



**NORTH AMERICAN
DEVELOPMENT BANK**

**PROCUREMENT
POLICIES AND PROCEDURES**

CONTENTS

1. INTRODUCTION	4
2. PRINCIPLES AND CONSIDERATIONS	5
ELIGIBILITY	5
BORROWER RESPONSIBILITIES.....	6
COMMUNITY PARTICIPATION IN PROCUREMENT	6
3. PROCUREMENT PROCEDURES FOR PUBLIC SECTOR OPERATIONS.....	6
GENERAL	6
APPLICABILITY OF THE PROCEDURES.....	6
PROCUREMENT PROCESS	7
PROCUREMENT PLANNING	8
NOTIFICATION	8
OPEN BIDDING (INTERNATIONAL COMPETITIVE BIDDING).....	9
EXCEPTIONS TO OPEN BIDDING	9
BID DOCUMENTATION.....	10
ELIGIBILITY TO SUBMIT BIDS.....	13
BID OPENING	14
BID EVALUATION AND CONTRACT AWARD	14
ADVANCE CONTRACTING/RETROACTIVE FINANCING.....	15
CONTRACT ADMINISTRATION	15
PROCUREMENT MONITORING AND BANK REVIEW	15
4. PROCUREMENT IN PRIVATE SECTOR OPERATIONS.....	16
PROCUREMENT UNDER BOT (BUILD-OPERATE-TRANSFER) AND SIMILAR PRIVATE SECTOR ARRANGEMENTS.....	16
PROCUREMENT IN LOANS TO FINANCIAL INTERMEDIARIES	17
PROCUREMENT UNDER LOANS GUARANTEED BY THE BANK	17
5. PROCUREMENT OF CONSULTANT SERVICES.....	17
GENERAL	17
CONSULTANT SELECTION PROCEDURES.....	18
SHORT LISTS.....	18
EVALUATION AND SELECTION	19
CONTRACT NEGOTIATIONS	20
CONTRACT ADMINISTRATION	20
QUALITY OF STAFF	20
OTHER PROVISIONS (FROM SECTION 3 ABOVE).....	20
BANK REVIEW	20
APPENDIX 1: BANK REVIEW OF PROCUREMENT DECISIONS	22
APPENDIX 2: GUIDANCE TO BIDDERS	24

1. INTRODUCTION

1.1 In order to carry out its mandate, the North American Development Bank (the Bank) needs to promote economy and efficiency in its operations. The establishment of sound procurement policies and practices, based on the fundamental principle of competition, is an integral part of this process.

1.2 Open and fair procedures for awarding contracts for goods, works and services help to create efficient enterprises. They also encourage accountability and the cost-effective use of public funds, matters that are of concern to both the Bank and the governments of the United States and Mexico.

1.3 At the level of specific projects, which are the focus of the Bank's operations, the efficiency of the procurement process directly affects the costs and the time required for project execution and the ultimate performance of the operation. Good procurement practices should help ensure successful project implementation and operation.

1.4 Article 3, Section 8, of the agreement between the governments of the United States and Mexico establishing the Bank requires that:

- (a) The Bank shall impose no condition that the proceeds of a loan shall be spent in the territory of either [the United States or Mexico].
- (b) The Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency.

In order to supplement these principles, this paper sets out the procurement policies and procedures to be followed in Bank-financed operations.

1.5 The purpose of these policies and procedures is to inform those carrying out a project financed in whole or in part by the Bank of the arrangements to be made for procuring the goods, works and related services required for the project. Section 2 describes general principles and considerations that are applicable for all operations. Section 3 outlines the procedures for procurement in operations involving the public sector. Section 4 describes procurement arrangements in Bank-financed operations in the private sector. Section 5 concerns the selection of consultants by borrowers in Bank-financed operations.

1.6 The loan agreement will govern the legal relationships between the Bank's borrower and the Bank, and these policies and procedures are made applicable to procurement of goods, works and services for the projects as provided in the agreement. The rights and obligations of the Bank's borrower and the providers of goods, works or services for the project are governed by the bid documents and by the contracts signed by the borrower with the providers of goods, works or services, and not by these policies and procedures or the loan agreements. No party other than the parties to the loan agreement shall derive any rights therefrom or have any claim to loan proceeds.

2. PRINCIPLES AND CONSIDERATIONS

General

2.1 The underlying principle of the Bank's policies is that public sector contracts should normally be awarded on the basis of open competitive bidding. Only in special cases should contracts be awarded on the basis of selective bidding or direct purchase. The laws and practices for carrying out procurement should not discriminate between foreign and local products, suppliers or contractors and the procedures should be transparent and fairly applied.

2.2 The Bank seeks to leverage its own resources and increase the flow of environmental infrastructure investment in the border region by co-financing projects with multilateral and bilateral development agencies, export credit agencies and commercial entities. When projects are co-financed on a joint basis, the Bank's procurement policies and procedures will normally be applied for co-financed contracts. When projects are co-financed on a parallel basis, the co-financiers' procurement procedures will be applied for contracts financed by them, but the Bank will assure itself that quality goods and services are received at economic prices, that contracts are fair and provide adequate protection to the project, that contracts are completed in a timely manner, and that contractors satisfy the criteria specified in Appendix 2, paragraph 17, Debarment.

2.3 The Bank's concerns for economy and efficiency, quality of results, contractual protection and timely completion cover an entire project even if Bank funds are applied only to a portion of the project. The Bank will finance only those contracts that are an agreed part of a project and that have been awarded and executed in accordance with the procedures as agreed to be applied to that project.

2.4 No entity that is offering a bid or providing goods or services to the Bank or in conjunction with a loan made or guaranteed by the Bank shall use bribery or other illegal conduct to influence any act or decision to obtain or retain business related to the bid or contract.

