



Resolution DE-101/99

*LOAN CONTRACT No.1042/SF-GY-2*

between the

COOPERATIVE REPUBLIC OF GUYANA

and the

INTER-AMERICAN DEVELOPMENT BANK

Hybrid Program for Air Transport Reform  
(Investment/Technical Cooperation Components)

February 4, 2000

LEGIIVGY-858/99

# ***LOAN CONTRACT***

## **SPECIAL CONDITIONS**

### **INTRODUCTION**

#### **Parties, Purpose, Constituent Elements, and Executing Agency**

#### **1. PARTIES AND PURPOSE OF THE CONTRACT.**

CONTRACT entered into on February 4, 2000, between the COOPERATIVE REPUBLIC OF GUYANA (hereinafter referred to as the "Borrower") and the INTER-AMERICAN DEVELOPMENT BANK (hereinafter referred to as the "Bank") to cooperate in the execution of the Investment and Technical Cooperation Components of a Hybrid Program for Air Transport Reform, hereinafter referred to as the "Program". The Investment Component and the Technical Cooperation Components of the Program are referred to hereinafter collectively as the "Components". The major aspects of the Program related to the Components are described in detail in Annex A.

#### **2. CONSTITUENT ELEMENTS OF THE CONTRACT AND REFERENCE TO THE GENERAL CONDITIONS.**

(a) This Contract consists of these Special Conditions, the General Conditions, and Annexes A, B, and C, which are attached hereto. If any provision of the Special Conditions or the Annexes should present any inconsistency or contradiction with the General Conditions, the provisions of the Special Conditions, or of the respective Annex, shall prevail. In case of inconsistencies or contradictions between the Special Conditions or Annexes, specific rules shall prevail over general rules.

(b) Rules for the application of amortization, interest, credit fee, inspection and supervision and disbursement clauses, as well as other conditions related to project execution, are established in detail in the General Conditions. The General Conditions also include general definitions.

#### **3. EXECUTING AGENCY**

The parties agree that the execution of the Program and the utilization of the resources of the financing from the Bank shall be carried out by the Borrower, through its Ministry of Public Works and Communications, which for the purposes of this Contract shall be referred to, without distinction, as either the "Borrower", the "MPW&C" or the "Executing Agency."

## CHAPTER I

### Costs, Financing and Additional Resources

**SECTION 1.01** Cost of the Program and of the Components. The total cost of the Program is estimated to be the equivalent of thirty-two million United States of America dollars (US\$32,000,000). Unless otherwise stated in this Contract, the term "dollars" hereinafter signifies the currency of legal tender in the United States of America. The total cost of the Investment Component is estimated to be the equivalent of nine million four hundred thousand dollars (US\$9,400,000), and that of the Technical Cooperation Component is estimated to be the equivalent of two million four hundred thousand dollars (US\$2,400,000).

**SECTION 1.02** Amount of the Financing. In accordance with this Contract, the Bank agrees to grant to the Borrower, and the Borrower accepts, a "Financing", chargeable to the resources of the Fund for Special Operations of the Bank, for up to the equivalent of nine million eight hundred thousand dollars (US\$9,800,000) or the equivalent thereof in other currencies forming part of such resources, except the currency of Guyana. Of this total, an amount of up to seven million five hundred thousand dollars (US\$7,500,000) is expected to be destined for the Investment Component, and an amount of up to two million three hundred thousand dollars (US\$2,300,000) is expected to be destined for the Technical Cooperation Component. The amounts disbursed from the Financing shall constitute the "Loan."

**SECTION 1.03** Additional Resources. The amount of the additional resources which, pursuant to Article 6.04 of the General Conditions, the Borrower shall undertake to contribute in a timely manner for the complete and uninterrupted execution of the Program, is estimated to be the equivalent of two million dollars (US\$2,000,000), with one million nine hundred thousand dollars (US\$1,900,000) of that amount expected to be destined for the Investment Component and the remaining one hundred thousand dollars (US\$100,000) expected to be destined for the Technical Cooperation Component. These estimates shall not imply any limitation or reduction of the obligation of the Borrower under said Article.

## CHAPTER II

### Amortization, Interest, General Inspection and Supervision, and Credit Fee

**SECTION 2.01** Amortization. The Loan shall be completely repaid by the Borrower by means of sixty (60) semiannual, consecutive, and, insofar as possible, equal installments. The first installment shall be paid on August 4, 2010, and the last installment no later than February 4, 2040.

**SECTION 2.02** Interest. (a) The Borrower shall pay interest semiannually on the outstanding daily balance of the Loan at the rate of 1% per annum until February 4, 2010, and 2% per annum thereafter. Interest shall accrue from the date of each respective disbursement. The first payment of interest shall be made on August 4, 2000, and subsequent payments shall be made on February 4 and August 4 of each year.

(b) Resources of the Financing shall be used to pay interest during the period of disbursement thereof, without a request from the Borrower.

**SECTION 2.03** Resources for General Inspection and Supervision. From the amount of the Financing, the sum of ninety-eight thousand dollars (US\$98,000) is hereby allocated to cover the Bank's expenses for general inspection and supervision. Said sum shall be disbursed in quarterly and, insofar as possible, equal installments and shall be credited to the accounts of the Bank without the necessity of a request from the Borrower.

**SECTION 2.04** Credit Fee. In addition to interest, the Borrower shall pay a credit fee pursuant to the provisions of Article 3.02 of the General Conditions. For this purpose it is hereby noted that the Board of Executive Directors of the Bank approved the Resolution relating to the Financing on October 20, 1999.

### CHAPTER III

#### Disbursements

**SECTION 3.01** Currency and Use of Funds. (a) The amount of the Financing shall be disbursed in dollars or its equivalent thereof in other currencies of the Fund for Special Operations, except that of Guyana, to pay for goods and services through international competition and for such other purposes as are indicated in this Contract.

(b) The resources of the Financing may be used only for the payment of goods and services originating in member countries of the Bank.

**SECTION 3.02** Special Conditions Prior to First Disbursement under Investment Component In addition to the conditions precedent stipulated in Article 4.01 of the General Conditions, the first disbursement of the Financing destined for the Investment Component shall be subject to the fulfillment, to the satisfaction of the Bank, of the following requirements:

- (a) Evidence that the Borrower has established a foreign exchange account in the Central Bank of Guyana where the resources of the Loan will be deposited and an account in a commercial Bank for the transfer of the local counterpart resources;



- (b) Agreement between the Borrower and the Bank on designs, environmental assessment, and specifications related to investments under the Program in Cheddi Jagan International Airport ("CJIA"); and
- (c) The corporatized entity to be created under the Program for managing CJIA (the "CJIA Corporation") has been legally created and fully staffed in accordance with plans agreed upon with the Bank; provided, however, that fulfillment of this Section 3.02(c) shall not be required prior to the release of disbursements totaling up to five hundred thousand dollars (US\$500,000) solely for the purchase and installation of approach lights at CJIA, in accordance with plans agreed upon with the Bank.

**SECTION 3.03 Special Conditions Prior to First Disbursement under Technical Cooperation Component.** In addition to the conditions precedent stipulated in Article 4.01 of the General Conditions, the first disbursement of the Financing destined for the Technical Cooperation Component shall be subject to the fulfillment, to the satisfaction of the Bank, of the following requirements:

- (a) Evidence of the establishment of the accounts referred to in Section 3.02(a) of this Contract;
- (b) Agreement with the Bank on specific terms of reference and cost estimates for the consultancy services to be hired under the Component; and
- (c) The signature of an agreement between the Ministry of Finance and the MPW&C by means of which responsibility for the Technical Cooperation Component is given to the latter without the need for further requests for transfer of funds.

**SECTION 3.04 Reimbursement of Expenditures Chargeable to the Financing.** With the consent of the Bank, resources of the Financing may be used to reimburse expenditures incurred or to finance those that may be incurred in the Program on or after October 20, 1999, and up to the date of this Contract, provided that requirements substantially similar to those set forth in this Contract have been fulfilled.

**SECTION 3.05 Disbursement Period.** The period for disbursement of the resources of the Financing shall expire four (4) years from the effective date of this Contract.

**SECTION 3.06 Revolving Fund.** (a) For the purposes of the provisions established in Article 4.07(b) of the General Conditions, the amount of the Revolving Fund shall not exceed 5% of the amount of the Financing

(b) The reports related to the execution of the Program which the Borrower shall submit to the Bank in accordance with Article 7.03(a)(I) of the General Conditions, shall include the financial-

accounting information about management of the Revolving Fund resources, upon request by the Bank.

## CHAPTER IV

### Execution of the Program

**SECTION 4.01**     **Conditions Concerning Prices and Acquisitions.** (a) The acquisition of goods, works and related services shall be subject to the Tender Procedures which are attached to this Contract as Annex B. When the estimated value of goods or related services is equal to or exceeds the equivalent of two hundred fifty thousand dollars (US\$250,000) or that of works is equal to or exceeds the equivalent of one million dollars (US\$1,000,000) and the entity in charge of carrying out procurement for the Program belongs to the public sector, the method of procurement to be utilized shall be international competitive bidding, in accordance with the provisions of the cited Annex.

(b) Unless the parties agree otherwise, prior to issuing each call for public tendering or, if a call for public tendering is not applicable, prior to the acquisition of goods or the initiation of the construction of works, the Borrower shall submit for the consideration of the Bank: (i) the general plans, specifications, budgets and other documents required for the acquisition or the construction, and, as the case may be, the specific guidelines and other documents necessary for the call for bids; and (ii) in the case of works, evidence that it has, with respect to the real property where the works will be constructed, the right of legal possession, easements or other rights necessary to initiate the construction.

(c) For purposes of the provisions set forth in paragraph (a) above, the system of prequalification or the registry of bidders shall be used in biddings for the execution of works with a cost equal to or exceeding the equivalent of two million five hundred thousand dollars (US\$2,500,000).

**SECTION 4.02**     **Maintenance of Works.** The Borrower undertakes to: (a) ensure that the works and equipment included in the Program shall be adequately maintained according to generally accepted technical standards; and (b) present to the Bank a report on the status of said works and equipment and an annual maintenance plan for that year, as established in paragraph 6.03 of Annex A, during the five (5) years following the completion of the first of the works of the Program and within the first quarter of each calendar year. If from the inspections conducted by the Bank or from the reports it receives, it is determined that maintenance does not meet the levels agreed upon, the Borrower shall undertake the necessary measures to correct these shortcomings.

**SECTION 4.03**     **Reimbursement of Expenses as of Date of Loan Approval.** The Bank may recognize as part of the local contribution expenditures incurred or which may be incurred in the

Program on or after October 20, 1999, and up to the date of this Contract, provided that requirements substantially similar to those set forth in this Contract have been fulfilled.

**SECTION 4.04**     Technical Cooperation. Of the total amount of the Financing, the Borrower and the Bank agree that up to the equivalent of two million three hundred thousand dollars (US\$2,300,000) shall be used to meet part of the cost of the technical cooperation in accordance with provisions set forth in Annex C.

**SECTION 4.05**     Contracting of Consultants, Professionals or Experts. The Borrower shall select and contract directly the services of consultants, professionals or experts that may be necessary to fulfill the pertinent provisions of this Contract, in conformity with the procedures set forth in Annex C.

## CHAPTER V

### Records, Inspections, and Reports

**SECTION 5.01**     Records, Inspections, and Reports. The Borrower agrees to maintain records, permit inspections, and submit reports and financial statements in accordance with the provisions established in Chapter VII of the General Conditions.

**SECTION 5.02**     Audits. With respect to the provisions of Article 7.03 of the General Conditions, the financial statements of the Program shall be submitted on an annual basis throughout the period of Program execution, within 120 days of the close of the fiscal year, duly certified by independent auditors acceptable to the Bank.

## CHAPTER VI

### Miscellaneous Provisions

**SECTION 6.01**     Entry into Effect. The parties agree that this Contract shall enter into effect on the date of its signature.

**SECTION 6.02**     Termination. Payment in full of the Loan and of all interest and fees shall terminate this Contract and all obligations arising thereunder.

**SECTION 6.03**     Validity. The rights and obligations established in this Contract are valid and enforceable in accordance with its terms, regardless of the laws of any given country.

**SECTION 6.04**     Communications. Any notice, request, or communication from one party to another by virtue of this Contract shall be made in writing and shall be considered to have been made when the relevant document is delivered to the addressee at the respective address given below, unless the parties agree otherwise in writing:

For the Borrower:

Mailing address:

Ministry of Finance  
Main and Urquhart Streets  
Georgetown, Guyana

Facsimile: (592-2) 61284

For matters related to execution of the Program

Mailing address:

Ministry of Public Works and Communications  
Oranapai Towers  
Wight's Lane, Kingston

CHAPTER VII

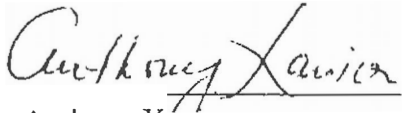
Arbitration

**SECTION 7.01** Commitment to Arbitrate. For the solution of any controversy which may arise under this Contract and which is not resolved by agreement, the parties unconditionally and irrevocably submit to the procedure and ruling of the Arbitration Tribunal referred to in Chapter IX of the General Conditions.

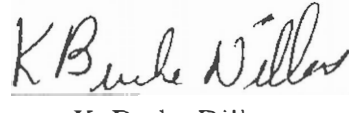
IN WITNESS WHEREOF, the Borrower and the Bank, each acting through its authorized representative, have signed this Contract, in two (2) equally authentic copies in Washington, D.C., Georgetown, on the date above written.

