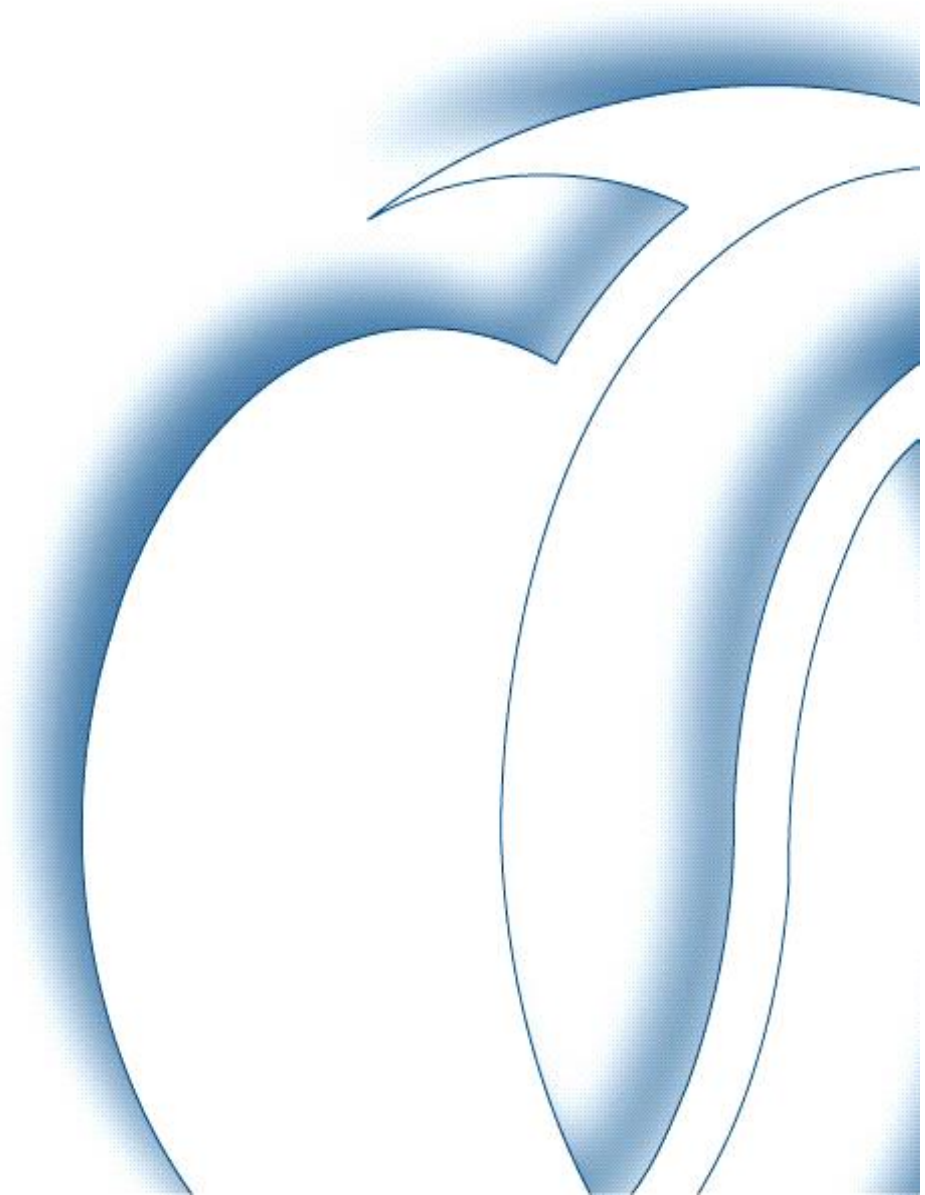


Standard Prequalification Documents

Guidance Notes on the Prequalification of Tenderers



June 2012

GUIDANCE NOTES ON THE PREQUALIFICATION OF TENDERERS

PREFACE

Procurement under projects financed by the European Bank for Reconstruction and Development (the Bank) is carried out in accordance with the procedures laid down in the Bank's *Procurement Policies and Rules*.

The *Standard Prequalification Documents* have been prepared for the use by the Bank's public sector clients for the procurement of construction works, complex goods, services or engineering systems in projects financed by the Bank.

These *Guidance Notes* are prepared to complement the *Standard Prequalification Documents* in order to explain the reasons for this procedure and its advantages, and to provide general guidance to clients and their consultants.

The *Guidance Notes* are for the exclusive use of the clients and should not be included in the Prequalification Documents made available to applicants.

Care should be taken when preparing prequalification documents to ensure that the prequalification criteria refer to the needs and characteristics of the specific contract/project, while being consistent with the general principles outlined in these *Guidance Notes*.

These *Guidance Notes* shall also be consulted while drafting the post-qualification part of the tender documents, as the same principles and methodology should be applied.

Additional information on procurement for projects financed by the Bank can be obtained from:

**Procurement Department
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Telephone: +44 20 7338 6000
Facsimile: +44 20 7338 7472**

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GUIDANCE NOTES ON THE PREQUALIFICATION OF TENDERERS

1. **Competitive Tendering for Construction Works, Supply of Complex Goods, Services¹ or Engineering Systems**

- 1.1 The successful execution of contracts for large building, civil engineering, supply and installation projects, and major complex custom-made equipment, complex or unique services requires that contracts are awarded to competent contractors, usually on the basis of competitive tendering procedures. Large contracts financed under loans from the European Bank for Reconstruction and Development are awarded, as a rule, through open tendering.

