reference set by JICA.

The consulting firms that will implement the Project after the Grant Agreement ("the G/A) can be, in principle, Japanese firms recommended by JICA for maintaining technical consistency with the Study.

3. Implementation of GAEC after the E/N

1) Exchange of Notes (E/N) and Grant Agreement (G/A)

The content of GAEC will be determined in accordance with the E/N exchanged by the two Governments, in which the objectives of the Project, length of the Project, conditions and amount of the Grant Aid are confirmed. The conclusion of the G/A between the Government of Kenya and JICA follows the exchange of E/N to determine the paying conditions responsibilities of the Government of Kenya and procurement conditions.

2) Details of Procedures

Details of procedures on procurement and services under GAEC will be agreed between the authorities of the two governments concerned at the time of the signing of the E/N and the G/A.

Essential points to be agreed are outlined as follows:

- a) JICA will supervise the implementation of the Project.
- b) Products and services shall be procured and provided in accordance with JICA's "Procurement Guidelines for the Programme Grant Aid (Type I – E) for Environment and Climate Change."
- c) The Government of Kenya shall conclude a contract with the Agent.
- d) The Agent is the representative acting in the name of Government of Kenya concerning all transfers of funds to the Agent.

3) Focal points of the "Procurement Guidelines for the Programme Grant Aid (Type I – E) for Environment and Climate Change"

a) The Agent

The Agent is the organization, which provides procurement of products and services on behalf of the Government of Kenya according to the Agent Agreement with the Government of Kenya. The Agent is recommended to the Government of Kenya by the Government of Japan and agreed between the two Governments in the A/M.

b) Agent Agreement

Government of Kenya shall conclude the Agent Agreement, in principle, within two months after the signing of the G/A, in accordance with the A/M. The scope of the Agent's services shall be clearly specified in the Agent Agreement.

c) Approval of the Agent Agreement

The Agent Agreement is prepared as two identical documents and the copy of the Agent Agreement shall be submitted to JICA by the Government of Kenya through the Agent. JICA will confirm whether the Agent Agreement is concluded in conformity with the E/N, A/M, and G/A and the Procurement Guidelines for the Programme Grant Aid for Environment and Climate Change then approves the Agent Agreement.

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

d) Payment Methods

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

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 three percent (3%) of the Grant and its accrued interests.

e) Products and Services Eligible for Procurement

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

f) Selection of firms

In principle, firms of any nationality could be contracted as long as the firms satisfies the conditions specified in the tender documents.

g) Method of Procurement

When conducting the procurement, sufficient attention shall be paid to transparency in selecting the firms and for this purpose, in principle, competitive tendering shall be employed.

h) Tender Documents

The tender documents should contain all information necessary to enable tenderers to prepare valid offers for the products and services to be procured by GAEC.

The rights and obligations of the Government of Kenya, the Agent and the firms supplying products and services should be stipulated in the tender documents to be prepared by the Agent.

i) Pre-qualification Examination of Tenderers

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. The pre-qualification examination should be performed only with respect to whether the

prospective tenderers have the capability of concluding the contracts.

For this, the following points should be taken into consideration:

- (1) Experience and past performance in contracts of similar kind
- (2) Financial credibility (including assets such as real estate)
- (3) Existence of offices and other items to be specified in the tender documents.
- (4) Their potentialities to use necessary personnel and facilities.

j) Tender Evaluation

The tender evaluation should be implemented on the basis of the conditions specified in the tender documents.

Those tenderers which substantially conform to the technical specifications and 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.

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.

k) Additional procurement

If there is any remaining balance after the competitive and/or selective tendering and/or direct negotiation for a contract, and if the Government of Kenya would like to procure additional items, the Agent is allowed to conduct this additional procurement, following the points mentioned below:

(1) Procurement of same products and services

When the products and services to be additionally procured are identical with the initial tender and a competitive tendering is judged not efficient, additional procurement can be conducted by a negotiated contract with the successful tenderer of the initial tender.

(2) Other procurements

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

l) Conclusion of the Contracts

In order to procure products and services in accordance with the guideline, the Agent shall conclude contracts with firms selected by tendering or other methods.

m) 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. 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.