COOPERATIVE REPUBLIC  
OF GUYANA

INTER-AMERICAN DEVELOPMENT  
BANK



Anthony Xavier  
Minister of Transport and Hydraulics



K. Burke Dillon  
Executive Vicepresident

## PART TWO

### GENERAL CONDITIONS

#### CHAPTER I

##### Application of the General Conditions

ARTICLE 1.01. Application of the General Conditions. These General Conditions apply to the Loan Contracts entered into by the Inter-American Development Bank with its Borrowers, and accordingly the provisions hereof form an integral part of this Contract.

#### CHAPTER II

##### Definitions

ARTICLE 2.01. Definitions. For the purposes of the obligations contracted between the parties, the following definitions are adopted:

- (a) "Bank" means the Inter-American Development Bank.
- (b) "Board" means the Board of Executive Directors of the Bank.
- (c) "Borrower" means the party to which the Financing is made available.
- (d) "Contract" means the entirety of the Special Conditions, the General Conditions and the Annexes.
- (e) "Executing Agency/ Agencies" means the entity/entities responsible for executing all or part of the Project.
- (f) "Financing" means the funds which the Bank has agreed to make available to the Borrower to assist in carrying out the Project.
- (g) "General Conditions" means the entirety of articles which comprise Part Two of this Contract and reflect the basic policies of the Bank uniformly applicable to its Loan Contracts.
- (h) "Guarantor" means the party which guarantees the fulfillment of the obligations contracted by the Borrower and which assumes other obligations for which it is liable in accordance with the Guarantee Contract.

- (i) "Loan" means the funds disbursed from the Financing.
- (j) "Project" means the Program or Project for which the Financing has been extended.
- (k) "Revolving Fund" means a fund that the Bank may establish as provided in Article 4.07 of these General Conditions, for the purpose of advancing resources to defray Project expenses chargeable to the Financing.
- (l) "Semester" means the first or second six months of a calendar year.
- (m) "Special Conditions" means the entirety of the provisions which comprise Part One of this Contract and contain the particular terms of the operation.

### CHAPTER III

#### Amortization, Interest and Credit Fee

**ARTICLE 3.01. Dates of Amortization.** The Borrower shall amortize the Loan in semi-annual installments on the same dates as those designated in the Special Conditions for payment of interest. The date for the first principal amortization installment shall coincide with the date on which the next immediate interest payment is due, once six months from the scheduled date of the last disbursement have elapsed

**ARTICLE 3.02. Credit Fee.** (a) The Borrower shall pay on the undisbursed balance of the Financing which is not in the currency of the Borrower's country a credit fee of ½ of 1% per annum, which shall begin to accrue twelve (12) months after the date of the Resolution of the Board of Executive Directors approving the Financing.

(b) This fee shall be paid in United States of America United States of America dollars on the same dates as those specified for the payment of interest pursuant to the provisions of the Special Conditions.

(c) This fee shall cease to accrue in full or in part, as the case may be, to the extent that: (i) the respective disbursements have been made; or (ii) the Financing has been canceled totally or partially pursuant to Articles 3.12, 3.13 and 4.02 of these General Conditions and the relevant provisions of the Special Conditions.

**ARTICLE 3.03. Computation of Interest and Credit Fee.** The interest and credit fee shall be calculated according to the exact number of days in the respective Semester.

**ARTICLE 3.04. Obligations Relating to Currencies.** (a) Amounts which are disbursed shall be applied, on the date of each respective disbursement, against the Financing in accordance with

the equivalency in United States of America United States of America dollars as reasonably determined by the Bank, pursuant to the provisions of Article 3.05.

(b) The Borrower shall owe, in the respective currencies disbursed, from the date of the corresponding disbursement:

- (i) The amounts disbursed in any of the currencies which form part of the Fund for Special Operations, in respect of which the Bank has indicated that they may be considered freely convertible; and
- (ii) Amounts equivalent in United States of America dollars to the sums disbursed in currencies not included in the preceding subparagraph (i) which form part of the Fund for Special Operations.

(c) On the due dates, the Borrower shall pay, in the respective currencies disbursed, amortization and interest on:

- (i) The amounts disbursed in the currencies referred to in subparagraph (b)(i) above; and
- (ii) Amounts equivalent in United States of America United States of America dollars to the sums disbursed in the currencies referred to in subparagraph (b)(ii) above.

**ARTICLE 3.05. Rate of Exchange.** (a) For the purposes set forth in paragraph (a) and (b)(i) of the preceding Article, the equivalency of other currencies in relation to the United States of America dollar shall be calculated by applying, on the date on which the disbursement is made, the foreign exchange market rate in effect on that date. For the purposes set forth in paragraphs (a) and (b)(ii) of the preceding Article, the equivalency of other currencies in relation to the United States of America dollar shall be calculated by applying, on the date on which the disbursement is made, the exchange rate agreed upon by the Bank with the respective issuing member country for the purpose of maintaining the value of its currency held by the Bank, in accordance with Article V, Section 3, of the Agreement Establishing the Bank.

(b) For the purposes of payments to the Bank pursuant to paragraph (c)(ii) of the preceding Article:

- (i) The equivalency of other currencies in relation to the United States of America dollar shall be calculated on the date of payment, in accordance with the rate of exchange referred to in paragraph (a) of this Article.
- (ii) Should there be no agreement in force between the Bank and the respective issuing member country with regard to the rate of exchange to be applied for



the purpose of maintaining the value of its currency held by the issuer shall have the right to require that the rate of exchange shall be that which on the due date is utilized by the corresponding authority of the issuing member country to sell United States dollars to residents of such country, other than government agencies, in the following transactions: (a) payments of principal and interest due on transfers of dividends or other income from capital investments in the respective country; and (b) transfers of investment capital.

If, on the date on which the payment is due, the foregoing rule cannot be applied because the operation referred to does not exist, payment shall be made on the basis of the most recent rate of exchange in force in such country (30) days preceding the respective due date.

(iv) If notwithstanding the application of the foregoing rules the rate of exchange for the purpose of determining payments due to the issuer of its securities and for the determination of the determination of the rate of exchange shall be that of the issuer's country.

Notwithstanding the foregoing, if the rate of exchange of the issuer's country is not available on the date of payment, the rate of exchange shall be that of the issuer's country as of the date of payment, or if such rate is not available, the rate of exchange shall be that of the issuer's country as of the date of payment, or if such rate is not available, the rate of exchange shall be that of the issuer's country as of the date of payment.

Notwithstanding the foregoing, if the rate of exchange of the issuer's country is not available on the date of payment, the rate of exchange shall be that of the issuer's country as of the date of payment, or if such rate is not available, the rate of exchange shall be that of the issuer's country as of the date of payment, or if such rate is not available, the rate of exchange shall be that of the issuer's country as of the date of payment.

ARTICLE 37 - Participation in the operations, the

(b) Participations may be granted in respect of either of the following: (i) amounts of the Loan disbursed prior to execution of the participation agreement; or (ii) amounts of the Financing which are still undisbursed at the time of the participation agreement's execution.

**ARTICLE 3.07. Place of Payments.** All payments shall be made at the principal office of the Bank in Washington, District of Columbia, United States of America, unless the Bank designates another place or places for this purpose by written notification to the Borrower.

**ARTICLE 3.08. Transactions Falling Due on Public Holidays.** Any payment or other transaction, which pursuant to this Contract should be effected on Saturday, Sunday or a day which is a banking holiday according to the law of the place where it is required to be made, shall be considered validly effected if carried out on the first business day immediately thereafter, and in such case no penalty whatsoever shall apply.

**ARTICLE 3.09. Receipts and Promissory Notes.** At the request of the Bank, the Borrower shall sign and deliver to the Bank, upon the completion of disbursements, a receipt or receipts for the amounts disbursed. Likewise, the Borrower shall sign and deliver to the Bank, at its request, promissory notes or other negotiable instruments representing the Borrower's obligation to repay the Loan with the interest agreed upon in the Contract. Such documents shall be in the form prescribed by the Bank taking into account the applicable legal provisions of the country of the Borrower.

**ARTICLE 3.10. Application of Payments.** All payments shall be applied first to returns of unjustified advances of funds, then to fees and interest due on the payment date, and if a balance exists, to the amortization of installments of principal due.

**ARTICLE 3.11. Advance Payments.** Upon advance notice in writing to the Bank of at least fifteen (15) days, the Borrower may pay, on the date indicated in the notification, any part of the Loan prior to its maturity, provided that no sum is owing in respect of the credit fee and/or interest. Unless otherwise agreed in writing, each partial advance payment shall be applied to unpaid installments of principal in the inverse order of their maturity.

**ARTICLE 3.12. Renunciation of Part of the Financing.** The Borrower, with the concurrence of the Guarantor, if any, may renounce, by written notice to the Bank, its right to utilize any part of the Financing which has not been disbursed before the receipt of the notice, provided that such part is not subject to any of the circumstances set forth in Article 5.03 of these General Conditions.

**ARTICLE 3.13. Automatic Cancellation of Part of the Financing.** Unless the Bank and the Borrower and the Guarantor, if any, expressly agree in writing to extend the term for making disbursements, that portion of the Financing not committed or disbursed, as the case may be, within the corresponding term, shall automatically be canceled.

## CHAPTER IV

### Conditions Relating to Disbursements

**ARTICLE 4.01. Conditions Precedent to First Disbursement.** The first disbursement of the Financing shall be subject to fulfillment of the following requirements to the satisfaction of the Bank:

- (a) The Bank shall have received one or more well-founded legal opinions which establish, with citations of the pertinent constitutional, legal, and regulatory provisions, that the obligations undertaken by the Borrower in this Contract, and those of the Guarantor, if any, in the Guarantee Contract, are valid and enforceable. Such opinions shall also refer to any other legal question that the Bank may reasonably deem relevant.
- (b) The Borrower, directly or through the Executing Agency, if any, shall have designated one or more officials to represent it in all acts relating to the implementation of this Contract and shall have furnished the Bank with authentic copies of the signatures of said representatives. Should two or more officials be designated, the designation shall indicate whether such officials may act separately or must act jointly.
- (c) The Borrower, either directly or through the Executing Agency, if any, shall have demonstrated to the Bank that sufficient resources have been allocated to cover, at least during the first calendar year, the execution of the Project in accordance with the investment schedule referred to in the following paragraph. If this Financing constitutes a continuation of the same lending operation, the earlier stage or stages of which the Bank is financing, the obligation set forth in this paragraph shall not be applicable.
- (d) The Borrower, either directly or through the Executing Agency, if any, shall have presented to the Bank an initial report prepared in the form indicated by the Bank, which shall serve as the basis for the preparation and evaluation of the progress reports referred to in Article 7.03(a)(i) of these General Conditions. In addition to such other information as the Bank may reasonably request pursuant to the provisions of this Contract, the initial report shall set forth: (i) a plan for implementation of the Project including, except with respect to a program for the granting of credits, the plans and specifications deemed necessary by the Bank; (ii) a calendar or schedule of work or granting of credits, as the case may be; and (iii) a table of the source and use of funds setting forth a detailed schedule of investments in accordance with the categories of investment established in Annex A of this Contract and an indication of the annual contributions needed from the various sources of funds from which the Project will be financed. If this Contract permits the recognition of expenditures made prior to its

signature or to that of the Resolution authorizing the Financing, the initial report shall include a statement of the investments and, in accordance with the objectives of the Financing, a description of works carried out under the Project or a statement as to credits granted, as the case may be, up to a date immediately preceding to the report.

(e) The Borrower or Executing Agency shall have presented to the Bank the plan, catalog or code of accounts referred to in Article 7.07 of these General Conditions.

(f) The official auditing agency referred to in the Special Conditions shall have agreed to perform the auditing function foreseen in Article 7.03(b) of these General Conditions and in the Special Conditions, or the Borrower or Executing Agency shall have agreed with the Bank with respect to a firm of independent public accountants to perform the above functions.

**ARTICLE 4.02. Period for Fulfilling the Conditions Precedent to First Disbursement.** If within one hundred eighty (180) days from the effective date of this Contract, or within such longer period as the parties may agree in writing, the conditions precedent to the first disbursement established in Article 4.01 of these General Conditions and in the Special Conditions have not been fulfilled, the Bank may terminate the Contract by giving notice to the Borrower.

**ARTICLE 4.03. Requisites for All Disbursements.** For the Bank to make any disbursement, it shall be necessary that: (a) the Borrower, or the Executing Agency, if any, shall have submitted in writing a disbursement request and, in support thereof, shall have supplied to the Bank such pertinent documents and other background materials as the Bank may have required. Requests must be presented no later than thirty (30) calendar days in advance of the date of expiry of the term for disbursement or of any extension thereof which the Borrower and the Bank may have agreed to; (b) none of the circumstances described in Article 5.01 of these General Conditions shall have occurred; and (c) the Guarantor, if any, shall not be in non-compliance for more than one hundred twenty (120) days with any obligation to make payments to the Bank on any Loan or Guarantee.

**ARTICLE 4.04. Disbursements for Technical Cooperation.** If the Special Conditions contemplate the financing of expenses for technical cooperation, the disbursements therefor may be made once the conditions established in Article 4.01(a) and (b) and in Article 4.03 of these General Conditions have been fulfilled.

**ARTICLE 4.05. Charges for the Inspection and Supervisor Fee.** The Bank shall withdraw from the resources of the Financing and allocate to the Bank's general account the amount or amounts specified in the Special Conditions for inspection and supervision. Such action shall not require a disbursement request by the Borrower or the Executing Agency and may be undertaken once the conditions precedent to the first disbursement have been fulfilled or upon the occurrence of the first payment date for the Credit Fee, whichever occurs first.

