



PROCUREMENT POLICIES AND PROCEDURES

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INTRODUCTION

The purpose of this document is to inform those carrying out projects (including technical assistance projects) that are financed in whole or in part by a loan or grant from the North American Development Bank (NADB) (or funds administered by NADB to which NADB's procurement policies apply) of the policies that govern the procurement of goods, works, and consulting services required for such projects. Section 1 describes general principles and considerations that are applicable for all operations. Section 2 outlines procedures for procurement of goods and works for operations involving the public sector. Section 3 outlines procedures for procurement of consulting services for operations involving the public sector. Section 4 outlines procedures for procurement for operations involving the private sector.

I. GENERAL CONSIDERATIONS

Borrower/Grantee Responsibility

1.1. The responsibility for the implementation of the project, and therefore all aspects of the procurement process, including the award and administration of contracts under the project, rests with the Borrower or Grantee. NADB, for its part, is required by Article III, Section 8(b) of Chapter II of its Charter to *"take the necessary measures to ensure that the proceeds of any loan made, guaranteed, or participated in, or any grant made by the Bank are used only for the purposes for which the loan was granted, or the grant was made, with due attention to considerations of economy and efficiency."* While in practice the specific procurement rules and procedures to be followed in the implementation of a project depend on the particular case, NADB's primary concern is to promote economy, efficiency, fairness and transparency in the procurement process. Sound procurement policies and practices grounded in open competition help to ensure successful and sustainable project implementation and operation.

1.2. A loan or grant agreement governs the legal relationship between the Borrower or Grantee and NADB, and these policies are made applicable to procurement of goods, works and consulting services for the project as provided in such loan or grant agreement. The rights and obligations of the Borrower or Grantee and the providers of goods, works or consulting services for the project are governed by the bidding documents, requests for proposals and the contracts signed by the Borrower or Grantee with the providers of goods, works or consulting services, and not by these policies or the loan or grant agreement. No party other than the parties to the loan or grant agreement shall derive any rights therefrom or have any claim to loan or grant proceeds.

Planning

1.3. Sound planning of procurement is crucial to project success. As early as possible in its process of preparing a project for potential NADB loan or grant financing, a

prospective Borrower or Grantee shall discuss with NADB its procurement plan for the project, including: (a) the particular contracts for the goods, works, and/or services required to carry out the project; (b) the particular contracts for consulting services required to carry out the project; (c) the proposed methods for procurement of such contracts, and (d) the applicable NADB review procedures.

Applicability

1.4. The procedures outlined in these policies apply to all contracts for goods, works or consulting services financed in whole or in part from NADB loans or grants or funds administered by NADB. For the procurement of those contracts for goods, works or consulting services not financed from an NADB loan or grant, the Borrower or Grantee may adopt other procedures. In such cases NADB shall be satisfied that the procedures to be used will fulfill the Borrower's or Grantee's obligations to cause the related project to be carried out diligently and efficiently and/or will result in the selection of consultants who have the necessary professional qualifications to perform assignments in accordance with the relevant terms of reference.

Eligibility

1.5. Funds from NADB loans or grants can be used for the payment of goods, works and consulting services contracted with firms or individuals from any country, regardless of whether the country is a member of NADB. Conditions for participation shall be limited to those that are essential to ensure the firm's or individual's capability to fulfill the contract in question.

1.6. In connection with any contract to be financed in whole or in part from an NADB loan or grant, NADB does not permit a Borrower or Grantee to deny pre- or post-qualification to a firm or consultant for reasons unrelated to its capability and resources to successfully perform the contract, nor does it permit a Borrower or Grantee to disqualify any bidder or consultant for such reasons. Consequently, Borrowers or Grantees should carry out due diligence on the technical and financial qualification of bidders and consultants to be assured of their capabilities in relation to the specific contract.

1.7. As exceptions to the foregoing:

- a) Firms or consultants of a country or goods manufactured in a country may be excluded if (i) as a matter of law or official regulation, the United States or Mexico prohibits commercial relations with that country; or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the U.S. or Mexico prohibits any import of goods from, or payments to, a particular country, person or entity. Where the U.S. or Mexico prohibits payments to a particular firm or

individual or for particular goods by such an act of compliance, that firm or individual will be excluded.