2. **Requirement for Prequalification of Tenderers**

- 2.1 This document relates specifically to the selection of competent tenderers, prior to the issue of the invitations to tender, a procedure known as prequalification. Prequalification of contractors is recommended for large or complex works and for custom-designed equipment or systems and specialised services. Prequalification can also be used in other circumstances, for example, in sector projects financing annual programmes under a multi-year capital investment plan, and when a large number of contracts are tendered and let as one or more lots ("slice and packaging") or as the basis of framework arrangements.
- 2.2 The qualification of a tenderer is a process distinct from the tender evaluation procedure, which concentrates on the price and merits of the specific tender itself. For further details of the tender evaluation procedure, refer to the relevant Standard Tender Documents of the Bank and the Bank's Guidance Note - Opening and Evaluation of Tenders. The qualification process is focused on qualification, experience and capability of the tenderers to implement the resulting contracts satisfactorily.
- 2.3 The main purpose of prequalification is to select those contractors/suppliers, whose qualifications and experience would minimise the risk of non-performance under the proposed project/contract.

3. **Benefits of Prequalification**

- 3.1 The prequalification process is of advantage to tenderers and clients alike.
- 3.2 The prequalification process enables tenderers who may be insufficiently qualified on their own to avoid the expense of tendering or to enter into a joint venture, consortium, or association (JVCA), which may have a better chance of success, or consider working as a sub-contractor on the project. The well-qualified firms may also price their tenders with the knowledge that they will be competing with other qualified tenderers meeting appropriate minimum competence criteria. The assurance that competitors lacking the necessary qualifications will be excluded from tendering thus encourages leading contractors or suppliers to tender.

¹ The services are any services, except consulting services, for example operation and maintenance of roads or plants, design, geotechnical surveys etc.

3.3 Prequalification enables clients:

- to select potential contractors/suppliers, who meet project/contract specific qualification criteria and, therefore, are deemed to be capable of performing the project/contract satisfactorily;
- to assess the interest generated by the project among qualified firms, and to make any necessary adjustments to the procurement process (including, in particular, the evaluation methodology, the conditions of contract – sharing of risk, payment terms, liquidated damages, warranty or completion times, which may be perceived as onerous by potential tenderers);
- to reduce the amount of work and time involved in evaluating tenders from unqualified contractors or suppliers;
- to encourage local firms to form JVCA with other local or foreign firms, thereby benefiting from their resources and experience; and
- to eliminate or significantly reduce problems associated with low prices submitted by tenderers of doubtful capability.

4. Basis for Prequalification

- 4.1 Under Bank-financed projects, the Bank's clients (the "Client" in this document) are responsible for preparing the prequalification documents and evaluating the applicants. The prequalification documents should provide a clear basis upon which prospective tenderers can be evaluated, following an objective process based on fair and transparent criteria. The documentation sought should always be relevant, clearly stated and, so as not to deter prospective tenderers, should not impose an excessive burden of preparation or paperwork.
- 4.2 Prequalification should be denied only to those prospective tenderers who do not meet all or critical aspects the specified criteria. Thus, those who prepare prequalification documentation for a project are responsible for ensuring that the criteria are drawn up in accordance with the appropriate needs of the project and that the criteria are balanced and sufficiently stringent to assure that only properly qualified firms are included in the final list. Excessively '*soft*' criteria may result in an excess of unsuitably qualified applicants and may lead to (a) deterring the better qualified firms from tendering and (b) low priced tenders from under-qualified contractors or suppliers. At the same time excessively '*strict*' criteria may seriously hamper competition, limit participation of local companies in the tender and lead to complaints.
- 4.3 The Bank does not accept blanket '*blacklisting*' of contractors or suppliers. In principle, a firm that did not perform well in a prior contract should be permitted to tender for subsequent tenders if it can demonstrate that it has corrected the problems that caused its prior poor performance. The evaluation of applicants for prequalification must therefore be based on the evidence submitted by the applicant without reference to blacklists, which may be based on out-of-date or uncorroborated information or irrelevant data. At the same time, if an applicant is formally debarred from contracting activities by the law or official regulation of the country, and the Client may not enter into a contract with such applicant, the Client may reject the application. In such cases the Bank shall be provided with a copy of an official record/court decision confirming the debarment. Current poor performance or negative litigation history with the Client may be a reason for disqualifying an applicant, provided such judgment is supported by official impartial

records/court decisions. Such action would have to be reviewed by the Bank on a case-by-case basis.

- 4.4 Since prequalification is a preliminary stage in the process of awarding a contract to a competent tenderer, the Client must be able to verify the statements made by the applicants and to solicit information from past clients and financial institutions. Because there may be many applicants at the prequalification stage, the extent of verification should be limited to significant issues and applicants should be afforded the benefit of reasonable doubt. In subsequent stages of the procurement process, such doubts may be investigated if they remain relevant. In view of the above, the Bank strongly advocates an *'inclusive'*, rather than an *'exclusive'* approach during the prequalification exercise. Only deviation from critical criteria caused by activities which occurred in the past, and which applicants therefore can not change, shall be used as a basis for rejection of applicants. Otherwise applicants shall be asked to provide lacking documents (such as absent forms, letters, balance sheets etc.) to rectify omissions during evaluation. Applicants shall also be given an opportunity to resolve deviations identified during prequalification at a later stage; this process known as *'conditional prequalification'* is described in paragraph 19 below.

