

## **Anexo 5**

- "Loan Agreement PE-P14"
- "General Terms and Conditions"
- "Guidelines for Procurement under OECF Loan"



MINISTERIO DE ECONOMIA Y FINANZAS

Lima, 16 JUL. 1998

OFICIO N° 193 -98-EF/75.22

Señor  
EDWIN MANRIQUE P.  
Gerente General  
Empresa de Generación de  
Energía Eléctrica-EGECEN S.A.  
Presente.

ASUNTO                      Contrato de Préstamo PE-P14

REF.                              Carta GG-423-98/E.107

Es grato dirigirme a usted, en relación a su carta de la referencia, para remitirle adjunto al presente, copia del Contrato suscrito entre el Ministerio de Economía y Finanzas y el Overseas Economic Corporation Fund-OECF de Japón, suscrito el 24 de setiembre de 1996.

Aprovecho la oportunidad para expresarle las seguridades de mi consideración

Atentamente.

JOSE F. LITUMA AGÜERO  
Director General de Crédito Público

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LOAN AGREEMENT NO. PE-P14

LOAN AGREEMENT

For

YUNCAN (PAUCARTAMBO II) HYDROELECTRIC  
POWER PLANT CONSTRUCTION PROJECT

Between

THE OVERSEAS ECONOMIC COOPERATION FUND, JAPAN

And

THE REPUBLIC OF PERU

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*Wailb*  
LISA VARILLAS VILCHEZ  
FEDATARIO  
C.I. N.º. 970 - 97 - EF / 43

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Loan Agreement No. PE-P14, dated September 24, 1996, between THE OVERSEAS ECONOMIC COOPERATION FUND and THE REPUBLIC OF PERU

In the light of the contents of the Exchange of Notes between the Government of Japan and the Government of the Republic of Peru dated August 27, concerning Japanese loans to be extended with a view to strengthening the friendly relations and economic cooperation between the two countries,

THE OVERSEAS ECONOMIC COOPERATION FUND (hereinafter referred to as the Fund") and THE REPUBLIC OF PERU (hereinafter referred to as "the Borrower") herewith conclude the following Loan Agreement (hereinafter referred to as "the Loan Agreement", which includes all agreements supplemental hereto).

Article I

Loan

Section 1. Amount and Purpose of Loan

The Fund agrees to lend the Borrower an amount not exceeding THIRTY THREE BILLION Japanese Yen (¥33,000,000,000) as principal for the implementation of the Yuncan (Paucartambo II) Hydroelectric Power Plant Construction Project described in Schedule 1 attached hereto (hereinafter referred to as "the Project"), on the terms and conditions set forth in the Loan Agreement and in accordance with the relevant laws and regulations of Japan (hereinafter referred to as "the Loan"), provided, however, that when the cumulative total of disbursements under the Loan Agreement reaches the said limit, the Fund shall make no further disbursement.

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Lima: 15 Jul. 1996  
*[Signature]*  
LINA VASTILLAS VILCHEZ  
FEDATARIO  
I-VN N.º 070 - 97 - EF /-43

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Lima: 15 de Julio, 1990

Section 2. Use of Proceeds of Loan

(1) The Borrower shall cause the proceeds of the Loan to be used for the purchase of eligible goods and services necessary for the implementation of the Project, from suppliers, contractors (hereinafter collectively referred to as "the Supplier(s)") of the eligible source countries described in Schedule 4 attached hereto (hereinafter referred to as "the Eligible Source Country(ies)") in accordance with the allocation described in Schedule 2 attached hereto.

(2) The final disbursement under the Loan Agreement shall be made not later than the same day and month eight (8) years after the effective date of the Loan Agreement, and no further disbursement shall be made by the Fund thereafter, unless otherwise agreed upon between the Fund and the Borrower.

Article II

Repayment and Interest

Section 1. Repayment of Principal

The Borrower shall repay the principal of the Loan to the Fund in accordance with the Amortization Schedule set forth in Schedule 3 attached hereto.

Section 2. Interest and Method of Payment thereof

(1) The Borrower shall pay interest to the Fund semi-annually at the rate of two and seven tenth percent (2.7%) per annum on principal corresponding to categories (a), (b) and (c) below disbursed (hereinafter referred to as "Principal (D)") and outstanding:

- (a) Principal disbursed out of the proceeds of the Loan allocated to Categories (A), (B) and (D)-(i) (provided for in Section 1 of Schedule 2, attached hereto);
- (b) Service charges disbursed out of the proceeds of the Loan with respect to the disbursement of (1) (a) above;
- (c) Any principal reallocated from Category (E) (provided for in Section 1 of Schedule 2, attached hereto) and disbursed with respect to (1) (a) or (1) (b) above.

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(2) The Borrower

- (2) The Borrower shall pay interest to the Fund semi-annually at the rate of two and three tenth percent (2.3%) per annum on the principal corresponding to categories (a), (b) and (c) below disbursed (hereinafter referred to as "Principal (II)") and outstanding:
- (a) Principal disbursed out of the proceeds of the Loan allocated to Category (C) and (D)-  
(ii)(provided for in Section 1 of Schedule 2, attached hereto);
  - (b) Service charges disbursed out of the proceeds of the Loan with respect to the disbursement of (2) (a) above;
  - (c) Any principal reallocated from Category (E) (provided for in Section 1 of Schedule 2, attached hereto) and disbursed with respect to (2) (a) or (2) (b) above.
- (3) The Borrower shall pay to the Fund on March 20 of each year the interest that has accrued up to March 19 of that year from September 20 of the preceding year, and on September 20 of each year the interest that has accrued up to September 19 from March 20 of that year, provided that, prior to the date of the final disbursement of the proceeds of the Loan, the Borrower shall pay to the Fund on April 20 of each year the interest that has accrued up to March 19 of that year from September 20 of the preceding year, and on October 20 of each year the interest that has accrued up to September 19 from March 20 of that year.

Article III

Particular Covenants.

Section 1. General Terms and Conditions

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Other terms and conditions generally applicable to the Loan Agreement shall be set forth in the Fund's General Terms and Conditions, dated November, 1987, with the following supplemental stipulations (hereinafter referred to as "the General Terms and Conditions"):

- (1) The term "principal" wherever mentioned in the General Terms and Conditions shall be replaced by "Principal (I) and Principal (II)";
- (2) When the Borrower makes repayment of principal or payment of interest or other charges without specifying the order of application, the Fund may decide the order of application among principal, interest or other charges for Principal (I) or Principal (II).



- (3) Article VII of the General Terms and Conditions shall be disregarded, and, consequently, all references to "the Guarantee" or "the Guarantor", wherever mentioned in the General Terms and Conditions, shall be likewise disregarded.
- (4) After a contract is determined to be eligible for the Fund's financing, the name of the Supplier may be made public by the Fund.

### Section 2. Procurement Procedure

The guidelines for procurement and for the employment of consultants mentioned in Section 4.01. of the General Terms and Conditions shall be as stipulated in Procurement Procedure attached hereto as Schedule 4.

### Section 3. Disbursement Procedure

The disbursement procedure mentioned in Section 5.01. of the General Terms and Conditions shall be as follows:

- (1) Commitment Procedure attached hereto as Schedule 5 shall apply in cases of disbursements to the Supplier(s) of the Eligible Source Countries other than the Republic of Peru with respect to the portion of contracts stated in a currency other than that of the Republic of Peru, except for the disbursements for payments made between March 27, 1996 and the previous date of coming into force of the Loan Agreement.
- (2) Reimbursement Procedure attached hereto as Schedule 6 shall apply in cases of disbursements for payments made on and after March 27, 1996 to the Supplier(s) of the Republic of Peru and the Supplier(s) of the Eligible Source Countries other than the Republic of Peru with respect to the portion of contracts stated in the currency of the Republic of Peru. This procedure shall also apply in cases of disbursements for the payments made between the March 27, 1996 and the previous date of coming into force of the Loan Agreement, to the Supplier(s) of Eligible Source Countries other than the Republic of Peru with respect to the portion of contracts stated in a currency other than that of the Republic of Peru.

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- (3) Notwithstanding the provision of the paragraph (2) mentioned above, Transfer Procedure attached hereto as Schedule 7 made apply in cases of disbursements to the Supplier(s) of the Republic of Peru, and to the Supplier(s) of the Eligible Source Countries other than the Republic of Peru with respect to the portion of contracts stated in the currency of the Republic of Peru.

#### Section 4. Administration of Loan

- (1) The Borrower shall authorize Ministry of Energy and Mines (hereinafter referred to as "the Executing Agency") to implement the Project.
- (2) The Borrower shall cause the Executing Agency to employ consultants for the implementation of the Project.
- (3) Should the funds available from the proceeds of the Loan be insufficient for the implementation of the Project, the Borrower shall make arrangements promptly to provide such funds as shall be needed.
- (4) The Borrower shall at all times operate and maintain, or cause to be operated and maintained, any facilities relevant to the Project, and promptly as needed, make or cause to be made all necessary repairs and replacements thereof.
- (6) The Borrower shall cause the Executing Agency to furnish the Fund with progress reports for the Project on a quarterly basis (as of March, June, September and December of each year) until the Project is completed, in such form and in such detail as the Fund may reasonably request.
- (7) Promptly, but in any event not later than six (6) months after completion of the Project, the Borrower shall cause the Executing Agency to furnish the Fund with a project completion report in such form and in such detail as the Fund may reasonably request.

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Section 5.

Section 5. Notices and Requests

The following addresses are specified for the purpose of Section 9.03. of the General Terms and Conditions:

For the Fund

Postal address:

THE OVERSEAS ECONOMIC COOPERATION FUND  
Takebashi Godo Building, 4-1, Ohtemachi 1-chome  
Chiyoda-ku, Tokyo 100, Japan

Attention: Managing Director, Operations Department III

Cable address: COOPERATIONFUND Tokyo

Telex: (1) Call No. J28360

Answer Back Code: COOPFUND J28360

(2) Call No. J28430

Answer Back Code: COOPFUND J28430

For the Borrower

Postal address:

MINISTRY OF ECONOMY AND FINANCE  
Jiron Junin No.319, Lima 1. Peru

Attention: General Directorate of Public Credit

Cable address: MINDEF. Lima

For the Executing Agency

Postal address:

MINISTRY OF ENERGY AND MINES

Avenida Las Artes 260 San Borja, Lima 41, Peru

Attention: Executing Director of Projects

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If the above addresses and/or names are changed, the party concerned shall immediately notify the other party hereto in writing of the new addresses and/or names.