- b) A firm or individual that has been engaged by the Borrower or Grantee to provide consulting services for the preparation of implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods, works or consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors or suppliers) that together are performing the contractor's obligations under a turnkey or design and build contract.
- c) Any firm, individual, parent company, subsidiary, or previous form of organization constituted by or with any of the same individual(s) and principal(s) declared ineligible by NADB in accordance with its debarment procedures or declared ineligible by another international or domestic public financial institution and subject to agreements that NADB might have for the mutual enforcement of sanctions shall be ineligible to be awarded an NADB-financed contract or to benefit from an NADB-financed contract, financially or in any other manner, during the period of time determined by NADB or by the relevant international or domestic public financial institution, as applicable.

Advance Contracting and Retroactive Financing

1.8. A Borrower or Grantee may wish to proceed with the initial steps of procurement before signing the related NADB loan or grant agreement. In such cases, the procurement procedures, including advertising, shall be in accordance with these policies in order for the eventual contracts to be eligible for NADB financing, and NADB shall review the process used by the Borrower or Grantee. A Borrower or Grantee undertakes such advance contracting at its own risk, and any concurrence by NADB with the procedures, documentation or proposal for award does not commit NADB to make a loan or grant for the project in question. If the contract is signed, retroactive financing by NADB of any payments made by the Borrower or Grantee under the contract prior to loan or grant signing is only permitted within the limits specified in the loan contract.

Misprocurement

1.9. NADB does not finance expenditures for goods, works or consulting services that have not been procured in accordance with these policies and the agreed provisions in the loan or grant agreement. In such cases, NADB will declare misprocurement, and it is the policy of NADB to cancel that portion (or the entirety) of the loan or grant allocated to the goods, works or consulting services that have been misprocured. NADB may, in addition, exercise other remedies provided for under the loan or grant agreement. If a contract is awarded after obtaining a "no objection" from NADB, NADB may still declare misprocurement if it concludes that the "no objection" was issued on the basis of

incomplete, inaccurate, or misleading information furnished by the Borrower or Grantee or the terms and conditions of the contract had been modified without NADB's approval.

Unethical Practices, Debarment and Certification

1.10. NADB requires that all Borrowers and Grantees, executing agencies, contracting agencies, and firms and individuals bidding for or participating in an NADB-financed activity adhere to the highest ethical standards and report to NADB all suspected corrupt, fraudulent, coercive, collusive or obstructive practices of which they have knowledge or become aware during any NADB-financed procurement process.

1.11. If it is determined that at any stage of the procurement process any firm or individual participating in an NADB-financed activity has engaged in unethical practices, NADB may:

- a) Declare a misprocurement;
- b) Not finance any proposal to award a contract for goods, works or consulting services to be financed by NADB;
- c) Suspend disbursement of the relevant operation;
- d) Declare that the firm or individual is ineligible, either permanently or for a stated period of time, to participate in activities financed by NADB ("debarment");
- e) Refer the matter to appropriate law enforcement authorities; and/or
- f) Impose other sanctions that it deems appropriate under the circumstances, including a demand for reimbursement of NADB costs associated with related proceedings.

1.12. NADB also shall have the right to debar any firm or individual who is on a list of debarred firms and individuals at any multilateral or domestic public development bank or financial institution, including but not limited to the World Bank and the Inter-American Development Bank, or on any United Nations, U.S. government or Mexican government sanctions list.

1.13. Firms or individuals offering bids or proposals to provide goods, works or consulting services financed by an NADB loan or grant must certify in writing that (i) they have not engaged and will not engage in bribery of domestic or foreign officials in relation to potential or active NADB projects; (ii) they have corporate policies in place that clearly prohibit the use of any bribery in corporate activity and have neither been convicted of nor found by a civil judgment to have committed bribery of domestic or foreign officials or Other Offenses as defined in paragraph 1.14, within five years of the date of the certification.