Eligibility

2.5 The Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects regardless of whether the country is a member of the Bank. Subject to Appendix 2, paragraph 17, Debarment, conditions for participation shall be limited to those that are essential to ensure the firm's or individual's capability to fulfill the contract in question.¹ Borrowers will not exclude a firm or individual from open competition for a contract for reasons unrelated to its capability to perform the contract in question unless, as a matter of law or official regulation, a party to the agreement prohibits commercial relations with the firm's or individual's country.

¹ See also para. 3.26, 3.27 and 3.28.

Borrower Responsibilities

2.6 Borrowers are responsible for implementing Bank-financed projects, including all aspects of the procurement process from the planning stage through the award of contracts, as well as the administration of the contracts themselves. The Bank may advise and assist borrowers in the procurement process for specific projects but is not a party to the resulting contracts. The rights and obligations of the borrower vis-a-vis bidders for goods, works and services to be furnished for the project will be governed by the bid documents issued by the borrower and not by these policies and procedures.

Community Participation in Procurement

2.7 Where, in the interest of project sustainability or to achieve certain specific social objectives of the project, it is desirable in selected project components to (i) call for the participation of local communities and/or nongovernmental organizations (NGOs), or (ii) increase the utilization of local know-how and materials, or (iii) employ labor-intensive and other appropriate technologies, the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations, provided these are efficient. The procedures proposed shall be outlined in the Bank's operation report and in the loan agreement.

3. PROCUREMENT PROCEDURES FOR PUBLIC SECTOR OPERATIONS

General

3.1 Competition is the foundation for good procurement practice. In addition to economy and efficiency, the public sector requires transparency and accountability for the use of public funds, and this affects the choice of the procurement method and the documentation and procedures that are used. Therefore, the Bank requires its public sector borrowers, in all appropriate cases, to obtain goods, works and services through open bidding procedures consistent with the procedures outlined in this section. Other methods may be appropriate for special circumstances, depending on the nature and value of the goods, works or services to be obtained, the required completion time and other considerations. All exceptions to open bidding shall be clearly justified and agreed by the Bank, as well as specified in the operation report and the loan agreement.

Applicability of the Procedures

3.2 For the purpose of these procedures, public sector operations² are operations for national or local governments of the country of operation or agencies and enterprises, including public utilities,³ majority owned or controlled⁴ by any of them.

² Operations refer to loans or guarantees of the Bank.

3.3 These procedures shall apply to the acquisition⁵ of goods, works and services (except consultant services, for which the procedures are described in Section 5) financed in whole or in part by the Bank in public sector operations. Contracts shall be procured following open bidding⁶ if their value is estimated to equal or exceed US\$250,000 for goods and services and US\$3.0 million for works. If the Bank determines that the above thresholds may have the effect of limiting competition or are not likely to ensure the most economic and efficient outcome, more appropriate thresholds will be required for such specific circumstances and will be specified in the operation report and the loan agreement. No procurement requirement shall be divided with the intent of reducing the value of the resulting contract(s) below these thresholds with the purpose of circumventing these procedures. In the case of contracts for goods, works and services below these threshold values, borrowers are encouraged to follow open bidding but may use other procedures⁷ that are consistent with the principles of competition, transparency, economy and efficiency and which are acceptable to the Bank.

Procurement Process

3.4 The normal process for public sector procurement involves the following steps:

- (a) Notification of opportunities for bidding;
- (b) Prequalification, where appropriate,⁸
- (c) Invitation to bid and issuance of bid documents;
- (d) Receipt of bids, evaluation of bids and contract award; and
- (e) Contract administration.

The extent of the process and specific procedures to be followed for each step will depend on the method of bidding that is used.

³ Utilities are authorities or undertakings carrying out the provision or operation of, or supply to, fixed networks providing a service to the public in any of the areas of operation of the Bank (e.g., wastewater treatment, water supply, municipal solid waste).

⁴ Control is measured by the ability to effectively determine the decisions and policies of the utility, and not merely by the ability to set utility tariffs.

⁵ Acquisition includes purchase, hire-purchase, rental and leasing.

⁶ See para. 3.8.

⁷ See paras 3.9 and 3.10.

⁸ Prequalification is the process of assuring that potential bidders have the financial and technical requirements needed to buy the bidding documents. Prequalification is not a form of selective bidding. The prequalification criteria, which shall be specified in the prequalification document, shall be based entirely upon the financial and technical capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (a) experience and past experience on similar contracts; (b) capabilities with respect to personnel, equipment, and construction or manufacturing facilities; and (c) financial position.

Procurement Planning

3.5 Sound planning of procurement is crucial. The borrower shall determine what goods, works, services and consulting services are needed to carry out the project, when they shall be delivered, what standards are required, the need for co-financing⁹ and which procurement and contracting procedure is most suitable for each contract. The borrower shall complete the overall procurement plan and the Bank shall clear the proposals before any procurement begins. The particular procedures and the goods, works, services and consulting services to which they apply are determined by agreement between the Bank and the borrower and are specified in the Bank's operation report and the loan agreement. Review and approval of the procurement plan by the Bank is one of the essential steps for establishing the use of loan proceeds.

Notification

3.6 After the procurement plan has been prepared by the borrower and cleared by the Bank and as early in the project cycle as possible, the borrower shall prepare and submit to the Bank a draft General Procurement Notice (GPN) that advises the business community about the nature of the project. This notice shall be prepared in either English or Spanish and include the amount and purpose of the loan and the overall procurement plan, including: (a) the goods, works and services to be purchased; (b) the expected timing; and (c) a name and address (including phone and fax numbers) to contact to express interest and obtain additional information. The Bank will arrange for its publication in English and Spanish, as appropriate, in:

- Mexico's *Diario Oficial de la Federación*;
- the state where the project is located, in a newspaper of broad circulation;
- the state across the U.S.-Mexico border, in a newspaper of broad circulation;
- the NADB's web site, posted on the site and distributed via list-serv (e-mail distribution);¹⁰
- *Compranet*, Mexico's electronic service for publishing public tenders;
- U.N. *Development Business* (optional, recommended for large contracts);¹¹ and
- other technical journals as appropriate.