5. Eligibility to Prequalify

- 5.1 The prequalification process shall not be used to limit arbitrarily the number of tenderers, and all prequalified applicants must be permitted to tender. Some countries maintain registers of firms that meet pre-set qualification requirements. Such registers are not a substitute for the prequalification process under open tendering for a specific contract or project.
- 5.2 Prequalification in Bank-funded projects is open to contractors, suppliers and JVCA from any country or countries.
- 5.3 No affiliate of the Client shall be eligible to tender or participate in a tender in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the Client and the affiliate².
- 5.4 Where a firm, its affiliates or parent company, in addition to consulting also has the capability to manufacture or supply goods or to construct works or provide services, that firm, its affiliates or parent company normally cannot be a supplier of goods, works or services on a project for which it provides consulting services, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the consulting firm and the supplier or the contractor.
- 5.5 The proceeds of the Bank's loans, equity investments or guarantees shall not be used for payments to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, or as a matter of law or official regulation, the Client's country prohibits commercial relations with the firm's country, provided that the Bank is satisfied that such exclusion does not preclude effective competition.
- 5.6 A company shall not be eligible to participate in prequalification in any capacity whatsoever where it has been determined that it has engaged in prohibited

² Affiliate means, in relation to an entity (the First Entity), any entity controlled, directly or indirectly, by the First Entity, any entity that controls, directly or indirectly, the First Entity or any entity directly or indirectly under common control with the First Entity.

practices as defined in the Bank's *Procurement Policies and Rules*. Therefore, applications from any firm included in the Bank's *List of Ineligible Entities* and subject to a debarment must be rejected.

The *List of Ineligible Entities* may be found on the following Bank's web-site: <http://www.ebrd.com/pages/about/principles/integrity/list.shtml>.

6. Co-Financed Projects

- 6.1 Individual contracts may be financed jointly by the Bank and other lenders. The procurement process is normally the same as in any contract funded solely by the Bank.
- 6.2 In cases, where contracts are co-financed on a parallel basis, the co-financiers' procurement procedures shall normally be applied for contracts financed by them. The prequalification documents must address the requirements of the co-financiers in respect of the contracts they finance.
- 6.3 In some cases, the co-financing arrangements (including the extent of the participation of the various co-lenders, the allocation of their funds to the various discrete elements of the project, and the extent to which joint co-financing will apply) may not have been determined at the time of inviting firms for prequalification, and therefore the prequalification requirements for the various elements of the project are not yet known. The prequalification documents should disclose to the applicants the possibility of subsequent subdivision of the project into separate contracts for a potential parallel co-financing arrangement.

7. Two-Envelope System

- 7.1 The evaluation of prequalification applications precedes the issue of Invitations to Tender. Procedures such as the '*two-envelope system*', which entails submitting Prequalification and Tender Documents at the same time, in separate envelopes, defeat one of the key objectives of prequalification, i.e. saving unqualified prospective tenderers the expense of tendering. The two-envelope system, therefore, may not be used.

8. Multiple Contracts

- 8.1 Where a project may be divided into separate contracts (lots/slices) that may be combined into groups of contracts (packages), applicants may be invited to prequalify for each specific contract separately, or for a package of contracts which may be essentially of a similar type and size. Applicants should be prequalified for a specific limit, either by aggregate value or number of contracts, based on their demonstrated competence.
- 8.2 An applicant should be allowed to tender for any contract or contracts within the value limit for which it is prequalified. However, it may only be awarded an aggregate value or number of contracts for which it was prequalified.

9. Subcontractors

- 9.1 The turnover and financial resources of subcontractors shall be disregarded for the purposes of prequalification, as they will not be a party to the resulting contract. However, their specific experience related to the contract and/or availability of licences, required by the law of the country, where the works are to be carried out, may be taken into account during prequalification.

At the same time the cumulative experience and capacity of an applicant gained as a former subcontractor for certain works, depending on the extent of his involvement, scope, nature and magnitude of the works, services or supply should also be considered. In cases where a specialised process is needed, applicants should be required to specify the names and qualifications of such specialist subcontractors, if the particular process is not available in-house. Lack of such specialised support, essential in certain construction operations that require, for example, design, installation and commissioning of specialised engineering systems or underwater repair work, could result in disqualification of the applicant.

- 9.2 The Bank does not support arbitrarily set limits for subcontracting. At the same time the contractors/suppliers shall not subcontract the whole works/supply. The qualified tenderers should be capable to arrange the works/supply in the most efficient and economic way, regardless as to whether they engage their own resources or use subcontractors.

Under any circumstances the contract conditions shall provide for the contractors/suppliers to remain responsible for implementing the contracts in time, with due quality and within the agreed price.

- 9.3 In addition to the assessment of the qualification of the applicants, the Client may also assess the qualification of subcontractors in respect to the works/supply they are proposed by the applicant to be engaged in. Normally such assessment shall only be focused on the subcontractors for critical components of the works or for works in excess of 10 percent of the value of the whole works. The evaluation of the subcontractor's qualification shall mirror that of the applicant with the criteria reduced pro rata to the scope of the respective works/supply. Should a subcontractor be determined to be unqualified or otherwise unacceptable, the application shall not be rejected, but the applicant shall be required to substitute the unqualified subcontractor with an acceptable subcontractor. In many cases it may be more efficient to assess the subcontractor's qualification at the tendering stage, when the scope and terms of the works/supply are well defined, as opposed to the prequalification stage, when only general information and basic design of the project are usually available.