1.14. NADB shall have the right to exclude from participation in NADB-funded projects any firm or individual that has been convicted of, or has been found by a civil judgment to have committed, bribery of domestic or foreign officials (“Bribery”) within five years of the firm or individual’s proposed participation in an NADB-funded project. This exclusion shall also apply to firms or individuals who, within the same five -year time period, have been convicted of, or found by a civil judgment to have committed fraud, embezzlement, theft, forgery, destruction of records, making false statements to government officials, receiving stolen property, or any other offense indicating a lack of business or personal integrity (“Other Offenses”). NADB also shall have the right to exclude from participation in NADB-funded projects any firm or individual that is under investigation for Bribery or Other Offenses at the time of the relevant bidding process.

1.15. NADB shall publicize on its website a record of firms and individuals debarred pursuant to paragraph 1.12 – 1.15.

Bank’s Role in Resolution of Procurement Disputes

1.16. Bidders may send copies of their communications on issues and questions involving a Borrower or Grantee to the Bank or, when the Borrower or Grantee does not respond promptly or when the communication is a complaint against the Borrower or Grantee, may email or write to the Bank directly. All such communications should be addressed as follows:

Director, Project Administration and Technical Services
North American Development Bank
203 S. St. Mary’s
Suite 300
San Antonio, TX 78205

or, by email to: _____

1.17. Communications received by the Bank from potential bidders, prior to the closing date for submission of the bids, will, if appropriate, be referred to the Borrower or Grantee with the Bank’s comments and advice, for action or response.

1.18. Communications, including complaints, received from bidders after the opening of the bids will be sent to the Borrower or Grantee for consideration and appropriate action, if any. The Bank may require the Borrower or Grantee to send the Bank all relevant information regarding a complaint for its review and comments prior to execution of the relevant contract.

1.19. Except for acknowledgment, the Bank will not enter into discussion or correspondence with any bidder during the evaluation and review process of the procurement, until award of the contract.

1.20. In the event a bidder elects or is required to pursue its complaint through available domestic administrative or judicial processes, the Bank will cease any involvement in the resolution of the complaint until a final, unappealable judgment has been rendered in such domestic legal proceedings.

II. PUBLIC SECTOR OPERATIONS – GOODS AND WORKS

Definition and Applicability

2.1. For the purpose of these procedures, public sector operations are loans or grants to national or local governments of the country of operation or agencies and enterprises, including public utilities, majority owned or controlled by them.

2.2. The procedures outlined in this section apply to all contracts for goods and works financed in whole or in part from NADB loans or grants for public sector projects. Procedures governing contracts for consulting services financed in whole or in part from NADB loans or grants for public sector projects are addressed in section III of these policies.

Applicable Procurement Arrangements

General

2.3. NADB allows Borrowers and Grantees to use the public procurement arrangements applicable to a project's location to carry out procurement processes for NADB-financed projects.

2.4. The public procurement arrangements of each of the federal governments of the United States and Mexico and each of the state governments of the U.S.-Mexico border region may be used for the procurement of goods and works for NADB-financed projects, subject to modifications on a project-by-project basis required by NADB to further NADB's goals of economy, efficiency, fairness and transparency in the procurement process.

2.5. When NADB is participating in the financing of a project together with one or more multilateral development banks (for example, the World Bank or the Inter-American Development Bank) or with a U.S. or Mexican federal or state public financing entity (for example, Overseas Private Investment Corporation [OPIC], Export-Import Bank of the U.S. [EXIM], Texas Water Development Board [TWDB], *Banco Nacional de Obras y Servicios Públicos, S.N.C.* [Banobras], *Banco Nacional de Comercio Exterior, S.N.C.* [Bancomext] or Nacional Financiera, S.A. [NAFIN]), NADB may consent to the use of the procurement arrangements of any of those entities for the procurement of goods and works for the project and may delegate procurement leadership and oversight

responsibilities to such entity. In such cases, NADB would retain the right to review procurement documentation and activities carried out under these other arrangements.