4) Undertakings required by the Government of Kenya

In the implementation of the Grant Aid Project, the Government of Kenya is required to undertake necessary measures as the following:

- a) To secure land necessary for the sites of the Project.
- b) To provide facilities for distributing electricity, water supply and drainage and other incidental facilities in and around the sites if necessary.
- c) To assist prompt execution for domestic transportation of products purchased under the Grant Aid as necessary,
- d) To ensure that customs duty, internal tax and other fiscal levies that may be imposed in Kenya with respect to the purchase of the Components and the Agent's services shall be exempted by the Government of Kenya.
- e) To accord all the concerned parties, whose services may be required in connection with supply of the products and services under the contracts, such facilities as may be necessary for their entry into Kenya and stay therein for the performance of their work.

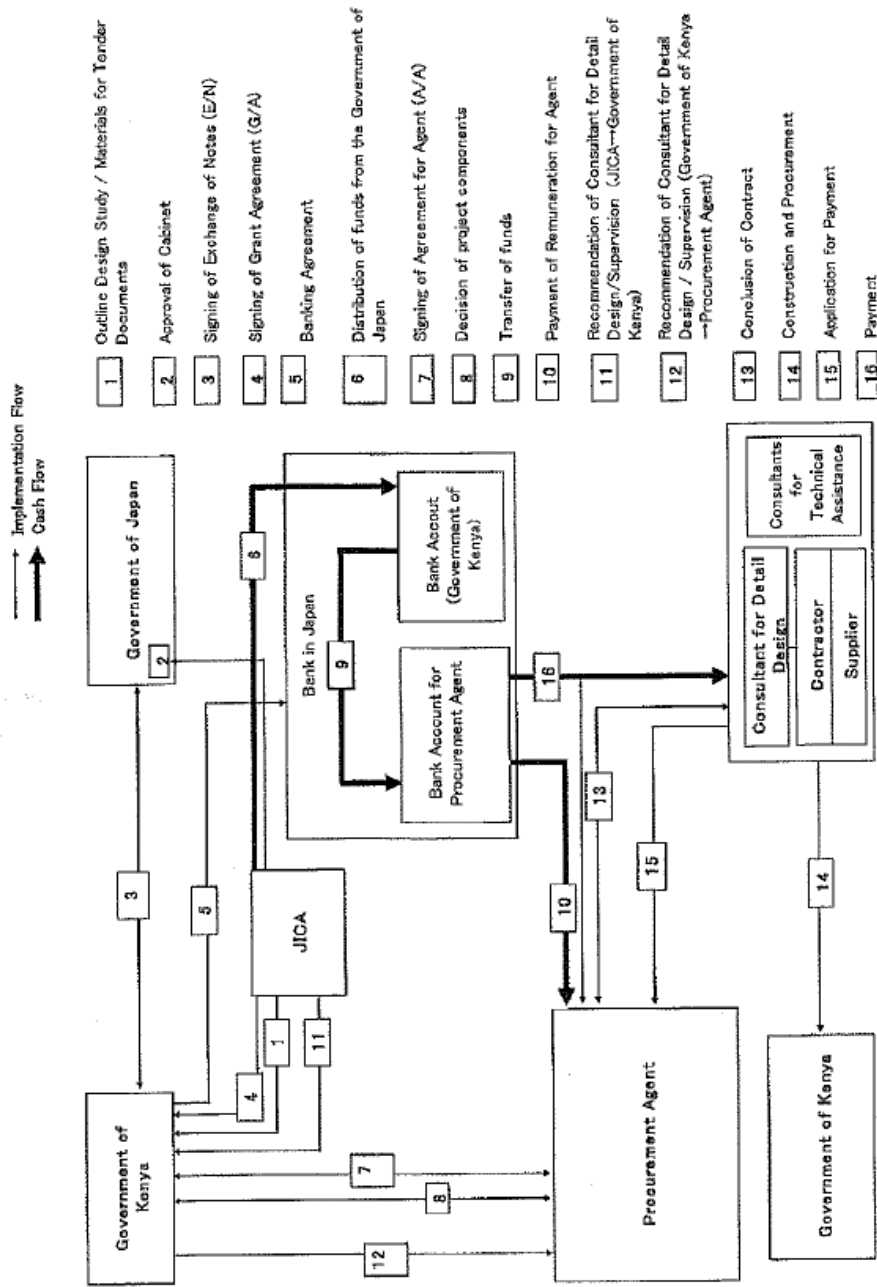
5) "Proper use of funds"

The Government of Kenya is required to take necessary actions so that the facilities constructed under the Grant Aid are properly and effectively used and to ensure sustainable operation and maintenance as well as to bear all the expenses other than those covered by the Grant Aid.