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Lima: 15 de Agosto de 1998  
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IN WITNESS WHEREOF

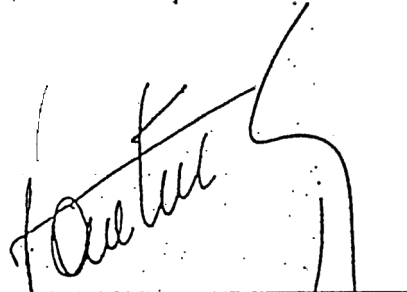
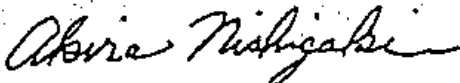
IN WITNESS WHEREOF, the Fund and the Borrower, acting through their duly authorized representatives, have caused the Loan Agreement to be duly executed in their respective names and delivered at the office of THE OVERSEAS ECONOMIC COOPERATION FUND, Chiyoda-ku, Tokyo, Japan, as of the day and year first above written.

For

For

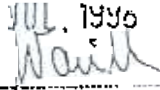
THE OVERSEAS ECONOMIC  
COOPERATION FUND

THE REPUBLIC OF PERU



AKIRA NISHIGAKI  
President,  
Chairman of the Board

VICTOR ARITOMI SHINTO  
Ambassador Extraordinary  
and Plenipotentiary to Japan

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Schedule 1

Description of Project

Section 1. Outline of the Project

(1) Objective

To supply central north area of Peru with electrical power by means of developing 126MW hydropower station and connecting it to Central-North Interconnected System, to cope with the rapid increase of electric demand.

(2) Location

Midcourse stream of Paucartambo River at the Province and department of Junin

(3) Executing Agency

Ministry of Energy and Mines

(4) Scope of Work

(a) Civil Works

(i) Preparatory works

(ii) Main civil works

- Uchuhuerta intake dam
- Huallamayo dam
- Development of glacier lakes (Chilac and Victoria reservoirs)
- Other civil works

(b) Electrical and Mechanical Works

(i) Electrical and Mechanical equipment

(ii) Hydromechanical equipment

(iii) Transmission lines (220kv) and expansion of substations

(c) Consulting services

(i) Engineering Service (Stage 1)

(ii) Management Service (Stage 2)

The proceeds of the Loan are available for items (a) through (c).

Any balance remaining on the aforementioned item and all other items are to be financed by the Borrower.

Section 2. Estimated annual fund requirements are as shown below.

Calendar Year	For the Loan (in million Japanese Yen)	For the project (in million Japanese Yen)
1996	215	1,297
1997	1,415	1,585
1998	5,748	7,293
1999	6,312	8,238
2000	8,377	11,289
2001	8,972	11,881
2002	1,961	2,414
Total	33,000	43,997

Disbursement of the proceeds of the Loan shall be made within the limit of the Japanese Government's annual budgetary appropriations for the Fund.

Section 3. The Project is expected to be completed by the end of August 2002.

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Schedule 2

Allocation of Proceeds of Loan

Section 1. Allocation

Category	Amount of the Loan Allocated (in million Japanese Yen)	% of expenditure to be financed
(A) Civil works	14,961	
(B) Electrical and Mechanical Works	11,778	100
(C) Consulting services	2,606	100
(D) Interest During Construction	2,922	
i) with respect to (A) and (B)	2,655	
ii) with respect to (C)	267	
(E) Contingencies	733	
	-----	
Total	33,000	

Note: Items not eligible for financing are as shown below

- (a) General administration expenses
- (b) Taxes and Duties
- (c) Purchase of land and other real property
- (d) Compensation
- (e) Other indirect items

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(1) With regard



(1) With regard to disbursement in each Category, the amount disbursed shall be calculated from the eligible expenditure by multiplying with the percentage of respective Category stipulated in this Section, unless otherwise agreed upon between the Fund and the Borrower.

(2) Category (D) indicates the estimated cost of interest on the principal disbursed and outstanding during construction. The Fund shall be entitled to disburse out of the proceeds of the Loan and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of interest during the construction period of the Project. The final date of such disbursement as decided above shall be determined by the Fund.

## Section 2. Reallocation upon change in cost estimates

(1) If the estimated cost of items included in any of Category (A) through (D) shall decrease, the amount then allocated to, and no longer required for, such Category will be reallocated by the Fund to Category (E).

(2) If the estimated cost of items included in any of Category (A) through (D) shall increase, the amount equal to the portion, if any, of such increase to be financed out of the proceeds of the Loan, will be allocated by the Fund, at the request of the Borrower, to such Category from Category (E), subject, however, to the Fund's consideration on the necessities for contingencies in respect of the cost of items in the other Categories.

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Schedule 3

Amortization Schedule

1. Repayment of Principal (I)

Due Date	Amount (in Japanese Yen)
On September 20, 2003	814,252,000
On each March 20 and September 20 beginning March 20, 2004 through September 20, 2021	814,243,000

2. Repayment of Principal (II)

Due Date	Amount (in Japanese Yen)
On September 20, 2003	77,672,000
On each March 20 and September 20 beginning March 20, 2004 through September 20, 2021	77,648,000

3. Total of Repayment (I) + (II)

Due Date	Amount (in Japanese Yen)
On September 20, 2003	891,924,000
On each March 20 and September 20 beginning March 20, 2004 through September 20, 2021	891,891,000

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Schedule 4

Procurement Procedure

Section 1. Guidelines to be used for procurement under the Loan

- (1) Procurement of all goods and services, except consulting services to be financed out of the proceeds of the Loan shall be in accordance with Guidelines for Procurement under OECF Loans dated November, 1987 (hereinafter referred to as "the Procurement Guidelines").
- (2) Employment of consultants to be financed out of the proceeds of the Loan shall be in accordance with Guidelines for the Employment of Consultants by OECF dated November, 1987 (hereinafter referred to as "the Consultant Guidelines").

Section 2. Eligible Source Countries

The Eligible Source Countries for procurement of all goods and services, including consulting services, to be financed out of the proceeds of the Loan are all countries and areas.

Section 3. The Fund's review of decisions relating to procurement of goods and services (except consulting services)

The following procedure shall, in accordance with Section 4.02. of the General Terms and Conditions, be subject to the Fund's review and concurrence.

- (1) With regard to any contract the value of which is estimated to be not less than three hundred million Japanese Yen (¥300,000,000.):
  - a) If the Borrower wishes to adopt procurement procedures other than International Competitive Bidding, the Borrower shall submit to the Fund a Request for Review of Procurement Method(s) (as per Form No.1 attached hereto). The Fund shall inform the Borrower of its concurrence by means of a Notice regarding Procurement Method(s).

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(b) Before

- b) Before advertisement and/or notification of prequalification, the Borrower shall submit to the Fund, for its review and concurrence, the Prequalification Documents, together with a Request for Review of Prequalification Documents. When the Fund has no objection to the said documents, the Fund shall inform the Borrower accordingly by means of a Notice regarding Prequalification Documents. Any further modification by the Borrower of the said documents requires prior concurrence by the Fund.
- c) When the prequalified firms have been selected, the Borrower shall submit to the Fund, for its review and concurrence, a list of those firms and a report on the selection process with the reason for the choice made, attaching all relevant documents, together with a Request for Review of Result of Prequalification. When the Fund has no objection to the said documents, the Fund shall inform the Borrower accordingly by means of a Notice regarding Result of Prequalification.
- d) Before inviting bids, the Borrower shall submit to the Fund, for its review and concurrence, the notices and instructions to bidders, bid form, proposed draft contract, specifications, drawings and all other documents related to the bidding, together with a Request for Review of Tender Documents. When the Fund has no objection to the said documents, the Fund shall inform the Borrower accordingly by means of a Notice regarding Tender Documents. When the Borrower wishes to make any subsequent alteration to any of the said documents, the Fund's concurrence is to be obtained before the documents are sent to prospective bidders.
- e) Before sending a notice of award to the successful bidder, the Borrower shall submit to the Fund, for its review and concurrence, the analysis of bids and proposal for award, together with a Request for Review of Analysis of Bids and Proposal for Award. When the Fund has no objection to the said documents, the Fund shall inform the Borrower accordingly by means of a Notice regarding Analysis of Bids and Proposal for Award.
- f) When, as provided in Section 5.10. of the Procurement Guidelines, the Borrower wishes to reject all bids or to negotiate with one or two of the lowest bidders with a view to obtaining a satisfactory contract, the Borrower shall inform the Fund of its reasons, requesting the Fund's prior review and concurrence. When the Fund has no objection, it shall inform the Borrower of its concurrence. In the case of re-bidding, all subsequent procedures shall be made substantially in accordance with the above-mentioned sub-paragraphs (a) through (e).

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(g) Promotiv

1) Promptly after executing a contract, the Borrower shall submit to the Fund, for its review and concurrence, a duly certified copy of the contract, together with a Request for Review of Contract (as per Form No.2 attached hereto). When the Fund determines the contract to be consistent with the Loan Agreement, the Fund shall inform the Borrower accordingly by means of a Notice regarding Contract.

2) Any modification or cancellation of a contract reviewed by the Fund shall require the prior written concurrence of the Fund thereto, provided, however, that any change which does not constitute an important modification of the contract and which does not affect the contract price shall not require such concurrence of the Fund.

3) With regard to any contract the value of which is estimated to be less than three hundred million Japanese Yen (¥300,000,000.):

(a) The Borrower shall, promptly after executing a contract, submit to the Fund, for the Fund's review and concurrence, a duly certified copy of the contract, together with a Request for Review of Contract (as per Form No.2 attached hereto). When the Fund determines the contract to be consistent with the Loan Agreement, the Fund shall inform the Borrower accordingly by means of a Notice regarding Contract. The Borrower shall submit to the Fund, for the Fund's reference, such other documents related to the contract as the Fund shall reasonably request.

(b) Any modification or cancellation of a contract reviewed by the Fund shall require the prior written concurrence of the Fund thereto, provided, however, that any change which does not constitute an important modification of the contract and which does not affect the contract price shall not require such concurrence of the Fund.

#### Section 4 The Fund's review of decisions relating to employment of consultants

(1) With reference to Section 4.02 of the General Terms and Conditions, the following procedures shall be subject to the Fund's review and concurrence.