Modifications, Monitoring and Review

2.6. In their application to specific projects, NADB shall review and modify as necessary at NADB's discretion the public procurement arrangements applicable to a project's location to assure economy, efficiency, effective competition, and transparency in the project procurement process. Such review and modification shall also apply in cases where NADB consents to the use of the procurement arrangements of one of the entities set forth in paragraph 2.5 above. NADB also reserves the right to prior- or post-review of procurement documentation and activities carried out under applicable public procurement arrangements or pursuant to the procurement arrangements of one of the entities set forth in paragraph 2.5 above.

2.7. NADB's Department of Project Administration and Technical Services (PATSD) (or other relevant department) shall make the initial determination of the procurement arrangements, including appropriate modifications, applicable to a specific project. These arrangements shall be set forth in the project financing proposal that is presented to NADB's internal Funding Committee for review and approval, and subsequently to NADB's Board of Directors for review and approval. In the case of technical assistance awards, the Bank's Technical Assistance Committee shall review and approve recommendations regarding procurement arrangements presented by PATSD.

2.8. NADB will review the Borrower's or Grantee's proposed procurement procedures, documents, bid evaluations, award recommendations, and contracts to ensure that the procurement process is carried out in accordance with the relevant loan or grant agreement and these policies. Such review may include the following:

- a) In cases where prequalification is used, the Borrower or Grantee shall, before prequalification submissions are invited, furnish NADB with the draft documents to be used, including the text of the invitation to prequalify, the prequalification questionnaire, and the evaluation methodology, together with a description of the advertising procedures to be followed, and shall introduce such modifications in said procedure and documents as NADB may request. The prequalification report evaluating the applications received by the Borrower or Grantee, the list of proposed prequalified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for prequalification, shall be furnished by the Borrower or the Grantee to NADB for its comments before the applicants are notified of the Borrower or Grantee's decision, and the Borrower or Grantee shall make such additions to, deletions from, or modifications in the said list as NADB shall reasonably request.
- b) Before bids are invited, the Borrower or Grantee shall furnish to NADB for its comments draft bid documents, including the invitation to bid; instructions to bidders, including the basis of bid evaluation and contract award; and the

conditions of contract and specifications for the civil works, supply of goods, or installation of equipment, etc., as the case may be, together with a description of the advertising procedures to be followed for the bidding (if prequalification has not been used), and shall make such modifications in the said documents as NADB shall reasonably request.

- c) After bids have been received and evaluated, the Borrower or Grantee shall, before a final decision on the award is made, furnish to NADB, in sufficient time for its review, a detailed report on the evaluation and comparison of the bids received, together with the recommendations for award and such other information as NADB shall reasonably request. NADB shall, if it determines that the intended award would be inconsistent with the loan or grant agreement or these policies, promptly inform the Borrower or Grantee and state the reasons for such determination. Otherwise, NADB shall provide its approval of the recommendation for contract award. The Borrower or Grantee shall award the contract only after receiving the approval from NADB.
- d) If after publication of the results of evaluation, the Borrower or Grantee receives protest or complains from bidders, a copy of the complaint and a copy of the Borrower's or Grantee's response shall be sent to NADB for information.
- e) If as a result of analysis of a protest, the Borrower or Grantee changes its contract award recommendation, the reasons for such decision and a revised evaluation report shall be submitted to NADB for "no objection."
- f) The terms and conditions of a contract shall not, without NADB's prior approval, materially differ from those on which bids were asked or prequalification of contractors, if any, was invited.
- g) Prior to the first request for disbursement of funds under a loan or grant agreement, one copy of the executed contract shall be furnished to NADB for NADB's "no objection."
- h) Before granting a material extension of the stipulated time for performance of a contract, agreeing to any modification or waiver of the conditions of such contract, including issuing any change order or orders under such contract (except in cases of extreme urgency) that would in aggregate increase the amount of the contract by more than 25 percent of the original price, the Borrower or Grantee shall seek NADB's "no objection" to the proposed extension, modification, or change order. If NADB determines that the proposal would be inconsistent with the provisions of the loan or grant agreement or these policies, it shall promptly inform the Borrower or Grantee and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to NADB for its record.
- i) All evaluation reports shall be accompanied by a summary of the procurement on a form provided by NADB. The description and amount of the contract,

together with the name and address of the successful bidder, shall be subject to publication by NADB upon receipt of the signed copy of the contract.

