

**REGULATIONS AND RULES**

**FOR THE**

**PROCUREMENT OF**

**GOODS AND SERVICES**

**OF THE SECOND ACCOUNT**



# REGULATIONS AND RULES FOR THE PROCUREMENT OF GOODS AND SERVICES OF THE SECOND ACCOUNT

*(Adopted by the Executive Board at its Fourth Meeting in October 1990,  
pursuant to Governing Council decision 4 (II) of 26 July 1990 and amended by the Governing Council  
on 6 December 2004 at its Sixteenth Annual Meeting<sup>1</sup>)*

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# **REGULATIONS AND RULES FOR THE PROCUREMENT OF GOODS AND SERVICES OF THE SECOND ACCOUNT**

## **PART I**

### **GENERAL**

1.01 Regulation I through XXII of the present Regulations and Rules for the Procurement of Goods and Services of the Second Account of the Common Fund prescribe the conditions under which goods and services of projects financed by the Fund through the Second Account are, except as provided in paragraph 1.02 hereinbelow, procured. The present Regulations and Rules are adopted pursuant to Article 16.10 and under the authority of the Agreement Establishing the Common Fund. The provisions of the Agreement shall have primacy over these Regulations and Rules.

1.02 Bodies, Entities and Specialized Agencies of the United Nations may, when undertaking procurement of goods and services in the capacity of Project Executing Agencies for projects financed by the Fund through the Second Account, apply, as the case may be, either their own procurement regulations or those of the United Nations in the place of Regulation I through XXII.

### **REGULATION I. DEFINITIONS**

1.03 For the purpose of the present Regulations and Rules:

- (a) “Award” means the decision to grant a contract to the winning bidder after a competitive bidding.
- (b) “Bid Evaluation” means the determination of the lowest evaluated cost based on price offers, standards of capability and financial resources and other factors.
- (c) “Bid Price” means the sum of all payments in various currencies required to be made to the bidder.
- (d) “Bid validity” means the period in which bids submitted remain valid for comparison, evaluation, approval and subsequently for contract award.
- (e) “Contract Price” means the sum payable to the contractor in a currency or currencies in which the bid price of the successful bidder is stated.
- (f) “Prequalification” means a process of selecting bidders in advance of bids for particular contracts requiring specially designed equipment or specialized services.

- (g) “Procurement” means the acquisition of both goods and services for the purpose of implementing projects.

1.04 The definitions contained in the Agreement Establishing the Common Fund and in the Rules and Regulations of the Second Account Operations shall also be applicable to these Rules and Regulations.

## **REGULATION II. THE PURPOSE**

1.05 The purpose of the present Regulations and Rules is to provide equal opportunity to prospective bidders from all Member States of the Fund, subject to appropriate preferences for goods and services from developing Member countries as provided for in Article 16.10 of the Agreement, and to ensure economy and efficiency and to encourage the development of local manufacturers and contractors in the developing countries in the execution of projects financed by the Fund.

## **REGULATION III. APPLICABILITY**

1.06 The Rules and Regulations prescribed hereinafter apply to all procurement of goods and services financed wholly or in part by the Fund through its Second Account operations. If the Fund finances only part of the project, the procurement of those goods and services not financed by the Fund may be acquired under procedures specified in the Project Agreement. In such cases the Fund should be satisfied that the goods and services:

- (a) Are of satisfactory quality and are compatible with the standards required by the Project Agreement;
- (b) Will be delivered or completed in timely fashion; and
- (c) Are priced so as not to affect adversely the overall economic and financial viability of the project.

## **REGULATION IV. METHODS OF PROCUREMENT**

1.07 Depending upon the size, nature and circumstances under which a project is implemented, methods of procurement shall be one of the following:

- (a) International Competitive Bidding (ICB)
- (b) Other methods of Procurement, including:
  - (i) Limited International Bidding (LIB);
  - (ii) Local Competitive Bidding (LCB);

- (iii) International and Local Shopping (ILS);
- (iv) Direct Contracting or Direct Selection of Supplier (DSS);
- (v) Force Account;
- (vi) Use of Procurement Agents.

1.08 The particular methods to be followed for the procurement of goods and services for a project shall be specified in the Loan/Grant and/or Project Agreement.