The notice shall be published in each publication not later than 60 days before invitations to bid are issued. The General Procurement Notice shall be updated annually so long as any goods, works or services remain to be procured by open or selective bidding.

⁹ See para. 3.15.

¹⁰ NADB Internet address: <http://www.nadbank.org>

¹¹ This notice would indicate where all future project-related advertising would take place, and the project sponsor would be required to maintain a list of those who responded to the general procurement notice and send copies of future notices to them.

3.7 Open bidding, including prequalification where required, for individual contracts shall be advertised in English and Spanish as appropriate in the following publications:

- Mexico's *Diario Oficial de la Federación*;
- the state where the project is located, in a newspaper of broad circulation;
- the state across the U.S.-Mexico border, in a newspaper of broad circulation;
- the NADB's web site, posted on the site and distributed via list-serv (e-mail distribution);
- *Compranet*, Mexico's electronic service for publishing public tenders;
- other technical journals as appropriate; and
- U.N. *Development Business* (optional for contracts over the international competitive bidding thresholds).

The borrower will prepare the notices and the Bank will arrange for publication of the notices. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses. Bid and prequalification notices shall also be sent to potential bidders that have responded with an expression of interest to the General Procurement Notice. In order to encourage and facilitate the participation of sub-contractors and suppliers in contracts, the borrower should make available to interested parties the list of potential bidders that have purchased bid documents and where pre-qualification is being used, the list of prequalified bidders.

Open Bidding (International Competitive Bidding)

3.8 Open Bidding procedures are those procedures under which all interested suppliers or contractors are given adequate notification of purchase requirements and all such bidders are given an equal opportunity to submit a bid. They provide the greatest opportunity for competition and satisfy the need for economy and efficiency. The borrower shall give sufficient advance public notification of open bidding opportunities for potential bidders to determine their interest and to prepare and submit their bids.¹² Borrowers may require potential bidders to prequalify for large and complex contracts, and all bidders that meet the prequalification criteria shall be allowed to submit bids. The notification for prequalification and the evaluation procedure shall be consistent with those for open bidding in these procedures.

Exceptions to Open Bidding

3.9 **Selective Bidding** (limited bidding) procedures are similar to those for open bids except that the borrower preselects qualified firms, which will be invited to submit bids. It may be a suitable method for awarding contracts where:

- (a) there are only a limited number of suppliers of the particular goods or services needed; or

¹² See para. 3.20.

- (b) other conditions limit the number of firms that are able to meet contract requirements, or justify departure from full open bidding procedures.

In these cases a borrower may, with the Bank's approval, invite bids from a list of qualified firms, selected in a non-discriminatory manner. The list should be compiled from a wide geographical distribution and include foreign firms wherever possible. The list shall include all suppliers when there are only a limited number.

3.10 **Shopping procedures** may be agreed to by the Bank for contracts of a small value for (a) readily available off-the-shelf items; and (b) standard specification goods. Shopping is a simplified form of competitive purchasing that only requires written price quotations from at least three suppliers. Requests for quotations shall indicate the description and quantity of the goods, as well as desired delivery time and place. Quotations may be submitted by telex or facsimile. The evaluation of quotations shall follow sound public sector practices of the purchaser. The terms of the accepted offer shall be incorporated in a purchase order.

3.11 **Direct Purchase** may be used in exceptional cases where:

- (a) the extension of an existing contract awarded in accordance with procedures acceptable to the Bank for additional goods, works or services of a similar nature would clearly be economic and efficient and no advantage would be obtained by further competition;
- (b) standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original supplier. For such purchases to be justified, the original equipment should be suitable, the number of new items should generally be fewer than the existing number, the price should be reasonable, and the advantages of another make or source of equipment should have been considered and rejected on grounds acceptable to the Bank.
- (c) the required product can only be provided by a single supplier because of exclusive capabilities or rights; or
- (d) it is a case of extreme urgency, such as in response to natural disasters.

In each of these cases a borrower may, with the Bank's approval, invite a single firm to present its bid without prior public notification.

Bid Documentation

3.12 Bid documents are the basis for informing potential bidders of the requirements to supply specific goods and services or to construct works, so they must provide all information necessary to permit bidders to submit responsive bids. Bid documents shall be drafted so as to permit and encourage international competition. They shall clearly define the scope of the works, goods or services to be supplied, the rights and obligations of the purchaser and of suppliers and contractors, as well as the conditions to be met in order for

a bid to be declared valid and responsive; they shall also set out fair and non-discriminatory criteria for selecting the winning bid. The detail and complexity will vary according to the size and nature of the contract, but generally they shall include an invitation to bid, instructions to bidders, the form of bid, bid security requirements, the conditions of contract, advance payment guarantees, performance security requirements, technical specifications and drawings, a schedule or requirements for the goods, works or services and the form of contract.

3.13 Wherever appropriate, the Model Bidding Documents issued by the Bank should be used. All changes to the model documents necessary to address country and project specific issues shall be introduced only through bid or contract data sheets, or through special conditions of contract, and not by introducing changes in the standard wording of the Bank's model documents. Where no relevant model bidding documents have been issued, the borrower shall use other internationally recognized standard documents acceptable to the Bank.

