



FACT SHEET PROJECT FINANCE - ELIGIBILITY OF COSTS

Eligibility of costs for Ex-Im Bank's support of limited recourse project finance ("Project Finance") transactions generally tracks the overall criteria developed and used for other Ex-Im Bank programs. However, eligibility guidelines for Project Finance cases require further explanation since the coverage requested under these cases brings into focus cost categories and eligibility issues that are only occasionally seen in other Ex-Im Bank programs.

The following explains the various Ex-Im Bank cost eligibility guidelines as they pertain to Project Finance cases. The criteria underlying these guidelines are based on assessments of whether the respective cost categories satisfy the two objectives of 1) consistency with Ex-Im Bank's policies, and 2) the flexibility required to appropriately support Project Finance cases. Ex-Im Bank's Engineering and Environment Division, with input from the Project Finance Division, determines the eligibility of the various costs associated with a specific project. Actual support determination is always subject to the receipt of proper supporting documentation (invoices, Supplier's Certificates, etc.) by Ex-Im Bank's Credit Administration Division during the disbursement stage of the transaction.

In order to determine the support available for a given transaction, the total project cost *must* first be broken down according to major items in a form acceptable to Ex-Im Bank. *An example of an acceptable Project Cost Breakdown is provided as Attachment "A".* Before Ex-Im Bank will consider an application for a final commitment, the Project Sponsors must submit a U.S. Acquisition List satisfactory to Ex-Im Bank setting forth the U.S. and eligible foreign costs of all the U.S. items of the particular project. *An example of a U.S. Acquisition List is provided as Attachment "B".*

There are seven major guidelines used to determine the eligibility of costs associated with various elements of Project Finance transactions:

- FOREIGN CONTENT
- REACH-BACK
- RELATED PARTIES
- CAPITAL COST
- CONTINGENCIES
- LOCAL COST
- PROGRESS PAYMENTS

The guidelines and the manner in which they are applied are explained as follows:

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I - FOREIGN CONTENT GUIDELINES

Foreign Content guidelines for Project Finance transactions follow an "aggregate" approach. To be eligible for support, goods and services in a U.S. supply contract must be shipped from the United States to a foreign buyer.

Ex-Im Bank will finance either 85 percent of the net Contract Price, or 100 percent of its U.S. Content (U.S. Contract Price less Eligible Foreign Content), whichever is less. The amount eligible for Ex-Im support will be aggregated on a contract by contract

II - "REACH-BACK " GUIDELINES

Shipments of goods and services that occurred prior to the submission of a final commitment request to Ex-Im Bank may be eligible for Ex-Im Bank financing provided the shipments occurred within one of the following allowable time frames:

1. On or after the date Ex-Im Bank issued the original Letter of Interest for the transaction;
2. On or after the date Ex-Im Bank received the initial request for Preliminary Commitment for the transaction;
3. Up to 12 months prior to the date Ex-Im Bank received the final commitment application or insurance application for the transaction. The maximum reachback period is the earliest of the three above dates.

Where required by the OECD Arrangement, repayment terms would be shortened to accommodate a long reachback.

III - RELATED PARTIES COST GUIDELINES

Most Project Finance transactions contain elements of costs for services or products provided by a U.S. supplier which also has ownership in the project. Ex-Im Bank provides support for such costs as long as there is evidence that the sale in question was negotiated and administered on an "arms-length" basis. When parties to a contract are related to one another, Ex-Im Bank will presume that the contract is not arms-length.

In determining cost eligibility of a related party's contract, the sponsor or supplier may first be asked to provide evidence that the contract was negotiated on an arm's-length basis. It can usually be assumed that if the percentage of ownership between a supplier and buyer is not a controlling one, a negotiated sale may be arms-length. However, *when the ownership percentage is close to or greater than 50 percent, Ex-Im Bank's Engineering and Environment Division will review each cost element of a contract to determine which can be considered arms-length for purposes of Ex-Im Bank support.* Factors taken into account in the Ex-Im Bank determination include whether or not offers from other suppliers were solicited (thereby introducing competition), whether separate divisions of the company negotiated the contract on an independent basis, and whether the costs involved reflect market prices.

