

Project Administration Instructions

PAI 3.09
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PROJECT SUPERVISION DURING THE BIDDING PROCESS

PART I: SELECTION OF BIDDING PROCEDURE AND PREPARATIONS FOR BIDDING

1. This part addresses procedures, concerns, and issues that project staff and executing and implementing agencies undergo or face when preparing bidding documents after the procurement plan has been approved.

A. Selection of Bidding Procedure

2. With the guidance in PAIs 3.01–3.08, the procurement plan lists all the contracts to undergo bidding through the life of a project, with specific details provided for at least the first 18 months of implementation.

3. Changes in the bidding procedure need to be reflected in the updated procurement plan. Note that a change from single-stage to two-stage, or from one-envelope to two-envelope bidding does not affect the method of procurement, but the timetable for procurement may be affected depending on the procedure selected (see PAI 3.03 Appendix 3). Moreover, the addition of prequalification may increase the time for procurement but does not affect the method.

B. Selection of Contract Type and Bidding Document

4. In the period between the initial procurement plan and the time when the executing agency (EA) is ready to prepare the contract-specific bidding document based on the master bidding documents (MBDs) agreed earlier in accordance with PAI 3.2, Part G, there may be changes in cost estimates or scope. A change in cost becomes critical only when it breaches the international competitive bidding (ICB) threshold or other contract ceilings, and thus requires a change in the procurement method, for example, from national competitive bidding (NCB) to ICB or from shopping to NCB.

5. Changes in scope, however, need to be examined more closely. Generally, a contract is considered a supply contract when approximately 60% of the scope is for goods although it may include some works components such as sheds or minor structures. A works contract may also contain some equipment components. The dominant component of a contract determines its type and the bidding document to be used, but minor elements may require additional clauses or provisions in the bidding document such as in payment terms¹ and special conditions of contract.

6. The plant contract as structured in the ADB standard bidding document (SBD) involves design, supply, and installation of a combination of equipment, machinery, and related works with supervision by the Employer, including partial completion and acceptance and payment by price schedules (expressed in foreign currency CIF and local currency EXW prices) that are usually based on completing milestones. For a turnkey contract, payment may not be based on price schedules but rather on accepted milestones or percentages completed and then final acceptance of an operational facility, thus requiring adjustments to clauses in the SBD. Incoterms² rules become unimportant for a turnkey contract as the contractor procures, installs, and retains responsibility for all imported and installed equipment and machinery until final acceptance. Another adjustment in contract conditions will be necessary if the design, supply, and install contract requires a fixed-price bid. A key reminder is that if design is to be included in the contract, the design scope is not recommended to cover underground works such as tunneling or heavy earthmoving, unless comprehensive geotechnical surveys have been completed and the results are available to all

¹ Special or unusual payment terms may be referred to the Controllers Department and to the Procurement, Portfolio and Financial Management Department.

² International Chamber of Commerce publishes rules of carriage of imported goods that provide basis for pricing.

bidders. Based on experience, the uncertainty of underground conditions will increase the risks of cost overruns and time delays.

7. While the MBDs would normally include the conditions of contract, completion of the detailed design activity may require a change in some sections. When no relevant SBD is appropriate, para. 2.12(a) of the ADB Procurement Guidelines allows the use of other internationally recognized standard conditions of contract and contract forms acceptable to ADB. This may be the case when a specific contract scope or implementation procedure does not fit into the general conditions of contract under any ADB SBDs or when using these SBDs will require extensive changes in the special conditions section. For example, in the procurement of large and complex facilities such as power plants, some experienced EAs may find a better fit to their specific requirements if they use other forms of contract (general conditions of contract), the most popular being the FIDIC³ contract conditions, i.e., the Plant and Design-Build and the EPC⁴/Turnkey. They differ in payment terms, acceptance, and testing procedures, variations, the need for an engineer, and level of supervision by the Employer. Staff should note, however, that using other conditions of contract requires clearance from the Procurement, Portfolio and Financial Management Department (PPFD) and the Office of the General Counsel (OGC). Staff should also note that the use of a different form of contract will require a longer review period, and they should be prepared to make a reasonable case that ADB SBDs are not an appropriate fit to their EA's specific project implementation requirements. Moreover, it will be necessary to incorporate comprehensive safeguard provisions that are included in ADB SBDs.