## **PART II**

### **REGULATION V. INTERNATIONAL COMPETITIVE BIDDING (ICB)**

2.01 International Competitive Bidding should be the normal method of procurement and should always be used for procurement of goods and services exceeding the value of USD 100,000. International Competitive Bidding should provide prospective bidders adequate notification of a project's requirements and providing all such bidders an equal opportunity to bid on the necessary goods and services. The bidding document should clearly state the type of contract to be entered into and contain provisions including the basis of payment, either lump sum, unit prices, cost plus fees or combinations thereof.

### **REGULATION VI. NOTIFICATION AND ADVERTISING FOR ICB**

2.02 Timely notification of bidding is essential in competitive bidding. In this regard:

- (a) The Project Executing Agency shall prepare and forward to the Fund and/or to the Supervisory Body a General Procurement Notice as soon as possible, and in any event not later than 60 days prior to the date of availability to the public of the tender documents. The Notice shall contain information concerning, among others, the amount and purpose of the loan/grant, the goods and services to be procured, the schedule date for availability of the bidding or pre-qualification documents and the agency, if any, responsible for procurement of the goods and services for the Project Executing Agency. The Notice shall also state the preference to be given to goods and services from developing countries in accordance with Regulation XX of the present Rules and Regulations. The Fund shall arrange for the publication of such Notice in the United Nations Development Forum Business Edition.
- (b) The international Community shall also be notified of the opportunities to bid for specific contracts through invitations to prequalify or to bid in at least one newspaper of general circulation in the country where the goods and services shall be utilized for the project and in the official gazette, if any. Copies of such invitations may also be sent to local representatives of potential suppliers of the goods and services and to those who have expressed interest in response to the

General Notice. For large and specialized contracts, the Fund may require that the Project Executing Agency advertise the invitations to prequalify or to bid in well-known technical magazines, newspapers and trade publications of wide international circulation.

## **REGULATION VII. PREQUALIFICATION OF BIDDERS**

2.03 In the case of large and/or complex services requiring custom-designed equipment and specialized services where it is essential to ensure in advance of bidding that invitations to bid are extended only to those who are capable, prequalification may be required for particular contracts. Prequalification shall be based upon the capability of the prospective bidders to perform the particular contract satisfactorily, taking into account, inter alia,

- (a) experience and past performance on similar contracts;
- (b) capabilities with respect to personnel, equipment and plant; and
- (c) financial position.

2.04 On the completion of the prequalification selection, the bidding documents shall be issued to the qualified bidders.

## **REGULATION VIII. BIDDING DOCUMENTS**

2.05 Prospective bidders shall be furnished with a bidding document providing all necessary documents and information, including invitation to bid, instructions to bidders, form of bid, form of contract, conditions of contract, technical specifications, list of goods or bill of quantities and drawings, as well as necessary appendices, such as formats for various securities. Such documents shall be available at reasonable charges, if any, reflecting the cost of their production and shall not be so high as to discourage qualified bidders. The Project Agreement shall specify whether the bidding documents shall be submitted to the Fund for review before they are issued to prospective bidders.

2.06 Bidding documents should set clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule of delivery or completion, and the warranty and maintenance requirements as well as any other pertinent terms and conditions. Where appropriate, bidding documents should define the tests, standards and methods that will be employed to judge the conformity of equipment as delivered, or services as performed, with the specifications. If bids based on alternative designs, materials, completions schedules, payment terms etc. are permitted, conditions for their acceptability and the methods of their evaluation should be expressly stated. Any additional information, clarification or correction of errors should be sent to each recipient of the original bidding documents in sufficient time.

2.07 If particular national or other standards are cited, bidding documents shall state that equipment, materials or workmanship meeting other standards which ensure equivalent or higher quality than the standard specified will also be accepted.

2.08 Specifications shall be based on relevant characteristics and/or performance requirements and references to brand names, catalogue numbers or similar classifications shall be avoided. When it is unavoidable to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” should be added after such a reference.