3.14 Evaluation Criteria. Bid documents shall specify the relevant factors, in addition to price, to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. Factors which may be taken into consideration include, *inter alia*, the costs of inland transport to the project site, the payment schedule, the time of completion of construction or delivery, the operating costs, the efficiency and compatibility of the equipment, and the availability of service and spare parts. The factors other than price to be used for determining the lowest evaluated bid should be expressed in monetary terms or, where that is not practicable, given a relative weight in the evaluation provisions of the bid documents.

3.15 Language. Bid documentation shall be prepared in either English or Spanish, according to the location of the project, and the language of the bid shall be the governing language.

3.16 Standards and Specifications. Borrowers shall use international standards and specifications wherever these are available and appropriate. If particular national or other standards are used, the bid documents shall state that other standards that ensure equivalent or higher quality or performance than the specified standards would also be accepted. The use of brand names or other designations that would discriminate among suppliers should be avoided. If they are necessary to clarify the nature of the product requirements, the bid documents shall state that products of equal or higher quality would be acceptable.

3.17 Bid Prices. Bid prices for the supply of goods shall be requested on the basis of Incoterms CIP, DAF or similar, border entry point for foreign goods and ex-factory for domestic goods. Bid prices on contracts for works and services to be substantially executed in the purchaser's country may be requested inclusive of all duties, taxes and other levies.

3.18 Currency. A bidder may express the bid price in U.S. dollars or in Mexican pesos. Purchasers may require bidders to state the domestic cost portion of a bid in the

domestic currency. For the purpose of bid evaluation and comparison, bid prices shall be converted to U.S. dollars using the exchange rate quoted by the central bank of Mexico on the date specified for submission of bids. Payment under the contract will be made in the currency or currencies in which the bid price is stated in the bid of the successful bidder. For civil works and other similar contracts that involve performance in the borrower's country, the bid price may be stated entirely in the currency of the country in which the contract is to be performed indicating any foreign currency requirements as a percentage and the applicable exchange rate for purposes of payment.

3.19 Payment. Payment terms and procedures shall be in accordance with the international commercial practices applicable to the goods, works or services and the market in question. Contracts for the supply of goods shall provide for full payment on delivery and inspection, if so required, of the contracted goods, except for contracts involving installation and commissioning, in which case a portion of the payment may be retained until the supplier has complied with all its obligations.

3.20 Time limits. Prescribed time limits for preparation and submission of bids shall be adequate for all bidders to prepare and submit bids. Generally not less than 45 days from the publication of the invitation to bid or the availability of bid documents, whichever is later, shall be allowed for the preparation and submission of bids. For large or complex works or items of equipment, this period shall be extended to 90 days or longer. Bid validity periods and delivery dates shall be consistent with the purchaser's reasonable requirements but shall not be used to discriminate against any potential bidder. In exceptional cases it may be necessary to request bidders to extend the validity of their bids. In such cases bidders shall not be allowed or required to change their bid and shall be free not to give such extension. Where the bid is for a fixed price contract, provision shall be made in the bid documents for the bid price of the successful bidder to be adjusted for inflation¹³ up to the date of contract award, so as to mitigate the risk accruing to bidders offering such extension.

3.21 Conditions of Contract. The form of contract to be used shall be appropriate to the objectives and circumstances of the project. Contract conditions shall be drafted so as to allocate the risks associated with the contract fairly, with the primary aim of achieving the most economic price and efficient performance of the contract. The contract shall clearly define the scope of goods, works or services to be supplied or performed, the rights and obligations of the purchaser and of suppliers and contractors and shall include, *inter alia*, appropriate provisions for guarantees of performance and warranties, liability and insurance, acceptance, payment terms and procedures, price adjustments, liquidated damages and bonuses, handling of changes and claims, *force majeure*, termination, settlement of disputes and governing law. Wherever appropriate, standard forms of contract incorporating generally accepted international conditions shall be used.

3.22 Performance Security. Bidding documents for works shall require security in an amount sufficient to protect the borrower in case of breach of contract by the contractor.

¹³ An appropriate index shall be used such as the official cost of living or consumer price index of the country of the currency of the bid.

This security shall be provided, at the contractor's option, by a performance bond from an insurance/bonding company or by a commercial bank guarantee in an appropriate form and amount as specified in the bidding document. The amount of the bond or guarantee may vary, depending on the type of security furnished and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period of up to final acceptance by the borrower; alternatively, contracts may provide for a percentage of each periodic payment to be held as retention money until final acceptance. Contractors may be allowed to replace retention money with an equivalent security after provisional acceptance.

In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a bank guarantee to protect against non-performance of the contract. Such security in an appropriate amount may also cover warranty obligations or, alternatively, a percentage of the payments may be held as retention money to cover warranty obligations, and any installation or commissioning requirements. The security or retention money shall be reasonable in amount.

3.23 **Applicable Law and Settlement of Disputes.** The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration may have practical advantages over other methods for the settlement of disputes. Borrowers are, therefore, encouraged to provide for this type of arbitration in contracts for the procurement of goods and works. The Bank shall not be named arbitrator or be asked to name an arbitrator. In the case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall, wherever appropriate, also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

3.24 **Competition.** Nothing in the bid documents shall be designed to restrict competition or offer an unfair advantage to a bidder. Purchasers shall not provide to any potential supplier or contractor, information regarding a specific procurement which would have the effect of reducing or precluding competition. All amendments to bid documents shall be sent on a timely basis to each recipient of the original bid documents.

Eligibility to Submit Bids

3.25 A bidder may submit or participate, in any capacity whatsoever, in only one bid for each contract. Submission or participation by a bidder in more than one bid for a contract will result in the rejection of all bids for that contract in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid.

