

HANDBOOK for Procurement under JBIC ODA Loans

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Revisions and Accompanying Explanations

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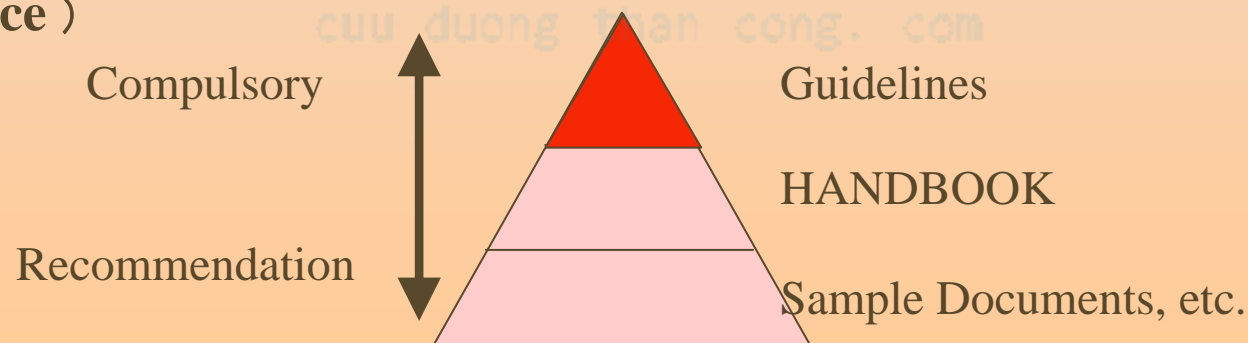
Arrangement of the HANDBOOK

❖ Procedural measures for JBIC Guidelines

- ❖ **Current procedural measures** relating to the application of JBIC guidelines and **accompanying explanations**.
- ❖ Procedural measures encompass both recommendations and matters requiring JBIC approval, and are effectively binding.

→ It is expected that the HANDBOOK (guidelines) will **contribute to a transparent and stable operation of the system, facilitate procurement procedures and enhance capacity building in borrower countries.**

(For reference)



Employment of Consultants

Section 2.05, 1.

Definition of Associate and Affiliate Companies

<Revision>

- ❖ To ensure the impartiality of project consultants, the definition of associates and/or affiliates must be understood in a full sense.
- ❖ In general, **associates are considered to be those with not less than 20% of subscribed shares or total capital held by the consulting firm, and 50% in the case of affiliates.**

< Explanation >

- ❖ To ensure project consultant impartiality, associate or affiliate companies of those involved in the procurement process are excluded from participating. Yet, the criteria defining such companies has not previously been made clear.
- ❖ Henceforth, the respective definitions are to include the specific numerical figures.

Section 3.01, 1.

Specification for QBS Method Utilization

- ❖ Consultants play an important role **in ensuring project success and in maximizing its benefits / development effects.**
 - ❖ To ensure the provision of high quality services, they should be equipped with all reasonable skills, care, and diligence.
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 - ❖ Consultants are **selected solely on the basis of quality** (price is not taken into consideration)
- ❖ A clear indication has been given of the key role to be played by consultants (i.e., to support a project's success and maximize its benefits/ development effects).
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Objective of ODA Loans
 - ❖ JBIC has made its stance on emphasizing **“quality”** explicit.

Stipulated Measures for Misprocurement

- ❖ “Implementation Rules for Sanctions against a Party Engaged in Corrupt or Fraudulent Practices Under a Contract Funded by JBIC ODA Loans” published on the official JBIC website prescribe specific measures to be taken against a party engaged in such practices.
- ❖ With the introduction of the article on misprocurement in 1999, information on the content and methods of applying specific measures against violators has been made publicly available.
- ❖ It is expected that this document will **reinforce awareness among project proponents of transparency under ODA projects.**

Section 3.04, 4.