10. Consortia and Other Forms of Association

- 10.1 The Bank encourages the formation of a JVCA of contractors or suppliers, but does not accept conditions for prequalification or tendering which make such JVCA mandatory.
- 10.2 When two or more firms apply jointly for prequalification, special considerations must be met. The prequalification documents must clearly set out the conditions applying to such a JVCA, whether existing or proposed; to any change in the composition of a JVCA; or to the association of prequalified firms after prequalification. Each party of a JVCA must submit the complete documentation required of individual firms applying for prequalification.
- 10.3 The requirements described for a JVCA apply to associations, partnerships, consortia, and other ventures in which firms associate with each other formally for the purpose of jointly carrying out a contract without registering a legal entity. Partners of a JVCA must confirm that, if prequalified, the JVCA tender will be submitted with a formal JVCA agreement and that all parties to that agreement will be jointly and severally liable for the tender and any consequent contract. The lead partner in the JVCA should also be designated, as well as the individual, with overall

responsibility for the joint application, who will be the principal contact for communications. These requirements do not apply to subcontracting arrangements.

- 10.4 A firm may apply for prequalification both individually and as part of one or more JVCA. However, a prequalified firm or member of a prequalified JVCA may participate as a tenderer in only one tender, either individually or as a partner in a JVCA, for the contract. Submission or participation by a firm in more than one tender for a contract (other than alternatives which have been permitted or requested) will result in the disqualification of all tenders for that contract in which the party is involved.
- 10.5 Formation or regrouping of a JVCA after prequalification will only be considered if the additional firms or JVCA have been prequalified. However, such new JVCA will not be approved if, in the Client's or the Bank's opinion, this would substantially reduce competition.
- 10.6 If an applicant is a JVCA of firms, who associate with each other formally for the purpose of carrying out a contract jointly through registering a legal entity/the special purpose vehicle (the SPV), the qualification of the founders shall be disregarded, until and unless the application is supported by the parent companies' unconditional guarantees for due performance.

11. Parent Companies' Credentials

- 11.1 If an applicant is a JVCA of firms, which associate with each other formally for the purpose of carrying out a contract jointly through registering a legal entity/the SPV, or a branch of a large parent company, the qualification of their founders or parent companies shall be disregarded, unless the application is supported by the parent company's unconditional guarantee of due performance of all the contractor's/supplier's obligations and liabilities under the resulting contract (similar to a sample parent company guarantee included in *FIDIC Conditions of Contract, Annex A*).
- 11.2 In case an appropriate parent company's written commitment is submitted, the qualification of the parent company shall be evaluated in a way similar to the assessment of the qualification of applicants or JVCA members, as described in these Guidance Notes.
- 11.3 Subject to satisfactory assessment, the prequalification of applicants shall be conditional upon submitting the parent company guarantee with their tenders and maintaining it throughout contract implementation.

12. Advertisement and Time Period

- 12.1 The prequalification of tenderers should be advertised following the procedures for notification and advertising specified in the Bank's *Procurement Policies and Rules*.
- 12.2 Adequate time for response should be allowed. Consistent with the WTO/GPA provisions the period for submitting applications shall not be less than 25 days from the date of publication of the notice. The time for preparing and submitting applications for a particular contract/project shall depend on its nature and complexity.
- 12.3 It is strongly recommended that the prequalification documents are to be disseminated free of charge in electronic format, wherever possible. In case the

documents are distributed in hard copy only a nominal fee should be charged, solely to cover the costs of reproduction and of dispatching the documents by courier.

13. Review by the Bank

- 13.1 Prior to inviting companies to prequalify, the Client is required to submit the complete prequalification documents to the Bank for its review and no-objection. The Client shall use the Bank's *Standard Prequalification Documents* as a basis for the preparation of the specific prequalification documents. The Client shall make such modifications in the documents, as the Bank requests. The approved documents shall not be changed without the Bank's no-objection.
- 13.2 The specific criteria, and the prequalification document as a whole, must be considered with care as early as possible in the procurement process. However, the prequalification documents should be issued only when the preparation of engineering designs and the procurement strategy is well advanced, and the works, goods or services are reasonably well defined. The timing of the prequalification shall be well planned, as the time period between prequalification and the tendering shall not be too long as to affect the interest of prequalified companies to tender, or to provide for substantial changes of the market conditions or project circumstances. In the latter cases the prequalification exercise may need to be repeated.

14. Clarifications

- 14.1. A prospective applicant requiring any clarification on any aspect of the prequalification documents or process may solicit clarifications from the Client. The Client shall normally respond to requests for clarification in advance of the deadline for application submission. Copies of the Client's response shall be sent to all prospective applicants. All correspondence between the Client and applicants shall be in writing.
- 14.2 Where circumstances warrant (usually for very large or very complex projects), a clarification meeting should be held to clarify any queries of the potential applicants about the documents or the project. If such a meeting takes place, all firms that have obtained prequalification documents should be sent, at least two weeks before the submission date, a copy of the minutes of the meeting, listing any additional information and/or changes made to the prequalification requirements or procedure, as a result of the meeting.
- 14.3 To assist in the examination and evaluation of applications the Client may, at its own discretion, ask any applicant for clarification of its application. Such clarification may be requested in writing at any stage up to the notification of the outcome of the prequalification.

15. Amendment of Prequalification Documents

- 15.1 At any time prior to the deadline for submission of applications, the Client may amend the prequalification requirements or procedure by issuing an amendment to the prequalification documents. Any amendment shall be part of the prequalification documents and shall be communicated in writing to all prospective applicants. All amendments shall be subject to the Bank's review and no-objection prior to issue.
- 15.2 To give prospective applicants reasonable time in which to take an amendment into account in preparing their applications, the Client may, at its own discretion, extend the deadline for the application submission.