8. Staff should also note the following.

- Since ADB and other multilateral development banks are licensed by FIDIC to use only their harmonized conditions for works contracts, ADB may only promote them in their bidding documents. If approval is given to an EA by ADB staff to use other FIDIC contract conditions, the approval shall be on condition that the agency and the bidders shall secure their own licenses to use in their bid preparations and for the winning contractor for contract management. The EA may not reproduce the conditions of contract in the bidding document unless specifically authorized to do so.
- In any of these contract forms, any risk to the contractor carries a corresponding cost. Thus traditionally, design costs for infrastructure projects are for the account of the Employer, but when the design risks are transferred to the Contractor, such as in a design-build or EPC/turnkey contract, not only would the actual costs of design engineers be added to the contract cost, but the risk taken on the designs prepared by contractor may add to the costs and reflect on the bid price.
- The turnkey arrangement puts more risk on the Contractor, as normally no partially completed structures may be turned over for ownership by the Employer. Instead, full turnover happens only when commissioning tests and even training may have been completed. While there may be certain payments based on milestones or completed percentages, payment for the full costs come only upon final acceptance. Maintenance of partially completed facilities remains the Contractor's responsibility and so do all project management costs.
- A fixed-price condition further increases the Contractor's risk, as all possible costs must be projected in the bid price, and therefore requires price buffer elements. Thus, projects involving a significant amount of earthworks or underground works are normally not suitable candidates for turnkey or fixed-price contracts, due to the risk of huge cost overruns and/or time delays.

³ Federation Internationale des Ingenieurs - Conseils (or International Federation of Consulting Engineers); FIDIC prepared the multilateral development bank version of the general conditions of contract included in the SBD for large works.

⁴ Engineering, procurement, and construction

- Under a turnkey arrangement (design, supply, install, and commission) with a firm lump sum contract price, any change in scope due to detailed design will not have an impact on contract price. Facilities created due to the Employer's additional requirements outside the contract scope will, however, be priced and paid to the Contractor.

C. Preparation of Bidding Documents

9. In preparing the contract-specific bidding documents based on the master, staff should remind EAs that a well-prepared bidding document describes fair and transparent procedures clearly, and allows all eligible potential bidders to participate to maximize competition when bids are opened and evaluated. The contract-specific bidding documents should set out clear instructions to bidders. Qualification requirements, and valuation procedures is mandatory, but the specific bidding document issued must still have the identity of the specific contract, the project, and the executing/implementing agency.

10. Under prior review, executing/implementing agencies need to submit the draft contract-specific bidding document together with the draft advertisement. They shall also modify the draft document as ADB may request upon review and any further modification needs to be cleared with ADB before bidding documents are finally issued. Thus, all contract-specific bidding documents should not be provided to bidders until all issues are resolved with the ADB reviewing staff.

International Competitive Bidding Documents

11. Even as MBDs are prepared early, the completion of detailed project design will be the basis for finalizing the employer's requirements, including specifications or Section 6 of the contract-specific bidding documents. The final employer's requirements may require a change in the bidding procedure, e.g., one to two-envelope, or single to two-stage, or a change in conditions of contract, say, for procurement of plant from the default SBD conditions to a turnkey, EPC or DBO⁵ conditions.

12. Project division staff have the responsibility to carefully examine Section 6 (Specifications/ Employer's Requirements) because this is the primary point of interest for potential bidders. Moreover, it is here that the executing/implementing agency may be tempted to use tailor-fit specifications, e.g., lifted verbatim from brochures on not necessarily preferred but known items of supply or equipment. Project staff are expected to have the primary expertise for the particular project, and thus also primary responsibility for accuracy and appropriateness. PPFD normally relies upon project staff review for assurance that the contents of Section 6 comply with the requirements of the project and adhere sufficiently with the guidance in the SBD. Project staff should make sure that the contents of Section 6 are appropriate for the contract and that no brand names or preferred items or tailor-fit specifications are included, and staff should be sensitive to any sign of agency preference, whether inadvertent or not, that may subvert competition. Section 6 should also not include unnecessary requirements that favor or discourage bidders from certain geographic regions or improper items such as foreign trips for agency officials in the guise of unnecessary plant inspections that will raise bid prices, unless these are established industry practice that the sector divisions must also confirm. Staff should bear in mind that not only can improper specifications or employer's requirements lead to inadequate proposals and high prices, they can indicate fraud and corruption as well.

National Competitive Bidding Documents

13. On NCB procedures, para. 3.3 of the guidelines requires that they be reviewed and modified as necessary to assure consistency. The NCB document proposed by an EA need not be the same as an ADB SBD; however, for ease of review and conformity with multilateral development bank harmonized

⁵ EPC= engineering, procurement and construction; DBO= design, build and operate

procedures, project staff should strongly advise the use of ADB SBDs as basis even for NCB, while allowing for adjustments to accommodate provisions of local laws, rules, and regulations as set out in the NCB annex. Contracts identified to be under post review (sampling) may use the national bidding documents when available.