... by utilizing such facilities as may be available to the Bank in connection with the financing of the Project, provided that the requirements of Article 4.07 of these General Conditions shall be satisfied.

(c) in the amount of fifty thousand British Pound Sterling (GBP 50,000).

**ARTICLE 4.06 Revolving Fund.** In addition to the facilities provided for in Articles 4.01 and 4.02 of these General Conditions and the facilities established in the Special Conditions, the Bank may advance resources to the Borrower for the purpose of establishing a Revolving Fund to be used for the financing of the Project.

The Bank may, at its discretion, advance to the Borrower the amount of the Revolving Fund up to the amount of the financing of the Project. The Bank may also reduce or cancel the Revolving Fund at any time if the Borrower fails to comply with the requirements of Article 4.07 of these General Conditions. The Bank may also reduce or cancel the Revolving Fund at any time if the Borrower fails to comply with the requirements of Article 4.07 of these General Conditions. The Bank may also reduce or cancel the Revolving Fund at any time if the Borrower fails to comply with the requirements of Article 4.07 of these General Conditions.

The proceeds of the Revolving Fund shall be used for the purposes of the Project in accordance with Article 4.01(c) of these General Conditions.

Revolving

(d) Not later than thirty (30) days prior to the date agreed upon for the financing, the Borrower shall present to the Bank justification of the use of the Revolving Fund.

**ARTICLE 4.08 Availability of Local Currency.** The Bank shall be obliged to make available to the Borrower in local currency only to the extent that the respective domestic laws of the country of the Project permit at its effective date.

## CHAPTER V

### Suspension of Disbursements and Accelerated Maturity

**ARTICLE 5.01.**     **Suspension of Disbursements.** The Bank, by written notice to the Borrower, may suspend disbursements if any of the following circumstances occurs and so long as it continues:

- (a) Delay in the payment of any sums owed by the Borrower to the Bank for principal, fees, interest, return of advances of funds or for any other reason, under this Contract or any other Loan Contract entered into between the Bank and the Borrower.
- (b) Nonfulfillment by the Borrower of any other obligation set forth in the Contract or in any other Contract entered into with the Bank for the financing of the Project.
- (c) Withdrawal or suspension from membership in the Bank of the country in which the Project is to be executed.
- (d) The Project or the purposes of the Financing may be affected by: (i) any restriction, modification or alteration of the legal capacity, functions or assets of the Borrower or the Executing Agency; or (ii) any modification or change made without the written concurrence of the Bank of the basic conditions fulfilled before the approval of the Resolution authorizing the Financing or the signature of the Contract. In such cases, the Bank will have the right to require the Borrower and the Executing Agency to provide reasoned and detailed information. Only after hearing the Borrower or the Executing Agency and weighing the information or clarification received, or if the Borrower and the Executing Agency fail to respond, may the Bank suspend disbursements if it considers that the modifications made affect the Project substantially and unfavorably or make its execution impossible.
- (e) The non-compliance on the part of the Guarantor, if any, of any obligation set forth in the Guarantee Contract.
- (f) When the Borrower is not a member country government, any extraordinary circumstance which, in the opinion of the Bank, makes it unlikely that the Borrower will be able to comply with the obligations established in this Contract or to fulfill the purposes for which it was entered into.

**ARTICLE 5.02.**     **Termination, Accelerated Maturity, or Partial Cancellation of Undisbursed Balances.** (a) The Bank may terminate this Contract with respect to the part of the Financing not yet disbursed or may ~~declare~~ the entire loan or a portion thereof immediately due and payable, together with interest and commissions accrued up to the date of payment if: (i) any of the circumstances set forth in paragraphs (a), (b), (c) and (e) of the preceding Article continues for more

than sixty (60) days; or (ii) the information referred to in paragraph (d) of the preceding Article, or the clarifications or additional information presented by the Borrower or the Executing Agency, if any, are not satisfactory to the Bank.

(b) The Bank may cancel the part of the Financing pertaining to the procurement of certain goods, works or related services, or consulting services, or may declare the portion of the loan pertaining to such items immediately due and payable, if it determines at any time that: (i) the procurement was carried out without following the procedures set forth in this Contract; or (ii) representatives of the Borrower or a beneficiary of the grant have committed corrupt practices, either in the process of selecting the supplier or contractor or in the execution of the respective contract, and the Borrower has not taken timely and remedial measures, observing the due process guarantees of the Borrowing country's legislation, and acceptable to the Bank.

(c) For the purposes of the above paragraph, corrupt practices shall be understood to include acts of: (i) bribery, meaning the act of unduly offering, giving, receiving, or soliciting of anything of value to influence the process of procuring goods or services, selecting consultants, or executing contracts; (ii) extortion or coercion, meaning the act of attempting to influence the process of procuring goods or services, selecting consultants, or executing contracts by means of threats of injury to person, property or reputation; (iii) fraud, meaning the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, selecting consultants, or executing contracts, to the detriment of the borrower or other participants; and (iv) collusion, meaning an agreement between bidders designed to result in bids at artificial prices that are not competitive.

**ARTICLE 5.03. Obligations not Affected.** Notwithstanding the provisions of the foregoing Articles 5.01 and 5.02, none of the measures set forth in this Chapter shall affect the disbursement by the Bank of: (a) any amounts subject to the guarantee of an irrevocable letter of credit; and (b) any amounts which the Bank by specific written agreement with the Borrower or the Executing Agency, if any, has agreed to provide from the resources of the Financing to make payments to a supplier of goods or services. The exceptions set forth in subparagraph (b) shall not apply if the Bank determines that corrupt practices occurred with respect to the procurement of, or the execution of the contract for, the goods or services.

**ARTICLE 5.04. Non-waiver of Rights.** Any delay by the Bank in the exercise of its rights pursuant to this Contract, or failure to exercise them, shall not be construed as a waiver by the Bank of any such rights nor as acquiescence in events or circumstances which, had they occurred, would have empowered it to exercise them.

**ARTICLE 5.05. Provisions not Affected.** The application of any of the measures provided for by this Chapter shall not affect the obligations of the Borrower established in this Contract, which shall remain in full force and effect, except that in case the entire Loan has been declared due and payable only the pecuniary obligations of the Borrower shall continue in force.

## CHAPTER VI

### Execution of the Project

**ARTICLE 6.01. General Provisions for Execution of the Project.** (a) The Borrower undertakes that the Project shall be executed with due diligence in conformity with sound financial and technical practices, and in accordance with the plans, specifications, investment schedule, budgets, regulations, and other documents approved by the Bank. The Borrower further undertakes that its obligations shall be fulfilled to the satisfaction of the Bank.

(b) Any important modification in the plans, specifications, investment schedule, budgets, regulations or other documents which the Bank has approved, as well as any substantial change in the contract or contracts for goods or services which may be funded with the resources devoted to the execution of the Project, or in the categories of investment, shall require the written consent of the Bank.

**ARTICLE 6.02. Prices and Public Tender.** (a) Contracts for execution of works, procurement of goods, and rendering of services for the Project shall be undertaken at a reasonable cost which shall generally be the lowest market price, taking into account quality, efficiency, and any other pertinent factors.

(h) In the acquisition of machinery, equipment and other goods for the Project, and in the awarding of contracts for the execution of works, the system of public tender shall be utilized in each case in which the value of such acquisitions is equal to or exceeds the amounts set forth in Chapter IV of the Special Conditions. The procedures for tendering shall be set forth in the relevant Annex B of this Contract.

**ARTICLE 6.03. Use of Goods.** Except with the express authorization of the Bank, the goods acquired with the resources of the Financing shall be used exclusively for the purposes of the Project. Once the Project has been completed, the construction machinery and equipment utilized in the execution of the Project may be used for other purposes.

**ARTICLE 6.04. Additional Resources.** (a) The Borrower shall contribute in a timely manner all the resources in addition to those of the Loan which may be necessary for the complete and uninterrupted execution of the Project, the estimated amount of which is specified in the Special Conditions. If during the process of disbursement of the Financing an increase in the estimated cost of the Project arises, the Bank may require the modification of the investment schedule referred to in Article 4.01(d) of these General Conditions in order that the Borrower shall meet such increase.

(b) Beginning with the calendar year following the initiation of the Project and during the period of its execution, the Borrower shall demonstrate to the Bank in the first sixty (60) days of each



calendar year that it will have available when needed the resources necessary to make the local contribution to the Project during that year.

## CHAPTER VII

### Records, Inspections and Reports

**ARTICLE 7.01. Internal Control and Records.** The Borrower or the Executing Agency, as the case may be, shall maintain an appropriate system of internal accounting and administrative controls. The accounting system shall be organized so as to provide the necessary documentation to permit the verification of transactions and facilitate the timely preparation of financial statements and reports. The records of the Project shall be maintained in such a way that: (a) they make it possible to identify the sums received from the various sources; (b) they show, in accordance with the catalogue of accounts approved by the Bank, the investments in the Project, both with the resources of the Loan and with the other funds to be provided for its complete execution; (c) they include sufficient detail to show the goods acquired and the services contracted, as well as the utilization of such goods and services; and (d) they show the cost of the investments in each category and the progress of the works. With respect to credit programs, the records shall also detail the credits granted, the recoveries obtained, and the utilization of the funds recovered.

**ARTICLE 7.02. Inspections.** (a) The Bank may establish such inspection procedures as it deems necessary to assure the satisfactory development of the Project.

(b) The Borrower and the Executing Agency, if any, shall permit the Bank to inspect at any time the Project, the equipment and materials involved therein, and to examine such records and documents as the Bank may deem pertinent. The personnel which the Bank shall send for this purpose shall receive the complete cooperation of the respective authorities. All the costs relating to transportation, salaries, and other expenses of such personnel shall be borne by the Bank.

**ARTICLE 7.03. Reports and Financial Statements.** (a) The Borrower or the Executing Agency, as appropriate, shall present to the Bank the following reports, within the periods specified with respect to each:

- (i) Reports on the execution of the Project, within sixty (60) days following the end of each calendar Semester, or within such other period as the parties may agree, prepared in accordance with the relevant rules agreed to with the Bank.
- (ii) Such other reports as the Bank may reasonably request regarding the investment of the sums lent, the use of goods acquired with such sums, and the progress of the Project.

- (iii) Three copies of the financial statements for the entire Project as of the close of each fiscal year of the Executing Agency, and supplementary financial information relating to such statements. Such financial statements shall be submitted within one hundred twenty (120) days following the close of each fiscal year of the Executing Agency, beginning with the fiscal year in which the Project was initiated and during the period stipulated in the Special Conditions.
- (iv) When the Special Conditions so require, three copies of the financial statements of the Borrower as of the close of each fiscal year, and supplementary financial information relating to such statements. The financial statements shall be submitted during the period stipulated in the Special Conditions, beginning with the fiscal year in which the Project was initiated and within one hundred twenty (120) days following the close of each fiscal year of the Borrower. This obligation shall not apply if the Borrower is the Republic or the Central Bank.
- (v) — When the Special Conditions so require, three copies of the financial statements of the Executing Agency as of the close of each fiscal year, and complementary financial information relating to such statements. The statements shall be submitted during the period stipulated in the Special Conditions, beginning with the fiscal year in which the Project was initiated and within one hundred twenty (120) days following the close of each fiscal year of the Executing Agency.

(b) The statements and documents described in paragraphs (a)(iii), (iv) and (v) shall be submitted with the opinion of the auditing entity specified in the Special Conditions of this Contract and in accordance with requirements satisfactory to the Bank. The Borrower or the Executing Agency, as the case may be, shall authorize the auditing entity to provide the Bank with any additional information it may reasonably request with respect to the financial statements and audit reports issued

(c) In cases in which the audit is to be performed by an official auditing agency and such agency is unable to perform the audit in accordance with requirements satisfactory to the Bank or within the periods mentioned above, the Borrower or the Executing Agency shall contract the services of a firm of independent public accountants acceptable to the Bank. The services of a firm of independent public accountants may also be utilized if the contracting parties so agree.

## CHAPTER VIII

### Provision on Encumbrances and Exemptions

ARTICLE 8.01. Commitment on Encumbrances. If the Borrower should agree to create any specific encumbrance on all or part of its assets or revenues to secure an external debt, it shall at the same time create an encumbrance guaranteeing to the Bank, equally and proportionally, the fulfillment of the pecuniary obligations arising from the Contract. However, the foregoing shall not apply: (a) to encumbrances on goods used as security for payment of the unpaid balance of the purchase price; and (b) to encumbrances created in banking operations to secure payment of debts with maturities of not more than one year. In the event that the Borrower is a member country, the term "assets or revenues" shall mean all types of assets or revenues which belong to the Borrower or any of its dependent agencies which are not autonomous entities with their own separate capital.

ARTICLE 8.02. Tax Exemption. The Borrower undertakes to ensure that both the principal and the interest and other charges of the Loan shall be paid without any deduction or restriction whatsoever, exempt from any tax, fee, duty or charge established or that may be established by the laws of its country, and to pay any tax, fee, or duty applicable to the signing, negotiation, and execution of this Contract.

## CHAPTER IX

### Arbitration Procedure

ARTICLE 9.01. Composition of the Tribunal. (a) The Arbitration Tribunal shall be composed of three members to be appointed in the following manner: one by the Bank, another by the Borrower, and a third, hereinafter called the "Referee", by direct agreement between the parties or through their respective arbitrators. If the parties or the arbitrators fail to agree on who the Referee shall be, or if one of the parties should not designate an arbitrator, the Referee shall be appointed, at the request of either party, by the Secretary General of the Organization of American States. If either of the parties fails to appoint an arbitrator, one shall be appointed by the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his successor shall be appointed in the same manner as for the original appointment. The successor shall have the same functions and faculties as his predecessor.