Notification and Advertising Requirements

2.9. When notification and advertising requirements are triggered in public procurement arrangements, in addition to the specific notification and advertising requirements of the relevant public procurement arrangements, unless otherwise determined by NADB, general procurement notices and invitations to prequalify or to bid shall be advertised in at least one newspaper of national circulation in the Borrower's or Grantee's country, one newspaper of local circulation appropriate to the project location, for Mexican projects, the *Diario Oficial de la Federacion* or the corresponding state registry, on NADB's website, and on any website where the Borrower or Grantee advertises all government business opportunities. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.

Publication of the Award of Contract

2.10. Within two weeks of concluding a bidding process and finalizing its determination to award a contract, the Borrower or Grantee shall forward to the Bank for publication on its website the following information regarding the contract award: identification of the bid with basic summary and the name of the winning bidder.

III. PUBLIC SECTOR OPERATIONS – CONSULTANTS

Definitions

3.1. The term "consultants" includes a wide variety of private and public entities, including consulting firms, engineering firms, construction managers, investment and merchant banks, universities, research institutions, government agencies, non-governmental organizations (NGOs), and individuals. NADB Borrowers and Grantees use these organizations as consultants to help in a wide range of activities such as policy advice; institutional reforms, management, engineering services; construction supervision; financial services; procurement services; environmental studies; and identification, preparation and implementation of projects to complement the Borrowers' and Grantees' capabilities in these areas.

3.2. The consulting services to which these policies apply are of an intellectual and advisory nature. These policies do not apply to other types of services in which the physical aspects of the activity predominate (for example, construction of works, manufacture of goods, operation and maintenance of facilities or plant, and services

contracted on the basis of performance of measurable physical output, which are encompassed in Section II of these policies and procedures).

Applicable Procurement Arrangements

General

3.3. NADB allows Borrowers and Grantees to use applicable public procurement arrangements to carry out procurement processes for NADB-financed consulting services.

3.4. The public procurement arrangements of each of the federal governments of the United States and Mexico and each of the state governments of the U.S.-Mexico border region may be used for the procurement of consulting services for NADB-financed projects, subject to modifications as necessary to take into account four key policy considerations: the need for high-quality services; the need for economy and efficiency; the need to give all qualified consultants an opportunity to compete in providing the services financed by NADB; and the need for fairness and transparency in the selection process. In the majority of cases, these policy goals can best be achieved through competition among qualified short-listed firms in which the selection is based on the quality of the proposal and, where appropriate, the cost of the services to be provided (Quality- and Cost-Based Selection (QCBS)). The relative weight to be given to the quality and cost is determined for each case depending on the nature of the assignment.

3.5. When NADB is participating in the financing of consulting services together with one or more multilateral development banks (for example, the World Bank or the Inter-American Development Bank) or with a U.S. or Mexican federal or state public financing entity (for example, OPIC, Ex-Im Bank, TWDB, Banobras, Bancomext or NAFIN), NADB may consent to the use of the procurement arrangements of any of those entities for the procurement of such consulting services and may delegate procurement leadership and oversight responsibilities to such entity. In such cases, NADB would retain the right to review procurement documentation and activities carried out under these other arrangements.

Modifications, Monitoring and Review

3.6. In their application to specific projects, NADB shall review and modify as necessary at NADB's discretion the public procurement arrangements applicable to the consulting services in order to meet the policy goals set forth in paragraph 3.4 above. Such review and modification shall also apply in cases where NADB consents to the use of the procurement arrangements of one of the entities set forth in paragraph 3.5 above. NADB also reserves the right to prior- or post-review of procurement documentation and activities carried out under applicable public procurement arrangements or pursuant to the procurement arrangements of one of the entities set forth in paragraph 3.5 above.

3.7. NADB's Department of Project Administration and Technical Services (or other relevant department) shall make the initial determination of the procurement

arrangements, including appropriate modifications, applicable to specific consulting services. These arrangements shall be reviewed and approved by the relevant internal NADB committee (e.g., Operations Committee, Technical Assistance Committee, Funding Committee) and, if applicable, by the NADB Board of Directors.