3.26 Where a firm, its affiliates or parent company, in addition to consulting also has the capability to manufacture or supply goods or to construct works, that firm, its affiliates or parent company may not be a supplier of goods or works on a project for which it provides consulting services. The exceptions are turnkey, single responsibility, public works concessions or similar undertakings where design, supply and construction activities are

an integral part of the contract or where certain proprietary and critical items of equipment and materials are an essential part of the process design.

3.27 Government-owned enterprises may participate in bidding for Bank-financed contracts only if they can establish that they (a) are legally and financially autonomous and (b) operate under commercial law. No dependent agency or affiliate of the borrower, sub-borrower or the purchasing entity may participate in bidding for Bank-financed contracts.

Bid Opening

3.28 Bids solicited under open and selective procedures shall be received and opened as follows. The time specified for bid opening shall be the same as for the latest delivery of bids or promptly thereafter. On the date and at the time and place described in the bid documents, the borrower shall open all bids that have been received before the latest time stipulated for the delivery of bids. Bids shall be opened in the presence of bidders or their representatives who wish to attend. The name of the bidder and the total amount of each bid, including alternative bids if permitted, shall be read aloud and recorded when opened. The borrower shall maintain a complete record of the bid opening, which shall be copied to the Bank. Bids received after the stipulated deadline for the submission of bids shall be returned unopened to the bidder.

Bid Evaluation and Contract Award

3.29 Evaluation of bids for supply of goods shall exclude import duties and taxes payable on imported goods and on directly imported components to be incorporated in domestically supplied goods, but shall include all costs associated with the supply, delivery, handling and insurance of the goods to the final destination. The evaluation and comparison of bids for works and service contracts to be executed in the borrower's country shall be on this basis and the selected contractor would be responsible for all duties, taxes and levies in the performance of the contract.

When competitive procedures are used, the borrower shall evaluate all bids and compare them only on the basis of the evaluation criteria set out in the bid documents. The bid evaluation process up to the award of the contract shall be confidential. Contracts shall be awarded within the period of bid validity to the bidder whose bid has been determined as being substantially responsive and, in terms of the specific evaluation criteria set forth in the bid documentation, is determined as the lowest evaluated and who has been determined to be fully capable of undertaking the contract. Bidders shall not be allowed or asked to change their bid nor required to accept new conditions during evaluation or as a condition of award. The terms and conditions of the contract shall not, without the Bank's concurrence, materially differ from those on which bids were invited. The borrower shall only reject all bids if (a) there is evidence of collusion; (b) there has been a lack of competition; or (c) bid prices substantially exceed the cost estimates or funds available. Before rejecting all bids, the borrower shall obtain agreement from the Bank on the procedures to follow.

3.30 The borrower shall submit to the Bank a report containing the results of the bid evaluation and its recommendation for the award of the contract. The Bank shall review the findings and recommendations as the final step in establishing the eligibility of the contract for Bank financing.¹⁴

Advance Contracting/Retroactive Financing

3.31 In some cases it may be advantageous for the borrower to sign a contract before the signing of the related Bank loan. Borrowers undertake such advance contracting at their own risk and the Bank's concurrence with the procedures, documents or the proposal for award does not commit the Bank to make a loan for the project. All procurement procedures shall be consistent with the Bank's policies and procedures in order for advance contracts to be eligible for Bank financing. Provided that the preappraisal process has begun, the eligibility date for allowable expenditures is 12 months before the expected date of loan signing. Retroactive financing shall normally not exceed 10 percent of the loan amount.

Contract Administration

3.32 The purchaser shall administer contracts with due diligence and monitor and report to the Bank on the performance of contracts. The purchaser shall seek the Bank's concurrence before agreeing to any material modification to the terms and conditions of a contract including, but not limited to: (a) granting a material extension of the stipulated time for performance of a contract; or (b) issuing a change order or orders which in aggregate would increase the cost of a contract by more than 15 percent of the original price.

Procurement Monitoring and Bank Review

3.33 As an integral part of their project implementation responsibilities, borrowers are required to prepare and maintain documents and records pertaining to the procurement process and the administration of contracts following their award and to keep the Bank informed through routine reporting. The Bank's review of the procurement and contract administration processes will focus on critical steps that are necessary to ensure eligibility of the contract for Bank financing, in particular the procurement plan, the bid documents, the bid evaluation and contract award recommendations, and material changes and claims during execution of the contract. These review procedures are described in Appendix 1. All contracts to be procured following open or selective bidding will normally be subject to the Bank's review. The operation report and the loan agreement will specify the contracts subject to review.

3.34 When a complaint regarding any aspect of a bid procedure is received by the Bank, the Bank will ensure that the complaint is fully reviewed by the borrower to the Bank's satisfaction and that, pending the outcome of such review, no decisions are made or approvals given that could prejudice the outcome of the review.

¹⁴ See para. 3.33 and Appendix I.

3.35 If the Bank finds that the procurement or administration of a contract has not been carried out in accordance with the agreed procedures, the contract shall no longer be eligible for financing with the loan proceeds and the portion of the loan allocated to the contract shall be canceled. The Bank may, in addition, exercise other remedies under the loan agreement.

4. PROCUREMENT IN PRIVATE SECTOR OPERATIONS

General

4.1 The Bank's concerns for the appropriate use of funds and for economy and efficiency apply equally to its public sector operations and its private sector operations. Private sector enterprises often meet these concerns by following established commercial practices other than formal open bidding for their procurement. Nevertheless, wherever appropriate, the Bank will encourage the use of competitive bidding methods by its private sector borrowers, particularly for large contracts.

4.2 The Bank will satisfy itself that private sector borrowers use appropriate procurement methods to ensure a sound selection of goods and services, works and consulting services at fair market prices and that their capital investments are made in a cost effective manner. Careful procurement planning that takes into account the particular needs of the enterprise is essential for the Bank's evaluation and agreement.