2.09 If reference has to be made to the Fund in the bidding document, the following language shall be used:

“...(name of the Project Executing Agency) has received loan/grant from the Common Fund for Commodities in .....currency(ies) equivalent to .... (Units of Account) towards the cost of .....(name of project), and intends to apply the proceeds of this loan/grant to eligible payments under the contract (contracts) for which this invitation to bid is issued. Payment by the Fund will be made only at the request of ....(Project Executing Agency) and upon approval by the Fund in accordance with the terms and the conditions of the Project Agreement, and will be subject in all respects, to the terms and conditions of the Agreement. Except as the Fund may specifically otherwise agree, no party other than the Project Executing Agency shall derive any rights from the Loan/Grant Agreement or have any claim to loan/grant proceeds.

#### **REGULATION IX. VALIDITY OF BIDS AND BID SECURITY**

2.10 Bidders shall submit bids valid for the period specified in the invitation to bid and sufficient for the Project Executing Agency to complete the comparison and evaluation of bids, to review the recommendation of award with the Fund and obtain all the necessary approvals, when required by the Project Agreement so that the award shall be notified in time.

2.11 Bid Bonds or guarantees may be required to provide reasonable security for the Project Executing Agency and may be specified in the contract. Special conditions, if any, shall also be included. Bid bonds shall be released to unsuccessful bidders immediately after bid award.

#### **REGULATION X. CURRENCY PROVISIONS**

2.12 Bidding documents shall state the currency or currencies in which bidders are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the contract prices will be paid.

2.13 Bidders shall express their bid prices in a usable currency or in a currency widely used in international trade. Such currency shall be specified in the bidding documents. Bidders who

expect to incur expenditures in more than one currency may state the respective portions of their prices in each such currency. Alternatively, the bidder may express the entire bid price in one currency and indicate the percentages of the bid price required to be paid in other currencies and the exchange rates used in the calculations. Bidders may be required to state the local cost portion of the bid price in the currency of the country in which the project is implemented.

2.14 In bids concerning works, bidders may be required to state all their bid prices in the currency of the country in which the project will be implemented, along with the requirements for foreign currency payments expressed as a percentage of the bid price and specifying the exchange rate used in such calculations.

2.15 All bid prices shall be converted to a single currency selected by the Project Executing Agency and stated in the bidding documents. The conversion shall be done by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank) for similar transactions either:

- (a) On a date selected in advance and specified in the bidding documents, provided that such date should not be earlier than thirty days prior to the date specified for the opening of bids nor later than the original date prescribed in the bidding documents for the expiry of the period of bid validity; or
- (b) On the date of decision to award the contract or on the original date prescribed in the bidding documents for the expiry of the period of bid validity, whichever is earlier.

2.16 Contract price shall be paid in the currency or currencies in which the bid price of the successful bidder is stated when a bidder expressed his payment requirements in other currencies as a percentage of the bid price, and if requests payment in other currencies the exchange rates to be used for the purpose of payment shall be those used by the bidder in his bid.

## **REGULATION XI. TERMS AND METHODS OF PAYMENT**

2.17 Bidding documents shall specify payment terms and methods. Payment terms shall be in accordance with international commercial practices applicable to the goods and works and the market in question.

2.18 For work contracts extending over several years, bidding documents should state whether upward or downward adjustments of bid prices will be made in the event changes occur in major cost components. Such adjustments may be affected either by the use of a prescribed formula (or formulae) which breaks down the total contract cost into components that are adjusted by price indices specified for each component or use documentary evidence presented by the supplier or contractor, as may be agreed in advance.

2.19 If there shall be any advance payments for mobilization or any other expenses, the amounts and timing of such advance payment(s) shall be stated in the bidding documents and the purposes for which they are intended shall be described.

## **REGULATION XII. PERFORMANCE SECURITY**

2.20 Bidders shall be required to provide security against breach of contract with a performance bond or a bank guarantee, at the contractor's option, in an appropriate form and amount as shall be specified in the bidding documents. Work contracts may provide for a percentage of the total payment to be held as retention money to secure full performance by the contractor. Security shall extend beyond the estimated date for completion of the works to cover the warranty or maintenance period which may be specified in the contract. Suppliers or manufacturers of goods may be required to provide a bank guarantee to protect against non-performance of the contract. A percentage of the payments may be held as retention money to cover warranty obligations.