Rules on Associations between S/L and non-S/L Consultants

- ❖ A short-listed (S/L) consultant may undertake works in association with other consultants listed or not listed in the Short List **as long as the Short Listed consultants execute a major portion of the required services.**
- ❖ Given that **the aim of the S/L method is to ensure “quality,”** the S/L consultant should fulfill the major role.
- ❖ To the extent that the above condition is met, the S/L consultant is permitted to form associations with non-S/L consultants.
- ❖ This criterion must be stipulated in the I/L (Letter of Invitation)

Rules on Associations

- ❖ Based on **the principle of one bid per bidder**, the following rules on associations are indicated.
 - ❖ Companies that are “solely” or “jointly and severally” liable for entire contract are permitted to participate in only one proposal.
 - ❖ Companies that are not liable for entire contract are free to participate in multiple proposals.
- ❖ In light of the one bid-one bidder principle, which aims **to ensure fair competition**, companies assuming overall contractual responsibility are required to focus on a single proposal.
- ❖ This criterion must be stipulated in the I/L.
- ❖ This criterion also applies to the procurement of goods and services.

Contract Negotiations on Price

- ❖ Financial negotiations shall be **reasonable based on market rates** in order to keep consistency between the quality and the price of the services.
- ❖ This is necessary to prevent the practice of unreasonable discounting in QBS price negotiations, and to avoid placing an excessive cost burden on the Executing Agency.
- ❖ **Appropriate price negotiations are necessary to ensure “a reasonable price based on the quality,”** which is an important factor.

Personnel Changes

- ❖ Before or after the contract, any changes of the proposed staff **should not affect the quality of services and undermine the effectiveness of the selection procedure.** Therefore, if a change of staff is necessary, **it should be examined in a discreet manner** with its reasons. And in case such a change is reasonably underpinned, the newly named staff **should be qualified at the same or higher level** as required in the evaluation criteria.
- ❖ Changes to personnel can potentially have a major impact on the “quality” of operations and can result in the loss of selection process legitimacy, both of which are critical factors.
- ❖ Accordingly, any such changes to personnel should be permitted only after due consideration has been given to both these factors.

Other Revisions – 1

- ❖ **Section 2.05, 3.:**

In connection with conflicts of interest, the criteria for “lends, or temporarily second” have been written into the guidelines for consultants.

- ❖ **Section 4.07, 2.:**

It is recommended that a price adjustment clause be included in contracts exceeding 18 months.

- ❖ Criteria that have only been listed in the explanatory notes for the procurement guidelines are also specified in the guidelines for consultants.

- ❖ An indication of the specific contract term is to be stated. Note that JBIC recommends the inclusion of a price adjustment clause in contracts for goods and services that exceed one year.

Other Revisions – 2

- ❖ **Section 4.09, 1.:**

To ensure the smooth execution of operations, interim payments are normally made on a quarterly or bi-monthly basis.

- ❖ This is necessary to avoid contracts that unduly impede payment frequency and to preserve an environment that is conducive to the execution of operations.

- ❖ **Section 4.11:**

The services to be provided by the employer under a contract must be guaranteed to ensure the smooth and efficient operational start-up and execution by the consultants.

- ❖ This is required to underscore the significance of issues that frequently become problems for the Executing Agency.

Procurement of Goods and Services

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Disclosure of the Estimated Contract Price

< Revision >

- ❖ To emphasize free competition, JBIC has not previously agree to disclose the estimated contract price. However, some Borrowers and IFIs recently come to require the disclosure of the estimated price for maximizing transparency. Although JBIC does not encourage the disclosure, **if the Borrower wishes to disclose, JBIC will not oppose the Borrower's position.**

< Explanation >

- ❖ JBIC has previously opposed disclosure of the estimated contract price because it provides an indication of the standards for price integration, thus effectively having the potential to impede free competition.
- ❖ Other organizations, however, have actively requested disclosure and JBIC understands the need for greater transparency.
- ❖ Henceforth, JBIC will entrust disclosure to **domestic laws in the recipient country or to the judgment of the Executing Agency.**

Stipulated Measures for Misprocurement

- ❖ “Implementation Rules for Sanctions against a Party Engaged in Corrupt or Fraudulent Practices Under a Contract Funded by JBIC ODA Loans” published on the official JBIC website prescribe specific measures to be taken against a party engaged in such practices.
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Section 3.02, 3.