4.3 Where a shareholder of the borrower company or one of its affiliates, including parent companies and affiliates of such parent companies, is also a contractor or supplier to the project, contracts shall be negotiated on an arm's length basis and be in the best financial interest of the borrower company as distinct from the sponsors, and the Bank will satisfy itself that the costs are in line with current market prices and with the original cost estimates in the operation report and that the contract conditions are fair and reasonable. The Bank will not finance costs that exceed market levels.

Procurement under BOT (Build-Operate-Transfer) and Similar Private Sector Arrangements

4.4 Where the Bank is participating in financing the cost of a project being implemented under a BOO/BOT/BOOT or similar type of private sector arrangement, either of the following procurement procedures shall be used, as set forth in detail in the operation report and the loan agreement:

- (a) The entrepreneur under the BOO/BOT/BOOT or similar type of contract shall be selected under competitive bidding procedures acceptable to the Bank, which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for the borrower or purchaser by the facility, and the period of the facility's depreciation. The said entrepreneur

selected in this manner shall then be free to procure the goods, works, and services required for the facility using its own procedures. In this case, the operation report and the loan agreement shall specify the type of expenditure incurred by the said entrepreneur towards which Bank financing will apply.

Or,

- (b) If the said entrepreneur has not been selected in the manner set forth in subparagraph (a) above, the goods, works or services required for the facility and to be financed by the Bank shall be procured in accordance with the procedures for public sector operations outlined in Section 3.

Procurement in Loans to Financial Intermediaries

4.5 Where an operation provides funds to a financial intermediary to finance sub-loans to private beneficiaries such as small and medium-sized enterprises, the procurement under the sub-loan shall be undertaken by the respective beneficiaries in accordance with normal procurement practices for private sector operations outlined in Section 4. Where sub-loans are made to public sector beneficiaries, procurement under such sub-loans shall be in accordance with the procedures for public sector operations outlined in Section 3.

Procurement under Loans Guaranteed by the Bank

4.6 If the Bank guarantees, in whole or in part, a loan made by another lender, the goods, services, and works financed by the said loan shall be procured:

- a) for private sector operations, in accordance with normal commercial practices for private sector operations outlined in Section 4; or
- b) for public sector operations, in accordance with the procedures for public sector operations outlined in Section 3.

5. PROCUREMENT OF CONSULTANT SERVICES

General

5.1 The Bank and its borrowers employ individuals and firms to provide a wide range of expert advice and consulting services in connection with their operations and management responsibilities. The main concern when choosing consultants should be the quality of the services that are provided. The procedures for selecting consultants and contracting for their services shall be flexible and transparent to ensure that assignments can be efficiently executed with high standards of performance, while providing the necessary accountability. The procedures described below shall be followed for consultant contracts to be financed with the proceeds of Bank loans under public sector operations.

Consultant Selection Procedures

5.2 The selection process for consultants normally involves the following steps:

- (a) Defining the scope, objectives and estimated budget of the proposed assignment and determining the selection procedure to be followed;
- (b) Identifying consultants that are qualified to perform the required services and preparing a short list of qualified firms;
- (c) Inviting proposals from the short-listed firms;
- (d) Evaluating and comparing capabilities and proposals and selecting the consultant with the highest-rated proposal;
- (e) Executing a contract with the selected consultant; and
- (f) Contract administration.

5.3 Some of these steps may be simplified or omitted, depending on the value of the contract for services to be performed:

- (a) For contracts estimated to cost less than \$US50,000 with individuals or with firms, a qualified consultant or firm may be selected directly, without the requirement to prepare a short list, and a contract negotiated with the selected consultant or firm.
- (b) For contracts with individuals estimated to cost \$US50,000 or more, selection shall be made on the basis of an evaluation of short-listed, qualified candidates and the rationale for the choice shall be recorded.
- (c) Contracts with firms estimated to cost \$US50,000 or more shall follow a competitive procedure based on invited proposals from a short list of qualified firms.

Short Lists

5.4 Short lists of consultants shall normally include no fewer than three and no more than six qualified and experienced consultants (candidates or firms, as the case may be). The list shall normally comprise a wide geographic spread of consultants, including wherever possible at least one qualified consultant from the United States and Mexico. To assist borrowers and Bank staff in the preparation of short lists the Bank will maintain a register of consultants.

5.5 No affiliate of the borrower shall be included on a short list.

5.6 For assignments with firms estimated to cost US\$150,000 or more, complex or specialized assignments, or operations involving a significant number of similar assignments, a formal notice soliciting expressions of interest from qualified firms shall be published in English and Spanish, as appropriate, in:

- Mexico's *Diario Oficial de la Federación*;

- the state where the project is located, in a newspaper of broad circulation;
- the state across the U.S.-Mexico border, in a newspaper of broad circulation;
- the NADB's web site, posted on the site and distributed via list-serv (e-mail distribution);
- *Compranet*, Mexico's electronic service for publishing public tenders;
- other technical journals as appropriate; and
- *Development Business* (optional for contracts over the international competitive bidding thresholds).

The short list shall be prepared on the basis of the responses to the solicitation and information from the register of consultants.

Evaluation and Selection

5.7 When formal proposals are requested from a short list of firms, the invitation for proposals shall clearly state the criteria for evaluating them. The evaluation of consultants shall normally be based only on technical considerations including, but not limited to, experience in similar assignments, qualifications of key personnel proposed for the assignment, and suitability and quality of the work plan. For some assignments of a straightforward technical nature, the price of the services can be a consideration but quality shall remain the principal factor in selection. If price is an element in the evaluation, a two-stage procedure shall be used in which the technical evaluation is undertaken independently and free from the influence of price. Price proposals will not be available to the evaluators until after the technical evaluation has been completed. When formal proposals have been requested in which price is not a factor in the evaluation, the consultant that submits the highest rated proposal shall be invited to negotiate a contract with the borrower. When formal proposals have been requested in which price is a factor in the evaluation, the consultant that submits the highest evaluated proposal shall be invited to sign a contract with the borrower.