## **REGULATION XIII. TRANSPORTATION AND INSURANCE**

2.21 Bids shall be invited on cost, insurance and freight (c.i.f.) port of entry border point terms and the evaluation and selection of the lowest evaluated bid shall be on the basis of these c.i.f. prices. The Project Executing Agency may sign the contract on f.o.b. terms and make its own arrangements for transportation and insurance, but payments under the Fund loan/grant shall be limited to the c.i.f. price quoted by the bidder. Indemnity under insurance must be readily available in convertible currencies to enable prompt replacements of lost or damaged goods. In the case of large projects with several contractors on a site, a "wrap-up" or total project insurance arrangement may be provided and the Project Executing Agency shall seek competition for such insurance.

## **REGULATION XIV. FORCE MAJEURE**

2.22 The conditions of contract shall contain clauses, if necessary, when failure to perform the obligations of the parties under the contract shall not be considered a default but a result of an event of force majeure.

## **REGULATION XV. LANGUAGE**

2.23 Bidding documents shall be prepared in one of the languages customarily used in international commercial transactions and should specify that the text of the documents in that language shall be the authentic one.

## **REGULATION XVI. SETTLEMENT OF DISPUTES**

2.24 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration shall normally have preference over other methods for the settlement of disputes.

## **REGULATION XVII. PREPARATION AND SUBMISSION OF BIDS**

2.25 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than 45 days from the date of the invitation to bid or the date of availability of bidding documents, whichever is later shall be allowed for international bidding. Where large works or complex items of equipment are involved, this period shall generally be not less than 90 days to enable prospective bidders to conduct investigations before submitting their bids. The date, hour and place for latest delivery of bids should be specified in the invitation to bid.

## **REGULATION XVIII. BID OPENING PROCEDURES**

2.26 The time of bid opening shall be the same as for the latest delivery of bids or soon thereafter, and should be announced, together with the place for bid opening, in the invitation to bid. the opening of bid shall be as follows:

- (a) The Project Executing Agent shall open in public all bids at the stipulated time. Bidders or their representatives shall be allowed to be present.
- (b) The name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, should be read out aloud and recorded.

2.27 A copy of the record shall be sent to the Fund if requested by the Fund and/or by Supervisory Body.

2.28 Bidders shall not be requested or permitted to alter their bids after the first bid has been opened. Clarifications could be asked if needed to evaluate bids, but no change of the substance or price of bids are permitted after the bid opening.

## **REGULATION XIX. EXAMINATION, EVALUATION AND COMPARISON OF BIDS**

2.29 The Project Executing Agency shall ascertain whether the bids are generally in order and conform to the requirements of the bidding documents. If a bid is not substantially responsive and contains material deviations from or reservations to the terms, conditions and specifications in the bidding documents, it shall not be considered further.

2.30 The bid with the most favourable offer should be selected for award, exemption being made to bidders from developing countries, a margin of preference of 10% given to them on the bid price. Additional factors to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the most favourable evaluated bid shall be specified in the bidding documents. The factors may include, the cost 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, the availability and guarantee of services and spare parts, the reliability of proposed methods, and minor deviations, if any.

2.31 The evaluation and comparison of bids shall be on the basis that goods or services acquired under financing from the Fund are free from taxes and levies in the territory in which the project concerned is implemented in connection with the execution, delivery or registration thereof.

2.32 The Project Executing Agency shall prepare a detailed report on the evaluation and comparison of bids indicating the rationale on which the recommendation is based for the award of the contract. This report shall be made available to the Fund. It shall be stated in the Project Agreement if the report will be reviewed by the Fund before the award. This shall always be the case when procurements exceed the equivalent of USD 200,000.

2.33 The Project Executing Agency shall award the contract within the period of the validity of a bid to the bidder whose bid has been evaluated as the most favourable exception being made from developing countries in accordance with Regulation XIX, paragraph 2.30 above, and which meets the appropriate standards of capability and financial resources. In exceptional circumstances, whereby the Project Executing Agency is unable to evaluate and award bids within the initial period of bid validity, extension of bid validity shall be requested in writing from all bidders before the expiry date. Bidders shall have the right to refuse extension of bid validity. The Fund shall be informed of such extension of bid validity.