14. In reviewing the master NCB documents, ADB staff should exercise flexibility, particularly when local procurement laws and regulations together with national bidding documents are available. The following items may be modified in accordance with local laws, rules, and regulations:

- forms of bid and performance securities;
- payment terms;
- use of ADB SBDs;
- publication of awards and debriefing;
- arbitration provisions.

On the other hand, the guidelines provide no flexibility on the following:

- undertaking bidding in accordance with the procurement plan;
- country eligibility requirements unless waived by the ADB Board;
- applicability of conflict of interest policies;
- applicability of ADB Anticorruption Policy and Integrity Principles and Guidelines;
- no mandatory requirement for association between firms (forming joint ventures);
- No disqualifying provision unrelated to a bidder's capability and resources to successfully perform the contract.

15. The same, if not even a more, careful review of Section 6 (Specifications/Employer's Requirements) of the NCB document must be undertaken by project division staff. Check the NCB annex against any notations for current provisions of local laws, rules, and regulations, e.g., watch out for margins of preference allowed for local goods and suppliers/contractors as these are not permitted for NCB.

Invitations for Bids

16. It is considered good practice to include the following (in single-stage advertisements or second-stage letters of invitation) in postings for ICB or NCB, in addition to what the user's guide recommends:

- (i) key qualification criteria;
- (ii) if bid security is required, the specific amount and not a percentage of the bid, even for single-envelope bidding;
- (iii) the exact dates of the appropriate bid validity period instead of counting the number of days from the bid submission deadline;
- (iv) other key documentary requirements such as the written authority to submit the bid and manufacturers' authorizations for certain goods.

17. The cost of obtaining the bidding documents remains an issue with some executing/implementing agencies, but the principle is that the documents should preferably be free to provide all potential bidders the opportunity to participate. Administrative costs such as printing and photocopying may, however, be recovered and charged as fees for the documents, but in no case shall the fees exceed \$500 for complex contracts requiring various sets of drawings and specifications to be supplied to potential bidders. The practice of charging fees separately for drawings and specifications for each contract in a package that is otherwise tendered together, when there is only a single set of instructions or forms, is strongly discouraged.

18. The period taken by a potential bidder to prepare the bid is the bidding period (equivalent to the period between the date of the advertisement and the deadline for submitting bids). The guidelines

prescribe 42 days as a minimum for ICB, while the recommended time for NCB is 28 to 30 days or as otherwise provided in the procurement plan. Note that even in rebidding when there is potential for new foreign participation,⁶ 42 days should be the bidding period for ICB.⁷ Only in disasters, emergencies, or other exceptional circumstances should this period be shortened. Requests to extend the bidding period or to postpone the deadline for submissions must be assessed against the EA's justification. In principle, these requests are justified by the need to accommodate requests of bidders for a more competitive bid. If necessary, project divisions may consult PPFD before approving such requests.

Bid Security and Bid Validity

19. Staff should remind EAs that bid security is optional, but if required, should follow the SBD guidance for ICB and the user's guide, or local regulations for NCB as accepted by ADB. Based on ADB experience, staff may recommend that agencies consider retaining the bid security requirement for contracts only under certain conditions: (i) if the contract size attracts nuisance bids or bids that are not carefully prepared and that eventually delay bid evaluation such as for NCBs; (ii) for ICB contracts where the potential bidders are not known; and (iii) if local law specifically requires it.

20. The required bid validity, which should cover contract awards, should be consistent with the bidding procedure adopted. For single-stage one-envelope ICB procurement, at least 90 days for goods, and 120 days for works are recommended; more should be allotted for two-envelope and two-stage procedures (see PAI 3.03).⁸

Incoterms

21. The Incoterms used for ICB are limited in the guidelines to only EXW, CIP/CIF, FOB/FCA or CFR/CPT. For NCB, however, only EXW are normally used as goods are considered to come from within the country (even if previously imported).

Currencies

22. For ICB and limited international bidding, currencies are limited by the guidelines to three foreign currencies in addition to the local currency. For NCB and shopping, the default currency is the local currency for bidding and payment.

Joint Venture Partners and Subcontractors

23. Partners in a joint venture are taken together as one bidder with qualification requirements to be met by each partner. Each partner needs to demonstrate eligibility and financial and technical qualifications, with appropriate and valid documentation, to allow the joint venture to be considered for a contract award.