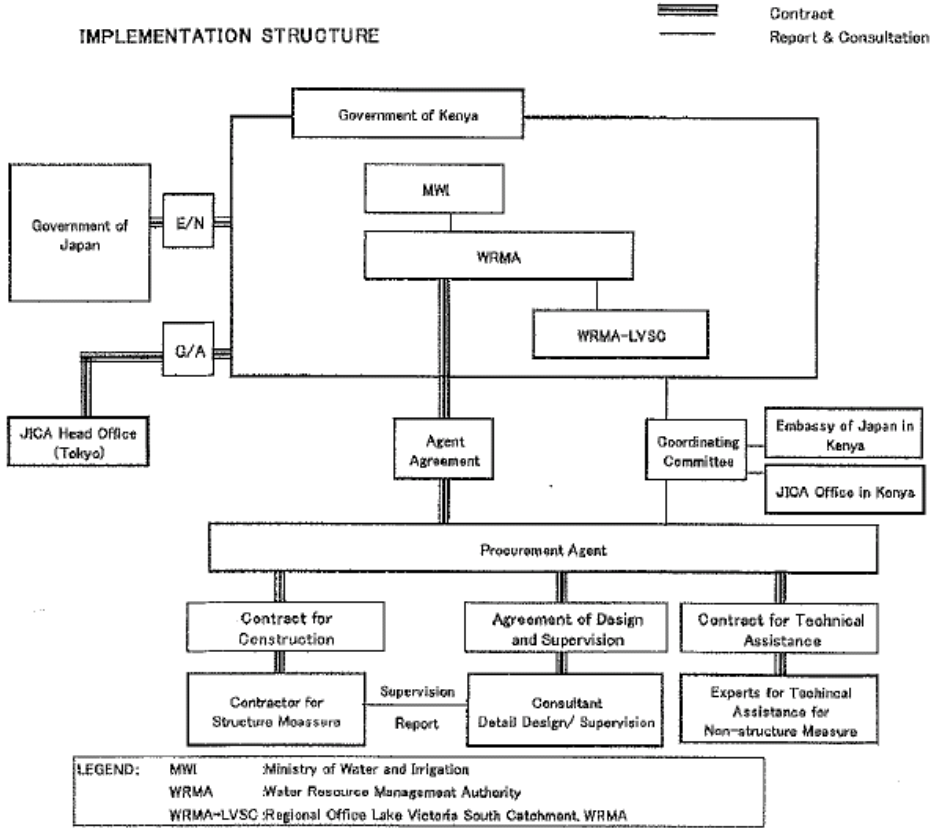
6) "Exported or Re-export"

The products purchased under the Grant shall not be exported or re-exported from Kenya.

Flow of funds for implementation under the Grant Aid for Environment and Climate Change



**Chart of project implementing organizations
under the Grant Aid for Environment and Climate Change**



Project Cost Estimation

Items	Amount	Remarks
	(Million JPY)	
I. Construction Cost		Cost for constructing structural measures
Direct Cost	204.8	
Common Temporary Work	11.9	
Subtotal	216.7	
II. Technical Assistance	102.0	Cost for implementing and administering technical assistance (non-structural measures)
III. Detail Design and Construction Management	95.5	Cost to conduct detail design and construction management for structural measures
IV. Procurement Agent Fee	89.0	
Total	503.2	

* The above amount is subject to change during the course of the Outline Design Study