16. Information to be Sought

- 16.1 To enable potential tenderers to be prequalified, it is necessary to seek only such information essential for the Client to determine the applicant's capabilities to perform the contracts satisfactorily. These capabilities are normally established in respect of experience, personnel capabilities, equipment capabilities, financial position, litigation history, JVCA arrangements, critical subcontracting, and current commitments.
- 16.2 The minimum amount of information to determine the applicant's capabilities to perform the contracts satisfactorily shall be solicited. During evaluation the applicants may be requested and shall be allowed to provide additional critical information prior to the Client's final determination in respect of their qualification.

17. Pass/Fail Criteria

- 17.1 The Bank strongly advocates that tenderers should be prequalified by meeting predefined and precise minimum requirements. The method entails setting Pass/Fail criteria which, if not substantially met by the applicant, results in disqualification. These criteria must be set so that they neither inhibit competition nor set a predetermined number of firms to be prequalified, as all firms that meet the criteria should be invited to tender. Other methods, that involve the use of subjective criteria, or are based on an imprecise merit point system to evaluate firms, have been found to be flawed. They have often resulted in complaints from potential tenderers that were unjustly disqualified, and have led to serious delays in project implementation.
- 17.2 The criteria adopted must relate to characteristics that are essential to ensure a satisfactory execution of the contract, and must be stated in unambiguous terms. In essence, the criteria must be chosen so that only applicants who are well qualified to carry out the contracts are permitted to tender. The prequalification criteria for JVCA applicants should be the same as those for single applicants.
- 17.3 Some qualification criteria may reflect arrangements for the specific contract, which can be amended by the applicants in the future prior to submission of their tenders (for example, improving critical project management; access to specialised equipment; the substitution of a critical specialist supplier or subcontractor). With regard to these Pass/Fail criteria, the applicants may be prequalified conditionally.

18. Typical Qualification Criteria

18.1 Legal Status

- 18.1.1 The applicants may be requested to provide their charter and registration/incorporation documents. An existing JVCA shall be required to provide a copy of the JVCA agreements, which they shall be allowed to change at the tendering stage. A prospective JVCA, as a minimum, shall provide a letter of intent to form a JVCA at the tendering stage, signed by all partners. In this letter partners of the prospective JVCA must confirm that, if prequalified, their tender will be submitted with a formal JVCA agreement and that all parties to that agreement will be jointly and severally liable for the tender and any consequent contract. The lead partner in the JVCA should also be designated, as well as the individual with overall responsibility for the joint application, who will be the principal contact for communications.

18.1.2 When the law of the country, where the project is implemented, requires the applicant to have licences for the activities to be undertaken under the contract, or be a member of self regulating associations, the Clients may request the applicants to submit copies of the appropriate licences and/or association membership. If some of the above mentioned activities are to be carried out by subcontractors, their licences and/or association membership are to be submitted with applications. However, if the applicants do not possess such documents at the prequalification stage, they have to demonstrate that they would be in a position to obtain such documents before submitting their tender. Therefore, their applications shall not be rejected, but the applicants shall be informed that failure to submit the required documents would lead to rejection of their tender.

18.2 General Experience

18.2.1 The applicant's general capabilities should be substantiated by reference to its current, relevant experience and the value of work undertaken. Minimum experience requirements should be stipulated usually as an annual value of the general construction work/supplies/services carried out over a stated period, e.g. three to five years.

18.2.2 The value of relevant works/supplies/services undertaken should be presented as the annual turnover, in terms of earnings during the year, expressed in its equivalent of a defined currency, for example EUR. The turnover value in the defined currency should be calculated at the exchange rate at the middle of each year reported, as set by the central bank of the Client's country or similar institution. The criterion for qualification should be set at a level that ensures that the potential contractor/supplier will not be overwhelmed by the size of the new contract. For instance, the applicant's annual turnover should be not less than 2.5 times the expected annual cash flow of the proposed contract. The multipliers may be reduced for large contracts (in excess of EUR 100 million equivalent) or very small (EUR 5 million equivalent or less), or in special circumstances, but in any case should not be less than 1.5.

18.2.3 For some contracts the turnover criterion may be substituted or complemented by the requests to stipulate works/supplies/services undertaken within the given period in physical terms (for example, number of vehicles supplied, volume of dredging works carried out etc). Similarly the criterion should be set at a level that ensures that the potential contractor/supplier will not be overwhelmed by the size of the new contract.

18.2.4 Testimonials and certificates may be of doubtful value in assessing applicants' capabilities, and are not always available. However, the Client may request submission of copies of completion certificates/reference letters, where available, to demonstrate successful experience. However, applicants shall not be rejected for the lack of such documents in their submission.

18.3 Particular Experience

18.3.1 Applicants should demonstrate that they have carried out work of a nature, size and complexity similar to that of the project in question.

There are three principal criteria for prequalification:

- the applicant should have carried out similar work in any capacity (main or sub-contractor) of at least a magnitude approximating that of the package of works for which prequalification is sought. Depending on the nature of the works to be tendered, the applicant should have carried out one or more projects of adequate (specified) value during a specified period, usually the last three to five years. The reference projects/works do not have to be commenced, but completed within the specified period of time. The individual value of such previous contracts/works should be not less than 60 percent of the estimated cost of the contract to be undertaken;
- the applicant should have performed operations of a volume and quality similar to those required for the project. For example, where large volume earthworks, tunnelling or concrete placing is involved, the applicant should demonstrate experience in those operations, having performed them at the rates comparable to (usually not less than 75 percent of) the peak rate required for the project;
- the applicant or the lead partner in a JVCA should have acted as a main contractor on projects of similar magnitude. Usually they shall be required to demonstrate the execution of two or more projects of adequate value (not less than 60 percent of the estimated cost of the contract to be undertaken) during a specified period, usually the last three to five years.