24. Subcontractors, on the other hand, take different forms, depending on the stage of procurement and contract type. Subcontractors need to meet the following eligibility requirements:

- (a) Under a works or plant contract, there may be subcontractors appointed or named at the start of the bidding or at prequalification to undertake part of the scope of work. Such a subcontractor named in the bid is a "specialist subcontractor" for works procurement (or prequalification) that the bidder needs, to meet qualification requirements for key technical specialties or activities. A "nominated subcontractor" is named by the employer in the bidding document to perform certain specific items in the scope of work and is normally excluded from the bid evaluation.

⁶ Such as when one year has lapsed from the original advertisement

⁷ Limited international bidding may be considered for rebidding if there is limited participation in the first bidding. This requires a change in method of procurement.

⁸ Project divisions should advise the executing agency based on previous experience including the ADB review.

- (b) Under a works, plant, or supply contract, there may be subcontractors that are appointed or named during contract implementation, with selection and approval covered by the conditions of the contract.
- (c) Under a plant or supply contract, subcontractors and manufacturers (other than the bidder) are named in the bid for major items of supply or services for which they need to meet minimum technical qualifications.
- (d) Under a supply contract, manufacturers (other than the bidder) named in the bid for major items of supply or services are considered subcontractors, and they also need to meet minimum technical qualifications.
- (e) Replacing named subcontractors during the bidding is governed by the bidding documents while replacing subcontractors appointed during contract implementation is governed by the contract.

D. Submission and Prior Review of the Draft Contract-Specific Bidding Document

25. Three copies of the invitation for bids and of the contract-specific bidding document for ICB (based on any of the ADB SBDs with corresponding user's guides) must be submitted to ADB for approval. For prior review, the documents must reach ADB as soon as possible, to allow sufficient time for review and approval, and to allow time for a specific notice to be published on adb.org, consistent with the streamlined review process discussed in PAI 3.03 for ICB and PAI 3.05 for NCB. The scope of ADB review will cover the invitation for bids and sections of the bidding document:

- to ensure the invitation for bids contains complete and necessary information and is consistent with the information contained in other sections of the bidding document;
- to ensure that the Instructions to Bidders (SBD Section 1) are identical to the clauses of the appropriate ADB SBD as this section should not be changed;
- to ensure that the Bid Data Sheet (SBD Section 2) contains complete and necessary contract-specific information as required by clauses in Section 1 and that any supplementary information does not amend the clauses themselves;
- to ensure that the parameters adopted for each criterion in the Evaluation and Qualification Criteria (SBD Section 3) are adequate and reasonable, and otherwise conform to parameters recommended in the user's guide;
- to ensure that the Bidding Forms (SBD Section 4) conform to the standard forms in the user's guide and that any additional statements or deviations comply with the guidelines and are consistent with other sections of the bidding document;
- to ensure that the List of Eligible Countries (SBD Section 5) is updated and complete⁹;
- to ensure that the Schedule of Supply or Employer's Requirements (SBD Section 6) contains complete and necessary information to allow bidders to efficiently and accurately prepare bids that are realistic and competitive;
- to ensure that the General Conditions of Contract (SBD Section 7) are identical to the relevant clauses of the SBD as this section also should not be changed;

⁹ See PAI 3.01 for eligible country requirements.

- to ensure that the Special or Particular Conditions of Contract (SBD Section 8) required in Section 7 have been included and that any additional conditions comply with the guidelines, the procurement plan, or the financing agreement;
- to ensure compliance with any specific conditions to the award of the contract or covenants required under the relevant financing agreement for the project; and
- to confirm that the procurement method in the updated procurement plan for the project is appropriate for the contract type and updated amount.

The contract-specific bidding documents, which would have incorporated the results and recommendations of the detailed design stage, will contain additional details for Sections 2, 4 and 6, and will also allow for confirming the original qualification criteria prepared for Section 3 in the MBDs.

26. For either post or prior review, the ADB project division concerned will review the draft contract-specific bidding documents (see PAI 3.02, Part L) to identify discrepancies with the master bidding documents agreed earlier as well as with the new inputs based on the detailed design results, and will determine compliance with the relevant financing agreement, the procurement plan, and these PAIs¹⁰. Following the review, the project division will forward the documents for separate review by PPF and OGC, together with the division's comments. OGC will review the special conditions of contract and will advise on specific legal issues, including covenants required under the relevant financing agreement. EAs must use appropriate ADB SBDs. The reviewing units are jointly responsible for determining compliance with the ADB Procurement Guidelines.