**The above contents are to be kept confidential until all contracts of the project is concluded.

Project Design Matrix (PDM) for Non-Structural Measures
The Project for Community-Based Flood Disaster Management to Adapt to Climate Change in the Nyando River Basin in the Republic of Kenya
 24 Villages in Kisumu District and Nyando District of Nyaruga Province in Kenya
 (12 Villages in Kisumu District: Ras Kariyaka, Nowiten, Bwanda, Otera, Kanunge, Oyela, Kanyengo, Komwaga, Kowiri, Kanget Uge, Kopudo, and Kanyaoonzo)
 (12 Villages in Nyando District: Koiat, Waiessa, Kamagaga, Wangaya Mombasa, Actuodho, Wakesi, Kojien, Kanyilam, Kadika, Nyechoha, Mesunc, and Kojunga)
 Duration: 23 months after the signing of Exchange of Notes
 Target Group: Community Based Flood Management Organizations of 24 villages

NARRATIVE SUMMARY	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	IMPORTANT ASSUMPTIONS
<p>OVERALL GOAL Capacity for the flood management to adapt to the climate change is strengthened in the Nyando River Basin.</p> <p>PROJECT PURPOSE Capacity for the flood management is strengthened in 24 target communities.</p> <p>OUTPUTS 1 Community Based Flood Management Organizations is established and strengthened in the Project Area.</p> <p>2 CFMO becomes capable to conduct O&M for constructed structural measures.</p> <p>3 CFMO becomes capable to implement flood disaster management activities.</p> <p>4 Public awareness is widely promoted in the Project Area.</p>	<p>1 Number of affected people from flood disasters is reduced.</p> <p>2 Flood management is replicated throughout the Nyando River Basin.</p> <p>Capacity for the flood management is strengthened by the CFMOs.</p> <p>1.1 By-laws is formulated for each CFMO.</p> <p>1.2 Financial plan will be formulated for each CFMO.</p> <p>2 O&M manuals is formulated for each CFMO.</p> <p>3.1 Community flood management manual is formulated for each CFMO.</p> <p>3.2 Evacuation plan is formulated for each CFMO.</p> <p>4.1 Education programs for disaster prevention is formulated and carried out in the targeted 16 schools.</p> <p>4.2 Radio programs about flood management are broadcasted continuously.</p> <p>4.3 Posters about flood management is prepared and used for the public relation activities.</p>	<p>1 Record of flood damage</p> <p>2 Questionnaire survey</p> <p>1 Questionnaire survey in Lessons Learned Meeting</p> <p>2 Number of residents registered in CFMOs</p> <p>1.1.1 By-laws of each CFMO</p> <p>1.1.2 Number of meetings and participants</p> <p>1.2.1 Financial plan of each CFMO</p> <p>1.2.2 Manual for writing proposals for fundraising of each CFMO</p> <p>1.2.3 Number of meetings and participants</p> <p>2.1 O&M manuals of each CFMO</p> <p>2.2 Number of lectures, on-site trainings, and participants</p> <p>2.3 Questionnaire survey</p> <p>3.1 Community flood management manual of each CFMO</p> <p>3.2 Number of participants in the evacuation drills</p> <p>4.1.1 Number of teaching materials</p> <p>4.1.2 Number of textbooks for pupils</p> <p>4.1.3 Result of assessment for teaching practice</p> <p>4.1.4 Questionnaire survey of the pupils having received the education programs</p> <p>4.1.5 Number of pupils</p> <p>4.2.1 Record of broadcasted long and short radio programs</p> <p>4.2.2 Questionnaire survey of listeners</p> <p>4.3 Number of distributed posters</p>	<p>1 GOK will replicate the experiences of the Project to other villages.</p>
<p>ACTIVITIES 1.1 Organizing trainings for CFMOs 1.2 Financial trainings for CFMOs 1.3 O&M trainings for CFMOs 2.1 Community Flood management Manual for CFMOs 2.2 Evacuation drills for CFMOs 3.1 Education programs for disaster prevention 3.2 Radio programs about flood management 3.3 Posters about flood management</p>	<p>INPUTS Japanese Side 1 Procure the experts for supervising the non-structural measures 1.1 Japanese expert (10-SMM) 1.2 Local expert (2 persons and 36MM in total) 2 Procurement of local NGOs to implement the non-structural measures 3 Providing of equipment 3.1 O&M equipment 3.2 3 kinds of signboards to show hazard map, evacuation route, and evacuation places 3.3 Equipment for evacuation drill</p>	<p>Kenyan Side Assign a full-time counterpart of the Project</p>	<p>Pre-Conditions 1 GOK policy on disaster management will continue to be highlighted. 2 GOK will support the CFMOs through WRUA.</p>