(b) If the controversy affects not only the Borrower but also the Guarantor, if any, both shall be considered a single party and consequently shall act jointly in the designation of the arbitrator and for the other purposes of the arbitration proceedings.

ARTICLE 9.02. Initiation of the Procedure. In order to submit the controversy to arbitration, the claimant shall address to the other party a written communication setting forth the nature of the claim, the satisfaction or compensation which it seeks, and the name of the arbitrator it appoints.

The party receiving such communication shall, within forty-five (45) days, notify the adverse party of the name of the person it appoints as arbitrator. If, within thirty (30) days after delivery of such notification to the claimant, the parties have not agreed as to the person who is to act as Referee, either party may request the Secretary General of the Organization of American States to make the appointment.

ARTICLE 9.03. Convening of the Tribunal. The Arbitration Tribunal shall be convened in Washington, District of Columbia, United States of America, on the date designated by the Referee, and, once convened, shall meet on the dates which the Tribunal itself shall establish.

ARTICLE 9.04. Procedure. (a) The Tribunal shall be competent to hear only the matters in controversy. It shall adopt its own procedures and may on its own initiative designate whatever experts it considers necessary. In any case, it shall give the parties the opportunity to make oral presentations.

(b) The Tribunal shall proceed ex aequo et bono, basing itself on the terms of this Contract, and shall issue an award even if either party should fail to appear or present its case.

(c) The award shall be in writing and shall be adopted with the concurrent vote of at least two members of the Tribunal. It shall be handed down within approximately sixty (60) days from the date on which the Referee has been appointed, unless the Tribunal determines that, due to special and unforeseen circumstances, such period should be extended. The award shall be notified to the parties by means of a communication signed by at least two members of the Tribunal, and shall be complied with within thirty (30) days from the date of notification. The award shall be final and shall not be subject to any appeal.

ARTICLE 9.05. Costs. The fees of each arbitrator shall be paid by the party which appointed him and the fees of the Referee shall be paid by both parties in equal proportion. Prior to the convening of the Tribunal, the parties shall agree on the remuneration of the other persons who, by mutual agreement, they deem should take part in the arbitration proceedings. If such agreement is not reached in a timely manner, the Tribunal itself shall determine the compensation which may be reasonable for such persons under the circumstances. Each party shall defray its own expenses in the arbitration proceedings, but the expenses of the Tribunal shall be borne equally by the parties. Any doubt regarding the division of costs or the manner in which they are to be paid shall be determined, without appeal, by the Tribunal.

ARTICLE 9.06. Notification. All notifications relative to the arbitration or to the award shall be made in the manner provided in this Contract. The parties waive any other form of notification.

## ANNEX A

### THE PROGRAM

#### Investment/Technical Cooperation Components

#### I. Objective

- 1.01 The objective of the Program is to raise the standards of air transport operations, safety procedures, and affiliated services in Guyana to internationally acceptable levels.

#### II. Description

##### Investment Component

- 2.01 The purpose of this Component is to cover the costs of improvements required immediately for safe operation of CJIA, as well as those needed over the next three years to bring the airport into full compliance with ICAO standards. In addition, the Component covers the cost of specific investments necessary to meet environmental and operating standards.
- 2.02 A portion of this Component will finance the installation of approach lights on the principal runway, 06.
- 2.03 The largest single urgent element of the Investment Component is repaving runway 06. It is assumed that the runway does not urgently require reconstruction, but that an overlay of a depth to be determined by design studies will be carried out.
- 2.04 In the medium term, larger investments in the terminal roof and sewage treatment will require more extensive studies.

##### Technical Cooperation Component

- 2.05 This Component will support the GOG in reforming governing statutes, developing air transport regulations, creating a Guyana Civil Aviation Authority, converting the management of CJIA into an incentive-based corporation, and privatizing Ogle Airport. The Component will also fund a special adviser to the Minister of Transport and Hydraulics who would coordinate the entire Program, and assist in creating the regulatory infrastructure necessary for the Program and training its staff.



- 2.06 Coordination of the Program will fall to the adviser referred to above, who will be contracted annually for three years. Funding is also provided for hiring an assistant as required, and an environmental monitor and the Ministry will provide them administrative support and office space. The adviser will be responsible for developing specific terms of reference for the remaining consultants identified for each of the elements in the Program.
- 2.07 Further consultancy is also required to draft amendments to the 1996 Civil Aviation Act in cooperation with the Office of the Attorney General. The legislation leaves the development of revised regulations to the MPW&C, for which specialized consultancy will be required.
- 2.08 The principle for reforming both CJIA and Ogle Airport is regulation by contract. The major aspects of operation of the airports and performance standards will be written into the lease for Ogle, and the articles of incorporation of CJIA. Enforcement of these conditions will rest upon a professional GCAA. Therefore, assistance will be necessary for establishing the regulatory authority itself and for initially staffing at least one senior position and training others. Areas will include regulation and support of aviation in general, including licensing, air traffic control, safety, meteorology, and search and rescue, among others.
- ~~2.09 Privatization within Guyana has been assigned to a special unit within the Ministry of Finance (M/F). This unit is involved in all privatizations (e.g. that of CIA) included in the Program, but will not be involved in the leasing of Ogle Airport nor the corporatization of CJIA as these are not considered privatizations. Therefore, the MPW&C will need specialized consultants to help during the negotiation of the terms of the eventual lease of Ogle Airport, and in preparing for the corporatization of CJIA, contracting key members of the management team, and training future managers. Funds are also included to cover the cost of hiring consultants to help the transition of CJIA to a corporate structure, to advise management during the formative stage of the airport corporation, and to train its staff.~~

### III. Total Cost of the Components and Financing Plan

- 3.01 The estimated cost of the Investment and Technical Cooperation Components of the Program is the equivalent of eleven million eight hundred thousand dollars (US\$11,800,000). A Financing Plan is set forth in Appendix I to this Annex A.

### V. Procurement

- 4.01 When goods to be procured or services to be contracted for the Program, including those related to any form of transportation or insurance, are to be financed in whole or in part with foreign exchange from the Financing, the procedures and specific requirements for the bidding or other forms of contracting shall permit the unrestricted participation of goods and services from member countries of the Bank. Consequently, no conditions of sale shall

prevent or restrict the offer of goods or the participation of contractors from such countries shall be established in such procedures or specific requirements.

- 4.02 When sources of credit other than the resources of the financing or the local counterpart are to be used, the Borrower may agree with the creditor on the procurement procedure to be followed. However, upon the Bank's request, the Borrower shall demonstrate the reasonableness of both the price agreed upon or paid for the purchase of the goods and services and the financial conditions of the credits. The Borrower shall also demonstrate that the quality of the goods conforms to the technical requirements of the Program

#### V. Consulting Services

- 5.01 In the selection and contracting of consulting services financed in whole or in part with resources from the Financing: (a) the procedures agreed upon with the Bank shall apply; and (b) no conditions or stipulations may be established that would restrict or prevent the participation of consultants from the Bank's member countries.

- 5.02 With respect to consulting services financed with resources of the local counterpart, the Bank reserves the right to review and approve, prior to the Borrower proceeding with the corresponding hire, the names and background of the firms or individual consultants selected, their terms of reference, and the agreed fees.

#### VI. Maintenance

- 6.01 The purpose of the maintenance shall be to preserve all the works of the Program in the operating conditions in which they were upon their completion, at a level compatible with the services they should provide.
- 6.02 The first annual maintenance report shall correspond to the fiscal year subsequent to that in which the first work of the Program went into operation.
- 6.03 The annual maintenance report shall include: (i) details of the organization responsible for maintenance; the personnel involved, and the number, type, and condition of the maintenance equipment; (ii) the location, size, and condition of the repair, storage, and maintenance facilities; (iii) information pertaining to the resources to be allocated for maintenance during the current year and the amount to be allocated in the budget during the following year; and (iv) a report on the status of maintenance, based on the evaluation system established by the Borrower.



Appendix I to Annex A  
Financing Plan

Costs and Sources of financing  
(in US\$ million equivalent)

I. Program Component	20.2		20.2	63.1
If. Investment Component	7.5	1.9	9.4	20.4
A. Direct costs	7.2	0.3	7.5	23.4
1. Construct and equip.	6.8	0.2	7.0	
2. Design and disp.	0.4	0.1	0.5	
B. Financial costs	0.2	0.1	0.4	7.3
1. Interest	0.2		0.2	
2. Credit fees		0.1	0.1	
3. Inspection & supervision	0.1		0.1	
C. Unallocated		1.5	1.5	4.7
1. Contingencies (7%)		1.0	1.0	
2. Es. 2.5%				
Ii. Technical Cooperation Component	2.3	0.1	2.4	7.5
A. Consulting Services				
B. Training	0.4		0.4	
Financial Costs		0.1	0.1	
Total	3.0	2.0	32.0	100.0

## ANNEX B

### TENDER PROCEDURES

Hybrid Program for Air Transport Reform  
(Investment/Technical Cooperation Components)

#### I. APPLICABILITY

- 1.01 **Amount and types of entities.** These Procedures shall be used by the Tendering Entity in all procurement of goods and execution of works for the Project.<sup>2</sup> Whenever the estimated value of such goods or works is equal to or exceeds the amounts set forth in Section 4.01 of this Contract<sup>3</sup> and provided such Entity is part of the public sector, the procurement method to be used shall be international competitive bidding. Included in the public sector are corporations and other entities in which government participation exceeds 50 percent of their capital. The contracting of related services, such as transportation of goods, insurance installation and assembly of equipment and initial operation and maintenance shall also be governed by these Procedures. The rules applicable to the procurement of goods under these Procedures are applicable to such services.<sup>4</sup> Consulting services however, are governed by different procedures.

In these Procedures, the term "Tendering Entity" refers to the entity charged with carrying out the bidding process for the Project, both for works as well as for goods and related services. This entity may correspond, depending on the circumstances, to the Borrower, to the Executing Agency or to certain official entities or specialized agencies which may be granted authority, pursuant to local law, over the entire public sector bidding processes or only over the selection and adjudication stages. "Bidder" is the entity submitting the bid. Other terms used are tenderer, offeror, bidding firm, contractor, supplier, etc.

"Project" means the Project or Program for which the Financing has been extended.

For nonreimbursable technical cooperations, any reference to "the Section 4.01 of this Contract" shall read as "the Special Conditions of this Agreement".

As an exception, nationality of firms rendering the related services is governed by the same criteria as those used for determining the nationality of construction firms, as set forth in paragraph 2.07. In this Procedure the term "service" is not used as a synonym of construction services (works).

- 1.02 Local law. The Tendering Entity may apply, in supplementary form, to the provisions of these Procedures, formal requirements or procedural details prescribed under local law and not included in these Procedures, when their application does not contravene basic bidding guarantees or relevant Bank policy.<sup>5</sup>
- 1.03 Legal relationships. The legal relationship between the Bank and the Borrower is governed by this Contract. This Contract also regulates important aspects of the procurement process. The legal relationship between the Tendering Entity and the suppliers of works, goods and related services is governed by the bidding documents and the provisions of the respective contracts between those parties; no supplier or entity that is not a party to this Contract can derive rights or demand payments on the basis of this Contract
- 1.04 Basic responsibilities. The responsibility for the execution of the Project remains with the Borrower and, for this reason, such Borrower is also responsible for the award and the management of the procurement contracts, all without prejudice to the supervisory authority of the Bank.

## II. GE

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- 2.01 Ethical standards. The Bidders, the Tendering Entity, the Borrower or any other individuals or entities participating directly or indirectly in procurement under these Procedures, shall adhere to the highest ethical standards and refrain from engaging in corrupt practices, both during the bidding process and the execution of the corresponding procurement contracts.
- 2.02 International competitive bidding. The system of international competitive bidding shall be used whenever the acquisition of goods or the execution of works or related services is to be partially or totally financed with foreign exchange from the Financing and the estimated

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Because these Procedures are uniformly employed by the borrowing countries, and because bidding legislation varies from country to country in both form and detail, the rules and procedures established herein set forth only the general guidelines of the bidding process, its basic guarantees (such as publicity, equality, competition, formality, confidentiality, and free access) as well as the relevant policies of the Bank. For this reason, local laws may supplement the provisions of these procedures in regard to certain practices or procedural details, such as the membership of bidding boards or technical committees, formalities for registration of firms, periods for the award or evaluation of bids, formal requirements of the minutes of the meeting to publicly open bids, formal requirements to award, and so forth

cost of such goods, works or services is equal to or exceeds the amounts set forth in Section 4.01(a) of this Contract.