Contracts Requiring P/Q

- ❖ Prequalification (P/Q) is “required in principle” from the viewpoint of an “emphasis on quality”, at least, for large-scale contracts worth **more than 1 billion yen, complex works/contracts** or in any other circumstances **in which the high cost of preparing detailed bids could discourage competition such as design-build contracting.**
- ❖ Typical contracts that, in principle, require P/Q are large-scale contracts as well as newly, complex works/contracts and design-build contracts that need costly tenders.
- ❖ P/Q does not merely pertain to the amount of the contract, but also indicates **points requiring attention in connection with the nature of the contract and/or bid.**
- ❖ The aim of P/Q is to promote **competition among bidders.**

P/Q Assessment using Financial Indicators

- ❖ In assessing financial capability, **a pass / fail method based on financial index should be avoided**. Assessments made using index that is based on different accounting standards and/or methods do **not ensure impartiality**, and it is difficult to demonstrate every aspect of a bidder's financial position. The only index permitted by JBIC is **Net Worth** as a very basic index. The Borrower should give the applicants certain flexibility to demonstrate their financial capability.
- ❖ A financial index constitutes one aspect of a company's financial soundness, but decisions solely based on such an index are inappropriate.
- ❖ Standards vary from country to country, making impartial assessments impossible.
- ❖ Taking into consideration the aim of financial soundness assessments in P/Q, **comprehensive assessments are indispensable**. For cases utilizing an index, its use should be limited only to Net Worth, a basic index, as an element of the assessment.

Single Bids at P/Q

- ❖ In case only one applicant passes the P/Q, the Borrower **should reject the P/Q process** because it is of no value to conduct a Bid with the only applicant.
- ❖ The borrower **should then initiate another P/Q process** with certain modifications of conditions or other relevant methods based on the basic principles on guidelines.
- ❖ Where a single bid results, in principle, another P/Q process should be initiated after certain conditions are modified.
- ❖ It is possible, however, to explore other methods in accordance with the terms and conditions, such as time constraints.
- ❖ In such instances, the method employed **must be consistent with the basic principles of the guidelines** (economy, impartiality, etc.).

Section 4.01, 2.

Price of Bid Documents

- ❖ The fee of the bid documents should only be nominal to cover reproduction and mailing costs and to ensure that only bona fide bidders apply while not being so high as to discourage bona fide bidders.
- ❖ Although dependent upon both size and complexity, **in general, an amount of not more than the equivalent of US\$ 1,000 is considered appropriate.**
- ❖ Recently, there has been a quickly escalating trend in the price of bid documents. Hence, general pricing standards are indicated to ensure the participation of appropriate bidders.

Risk Allocation under Contracts

- ❖ In case the Borrower wants to modify substantially the risk allocation between the Borrower and Contractor in the adopted standard forms (FIDIC, ENAA, etc.), such modification **shall be reasonable in terms of the principles of the guidelines.**
- ❖ Recently, for some tenders, standard forms have been modified substantially and contract terms extremely disadvantageous to contractors have been set.
- ❖ In order to avoid **limited competition, soaring prices and operational delays** due to re-bidding or work suspension, it is necessary to **set reasonable terms that take into account the principles of economy, efficiency, etc.**

Treatment of Tax on Bid Evaluations

- ❖ In order to avoid confusion and the partial comparison of bids, the bidding documents shall make clear the treatment of taxes, customs, and relevant duties for bidders' setting of bid prices.
- ❖ In addition, treatment of those factors shall be clearly stipulated in the evaluation methods.
- ❖ Problems relating to the treatment of taxes during price setting and/or evaluations have arisen on occasion.
- ❖ In order to avoid these problems, it is necessary to **stipulate clearly in advance how taxes are to be handled in bid documents and/or evaluations.**

Section 5.01, 1.

Allowing Sufficient Time for Bid Preparation

- ❖ Allowing enough time for the preparation of bid does **not simply secure proper competition** but also allows bidders to analyze bid documents carefully and prepare well considered bids; this helps **to avoid subsequent problems** such as repeated clarifications, confusion and arbitrary evaluation.
- ❖ **High quality bids prepared through sufficient preparation time result in a shortened total period of procurement in the long run.**
- ❖ Executing Agencies frequently make unreasonable requests to shorten the bid procedure to expedite the start of a project.
- ❖ To address such a request, the importance of ensuring sufficient time for bid preparation, and the resulting effect of facilitating and expediting the bid procedure in particular, has been emphasized.