**Procurement Guidelines for the
Grant Aid for
Environment and Climate Change
(Type I-E)
(Provisional)**

January 2009

**Japan International Cooperation Agency
(JICA)**

PART I Basic Principles

I-I Introduction

These Guidelines (Type I-E) , which are prepared by Japan International Cooperation Agency (hereinafter referred to as "JICA") and are authorized by the Government of Japan, set forth the general rules to be followed by the Government of the recipient country (hereinafter referred to as "the Recipient") in using Japanese Grant (hereinafter referred to as "the Grant") for the procurement of the products and services for the implementation of the programme (hereinafter referred to as "the Programme") which is agreed upon in the Exchange of Notes (hereinafter referred to as "the E/N") between the Government of Japan and the Recipient. These Guidelines (hereinafter referred to "the Guidelines") are applicable to the Grant Aid for Environment and Climate Change.

The application of the Guidelines to a particular programme funded by the Grant will be stipulated in the Grant Agreement (hereinafter referred to as "the G/A") concluded between JICA and the Recipient.

The rights and obligations of the Recipient, procurement agent (hereinafter referred to as "the Agent") and the firm(s) which supplies or provides the products and services for the Programme (hereinafter referred to as "the Firm") are governed by the employment contract (hereinafter referred to as "the Agent Agreement") concluded between the Recipient and the Agent which is defined in the Agreed Minutes on procedural details (hereinafter referred to as "the A/M") signed together with the E/N and in the G/A, by the tender documents, and by the contracts concluded between the Agent and the Firm, and not by the Guidelines.

I-II Parties Concerned

In the Guidelines, the Grant Aid means a set of arrangements where, based on the E/N between the Government of Japan and the Recipient, JICA concludes the G/A with the Recipient and provides to the Recipient the Grant to be expended for procuring products and services necessary for the implementation of the Programme, whereas the Recipient implements the Programme using the Grant. The roles of the concerned parties, including the Government of Japan, JICA, the Recipient, the Agent and the Firm in relation to the implementation of the Programme under the Grant are understood as follows:

- 1) The Government of Japan extends the Grant for the Programme.
- 2) JICA executes the Grant by making payments of the amount agreed upon in the E/N and pays serious attention to ensure the accountability on proper and effective use of the Grant for the Programme.
- 3) The Recipient is the beneficiary of the Grant and is responsible for the implementation of the Programme. The Recipient entrusts the Agent with the procurement of the products and services.

4) The Agent is an impartial and specialized organization which provides procurement services of the products and services on behalf of the Recipient according to the Agent Agreement with the Recipient.

5) The Firm is the contractor who provides the products and services for the Programme in accordance with the contract with the Agent.

I-III Safety Considerations

The Recipient shall comply with all the applicable safety regulations and pay full attention to all the safety measures.

Part II Guidelines for the Use of the Agent

II-I General

II-I-1 Role of the Agent

The Agent shall conduct the procurement services of the products and services for the Programme 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 implementation of the Programme 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.

II-I-2 Agent Agreement

The Recipient shall conclude an Agent Agreement, in principle within two (2) months after the date of signing of the G/A, with the Agent in accordance with the G/A.

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

II-I-3 Services of the Agent

The Agent shall conduct the services referred to in the Schedule I of the G/A.

II-II Approval of the Agent Agreement

II-II-1 General

The Agent Agreement is prepared as two identical documents and the copy of the Agent Agreement shall be submitted to JICA by the Recipient through the Agent. JICA confirms whether or not the Agent Agreement is concluded in conformity with the G/A and the Guidelines, and approves the Agent Agreement.

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

II-II-2 Reference to the G/A

The Agent Agreement shall refer to the G/A as follows:

JICA shall execute the Grant to the Government of (name of recipient country) in accordance with the G/A signed on (date of signature) between JICA and the Government of (name of recipient country).

II-II-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 G/A shall not be approved by JICA.

II-II-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 the 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.

II-II-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.