- 2.03 Unrestricted participation of bidders. When foreign exchange from the Financing is to be used, the procedures and specific requirements for the bidding shall permit the unrestricted participation of bidders from member countries of the Bank. Consequently, no conditions that would preclude or restrict the offer of works, goods, or related services, including those related to any mode of transport, or the participation of bidders from such countries, may be imposed.
- 2.04 Public bidding which may be restricted locally. The acquisition of goods or execution of works to be totally financed with local currency from the Financing, or with local counterpart funds, or with a combination of both, the amounts of which are equal to or exceed those indicated in Section 4.01(a) of this Contract, shall be accomplished through public bidding which may be limited to the national market.
- 2.05 Other procedures for execution of works or procurement of goods. Whenever the procurement of goods or the execution of works is financed exclusively by resources other than those from the Financing or of the Borrower<sup>6</sup>, ~~the~~ Tendering Entity may follow ~~procedures agreed upon with~~ supplier or ~~suppliers~~ must comply, to the Bank's satisfaction, with the Borrower's obligation to carry out the Project diligently and efficiently. Furthermore, the Bank must be satisfied that the goods and works to be procured shall be: (a) of satisfactory quality and meet the technical requirements of the project; (b) delivered or completed in timely fashion; and (c) procured at market prices. The Bank may request that the Tendering Entity provide it with information on the applicable procedure and the results obtained therefrom.
- 2.06 Procedures applicable to bids in amounts less than the limits indicated in Section 4.01(a)
- a. The procurement of goods or the execution of works for amounts less than those indicated in Section 4.01(a) shall, as a general rule, be governed by the provisions of the respective local law. Insofar as possible, the Tendering Entity shall establish procedures permitting the participation of several bidders and give appropriate consideration to economy, efficiency and reasonable price. Whenever foreign exchange from the Financing is to be utilized, the procedures employed shall permit.

Such as resources from commercial banks, suppliers or other international financial institutions

in addition, the participation of bidders for goods or works from the Bank's member countries.

- b. Whenever Annex A provides that certain procurement will be supervised by the Bank *ex post*, that is, subsequent to the signing of the corresponding procurement contracts, the Tendering Entity shall promptly notify the Bank each time a procurement contract has been entered into and will send to the Bank the basic data relating to the contract. The Tendering Entity shall retain, so that the Bank may carry out its supervision, the background information on each procurement and in particular the following documents:
- (i) the pertinent tendering documents;
  - (ii) tender notices and letters relative to the publicity given to the bidding;
  - (iii) reports on tender evaluation and on the recommendation to award the contract; and
  - (iv) ~~the~~ the corresponding signed contracts.

which the Bank may request.

- c. Procurement supervised *ex post* is also subject to Bank policies. The Bank reserves the right:
- (i) not to finance or to cancel resources for contracts whose procurement procedures were not in accordance with Bank policies;
  - (ii) to request reimbursement, with interest and commissions, of resources already disbursed for such contracts; and
  - (iii) not to recognize as part of the local counterpart contribution, resources assigned by the Borrower for such contracts.

The Bank further reserves the right to require that future contracts be supervised *ex ante*.

*1. In the case of bidding for works:*

2.08 Criteria for determining nationality. Only firms from the Bank's member countries may bid on works. To determine the nationality of the bidding firm, the Tendering Entity must verify the following criteria:

- a. that the firm be constituted and in operation, in accordance with the laws of the member country in which the firm has its principal domicile;
- b. that the firm have its principal place of business located in a member country;
- c. that more than 50% of the firm's capital be owned by one or more persons or legal entities of one or more member countries or by citizens or bona fide residents of such eligible countries;
- d. that the firm be an integral part of the economy of the member country where it is located;
- e. that there be no arrangement whereby any substantial part of the net profits or other tangible benefits of the firm will accrue or be paid to persons not citizens or bona fide residents of member countries or to legal entities that are not eligible in accordance with the nationality requirements set forth in this paragraph;
- f. that in the case of a contract for the execution of works, not less than 80% of all persons who will perform services in the country where the construction is to be carried out, whether employed directly by the contractor or by a subcontractor, be citizens of a member country. In making this computation with respect to a firm from a country other than that in which the construction site is located, citizens or permanent residents of the country where the construction is to be carried out will not be counted; and
- g. that the foregoing criteria apply to each member of a joint venture or consortium (a collaborative effort of two or more firms) and to every firm which is proposed to subcontract part of the work.

The requirements set forth in this paragraph must be made known to all interested parties; these shall submit to the Tendering Entity the necessary information for determining their nationality, either in the prequalification or bidding forms or in the forms to register, as the case may be.

*2. In the case of bidding for goods.*

- 2.09 **Criteria for determining the origin of goods.** Only goods whose country of origin is a Bank member country may be acquired. The term "country of origin" means:
- a. that country in which the material or equipment has been mined, grown, produced, manufactured or processed; or
  - b. that country in which, through manufacturing, processing or assembly, another commercially recognized article results which differs substantially in its basic characteristics from any of its imported components. The nationality or country of origin of the firm that produces, assembles, distributes or sells the goods or equipment shall not be relevant to determine their origin.
- 2.10 **National and regional margins of preference for bidding on the procurement of goods.** The Tendering Entity may apply the following margins of preference in public international bidding on the procurement of goods:
- 2.11 **National margin of preference.** When suppliers from the country of the Borrower participate in public bidding, the Tendering Entity may apply a national margin of preference in favor of such local suppliers. The following criteria shall be utilized:
- a. A good shall be considered to be of local origin if the cost of the local materials, labor and services used to produce the item constitutes not less than 40% of its total cost.
  - b. In comparing local and foreign offers, the bid or offered price of goods of local origin shall be the delivered price at the Project site, with deductions for: (i) import duties paid on significant raw materials or manufactured components; and (ii) local sales, consumption and value-added taxes incorporated into the cost of the item or items being offered. Proof of the amounts to be deducted under (i) and (ii) shall be provided by the local bidder. The foreign bid or offered price shall be the CIF price, excluding import duties or consular and port fees, to which will be added port handling charges and any local transportation from the port or frontier to the site of the project in question.
  - c. The conversion of currencies to provide price comparisons shall be made on the basis of the exchange rate utilized by the Bank itself in this Contract.
  - d. In adjudicating bids, the Tendering Entity may add a 15% margin of preference or the actual import duty, whichever is the lesser, to the CIF price of the foreign offers expressed in their local currency equivalent.

2.12 Regional margin of preference

- a. For purposes of this Contract, the Bank recognizes the following regional or subregional integration agreements: (i) Central American Common Market; (ii) Caribbean Community; (iii) Cartagena Agreement; and (iv) Latin American Integration Association. If the country where the Borrower is located has signed more than one integration agreement, either the subregional margin of preference or the regional margin may apply depending on the country of origin of the article to be procured.
- b. Where suppliers from a country (other than the country of the Borrower) that is a party to an integration agreement to which the country of the Borrower is also a party, participate in a bidding, such suppliers of goods are entitled to a regional margin of preference utilizing the following criteria:
  - (i) A good shall be considered to be of regional origin if it originates in a country that is a party to an integration agreement to which the country of the Borrower is also a party and if it complies with the standards governing origin and other matters relating to trade liberalization programs established in the respective integration agreements.
  - (ii) The local value added shall not be less than that stipulated for the national margin of preference.
  - (iii) In comparing foreign offers, the Tendering Entity may add to the price of offers of goods originating in countries not parties to the respective integration agreement either 15% or the difference between the import duty applicable to such goods when they originate in countries not parties to the integration agreement and that which is applicable to those goods when they originate in countries which are parties to the agreement, whichever is lower.

2.13 Joint ventures. The Bank encourages the participation of local manufacturers and contractors to aid development of local industry. Manufacturers, industrial firms and local contractors may bid independently or in joint venture with foreign firms, but no conditions shall be established requiring mandatory joint ventures or mandatory percentages of participation.



### III. INTERNATIONAL COMPETITIVE BIDDING

#### *PUBLICITY*

##### *General Procurement Notice*

3.01 General rule and specific requirements. Except as the Bank may otherwise agree, the Project shall require the publication of a General Procurement Notice ("GPN") This notice, which is intended to give interested parties timely notification of acquisitions for works or goods that may result from the Project, as well as to provide a tentative schedule for such biddings, shall include the following information:

- a. the name of the country;
- b. a reference to the Inter-American Development Bank loan;
- c. the name of the Project, amount and purpose of the loan;
- d. ~~a brief description of each bidding or group of biddings that would take place as part of the Project, indicating in which quarter or half of each year the biddings are likely to take place;~~  
a brief description of each bidding or group of biddings that would take place as part of the Project, indicating in which quarter or half of each year the biddings are likely to take place;
- e. a brief description of the Bank's policy on publicity for specific biddings, with an indication of the type of publication to be used; and
- f. the name of the Tendering Entity, its postal address, and telephone and fax number at which interested parties may obtain additional information

3.02 Method of publication. When the GPN is not in the process of being published or has not been published prior to the signature of this Contract, the Bank will arrange on behalf of the Tendering Entity, to have the GPN published in the United Nations Journal "Development Business." For such purpose, the Tendering Entity shall send to the Bank, for its review and publication, within 30 days from the date of this Contract, the text of the GPN to be published, following the requirements of paragraph 3.01, above. Once the final text has been agreed upon, the Bank shall carry out its publication, which may be in any of the official languages of the Bank.

3.03 Publicity requirements for specific biddings

- a. Content of the public notice to prequalify The public notice of prequalification or registration of prospective bidders, as the case may be, the text of which shall

have been previously approved by the Bank, shall include, at a minimum, the following information:

- (i) a general description of the Project and of the work which is the subject of the bidding, its site and its principal characteristics. In the case of bidding on goods, their description and special characteristics, if any;
- (ii) the proposed method of prequalification;
- (iii) approximate dates for issuance of the invitations to bid, opening of tenders, initiation of the works which are the subject of the bidding, and completion of construction;
- (iv) the fact that the project for which bidding is being carried out is being partially financed by the Bank and that the procurement of goods or contracting for works covered by said Financing shall be subject to the provisions of this Contract;
- (v) the place, time and date at which firms may obtain the prequalification or registration forms agreed upon by the Tendering Entity and the Bank, as well as the cost of these forms, and
- (vi) any other requirements which must be fulfilled by interested parties so that they qualify and are subsequently invited or are able to participate in public biddings.

b. Content of the notices of the call to bid and invitations to bid

Calls to bid published in the press when prequalification has not taken place or invitations to bid delivered or forwarded to prequalified firms, the texts of which shall have been previously approved by the Bank, must specify, as a minimum, the following:

- (i) the description of the Project, purpose of the bidding and source of funds destined to finance the cost of the procurement of goods or works;
- (ii) the fact that the project for which bidding is being carried out is being partially financed by the Bank and that the procurement of goods or contracting of works payable from said Financing shall be subject to the provisions of this Contract;

- (iii) the general description of the equipment, machinery and materials required, as well as of the works, the volume or quantity of work, its principal parts and the deadline for its completion;

the office or place; date and time at which the bidding documents, including the bidding guidelines, plans, specifications and draft contracts, may be obtained.

- (v) the office where the bids are to be submitted and the authority responsible for their approval and award;
- (vi) the place, date and time at which the bids will be opened in the presence of the bidders or their representatives.

**Publicity:**

**Local publicity.** Every bidding for goods, works or related services shall include local publicity. Said publicity requires that the public notice of prequalification or registration, and that of the invitation to bid, shall

Tendering Entity, on one occasion in two different newspapers which widely circulated.

- (ii) **International publicity.** In the case of bidings with a value estimated to be equal to or above the amounts set forth in Section 4.01(j) of the

(i) above, the Tendering Entity shall carry out international publicity. In such cases, the public notice of prequalification or registration and that of submission of bids, when there has been no prequalification, shall be published in the United Nations journal "Development Business" and, if applicable, in any additional medium which may be specified in the cited Section 4.01.

**BIDDING DOCUMENTS**

**3.64 Bank's approval.** The bidding documents shall be approved by the Bank prior to their release to interested parties. These documents shall conform to the requirements set forth in paragraphs 3.63 to 3.10.

**Clarity, contents and price of the bidding documents.** The bidding documents shall be clear, complete and unambiguous. They shall include accurate drawings and

full detail what is required, that is, the goods, works or services to be provided; they should not include requirements which make it difficult for qualified contractors to participate and they should clearly indicate the criteria to be used in evaluation and comparison of bids. The detail and complexity of the documents may vary according to the nature of the bidding, but in general the documents shall include: the call for bids; instructions for bidders; bid forms; guarantee or bond requirements; a model contract; technical specifications; a list of goods or a bill of quantities and, when applicable, a table of prices. If a price is fixed for purchase of the bidding documents, it should reflect the reproduction cost of those documents and in no case be so high as to discourage competition.

3.06 Free access to the Tendering Entity. The Tendering Entity shall be available, once the bidding documents have been collected by bidders and up to an appropriate time before the bids are opened, to answer questions or clarify the bid documents for bidders. These inquiries shall be answered promptly by the Tendering Entity, and clarifications made known to the other interested parties that have acquired the bidding documents and to the Bank. The names of the firms which requested clarification shall not be made known.

3.07 Standards of quality. If the bidding documents mention standards of quality which the equipment or materials must meet, the specifications should also indicate that goods complying with other recognized standards which assure equal or higher quality than the mentioned standards shall also be acceptable.

3.08 Specifications for equipment: brand names. Specifications should not refer to brand names, catalog numbers or types of equipment from a particular manufacturer, except when it has been decided that this is necessary in order to guarantee the inclusion of a particular essential design or characteristic of functioning, construction or fabrication. In these cases, the references should be followed by the words "or equivalent" together with the criteria for determining such equivalence. The specifications should permit the acceptance of offers for equipment with similar characteristics and which provide performance and service at least equal to that specified. In special cases and with the prior approval of the Bank, specifications may require the furnishing of an article from a designated manufacturer.