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(a) Before

- (a) Before proposals are invited from consultants, the Borrower shall submit to the Fund, for the Fund's review and concurrence, the Terms of Reference, Short List of Consultants and Letter of Invitation, together with a Request for Review of these documents. When the Fund has no objection to the said documents, the Fund shall inform the Borrower accordingly by means of a Notice regarding the Terms of Reference, Short List of Consultants and Letter of Invitation. Any further modification by the Borrower of the said documents requires the prior concurrence of the Fund.
- (b) Before inviting the highest-ranked consultant to enter on contract negotiations, the Borrower shall send to the Fund, for the Fund's review and concurrence, the results of its evaluation of proposals received, together with a Request for Review of Evaluation Report on Consultants' Proposals. When the Fund has no objection to the said documents, the Fund shall inform the Borrower accordingly by means of a Notice regarding Evaluation Report on Consultants' Proposals.
- (c) When, as provided for in Section 3.07 (2) of the Consultant Guidelines, the Borrower wishes to terminate the contract negotiations with the highest-ranked consultant and invite the second-ranked consultant to enter on negotiations, the Borrower shall, in advance, inform the Fund of this fact, stating its reasons for the Fund's reference.
- (d) If the Borrower wishes, as provided for in Section 3.01 (2) of the Consultant Guidelines, to employ a specific consultant, the Borrower shall inform the Fund in writing of its reasons, for the Fund's review and concurrence, together with the Letter of Invitation and Terms of Reference. After obtaining the concurrence of the Fund, the Borrower may send the Letter of Invitation and Terms of Reference to the Consultant concerned. If the Borrower finds the proposal of the consultant to be satisfactory, it may then negotiate the conditions (including the financial terms) of the contract.
- (e) Promptly after executing a contract, the Borrower shall submit to the Fund, for the Fund's review and concurrence, a duly certified copy of the contract, together with a Request for Review of Contract (as per Form No.3 attached hereto). When the Fund determines the contract to be consistent with the Loan Agreement, the Fund shall inform the Borrower accordingly by means of a Notice regarding Contract.
- (f) Any modification or cancellation of a contract reviewed by the Fund shall require the prior written concurrence of the Fund thereto, provided, however, that any change which does not constitute an important modification of the contract and which does not affect the contract price shall not require such concurrence of the Fund.

Date:

Ref. No.

THE OVERSEAS ECONOMIC COOPERATION FUND  
Tokyo, Japan

Attention: Managing Director, Operations Department III

Gentlemen:

REQUEST FOR REVIEW OF PROCUREMENT METHOD(S)

Reference: Loan Agreement No. PE-P14, dated September 24, 1996 for  
Yuncan (Paucartambo II) Hydroelectric Power Plant Construction Project.

In accordance with the relevant provisions of the Loan Agreement under reference, we hereby submit for your review the Procurement Method(s) as per attached sheet.

We should be grateful if you would notify us of your concurrence.

Very truly yours

For:

(Name of the Borrower)

By:

(Authorized Signature)

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Attached Sheet No.

Name of the Project

Method(s) of Procurement

- Limited International Bidding
- International Shopping
- Direct Contracting
- Others ( )

Reasons for Selection of Method(s) of Procurement in detail

(For example: technical considerations, economic factors, experiences and capabilities)

Name and Nationality of the Supplier

(in the cases of Limited International Bidding and Direct Contracting)

Estimated Contract Amount

Foreign Currency

Local Currency

Main Items Covered by the Contract

Type of Contract

- Turnkey Contract
- Procurement of Goods/Equipment/Materials
- Civil Works Contract
- Procurement of Services
- Others

Schedule

- i) Date of Execution of Contract
- ii) Shipping Date and/or Date for Commencement of Works/Services
- iii) Completion Date (for delivery or construction)

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Date:

Ref. No.

THE OVERSEAS ECONOMIC COOPERATION FUND  
Tokyo, Japan

Attention: Managing Director, Operations Department III

Gentlemen:

REQUEST FOR REVIEW OF CONTRACT

In accordance with the relevant provisions of the Loan Agreement No. PE-P14, dated September 24, 1996, we hereby submit for your review a certified copy of the Contract attached hereto. The details of the Contract are as follows:

1. Number and Date of Contract:
2. Name and Nationality of the Supplier:
3. Name of the Purchaser:
4. Contract Price:
5. Amount of Financing Applied for:  
(representing % of eligible expenditure)
6. Description and origin of the goods:

We should be grateful if you would notify us of your concurrence to the Contract by sending us a Notice regarding Contract.

Very truly yours

For:

(Name of the Borrower)

By:

(Authorized Signature)

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Date:

Ref No.

THE OVERSEAS ECONOMIC COOPERATION FUND

Tokyo, Japan

Attention: Managing Director, Operations Department III

Gentlemen:

REQUEST FOR REVIEW OF CONTRACT

In accordance with the relevant provisions of the Loan Agreement No. PE-P14, dated September 24, 1996, we hereby submit for your review a certified copy of the Contract attached hereto. The details of the Contract are as follows:

1. Number and Date of Contract:
2. Name and Nationality of the Consultant:
3. Name of the Purchaser:
4. Contract Price:
5. Amount of Financing Applied for:  
(representing % of eligible expenditure)

We should be grateful if you would notify us of your concurrence by sending us a Notice regarding Contract.

Very truly yours,

For:

(Name of the Borrower)

By:

(Authorized Signature)

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Schedule 5

Commitment Procedure

COMMITMENT PROCEDURE dated July, 1988 shall mutatis mutandis be applied for disbursement of the proceeds of the Loan for the purchase of goods and services from the Suppliers of the Eligible Source Countries other than the Republic of Peru with respect to the portion of Contract stated in the currency other than that of the Republic of Peru, with the following supplemental stipulations:

1. With regard to Section 1.(2) of COMMITMENT PROCEDURE, the Japanese Bank shall be The Bank of Tokyo-Mitsubishi, Ltd., Tokyo, Japan.
2. With regard to Section 1.(2) of COMMITMENT PROCEDURE, the Issuing Bank shall be The Bank of Tokyo-Mitsubishi, Ltd., Tokyo, Japan.
3. (1) The Borrower shall pay to the Fund in Japanese Yen an amount equal to one-tenth percent (0.1%) of the amount of the Letter of Commitment as the service charge thereof on the issuing date of the relative Letter of Commitment. The Fund shall issue to the Japanese Bank the Letter of Commitment upon receipt of the service charge from the Borrower.  
  
(2) An amount equal to such service charge shall be financed out of the proceeds of the Loan, and the Fund shall immediately pay such amount to itself as the service charge on the issuing date of the Letter of Commitment. Such disbursement out of the proceeds of the Loan shall constitute a valid and binding obligation upon the Borrower under the terms and conditions of the Loan Agreement.

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c) For payments for consultants' services-

- i) the claim put in by the consultants indicating, in sufficient details, the services rendered, period covered, and amount payable to them;
- ii) cancelled bank check, demand draft or similar document evidencing the date and amount of payment made to the consultants; a simple receipts from the consultants showing the date and amount of payment would also suffice.

d) For payments for other services rendered-

- i) the bill, claim or invoice specifying the nature of services rendered and amounts charged therefore;
- ii) cancelled bank check, demand draft or similar document evidencing the date and amount of payment made; a simple receipt showing the date and amount of payment would also suffice. If such services related to importation of goods (e.g. freight, insurance payments) adequate references shall be given to enable the Fund to relate each of these items to the specific goods the cost of which has been or is to be financed by the Fund.

e) For payments under civil works contracts-

- i) the claim, bill or invoice of the contractor showing, in sufficient detail, the work performed by the contractor and amount claimed therefor;
- ii) a certificate to the effect that the work performed by the contractor is satisfactory and in accordance with the terms of the relevant contract; such certificate shall be signed by the chief engineering officer of the Borrower assigned to the Project.
- iii) cancelled bank check or similar document evidencing the date and amount of payment made to the contractor; a simple receipt from the contractor showing the date and amount of payment would also suffice.

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4. (1) The Borrower shall pay to the Fund in Japanese Yen an amount equal to one tenth percent (0.1%) of the amount of the disbursement for the Borrower as the service charge thereof on the date of such disbursement. The Fund's disbursement under this procedure shall be made upon receipt of the service charge from the Borrower.
  - (2) An amount equal to such service charge shall be financed out of the proceeds of the Loan, and the Fund shall immediately pay such amount to itself as the service charge on the date of the disbursement for the Borrower. Such disbursement out of the proceeds of the Loan shall constitute a valid and binding obligation upon the Borrower under the terms and conditions of the Loan Agreement.
5. The currency and the conversion rate(s) used in the Request for Reimbursement, as mentioned in 3. of REIMBURSEMENT PROCEDURE, shall be as follows:
    - (1) The amount in the Request for Reimbursement shall be expressed in Japanese Yen or U.S. Dollars.
    - (2) When the amount in the Request for Reimbursement is expressed in U.S. Dollars, such amount shall be converted at the T/T buying rate quoted by Banco de la Nacion on the day immediately preceding the day on which the Request for Reimbursement is made.
  6. Form OECF-SSP attached hereto shall be substituted for Form OECF-SSP attached to the REIMBURSEMENT PROCEDURE.

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Summary Sheet of Payment

(Form OECF-SSP)

Date:  
Serial No.

2 Purchaser	3 Supplier	4 * Nationality of Supplier	5 ** Description	6 *** Category	7 Origin	8 Contract Amount	9 Date of Payment	10 **** Amount of Payment	11 ***** Nature of Payment	12 ***** Method Procurement	13 **** Amount Applied for Financing	14 ***** Disbursement Ratio

The undersigned certifies that the Supplier(s) and goods and/or services stated above are eligible under the Loan Agreement.

Note for 4. Nationality of Supplier: Country in which the Supplier is incorporated and registered.

Note for 5. Description of goods and/or services: In the case of the Commodity Loan, use SITC Code (Rev.2) No.

Note for 6. Category: Indicate the Category in Section 1., Schedule 2 of the Loan Agreement.

Note for 10. Amount of Payment: If not in Japanese Yen, state both the amount in the currency in which the  
& 13. payment was made to the Supplier, and its converted amount(s) calculated in accordance with 3. of  
REIMBURSEMENT PROCEDURE, as well as the conversion rate(s).

\*\*\* Note for 11. Nature of Payment: A down payment, an installment payment or a final payment, etc.

\*\*\*\* Note for 12. Method of Procurement: State reasons for choice where other than international competitive bidding.

\*\*\*\*\* Note for 14. Disbursement Ratio: Ratio of Amount Applied for Financing (column 13.) against Amount of Payment (column 10.) in the Currency in which the payment was made to the Supplier.

FOR The Borrower

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By: \_\_\_\_\_  
(Authorized Signature)



Schedule 7

Transfer Procedure

Transfer Procedure set forth herein shall be applied for disbursement of the proceeds of the Loan for the payment to be made to the Suppliers of the Republic of Peru, and to the Suppliers of the Eligible Source Countries other than the Republic of Peru with respect to the portion of contract stated in the currency of the Republic of Peru.

The authorized foreign exchange bank in Tokyo wherever mentioned in this Schedule, shall be The Bank of Tokyo-Mitsubishi, Ltd., Tokyo, Japan (hereinafter referred to as "the Paying Bank").