2.34 If bidders have not been prequalified, and if the bidder whose bid has been evaluated as the most favourable has been found by the Project Executing Agency to lack the capability and resources to carry out the contract concerned, his bid shall be rejected and the offer of the next most favourable bidder shall be considered, exception being made to bidders from developing countries in accordance with Regulation XIX, paragraph 2.30.

## **REGULATION XX. PREFERENCES**

2.35 The Project Agreement shall state the extent to which International Competitive Bidding shall state the appropriate preference to be given to experts, technicians, suppliers and contractors from developing countries Members of the Fund as provided for in Article 16 (10) of the Agreement. In this regard, appropriate preference should be the equivalent of 10% of bidding price.

## **REGULATION XXI. REJECTION OF ALL BIDS**

2.36 All request to bid from the Executing Agency should make the following provisions: Only bids conforming to all terms and conditions will be considered. Bids may be rejected in whole or in part. Bids may be accepted without negotiation. All bids may be rejected in cases where the bidder with the most favourable bid exceeds the cost estimates by a substantial amount or when bids are not responsive or there is lack of effective competition. If all bids are rejected,

the Supervisory Body shall review the causes justifying the rejection and consider making either revisions in the specifications or modifications in the project or both before inviting new bids. If any modifications or revisions have been made as an alternative to rebidding, the Project Executing Agency shall negotiate with the bidder offering the most favourable bid to try to obtain a satisfactory contact. The Fund shall be consulted in the process.

### **PART III**

#### **REGULATION XXII. OTHER METHODS OF PROCUREMENT**

3.01 Where international competitive bidding would not be the most economical and efficient method of procurement, one of the commonly used procurement methods set forth below may be employed for the procurement of goods and services exceeding the value of USD 10,000. The particular methods and the categories of goods and services to which they apply shall be specified in the Project Agreement.

3.02 Limited International Bidding (LIB) is essentially international competitive bidding by direct invitation without open advertisement used in cases where:

- (a) the amounts are small;
- (b) there are a limited number of suppliers;
- (c) other exceptional reasons justifying departure from full ICB procedure.

3.03 In all respects, ICB procedures other than advertisement shall apply.

3.04 Local Competitive Bidding (LCB) is a competitive bidding advertised locally and in accordance with local procedures when goods or services are unlikely to attract foreign bidders. Bidding documents may be issued in a local language and local currency are generally used for the purpose of bids and payment. Advertisement may be limited to the local press or official gazette. Local methods and procedures to be employed shall provide for adequate competition and must be acceptable to the Fund.

3.05 International and Local Shopping is a method based on price quotations obtained from, at least three, foreign or local suppliers. It is an appropriate method used for procuring readily available and standard off-the-shelf goods that are small in value. No formal bidding documents are required.

3.06 Direct Contracting or Direct Selection of Suppliers (DSS is direct contracting without competition under the following circumstances:

- (a) An existing contract for services or goods may be extended for the construction or provision of additional services or goods of a similar nature and when no advantage could be obtained by further competition.

- (b) Standardization and compatibility of equipment, quality and price may justify additional purchases from original supplier.
- (c) When equipment is obtainable from only one source.
- (d) When the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of his guarantee of performance.
- (e) When the need for early delivery justify direct contracting to avoid costly delays.
- (f) A directly negotiated contract may be acceptable when competitive bidding including rebidding fails to produce a contractor capable of carrying out the required services at a reasonable price.

3.07 Force Account is construction by the use of the Project Executing Agency's own personnel and equipment. Such procurement may be justified where:

- (a) Quantities of work cannot be defined in advance.
- (b) Small and scattered services or remoteness of location would make mobilization costs high.
- (c) Work must be carried out to avoid disruption of ongoing operations when the contractor is unable to complete the work due to reasons beyond his control.
- (d) No contractor is interested in carrying out the work.

3.08 Where procurement is particularly complex, or the Project executing Agency lacks the necessary organization and experience, the services of firms which specialize in handling international procurement may be employed. Procurements of goods and equipment may be made through the United Nations Specialized Agencies whenever such opportunities are available.

3.09 In situations where other methods of procurement are used, the Executing Agency shall record on file the justification for adopting the alternative method and secure the agreement of the Supervisory Body.