Fees including "development fees" charged by a sponsor having ownership in a project are not considered eligible for Ex-Im Bank support. In certain instances, however, if a cost breakdown of such a fee shows that it covers the cost of certain project related services subcontracted to a U.S. company, the Engineering and Environment Division will review the costs to determine their eligibility for inclusion in the Ex-Im Bank supported portion of the project. For example, the cost reflecting an actual invoiced amount for engineering services subcontracted to a U.S. company and undertaken within the Reach-Back period, represents an element of a fee which may be eligible for Ex-Im Bank support.

Engineering services undertaken directly by a sponsor may also be considered eligible when factors including competitive pricing elements and inter-company contractual controls of the service costs are evident. While certain bona fide sponsor incurred costs (such as the salaries paid for the undertaking of required project services) may be eligible for support, actual fees associated with any related party's contract are not eligible for Ex-Im Bank support.

IV - CAPITAL COST GUIDELINES

This straightforward guideline reflects the fundamental policy that Ex-Im Bank will limit its support of Project Finance transactions (as it does for all project related transactions) to only those items deemed to be "capital cost" in nature. This means that pre-development costs incurred at the project definition stage, as well as costs incurred after the project is operational, such as operations & maintenance (O&M) activities, will not be considered eligible for Ex-Im Bank financial support. Working capital costs are also considered ineligible for support. Only those capital cost items, such as equipment and services covered under an engineer, procure and construct contract (EPC), legal, financial and engineering services associated with the undertaking of the project, and items such as training and insurance during construction will be considered eligible for Ex-Im Bank support. Refer to the Sample Acquisition List, Attachment B, for examples of eligible capital cost items.

The costs of all pre-construction activity must be itemized so that Ex-Im Bank can establish whether they constitute a capital cost eligible for Ex-Im Bank support. Specific costs incurred in the project development stage may be considered eligible if Ex-Im Bank determines that a) they were incurred on an arms-length basis, b) fall within the established Reach-Back period, and c) relate to final design, construction and related activities such as acquisition of permits or finalization of financial support. Investments made by sponsors to cover preliminary studies regarding the viability or feasibility of a project, especially related to decisions of sponsor participation, are not considered capital in nature.⁰ (Usually such costs will have been incurred well before the established Reach-Back date.) Similarly, post-completion operating expenses should be met with project revenue, and will not be considered eligible for support.

⁰ 1 If the pre-project services were financed under the Ex-Im Bank Engineering Multiplier Program, then these services may be rolled into the capital cost of the project, in keeping with the special feature of that Program

V - CONTINGENCY COST GUIDELINES

Generally, amounts for contingencies associated with EPC contracts or major supply contracts which do not exceed 10 percent of the total contract price, will not be questioned by Ex-Im Bank at the application stage and thus will be considered eligible. However, prior to any Ex-Im Bank disbursement, these amounts will be reviewed by the Engineering and Environment Division to ascertain whether they are technically appropriate and necessary to successfully complete the project. Also, input from the Lender's Independent Engineer will be used in the determination. Contingency related items must also be fully described and are subject to the other eligibility criteria described in this paper. In no case will disbursements be made for an unused contingency.

Only those contingencies associated with eligible project supply contracts will be considered for financial support by Ex-Im Bank. The appropriateness of the request, and the nature of the project and related project risks will always be the principal factors by which Ex-Im Bank will determine the eligibility at the application stage of a contract contingency allowance.

Ex-Im Bank considers "Owner's Contingencies" as an element of the equity portion of a project, and hence ineligible for financial support. Contingencies associated with related party contracts will be reviewed on a case-by-case basis to determine eligibility.