I. Request for Disbursement

(1) When the Borrower receives Claims for Payment from the Suppliers through the Executing Agency (as per Form CFP attached hereto), the Borrower shall request the Fund to make disbursement for a sum not exceeding the amount actually claimed by the Suppliers by sending to the Fund a Request for Disbursement in accordance with the Form TRF attached hereto. Each request shall be accompanied by the following documents:

(a) Summary Sheet of Payments as per Form TRF-a attached hereto

(b) A copy of the Transfer Instructions sent to the Paying Bank, as per Form OECF-TI

(c) Claims for Payment evidencing the amount to be paid to the Suppliers

(d) The following supporting documents evidencing each payment and its usage;

i) For payments to suppliers against delivery/shipment of goods and/or services - bill of lading or similar document evidencing shipment/delivery of the goods and/or services listed on the invoice;

ii) For payments for consultants' services - the claim put in by the consultants indicating, in sufficient details, the services rendered, period covered, and amount payable to them;

(iii) For payments



(iii) For payments under civil works contracts -

- the claim, bill or invoice of the contractor showing, in sufficient detail, work performed by the contractor and amount claimed therefore;
- a certificate to the effect that the work performed by the contractor is satisfactory and in accordance with the terms of the relevant contract; such certificate shall be signed by the chief engineering or project officer of the Executing Agency assigned to the Project.

(2) The amount stated in the Request for Disbursement shall be in Japanese Yen or United States Dollars, converted at the T/T buying rate quoted by the Banco de la Nacion on the day immediately preceding the day on which the Request for Disbursement is made. The amount to be paid in the currency and the exchange rate used for conversion to Japanese Yen or United States Dollars shall be described in the Summary Sheet of Payments as per Form TRF-a together with the evidence of such conversion rate.

## 2. Disbursement

(1) When the Fund finds the Request for Disbursement in order and in conformity with the provisions of the Loan Agreement, the Fund, upon receipt of an amount equal to one-tenth percent (0.1%) of the amount to be disbursed as the service charge from the Borrower, shall make disbursement in Japanese Yen. Disbursement will be made within fifteen (15) business days from the date of receipt of the Request by paying into the non-resident Yen Account of the Banco de la Nacion, which shall be opened in advance with the Paying Bank, in accordance with the relevant laws and regulations of Japan.

(2) An amount equal to such service charge shall be financed out of the proceeds of the Loan, and the Fund shall immediately pay such an amount to itself as the service charge on the date of the disbursement for the Borrower. Such disbursement out of the proceeds of the Loan shall constitute a valid and binding obligation upon the Borrower under the terms and conditions of the Loan Agreement.

(3) In case where the amount stated in the Request for Disbursement is in United States Dollars, the amount of disbursement in Japanese Yen shall be calculated at the T/T selling rate quoted by the Paying Bank two business days before the day when the disbursement is made.

### 3. Payment to the Supplier

After receiving cable advice from the Paying Bank, Banco de la Nacion shall immediately credit the local currency equivalent of the disbursed amount into the account of the Supplier's Bank with Banco de la Nacion. The credited amount shall in turn be credited into the corresponding account of the Supplier by the Supplier's Bank.

### 4. Delegation of Authority

- (1) The Borrower hereby designates Banco de la Nacion as its agent for the purposes of taking any action or entering into any agreement required or permitted under this Transfer Procedure.
- (2) Any action taken or agreement entered into by Banco de la Nacion pursuant to the authority conferred on Banco de la Nacion shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.
- (3) The authority conferred on Banco de la Nacion may be revoked or modified by agreement between the Borrower and the Fund.

### 5. Report

The Borrower shall submit to the Fund a copy of the Credit Memo received by the Supplier from its Bank within thirty (30) days after date of disbursement made by the Fund.

### Arrangement

The Borrower shall cause Banco de la Nacion to make a necessary arrangement with the Paying Bank containing the following in accordance with the authorization conferred on Banco de la Nacion set forth in 4. above:

- (1) To open the non-resident Yen Account of Banco de la Nacion on behalf of the Borrower with the Paying Bank
- (2) To let the Paying Bank make cable advice to Banco de la Nacion of the disbursement by the Fund

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(3) The Borrower

(Form TRF)

Request for Disbursement

Date: \_\_\_\_\_  
Loan No. : PE-P14  
App. Serial No.: \_\_\_\_\_

To: THE OVERSEAS ECONOMIC  
COOPERATION FUND  
Tokyo, Japan

Attention: Managing Director, Operations Department III

Gentlemen:

1. Pursuant to the Loan Agreement No. PE-P14, dated September 24, 1996, between THE OVERSEAS ECONOMIC COOPERATION FUND (hereinafter referred to as "the Fund") and of Republic of Peru, the undersigned hereby requests for disbursement under the said Loan Agreement, of the sum of Japanese Yen \_\_\_\_\_ (say \_\_\_\_\_) for the payment of expenditures as described in the Summary Sheet(s) attached hereto.
2. The undersigned has not previously requested for disbursement of any amount from the Loan for the purpose of meeting the expenditures described in the Summary Sheet(s). The undersigned has not obtained nor will obtain funds for such purpose out of the proceeds of any other loan, credit or grant available to the undersigned
3. The undersigned certifies that:
  - a) the expenditures described in the Summary Sheet(s) are made for the purposes specified in the Loan Agreement;
  - b) the goods and services purchased with these expenditures have been procured in accordance with the applicable procurement procedures agreed with the Fund pursuant to the said Loan Agreement and the cost and terms of purchase thereof are reasonable;
  - c) the said goods and services were or will be supplied by the supplier(s) specified in the attached Summary Sheet(s) and were or will be produced in (or, in the case of services, supplied from) the eligible source country (ies) for the Fund's loan.

4. Please disburse the amount herein requested by paying into the non-resident Yen account of Banco de la Nacion with The Bank of Tokyo-Mitsubishi, Ltd., Tokyo.

5. This request consists of \_\_\_\_\_page(s) and signed and numbered Summary Sheet(s).

Very truly yours,

-----  
(Name of the Borrower)

By:

-----  
(Authorized Signature)

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Form: OECF-TI

Transfer Instructions

Date:

Loan Agreement No.: PE-P14

App. Serial No.:

To: The Bank of Tokyo-Mitsubishi, Ltd., Tokyo

Pursuant to the Banking Arrangement between The Bank of Tokyo-Mitsubishi, Ltd., Tokyo, and Banco de la Nacion dated , we hereby request you to transfer the amount disbursed by the Fund against our Request for Disbursement No. dated to the account of the relevant Supplier mentioned in the Claims for Payment No. dated attached to the Request for Disbursement mentioned above.

.....  
(Name and Address of the Borrower)

.....  
(Signature)

encl. Request for Disbursement  
Claims for Payment

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Date:

Ref.No.

Unit:

Summary Sheet of Payment

2

3

4

5

6

7

Description of goods and/or services

Name and address of supplier contractor

Contract Amount

Amount to be Paid in Currency of Contract

Accumulated Amount

Remarks

OECEC Concurred Amount

Amount Applied for OECEC Financing

Amount to be paid in Currency to be Received by Supplier

Accumulated Amount of OECEC Financing Already Paid

Note: 1. The amount applied for OECEC financing is calculated as follows:

(If any disbursement ratio is used for this calculation, please indicate it specifically.)

2. Amount applied for OECEC financing = NS Nuebo Sol(es) equivalent to Japanese Yen/U.S. Dollars  
(Exchange Rate: Nuebo Soles per Japanese Yen/U.S. Dollars)

3. Amount applied for OECEC financing is equivalent to the claimed amount indicated in the attached copy of the Claims for Payment (Form CFP)

4. Exchange Rate of 2 decimal point shall be rounded off. Disregard Japanese Yen below decimal point/U.S.Dollars below cents.

5. Column 7 is to indicate whether the payment is an advance payment, or a down payment, of installment FOR (if so, the number of installment) or the final payment in full settlement.

THE REPUBLIC OF PERU

By: \_\_\_\_\_  
(Authorized Signature)

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Claims for Payment

Date:

Loan No.: PE-P14

To: (Name and Address of the Executing Agency)

We hereby submit Claims for Payment to you for the progress of the work in the following content.

1. Contract No. and date:
2. Notice regarding Contract No. and date (if any):
3. Description of goods and services accomplished:
4. Claimed amount:
5. Accumulated amount already paid:
6. Total amount (4. + 5.):

Please pay the amount claimed in 4. above into our account (account number) with (name and address of the bank in the Eligible Source Country).

(Name of the Supplier)

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By:

(Signature)





**THE OVERSEAS ECONOMIC  
COOPERATION FUND**

*General Terms and Conditions*

*Nov. 1987*

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The Overseas Economic Cooperation Fund

Takebashi Godo Building, 4-1 Ohtemachi  
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First printing Nov. 1987

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# GENERAL TERMS AND CONDITIONS

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## GENERAL TERMS AND CONDITIONS

### Article I

#### Introduction; Inconsistency

##### Section 1.01. Introduction

The purpose of these General Terms and Conditions (hereinafter referred to as "the General Terms and Conditions") is to set forth the terms and conditions generally applicable to loans made by the Fund.

##### Section 1.02. Inconsistency with Loan Agreement

If any provision of the General Terms and Conditions is inconsistent with any provision of the Loan Agreement, of which the General Terms and Conditions constitute an integral part, or with any provision of the Guarantee, if any, such provision of the Loan Agreement or the Guarantee shall govern.

### Article II

#### Definition: Reference to Articles and Sections; Headings

##### Section 2.01. Definitions

The following terms have the following meanings wherever used in the General Terms and Conditions.

- (a) "Fund" means THE OVERSEAS ECONOMIC COOPERATION FUND.
- (b) "Loan Agreement" means the particular loan agreement, as that agreement may from time to time be amended, to which the General Terms and Conditions apply. Loan Agreement includes the General Terms and Conditions as applicable thereto and all schedules and agreements supplemental to the Loan Agreement.
- (c) "Loan" means the loan provided for in the Loan Agreement.
- (d) "Borrower" means the party to the Loan Agreement to which the Loan is made.
- (e) "Guarantee" means a written promise to the Fund, made by an entity in the country of the Borrower other than the Borrower constituting a guarantee for the Loan.
- (f) "Guarantor" means the entity referred to in item (e) above.
- (g) "Project" means the project or program for which the Loan is granted, as described in the Loan Agreement and as the description thereof may from time to time be amended by agreement

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between the Fund and the Borrower.

- (h) "Letter of Commitment" means an undertaking given by the Fund to make disbursement to the issuing bank of a letter of credit for the procurement of goods and services under the Loan.

Section 2. 02. References to Articles and Sections

References in the General Terms and Conditions to Articles or Sections are to Articles or Sections of the General Terms and Conditions.

Section 2. 03. Headings

The headings of Articles and Sections of the General Terms and Conditions are inserted for convenient reference only and are not a part of the General Terms and Conditions.