5.8 The preferred procedure for selecting a consultant is through competition. Competition offers opportunities to the borrower to choose among different approaches. The competitive process normally leads to a better analysis of job requirements, the preparation of better terms of reference (TORs) and lower costs. Therefore, competition through a short list is preferred. In particular, for follow-on assignments, competitive selection is required for:

- (a) relatively simple assignments that many firms could carry out with comparable quality and price;
- (b) follow-on assignments that are relatively large compared to the initial ones;
- (c) follow-on assignments where the original contract was not awarded through international open competition.

5.9 In some circumstances, the services of a specific firm may be continued when 1) the Bank determines that there is no advantage to be gained from a competitive process, and 2) provision for an extension was included in the original terms of reference and contract, which was awarded after an open international competitive selection, where:

- (a) the firm has unique expertise; or
- (b) the firm has been or is involved in the early phases of the project such as feasibility or design, and continuity is essential from a technical point of view.

In such cases a borrower may, with the Bank's prior approval, invite the firm in question to submit a proposal and negotiate a contract.

Contract Negotiations

5.10 A discussion of the work plan, staffing, borrower's inputs and form of proposed contract should be completed prior to financial negotiations. The draft final contract shall be presented to the Bank for review and concurrence before signing.

Contract Administration

5.11 As in the case of other contracts in Bank-financed projects, the borrower is responsible for managing and administering the consultant's work to ensure high performance standards, authorizing payments, making contract changes as may be needed, resolving claims and disputes, ensuring timely and satisfactory completion of the assignment and evaluating, in consultation with the Bank, the performance of consultants.

Quality of Staff

5.12 Staff substitution by a consulting firm is undesirable at any time. Reasons for staff substitution must be documented. If substitution becomes necessary, the consultant should propose other staff having equal or better qualifications directly related to the required services, for approval by the borrower and the Bank.

Other Provisions (from section 3 above)

5.13 The Section 3 paragraphs (see above) on advance contracting/retroactive financing (3.31), language (3.15), currency (3.18), payment (3.19), performance security (3.22), and application of law for settlement of disputes (3.23) also apply to the procurement of consulting services.

Bank Review

5.14 Where consultants are being engaged by a borrower, the qualifications, experience, and terms and conditions of employment of consultants shall be satisfactory to the Bank. The Bank will review the proposed scope of the services and terms of reference, the proposed short list of firms, the recommendation for consultant selection and the final contract to ensure that the assignment is eligible for Bank financing. The review

procedures are described in Appendix 1. The loan agreement and operations report will specify the contracts subject to review. The Bank will also evaluate a consultant's performance, in consultation with the borrower.

5.15 If the Bank finds that the procurement or administration of a contract has not been carried out in accordance with the agreed procedures, the contract shall not be eligible for financing with the loan proceeds and the portion of the loan allocated to the contract shall be canceled. The Bank may, in addition, exercise other remedies under the loan agreement.

APPENDIX 1

BANK REVIEW OF PROCUREMENT DECISIONS

Scheduling of Procurement

1. The Bank shall review the procurement arrangements proposed by the borrower, including contract packaging, applicable procedures, and the scheduling of the procurement process, for its compliance with these procedures and with the proposed implementation program and disbursement schedule. The borrower shall promptly inform the Bank of any delay, or other changes in the scheduling of the procurement process, which could significantly affect the timely and successful implementation of the project contracts, and agree with the Bank on corrective measures.

Contracts for Goods, Works, Services and Consultant Services

2. The borrower shall submit to the Bank such documents and information as the Bank may request in order to assure itself that procurement is conducted in accordance with the agreed procedures and consistent with these policies and procedures. This documentation would include, but not be limited to: procurement notices, prequalification and bidding documents, evaluation reports, procurement and contract monitoring reports, data on bidders and contract awards.

3. Prior to the submission of a drawdown application in respect of a contract, the borrower shall submit to the Bank a conformed copy of the contract together with documentation, in a form acceptable to the Bank, certifying and demonstrating that the procurement for the contract was carried out in accordance with the loan agreement.

4. The Bank may require that procurement procedures, documentation and decisions be reviewed and/or audited by independent, qualified and experienced consultants, retained under terms of reference acceptable to the Bank.

5. The borrower shall make such modifications in procurement documents or reports as the Bank shall reasonably request. Agreed documents or reports shall not be materially changed without the Bank's concurrence.

6. Before agreeing to any material modifications or waiver of the terms and conditions of a contract or granting a material extension of the stipulated time for performance or issuing any change order or orders (except in cases of extreme urgency) which in aggregate would increase the cost of a contract by more than 15 percent of the original price, the borrower shall get the Bank's concurrence to the proposed modification, waiver, extension or change order.

7. If the Bank determines that the bidding procedures, award of a contract, the contract itself or any modification or waiver of such contract is not consistent with the loan agreement, it shall promptly inform the borrower and state the reasons for such determination.

8. Upon the award of any contract to be financed by the Bank, the Bank may publish a description of such contract, the name and address of the party to which the contract was awarded and the contract price.

APPENDIX 2

GUIDANCE TO BIDDERS

Purpose

1. This Appendix provides guidance to potential bidders wishing to participate in Bank-financed procurement.

Responsibility for Procurement

2. As emphasized in paragraphs 1.6 and 2.5 of the Policies and Procedures, the borrower is legally responsible for the procurement. It invites, receives, and evaluates bids, and awards the contract. The contract is between the borrower and the supplier or contractor. The Bank is not a party to the contract.