VI - LOCAL COST GUIDELINES

Ex-Im Bank will generally support eligible local costs to an amount of up to 15 percent of the U.S. Contract Price associated with the project. This support is in addition to the normal support of 85 percent of the U.S. Contract Price. To be eligible for Ex-Im Bank support, the local costs must represent goods and services produced and procured within the host country **and** must be included in the Export Certificate.

VII - CONTRACT PROGRESS PAYMENT GUIDELINES

Progress payments (and construction "milestone payments") made under the terms of an EPC or other supply contract, are generally eligible for Ex-Im Bank support to the extent that the supplier can certify that the accrued costs for actual work performed under the contract, including expenses for any subcontracted equipment, are at least equal to the value of the respective progress payment. A certification that the value of the progress payment does not exceed the costs incurred by the supplier to date must accompany any request for a progress payment disbursement. Similarly, disbursements for initial down payments will only be made once the supplier can certify to Ex-Im Bank that actual expenses associated with the work performed are equal to the value of the requested disbursement. The Lender's Independent Engineer may be required to confirm the level of work performed. Ex-Im Bank disbursements may not serve as general working capital for the supplier.

In cases where the requested progress payments exceed 60 percent of the value of the export before it is shipped, the Engineering and Environment Division will advise the Credit Administration Division as to whether any further disbursements should be made until such time as the product is actually delivered. The Engineering and Environment Division will review the payment terms of the major project supply contracts, especially the EPC contract, and will advise the U.S. supplier if it appears that the progress payment schedule conflicts with Ex-Im Bank requirements, as described above.

MORE INFORMATION

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TDD	(202) 565-3377
E-Mail	structuredfinance@exim.gov bdd@exim.gov
Order User's Guide	(800) 565-EXIM, ext. 3912
Seminars	(800) 565-EXIM, ext. 3912

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Mid-Atlantic - Washington, DC	(202) 565-3940	Fax (202) 565-3932
Southeast - Miami	(305) 526-7436	Fax (305) 526-7435
Midwest - Chicago	(312) 353-8081	Fax (312) 353-8098
Southwest - Houston	(281) 721-0465	Fax (281) 679-0156
West - Long Beach	(562) 980-4580	Fax (562) 980-4590
<i>Satellite</i> - San Francisco, CA	(415) 705-2285	Fax (415) 705-1156
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EXPORT-IMPORT BANK OF THE UNITED STATES
EXPORTER'S CERTIFICATE For Use With An EXPORT CREDIT INSURANCE POLICY
Policyholders/Assignees must keep this document and submit it with Claims

Name and Address of Policyholder:
Policyholder:

Name and Address of Supplier if different from

Taxpayer ID No.: _____ Congressional District: _____

Policy No. _____

Supplier's Dun & Bradstreet No. _____
(to be completed by policyholder, also see B3)

Indicate (not required) if owned by a woman, or an ethnic minority, describe _____

Upon representation that the Export-Import Bank of the United States ("Eximbank") has issued an export credit insurance policy to the policyholder (may also be the supplier) identified above and, in consideration of the payment, acceptance or negotiation of an irrevocable letter of credit in support of an export, the financing of an export or the receipt of funding as a result of assigning the proceeds of the policy **we, the supplier, hereby certify** to Eximbank and, if we are not the policyholder, to the policyholder as follows (**check one**):

The supplier is **not the policyholder** and is either the beneficiary of a letter of credit, or the recipient of a funding under a direct buyer credit loan, or the recipient of the buyer's payment under a reimbursement loan, or the financing or factoring of a receivable under a Financial Institution Supplier Credit Policy.

The supplier must complete and certify to parts **A and B** only.

The supplier is **not the policyholder** and **not a beneficiary** or recipient as described above.

The supplier must complete and certify to part **B** only.

The supplier is a Medium Term Single-Buyer Policyholder and is **assigning** the proceeds of the policy to a financial institution.

The supplier must complete and certify to parts **A, B and C**.