3.09 Currency provisions. The bidding documents shall include the following currency provisions:

a. Currency of the bid

The bidding documents should establish that the bidder may express the price of its offer in the currency of its own country or, at its option, in a currency selected by the Tendering Entity and indicated in the bidding documents, provided that the currency selected is widely used in international commerce. A bidder who expects to incur expenses in more than one currency and desires to receive payment in the

same currencies stated in its offer, should indicate and justify the portion of the price of its offer to be paid in each currency. As an alternative, the bidder may express its offer in a single currency and indicate the percentage of the total price to be paid in other currencies and the exchange rate used in the calculations. The bidding documents shall clearly indicate the rules and procedures for making the conversion.

b. Currency for evaluation and comparison of bids

The currency or currencies in which the Tendering Entity is to pay for the goods and works shall be converted to a single currency selected by the Tendering Entity and identified in the bidding documents as the currency for comparison of all bids. The rate of exchange to be used in the evaluation shall be the selling rate of the selected currency, as published in an official source and applicable to similar transactions. The effective date of the rate of exchange should be stated 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.

Currency for payments

In general, the currency used in payments to a contractor should be the same as that quoted in the bid. When payments are to be made in local currency as well as in foreign exchange, the bidding documents should require that the amounts to be paid in each currency be stated separately and justified. When the bid price is stated in one currency and the bidder has also requested payments in other currencies as a percentage of the bid price, the exchange rates to be used for the purpose of payments shall be those used by the bidder in its bid, so as to ensure that the value of the foreign currency portions of its bid price remains the same, without any loss or gain. It is the Borrower's responsibility to establish clearly, in the bidding documents and in the contract, that the bidder must comply with the requirements stated above, and that the bidder shall not be able to obtain payment in a currency different from that specified in the bidding documents, the bid and the contract

- 3.10 Exchange risk. When a payment to be made to a contractor or supplier is based on the conversion of local or foreign currency, the exchange risk may not be charged to the contractor or supplier.

- 3.11 **Bid bonds.** ("Tender guarantees" or "bid securities") Bid bonds should not be set so high <sup>7</sup>, nor their validity extended over such long periods, as to discourage responsible bidders from tendering. Bid bonds shall be returned to the winning party once the contract is executed and the party's performance bond or guarantee has been accepted. Bid bonds shall be returned to the second and third-place bidders, within a period of no more than three months from the date of the award or upon execution of the contract, if the latter occurs prior to such deadline. Bid bonds shall be returned to other bidders within five days following the award.
- 3.12 **Performance bonds.** Specifications for construction works should require performance bonds or other forms of guarantee to ensure that the works will be carried out to completion. Even though the amount of the bond will vary with the type and magnitude of the work, it should be defined in the bidding documents and be sufficient to afford the Tendering Entity adequate protection. The amount of the bond should be sufficient to ensure completion of the work, at no increase in expense to the Tendering Entity, in case of default by the contractor in the performance of the work. The life of the bond or guarantee should extend sufficiently beyond completion of the contract to cover a reasonable warranty period. If necessary, performance bonds or other forms of guarantee may be required in connection ~~with contracts for the supply of equipment. This guarantee may consist of the retention of a percentage of the total payment during a warranty period.~~
- 3.13 **Criteria for evaluation of bids.** Contracts will be awarded to the bidder whose offer is the most advantageous in terms of price, and in terms of other factors that should be taken into account in the comparison of bids. This is the "lowest evaluated bid." In order to select the lowest evaluated bid, the bidding documents should clearly establish the factors, in addition to price, which are to be taken into account in the evaluation and the weight which is to be given to each factor. These factors should preferably be expressed in monetary terms or, at a minimum, given a relative weight in the evaluation criteria of the bidding documents. Factors that can be taken into account are, among others: transportation costs to the project site; payment schedule; schedule of delivery of the works or goods; operational costs; efficiency and compatibility of equipment; availability of maintenance service and spare parts; and proposed method of construction. The relative weights assigned to each factor should reflect the costs and benefits that the factors would bring to the project. In the evaluation of bids, no consideration may be given to factors not described in the bidding

<sup>7</sup> Some bidding practices limit the amount of bid bonds (tender guarantees) to a certain percentage of the price of each offer. In general it is recommended that the Executing Agency establish a set percentage related to the estimated cost of the works common for all bidders. This is to avoid disclosure of the price of each tender prior to the opening of the bids, should the amount of the guarantee or bid bond become public knowledge. This set percentage varies between 1% for very large contracts of over US\$100 million, ranging to 3% for small contracts.

documents. Price adjustment provisions in the bid are not taken into account in the evaluation.

3.14 **Reparable errors or omissions.** The bidding documents should distinguish between errors and omissions that are properly subject to correction and those that are not, in the stages both of prequalification and of presentation of bids. A bidder should not be automatically disqualified for not having presented complete information, either unintentionally or because the requirements in the bidding documents were not clear. Provided that the error or omission in question is subject to correction --generally a situation arising in the context of omissions relating to data or information of a factual or historical nature-- the Tendering Entity shall permit the bidder to promptly provide the missing information or correct the mistake. However, there are certain basic errors or omissions which, because of their gravity, are not traditionally subject to correction. Examples of these are failure to sign a bid or present a guarantee. Furthermore, the bidder shall not be permitted to correct errors or omissions that alter the substance of its offer or improve it.

3.15 **Rejection of all bids.** The bidding documents shall provide that the Tendering Entity may reject all bids, pursuant to the criteria set forth in Section 3.43.

3.16 **Model contract.** The form of contract between the Tendering Entity and the successful bidder must be consistent with the type of bidding used. The contract should be drawn up with the objective of equitably distributing the obligations and risks related to the operation so as to obtain the most economical price and efficient execution of the project. Such contract shall include general conditions and conditions of particular application or special conditions

a **General conditions of contract**

The contract should include general conditions which comprise, *inter alia*, general obligations of the contractor, requirements relating to bonds, indemnities and insurance, penalty and bonus clauses, percentage of payment to be retained, termination, advances, and the manner and currency of payment. When appropriate, the general conditions should also cover the duties and responsibilities of the consultant(s), revisions, additional funds, and any special situation at the job site that may affect the works. The following requirements apply to some frequent clauses of the general conditions:

(i) **Eligibility of expenses for payment with Bank financing**

The contract shall provide that the contractor or supplier shall not make any expenditures for the purpose of the contract, which are to be financed with

loan resources, in the territories of any country which is not eligible for procurement under the Project.

(ii) Payments

Use of advance payments by the Tendering Entity to the supplier or construction contractor for mobilization expenses, which may be authorized upon signature of the contract, should be carefully analyzed. Other advances which may be authorized, as for example for materials delivered to the site but not yet incorporated into the works, should be clearly described in the contract documents. When appropriate, progress payments for work performed or goods delivered should be provided for in order to avoid excessively high bids which might result from the high cost of working capital of the contractor or supplier. At the request of the Tendering Entity, the Bank may make disbursements for the acquisition of goods and construction services financed under the Financing: (1) by direct disbursement to the Tendering Entity in the form of an advance or reimbursement of expenditures; (2) by disbursement to suppliers of imported goods, or to contractors; and (3) by means of an irrevocable agreement of the Bank to reimburse a commercial bank which has issued or confirmed a letter of credit to a supplier or contractor.

(iii) Price adjustment clauses

In appropriate cases, provisions may be made for adjustments (upwards or downwards) in the contract price in the event changes occurring as a result of inflation or deflation of the economy affecting prices of the major cost components of the contract, such as labor, materials and equipment. The basis for such adjustments should be clearly indicated in the bidding documents and in the contract.

(iv) Retention of payment

When appropriate, the bidding documents and the contract may provide for a percentage of the total payment to be held as retention money to secure full performance by the contractor, as well as the conditions for its reimbursement and ultimate payment.

(v) Penalty and bonus clauses

Provisions for a penalty, --sometimes called liquidated damages-- should be included in the contract when delays in completion may result in extra



expense, loss of revenue, loss of production, or inconvenience to the Tendering Entity. Similarly, the contract may stipulate the payment of a bonus to the contractor for completion of the contract before the completion date specified in the contract, or for otherwise exceeding minimum criteria established in the contract regarding performance.

(vi) Force Majeure

It is desirable that the general conditions of the contract contain clauses stipulating that failure of one of the parties to perform any or all of its obligations under the contract shall not be considered a default in the performance of such obligations insofar as such failure is the result of an event of *force majeure* (to be defined in the general conditions of the contract).

(vii) Resolution of disputes

It is advisable to include in the contract, provisions with respect to the applicable law and the forum for the settlement of disputes

b. Conditions of particular application

- (b) The conditions of particular application (for works) or special conditions (for goods) include a detailed description of the works to be constructed or the goods to be purchased; the source of financing; special requirements pertaining to matters such as currency; payment; and bonus for early completion; as well as any amendments to be made to the general conditions.

*Prequalification and registration of bidders*

3.17 Applicability. General rule. In bidding conducted for the execution of works, the Tendering Entity shall utilize the system of prequalification or registration of bidders in the case of large or complex civil works. The Tendering Entity may also use a system of prequalification or registration in bidding conducted for the procurement of goods, if deemed appropriate by such Entity.

3.18 Two-envelope procedure. Unless prohibited by local law, the Bank and the Tendering Entity may agree to utilize a two-envelope procedure whenever, in their judgment, circumstances render it advisable. By means of this procedure, which must be clearly established in the bidding documents:

- a. Every bidder shall submit, at the time the bids are opened, two sealed envelopes containing the following:
  - (i) **Envelope 1** - Information on the financial, legal and technical qualifications of the firms, such as: financial solvency, capacity to contract, general and specific experience, key personnel and machinery available for the project, contracts executed, ongoing contracts, and current obligations and litigation.
  - (ii) **Envelope 2** - The bid itself, with the respective price quotation
- b. At the opening of bids, which shall take place in a public meeting at the set day and time, Envelopes No.1 shall be opened and it shall be verified whether the bidders have included the documents required by the bidding specifications. If the Envelopes do not contain the required documentation, that fact will be recorded in the minutes of the session along with a description of the missing or incomplete information, and Envelopes No.2 shall be returned unopened to the respective bidders. Upon completing these procedures, the first ceremony shall be adjourned, and Envelopes No.2 of bidders that have presented all the required information shall remain sealed
- c. Based on this information, prequalification of bidders shall take place within the periods set forth in the bidding documents
- d. Once the prequalification has been completed and approved by the Bank, the Tendering Entity shall set, with appropriate prior notice, the place, date and time of the second public meeting. In this second public meeting, Envelopes No.2 shall be returned unopened to the firms not prequalified. Envelopes No. 2 of the firms that did prequalify shall then be opened, the price of each offer shall be read aloud, and a record of the prices and most relevant details of the tenders shall be made in the minutes.
- e. The final evaluation of the proposals and the award shall be made within the time periods set forth in the bidding documents, and once the Bank has given its consent to the proceedings.

3.19 **Registration of bidders.** The registry of bidders is a form of prequalification acceptable to the Bank. In order to be acceptable it is necessary that the registers: (a) be open permanently or be opened on a frequent basis, whether for updating information on registered firms or adding new firms; (b) be open for each bidding to be carried out for projects financed by the Bank; and (c) include no requirements that would impede or render difficult the participation of foreign bidders or violate the principle of bidder equality.

3.20 **Term for prequalification.** The Tendering Entity shall conclude the prequalification within a time period compatible with the timetable of investments agreed upon by such Entity and the Bank.

3.21 **Content of the prequalification or bidder registration form.** The prequalification or registration form, as the case may be, shall contain, *inter alia*, the following data:

- a. the legal background on the creation, juridical nature and nationality of the bidding firm. A copy of the firm's by-laws and respective constituting documents shall be attached. The information regarding nationality shall comply with paragraph 2.07 herein<sup>8</sup>;
- b. the technical background of the firm;
- c. the financial condition of the firm;
- d. available staff and equipment;
- e. experience in the construction, manufacture and installation of goods or works similar to those which are the subject of the bidding;
- f. work under way or present obligations assumed by the firm;
- g. evidence that the firm has sufficient staff and equipment to satisfactorily carry out the works contemplated by the project and an indication of where such staff and equipment are located; and
- h. a description, in broad terms, of the systems the firm would use to execute the works.

3.22 **Deadline for delivery of the forms.** Interested parties shall have at least 45 calendar days from the final publication of the notice to file prequalification or registration forms. This deadline may be reduced to 30 days when bidding is restricted to the domestic market

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8 In the instances in which prequalification is conducted with respect to bidding for the procurement of goods, the information to which reference is made in this subparagraph (a) must include information on the origin of the goods, pursuant to paragraph 2.08

### *Selection of Prequalified Firms*

- 3.23 Qualified firms. Only firms that have demonstrated, pursuant to requirements set forth in the bidding or registration documents, the necessary technical, financial, legal and administrative capacity to carry out the works may be prequalified or entered in the registry of bidders. Forms which are defective in form or which contain obvious errors may be accepted and corrections requested, in accordance with the principles included in Paragraph 3.14.
- 3.24 Technical report. The Tendering Entity shall prepare a technical report on firms that presented themselves, indicating which were prequalified or duly qualified in the register and which were not, together with the grounds thereof. The report shall be sent to the Bank promptly so that it may express its approval or reservations.
- 3.25 Notification of results. Once the Bank approves the technical report, all participating firms shall be simultaneously notified of the results.
- 3.26 Later disqualification. Once prequalified, a firm may not be disqualified from the corresponding bidding unless prequalification or registration was based on incorrect information filed by the firm or unless compelling circumstances that would justify such a decision arise after the date of prequalification or registration.
- 3.27 Duration of eligibility. If one year has elapsed since prequalification or registration, and an invitation for bidding has not been issued, the Tendering Entity shall issue a new call for prequalification or registration so that prospective new bidders may be admitted and those firms already prequalified or registered may update the information they originally provided. The new call shall meet the requirements established in these Procedures.
- 3.28 Absence of prospective bidders
- a. If fewer than two prospective bidders were prequalified or registered in the first call, a second call shall be made, following the same procedure, as in the first, unless the Bank authorizes limited bidding on the terms set forth in the following subparagraph or authorizes the direct hiring of the contractor or supplier.
  - b. If, after the second call, there are not two or more firms that have qualified, the prequalification may be declared null and void and with the prior approval of the Bank, limited bidding may be conducted with at least three firms being invited to bid, including the firm previously prequalified, if there was one

### 3.29 Prequalification for multiple biddings

- a. The Tendering Entity may agree with the Bank to call for a single prequalification of contractors for multiple biddings when it is anticipated that, in a short period of time, several biddings for the construction of a group of similar works will take place and when, due to the geographical location of such works or other considerations acceptable to the Bank, such works may not be carried out through a single bidding.
- b. If so established by the bidding documents, contractors thus prequalified may participate in one or more of the scheduled biddings. In each invitation for bids, the Tendering Entity may request that the bidders update information that may have changed since prequalification, and in particular, demonstrate that their capacity to execute the work continues to be that required by the bidding documents.
- c. The duration of the validity of prequalifications for a group of bids shall not exceed one year.