Article III

Loan; Repayment; Interest; Overdue Charge  
Method of Payment; Currency

Section 3. 01. Amount of Loan

The Amount of the Loan, expressed in Japanese Yen, shall be stipulated in the Loan Agreement. The proceeds of the Loan shall be disbursed by the Fund within the limit of that amount in accordance with the disbursement procedure provided for in Article V.

Section 3. 02. Repayment

(1) The principal of the Loan shall be repayable in accordance with the amortization schedule attached to the Loan Agreement.

(2) When all disbursements to be made under the Loan Agreement have been completed and the cumulative total of such disbursements is less than the full amount of the Loan stipulated therein, the difference between such amount of the Loan and the cumulative total of all disbursements shall be deducted proportionately from all subsequent instalments of repayment of principal, as indicated in the amortization schedule attached to the Loan Agreement, provided, however, that all fractions of ONE THOUSAND Japanese Yen (¥1,000.) of such instalments of principal shall be added to the immediately subsequent instalment of principal.

(3) The Borrower may, upon giving not less than thirty (30) days' notice in writing to the Fund, prepay in whole or in part the principal of the Loan then outstanding together with the interest accrued thereon. Any such prepayment shall be applied to the instalments in inverse order of maturity.

Section 3. 03. Interest

Interest at the rate specified in the Loan Agreement shall be payable semi-annually on the principal disbursed and outstanding. Interest shall accrue from the respective dates on which the proceeds of the Loan are disbursed.

**Section 3.04. Financing of Part of Banking Charges and/or Fees.**

For the purpose of financing part of banking charges and/or fees for disbursement of the proceeds of the Loan as referred to in Section 9.02 (2), the Fund agrees to lend the Borrower up to a cumulative amount of one tenth of one percent (0.1%) of the amount of each Letter of Commitment and/or disbursement effected in accordance with a procedure other than Letter of Commitment.

**Section 3.05. Overdue Charge**

Should repayment of principal or payment of interest or any other charges required under the Loan Agreement be delayed, the interest specified in Section 3.03. shall cease to accrue on such overdue amount of principal on and after the due date and an overdue charge calculated at a rate of three percent (3%) per annum over and above the interest rate specified in the Loan Agreement shall be payable on the overdue amount of principal, interest or other charges for a period from the due date to the day immediately preceding the day of actual payment thereof, both inclusive.

**Section 3.06. Computation of Interest and Overdue Charge**

Interest and overdue charge shall be computed on the basis of a 365-day year.

**Section 3.07. Method of Payment**

The Borrower shall have all payments of principal and of interest and other charges on the Loan credited to the Fund's account with The Bank of Tokyo, Ltd., Uchisaiwai-cho Office, Tokyo, Japan.

**Section 3.08. Currency in which Principal, Interest and Other Charges are Payable**

Repayment of principal and payment of interest and other charges shall be made in Japanese Yen.

**Section 3.09. Notice Given by the Fund**

The Fund may, when it deems it necessary, send the Borrower a Notice concerning Interest and Principal (Form No. 1 attached hereto).

**Article IV**

**Fund's Review and Misprocurement**

**Section 4.01. General**

Goods and services (the term "services" as used in this General Terms and Conditions includes consulting services), to be financed out of the proceeds of the Loan shall be procured in accordance with the guidelines for procurement and the guidelines for the employment of consultants.

**Section 4.02. Fund's Review**

The Fund may review the Borrower's procurement procedures, documents and decisions. The Loan Agreement will specify the extent to which review procedures will apply in respect of goods and services to be financed

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out of the proceeds of the Loan.

**Section 4.03. Misprocurement**

The Fund does not finance expenditures for goods and services which have not been procured in accordance with the agreed procedures and the Fund will cancel that portion of the Loan allocated to goods and services that have been misprocured. The Fund may, in addition, exercise other remedies under the Loan Agreement.

**Article V**

**Disbursement**

**Section 5.01. Disbursement Procedure**

The proceeds of the Loan shall be disbursed by the Fund as the progress of the Project renders it necessary and in accordance with the disbursement procedure.

**Section 5.02. Constitution of Obligation**

A disbursement effected in accordance with the disbursement procedure shall constitute a valid and binding obligation upon the Borrower under the terms of the Loan Agreement with relation to such disbursement as from the date of disbursement.

**Section 5.03. Adequacy of Documents**

All documents or evidence required under the disbursement procedure must be adequate in form and substance to satisfy the Fund that the proceeds of the Loan to be disbursed are to be used solely for the purpose specified in the Loan Agreement.

**Section 5.04. Additional Documents**

The Borrower shall provide the Fund with any additional documents or evidence in support of the documents or evidence mentioned in the preceding Section which the Fund may reasonably request.

**Section 5.05. Notice of Disbursement**

After effecting a disbursement, the Fund shall send the Borrower a Notice of Disbursement (Form No. 2 attached hereto).

**Section 5.06. Notice of Completion of Disbursement**

(1) After effecting the final disbursement under the Loan Agreement, the Fund shall send the Borrower a Notice of Completion of Disbursement (Form No. 3 attached hereto) in duplicate.

When the cumulative total of disbursements is less than the amount of the Loan and no further disbursement is required for the Project, the Borrower shall notify the Fund of the fact in order that the Fund may know that the final disbursement has been made.

(2) The Borrower shall immediately return to the Fund one copy of the Notice of Completion of Disbursement signed by a duly authorized person.

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## Article VI

### Remedies; Failure to Exercise Rights; Non-Exemption; Prohibition of Assignment; Non-Discrimination; Administration

#### Section 6. 01. Remedies of the Fund

When any of the following shall occur and be continuing, the Fund may by notice to the Borrower and the Guarantor, if any, suspend in whole or in part the rights of the Borrower, and/or demand that the Borrower and/or the Guarantor, if any, fully remedy whichever of the following has occurred. If the following shall have continued for a period of thirty (30) days from the date of such notice, the Fund may terminate disbursement and/or may declare all the principal then outstanding, with the interest and any other charges thereon, to be due and payable immediately, and upon such declaration such principal, interest and other charges shall become immediately due and payable:

- (a) Default in repayment of principal and/or payment of interest or any other charges required under the Loan Agreement and/or any other loan agreement between the Fund and the Borrower;
- (b) Default in the performance of any other terms and conditions, covenant or agreement on the part of the Borrower or the Guarantor, if any, under the Loan Agreement or the Guarantee, if any;
- (c) Exceptional circumstances beyond the control of the parties (including war, civil war, earthquake, flood, etc.) which make it improbable, in the opinion of the Fund, that the Borrower or the Guarantor, if any, will be able to perform its obligations under the Loan Agreement or the Guarantee, if any.

#### Section 6. 02. Failure to Exercise Rights

No failure on the part of the Fund to exercise, or delay in exercising, any of its rights under the Loan Agreement or the Guarantee, if any, shall be construed to be a waiver thereof, nor shall any single or partial exercise by the Fund of any of its rights under the Loan Agreement or the Guarantee, if any, impair the Fund's further exercise of such right(s) or of any other right.

#### Section 6. 03. Non-Exemption of the Borrower from Obligations

All claims or disputes in connection with the contract shall be settled among the parties thereto, and no such claims or disputes shall exempt the Borrower from any obligation incurred under the Loan Agreement.

#### Section 6. 04. Prohibition of Assignment

The Borrower shall not assign or transfer any rights or obligations under the Loan Agreement.

#### Section 6. 05. Non-Discrimination

Regarding repayment of principal and payment of interest or any other charges required under the Loan Agreement, the Borrower and the Guarantor, if any, shall undertake not to treat debts to the Fund less favorably than any other debts other than short-term debts.

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Section 6.06. Administration of Loan

(1) The Borrower shall carry out the Project, or cause it to be carried out, with all due diligence and efficiency, and in conformity with sound engineering and financial practices.

(2) The Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used solely for the implementation of the Project under the Loan Agreement.

(3) The Borrower shall keep, or cause to be kept, books, accounts and records adequate to identify goods and services financed out of the proceeds of the Loan, to show the use made thereof in the Project, to record the progress of the Project, and to reflect, in accordance with sound and consistent accounting practice, the operations and financial situation of the Borrower or other beneficiaries of the Loan.

(4) The Borrower shall enable, or take such steps as may be necessary to enable, the Fund's representatives to visit any facilities and construction sites included in the Project and to examine goods and services financed out of the proceeds of the Loan and any plant, installation, site, works, building, property, equipment, books, accounts, records and documents relevant to the performance of the obligations of the Borrower under the Loan Agreement.

(5) The Borrower shall, in the interests of the sound administration of the Loan, furnish the Fund with, or cause to be furnished with, to the Fund all such information, at such times, in such form and in such detail, as the Fund shall reasonably request. Such information may include information with respect to the financial and economic situation in the country of the Borrower and its international balance of payments position.

(6) Should any circumstances arise which prevent, or threaten to prevent, the execution and completion of the Project on schedule, the Borrower shall promptly notify the Fund of such circumstances.

(7) The Borrower shall send, or cause to be sent, to the Fund, promptly upon formulation, details of all plans which would result in any important modification of the Project and these shall be the subject of agreement between the Fund and the Borrower.

(8) Each party to the Loan shall, from time to time, as the other party thereto shall reasonably request, afford the other party all reasonable opportunity for exchange of views between the Fund and the Borrower with regard to any and all matters relating to the Loan.

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## Article VII

### Guarantee for Loan

#### Section 7. 01. Guarantee for Loan

When the Fund requires a guarantee for the Loan, the Borrower shall deliver the Guarantee to the Fund, signed by a Guarantor acceptable to the Fund, immediately after the execution of the Loan Agreement. The Guarantee shall be made substantially in the form given in Form No. 4 attached hereto.

#### Section 7. 02. Additional Guarantee

When the amount of the Loan is to be increased, the Borrower shall deliver to the Fund, an additional Guarantee signed by the Guarantor acceptable to the Fund, immediately after the Fund and the Borrower have agreed upon such increase.

## Article VIII

### Arbitration

#### Section 8. 01. Arbitral Tribunal

All disputes arising from the Loan Agreement or the Guarantee, if any, which cannot be settled amicably between the Fund and the Borrower (together with the Guarantor, if any), shall be decided, finally and exclusively, by an Arbitral Tribunal as hereinafter provided.

#### Section 8. 02. Parties to Arbitration

The parties to such arbitration shall be the Fund on the one hand and the Borrower and the Guarantor, if any, on the other.

#### Section 8. 03. Arbitrators

(1) The Arbitral Tribunal shall consist of three arbitrators appointed as follows:

One arbitrator shall be appointed by the Fund, a second by the Borrower and the Guarantor, if any, (where the Borrower and the Guarantor are unable to reach agreement on the choice of an arbitrator, then by the Guarantor) and a third arbitrator (hereinafter referred to as "the Umpire") shall be appointed by agreement of the parties or, if they are unable to agree, by an appropriate organ for the settlement of international disputes. If either party shall fail to appoint an arbitrator, that arbitrator shall be appointed by the Umpire.