Conflict of Interest

3.8. NADB requires that consultants provide professional, objective and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Borrower or Grantee. Without limitation to the generality of the forgoing, consultants shall not be hired under the circumstances set forth below:

- a) Conflict between consulting activities and procurement of goods, works or services (other than consulting services covered by this section): A firm that has been engaged by the Borrower or Grantee to provide goods, works, or services (other than consulting services covered by this section) for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works, or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works, or services (other than consulting services covered by this section) resulting from or directly related to the firm's consulting services for such preparation or implementation.
- b) Conflict among consulting assignments: Neither consultants (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare engineering designs for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.
- c) Relationship with Borrower's or Grantee's staff: Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the Borrower's or Grantee's staff (or of the project implementing agency's staff, or of a beneficiary of a loan or grant) who are directly or indirectly involved in any part of: (i) the preparation of the TOR of the contract; (ii) the selection process for such contract; or (iii) supervision of such contract, may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to NADB throughout the selection process and the execution of the contract.

NADB Monitoring and Review

3.9. NADB shall review the selection process for the hiring of consultants proposed and carried out by the Borrower or Grantee to ensure compliance with the loan or grant agreement and these policies.

3.10. Under special circumstances, and in response to a written request from the Borrower or Grantee, NADB may furnish to the Borrower or Grantee a short list of firms that is deems capable of undertaking the assignment. The provision of the list does not represent an endorsement of the consultants.

3.11. The Borrower or Grantee is responsible for supervising the consultants' performance and ensuring that they carry out the assignment in accordance with the contract. Without assuming the responsibilities of the Borrower or Grantee or the consultants, NADB staff shall monitor the work as necessary to determine to NADB's satisfaction that it is being carried out according to appropriate standards and is based on acceptable data. As appropriate, NADB may take part in discussions between the Borrower or Grantee and consultants and, if necessary, may help the Borrower or Grantee in addressing issues related to the assignment.

3.12. As applicable:

- a) Before inviting proposals, the Borrower or Grantee shall furnish to NADB for its approval the proposed terms of reference, cost estimate and request for proposals (RFP), including the short list. The Borrower or Grantee shall make such modifications to the short list and the documents as NADB reasonably requests.
- b) After the technical proposals have been evaluated, the Borrower or Grantee shall furnish to NADB a technical evaluation report and a copy of the proposals, if requested by NADB. If NADB determines that the technical evaluation is inconsistent with the provisions of the RFP, it shall promptly inform the Borrower or Grantee and state the reasons for its determination; otherwise, NADB shall provide an approval of the technical evaluation. The Borrower or Grantee shall also request NADB's "no objection" if the evaluation report recommends rejection of all proposals.
- c) The Borrower or Grantee may proceed with the opening of the financial proposals only after receiving NADB's approval of the technical evaluation. When price is a factor in the selection of the consultant, the Borrower or Grantee may then proceed with the financial evaluation in accordance with the provisions of the RFP. The Borrower or Grantee shall furnish to NADB, for its information, the final evaluation report along with its recommendation of the winning firm.
- d) If the Borrower or Grantee receives complaints from consultants, a copy of the complaint and a copy of the Borrower's or Grantee's response shall be sent to NADB for information.

- e) If as a result of analysis of a complaint the Borrower or Grantee changes its contract award recommendation, the reasons for such decision and a revised evaluation report shall be submitted to NADB for approval.
- f) After negotiations are completed, the Borrower or Grantee shall furnish to NADB a copy of the draft contract. If the contract resulted in substitution of key staff or any changes in the TOR, the Borrower or Grantee shall highlight the changes and provide an explanation of the changes.
- g) If NADB determines that the final evaluation report, recommendation for award and/or the contract are inconsistent with the provisions of the RFP, it shall promptly inform the Borrower or Grantee and state the reasons for its determination. Otherwise, NADB shall provide its final approval of the contract award. The Borrower or Grantee shall confirm the award of the contract only after receiving the approval from NADB.
- h) Following contract signature, the Borrower or Grantee shall furnish to NADB a copy of the final contract before submitting the first application for disbursement under the contract for NADB's "no objection."
- i) The description and amount of the contract, together with the name and address of the firm, shall be subject to public disclosure by NADB upon the NADB's receipt of the signed copy of the contract.
- j) Before granting a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, the Borrower or Grantee shall obtain NADB's "no-objection" to the proposed extension, modification, substitution, waiver or change. If NADB determines that the proposal would be inconsistent with the provision of the loan or grant agreement or these policies, it shall promptly inform the Borrower or Grantee and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to NADB.