II-II-6 Approval of the Agent Agreement

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

II-II-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 to conduct the transfer of the fund (hereinafter referred to as "the 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 three percent (3%) of the Grant and its accrued interests excluding the Agent's fees.

II-II-8 Force Majeure

The conditions of the Agent Agreement shall contain a clause stating that failure on the part of the Agent to fulfill obligations under the Agent Agreement would not be considered a

default if such failure is the result of an event of force majeure. The scope of force majeure shall be defined in the conditions of the Agent Agreement.

II-II-9 Responsibilities and Obligations of the Recipient

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

II-II-10 Amendment to the Agent Agreement

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

- (1) all the clauses except that which is / are amended, remain unchanged; and
- (2) the amendment to the Agent Agreement shall become effective only after the approval by JICA in a written form.

Part III Guidelines for the Procurement of the Products and Services by the Agent

III-I General

III-I-1 Products and Services Eligible for Procurement

The products and services to be procured shall be selected from those defined in the G/A. 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 the Programme.

III-I-2 Firm and Expert(s)

(1) In principle, a firm of any nationality could be contracted as long as the firm satisfies the conditions specified in the tender documents.

(2) Notwithstanding the provision (1) above, as a general rule, consultants that will be employed to do detail design and supervise the work for the Programme shall be Japanese nationals recommended by JICA, for the purpose of maintaining technical consistency with the preliminary examination and other related studies, conducted prior to the signing of the G/A (hereinafter referred to as "the Studies").

The recommendation of the consultant by JICA to the Recipient does not mean that JICA shall assume the responsibilities which the consultant shall bear to the Agent for the Recipient on the basis of the Contract

(The term "Japanese nationals" wherever used in the Guidelines means Japanese physical persons or Japanese juridical persons controlled by Japanese physical persons.)

(3) Expert(s) could be deployed to carry out technical assistance to support policy planning of the Recipient in view of achieving economic growth and contributing to climate stability. The expert(s) shall be recommended by JICA to maintain the conceptual consistency with the Studies. In principle, expert(s) is/are preferable to be Japanese nationals if appropriate.

(4) Furthermore, the Firm may be Japanese nationals and the products to be procured may be the products made in Japan or produced or manufactures by Japanese manufacturer(s) in any country if the Recipient requests to procure and / or if the said products have comparative advantages over products produced or manufactures by non- Japanese manufacturer(s).

III-I-3 Misprocurement

JICA 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, JICA 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. JICA will recognize a firm as ineligible, for a period determined by JICA, 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, JICA 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.

III-II Procurement Procedures

III-II-1 Transfer of the fund

The Agent shall take necessary measures for transferring the fund necessary for the procurement of the 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.

III-II-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 the products and services.

For this purpose, competitive tendering 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 tendering , international shopping or direct contracting :

- 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 (In this case selective tendering or international shopping is expected);and
- 7) when consultants are to be selected (In this case, competitions among contents of Technical Proposals and financial proposal or direct contracting with the consultant recommended by JICA is expected).

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

(3) Modifications of the Programme

The Grant must only be used for procuring the products and services necessary for implementing the Programme, based on the Studies. Therefore, the Recipient is to implement each component based on the items listed on the report of the Studies prepared and submitted for the Recipient by JICA and / or concerned parties. However, on the occasion that the content the Programme shall be modified due to various reasons at the stage of determining the details or implementing the Programme, the Recipient must obtain prior approval from JICA under the consensus of committee established in the G/A through the Agent, provided that the modifications of the Programme are beyond the concept of the Studies.

The prior consent for the modifications is conducted by JICA to ensure that the modifications of the Programme are appropriate and to confirm whether any modifications are required on the contract price or not, however it does not mean that JICA will assume the legal or technical responsibilities for the substance of the modifications.

On the other hand, provided that the modifications of the Programme are minor than the concept of the Studies, the Recipient, through the Agent, must obtain post-identification from JICA.

The details of the procedures for modifications will be advised by JICA separately.

(4) Additional Procurement

If the Recipient may request an additional procurement by using the Remaining Amount described in (5) 1) below, 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 the products and services other than those mentioned in (1) above are to be procured, the procurement shall be implemented in principle through a competitive tendering. In this case, the products and services for additional procurement shall be selected from among those in accordance with the G/A.