## *BIDDING*

### *Invitation to Bid*

3.30 Following prequalification. If prequalification has taken place, the Tendering Entity shall send or deliver invitations to bid only to those firms that were prequalified. Prior to sending or delivering such invitations, the Tendering Entity shall transmit to the Bank, for its approval, the text of the invitation to bid, together with the bidding documents if they were not transmitted earlier. At this stage, notices need not be published.

3.31 Without prequalification. In the absence of prequalification, the invitation to bid shall be publicized as set forth in paragraph 3.03. The bidding documents shall clearly specify the minimum prerequisites which would qualify bidders to carry out the works or supply the goods involved. For this purpose, the documents shall include a questionnaire similar in content to the form specified in paragraph 3.21 of this Chapter, which is to be filled out by interested parties and submitted by them along with their respective offers.

### Deadlines for Submission of Bids

3.32 Normal term. The normal deadline for filing offers in international competitive bidding shall be not less than 45 calendar days from the date of the last publication of the notice of bidding or the date of availability of bidding documents, whichever is later.

- 3.33 Term for large or complex civil works. Where large or complex civil works are involved, a minimum of 90 calendar days shall be allowed for contractors to submit their bids.
- 3.34 Deadline for filing of domestic bids. When the bidding is limited to the domestic market, the Tendering Entity may reduce the period for filing offers to 30 calendar days.
- 3.35 Confidentiality of bidding and prequalification documents. The officials in charge of receiving the envelopes containing prequalification or registration forms or tenders shall verify that such envelopes are delivered by the tenderer properly sealed. These envelopes shall be kept in a safe place until the day scheduled for their opening. Once opened, no copies shall be made of the documents in the envelopes. Except as the law may require to the contrary, after the public opening of bids and reading of the bid prices, and before the announcement of the contract award, information relating to the examination, tabulation, clarification and evaluation of bids or relating to recommendations concerning awards may be communicated only to those officials of the Tendering Entity who are officially involved in the respective bidding process.
- 3.36 Modification or amplification of the bidding documents. Any modification or amplification of the bidding guidelines or specifications or the filing date must first be approved by the Bank and communicated to all interested parties who have officially received the bidding documents. In the event that such modification or amplification is substantial, in the opinion of either the Tendering Entity or the Bank, there must be an interval of at least 30 calendar days between the date of notice to interested parties and the date bids are opened.
- 3.37 Consultations shall not modify bidding documents. Consultations regarding the interpretation of bidding documents addressed to the Tendering Entity by interested parties may not be used to modify or expand the bidding guidelines and specifications. Consultations and replies thereto shall in no case cause a suspension of the term for presentation of bids.
- 3.38 Single bid. When only a single bid is received in response to an invitation to bid, the Tendering Entity may not award the contract without the prior consent of the Bank
- 3.39 Opening of bids. Offers shall be submitted in writing in sealed envelopes. They must be signed by the legal representatives of the bidders and comply with the prerequisites set forth in the bidding documents. They shall be opened in public on the scheduled date and hour. Representatives of the bidders and of the Bank may attend the bid opening and shall be entitled to inspect the bids; bids received after the filing date and time shall be returned unopened. The names of the bidders, the price of each bid, the term and amount of guarantees, and any substantial change submitted separately before the deadline but after the principal bid is submitted, shall be read aloud. All of the above shall be recorded in the

minutes of the proceedings, which shall be signed by the representative of the Tendering Entity and by any bidders present who wish to do so.

- 3.40 **Clarification of bids.** The Tendering Entity may request clarifications from the bidders with respect to their offers. Clarifications requested or given shall not alter the essence of the offer or its price, nor shall they violate the principle of bidder equality.

#### **Analysis and Comparison of Bids**

- 3.41 **Purpose.** Bids shall be analyzed and evaluated to determine whether they comply with the terms and conditions stipulated in the bidding documents, and the value of each bid shall be fixed for the purpose of selecting the winning bid.

- 3.42 **Evaluation of bids.** The evaluation of bids shall be carried out following the criteria set forth in paragraph 3.13.

- 3.43 **Rejection of bids.** Bids that do not substantially fulfill the requirements of the bidding documents or that contain irreparable errors or omissions pursuant to the criteria set forth in paragraph 3.14, above, shall be returned without having been evaluated. Additionally, the Tendering Entity may, after consultation with the Bank, reject all bids where no bid complies with the bidding documents, or where there is evidence of lack of competition and/or collusion. Calls for new bids for reasons of price are discouraged in cases where bids are only slightly higher than the original cost estimates. Tendering Entities may, however, after consultation with the Bank, reject all bids if the lowest bids exceed the official estimate by amounts sufficient to provide reasonable justification for such action. In such cases new bids should be requested from, at the least, all those who were invited to submit bids in the first instance, and a reasonable amount of time should be allowed for submission of new bids. Individual bids may be rejected in cases where the particular bid is so much lower than the official estimate that it is reasonable to conclude that the bidder will not be able to complete the job or supply the goods within the time specified at the price offered.

- 3.44 **Bid evaluation report.** The Tendering Entity shall prepare a detailed report on the analysis and comparison of bids, describing precisely the reasons for selection of the lowest evaluated bid. The report shall be submitted to the Bank for consideration prior to the contract award. If the Bank determines that the proposed award is not consistent with the terms of these Procedures, it will promptly inform the Tendering Entity of its determination and state the reasons therefor. Such contract will not be eligible for financing by the Bank, unless the inconsistencies giving rise to the Bank's objections can be corrected. The Bank may cancel an amount of the Financing which, in its opinion, corresponds to the amount of expenditures declared ineligible.

### Award of Contract

- 3.45 Bank approval. The award shall be made to the bidder whose bid has been determined to be the lowest evaluated bid and in conformity with the bidding documents, once the Bank has approved the draft notice of award.
- 3.46 Award notification and contract signature. The Tendering Entity shall notify all bidders of the award, at the addresses they have provided and within three working days from the date of the award. Once this has taken place, the Tendering Entity shall no longer award to another bidder or declare the bidding invalid, unless there has been fraud or other forms of illegality, or the Borrower becomes aware of facts not known to it at the time of prequalification which could materially affect the ability of the successful bidder to perform the contract. It shall promptly send to the Bank, for its approval, a copy of the draft of the contract for signature by the winning bidder. The contract to be signed shall not modify the winning bid or the terms and conditions stipulated in the bidding documents. Once the Bank approves the draft contract, it shall be signed and the Tendering Entity shall promptly send a copy of the signed contract to the Bank. The successful bidder shall furnish the Tendering Entity a performance security within the same period as set forth for the signing of the contract.
- 3.47 Modification of the award. If for any reason the winning bidder does not sign the contract or furnish the performance security within the period set for that purpose, the Tendering Entity may award it, without a new invitation to bid, to the other bidders in the order in which they have been evaluated.

### Bidding Declared Null and Void

- 3.48 Report to the Bank. Whenever the Tendering Entity has justified grounds for declaring the bidding null and void, it shall request the prior favorable opinion of the Bank for such action by sending it a complete report, including the reasons and grounds for proposing such a measure
- 3.49 Effects of the declaration. Once the bidding is declared null and void, the Tendering Entity shall issue a second invitation to bid following the provisions set forth in these Procedures. If the second bidding is declared null and void, the Tendering Entity and the Bank shall agree on the procedure to be followed for the procurement involved

## IV. DUE PROCESS

- 4.01 Review mechanisms. Regulations applicable to bidding carried out under these Procedures must guarantee the legal protection of bidders, permitting the use of the review mechanisms necessary to guarantee such protection.



4.02 Submission of protests. The Tendering Entity shall not impose conditions which would impede, restrict or increase the cost of submission of protests by firms participating in bidding for the acquisition of goods or contracting for works with respect to which, in the Bank's opinion,

4.03 Notification of protests. The Tendering Entity shall notify the Bank promptly of any such protests or claims.

5.01 Effects of noncompliance. The Bank reserves the right not to finance any acquisition of goods and services or contracting for works with respect to which, in the Bank's opinion, there has been noncompliance with the provisions set forth in these Procedures.

## ANNEX C

**SELECTION AND CONTRACTING OF CONSULTING  
FIRMS OR INDIVIDUAL EXPERTS**

Hybrid Program for Air Transport Reform  
(Investment/Technical Cooperation Components)

In the selection and contracting of consulting firms, specialized institutions and/or individual experts, hereinafter referred to without distinction as "Consultants", necessary for the execution of the Project, the following shall be applicable:

**I. DEFINITIONS**

The following definitions are established:

- 1.01 A consulting firm is any legally constituted association, composed primarily of professional personnel, for the purpose of offering consulting services, technical advice, expert opinions, and professional services of various kinds.
- 1.02 A specialized institution is a non-profit organization such as a university, foundation, autonomous or semiautonomous organization or an international organization which offers consulting services. For the purpose of this Annex, the same rules shall apply to specialized institutions as to consulting firms.
- 1.03 An individual expert is any professional or technician specialized in some form of science, art or craft.
- 1.04 A Contracting Entity is the one with the authority to contract the consultants. This entity may be, depending on each case, the Borrower, the Executing Agencies, the Beneficiaries, the Intermediate Financial Institutions, or any other entity mentioned as such in the respective contract or agreement.
- 1.05 The terms Contract or Agreement shall be used interchangeably to refer to the legal instrument of which this Annex is a part.
- 1.06 "Project" means, indiscriminately, the Project or Program which is the subject of the Contract.

- 1.07 "Financing" means the resources, referred to as "Contribution", "Credit" or any other term, assigned to Loan Operations, Technical Cooperations, Small Projects, etc.

II. ETHICAL STANDARDS AND CONFLICTS OF INTEREST

- 2.01 The Contracting Entity, and entities or individuals participating directly or indirectly under these Procedures, shall adhere to the highest ethical standards and refrain from engaging in corrupt practices, both during the contracting stage and during the execution of the corresponding procurement contracts.
- 2.02 The resources of the Bank shall not be used to contract Individual Experts from the country of the Borrower if: (a) they are part of the regular or temporary staff of the institution which receives the Financing, or if such institution is the beneficiary of the services to be provided by such Individual Experts; or (b) they have belonged to such entities within the six months prior to one of the following dates: (i) that of the presentation of the application for Financing; or (ii) that of the selection of the Individual Expert. The Bank may reduce this term given previous and reasonable request by the Contracting Entity. Notwithstanding the aforementioned terms, affiliations or relationships, the Bank may also take into account other conditions for the purpose of determining the existence of a conflict of interest, and, therefore, declare the incompatibility of the Individual Expert.
- 2.03 In addition, Bank resources shall not be used to contract Consulting Firms from the country of the Borrower if the partners, associates, directors and other technical or professional staff of such Consulting Firms: (a) belong to the regular or temporary staff of the institution which shall receive the Financing, or if such institution is the beneficiary of the services to be provided by such Consultants; or (b) they have belonged to any of such entities within the six months prior to one of the following dates: (i) that of the presentation of the application for Financing; or (ii) that of the beginning of the prequalification or selection process of the Consulting Firm. The Bank may reduce this term given prior and reasonable request by the Contracting Entity. Notwithstanding the aforementioned terms, affiliations or relationships, the Bank may also take into account other conditions for the purpose of determining the existence of a conflict of interest, and, therefore, declare the incompatibility of the Consulting Firm.
- 2.04 A fully-qualified consulting services firm which is a subsidiary or affiliate of a construction contractor, equipment supplier or holding company normally will be considered acceptable only if it agrees in writing to limit its role to the provision of professional consulting services and agrees, in the contract it signs, to disqualify itself and its associates from any construction work, material or equipment supply or financial participation in the same Project.