A

1. a. We are **not the policyholder** and the policyholder has (**check one**):

informed us of an irrevocable letter of credit with Identification No. _____ and we have presented, or shall present, documents which are in compliance with the terms and conditions of such irrevocable letter of credit; or, to our belief, established an obligation of the foreign buyer named below to make repayment of funds on a specified term in support of an export for which we will receive payment or have received payment on _____ (date); or, to our belief, provided a financing facility to the foreign buyer named below in support of the export which has been made on a documentary collection, sight payment basis, the proceeds of which will be paid to us.

OR

b. We **are the supplier and policyholder** and have:

assigned the proceeds of the referenced policy, and in return for this assignment will receive payment or have received payment on _____ (date).

2. To the best of our knowledge and belief, the products were **shipped from the U.S.**

3. To the best of our knowledge and belief the products are **for use only in** countries in accordance with Ex-Im Bank's Country Limitation Schedule in effect on the date of shipment. See Ex-Im Bank's Internet Website <www.exim.gov> Country and Fee Information.

- The undersigned declares that it is **not** currently, nor has it been within the preceding three years:
 - a) debarred, suspended or declared ineligible from participating in any Federal transaction; or,
 - b) formally proposed for debarment, with a final determination still pending; or,
 - c) voluntarily excluded from participation in a Federal transaction; or,
 - d) indicted, convicted or had a civil judgement rendered against it for any of the offenses listed in the Regulations governing Debarment and Suspension (Governmentwide Nonprocurement Debarment and Suspension Regulations; Common Rule).
5. The undersigned certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification.

B

The above referenced irrevocable letter of credit or the buyer's obligation to pay the policyholder is in support of an export transaction described as follows:

- a) Name and address of buyer _____

 - b) Description and quantity of product(s)/service(s) _____
 - c) The product(s) are: New, Used. If used, attach Used Equipment Questionnaire form EIB-92-63.
 - d) Place of Shipment _____ e) Date of Shipment _____
- | | |
|--|--------------------------|
| | Contract Price to Buyer: |
| f) | |
| (i) Products/Services | \$ _____ |
| (ii) Less discounts or similar allowances | \$ _____ |
| (iii) Plus total insurance, freight or other
delivery charges included in the transaction | \$ _____ |
| Subtotal: | \$ _____ |

POLICYHOLDER NOTE: minimum 15% cash payment required for repayment **terms of 1 year or more**.

SUPPLIER who is not a policyholder: may enter N/A in (iv) and (v) if cash payment and financed portion are not known.

- (iv) Less cash payment \$ _____
- (v) Total final net delivered financed portion \$ _____

2. *Discounts and Allowances*. We have not granted or paid, agreed to grant or pay, offered to grant or pay, caused to be granted or paid, or arranged for, directly or indirectly, any discount, allowance, rebate, commission, fee or other payment, entered into any barter, buyback, countertrade or offset agreement or other similar agreement in connection with the sale of, or for obtaining the contract to sell, the products/services described above, **except**:

- a) the discounts and allowances to the buyer, if any, stated above; or,
- b) the regular remuneration of our regular full-time directors, officers and employees; or,
- c) regular commissions or fees, if any, to our regular sales agent or representative in the country of the buyer; or,
- d) other payments, as follow:

<u>Payee or Intended Payee</u>	<u>Address</u>	<u>Amount</u>
		\$ _____

(If **None**, then the word "none" must be inserted in order for this certificate to be considered complete. If any payee is named, a statement must be attached showing the reason for payment and method of calculation.)

3. The materials and labor comprising the products/services above
 - which were originated or manufactured by us were originated or manufactured in the U.S. **or**,
 - if not originated or manufactured by us, were acquired from sources in the U.S., **and**
 - to the best of our knowledge and belief, the value of the products/services, consisting of direct material, direct labor and indirect costs which can be reasonably attributed to the production of the product, and **excluding price markup**, is as below:

NOTE: If the supplier is not the policyholder, policyholder should inform supplier and indicate if repayment term is: 360 days or less, or 1 year or more.