18.3.2 Applicants should not be disqualified solely because they have not had direct experience in the Client's country or the region.

18.3.3 For some projects, involving implementation of the works under atypical climate (for example, at acute subzero temperatures) or geological (for example, in permafrost area) conditions or in remote areas, the Client may require the contractors or their specialised subcontractors to demonstrate particular relevant experience and capability to perform the works under such conditions. Such requirements, however, shall not be part of prequalification criteria and responsiveness shall be assessed at the time of tender submission as part of the evaluation of the work method and programme offered by tenderers.

18.3.4 Applicants should not be disqualified solely because they have not carried out the exact type of project proposed, if their experience is comparable. For example, a contractor may be capable of constructing an airfield if the contractor has adequate earthworks, paving and building experience, but has not constructed airfields before. On the other hand, it might be imprudent to prequalify an applicant who lacks maritime experience for construction of a sea port project.

18.4 Current Obligations and Pending Awards

18.4.1 Given that qualified contractors and suppliers may have large ongoing obligations and/or pending contract awards, which may limit or exhaust their resources to implement the Client's contract, applicants shall be requested to provide information regarding their on-going large contractual obligations and pending contract awards.

18.4.2 A significant volume of current and forthcoming undertakings, subsisting during the time period expected for implementation of the Client's project, may affect the

project, if they exceed the applicant's average turnover. Hence, this information shall be taken into account.

- 18.4.3 The application may be rejected if the level of the confirmed commitments to be carried out in parallel with the Client's contract exceeds the applicant's annual turnover for the previous year by a factor of 1.2.
- 18.4.4 The pending contract awards shall not be used for the calculation of the above commitments. However, the applicant's qualification shall be conditional on satisfactory review at the time of tender submission.

18.5 Personnel Capabilities

- 18.5.1 The managerial and technical competence of a contractor is primarily related to its key personnel on site. The extent to which the applicant should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The prequalification criteria should therefore refer to a limited number of such key personnel, for instance the project manager, the superintendents working under the project manager, who will be responsible for major components, the chief designer, etc.
- 18.5.2 Applicants should normally be required to name a principal candidate and an alternate for each key position. Criteria of acceptability should be based on:
- a minimum number of years of experience in a similar position; and
 - a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.

The requirements for the prime and alternate positions should be the same.

The applicants shall be asked to submit concise CVs of the principal candidates and alternates.

- 18.5.3 The requirement of specified education and academic qualifications is normally unnecessary for such positions, as contractors sometimes employ competent staff who might have acquired their skills "on the job", but lack formal academic qualifications.
- 18.5.4 It may be appropriate to specify that certain positions are filled by individuals, who have held posts of comparable authority for, say, three years with the applicant, so as to ensure that key staff, in executive site positions, have sufficient knowledge of the applicant's management, policy, procedures and practices to act with confidence and authority within that framework.
- 18.5.5 Notwithstanding the above it is recommended that the personnel capabilities information is sought at a qualification phase during the tendering stage, when all essential details of the contract, influencing tenderers' response to the criterion are known. At that stage tenderers should know what particular personnel is needed, available and therefore shall be committed for the contract.

18.6 Equipment Availability

- 18.6.1 An inventory of construction equipment represents a high capital cost overhead to a contractor. Therefore, not all competent potential tenderers will maintain an inventory of high-value items that are in suitable condition for major contracts. In most cases applicants can readily purchase, lease or hire equipment. It is thus

usually not necessary for prequalification to depend on the contractor owning generally available items of equipment. The Pass/Fail criteria adopted should therefore be limited only to bulky or specialised items that are critical for the type of project to be implemented and that may be difficult for the contractor to obtain quickly. Examples include items such as heavy cranes, piling barges, dredges, asphalt mixing plants and tunnel boring machines.

- 18.6.2 Even in such cases, main contractors may not own the equipment; rather they may rely on specialist subcontractors or equipment hire firms. The availability of the subcontractor and the specified equipment should be subject to verification (at the time of prequalification, or at the time of tendering) in such cases.
- 18.6.3 Particular care is needed in setting Pass/Fail criteria for equipment because of the different skill levels and techniques that contractors bring to construction projects. Thus, performance criteria related to the project may be more relevant. In view of the above the applicants shall be allowed to list alternative equipment which they would propose to use for the contract, together with an explanation of their proposal.
- 18.6.4 Notwithstanding the above it is recommended that the equipment availability information is sought at a qualification phase during the tendering stage, when all essential details of the contract, influencing tenderers' response to the criterion are known. At that stage tenderers are certain with the work method and therefore, can list the essential equipment relevant for their proposal and confirm its availability.

18.7 Manufacturing Capacity

- 18.7.1 For contracts involving the supply of specialised vehicles or equipment such as power turbines or a large number of standardised vehicles (buses, trams, wagons), it may be critical to establish whether the applicant or manufacturer/vendor of the equipment they offer to supply has the manufacturing capacity to produce the required equipment within the required period of time.
- 18.7.2 The criterion for qualification should be set at a level that ensures that the installed manufacturing capacity and the free (of the ongoing orders) capacity of the manufacturers is sufficient to meet the expected volume of supply, and that they will not be overwhelmed by the requirements of the new contract. Depending on the nature of the equipment to be tendered, the manufacturer should be required to demonstrate that they have production capacity in excess of that required for the expected contract, free of other commitments for the given period of time.
- 18.7.3 Notwithstanding the above it is recommended that the manufacturing capacity information is sought at a qualification phase during the tendering stage, when all essential details of the contract, influencing tenderers' response to the criterion are known. At that stage tenderers/manufacturers know the required delivery schedule and can confirm the manufacturing capacity during the require period of time.