E. Sanctioning by Member Countries

27. Staff may first encounter the issue of national blacklisting during the preparation of a bidding document by an EA. Staff should ensure that any member country's own debarment procedures do not prevent agencies from treating prospective eligible bidders, consultants, contractors, and suppliers for ADB-financed contracts from all member countries fairly and in accordance with ADB procurement procedures. This applies equally to official national blacklisting as well as "unofficial" or informal blacklisting. Member countries sometimes establish national blacklisting procedures, often for fraud or corruption, as the country may define them, but also for other reasons such as breaches of contract or poor performance. While ADB will support specific anticorruption efforts of member countries, national blacklisting generally will be considered for ADB-financed contracts only when the blacklisted companies and/or individuals are the same nationality as the EA. There may be limited circumstances in which national blacklisting may otherwise be accepted by ADB. If staff become aware of a national blacklist they should:

- determine the basis for it;
- advise the Office of Anticorruption and Integrity (OAI), PPF and regional departments (RDs); and
- ensure the blacklist is not considered in any ADB-financed contracting or procurement decisions, including prequalification, unless endorsed by PPF and OAI.

28. If a staff learns that an EA determined that fraud or corruption occurred in ADB-financed procurement, ADB should accept that determination, as long as the staff was satisfied that there was a sound basis for the decision and that the EA followed the ADB Procurement Guidelines and the requirements of the relevant procurement plan and financing agreement. The disqualification may, however, apply only to the specific procurement. In those cases, staff should consult with OAI.

29. The above discussion refers to blacklisting for fraud and corruption. For sanctioning that relates to

¹⁰ The Controller's Department may be consulted in case of unusual payment currencies and payment terms proposed in the contract-specific bidding documents.

poor performance on a particular contract, the poor performance may be taken into account in determining the contractor's qualifications (pre or post). In such cases, the project administration unit should assess the sanctioning in terms of qualification only and need not involve OAI. PPFDD should be consulted as necessary.

30. If a sanctioning or blacklisting system is disclosed early during processing, staff may include it in the scope for the EA capacity assessment or in the review of the local laws, rules, and regulations for preparing or updating the NCB annex of the procurement plan. A system that is objective, fair, and transparent, preferably using third party experts to assess technical issues, should be acceptable. If a system is found to be acceptable, the NCB annex may indicate whether sanctioning by the system can be included as a qualification criterion in the NCB document. For ICB contracts, including a qualification criterion based on a national blacklisting system will be considered on a case-to-case basis as part of the review of bidding documents and requires endorsement by PPFDD.

PART II: BID PREPARATION, SUBMISSION, AND OPENING

31. This part addresses procedures, concerns, and issues that project staff and EAs undergo or face when the contract-specific bidding documents have been issued and bidders are preparing bids up to the time of bid opening.

A. Bidding Document Issued

32. The bidding document is intended to enable interested parties to decide to participate in the bidding and to prepare competitive bids based on the amount and accuracy of information provided and within the time period allowed.

33. Once issued, the bidding document governs the bidding, subject only to addenda based on the provisions of the document itself, normally arising out of the prebid meeting and requests from bidders for clarifications.

B. Executing Agency Bidding Committee

34. Processing missions or project staff will normally find that borrowers have standard procedures for organizing bidding or tender committees. ADB does not prescribe standards for such committees except that the officials involved in procurement and their actions are covered by the anticorruption provisions of the bidding document. These deal with conflicts of interest and corrupt practices. It is best for processing missions or project staff to review local laws, rules, and regulations relating to the organization and staffing of bidding or tender committees, assess them against the conflict of interest and corruption clauses of ADB standard bidding documents, and if objectionable provisions are found, set conditions to amend them in the NCB annex.

35. Some borrowers/EAs have rules requiring bidding committee members to execute written declarations that they do not have a conflict of interest, and these should be welcomed. It is normally good practice to have the bidding committee independent of the contract signing authority, and to mandate that knowledgeable executing agency technical staff be included in the committee.

36. Some borrowers have a system involving several levels of internal review and approval for procurement documents and reports. What is important is to advise EAs that documents submitted to ADB should have had a final review by the internal reviewing authority, preferably within a reasonable timeframe. ADB comments and actions on EA procurement shall not be subject to any further review or action by the borrower, except for implementing them. Draft bidding documents may, however, be transmitted to ADB staff in advance form.

37. Sometimes, ADB staff are invited to participate in the bid evaluation. Staff shall preferably decline

in order to retain objectivity when reviewing the bid evaluation report (BER). If unable to officially decline, staff may take an observer role only in the evaluation.