Inquiries (Clarifications)

- ❖ Requests for clarifications and responses shall be made **in writing**, and in order to make the clarification process fair and effective, **reasonable time shall be given to the bidders to respond to the clarification request.**
- ❖ Decisions on the need for clarification is in principle **at the discretion of the Borrower.** However, this does not mean to allow the Borrower to treat bids in an arbitrary manner, and the Borrower **shall be impartial in making any clarifications as well as the evaluation of its results.**
- ❖ To avoid unfair procedures under clarification, it is important that requests be documented.
- ❖ Decisions on the need for clarifications, and the impartiality of making clarifications, are separate issues. As with the evaluation process, due consideration must be given to ensure impartiality concerning clarifications.

Award of Contract – 1

- ❖ So as to avoid the extension of the bid validity period, the Borrower shall complete **the evaluation of bids and award the contract within the initial period of the validity of bids.**
- ❖ To this end, the Borrower should pay due attention to **realistic scheduling and its management**, effectively achieving a smooth and efficient procurement.
- ❖ Extensions of the bid validity period are frequently observed.
- ❖ This practice imposes an **unexpected burden** on bidders. Specifically, lengthy and/or multiple extensions **can potentially spoil the objectives of a bid.**
- ❖ To avoid such stringent circumstances, the importance of schedule setting and management is again emphasized.

Section 5.09, 3.

Award of Contract– 2

- ❖ Despite the preceding section, the Borrower may request extension of the bid validity period if justified by exceptional circumstances.
- ❖ However, when significant extension is required, **so as to protect bidders from the risk of price fluctuations, certain methods to mitigate such risk are recommended to be taken, such as an objective formulae for price adjustment.** In such instances, **the formulae for price adjustment should be clearly established in the extension request** so as to secure impartial and transparent procedures.
- ❖ JBIC has demonstrated its position in regard to the recent steel price fluctuations and subsequent confusion.
- ❖ While every effort should be made to avoid extending the bid validity period, efforts should be made to mitigate the risk to bidders when an extension becomes unavoidable, aiming to avoid an unfair burden for bidders and to ensure a successful bid.
- ❖ This has been communicated through JBIC's website.

Limited Application of Rejected Bids

- ❖ Since **bid price is considered to be the “market price”** so long as the competitiveness was assured, rejection of bids should be adopted **only in case no other alternative is available.**
- ❖ JBIC has re-clarified its stance on excluding the convenient application of “rejected bids,” that is with the sole aim of obtaining lower prices, etc.

Other Revisions – 1

❖ **Section 4.12, 1.:**

It is generally recommended to apply price adjustment provisions in works contracts which extend beyond one year.

❖ The previous explanation has been revised. The price adjustment clause “should be adopted in principle” based on JBIC’s clear policy to recommend price adjustment.

❖ **Section 5.02, 3.:**

The opening of financial envelop shall be made public. As a matter of course, financial envelop of rejected bidders in the technical evaluation shall be returned unopened.

❖ Given that in rare instances the opening of the financial envelop is not conducted publicly, JBIC again requires the Executing Agencies to follow the proper procedures.

Other Revisions – 2

❖ **Section 5.04:**

The confidentiality of the process is essential to avoid improper interference either in an explicit or implicit manner.

❖ **Section 5.07:**

Post qualification is suitable for procurement of goods of small value and small works contract, and in order to facilitate the procedures, a questionnaire containing matters for confirmation is to be included in the bid documents.

❖ This reinforces the importance of ensuring transparency.

❖ This has been set forth as an elementary consideration relating to procedures suitable for post qualification.

Conclusion

- ❖ The HANDBOOK contains explanations on important procedural measures contained in the JBIC guidelines.



- ❖ We strongly recommend that reference be made to both the guidelines and the HANDBOOK in conducting loan operations.