### III. ELIGIBILITY AND NATIONALITY REQUIREMENTS

- 3.01 Except when the consulting services are financed with resources of the Multilateral Investment Fund ("MIF"), the Contracting Entity shall not establish in the implementation of the procedures set forth in this Annex, provisions or conditions which may restrict or impede the participation of Consultants that are nationals of any countries which are members of the Bank. When the consulting services are financed with resources of the MIF, the Contracting Agency may not restrict or prevent the participation of Consultants that are nationals of Donor countries of the MIF or of regional developing countries which are members of the Bank.
- 3.02 Only Consultants that are nationals of countries that are members of the Bank are eligible to be contracted with resources of the Financing; provided, however, that when consulting services are financed with resources of the MIF, only Consultants that are nationals of Donor countries of the MIF or of regional developing countries which are members of the Bank are eligible to be contracted. To determine the nationality of a consulting firm, the following criteria shall be considered:
- (a) The country in which the consulting firm is duly established or legally organized.
  - (b) The country in which the consulting firm maintains its principal place of business.
  - (c) The nationality of any firms or the citizenship or the bona fide residency of individual possessing ownership, with the right to participate in profits, of more than 50% of the consulting firm, as established by the certification of a duly authorized officer of said firm.
  - (d) The existence of arrangements whereby a substantial portion of the profits or other tangible benefits of the firm accrues to firms or individuals of a given nationality.
  - (e) A determination by the Bank that the consulting firm (i) constitutes an integral part of the economy of a country, as evidenced by bona fide residency in the country of a substantial portion of the executive, professional and technical personnel of the firm, and (ii) that the firm has available in the country the operating equipment or other elements necessary to provide the services to be contracted.
- 3.03 The nationality requirements established by the Bank shall also be applicable to firms proposed to provide part of the respective services in joint venture with or under sub contract to a qualified consulting firm.

3.04 The nationality of an individual expert shall be established by means of the individual's passport or other official document of identity. The Bank, however, may allow exceptions to this rule in those cases in which the individual expert, not being eligible by reason of nationality: (a) has established his domicile in a member country, is legally entitled to work there (as other than an international civil servant) and has no known intention of returning to his country of origin in the immediate future; or (b) has established permanent domicile in an eligible country and has resided therein for at least 5 years.

#### IV. PROFESSIONAL QUALIFICATIONS

4.01 An analysis of the professional qualifications of a consulting firm shall include: (a) experience of the firm and that of its principals in providing successful consulting services for projects of a comparable size, complexity and technical specialty as those of the task involved; (b) assigned number of professionally qualified personnel; (c) previous experience in the region and in foreign areas; (d) language capability; (e) financial capacity; (f) present work load; (g) ability to organize sufficient personnel to do the work within the required time; (h) high ethical and professional reputation, and (i) the non-existence of any link or relation that could cause a potential conflict of interest.

#### V. PROCEDURES FOR SELECTION AND CONTRACTING

##### A. Selection and contracting of consulting firms

5.01 In the selection and contracting of consulting firms:

(a) Prior to initiating the selection procedure and once it has obtained any necessary local approval, the Contracting Entity shall present for the Bank's approval the following requirements for the contracting of firms.

(i) The procedure to be used in the selection and contracting of the firm, including:

(A) The role of the staff of the Contracting Entity or the Selection Committee designated to:

1. Review and approve documents;
2. Select a short list of firms;
3. Determine the order of merit of the short listed firms; and
4. Approve the firm finally selected.

The Contracting Entity shall furnish the Bank with the names and positions of the people it chooses to participate in the pre-selection and selection processes.

- (B) The specific points system to be used in preselecting the firms. This system shall include, as a minimum, the following aspects:
  - 1. General background of the firm;
  - 2. Similar work done;
  - 3. Prior experience in the country where services are to be rendered, or in similar countries;
  - 4. Language proficiency; and
  - 5. The utilization of local consultants.
  
- (C) The specific point system to be used as selection criteria. This system shall include at least the following factors:
  - 1. Qualifications and experience of personnel to be assigned;
  - 2. Evaluation methodology (where applicable);
  - 3. Proposed plan of implementation;
  - 4. Execution schedule;
  - 5. Language proficiency; and
  - 6. Management support systems to assure quality control during execution of the consulting services (regular reports, budget controls, etc.)
  
- (D) The specific local laws, taxation requirements and procedures which may be relevant to the selection and contracting of the consultant firm
  
- (E) If it is estimated that the cost of the services will exceed two hundred thousand United States dollars (US\$200,000) or its equivalent, calculated in accordance with the provision relating to "Rate of Exchange" in this Contract or Agreement, the selection and contracting shall be advertised in "Development Business" of the United Nations and in the national press. These announcements should state the intention of contracting professional consulting services along with a brief description of the services required. These should also invite interested firms and consortia to apply and to furnish detailed information regarding their technical ability, prior experience with similar work, etc. within 30 days of the date of publication. Clippings of these advertisements shall be sent to the Bank specifying the date and the name of the publication in which they have appeared.

- (ii) The terms of reference (specifications) describing the work to be done by the firm, together with an estimate of the cost; and
  - (iii) A list of at least three and no more than six firms from which proposals for the work would be invited.
- (b) Once the Bank has approved the foregoing requirements, the pre-selected firms shall be invited to present proposals in conformity with the procedures and terms of reference approved. The pre-selected firms shall be informed regarding the specific selection procedure and evaluation criteria adopted, specific local laws, taxation requirements and procedures relevant to the selection of consulting firms as well as the names of the other firms invited to present proposals
- (c) In the invitations to present proposals the use of one or the other of the following procedures shall be specified:
- (i) A single sealed envelope including only the technical proposal, without a price quotation, shall be used. The Contracting Entity shall analyze the proposals and shall classify them in order of merit. If the complexity of the case so requires, the Contracting Entity may resort, with the prior approval of the Bank and at its own expense, to the use of consulting services to review the proposals and establish their order of merit.

Once an order of merit has been established among the firms, the firm listed as first shall be invited to negotiate a contract. During these negotiations the details of the terms of reference shall be reviewed completely to assure full and mutual understanding with the firm; the contractual and legal requirements of the agreement shall be reviewed; and finally, detailed costs shall be developed. If agreement cannot be reached with the firm on the terms of the contract, it shall be notified in writing that its proposal has been rejected and negotiations shall be initiated with the second firm and so on until a satisfactory agreement has been reached;

- (ii) Two sealed envelopes shall be used for presenting proposals, the first containing the technical proposal exclusive of costs and the second containing the proposed costs for the services.

The Contracting Entity shall analyze the technical proposal and establish their order of merit. Contract negotiations shall commence with the firm offering the best technical proposal. The second envelope presented by this firm shall be opened in the presence of one or more of its representatives and shall be

utilized in the contract negotiations. All the second envelopes presented by the other firms shall remain sealed and, if an agreement is reached with the first firm, they shall be returned unopened to the respective firms. If an agreement on the terms of the contract is not reached with the first firm, it shall be notified in writing of its rejection and negotiations shall be initiated with the second firm and so on until a satisfactory agreement is reached.

- (d) Inability to agree on detailed costs or compensation for services or a judgment on the part of the Contracting Entity that such costs or compensation are inappropriate or excessive, shall be sufficient cause for the rejection of the proposal and for the initiation of negotiations with the firm which follows in the order of merit. Once a firm has been rejected it shall not be recalled for further negotiations on such contract.
- (e) Before initiating negotiations, the Contracting Entity shall provide the Bank, for its non-objection, with a copy of the report summarizing the evaluation of technical proposals submitted by the short listed firms identified in Section 5.01(a)(iii) of this Annex.
- (f) The final draft of the contract negotiated with the consulting firm shall be submitted for the approval of the Bank by the Contracting Entity, once it has obtained any necessary local approval, before the contract is signed. Once signed, a true copy of the text shall be promptly sent to the Bank.
- (g) Whenever Annex A provides that supervision by the Bank of the hiring of consulting firms or individual experts, in determined cases, will be carried out ex post, i.e., after the corresponding contracts for consulting services have been entered into, the Tendering Entity shall promptly notify the Bank each time a contract has been entered into and shall send to the Bank the basic data regarding the contract. The Tendering Entity shall retain, so that the Bank may carry out its supervision, the background information on each consulting contract and in particular the following documents:
  - (i) the procedure used to hire the firms or experts, including, when relevant, the criteria for pre-qualification and selection;
  - (ii) the name of the consultants selected;
  - (iii) the reports that recommended prequalification and awarding of the contract; and
  - (iv) the signed consultancy contract.



The Tendering Entity shall provide the Bank with any additional information which the Bank may request.

- (h) Unless the parties agree otherwise, notwithstanding that supervision by the Bank is carried out **ex post**, the Tendering Entity shall in all cases submit for the Bank's **ex ante** approval:
  - (i) the corresponding terms of reference; and
  - (ii) the names of the firms included in the short list.
- (i) Before the first time that the procedures for the hiring of consulting firms or individual experts to be supervised by the Bank **ex post** have been initiated, the Tendering Entity shall submit for the Bank's concurrence, the procedure it intends to use for contracting consulting firms and individual experts, including ,when applicable, the criteria for prequalification and selection.
- (j) The contracting of consulting firms or individual experts supervised **ex post** by the Bank is also subject to Bank policies. The Bank reserves the right:
  - (i) not to finance or to cancel resources for contracts whose selection and contracting procedures were not in accordance with Bank policies,
  - (ii) to request reimbursement, with interest and commissions, of resources already disbursed for such contracts; and
  - (iii) not to recognize as part of the local counterpart contribution, resources assigned by the Borrower for such contracts.

The Bank further reserves the right to require that future contracts be supervised **ex ante**.

**B. Selection and contracting of individual experts**

**5.02** In the case of the selection and contracting of individual experts

- (a) Prior to initiating the selection procedure and once it has obtained any necessary local approval, the Contracting Entity shall submit the following for the Bank's approval.
  - (i) The selection procedure,

- (ii) The terms of reference (specifications) and the schedule of the services to be performed in the respective study;
  - (iii) The names of the experts tentatively selected, setting forth in detail their nationality, domicile, background, professional experience and knowledge of languages; and
  - (iv) The model contract to be used in retaining the experts.
- (b) Once the country's appropriate authorities and the Bank have approved the foregoing requirements, the Contracting Entity shall proceed to contract the experts. The contract to be entered into with each of them shall be consistent with the form of contract which the Bank and the country authorities shall have agreed upon. A true copy of the signed text of each contract shall be sent promptly to the Bank.
- (c) When Annex A provides that the contracting of individual experts, in certain cases, will be supervised by the Bank *ex post*, the rules set forth in subparagraphs (g), (h), (i) and (j) of paragraph 5.01 of this Annex shall apply.

5.03 Notwithstanding paragraphs 5.01 and 5.02 above and at the request of the Contracting Entity, the Bank may assist in the selection of the Consultants as well as in drafting the pertinent contracts. It is understood however, that the final negotiation and signing of such contracts, under terms and conditions acceptable to the Bank, shall be the sole responsibility of the Contracting Entity and that the Bank assumes no commitment on this matter.

## VI. CURRENCIES OF PAYMENT TO CONSULTANTS

6.01 In contracts entered into with Consultants, the following provisions related to currencies of payment shall be established, with the understanding that with respect to rate of exchange, the rule established to that effect in this Contract or Agreement, shall be applied:

- (a) Payments to consulting firms: Contracts entered into with consulting firms shall reflect one of the following formulations, as the case may be:
- (i) If the consulting firm is domiciled in the country in which it is to perform the services, its compensation shall be paid exclusively in the currency of that country, except for expenses incurred in foreign exchange for foreign travel or per diem expenses abroad which shall be reimbursed in United States of America dollars, or its equivalent in other currencies that form part of the Financing;

- (ii) If the consulting firm is not domiciled in the country in which it is to perform the services, the highest possible percentage of its compensation shall be paid in the currency of such country and the rest in United States of America dollars or the equivalent in other currencies that form part of the Financing, with the understanding that the part corresponding to per diem expenses shall be paid in the currency of the country or countries in which the respective services are to be performed. In the event that the percentage to be paid in the currency of the country in which the services are to be performed is less than 30% of the total compensation of the consulting firm, a complete and detailed justification shall be submitted to the Bank for its examination and comments by the Contracting Entity once it has obtained the necessary local approval;
  - (iii) In the case of a consortium composed of firms domiciled in the respective country and firms not domiciled therein, the part of the compensation which corresponds to each of the members shall be paid in accordance with paragraphs (i) and (ii) above.
- (b) Payments to individual experts:
- (i) If the expert is domiciled in the country in which his/her services are to be performed, his/her honoraria shall be paid exclusively in the currency of that country;
  - (ii) If the expert is not domiciled in the country in which his/her services are to be performed and is hired to work for less than six months, his/her honoraria and per diem shall be paid totally in United States of America dollars.
  - (iii) If the expert is not domiciled in the country in which his/her services are to be performed and is hired to work six or more months, his/her honoraria and post adjustment shall be paid in the following manner: (1) 40% in the currency of that country; and (2) 60% in United States of America dollars. Per diem, installation and change of residence allowances and withholding of compensation when applicable, shall also be paid in United States of America dollars;
  - (iv) Fixed lump sum compensation for services, including honoraria, transportation tickets and per diem, may be paid in United States of America dollars.

**VII. RECOMMENDATIONS OF CONSULTANTS**

7.01 It is understood that the opinions and recommendations of the Consultants obligate neither the Contracting Entity, other local entities, nor the Bank, and that they reserve the right to put forward such observations or exceptions as they deem appropriate.

**VIII. SCOPE OF COMMITMENT OF THE BANK**

8.01 It is agreed that the Bank assumes no commitment to finance all or part of any program or project which, directly or indirectly, might result from the services performed by the Consultants.

**IX. SPECIAL CONDITIONS AND REQUIREMENTS**

9.01 The final payment for services to the Consultants shall be contingent upon prior acceptance by the Contracting Entity or other appropriate local authorities and the Bank of the Consultant's final report. Such final payment shall consist of not less than 10% of the total amount to be paid as fees in accordance with the contract agreed upon.