C. Prebid Meeting or Conference

38. While prebid conferences are optional for an EA, staff should advise that it is considered good practice to conduct them, particularly for ICB to assess initial reactions to the project scope as reflected in the scope of supply or the employer's requirements in the bidding document. This will also provide an opportunity for the EA to explain any special features of the project and to reiterate deadlines, the location for submitting bids, and the amount and currency of any bid security and to clarify evaluation and qualification criteria including required documentation.

39. The proceedings of the meeting will normally be recorded and disseminated, but amendments to the bidding document shall be issued only in accordance with its provisions. The minutes or record of the prebid meeting, including responses to queries and the attendance sheet, should be copied to the project division once issued and should be attached to the BER.

D. Bidder Requests for Clarifications

40. Before the bid submission deadline, any bidder may request clarification on any provision in the bidding document, and the EA should be reminded by staff to respond promptly. The responses shall be prepared in writing and disseminated to all parties that obtained the bidding document. If the clarifications lead to amendments, these are prepared and disseminated in accordance with the specific provisions in the bidding document. The record of the questions, clarifications, and responses should be carefully documented by the EA and preferably copied to ADB once issued, but they should always be attached to the BER.

E. Amending Bidding Documents

41. Under prior review, any amendment to the bidding document issued to bidders by way of a formal written addendum shall revert to the ADB project division for approval, unless amendments are for the following, in which case the original ADB reviewing authority must be consulted by the project division before issuing the clearance:

- Consult PPFD when:
 - evaluation and qualification criteria are modified,
 - the scope of supply or employer's requirements (Section 6) is modified,
 - changes proposed require that the bid submission deadline be postponed for 30 days or later,
 - the language of bidding or contract forms (Sections 4 and 9) are proposed to be modified.

- Consult OGC and PPFD when:
 - clauses in the special or particular conditions of contract (Section 8) are amended,
 - when the language of contract forms (Section 9) is proposed to be modified.
 - clauses in the special or particular conditions of contract (Section 8) are proposed to be modified, or

- Consult PPFD, OGC and the Controllers Department (CTL) if there are modifications of payment terms or unusual payment or currency requirements.

In all cases, any amendment to the bidding document previously reviewed and approved by ADB will require prior approval before the same is issued to bidders by issuing a formal written amendment.

42. The foregoing is applicable to procuring ICB contracts for more than \$40 million. The sector/country director may approve NCB and ICB contracts for less than \$40 million with or without consulting PPF and OGC at their discretion. In all cases, any amendment to the bidding document issued to bidders by way of a formal written amendment should be copied to ADB once issued and later attached to the BERs.

F. Bid Submission and Opening

43. Staff should always remind EAs that a transparent and fair bid opening proceeding is one of the key elements in proper competitive bidding.

44. The guidelines prescribe that bids should be opened promptly after the submission deadline, but this includes time to bring the bids from the place of delivery to the place for opening which should be the same venue. If, for example, the venue is a high-rise building and the locations for delivering and opening bids are different, 30 minutes would suffice for transporting the bids to the meeting place. The security of the sealed bids shall be of paramount concern for the EA, from the deadline to bid opening.

45. Staff should advise the EA to set the time for opening, such that all bids are opened during the same proceeding. The time must be anticipated from the number of bidding documents issued.

46. Staff shall remind the EA that during the bid opening, no procurement decisions are made except for the administrative action of refusing to accept late bids. Therefore, it is not necessary that a formal meeting of the bidding or tender committee be held. No delay should be caused by waiting for a quorum of the bidding committee; any member (or a small subcommittee) may be assigned to take charge of receiving the bids and opening them.

47. There shall be no evaluation leading to a rejection of a bid during the bid opening.

48. The EA or the particular official conducting the bid opening must keep in mind that only the bids opened shall be considered for further evaluation and that only the information read out and recorded will be used during bid evaluation. For example, discounts not read out at the bid opening cannot be used in bid evaluation.

49. It is good practice for the EA to have an agenda for the bid opening that also facilitates preparation of the record. A detailed and complete record of the bid opening is the most important document at this stage of bidding. It is good practice to provide copies of this record immediately after the proceedings, properly signed by bidder representatives who attended. A copy of this record should also be promptly submitted to ADB in accordance with the guidelines that will also be attached later to the BER. The appendix to this PAI provides a sample of the record of bid opening that includes the attendance sheet.

G. Bid Opening Issues

50. Staff should advise EAs that any important observations during the bid opening shall be in the record so that they may be considered in the bid evaluation. As there are no procurement decisions to be made, examples of observations would include the validity of the bids including original signatures on the Letter of Bid, the presence or absence of either a bid security or a bid-securing declaration in original form, and compliance with bid validity indicated.