(2) When any arbitrator appointed pursuant to the preceding paragraph shall resign, die or otherwise become unable to act as an arbitrator, a successor shall be appointed without delay in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of the original arbitrator.

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(3) No person who has a personal or direct financial interest in the matter(s) submitted for arbitration shall be appointed as an arbitrator. The Umpire shall settle all disputes which may arise under this paragraph.

(4) The Umpire shall not be a person of the same nationality as either of the parties to arbitration.

(5) Any and all arbitrators appointed in accordance with the provisions hereof shall be bound by the provisions of this Article and shall arbitrate in accordance therewith.

#### Section 8.04. Arbitration Proceedings

(1) Arbitration proceedings shall be conducted in the English language and shall be instituted by the sending of a written request for arbitration by one party to the other. Such request shall contain a statement setting forth the nature of the dispute and the relief sought and/or the solution desired or proposed. Within forty (40) days of the sending of the request, each party shall notify the other of the full name, occupation, address, career and nationality of the arbitrator appointed by it.

(2) If, within sixty (60) days of the sending of such request, the parties have not agreed upon the appointment of the Umpire, the Fund shall request an appropriate organ for the settlement of international disputes to appoint the Umpire, as provided for in Section 8.03., paragraph (1).

(3) The place of meeting of the Arbitral Tribunal shall be determined by agreement between the parties, or, if they are unable to agree, by the Umpire.

Within thirty (30) days of the appointment of the Umpire or after the appointment of an arbitrator by the Umpire as provided for in Section 8.03., paragraph (1), the Umpire shall notify the parties concerned of the place, date and time of the first sitting of the Arbitral Tribunal. The places, dates and times of the second and subsequent sittings of the Arbitral Tribunal shall be fixed by the Arbitral Tribunal.

(4) The Arbitral Tribunal may, at any stage of the arbitration proceedings, request the parties to present such witnesses, documents, etc., as are considered necessary.

The Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. The parties shall, in any case, be afforded an oral hearing in a sitting of the Tribunal.

#### Section 8.05. Arbitral Award

(1) The Arbitral Tribunal shall make an arbitral award (hereinafter referred to as "the Award") within one hundred and twenty (120) days of the date of the first sitting of the Arbitral Tribunal, provided, however, that the Arbitral Tribunal may extend this period if it considers it necessary.

(2) The Award and all other matters requiring decisions by the Arbitral Tribunal shall be decided by majority vote and shall be final and binding upon the parties, and each party shall abide by, and comply with the Award. Any arbitrator who disagrees with the majority may append his views on the Award to the documents issued by the Arbitral Tribunal.

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(3) A copy of the Award documents, signed by all three arbitrators, shall be sent without delay to each party.

(4) The Award shall not be made public without the consent of the parties.

**Section 8.06. Costs of Arbitral Tribunal**

(1) The costs of the Arbitral Tribunal shall consist of the following:

(a) Remuneration of the arbitrators and any other persons whose services may be required in the course of the arbitration proceedings;

(b) Expenditures incurred by the Arbitral Tribunal, including the expenditures incurred in connection with the notice provided for in Section 8.04.;

(c) Any expenses paid by the parties and deemed by the Arbitral Tribunal to be costs of the Arbitral Tribunal.

(2) The amount of the remuneration of an arbitrator other than the Umpire shall be fixed by the party which appoints that arbitrator. The amount of the remuneration of the Umpire shall be fixed by an agreement between both parties, or if they fail to agree, by the Arbitral Tribunal.

(3) The Arbitral Tribunal may, before it commences its activities, collect equal sums from both parties in such amounts as may be considered necessary to cover its costs.

The costs of the Arbitral Tribunal provided for in paragraph (1) above shall finally be borne by one or both parties according to the terms of the Award.

**Section 8.07. Dissolution of Arbitral Tribunal**

The Arbitral Tribunal shall not be considered dissolved until the signed copies of the Award documents provided for in Section 8.05., paragraph (1) shall have been dispatched to the parties and the costs of the Arbitral Tribunal paid in full.

**Section 8.08. Enforcement of Award**

If within thirty (30) days of the sending of the Award documents to the parties, the Award shall not have been complied with, a party may require judgement upon the Award or institute proceedings for enforcement of the Award against the party with obligations to it under the Award in any court of competent jurisdiction. However, no other interference, legal or otherwise, with the enforcement of the Award shall be attempted.

**Article IX**

**Applicable Laws; Taxes and Expenses; Notices  
and Requests; Execution**

**Section 9.01. Applicable Laws**

The validity, interpretation and performance of the Loan Agreement

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and the Guarantee, if any, shall be governed by the laws and regulations of Japan.

**Section 9.02. Taxes and Expenses**

(1) The Borrower and/or other beneficiaries of the Loan shall pay all taxes, charges and other expenses imposed upon the Fund within the country of the Borrower in connection with the Loan and its implementation.

(2) The Borrower shall pay, or cause to be paid, all banking charges and/or fees for disbursement of the proceeds of the Loan, repayment of principal or payment of interest or any other charges on the Loan.

**Section 9.03. Notices and Requests**

Any notice or request required to be given or made or which one or both parties have the right to give or make under the Loan Agreement or the Guarantee, if any, shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall have been delivered by hand, received by mail or dispatched by registered airmail, cable or telex to the party to which it is to be given or made at such party's address specified in the Loan Agreement or at such other address as that party shall have designated by notice to the party giving the notice or making the request.

**Section 9.04. Execution**

The Loan Agreement shall be executed in duplicate in the English language, each copy being considered to be an original.

**Section 9.05. Fractions**

Any fraction of ONE Yen (¥1.00) which may appear in the computation of interest or any other charges under the Loan Agreement shall be disregarded.

**Article X**

**Effectiveness and Termination of Loan Agreement**

**Section 10.01. Evidence of Authority and Specimen Signatures**

(1) The Borrower shall furnish the Fund with satisfactory evidence of authority for the person(s) who will make, sign and deliver documents necessary for the implementation of the Loan Agreement, together with an authenticated specimen signature of each such person.

(2) When any change has been made relevant to the evidence of authority mentioned in the preceding paragraph, the Borrower shall notify the Fund in writing of the fact, providing the Fund with satisfactory new evidence of authority.

(3) When a person(s) has been appointed to replace a person(s) specified in the evidence of authority referred to in paragraph (1) above, the Borrower shall notify the Fund in writing of the fact, providing the Fund with an authenticated specimen signature of the newly appointed person(s).

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Section 10.02. Legal Opinion

(1) The Borrower shall provide the Fund with a Legal Opinion(s), made substantially in the form given in Form No. 5 and where required No. 6 attached hereto and prepared and certified by a person acceptable to the Fund showing:

(a) With regard to the Borrower, that the Loan Agreement has been duly authorized by and executed and delivered on behalf of the Borrower and constitutes a valid and binding obligation upon the Borrower with regard to all its terms and conditions, and that the authorizations and all other procedures necessary for the implementation of the Loan Agreement have been duly effected and completed;

(b) With regard to the Guarantor, if any, that the Guarantee has been duly authorized by and executed and delivered on behalf of the Guarantor and constitutes a valid and binding obligation upon the Guarantor with regard to all its terms and conditions.

(2) After the Loan Agreement becomes effective, the Borrower shall provide the Fund with such additional legal opinion(s) prepared and certified by the person mentioned above, on matters relating to the Loan Agreement and the Guarantee, if any, as the Fund may from time to time request.

Section 10.03. Effective Date

The Loan Agreement shall become effective on the date on which the Fund declares itself satisfied with the evidence of authority and the specimen signatures referred to in Section 10.01., paragraph (1), the Legal Opinion mentioned in Section 10.02., paragraph (1), and the Guarantee, if any.

The Fund shall immediately notify the Borrower in writing of the effective date of the Loan Agreement.

Section 10.04. Termination of Loan Agreement

(1) If the Loan Agreement shall not have become effective within one hundred and twenty (120) days (commencing with the date of signature), the Loan Agreement and the Guarantee, if any, shall terminate, unless the Fund, after consideration of the reasons for the delay, sets a later date for the purpose of this Section. The Fund shall promptly notify the Borrower of such later date.

(2) When the entire amount of the principal of the Loan shall have been repaid and all interest and other charges which shall have accrued on the Loan shall have been paid, the Loan Agreement and the Guarantee, if any, shall forthwith terminate.

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(Form No. 1)

Date:

Ref. No.

\_\_\_\_\_  
\_\_\_\_\_  
(Name and address of Borrower)

Attention:

NOTICE CONCERNING INTEREST AND PRINCIPAL

Loan Agreement No.

Date:

Due Date at Tokyo:

Principal Repayable: \_\_\_\_\_

Interest Payable: \_\_\_\_\_

Total: \_\_\_\_\_

Interest Computation: As per attached sheet.

Note: Please credit the said amount to THE OVERSEAS ECONOMIC CO-OPERATION FUND's account with The Bank of Tokyo, Ltd., Uchi-saiwai-cho Office, Tokyo, Japan by the due date at Tokyo.

\_\_\_\_\_  
(Authorized Signature)

Encl:

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(Form No. 2)

(Name and address of Borrower)

Date:

Ref. No.:

Attention:

Gentlemen:

**NOTICE OF DISBURSEMENT**

We hereby notify you that from \_\_\_\_\_ to \_\_\_\_\_ (as per attachment) we have made disbursements totalling \_\_\_\_\_

Very truly yours,

\_\_\_\_\_

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Date:

Ref. No.:

\_\_\_\_\_

(Name and address of Borrower)

Attention;

Gentlemen:

**NOTICE OF COMPLETION OF DISBURSEMENT**

With reference to Loan Agreement No. \_\_\_\_\_ dated \_\_\_\_\_, we hereby notify you that all disbursements under the said Loan Agreement have been completed. The details of disbursements under the Loan Agreement are as follows:

- 1. Loan Limit (A): ¥ \_\_\_\_\_
- 2. Cumulative Total of Disbursements (B): ¥ \_\_\_\_\_
- 3. Unused Balance (A - B): ¥ \_\_\_\_\_
- 4. Date of the Final Disbursement:
- 5. Date of Completion of Disbursement:

We also wish to notify you that the said Loan Agreement shall be implemented henceforth as follows:

- 1. Amortization Schedule:
- 2. Due Dates of Interest Payments:
  - (1) Due Date of Next Payment:
  - (2) Due Date thereafter:

In confirmation of this Notice, please return to us immediately one copy, signed by a duly authorized person.

Very truly yours,

\_\_\_\_\_  
(Authorized Signature)

(Please do not detach.) .....