- a) for products with a repayment period of **360 days or less**: for **each product** at least **50%** of U.S. origin; for products with a repayment period of **1 year or more**: the **aggregate value** of **all products** at least **85%** of U.S. origin;
 - b) for **services**: exclusively by U.S. personnel (either in the U.S. or on-site);
 - c) for the sale of **raw materials** or **commodities**: exclusively of U.S. origin and
 - that **no value** has been **added** to the product by us **after export** from the U.S.
4. With respect to products/services which, to the best of our knowledge,
 - a) could be used for **military** purposes;
 - b) could be **components** of a product or equipment which could be used for military purposes;
 - c) could be used to **manufacture** products or equipment which could be used for military purposes;
 - d) are listed on the **U.S. Munitions List** (part 121 of Title 22 of the Code of Federal Regulations); or,
 - e) are purchased by military or defense **organizations**,we have received the **written approval** of Eximbank for such sale of the products.
5. The products do not consist of technology, fuel, equipment, materials or goods and services to be used in the construction, alteration, operation or maintenance of **nuclear** power, enrichment, reprocessing, research or heavy water production facilities.

C

1. The products/services in the export transaction described above were sold for U.S. dollars on terms which required that we receive from the buyer, or we provide financing to the buyer for, a cash payment on or before delivery to the buyer at least equal to such amount as may be specified in the **Transaction Endorsement or Declarations** to the policy, and the **financed portion** of the transaction, as described in the policy, approved under the **Transaction Endorsement or Declarations**, or of a shipment made thereunder, was evidenced by a valid and legally enforceable **note**, as defined in the policy.
2. No dispute exists between us and the buyer, with respect to any loss, that has not already been finally determined to be a valid and legally enforceable indebtedness of the buyer, its legal representatives, or successors in interest, or has not already been otherwise settled to the satisfaction of the Insurer.
3. We have not contracted with, shipped to, or failed to cancel further transit to the buyer after knowledge of that buyer's **insolvency**, as defined in the policy, or financial difficulty.

4. We agree to notify Eximbank in writing of the buyer's **insolvency**, as defined in the policy, financial difficulty, or the occurrence of any event likely to cause a **loss**, as defined in the policy, within 10 calendar days of learning thereof.

5. We agree to hold Eximbank harmless from any loss:
- a) arising from the failure of ourselves or our agents to fulfill our or their contractual duties to the buyer with respect to the sale of the products/services, if such failure of performance shall have relieved the buyer of its duty, in whole or part, to pay the **note** when due, and,
 - b) arising from the unwillingness of the buyer to accept the products/services, and,
 - c) due to any dispute that arises between us and the buyer, with respect to any **loss**, that is not finally determined to be a valid and legally enforceable indebtedness of the buyer, its legal representatives, or successors in interest, or is not otherwise settled to the satisfaction of the Insurer, and,
 - d) that was insurable under the American Institute of Marine Underwriters' War Risk and Strikes, Riots and Civil Commotion Clauses current on the date of shipment.

With knowledge that Eximbank will rely on the certifications and representations made in this certificate, we agree to be liable for any damages (including, without limitation, **reimbursement to Eximbank** of any claim payment under the export credit insurance policy) suffered by Eximbank's reliance on such certifications and representations. We further understand that this certification is subject to the penalties for fraud provided in Article 18 U.S.C., Section 1001.

By: _____

Print Name: _____
(Authorized Representative of the Supplier)

Title: _____

Date: _____

If the supplier can not make any or all of the required certifications as they are presented here, Ex-Im Bank must be contacted to request written permission to delete or alter the certification, without which the insurance policy may not be valid.

On this _____ day of _____, _____, before me personally appeared _____, to me known, who first being duly sworn by me, did depose and say that he/she is the _____ of _____
Title Supplier

described herein and who executed the foregoing instrument; and that he/she has full authority to complete and execute the said instrument in the name of, and on behalf of, the said supplier.

Notary Public