(5) Handling of the Remaining Amount

1) "The Remaining Amount" refers to the difference in amount between "the total amount of the Grant, accrued interests, and where available, the resources received as delay damages, compensations or penalty(ies) (hereinafter referred to as "the Charges")" and "the total payment amount to the Firm and the Agent."

2) In the case conditions described in 3) below are fulfilled, the Recipient may use the Remaining Amount to cover the change of the contract price due to the modifications of the Programme and to fund additional procurements needed in the implementation of the Programme (including changes in the type of procurement of services, etc.) by taking steps described in (6) below. Any funds that remain after the completion of all procurements are to be returned to JICA.

3) Conditions for using the Remaining Amount are as follows:

- (a) It must be used for purposes and scopes stipulated in the G/A;
- (b) It must be used in line with the procedure stipulated in the G/A;
- (c) It must be used in line with the aims and content listed in the Studies and other documents;
- (d) The procurements shall be of the products and services necessary for effectively implementing the relevant projects, and such procurements shall be completed within the period set at the beginning;
- (e) In the case of purchasing or additionally procuring spare parts, the amount used for this out of the Remaining Amount must not exceed twenty percent (20%) of the contract price of

each equipment (or anticipated price by tender, if more appropriate); and

(f) The reimbursement of the Remaining Amount shall be carried out as stipulated in the G/A.

(6) Authorization Process for Using the Remaining Amount

The following steps shall be taken to obtain prior approval of JICA to use the Remaining Amount:

1) the implementing agency of the Recipient submits a proposal for using the Remaining Amount to the committee stipulated in the G/A and obtains its consensus;

2) upon obtaining the committee's consensus, the implementing agency of the recipient country submits to JICA, through the Agent, a request form clearly indicating, together with the design modifications proposal and/or the proposal of additional procurement, the aim and specific reasons (including technical reasons) for the use of the Remaining Amount;

3) JICA, based on the request form mentioned in 2) above, considers from a technical standpoint whether or not to authorize the use of the Remaining Amount; and

4) JICA responds to the implementing agency of the Recipient, through the Agent, regarding the result mentioned in 3) above.

III-II-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 shall 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 shall, whenever possible, be of a size large enough to attract tenderers.

III-II-4 Tender Conditions

The Agent shall fully study and consider technical specifications, construction period, required technical standards, prices, manufacturing, transportation, trade regulations, etc. regarding the products 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.

III-II-5 Public Announcement

Public announcement shall be carried out in such a way that all potential tenderers will have fair opportunity to learn about and participate in the tender.

The invitation to prequalification or to tender shall be publicized at least in a newspaper of general circulation in the recipient country (or neighboring countries) or in Japan, and in the easily accessible webpage operated by the Agent. The items to be contained in the public announcement are as follows:

(1) name of the Grant;

- (2) names of the 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) date, time and place of the distribution and price of tender documents; and
- (6) other relevant information considered to be necessary for firms to determine whether to participate in the tender.

The Agent is required to publicize the information from (1) to (3) above in the newspapers if other details including (4) to (6) above are advertised on the webpage of the Agent.

III-II-6 Language

The tender invitation, tender documents and contracts should be prepared in principle in English, French or Spanish. In case that announcement is made in a newspaper in circulation in Japan, Japanese translation shall be attached when possible.

III-III Tender Documents

III-III-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 for the Programme.
- (2) The rights and obligations of the Recipient, the Agent and the Firm 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 JICA shall execute the Grant to the Government of (name of recipient country) in accordance with the G/A signed on (date of signature) between JICA and the Government of (name of recipient country).
- (4) The tender documents shall clearly state that "JICA requires that, under contracts funded by the Grant, tenderers and the Firm observe the highest standard of ethics during the procurement and execution of such contracts. In this regard, JICA will 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. JICA will recognize a firm as ineligible, for a period determined by JICA, 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, JICA 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."

III-III-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; and
- (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.

III-III-3 Major Items Related to the Instruction to Tenderers

(1) The instruction to tenderers should clearly describe the procedure for question and 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, size of contract, place of delivery and date of shipment, insurance, transportation, bond, warranty, tax exemption described in the G/A and other pertinent terms.