Date:

We hereby acknowledge receipt of this Notice and confirm that the Loan Agreement shall be implemented as stated above.

\_\_\_\_\_  
(Name of Borrower)

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(Form No. 4)

Date:

Ref. No.:

THE OVERSEAS ECONOMIC  
COOPERATION FUND

Tokyo, Japan

Attention: Chairman

Gentlemen:

GUARANTEE FOR THE LOAN

In consideration of the Loan of \_\_\_\_\_ Japanese Yen (¥ \_\_\_\_\_) to be extended to (Name of Borrower) (hereinafter referred to as "the Borrower") by THE OVERSEAS ECONOMIC COOPERATION FUND (hereinafter referred to as "the Fund") under Loan Agreement No. \_\_\_\_\_, dated \_\_\_\_\_, between the Borrower and the Fund (hereinafter referred to as "the Loan Agreement"), I, the undersigned, acting for and on behalf of (Name of Guarantor) (hereinafter referred to as "the Guarantor"), hereby affirm:

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the Borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
2. That the Guarantor, furthermore, agrees that:
  - (1) The Guarantor guarantees the due and punctual payment of the principal of and the interest and any other charges on the Loan as provided for in the Loan Agreement;
  - (2) The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the Borrower, any exercise of right or remedy against the Borrower, or any modification or amplification of the provisions of the Loan Agreement (provided that if the principal of the Loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase);

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Date:

(3) So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:

- i) Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and
- ii) Not, without prior consent of the Fund in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities.

3. That the Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply notice concerning principal and interest, and notice of dishonor or non-payment of any such liabilities.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand and affixed my official seal, this \_\_\_ day of \_\_\_\_\_

Very truly yours,

\_\_\_\_\_  
(Name of Guarantor)

\_\_\_\_\_  
(Authorized signature)

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(Form No. 5)

Date:

Ref. No.:

THE OVERSEAS ECONOMIC  
COOPERATION FUND  
Tokyo, Japan

Attention: Chairman

Gentlemen:

LEGAL OPINION ON LOAN AGREEMENT

With respect to the Loan extended by THE OVERSEAS ECONOMIC COOPERATION FUND (hereinafter referred to as "the Fund") to (Name of Borrower) (hereinafter referred to as "the Borrower") in an aggregate amount of the Loan not exceeding \_\_\_\_\_ Japanese Yen (¥ \_\_\_\_\_) as principal in accordance with the terms and conditions of Loan Agreement No. \_\_\_\_\_, dated \_\_\_\_\_, between the Borrower and the Fund and other agreements supplemental thereto (hereinafter referred to as "the Loan Agreement"), I, the undersigned, acting as legal counsel for the Borrower, certify as follows:

have considered and examined, among other things, the following documents:

- (a) The Exchange of Notes between the Government of \_\_\_\_\_ and the Government of Japan, dated \_\_\_\_\_;
- (b) The Loan Agreement;
- (c) Evidence of Authority and Specimen Signatures, dated \_\_\_\_\_, issued by \_\_\_\_\_;
- (d) Other documents;
- (e) All the laws and regulations in the country of the Borrower relevant to the power and authority of the Borrower to make, sign and deliver the Loan Agreement.

Based upon the foregoing, hereby certify as follows:

1. That the Loan Agreement has been made, signed and delivered by (Name and Title of Authorized Person), who has the power and authority to make, sign and deliver under (Laws or Regulations);

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Date:

2. That the Borrower is authorized to borrow foreign currency funds from abroad under (Laws or Regulations) and that the terms and conditions of the Loan Agreement are in compliance with the provisions of (Laws or Regulations);
3. That, therefore, the Loan Agreement has been duly authorized by and made, signed and delivered on behalf of the Borrower and constitutes a valid and binding obligation upon the Borrower with regard to all its terms and conditions; and
4. That the authorization and any other procedures necessary for implementation of the Loan Agreement have been duly effected and completed.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand and affixed my official seal, this        day of

Very truly yours,

---

(Minister of Justice, Attorney-General  
or Other Competent Authority)

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(Form No. 6)

Date:

Ref. No.:

THE OVERSEAS ECONOMIC  
COOPERATION FUND  
Tokyo, Japan

Attention: Chairman

Gentlemen:

LEGAL OPINION ON GUARANTEE

Referring to the Guarantee given by (Name of Guarantor) in respect of the Loan extended by THE OVERSEAS ECONOMIC COOPERATION FUND (hereinafter referred to as "the Fund") to (Name of Borrower) (hereinafter referred to as "the Borrower") in an aggregate amount of the Loan not exceeding \_\_\_\_\_ Japanese Yen (¥\_\_\_\_) as principal in accordance with the terms and conditions of Loan Agreement No. \_\_\_\_, dated \_\_\_\_\_, between the Borrower and the Fund and other agreements supplemental thereto (hereinafter referred to as "the Loan Agreement"), I, the undersigned, acting as legal counsel for (Name of Guarantor) (hereinafter referred to as "the Guarantor"), certify as follows:

I have considered and examined, among other things, the following documents:

- (a) The Exchange of Notes between the Government of \_\_\_\_\_ and the Government of Japan, dated \_\_\_\_\_.
- (b) The Loan Agreement;
- (c) The Guarantee, dated \_\_\_\_\_ (hereinafter referred to as "the Guarantee"); and
- (d) All the laws and regulations in the country of the Borrower relevant to the power and authority of the Guarantor to make, sign and deliver the Guarantee.

Based upon the foregoing, I hereby certify as follows:

1. That the Guarantor has the full power and authority to guarantee the Loan made by the Fund to the Borrower in accordance with the terms and conditions of the Loan Agreement under (Laws or Regulations);

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Date:

2. That the Guarantee was made and signed on (Date), by (Name and Title), who is authorized to make and sign it for and on behalf of the Guarantor under (Laws or Regulations);
3. That, therefore, the Guarantee has been duly authorized by and made, signed and delivered on behalf of the Guarantor and constitutes a valid and binding obligation upon the Guarantor with regard to all its terms and conditions; and
4. That neither legislation nor any other procedure is required for the effectiveness of the Guarantee.

IN WITNESS WHEREOF, I, the undersigned, have hereunto set my hand and affixed my official seal, this \_\_\_\_ day of \_\_\_\_\_

Very truly yours,

---

(Minister of Justice, Attorney-General  
or Other Competent Authority)

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*Guidelines for Procurement  
under OECF Loans*



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Nov. 1987

THE OVERSEAS ECONOMIC COOPERATION FUND

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Part I

GENERAL

Section 1.01. Introduction

(a) These Guidelines set forth the general rules to be followed by Borrowers of THE OVERSEAS ECONOMIC COOPERATION FUND (hereinafter referred to as "the Fund") in carrying out the procurement of goods and services for a development project which the Fund finances, in whole or in part, by a loan. (The term "the Borrower" as used in these Guidelines also refers to the Executing Agency of the project and the term "services" as used in these Guidelines excludes consulting services.)

(b) The proceeds of the Fund's loans are required to be used with due attention to considerations of economy, efficiency and non-discrimination among those eligible to bid for procurement contracts.

(c) How these Guidelines are to apply to a particular project financed by the Fund will be stipulated in the Loan Agreement between the Fund and the Borrower.

(d) These Guidelines are concerned only with the relationship between the Fund and the Borrower, who has responsibility for the procurement of goods and services. The rights and obligations of the Borrower vis-à-vis bidders for goods and services to be furnished for the project will be governed by the bidding documents issued by the Borrower and not by these Guidelines.

Section 1.02. International Competitive Bidding (ICB)

1

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The Fund considers that in most cases International Competitive Bidding (ICB) is the best method for achieving the economical and efficient procurement of the goods and services required for projects. The Fund, therefore, normally requires Borrowers to obtain goods and services through ICB in accordance with the procedures described in Part II of these Guidelines.

#### Section 1.03. Procedures Other than International Competitive Bidding (ICB)

(a) There may be special circumstances in which ICB may not be appropriate, and the Fund may consider alternative procedures acceptable in cases of the following:

- (i) Where the Borrower has adequate reasons for wishing to maintain reasonable standardization of its equipment or spare parts in the interests of compatibility with existing equipment.
- (ii) Where the Borrower has adequate reasons for wishing to maintain continuity of services provided under an existing contract awarded in accordance with procedures acceptable to the Fund.
- (iii) Where the number of qualified suppliers or contractors is limited.
- (iv) Where the amount involved in the procurement is so small that foreign firms clearly would not be interested, or that the advantages of ICB would be outweighed by the administrative burden involved.
- (v) Where, in addition to cases (i), (ii), (iii) and (iv) above, the Fund deems it inappropriate to follow ICB procedures, e.g. in the case of emergency procurement.

(b) In the above-mentioned cases the following procurement formulae, may, as appropriate, be applied in such a manner as to comply with the ICB procedures to the fullest possible extent:

- (i) Limited International Bidding (L.I.B), which is essentially international competitive bidding by direct invitation without open advertisement.

(ii) International Shopping, which is a procurement method based on comparing price quotations obtained from several (usually at least three) foreign and/or local suppliers to ensure competitive prices.

(iii) Direct Contracting.

(c) These Procurement Guidelines will not apply in the case of procurement of goods and services which are to be financed out of the proceeds of the Loan allocated to the local currency portion.

Procurement of such goods and services should, however, be effected with due attention to economy and efficiency. The Fund deems it appropriate that such procurement be effected through Local Competitive Bidding among suppliers of the country of the Borrower.

#### Section 1.04. Eligibility

Goods eligible for financing under the Loan are those produced in the eligible source countries. However, even if goods contain materials imported from a country (countries) other than the eligible source countries, such goods may be eligible for financing, if the imported portion is less than 50 percent of the price per unit of such products in accordance with the following formulae:

- (i) When a supplier of the Borrower's country is awarded the contract concerned,

$$\frac{\text{Imported CIF Price} + \text{Import Duty}}{\text{Supplier's Ex-Factory Price}} \times 100;$$

- (ii) When a supplier of the eligible source countries other than the Borrower's country is awarded the contract concerned,

$$\frac{\text{Imported CIF Price} + \text{Import Duty}}{\text{Supplier's FOB Price}} \times 100.$$

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not be so high as to discourage qualified bidders. Guidelines on the principal components of the bidding documents are given in the following paragraphs.

#### Section 4.02. References to the Fund

Bidding documents should normally refer to the Fund using the following language:

"..... (name of borrower) ..... has received (or where appropriate 'has applied for') a loan from THE OVERSEAS ECONOMIC CO-OPERATION FUND in the amount of ¥\_\_\_\_\_ toward the cost of (name of project)".