51. The observations and information read out as indicated in the record of bid opening shall be used during the bid evaluation.

52. Staff should also remind EAs to make sure that representatives of bidders at the bid opening are identified, recorded, and asked to sign the record.

PART III: BID EVALUATION AND RECOMMENDATION FOR AWARD

53. This part addresses procedures, concerns, and issues that sector staff and EAs undergo or face when bids have been received and bid evaluation is undertaken, leading to the recommendation for award.

A. Conduct of Bid Evaluation

54. Project division staff should remind EAs of the following:

- experienced staff should conduct the evaluation of the bids;
- due diligence should be exercised during bid evaluation;
- ADB has a guide for conducting bid evaluations; and
- the bid evaluation should be strictly confidential.

55. The ADB Guide on Bid Evaluation can be downloaded from the ADB website at <https://www.adb.org/documents/guide-bid-evaluation>.

B. Evaluation

56. The principal guidance for EAs is that they should apply all of the evaluation and qualification criteria specified in the bidding document and those criteria only. They should be reminded of the “pass-fail” nature of the requirements under Section 3 of the bidding document, as well as the need for consistency in applying the evaluation methods for each of the criteria.

57. During bid evaluation, only questions/clarifications from the EA may be answered by a bidder. Staff should remind EAs that clarifications submitted by bidders should not and cannot be modifications of the original bid.

58. In single-stage bidding, only supporting documents may be clarified during bid evaluation, i.e., either documents that are of a public nature submitted to public offices and the content of which cannot be changed by the bidder just for the purpose of bid submission, or those documents whose original content is not the primary basis for qualification but is merely corroborative. Clarification in this case means submitting omitted documentation, and the request shall come from the EA in writing, providing for a reasonable time period for compliance, e.g., 2 weeks under ICB, 1 week for NCB. Failure to provide the requested clarification may also lead to rejection.

59. Staff should note that issues may arise in the evaluation of technical qualifications of joint ventures and subcontractors. Joint venture partners need to comply with specific individual requirements to meet financial and experience criteria while subcontractors are evaluated against certain specific technical experience requirements, when they are named manufacturers/subcontractors in procuring a plant or for other complex works or supply procurement. Interpretation of specific bidding document requirements may always be referred to PPF.

Technical Proposal Evaluation

60. The evaluation of the technical portions of a bid proposal is as important as any of the other “pass-fail” qualification requirements. This may be straightforward, as in procuring goods, but entails a broader look for works procurement. The sections of the technical proposal—personnel, equipment, site organization, method statement, mobilization and construction schedule—must form a convincing treatise for the EA technical evaluation group to show that the bidder knows how to implement the contract and has considered all aspects and requirements as provided and clarified in the bidding document. A negative overall assessment of a bidder’s technical proposal, even after clarifications, leads to a rejection of the technical proposal, even for an otherwise qualified bidder in terms of financial and administrative

requirements.

61. Staff should note that for works and plant procurement, personnel and key equipment are subject to clarification or replacement except when it is absolutely clear in the bidding document that proof of ownership or immediate availability is a “passing” requirement.

62. There should be no discussion by the EA of interim findings or results of the bid evaluation with bidders or other parties not officially involved in the bidding until the publication of contract award. From experience, however, bidders or other parties may communicate with the EA regarding an ongoing bid evaluation. In this situation, staff should advise agencies to take action strictly in accordance with the bidding document’s confidentiality clause.

Commercial Evaluation

63. Although the requirement is optional in the guidelines, bid security issues inevitably arise. As they do, staff should consult PPF¹¹ and OGC. OGC’s advice shall be limited to specific legal issues.

64. Staff should advise EAs that when a bidder submits an unsolicited letter during the course of the bid evaluation, there are two possible courses of action:

- (i) It may be assessed against the confidentiality clause (ITB 27) if certain information from the contents of bids is involved.
- (ii) It may be simply acknowledged for later reply if questions involve bidding procedures.

Financial Evaluation

65. If multiple contracts/lots are tendered and a bidder wins more than one contract, staff should remind EAs to comply with the requirements in the bidding document, to check that the bidder meets aggregated qualification requirements.