18.8 Financial Position

- 18.8.1 The Client should normally require applicants to provide the following background financial information to support the application forms:
- annual financial statements for the last three to five years supported by audit statements or tax returns/acceptance by the tax authorities; and
 - names and addresses of the applicant's bank(s) and an appropriate authorisation allowing verification of information provided.

- 18.8.2 Because of differing international accounting practices and tax laws, published information on the financial position of companies, and financial ratios derived therefrom, do not provide a suitable basis for evaluating the financial standing of companies for prequalification purposes. Nevertheless, audited financial statements or balance sheets, or those certified by the tax authorities, should be sought as a general guide to the financial health of the applicant. For example, the financial results over the last three to five years should be positive. Consistent losses or a risk of insolvency shown in the accounts may be cause for the disqualification of the applicant.
- 18.8.3 The financial information provided by an applicant should be reviewed in its entirety to allow a truly informed judgment, and the decision on the financial position of the applicant should be given on this basis. To assist in this review, the indicators used most frequently are working capital and net worth:
- working capital is the difference between current assets and current liabilities, and measures the firm's ability to generate cash in the short term. The Client shall take into account that current assets are cash and other assets suitable for conversion into cash within one year. Current liabilities are monetary obligations that must be paid out within the current year. In order to help with the interpretation of the adequacy of working capital, the current ratio, which compares the current assets with the current liabilities, is more helpful than a figure for working capital. Construction firms normally have small inventories and accounts receivable are easy to collect; they can therefore operate safely with a low current ratio;
 - net worth or net equity is the difference between total assets and total liabilities. The net worth measures a firm's ability to produce profits over the long run as well as its ability to sustain losses. Although the yearly figures for net worth indicate the growth of the firm, the return on equity gives a better indication of the efficiency with which equity is employed within the firm. This is obtained by dividing the annual profit before taxes by the net worth of the previous year and is expressed as a percentage.
- Any discontinuities or abnormal features in the above indicators or ratios should alert the Client to potential financial problems and the need to seek professional advice for further review and interpretation.
- 18.8.4 The Client must be satisfied that the tenderers will, at the time of award, have the financial resources to implement the project satisfactorily. Prequalification followed by updating information with the tender, and verification prior to award of contract, are necessary to determine the financial capabilities of the potential contractor, prequalification being a preliminary stage in the process.
- 18.8.5 The cash flow qualifying criterion should be based on the ability to finance the Client's estimate of cash flow for a specified '*critical*' period. Assuming monthly payments to the contractor, a straight line monthly cash flow projection for the contract, ignoring any effects of the advance payments and retention monies, is normally acceptable for determining this requirement. Calculating from the beginning of the month invoiced, the '*critical*' period is determined by adding a contingency period of one month to the cumulative time period needed by the Client to pay the amount due.
- 18.8.6 The amount estimated from the above calculations should be stated in the prequalification documents as a criterion. Applicants should demonstrate their access to liquid assets, lines of credit, unencumbered assets and other financial

means sufficient to meet the specified cash requirement, net of other known commitments at the time of award, and subject to verification.

- 18.8.7 Notwithstanding the above it is recommended that the information regarding the contract cash flow is sought at a qualification phase during the tendering stage, when all essential details of the contract, influencing tenderers' response to the criterion are known. At the time of tendering participants may estimate their contract price, work program and, by taking into account the proposed payment terms, the expected contract cash flow profile. Evaluation of tenderers' financial position at that stage would be more adequate to assess the potential risks and, therefore, would provide more reliable results.

18.9 Litigation History

- 18.9.1 Clients should be aware of applicants who consistently fail to perform their obligations under the contracts, therefore, bringing them to termination. They also should be aware of contractors and suppliers who resort to excessive claims and litigation as a means to increase income after an award of contract. However, in some countries, resorting to claims is an established and normal business practice.
- 18.9.2 Applicants with a consistent and significant history of excessive contract arbitration and litigation resulting in awards or decisions against them as well as those who frequently defaulted under contracts may not be qualified to tender. Hence, the litigation and non-performance history may be evaluated. Applicants should be required to list all contracts over a stated number of years (normally the last three to five years) that resulted in (a) litigation or arbitration proceedings, with an indication of the matters in dispute, the parties involved, the amounts in dispute and the outcome, where available; and (b) termination, with an indication of the causes of the termination and the parties involved.
- 18.9.3 The criterion for rejection should not be the number of reported litigations, but the proportion of arbitral awards or court decisions against the applicant. Normally the application may be rejected, should the ratio of the arbitral or court decisions against the applicant or an individual member of a JVCA exceed 25 per cent of all reported litigations. Furthermore, it is reasonable to set the limit for the amount of pending litigations, as they may represent a potential indirect risk for the Client. Therefore, the Client may request that all pending litigations shall in total not represent more than 25 percent of the applicant's net worth.

An application should be rejected only if the applicant demonstrates a consistent history of non-performance under its contracts. Under the best of circumstances, some projects *'go sour'* for causes such as clash of personalities or poor management by clients. On the other hand, if the applicant is frequently involved in litigation it may indicate an attitude of the management of the firm which could be unacceptably risky for the Client, if the applicant were awarded the contract.

- 18.9.4 If an applicant does not provide a complete record of litigations or non-performance for the required period of time, and the Client can demonstrate through official records/court decisions that the applicant has been involved in litigation or arbitration, the Client may consider the applicant's submission as a misrepresentation and reject the application.