#### Section 4.03. Bid Bonds or Guarantees

Bid bonds or bidding guarantees will usually be required, but they should not be set so high as to discourage suitable bidders. Bid bonds or guarantees should be released to unsuccessful bidders as soon as possible after the bids have been opened.

#### Section 4.04. Conditions of Contract

The conditions of contract should clearly define the rights and obligations of the Borrower and the supplier, and the powers and authority of the engineer, if one is employed by the Borrower, in the administration of the contract and any amendments thereto. In addition to customary general conditions of contract, some of which are referred to in these Guidelines, special conditions appropriate to the nature and location of the project should be included.

#### Section 4.05. Clarity of Specifications

Specifications should set forth as clearly and precisely as possible the work to be accomplished, the goods and services to be supplied and the place of delivery or installation. Drawings should be consistent with the text of the specifications. Where they are not, the text shall govern. The specifications should identify the main factors or criteria to be taken into account in evaluating and comparing bids. Any additional information, clarification, correction of errors or alteration of specifications should be sent promptly to all those who requested the original bidding documents. Invita-

tions to bid should specify the eligible source countries and provisions governing permissible import content from non-eligible source countries (as stated in Section 1.04.). The specifications should be so worded as to permit and encourage the widest possible competition.

#### Section 4.06. Standards

If particular national or other standards with which equipment or materials must comply are cited, the bidding documents should state that equipment or materials meeting the Japan Industrial Standards or other internationally accepted standards which ensure quality equivalent to or higher than the standards specified will also be accepted.

#### Section 4.07. Use of Brand Names

Specifications should be based on performance capability and should only specify brand names, catalogue numbers, or products of a specific manufacturer if specific spare parts are required or it has been determined that a degree of standardization is necessary in order to maintain certain essential features. In the latter case, the specifications should permit offers of alternative goods which have similar characteristics and provide performance and quality at least equal to those specified.

#### Section 4.08. Expenditures under Contracts

As the use of the Fund's loan is limited to financing expenditure for goods and services from eligible source countries (including permissible import content from non-eligible source countries), the bidding documents should require the supplier to limit his expenditures under the contract accordingly and to identify expenditures related to non-eligible source countries in his statements or invoices.

#### Section 4.09. Currency of Bids

The Fund's loan is denominated in Japanese Yen and the bid price should normally be stated in Japanese Yen, provided, however, that any portion of the bid price which the bidder expects to spend in the Borrower's country should be stated in the Borrower's currency.

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#### Section 4.10. Currency Conversion for Bid Comparison

The bid price is the sum of all payments to be made to the bidder, in whichever currency. For the purpose of comparing prices, all bid prices should be converted to a single currency selected by the Borrower and stated in the bidding documents. The Borrower should effect this conversion by using the exchange (selling) rates for those currencies quoted by an official source (such as the Central Bank) for similar transactions:

- (a) on a date selected in advance and specified in the bidding documents, provided that such date should not be earlier than thirty days prior to the date specified for the opening of bids nor later than the original date prescribed in the bidding documents for the expiry of the period of bid validity; or
- (b) on the date of the decision to award the contract or on the original date prescribed in the bidding documents for the expiry of the period of bid validity, whichever is the earlier.

One of the above options should be selected by the Borrower and clearly stated in the bidding documents.

#### Section 4.11. Contract Price

The contract price should normally be stated in Japanese Yen, provided, however, that any portion of the contract price which the contractor will spend in the Borrower's country should be stated in the Borrower's currency.

#### Section 4.12. Price Adjustment Clauses

Bidding documents should state clearly whether firm prices are required or escalation of bid prices is acceptable. In appropriate cases, provision should be made for adjustment (upwards or downwards) of the contract price, should changes occur in the prices of major cost components of the contract, such as labor or important materials. Specific formulae for price adjustment should be clearly stated in the bidding documents in order that the same provisions may apply to all bids. A

ceiling on price adjustment should be included in contracts for the supply of goods, but it is not usual to include such a ceiling in contracts for civil works. There should normally be no provision for goods to be delivered within one year.

#### Section 4.13. Advance Payment

The percentage of the total payment to be made in advance upon effectuation of the contract for mobilization and similar expenses should be reasonable and specified in the bidding documents. Other advances, for example, for materials delivered to the site for use in works, should also be clearly defined in the bidding documents. The bidding documents should specify the arrangements for any security required for advance payments.

#### Section 4.14. Guarantees, Performance Bonds and Retention Money

Bidding documents for civil works should require some form of security to guarantee that the work will be continued until it is completed. This security can be provided either by a bank guarantee or by a performance bond, the amount of which will vary with the type and size of the work, but should be sufficient to protect the Borrower in the case of default by the contractor. Its life should extend sufficiently beyond completion of the contract to cover a reasonable warranty period. The amount of the guarantee or bond required should be stated in the bidding documents. In contracts for the supply of goods it is usually preferable to have a percentage of the total payment held as retention money to guarantee performance than to have a bank guarantee or bond. The percentage of the total payment to be held as retention money and the conditions for its ultimate payment should be stipulated in the bidding documents. If, however, a bank guarantee or bond is preferred it should be reasonable in amount.

#### Section 4.15. Insurance

The bidding documents should state precisely the types of insurance to be obtained by the successful bidder.

#### Section 4.16. Liquidated Damage and Bonus Clauses

Liquidated damage clauses should be included in the bidding documents when delays in completion or delivery will result in extra cost, loss of revenues or loss of other benefits to the Borrower. Provision may also be made for a bonus to be paid to contractors for completion of civil works contracts by or in advance of times specified in the contract, when such earlier completion will be of benefit to the Borrower.

#### Section 4.17. Force Majeure

The conditions of contract included in the bidding documents should, when appropriate, contain clauses stipulating that failure on the part of the parties to perform their obligations under the contract should not be considered a default under the contract if such failure is the result of force majeure as defined in the conditions of contract.

#### Section 4.18. Language

Bidding documents should be prepared in English. If another language is used in the bidding documents, a full English text should be incorporated in those documents and it shall be specified which is governing.

#### Section 4.19. Settlement of Disputes

Provisions dealing with the settlement of disputes should be included in the conditions of contract. It is advisable that the provision be based on the "Rules of Conciliation and Arbitration" prepared by the International Chamber of Commerce.

### D. Opening of Bids, Evaluation and Award of Contract

#### Section 5.01. Time Interval between Invitation and Submission of Bids

The time allowed for preparation and submission of bids should be determined with due consideration of the particular circumstances of the project and the size and complexity of the contract. Generally, not less than 45 days should be allowed for international bidding. Where large civil works or complex items of equipment are involved, generally not less than 90 days should be allowed

to enable prospective bidders to conduct investigations at the site before submitting their bids.

#### Section 5.02. Procedures relating to Opening of Bids

The date, hour and place for latest receipt of bids and for the opening of bids should be announced in the invitations to bid and all bids should be opened publicly at the stipulated time. Bids received after this time should be returned unopened. The name of the bidder and total amount of each bid and of any alternative bids if they have been requested or permitted should be read aloud and recorded.

#### Section 5.03. Clarification or Alteration of Bids

Except as otherwise provided in Section 5.10 of these Guidelines, no bidder should be requested or permitted to alter his bid after the bids have been opened. Only clarifications not changing the substance of the bid may be accepted. The Borrower may ask any bidder for a clarification of his bid, but should not ask any bidder to change the substance or price of his bid.

#### Section 5.04. Process to be Confidential

Except as may be required by law, no information relating to the examination, clarification and evaluation of bids and recommendations concerning awards should be communicated after the public opening of bids to any persons not officially concerned with this process until a contract has been awarded to a bidder.

#### Section 5.05. Examination of Bids

Following the opening of bids, it should be ascertained whether material errors in computation have been made in the bids, whether the bids are substantially responsive to the bidding documents, whether the required securities have been provided, whether documents have been properly signed and whether the bids are otherwise generally in order. If a bid does not substantially conform to the specifications, or contains inadmissible reservations or is otherwise not substantially responsive to the bidding documents, it should be rejected. A technical analysis should then be made



to evaluate each responsive bid and to enable bids to be compared.

#### Section 5.06. Evaluation and Comparison of Bids

(a) Bid evaluation must be consistent with the terms and conditions set forth in the bidding documents.

The bidding documents should specify, in addition to provisions for adjustment of a bid price to correct any errors in computation, the relevant factors to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. Factors which may be taken into consideration include, inter alia, the cost of inland transport to the project site, the payment schedule, the time of completion of construction or delivery, the operating costs, the efficiency and compatibility of the equipment, the availability of service and spare parts, the reliability of the construction methods proposed, and minor deviations, if any. To the extent practicable, these factors should be expressed in monetary terms according to criteria specified in the bidding documents. Provision for price escalation adjustment included in a bid should not be taken into consideration.

(b) For the purposes of evaluation and comparison of bids for the supply of goods to be procured on the basis of international bidding:

- (i) Bidders will be required to state in their bids the c.i.f. port of entry price for imported goods or the ex-factory price of other goods offered in the bid;
- (ii) Customs duties and other import taxes levied in connection with the importation or sales and similar taxes levied in connection with the sale or delivery of goods pursuant to a bid should not be taken into account in the evaluation of that bid; and
- (iii) The cost of inland freight and other expenditures incidental to the transportation and delivery of the goods to the place of their use or installation for the purposes of the project should be included, if this is specified in the bidding documents.

(c) Where contractors are responsible for all duties, taxes and other levies under civil works contracts, bidders should take these factors into account in preparing their bids. The evaluation and comparison of bids should be on this basis.

(d) Any procedure under which bids above or below a predetermined bid value assessment are automatically disqualified is not permitted.

#### Section 5.07. Postqualification of Bidders

If there has been no prequalification of bidders, the Borrower should determine whether the bidder whose bid has been evaluated the lowest has the capability and resources to carry out the contract concerned effectively.

The criteria to be met should be set out in the bidding documents and if the bidder does not meet them, his bid should be rejected. In such an event, the Borrower should then make a similar decision regarding the next-lowest evaluated bidder.

#### Section 5.08. Evaluation Report

A detailed report on the evaluation and comparison of bids setting forth the specific reasons on which determination of the lowest evaluated bid was based should be prepared by the Borrower or its consultants.

#### Section 5.09. Award of Contract

The award of a contract should be made to the bidder whose bid has been determined to be the lowest evaluated bid and who meets the appropriate standards of capability and financial resources. A bidder should not be required as a condition of award to undertake responsibilities or work not stipulated in the specifications or to modify his bid.

#### Section 5.10. Rejection of Bids

Bidding documents usually provide that Borrowers may reject all bids. However, all bids should not be rejected and new bids invited on the same specifications solely for the purpose of obtaining lower prices in the new bids, except in cases where the lowest evaluated bid exceeds the cost estimates by a substantial amount. Rejection of all bids may