Notification and Advertising Requirements

3.13. When notification and advertising requirements are triggered in public procurement arrangements, in addition to the specific notification and advertising requirements of the relevant public procurement arrangements, unless otherwise determined by NADB, the Borrower or Grantee shall advertise specific procurement notices requesting expressions of interest for each contract for consulting services in at least one newspaper of national circulation in the Borrower's or Grantee's country, one newspaper of local circulation appropriate to the project location, for Mexican projects,

the *Diario Oficial de la Federacion* or corresponding state registry, on NADB's website, and on any electronic portal of free access where the Borrower or Grantee advertises all government business opportunities.

IV. PRIVATE SECTOR OPERATIONS – GOODS, WORKS AND CONSULTING SERVICES

Definition

4.1. For the purpose of these procedures, private-sector enterprises are those in which there is no government participation in the capital of the enterprise or those in which government participation represents less than fifty percent (50%) of the total capital of the enterprise.

Application of Policies

4.2. NADB's concerns for the appropriate use of NADB loan and grant funds and for economy and efficiency in procurement apply equally to its public-sector operations and its private sector operations.

Methods of Procurement

4.3. Private sector Borrowers shall utilize procurement procedures in accordance with established private-sector or commercial practices that are acceptable to NADB. NADB does not conduct reviews or provide "no-objections" or specific approvals for particular procurement contracts entered into by its private sector clients. Nevertheless, NADB will determine as needed the use of international competitive bidding methods by its private sector clients, subject to the complexity of the project under consideration.

Procurement under PPP, BOO/BOT/BOOT, Concessions and Similar Private Sector Arrangements

4.4. Where NADB is participating in financing the cost of a project procured under a public-private partnership (PPP), build-own-operate contract (BOO), build-operate-transfer contract (BOT), build-own-operate-transfer contract (BOOT), concession or similar arrangement by which a public-sector entity procures public services through a long-term contract with a private entity, either of the following procurement procedures may be used, as approved by NADB and provided for in the loan agreement:

- a) If the concessionaire under the contract is selected under open, competitive public sector procurement arrangements acceptable to NADB, then such concessionaire shall be free to procure the goods, works, and services required

for the project from eligible sources, using its own internal corporate practices. At a minimum, the procurement procedure should meet the following requirements:

- i. The process for selecting the concessionaire has demonstrated sufficient fairness, transparency and opportunity for competition;
 - ii. The process was free of fraud, corruption and other prohibited practices and in compliance with all applicable laws and regulations; and
 - iii. The outcome in terms of the concession agreement itself is fair and reasonable under the specific circumstances of the project in terms of price, quality and risk sharing in relation to market practice, or can be re-negotiated or re-balanced as appropriate; or
- b) If the said concessionaire or entrepreneur has not been selected in the manner set forth in subparagraph (a) above, the goods, works and consulting services required for the facility and to be financed by NADB shall be procured in accordance with international competitive bidding methods acceptable to NADB.

Procurement in Loans to Financial Intermediaries

4.6. Where a loan provides funds to an intermediary institution to be re-lent to beneficiaries, the procurement is ordinarily undertaken by the respective beneficiaries in accordance with established private sector or commercial practices and NADB will not normally conduct formal reviews or due diligence on the project beneficiaries, this being delegated to the financial intermediary.

Conflict of Interest

4.7. Where the private sector client also acts as contractor for the project, procurement should be carried out on an arms-length basis, taking into account the financial interests of the private sector client. When a shareholder of a private sector Borrower also acts as contractor to the Borrower, it should be demonstrated that the contract costs are equivalent to budget estimates and market prices.