18.10 Specific Requirements with regard to JVCA

- 18.10.1 Taking into account joint and several liabilities of the partners in a JVCA, each partner of a JVCA shall meet not less than 30 percent of the qualifying criteria with

regard to the applicant's turnover and financial position. The Client may increase the above mentioned percentage. Moreover, the Client may establish higher requirements with regard to the lead partner of a JVCA.

18.10.2 The lead partner of a JVCA shall demonstrate that he acted as a main contractor/supplier on projects of similar magnitude.

18.10.3 A JVCA must satisfy collectively the criteria for general and specific experience, personnel and equipment capabilities and financial position stated above, for which purpose the relevant figures for each of the partners shall be added to arrive at a JVCA total capacity.

18.10.4 Individual members must each satisfy the requirements for financial health and litigation.

19. Conditional Prequalification

19.1 When an applicant fails to meet some of the qualifying criteria, the applicant may be conditionally prequalified, that is, prequalified subject to certain specific requirements being met substantially prior to a prescribed deadline, normally the issuance of an invitation to tender, or in exceptional cases the deadline for submission of a tender.

19.2 The following typical requirements, inter alia, might justify conditional prequalification:

- provision of additional critical information, acceptable to the Client;
- revisions to a JVCA composition and/or agreement;
- improving critical project management;
- hiring experts in specialised fields;
- demonstrating access to specialised equipment;
- engagement/substitution of specialised subcontractors/suppliers;
- clarification with regard to the applicant's questionable ability to undertake the proposed works due to significant current commitments or pending award of other significant contracts; or
- the submission of bank reference(s) or a bank commitment to provide securities and/or line of credit in the event the applicant's tender is successful.

20. Late applications

20.1 Unlike in the tendering process, during prequalification the Client may accept (or reject) late applications upon consultations with the Bank. With the objective of enhancing competition without compromising essential project objectives, the Client should normally consider late applications, which have been received in good time prior to completion of the evaluation of applications by the Client.

21. Prequalification Report

21.1 The Client should evaluate the applications received and prepare a report to be submitted to the Bank for review. The Client should use *the Bank's Standard Prequalification Application Evaluation*. The report should address for every applicant each of the Pass/Fail criteria set in the documents. If applicants are

prequalified conditionally, the reasons for such determination and these conditions shall be clearly stated in the report. Disqualification of applicants, who fail to meet the pre-set criteria, should be highlighted and the reasoning explained in detail. The Bank may ask the Client to justify the decision and/or request further information or clarifications. If the Bank finds the outcome of prequalification not reasonably justified or substantiated with appropriate documents or evidence, it may request the Client to revise the decision.

22. Lack of Competition

- 22.1 If the result of prequalification demonstrates a lack of competition, in the event that only one or two companies are prequalified, the Client in consultation with the Bank shall revise the procurement arrangements for the project/contract. Such revision may involve revision of the scope of the works/supply, or contract packages, tender procedures, contract terms or qualification condition.

23. Notification of the Outcome of Prequalification

- 23.1 After the Client has processed and evaluated the prequalification submissions, and received the Bank's "no objection" to the results of the evaluation, the Client should notify all the applicants of the decision.
- 23.2 The notification sent to all applicants shall incorporate a complete list of qualified and conditionally prequalified companies. Moreover, the notifications sent to a conditionally prequalified applicant shall list the specific conditions of his prequalification and the time period within which these conditions are to be met. In addition to that, the notification sent to a disqualified applicant shall clearly state the specific reasons for the rejection of his application.
- 23.3 In all cases, the notification should indicate that prequalification will be followed by verification at the time of tendering, and that tenders shall be rejected by the Client, at its discretion, if the verification is unsatisfactory or if the tenderer is unable to confirm the requirements specified in the notification.
- 23.4 Applicants should be advised that only firms and JVCAs that have been prequalified under this full process will be eligible to tender.
- 23.5 The Client should make publicly available to interested parties the list of prequalified tenderers, prior to the issuance of the Invitation to Tender, in order to allow subcontractors and suppliers, particularly local firms to contact them.

The Bank publishes the lists of prequalified tenderers on the following web-site:
<http://www.ebrd.com/pages/workingwithus/procurement/project/prequalified.shtml>

24. Updating Prequalification Information

- 24.1 Because circumstances may change in the period between prequalification and the submission of tenders, contracts must be awarded only to tenderers, who continue to meet the requirements for prequalification. The tender documents should specify, which essential items of the information submitted with the prequalification documents should be updated with the tender. In particular, the Client should be satisfied that tenderers continue to have the required capacity and financial capability.
- 24.2 The Client may harbour reasonable doubts about the veracity of statements made by a tenderer. If a perceived weakness could materially affect the tenderer's

capability to perform the contract satisfactorily, then the prequalification information should be verified.

25. Invitation to Tender

- 25.1 Invitations to tender should follow as soon as possible after prequalified tenderers have been notified. The tender documents should be issued only to prequalified firms, and should refer to the need to provide specified updated information and any pre-award verification requirements.

26. Repeating the Prequalification

- 26.1 Should the invitation for tender be delayed by more than 12 months after the prequalification application submission deadline, the Client, upon consultations with the Bank, shall re-launch the prequalification, so that new applicants may express their interest in the project and the previously prequalified companies should be asked to update their qualification information.
- 26.2 All applicants for the original prequalification, including disqualified ones, shall be directly informed of the re-prequalification. If the original prequalification documents were disseminated for a fee, all of them shall be sent documents free of charge.