C. Bid Evaluation Report

66. Staff should advise EAs to prepare comprehensive BERs, ensuring that tables of results are consistent with the written text and noting the following:

- The record of bid opening should clearly and accurately identify the bidders with subsequent evaluation discussions corresponding to the order reflected therein.
- Readers of the BERs need to be able to clearly follow the progress of a bidder during the evaluation of qualifications and the bidder’s responsiveness to employer/purchaser requirements in order to appreciate why a bidder is declared either responsive or nonresponsive.
- Bid prices should be clearly reflected, starting with those read into the record of bid opening up to bid price comparisons which may have undergone arithmetic corrections and price adjustments or “loadings.”

D. Bid Evaluation Issues

67. Among the issues that arise during bid evaluations and for which the Guide on Bid Evaluation is the main reference are the following:

- (i) authenticity or compliance of documents required to consider a valid bid, such as signature on the

¹¹ PPF has prepared a [database of common bid evaluation issues](http://myadb.asiandevbank.org/wps/myportal/COSO/IssuesDecisions) that the procurement committee has considered and decided (go to <http://myadb.asiandevbank.org/wps/myportal/COSO/IssuesDecisions>).

Letter of Bid, authorization of the signing person, bid security, bid validity in the Letter of Bid, and manufacturer's authorization;

- (ii) the consideration of documents to demonstrate compliance with "pass-fail" requirements;
- (iii) items that can or cannot be clarified depending on the type of bidding procedure and whether omissions or deviations are major or minor;
- (iv) missing items or prices in bills of quantities or price schedules; and
- (v) multiple contract awards that require re-assessing aggregated qualifications.

68. Aside from missing prices, the consideration of discounts may become an issue when the discounts have not been read at bid opening and therefore cannot be used in bid evaluation.

69. When available references do not provide adequate responses to specific issues arising during bid evaluation by an EA, the issues may be referred to PPF. Staff should keep in mind that complex issues may be appreciated only when the full bid evaluation report is submitted. Moreover, when the contract award will go to the procurement committee for a final decision, refer to PAI 3.10.

70. Integrity violations, including red flags/indications of integrity violations, must be referred to OAI.

E. Bid Evaluation Reference

71. As already mentioned, the Guide on Bid Evaluation is the main reference for bid evaluation. It is updated in accordance with revisions to the ADB Procurement Guidelines. Revisions may also be made to the guide, following procurement committee decisions involving important and critical bid evaluation issues.

PART IV: BID DOCUMENTATION

72. Staff must emphasize the need for EAs to maintain proper documentation of the bid process and its procurement decisions for all contracts that underwent procurement. EAs must make available all procurement-related documents for ADB review. While most documents would be submitted to ADB for contracts under prior review, certain documents such as the bidding documents issued and their amendments, bidders' actual technical and financial proposals and all representations submitted may be requested for special review. On the other hand, for contracts under post review (sampling), all procurement-related documents such as copies of advertisements, bidding documents issued, technical and financial proposals, engineer's estimates and the bid evaluation report/(s) should be made available for ADB review, when requested.

RECORD OF BID OPENING

LOAN NO.....PROJECT TITLE

BID NO BID/CONTRACT TITLE.....

1. The following bids were received by the closing deadline fixed on(Date) at (Time).....hours and were publicly opened and read at (Time)hours on the same date.

No.	Name of Bidder and Address	Bid Security Amount	Bid Amount ¹				Remarks (if any e.g. bid security deficiency, no signature)	Signature of Bidders Representatives
			Package/ Contract/ Lot No. 1	Package/ Contract/ Lot No. 2	etc. ²	Total		
1.								
2.								
3.								
4.								
5.								
6.								
Etc.								

¹ Any discounts offered should be recorded. Any alternative bids submitted should be opened.

² Number of columns depends on the number of subpackages/contracts/lots in the bidding documents.

2. The following bidders' representatives attended the public opening of bids and a copy of the attendance sheet is attached as an annex to this record.

No.	Name	Designation	Bidding Company Represented
1.			
2.			
3.			
4.			
5.			
6.			
Etc.			

3. Matters transpiring during the opening of bids. *(Any modifications, bid withdrawals, complaints received, and clarifications made or announced by the bid opening committee should be recorded).*

4. Reading and signing of bids ended at hours.

.....
(Name, Signature, and Designation)

.....
(Name, Signature, and Designation)

.....
(Name, Signature, and Designation)

ATTENDANCE SHEET FOR OPENING OF BIDS

LOAN NOPROJECT TITLE
BID NO.....BID/CONTRACT TITLE

Place: Date:..... Time:.....

The following bidders' representatives attended the public opening of bids.

No.	Bidder (Company Firm/Contractor)	Representative (Printed Name)	Designation	Signature
1.				
2.				
3.				
4.				
5.				
6.				
etc.				