(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.

III-III-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

In the event that specifications require products to comply with industrial standards, technical specifications should be decided in appropriate manner, considering that the products meeting internationally accepted standards and domestically accepted standards and should be stated in the tender document.

III-III-5 Forms of Tender

The following forms of tender should be clarified:

- (1) tender qualification certificates;
- (2) tender specifications; and
- (3) tender price.

III-III-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; and
- (6) settlement of disputes.

III-IV Implementation of Tender

III-IV-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 the Programme 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.

III-IV-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.

III-IV-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; and
- (2) the answers should be given to all those who have purchased the tender documents well in advance of the date of tender so that the prospective tenderers can take proper measures.

III-IV-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.

III-IV-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 not to limit the tenderers but to confirm the capability and resources of potential tenderers to perform the particular work satisfactorily and should not hinder the objective of the competitive tendering.

(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; and
- 4) their potentialities to use necessary personnel, equipment and facilities.

III-IV-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 should be instructed to submit the following necessary tender documents:

- 1) tender qualification certificates;
- 2) tender specifications; and
- 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 as far as transparency and necessary confidentiality are secured. Tenderers who do not attend the tender opening should 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 shall be read aloud and recorded.

III-IV-7 Supplementary Explanation and Modifications of the Tender during Tender 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 modifications of the contents of the tenders and a change in tender prices.

III-IV-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.

III-IV-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) confirmation of proper signatures to the documents; and
- (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.

III-IV-10 Tender Evaluation

(1) The tender evaluation shall 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 and 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 satisfactory contract (a contract ad libitum).

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

III-IV-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.

III-IV-12 Notification of 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.

III-IV-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; and
- 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.

III-V Conclusion of the Contract

III-V-1 General

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

III-V-2 Reference to the G/A

The contract shall clearly state that JICA shall execute the Grant to the Government of (name of recipient country) in accordance with the G/A signed on (date of signature) between JICA and the Government of (name of recipient country).

III-V-3 Contents of the Products and Services

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

III-V-4 Contract Price

The amount of all contract prices and, where there is/are amendment(s) of the contract, amended contract prices (hereinafter jointly referred to as "the Contract Prices") and the Agent's Fee shall not exceed the amount of the Grant and its accrued interest. In case that there are the Charges, the total amount of the Contract Prices shall not exceed the sum of the Grant, its accrued interests and the Charges. Each of the Contract Prices and the Agent's Fee shall be precisely and correctly stated in both words and figures. If there is a discrepancy between the price in words and that in figures, the price in words is deemed correct.

III-V-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 Firm on the conditions that such the Firm submits the advance payment guarantee worth the amount of the advance payment to the Agent.

III-V-6 Warranty

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

III-V-7 Performance Guarantee

Each of the Firm may be requested to submit performance guarantees. Such performance guarantees shall be of an appropriate amount, and it shall be returned immediately after delivery of the products and completion of the services.

III-V-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, forfeiture of the performance guarantees, or cancellation of the contract against the Firm

III-V-9 Force Majeure

The contract should 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.

III-V-10 Consultation and Resolution Procedures

The procedures for consultation and resolution shall be clearly stipulated for both cases that the damage is ascribed to the Recipient / the Agent and/or the Firm or that the damage is ascribed to force majeure.

III-V-11 Disputes and Arbitration Procedures

The procedures for disputes and arbitration shall be clearly stipulated.

III-V-12 Modifications Procedure

The modifications procedures of the contract shall be clearly stipulated, when modification is deemed necessary by the Recipient / the Agent and the Firm.

III-V-13 Responsibilities and Obligations of Each Party

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

III-V-14 Applicable Law

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

III-V-15 Effectuation, Amendment, and Announcement of the Results of the Contract

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

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

(3) If an amendment to 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 a copy of the amended contract to JICA.

(4) The Agent shall, as soon as the contract is concluded, announce information on the contract such as names of procured items, name of the Firm, amount of contract and date of contract on the webpage of the Agent.

III-V-16 Reporting to JICA

The Recipient, through the Agent, shall periodically submit a written report on the progress of the Programme to JICA.