Bank's Role

3. The Bank requires the procurement procedures, documents, bid evaluations, award recommendations and the contract to be carried out in accordance with agreed procedures, as required in the loan agreement. In the case of major contracts the Bank normally reviews the documents as described in Appendix 1. If at any time in the procurement process (even after the award of contract), the Bank concludes that the agreed procedures were not followed in any material respect, the Bank may declare misprocurement, as described in paragraph 3.35. However, if a borrower has awarded a contract after obtaining the Bank's "no objection," the Bank will declare misprocurement only if the "no objection" was issued on the basis of incomplete, inaccurate or misleading information furnished by the borrower, or it is established, by a decision of a court of law, that the contract was awarded on the basis of corrupt practices.

4. The Bank has Model Bidding Documents for various types of procurement which borrowers can use, with minimum changes to address country- and project-specific issues. Prequalification and bidding documents are finalized and issued by the borrower.

5. Information on bidding opportunities under Open Bidding may be obtained from the General Procurement Notice and the Specific Invitation to prequalify or to bid, as described in paragraphs 3.6 and 3.7 of the Policies and Procedures. General guidance on participation, as well as advance information on business opportunities in upcoming projects, may be obtained in English and Spanish, as appropriate, in:

- Mexico's *Diario Oficial de la Federación*;
- the state where the project is located, in a newspaper of broad circulation;
- the state across the U.S.-Mexico border, in a newspaper of broad circulation;
- the NADB's web site, posted on the site and distributed via list-serv (e-mail distribution);

- *Compranet*, Mexico's electronic service for publishing public tenders;
- other technical journals as appropriate; and
- U.N. *Development Business* (optional for contracts over the international competitive bidding thresholds).

Bidder's Role

6. Once a bidder receives the prequalification or bidding document, the bidder should study the documents carefully to decide if it can meet the technical, commercial and contractual conditions, and if so, proceed to prepare its bid. The bidder should then critically review the documents to see if there is any ambiguity, omission or internal contradiction, or any feature of specifications or other conditions which are unclear or appear discriminatory or restrictive; if so, it should seek clarification from the borrower, in writing, within the time period specified in the bidding documents for seeking clarifications.

7. The criteria and methodology for selection of the successful bidder are outlined in the bidding documents, generally under Instructions to Bidders and Specifications. If these are not clear, clarification would be similarly sought from the borrower.

8. In this connection it should be emphasized that the specific bidding documents issued by the borrower govern each procurement, as stated in paragraph 2.5 of the Policies and Procedures. If a bidder feels that any of the provisions in the documents are inconsistent with the Policies and Procedures, it should also raise this issue with the borrower.

9. It is the responsibility of the bidder to raise any issue of ambiguity, contradiction, omission, etc., prior to the submission of its bid, to assure submission of a fully responsive and compliant bid, including all the supporting documents requested in the bidding documents. Noncompliance with critical (technical and commercial) requirements will result in rejection of the bid. If a bidder wishes to propose deviations to a non-critical requirement, or propose an alternative solution, the bidder should quote the price for the fully compliant bid and then separately indicate the adjustment in price that can be offered if the deviation or alternative solution is accepted. Once the bids are received and publicly opened, bidders will not be required or permitted to change the price or substance of a bid.

Confidentiality

10. The process of bid evaluation shall be confidential until the award is notified. This is essential to enable the borrower and Bank reviewers to avoid either the reality or perception of improper interference. If at this stage a bidder wishes to bring additional information to the notice of the borrower, the Bank, or both, it should do so in writing.

Action by the Bank

11. Bidders are free to send copies of their communications on issues and questions with the borrower to the Bank or to write to the Bank directly, when borrowers do not respond promptly, or the communication is a complaint against the borrower.

12. References received by the Bank from potential bidders, prior to the closing date for submission of the bids, will, if appropriate, be referred to the borrower with the Bank's comments and advice, for action or response.

13. Communications received from bidders after the opening of the bids, will be handled as follows. The communication will be examined by the Bank, in consultation with the borrower. If additional data is required to complete this process, these will be obtained from the borrower. If additional information or clarification is required from the bidder, the Bank will ask the borrower to obtain it and comment on or incorporate it, as appropriate, in the evaluation report. The contract award decision will not be made until the communication is fully examined and considered.

14. Except for acknowledgments of receipt, the Bank will not enter into discussion or correspondence with any bidder during the evaluation and review process of the procurement, until the award of the contract is notified.

Debriefing

15. If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the borrower. If the bidder is not satisfied with the explanation and wishes to seek a meeting with the Bank, it may do so, and the Bank will arrange a meeting with the relevant staff. In this discussion, only the bidder's bid can be discussed and not the bids of competitors.

Certification

16. Entities offering bids or providing goods or services to the Bank or in conjunction with a loan made or guaranteed by the Bank will certify in writing that (1) they have not engaged and will not engage in bribery of domestic or foreign officials related to potential or active Bank projects, (2) they have corporate policies that clearly prohibit the use of any bribery in a corporate activity, and (3) they have neither been convicted of (nor found by a civil judgment to have committed) bribery of domestic or foreign officials, or Other Offenses as set forth below, within five years of the date of the certification.

Debarment

17. The Bank shall have the right to exclude, from any future participation in any Bank-funded/guaranteed project, any entity that in the past five years has been convicted of (or found by a civil judgment to have committed) bribery of domestic or foreign officials or any of the other following offenses ("Other Offenses"): fraud, embezzlement, theft, forgery,

destruction of records, making false statements to government officials, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty.