

# **Procurement Guidelines for AFD-Financed Contracts in Foreign Countries**

**Agence Française de Développement**



**OCTOBER 2019**

## FOREWORD

As a public entity, Agence Française de Développement (AFD) is required to ensure that the funding it provides for its activities in foreign countries is used for the intended purpose. This specifically involves verifying that funds are properly allocated and that the principles of economy and efficiency are complied with, in line with International Good Practices, when, works, plants, goods, consulting services or non-consulting services are procured by the Beneficiaries of AFD's financing.

The purpose of the present Guidelines is to specify AFD's requirements for procurement, to render them binding upon the Beneficiary and to specify the scope of reviews that AFD undertakes on AFD-financed procurement.

These Guidelines comprise three sections:

- Common provisions applicable to all AFD-financed procurement;
- Provisions applicable to Beneficiaries that are subject to Public Procurement Regulations; and
- Provisions applicable to Beneficiaries that are not subject to Public Procurement Regulations.

### **Revision 2019:**

This revision dated October 2019 modifies the previous version by introducing the following main changes:

- Addition of new definitions: "Applicant", "Application", "Bid", "Bidder", "Consultant", "Proposal" and "Quotation", and improvement of the wording of Articles 2.2.9 and 2.3.7 (unsuccessful selection), 2.3.1 (scoring of the Applications for the preparation of the Shortlist), 2.2.4 and 2.3.3 (including the possibility to modify a joint venture), as well as Part 3, for more clarity.
- Article 1.1.3 on financial intermediation has been amended to allow the application of the Guidelines in specific cases.
- Obligation to include in the Procurement Documents (i) environmental, social, health and safety (ESHS) worksite management requirements for works contracts with high ESHS impacts (addition to Article 1.5.1) and (ii) security requirements for contracts performed in an area classified orange or red by the French Ministry of European and Foreign Affairs (creation of a dedicated Article 1.5.2).
- Inclusion of the option to request AFD to "provide assistance to the Contracting Authority free of charge" with the procurement of certain contracts (Article 1.6.3).
- A new Article 2.1.4 on Requests for Quotations has been incorporated, which determines (i) the thresholds, (ii) the application conditions, as well as (iii) the evaluation method.
- Article 2.1.5 has been supplemented to take into account new provisions relating to (i) the handling of complaints, (ii) the use of electronic procurement methods (e-procurement), (iii) the application of the Beneficiary's exclusion lists, and (iv) taxes.

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## DEFINITIONS

Capitalized terms used in the following Guidelines shall have the meaning ascribed to them in this Section.

Unless otherwise defined therein, all the capitalized terms in the present Guidelines shall have the meaning ascribed to them in the Financing Agreement.

<b>Act of Corruption</b>	Means any act of Corruption of a Public Officer or Corruption of a Private Person, it being understood that corruption can be active (act of promising or giving an advantage to somebody) or passive (act of receiving an advantage).
<b>AFD Website</b>	Means the internet website of AFD <a href="https://www.afd.fr/en">https://www.afd.fr/en</a> or any other website which should replace it.
<b>Anti-Competitive Practices</b>	Means: <ul style="list-style-type: none"> <li>– Any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other Persons, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply;</li> <li>– Any abuse by one Person or a group of Person which hold a dominant position on an internal market or on a substantial part of it;</li> <li>– Any practice whereby prices are quoted unreasonably low, the object of which is to eliminate a Person or any of its products from a market or to prevent it from entering the market.</li> </ul>
<b>Applicant</b>	Means any entity that prepares and / or submits an Application as part of a Request for Expressions of Interest or Prequalification.
<b>Application</b>	Means all the documents submitted by an Applicant in response to a Request for Expressions of Interest or a Prequalification process.
<b>Beneficiary</b>	Means any direct or indirect recipient of AFD financing, acting as a Contracting Authority, regardless of whether it received or will receive a loan or a grant under a Financing Agreement.
<b>Bid</b>	Means all the documents submitted by a Bidder in response to an International or National Procurement Competition, for the procurement of works, plants, goods, or non-consulting services.
<b>Bidder</b>	Means any entity that prepares and / or submits a Bid, or a Quotation, in the framework of an International or National Procurement Competition, or a Request for Quotations respectively, for the procurement of works, plants, goods or non-consulting services.
<b>Bidding Documents</b>	Means all the documents, information and forms as listed in Article 2.2.2 of the present Guidelines and prepared by the Beneficiary. They specify the rules for an International or National Procurement Competition for the procurement of works, plants, goods, or non-consulting services.
<b>Consultant</b>	Means any entity that prepares and / or submits a Proposal or a Quotation, as part of a Request for Proposals or Quotations respectively, for consulting services.

<b>Contracting Authority</b>	Means any Beneficiary who, under AFD's financing, procures works, plants, goods, consulting services or non-consulting services.
<b>Corruption of a Private Person</b>	Means: <ul style="list-style-type: none"> <li>– The act of promising, offering or giving to any Private Person, directly or indirectly, an undue advantage of any kind for himself or for another Person or entity, for such Private Person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or</li> <li>– The act by which any Private Person solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another Person or entity, for such Private Person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.</li> </ul>
<b>Corruption of a Public Officer</b>	Means: <ul style="list-style-type: none"> <li>– The act of promising, offering or giving to a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another Person or entity, for such Public Officer to act or refrain from acting in his official capacity; or</li> <li>– The act by which a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another Person or entity, for such Public Officer to act or refrain from acting in his official capacity.</li> </ul>
<b>Direct Contracting</b>	Means a procedure for awarding a contract to a Person without a prior competitive procedure.
<b>Final Beneficiary</b>	Means any Person in charge of implementing the project on its own account as the owner of the investments (in part or in whole) financed by the funds of the AFD's grant or loan, which are on-lent or on-granted by the Beneficiary.
<b>Financing Agreement</b>	Means a contract between a Beneficiary and AFD documenting funding granted by AFD to the Beneficiary, regardless of whether it takes the form of a loan or of a grant.
<b>Fraud</b>	Means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.
<b>Implementing Agency (or Delegated Contracting Authority)</b>	Means any Person who - by virtue of a mandate or any other empowerment of such effect - is entrusted by the Contracting Authority for the procurement of works, plants, goods, consulting services or non-consulting services financed by AFD.
<b>International Good Practices</b>	Means the principles of open, fair, transparent and efficient (best quality/price ratio and compliance with deadlines) competition in procurement, as well as the verification that adequate capacity to perform the contract is evidenced by the Applicants, Bidders, or Consultants.
<b>International Procurement Competition</b>	Means a competitive selection procedure for awarding a contract as specified in Article 2.1.2 of the present Guidelines, with the purpose of attracting foreign Bidders or Consultants to the procurement process.
<b>Invitation for Bids</b>	Means a public notice published by the Beneficiary, inviting any provider of works, plants goods or non-consulting services that meet

	the eligibility and qualification criteria of the Bidding Documents, to submit a Bid.
<b>National Procurement Competition</b>	Means a competitive selection procedure for awarding a contract as specified in Article 2.1.3 of the present Guidelines, with the purpose of attracting mainly national Bidders or Consultants, without excluding foreign Bidders or Consultants. This procedure may be used provided that the local supply market is adequate, qualified and competitive, making it unlikely that entities that are not established locally will participate.
<b>No Objection Letter</b>	Means a no objection letter issued by AFD in the context of its review of the procurement process, as described in Article 1.6.2 of the present Guidelines.
<b>Person</b>	Means any person, firm, company, corporation, government, state or state agency, as well as any association or group of several of the foregoing, whether or not having separate legal status.
<b>Prequalification</b>	Means an initial competitive stage (which is optional) for the procurement of works or plants, through a public and open invitation (invitation for Prequalification) intended to select, as specified in Article 2.2.1 of the present Guidelines, the qualified Applicants that will subsequently be invited to submit a Bid.
<b>Private Person</b>	Means any natural Person other than a Public Officer.
<b>Procurement Documents</b>	Means all the documents associated with a procurement process analysed by AFD and include Procurement Plans, Invitations for Bids, Requests for Expressions of Interest, Prequalification documents, Requests for Quotations, Bidding Documents, Requests for Proposals, evaluation reports and forms of contracts issued by the Beneficiary.
<b>Procurement Guidelines</b>	Means the present procurement provisions for AFD-financed contracts in foreign countries (hereinafter " <b>Guidelines</b> "), copy of which has been given to the Beneficiary.
<b>Procurement Plan</b>	Means the document defined in Article 1.6.1 of the present Guidelines and set up by the Beneficiary listing all procurement that are to take place or have taken place (in the case of retroactive financing) for contracts financed by AFD including key information related to those procurements.
<b>Proposal</b>	Means all the documents submitted by a Consultant in response to a Request for Proposals for the provision of consulting services.
<b>Public Officer</b>	<p>A "Public Officer" shall be construed as meaning:</p> <ul style="list-style-type: none"> <li>– Any natural Person who holds a legislative, executive, administrative or judicial mandate (within the State of the Beneficiary) regardless of whether that natural Person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the natural Person occupies;</li> <li>– Any other natural Person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;</li> <li>– Any other natural Person defined as a Public Officer by the national laws of the country of the Beneficiary.</li> </ul>

<b>Public Procurement Regulations</b>	Means any laws or legal regulations established by the state of the Beneficiary applicable to the procurement and execution of public contracts.
<b>Quotation</b>	Means all the documents submitted by a Bidder or Consultant in response to a Request for Quotations.
<b>Request for Expressions of Interest</b>	Means an initial competitive stage for the procurement of consulting services, through a public and open invitation, requesting interested Applicants to submit an Application.
<b>Request for Proposals (RFP)</b>	Means all the documents, information and forms as listed in Article 2.3.2 of the present Guidelines and prepared by the Beneficiary which set the rules to be followed when submitting a Proposal in an International or National Procurement Competition for the procurement of consulting services.
<b>Request for Quotations</b>	Means a competitive selection procedure for awarding a contract without prior advertising, intended to potentially interested parties identified by the Beneficiary. This type of procedure is used for the procurement of standard contracts of limited value where the Beneficiary is familiar with the existing qualified Bidders or Consultants. By extension, also means all the documents prepared by the Beneficiary as part of this procedure.
<b>Shortlist</b>	Means a short list of Consultants prepared by the Beneficiary who have been selected to submit Proposals for consulting services after reviewing the Applications submitted in response to the Request for Expressions of Interest. The Shortlist shall include not more than six (6) or less than four (4) Consultants (provided that a sufficient number of qualified Applications is received).
<b>Statement of Integrity</b>	Means a statement of integrity, eligibility and social and environmental responsibility in the form attached to the present Guidelines. Such a statement is to be provided by any Applicant, Bidder or Consultant as defined in Article 1.2.3 of the present Guidelines.

## 1 COMMON PROVISIONS APPLICABLE TO ALL AFD-FINANCED PROCUREMENT

### 1.1 Scope of application of the Guidelines

#### 1.1.1 Persons subject to the Guidelines

All Beneficiaries are subject to the provisions of the present Guidelines for the procurement and execution of contracts financed in whole or in part by AFD.

In case of an on-lending or on-granting to a Final Beneficiary, or in case of a recourse to an Implementing Agency, for the implementation, in part or in full, of an AFD financing (be it a loan or a grant), the Beneficiary, as a signatory to the Financing Agreement, guarantees that the Final Beneficiary or the Implementing Agency shall comply with the present Guidelines.

The provisions of the present Guidelines shall bind such Final Beneficiary or Implementing Agency to the same extent as they are binding for the Beneficiary, acting as Contracting Authority. Similarly, any contractual obligation related to procurement set out in the Financing Agreement entered between the Beneficiary and AFD shall apply to such Final Beneficiary or Implementing Agency.

#### 1.1.2 Procurement subject to the Guidelines

The provisions of the present Guidelines apply to all AFD-financed procurement and contract performance, the term "contract" being understood to mean any agreement concluded for pecuniary interest by the Beneficiary with one or several providers, to meet its needs, regardless of the contract price.

The present Guidelines also apply, in the context of AFD's refinancing activities, to contracts that have already been awarded by a Beneficiary concerning projects which have been accomplished or which are being implemented.

#### Co-financing:

The present Guidelines are intended to apply in case of a procurement process or a project being co-financed by one or several other development partners. However, in such an event, a prior arrangement between the different co-financiers may determine (i) the applicable rules of eligibility, (ii) the procurement procedures to be followed and (iii) the applicable reviews and their modalities<sup>1</sup>. Within such a framework, the present Guidelines may be, in all or in part, replaced by rules set out jointly with other development partners. Specific provisions regarding the Statement of Integrity advertising in the event of co-financing are provided in Articles 1.2.3 and 1.2.6.

The present Guidelines do not apply to AFD's procurement for its own account, which comes under specific regulatory framework and procedures and set of regulations. Nor do they apply to AFD's activities in French overseas territories.

#### 1.1.3 Specific cases

##### • Financial Intermediation

When AFD allocates financing through an intermediary (bank or financial institution), the contracts financed by such reallocated AFD funds shall exclusively be allocated to the clients of the intermediary for the purposes of the project defined in the Financing Agreement, in compliance with the relevant regulations to which they are subject. In this case, the provisions of the present Guidelines do not apply, unless otherwise required by AFD (in particular if AFD's financing is allocated to one or more identified contracts, or if the clients of the intermediary are subject to Public Procurement Regulations).

##### • Budget Support

Budget support to a State or a local authority is among the various aid modalities implemented by AFD. The Organisation for Economic Cooperation and Development (OECD) definition outlined in recent

<sup>1</sup> In particular, AFD is party to a partnership agreement with the European Investment Bank and with the KfW Entwicklungsbank (Germany), in the context of the Mutual Reliance Initiative (MRI). In addition, AFD signed a Partnership Agreement respectively with the World Bank, the Asian Development Bank, the African Development Bank and the Inter-American Development Bank.

Development Assistance Committee (DAC) guidelines defines budget support "as a method of financing a partner's country budget through a transfer of resources from an external financing agency to the partner government's national treasury". The funds thus transferred are managed in accordance with the recipient's budgetary procedures, provided that such procedures, subject to prior review, in particular procurement rules, are acceptable to AFD. The provisions of the present Guidelines do not apply when no identified contract is earmarked under AFD's financing.

- **Contracts not subject to Public Procurement Regulations**

Subject to AFD's prior approval, the Guidelines do not apply to the types of contracts that do not fall into the scope of Public Procurement Regulations (direct grant or further to a call for projects, public-public cooperation Agreement, cost-free contract, etc.) whenever the local laws and regulations so specify.

Except in case of the award of a grant to a Final Beneficiary, the Beneficiary undertakes, depending on whether the contract is to be concluded or has already been concluded, respectively to require from the contract's signatory the duly signed Statement of Integrity (form supplied as Appendix 1 to the present Guidelines) or, as the case may be, the duly signed form for retroactive financing (form supplied as Appendix 2 to the present Guidelines).

AFD is entitled to declare misprocurement and to exercise its rights under the Financing Agreement should it determine that its approval was issued on the basis of incomplete, inaccurate or misleading information provided by the Beneficiary or by the provider

## **1.2 General principles governing procurement**

### **1.2.1 Compliance with law applicable to the Beneficiary**

The present Guidelines shall apply to the Beneficiary without prejudice to relevant applicable laws and regulations. In other words, compliance with the Guidelines should not result in the Beneficiary's violation of laws and regulations insofar as they apply to it. Nevertheless, if the provisions of Guidelines are more restrictive than applicable laws and regulations, the Beneficiary should abide by the Guidelines. In case of a conflict between the laws and regulations applicable to the Beneficiary and the Guidelines, the Beneficiary undertakes to inform AFD of these, prior to any contract award. Provisions that best preserve the International Good Practices shall be applied.

The Beneficiary is fully responsible for the implementation of AFD-financed projects in compliance with relevant applicable laws and regulations, in particular concerning all aspects of the procurement procedure (i.e. drafting of Procurement Documents, award, administration and performance of the contracts). AFD shall only intervene to verify that the terms and conditions of its financing are fully met.

### **1.2.2 Compliance with International Good Practices**

The Beneficiary undertakes to ensure that AFD-financed contracts are awarded and performed in accordance with International Good Practices, in compliance with the relevant internationally recognised practices, particularly those recommended by the Organisation for Economic Cooperation and Development (OECD), specifically those practices pertaining to the information provided to potential providers, their pre-selection, the content and publication of Procurement Documents, the evaluation of Applications, Bids or Proposals and the award of contracts.

AFD makes standard procurement documents available to Beneficiaries on its Website for the procurement of works, plants<sup>2</sup>, goods and consulting services based on the best international practices. The Beneficiary is encouraged to use these documents, it being understood that it is ultimately the Beneficiary's responsibility to ensure that these documents comply with the laws and regulations that are applicable to it. In case of unavailability of the aforementioned documents on its Website, AFD shall transmit a copy of such documents to the Beneficiary, upon its request.

### **1.2.3 Statement of Integrity**

The Beneficiary must require that Applicants, Bidders and Consultants provide a duly signed Statement of Integrity which covers the criteria and requirements set out in Articles 1.2 to 1.5. The Beneficiary undertakes to require the submission of a signed Statement of Integrity (the template of which is

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<sup>2</sup> For example, water treatment units, hydropower facilities, pumping stations, telecommunication switchboards, etc.

appended to the Guidelines) at any Prequalification, Request for Expressions of Interest, Invitation for Bids (regardless of the type, International or National), Request for Proposals, Request for Quotations, and Direct Contracting, which shall form part of the contract. In the case of a project financed within the MRI, the Statement of Integrity shall be replaced by an equivalent and specific Statement approved by the development partners of the MRI<sup>3</sup>. In the case of other co-financings, the Statement of Integrity may be replaced by a specific statement which would have received prior approval from all co-financiers.

Should the Statement of Integrity not be provided or should one of the commitments included therein not be complied with, AFD is entitled to apply sanctions in accordance with Articles 1.4 and 1.6.5.

#### **1.2.4 Direct Contracting**

The Beneficiary can only be exempted from the requirement for competition in procurement processes financed by AFD when AFD's prior approval is obtained and when the following cumulative conditions are met:

- (i) the Direct Contracting complies with the provisions of the laws and regulations applicable to the Beneficiary if any;
- (ii) the absence of competition is based on sound justification for one of the reasons listed below;
- (iii) the contract is proposed to be awarded to a qualified and experienced contractor, supplier or consultant; and
- (iv) the contract price is consistent with initial estimates and usual market prices and that the terms and conditions of the contract are fair and reasonable.

The absence of a competitive procurement procedure must be based on one of the following reasons:

- a) cases of extreme emergency resulting from unstoppable events that could not have been foreseen and that are in no way attributable to the Beneficiary, which require the implementation of the contract within a timeframe that is not compatible with the deadlines required by the bidding procedures as described below; or
- b) the provision of the works, plants, goods, consulting or non-consulting services may only be entrusted to a particular Bidder or Consultant for technical reasons, for reasons related to the protection of exclusive rights, or due to the Bidder's or Consultant's recognised unique expertise; or
- c) the contract amount does not exceed €15,000.

#### **1.2.5 Responsibility for Procurement and Contract Performance**

AFD provides financing pursuant to the terms and conditions set out in the Financing Agreement. No contractual relationship shall be deemed to exist between AFD and any Person other than the Beneficiary.

Any communications which may be exchanged between any Person other than the Beneficiary and AFD in the context of a project do not constitute, and shall not be interpreted as constituting any undertaking or a stipulation by AFD in favour of such Person or any third party.

The Beneficiary remains entirely responsible for the preparation and implementation of the procurement process and the subsequent administration and performance of the contracts. Accordingly, the Beneficiary is solely responsible for (i) the content of the Procurement Documents, (ii) the evaluation of the documents submitted by Applicants, Bidders or Consultants in response to National or International Procurement Competitions, or in the context of a Direct Contracting procedure or a Request for Quotations, (iii) the content of the contract it concluded with the awarded Bidder or Consultant, and (iv) the content of any change made to the Contract.

Consequently, the relationships between the Beneficiary and an Applicant, Bidder or Consultant are exclusively governed (i) by the Procurement Documents issued by the Beneficiary, and (ii) by the contract signed between the Beneficiary and the Bidder or Consultant.

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<sup>3</sup> See Article 1.1.2 and footnote.

AFD may suspend or definitively terminate its financing to a Beneficiary. As this relates to the relationship between AFD and its Beneficiary exclusively, the providers of works, plants, goods, consulting services or non-consulting services in contractual relation with this Beneficiary within the framework of a project financed by AFD will not necessarily be informed beforehand of such a suspension or termination of this financing, and will not be entitled to claim from AFD any direct right to the amounts which, as the case may be, originate from such financing. These providers shall assume all possible liabilities for any unpaid amount and dispute which may arise in the context of their relationship with the Beneficiary.

The Beneficiary undertakes to retain and to make available to AFD (or an entity mandated by AFD) for a period of at least ten (10) years from the date of deadline for drawdown set out in the Financing Agreement, the documentation relative to the procurement and performance of contracts, namely documents subject to the No Objection Letter in accordance with Article 1.6.2 hereunder.

The Beneficiary shall ensure that a skilled Bid (or Proposal) evaluation committee is set up as early as possible (at the latest when the Procurement Documents are submitted to AFD for approval). It shall comprise a minimum of three technically qualified members and not subordinated to one another. It may be necessary to hire external technical assistance to enhance the technical skills of the committee.

Information relating to the evaluation of Applications, Bids, Proposals or Quotations, and recommendations of contract award is confidential and, unless otherwise required by the laws applicable to the Beneficiary, should not be disclosed to Applicants, Bidders, Consultants or to any other Person not officially involved in the procurement process until the publication of the award of contract.

### **1.2.6 Advertising**

Pursuant to the principles of open competition and transparency, the procurement of AFD-financed contracts shall, except in duly justified cases or retroactive financing (see Article 1.6.4), be subject to wide advertising by the Beneficiary which shall set out how to obtain the Procurement Documents, the deadline for submission of the expected documents and contact details of the Beneficiary in charge of the procurement process. The corresponding notices shall be published sufficiently in advance, in widely available paper or electronic media, to allow Applicants or Bidders to prepare high quality Bids. In the case of funds delegated by the European Union to AFD, for contracts amounting to €15,000 or more and subject to advertising, the publication of the notification of award in the same media is compulsory. In the case of a project financed within the MRI<sup>4</sup>, the publication of procurement notices in the Official Journal of the European Union is compulsory.

In case of procurement subject to international competition, the Beneficiary must publish, at a minimum, the Request for Expressions of Interest, the invitation for Prequalification or the Invitation for Bids as the case may be, on the website <http://afd.dgmarket.com>.

## **1.3 Eligibility Criteria**

### **1.3.1 Rules of nationality and of origin**

Financing allocated by AFD has been entirely untied since 1<sup>st</sup> January 2002. All procurement of works, plants, goods, consulting services and non-consulting services are eligible for AFD financing regardless of the country of origin of the providers, contractors or consultants (including subcontractors, subconsultants and suppliers), except where an international embargo applies. This decision not only concerns the "Least Developed Countries" (LDCs), pursuant to the Organisation for Economic Cooperation and Development (OECD)/Development Assistance Committee (DAC) Recommendation of 20<sup>th</sup> April 2001 on untying aid, but also all the other foreign countries where AFD operates.

### **1.3.2 Grounds for exclusion**

A Person cannot be awarded, or be the subcontractor of an entity to be awarded, an AFD-financed contract if, on the date of submission of its Application, Bid, Proposal or Quotation, or at the time of contract award, it:

<sup>4</sup> See Article 1.1.2 and footnote.

- (1) is bankrupt, being wound up or ceasing its activities, is having its activities administered by the courts, has entered into receivership, or is in any analogous situation arising from any similar procedure;
- (2) has been:
  - a) convicted within the past five years by a court decision, which has the force of *res judicata* in the country where the contract is implemented, of fraud or corruption or any other offence committed during the procurement process or performance of a contract, unless that Person provides supporting information together with its Statement of Integrity which shows that this conviction is not relevant in the context of this AFD financed contract;
  - b) subject to an administrative sanction within the past five years by the European Union or the competent authorities of the country where the Person is constituted, for fraud or corruption or for any other offence committed during a procurement process or performance of a contract, unless the Person provides supporting information together with its Statement of Integrity which shows that this conviction is not relevant in the context of this AFD financed contract;
  - c) convicted within the past five years by court decision, which has the force of *res judicata*, of fraud or corruption or of any other offence committed in the context of an AFD-financed procurement process or performance of a contract;
- (3) is listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight against terrorist financing or threat to international peace and security;
- (4) has been subject within the last five years to a contract termination fully settled against it for significant or persistent failure to comply with its contractual obligations during contract performance, unless (i) this termination was challenged and (ii) dispute resolution is still pending or has not confirmed a full settlement against it;
- (5) has not fulfilled its fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where the Person is constituted or the Beneficiary's country;
- (6) is subject to an exclusion decision of the World Bank and is listed on the website <http://www.worldbank.org/debarr>, unless the Person provides supporting information together with its Statement of Integrity which shows that the exclusion is not relevant in the context of this AFD-financed project;
- (7) has created false documents or has committed misrepresentation in documentation requested by the Beneficiary as part of the procurement process of this contract.

The exclusion criteria above shall be included in the Procurement Documents as early as possible in the procurement process.

### **1.3.3 Conflict of interest**

A Person cannot be awarded, or be the subcontractor of an entity to be awarded, an AFD-financed contract if, on the date of submission of its Application, Bid, Proposal or Quotation, or at the time of contract award, it:

- (1) is an affiliate controlled by the Beneficiary or a shareholder controlling the Beneficiary, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
- (2) has a business or a family relationship with a Beneficiary's staff involved in the procurement process or the supervision of the resulting contract, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
- (3) is controlled by or controls another Applicant, Bidder or Consultant or is under common control with another Applicant, Bidder or Consultant, receives from or grants subsidies directly or indirectly to another Applicant, Bidder or Consultant, has the same legal representative as another Applicant, Bidder or Consultant, maintains direct or indirect contacts with another Applicant, Bidder or Consultant which allows it to have or give access to information contained in the

respective Applications, Bids or Proposals, to influence it or influence the decisions of the Beneficiary;

- (4) is engaged in a consulting services activity which, by its nature, may be in conflict with the assignments that it would carry out for the Beneficiary;
- (5) Has prepared or has been associated with a Consultant who prepared specifications, drawings, calculations, terms of reference and other documentation for the procurement process; In the case of a procurement procedure for works, plants or goods, has been recruited or is proposed to be recruited, including any of its affiliates, to carry out works supervision or inspection for this contract.
- (6) is state-owned entity, which is not able to provide evidence that (i) it is legally and financially autonomous and/or (ii) it does operate under commercial law.

#### **1.3.4 Embargos**

The Beneficiary undertakes not to acquire or provide any good, nor to operate in any sector which is subject to an embargo by the United Nations, the European Union or France.

### **1.4 Corruption and Fraud**

The Beneficiary and the Applicants, Bidders or Consultants must observe the highest standard of ethics during the procurement process and contract execution.

In the procurement process of contracts financed in part or in whole by AFD, the Beneficiary undertakes to:

- Insert clauses in all Procurement Documents and in the contracts related thereto, whereby any Applicant, Bidder or Consultant shall declare that (i) it did not engage in any practice likely to influence the procurement process and corresponding contract award to the Beneficiary's detriment, and that it did not and will not get involved in any Anti-Competitive Practice, and that (ii) the negotiation, the procurement process and the performance of the contract did not and shall not give rise to any Act of Corruption or Fraud;
- Include in all Procurement Documents and in the contracts related thereto, a provision requiring that any Applicant, Bidder or Consultant shall permit AFD to inspect their accounts and records relating to the procurement process and performance of the contract, and to have them audited by auditors appointed by AFD.

Should the duly signed Statement of Integrity be part of the contract as required under Article 1.2.3, those undertakings shall be met.

AFD reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- Reject a proposal for a contract award if it is established that the Bidder or Consultant that is recommended for the award has been convicted of an Act of Corruption, directly or by means of an agent, or has engaged in Fraud or Anti-Competitive Practices for the purpose of being awarded the contract;
- Declare misprocurement and exercise its rights on the ground of the Financing Agreement's provisions relating to early repayment or termination, where appropriate, when it is established that, at any time, the Beneficiary or its representatives have engaged in Acts of Corruption, Fraud or Anti-Competitive Practices during the procurement process or execution of the contract without the Beneficiary having taken appropriate action in due time satisfactory to AFD (unless otherwise provided for in the Financing Agreement) to remedy the situation, including by failing to inform AFD at the time they knew of such practices.

## **1.5 Environmental, Social, Health and Safety (ESHS) Responsibility, and Security**

### **1.5.1 Environmental, Social, Health and Safety (ESHS) Responsibility**

In order to promote sustainable development, AFD seeks to ensure that internationally recognised ESHS standards are complied with and the Beneficiary undertakes that Applicants, Bidders and Consultants in AFD-financed contracts shall commit themselves to:

- Comply with and ensure that all their subcontractors comply with international ESHS standards, consistent with applicable law and regulations in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties; and
- Implement any ESHS risk mitigation measures, when defined in the Environmental and Social Commitment Plan annexed to the Financing Agreement, and the environmental and social management plan.

For works and plants contracts for which high ESHS impacts have been identified, the Beneficiary must include in the Procurement Documents ESHS requirements related to worksite management. For this purpose, for International Procurement Competition, ESHS requirements are included in the standard Bidding Documents for the procurement of works made available by AFD, in accordance with Article 1.2.2 above

### **1.5.2 Security**

In accordance with Article 1.2.5 above, the security of the persons and property mobilized to carry out the project are the sole responsibility of the Beneficiary.

If the contract to be performed is located in an area labelled as orange or red by the French Ministry of European and Foreign Affairs<sup>5</sup>, the Beneficiary shall include in the Procurement Documents requirements relating to security. Such requirements shall, among others, take into account the possibility that security conditions deteriorate during the performance of the contract.

To this end, for International Procurement Competitions, the minimum security requirements contained in the standard procurement documents are made available by AFD in accordance with Article 1.2.2 above. The Beneficiary shall be solely responsible for adding more stringent provisions if it deems so required depending on the context.

## **1.6 Reviews by AFD**

In accordance with Article 1.2.5 above, the procurement process ultimately remains the sole responsibility of the Beneficiary. Nevertheless, AFD shall verify that procurement processes take place under the required conditions of transparency, fairness, economy and efficiency.

### **1.6.1 Procurement Plan**

The Beneficiary is required to establish a Procurement Plan as part of the project preparation procedure, which identifies the procurement processes for contracts to be carried out under the AFD-financed project. This plan must be created at a minimum for the first 18 months and thereafter updated as and when required. It specifies for each contract: the contract name, the estimated contract amount, the type of contract, the type of competition, the procurement procedure, the selection method, the type of review required by AFD, the estimated dates of the main stages of the procurement process and contract implementation. A template of the Procurement Plan can be found on AFD's Website.

In accordance with provisions of Article 1.6.2 below, this document, which is essential for the upstream organisation and planning of the procurement activities, must be subject to AFD's prior No Objection Letter and each updated version shall also be subject to a No Objection Letter.

The Beneficiary undertakes to implement the Procurement Plan as approved by AFD in the No Objection Letter.

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<sup>5</sup> Or any other French Ministry responsible for the ranking of foreign countries' security conditions, if applicable.

In the case of a major project comprising several large contracts to be awarded, the Beneficiary should publish the information set out in the Procurement Plan approved by AFD through a general procurement notice. Such a publication contributes to more transparency and allows potential Applicants, Bidders or Consultants to prepare themselves for when a specific procurement notice is published. Publication shall be done in accordance with the provisions of Article 1.2.6.

Moreover, unless otherwise specified in the Financial Agreement, the Beneficiary shall permit AFD to provide third parties with information contained in the Procurement Plan in relation to contracts that are required to be advertised, particularly under AFD's obligations to notify ex-ante the Organisation for Economic Cooperation and Development (OECD)/Development Assistance Committee (DAC) of any financing that qualifies as Official Development Assistance.

### **1.6.2 No Objection Letter – Prior Review**

Unless otherwise notified by AFD to the Beneficiary, AFD shall carry out prior reviews of the procurement processes financed by AFD and issue No Objection Letters when it is satisfied that the Beneficiary has complied with these Guidelines.

Consequently, prior to any advertising or notification to third parties, and unless otherwise required by the law applicable to the Beneficiary before any communication for approval to a national regulatory or supervisory public procurement entity, the Beneficiary is required to submit to AFD, for its prior review (issuance of a No Objection Letter):

- a) The Procurement Plan;
- b) The Request for Expressions of Interest, when applicable, in order to establish the Shortlist of Consultants;
- c) The invitation for Prequalification, the Prequalification documents, when a Prequalification stage is organised;
- d) The evaluation report of the Applications received (in case of Prequalification or Request of Expressions of Interest), and the list of Bidders or Consultants proposed to be invited to participate in the following stage of the relevant Bidding process or Request for Proposals, or Request for Quotations;
- e) The Bidding Documents, Request for Proposals Documents or Request for Quotations;
- f) The detailed report on the evaluation and comparison of Bids, Proposals or Quotations received, including recommendations for contract award. In the case of a two-stage evaluation process, whereby Bids or Proposals are submitted in two separate envelopes (one for the technical proposal, and the other one for the financial proposals), AFD's No Objection Letter shall be requested twice: first, on the result of the evaluation of the technical proposals, and, second, after the opening and evaluation of the financial proposals, on the recommendation for contract award. A copy of the Bid; Proposal or Quotation of the Bidder or Consultant recommended for award (including the signed Statement of Integrity), will be communicated to AFD. In addition, AFD reserves its right to obtain disclosure of all the Bids, Proposals or Quotations from the Beneficiary;
- g) Where applicable, the decision to cancel the bidding process and to declare it unsuccessful;
- h) Prior to their signature, the contract draft and the letters to place an order (including the signed Statement of Integrity);
- i) If applicable, any subsequent contract amendments; and
- j) If applicable, any change or amendment to any of the documents mentioned in a) to i) above shall be approved by a No Objection Letter.

The Beneficiary shall inform AFD of any claim or complaint received and prior to starting a contract termination procedure.

**Provisional No Objection Letter:**

When a procurement process is initiated prior to the signature of the corresponding Financing Agreement, AFD may, at the request of the Beneficiary, issue provisional No Objection Letters which shall become effective if and when AFD's financing becomes effective. Such letters may under no circumstances constitute a commitment on the part of AFD to finance the contract, which remains strictly conditional upon the signing of the Financing Agreement.

### **1.6.3 Post reviews**

Should it deem appropriate, notably when the project covers numerous small standard procurement of limited impact, AFD may agree, particularly at the time of issuing its No Objection Letter on the Procurement Plan, that in lieu of prior reviews of procurement processes as described in Article 1.6.2 here above, it will exercise post reviews using modalities to be specified by AFD.

Upon the Beneficiary's request, AFD may provide it with an assistance with the procurement of certain contracts, free of charge. This service may include the recruitment of the initial technical assistance on the project. The respective roles and responsibilities of AFD and the Beneficiary shall be stated in a specific agreement signed by the parties. The corresponding contracts will be subject to post reviews.

### **1.6.4 Retroactive financing**

When AFD's financing becomes effective after the procurement process has already started or even got accomplished or when AFD refinances a contract that has already been awarded or is in the process of being awarded or is partly or entirely performed it shall ensure that the corresponding works, plants, goods, consulting services or non-consulting services have been procured in compliance with International Good Practices.

AFD shall systematically check that the competitive selection procedure is deemed effective (or, where applicable, that the provisions of Article 1.2.4 above were applicable when the contract was signed). AFD shall systematically ensure that the refinanced contracts are economical, fair and reasonable.

A prerequisite for refinancing of contracts that have already been awarded or are in the process of being awarded or are being performed, is to obtain a formal statement from the Beneficiary on the absence of any kind of claim or complaint, on the absence of any corrupt or fraudulent practices during procurement or performance of the contract to be refinanced, and on the eligibility of the awarded bidder or consultant. For that purpose, the Beneficiary shall sign the specific form supplied as Appendix 2 to the present Guidelines, failing which AFD may refuse its financing. In the event that claims or complaints have been formulated, the Beneficiary shall provide AFD with all answers and investigations carried out. AFD's financing shall only be granted if claims and complaints have been settled in a manner deemed acceptable to AFD.

### **1.6.5 Sanction for misprocurement**

Without prejudice to sanctions set out in Article 1.4 here above in case of Act of Corruption and Fraud, should the reviews conducted by AFD, whether prior or post, reveal that provisions of the present Guidelines are not complied with by the Beneficiary, AFD is entitled to declare misprocurement and to exercise its rights under the Financing Agreement, where appropriate:

- a) To cancel the part of the funds allocated to works, plants, goods, consulting services or non-consulting services which have not been procured in compliance with these provisions;
- b) In the case of a grant, to request reimbursement in full or in part of the disbursed funds;
- c) In the case of a loan, to demand early repayment in full or in part of the amount of the loan.

Even where a contract is awarded following a No Objection Letter, AFD may still declare misprocurement should it determine that the No Objection Letter was issued on the basis of incomplete, inaccurate or misleading information provided by the Beneficiary or that the terms and conditions of the contract were modified without AFD's agreement.

## 2 CONTRACTS AWARDED BY BENEFICIAIRES SUBJECT TO PUBLIC PROCUREMENT REGULATIONS

### 2.1 Provisions for International and National Procurement Competitions

#### 2.1.1 *Selection of International Procurement Competition*

In order to determine whether an international Procurement Competition should be organised, the Beneficiary shall take into consideration the following criteria: the estimated contract amount, the nature and complexity of the contract, and the capacity, number and experience of the domestic Applicants, Bidders or Consultants potentially available to perform the contract. The determination shall be reflected in the Procurement Plan approved by AFD by means of a No Objection Letter.

Unless otherwise approved by AFD, contracts with estimated amount above the thresholds given below shall be subject to International Procurement Competition:

- €5,000,000 for works, or plants contracts;
- €200,000 for goods, consulting services or non-consulting services contracts.

AFD may agree on different thresholds applicable to a particular financing in whole (normally then specified in the Financing Agreement), or may provide a specific agreement on applicable thresholds for one or more contracts (normally at the time of the No Objection Letter on the Procurement Plan).

#### 2.1.2 *Requirements for International Procurement Competition*

In cases of International Procurement Competition, the Beneficiaries are strongly encouraged to use AFD's standard Procurement Documents (see Article 1.2.2) which will significantly reduce the time for AFD to issue a No Objection Letter and reduce any risks of misprocurement. These documents are based on the harmonised procurement documents of multilateral development banks.

Except in duly justified cases approved by AFD, International Procurement Competition shall meet the requirements set out below.

##### a) Language

The Procurement Documents, Applications, Bids, and Proposals shall be prepared in one of the three following languages at the Beneficiary's discretion: English, French or Spanish. The contract signed with the selected Bidder or Consultant shall be in the language selected for the Procurement Documents, and that language shall govern the procurement process and the corresponding contract. The Beneficiary may also choose to translate the Procurement Documents to another language. In such a case, the Applicants, Bidders or Consultants shall be authorised to submit their Applications, Bids or Proposals in either of these two languages and the contract signed with the selected Bidder or Consultant shall be in the language in which its Bid or Proposal was submitted. If the language is neither English, French nor Spanish, and if the contract is subject to AFD's prior review, the Beneficiary shall provide AFD with a translation of the Bid or Proposal and of the contract draft into the international language (English, French or Spanish) in which the Procurement Documents were written. The contract shall be signed in one language only.

##### b) Advertising

In addition to the advertising methods that the Beneficiary is required to use in accordance with Public Procurement Regulations applicable to it, the procurement notices (Request for Expressions of Interest, invitation for Prequalification, Invitations for Bids, etc.) shall be published in electronic or paper media with international circulation and, at a minimum, on the following website: <http://afd.dgmarket.com>.

##### c) Application, Bid or Proposal submission deadlines

Unless otherwise approved by AFD, in order to allow foreign Applicants, Bidders and Consultants - that may be located far from the Beneficiary's country - to participate under satisfactory conditions, the minimum time periods for the submission of Applications, Bids or Proposals shall be as follows:

- Time for the preparation of an Application in response to a Request for Expressions of Interest / Prequalification (from the date the latest version of the notice is published to the application submission deadline): 3 weeks;
- Time for the preparation of a Proposal (from the date the latest revision of the Request for Proposals is sent to the Consultants on the Shortlist, to the deadline for submission of Proposals): 6 weeks; however, this time period should not exceed 3 months;
- Time for the preparation of a Bid for works, plants or goods (from the date the latest version of the publication of the Invitation for Bids is published to the deadline for the submission of Bids): 8 weeks.

d) Currencies

The Procurement Documents shall allow Bidders or Consultants to price their Bid or Proposal in one or several internationally convertible foreign currencies including, at least, the Euro.

The Beneficiary may, if it wishes, specify in the Procurement Documents that the part of the Bid or Proposal reflecting local costs (to be incurred in the Beneficiary's country) should be priced in the local currency.

For the purpose of Bid or Proposal evaluation and comparison, the Procurement Documents shall indicate an official source for the exchange rates and a reference date (usually prior to the deadline for the submission of Bids or Proposals) which shall be used to convert all the Bids or Proposals into one currency.

e) Registration and other administrative requirements

If local laws and regulations so specify, the Beneficiary may require the provision of administrative documents in the Procurement Documents. In this case, it should accept the provision by a foreign Applicant, Bidder or Consultant of documents of an equivalent nature to those required in the Beneficiary's country. In addition, the registration of an Applicant, Bidder or Consultant with the competent authorities of the country where the contract is implemented and/or the presentation of administrative documents issued in the country where the contract is implemented may be a (or, together, several) condition(s) to the signing of the contract if local laws and regulations so specify (in such case these conditions are to be stipulated in the Procurement Documents). The absence of such registration or administrative documents when selecting an Applicant receiving a Bid or Proposal should not lead to an automatic rejection of the Application, the Bid or the Proposal.

f) Applicable norms and standards

In order to prevent that Applicants, Bidders or Consultants from one country or another are unduly favoured, Procurement Documents should use, whenever possible, references to international norms and standards. Alternatively, Procurement Documents that refer to a non-international norm or standard shall permit a Bidder or Consultant to use an equivalent or higher norm or standard, provided that the Applicant, Bidder or Consultant substantiates its choice to the satisfaction of the Beneficiary.

g) Settlement of disputes

Unless otherwise approved by AFD, the Beneficiary shall have recourse to international commercial arbitration unless applicable laws and regulations prohibit it. AFD shall not be appointed as an arbitrator, nor be requested to appoint one.

The contract provisions on dispute resolution should also include prior conciliation or mediation mechanisms in order to expedite settlement, but avoiding, unless required by applicable regulations, recourse to dispute resolution procedural rules involving the intervention of the Beneficiary's supervisory authorities.

### **2.1.3 National Procurement Competition**

When International Procurement Competition is not required, the Beneficiary may use National Procurement Competition procedures, for which provisions set out in Article 2.1.2 are not mandatory, although AFD recommends their application. In this case, the provisions set out in Articles 2.1.2 (a) to (g) above may be substituted by the Public Procurement Regulations in force in the Beneficiary's

country, as long as such Public Procurement Regulations remain compliant with International Good Practices. In this respect, a National Procurement Competition procedure must not exclude the participation of foreign Applicants, Bidders or Consultants, in particular.

The Requests for Expressions of Interest, invitations for Prequalification and Invitation for Bids shall be widely advertised by the Beneficiary. Such notices shall be published on websites and in the appropriate national "paper media". It must be possible for AFD to verify the effectiveness of such advertising.

The deadlines for submissions may be reduced compared to those for International Procurement Competition, without undermining the conditions for proper competition or for the preparation of high quality Applications, Bids or Proposals.

#### **2.1.4 Requests for Quotations**

Provided that the public procurement regulations so allow it, and unless otherwise different thresholds are approved by AFD, contracts with an estimated amount below the following thresholds may be subject to a Request for Quotations:

- €300,000 for works or plants contracts;
- €200,000 for goods, consulting services or non-consulting services contracts.

The Beneficiary must have knowledge of Bidders or Consultants both qualified and experienced for the contract to be procured, Provided that the Beneficiary has ascertained that the potential Bidders or Consultants are both available for, and interested in, the contract to be procured, it may establish a list of at least three (3) and not more than six (6), such Bidders or Consultants to whom it will send the Request for Quotations. This list is subject to a No Objection Letter by AFD.

For works, plants goods, and non-consulting services contracts, the beneficiary shall select the lowest evaluated technically compliant Bid.

For consulting services, the quality of proposals shall outweigh price in the selection of the Consultant. The Beneficiary must negotiate the terms of the contract with the best-ranked Consultant.

#### **2.1.5 Other applicable provisions**

##### **a) Domestic preference**

When, and only when, applicable laws require the Beneficiary to apply domestic preference policies, AFD may agree to it, on the condition that (i) it is conducted in a fully transparent manner by applying a margin of preference for Bidders providing goods produced locally, or for Bidders from the Beneficiary's country, and that it is expressly provided for in the Procurement Documents and (ii) it shall not lead to a de facto exclusion of foreign competition. In any case, the domestic preference margin shall not exceed 15% of the import price excluding taxes in case of procurement of goods, or 7.5% of the price in case of procurement of works; it shall not be applicable to consulting services.

Any other provision to promote domestic products or labour (such as requiring a minimum of local products and/or local labour or requiring an association with a local contractor or consultant) is not eligible to AFD's financing, unless (i) it is required by the applicable law and (ii) AFD determines that such provision shall not jeopardize compliance with the International Good Practices, or fulfilment of the expected outcome of the financing.

##### **b) Price adjustment**

The Procurement Documents shall indicate whether the Bid or Proposal is required to be presented (i) on the basis of fixed prices, or (ii) on the basis of adjustable prices; an adjustment shall apply to any cost variations (upward or downward) of the main inputs to the contract (labour, equipment, materials and fuels, etc.) at an interval to be defined in the contract.

Inclusion of a price adjustment clause is not required in the procurement of simple works, plants or goods contracts, with a duration of less than 18 months. It shall be included in contracts with a duration of more than 18 months, as well as if the contract includes substantial inputs (materials, fuel, labour, etc.) for which there is a high price volatility.

c) Securities

Any advance payment by the Beneficiary is necessarily conditional upon the party awarded the contract submitting an advance payment bank guarantee for the same amount under terms accepted by the Beneficiary. The Beneficiary may, however, decide to waive this condition in the case of advances for amounts lower than 10% of the amount of contracts which do not exceed €100,000, and subject to this being specified in the Procurement Documents.

It is recommended to require a performance security in the case of works, plants and goods, contracts but not in the case of consulting services contracts.

It is recommended to require a bid security (also called bid bond) and a retention money security in the case of works, plants and goods contracts, but not in the case of consulting contracts.

Instead of a bid security, the Beneficiary may require Bidders to sign a declaration acknowledging that if they (i) withdraw or modify their Bids during the bid validity period, or (ii) if awarded the contract, fail to sign it, or fail to submit the performance security in a timely manner, then the Bidder shall be considered ineligible to bid for any contract with the Beneficiary for the period specified in the Procurement Documents.

When AFD-financed contracts provide for the provision of a performance security, or a retention money security, the Beneficiary undertakes to delegate the whole or a part of this security in favour of AFD, if AFD requires it.

d) Addendums to Contracts

Unless otherwise approved by AFD, the total aggregate amount of the addendums to a contract shall not exceed (i) the corresponding limit specified in the laws and regulations, if any, or (ii) 20% of the initial contract amount, whichever is more restrictive.

e) Complaints

In accordance with Article 1.2.5, the Beneficiary is responsible for handling complaints and claims received, in accordance with regulations applicable to the Beneficiary. It shall inform AFD of any complaint or claim received and their follow-up, for the procurement of AFD-financed contracts.

f) Electronic procurement (E-procurement)

The use of electronic procurement methods (in particular reverse electronic auctions or the use of an electronic catalog) shall require AFD's prior approval. Upon such request, AFD will analyze the security and confidentiality conditions of the system, as well as its reliability and its compliance with the International Good Practices (in particular, the absence of discrimination). To do so AFD will, among others, rely on any analyses already carried out by other development banks (if applicable), which will be transmitted by the Beneficiary to AFD.

g) Beneficiary's lists of exclusion

Exclusion lists applicable to the Beneficiary, if applicable, shall only be applied to the procurement of AFD-financed contracts upon AFD's prior approval. The Beneficiary will have to demonstrate that the sanctions are imposed transparently, according to formalized procedures, and by an officially established committee dedicated to this task.

h) Taxes

Unless otherwise approved by AFD, the evaluation of Proposals or Bids will be carried out excluding taxes applicable to the contract in the country of implementation. Specific taxes to be excluded from the evaluation will be specified in the Procurement Documents. These must indicate the terms of payment of each of these taxes (exemptions, or payment by one of the parties, to be specified).

## **2.2 Procurement of Works, Plants and Goods**

### **2.2.1 Prequalification**

A Prequalification stage is recommended in the case of the procurement of complex works or plants through an International Procurement Competition for which the risk of collusion between prequalified

Applicants is low. It stimulates competition, particularly when the Bid preparation costs are high. Unless otherwise approved by AFD, it is required for 'design, build and operate' contracts.

The Prequalification notice shall be widely advertised. The Prequalification documents issued by the Beneficiary shall provide information on the scope of the works, or plants to be procured, as well as the full description of the eligibility conditions and the qualification criteria to be used.

The qualification criteria shall relate to the ability of Applicants to perform the contract in a satisfactory manner, given in particular (i) their recent experience with similar contracts in scope and amount, and (ii) their financial situation. Each qualification criterion shall be evaluated as either "meeting" or "not meeting" the corresponding requirement ("pass" or "fail"). An Application for which one or more qualification criteria do not meet the corresponding requirement shall be rejected. The evaluation of the Prequalification of an application shall not be based on a weighted scoring of the qualification criteria.

All Applicants that are eligible and meet the qualification criteria shall be invited to submit a Bid, with no limit to their number. For 'design, build' and 'design, build and operate' contracts, subject to prior approval from AFD, a different evaluation method limiting the number of prequalified Applicants by introducing for this purpose a ranking of the Applications may be applied (then called initial selection instead of Prequalification).

The Bidding Documents must be issued to the prequalified Applicants as early as possible.

### **2.2.2 Bidding Documents and Letter of Invitation for Bids**

#### Letter of invitation for Bids or Invitation for Bids

When there was a Prequalification stage, prequalified Applicants are invited to submit a Bid through a letter indicating, at a minimum the time, date, place and cost to collect the Bidding Documents.

In the absence of a Prequalification stage, Bidders are invited through an Invitation for Bids, indicating, at a minimum, the date, time, place and cost to collect the Bidding Documents as well as the main qualification criteria.

If a payment is required for the Bidding Documents, it shall be the nominal cost for reproduction and not the cost of production.

#### Bidding Documents

The Bidding Documents shall comprise at least the following items:

a) Instructions to Bidders

The Instructions to Bidders that govern the bidding process shall include the scope of the contract, source of funds, contents of the Bidding Documents, modalities for the preparation, submission, opening, evaluation and comparison of Bids and how the contract will be awarded.

b) Bid Data Sheet

It shall include information about the specific bidding process such as deadline time, date, place where Bids shall be submitted, number of copies and contact names and addresses of the entity conducting the bidding process.

c) Evaluation and Qualification Criteria and Bidding Forms

It shall include evaluation and qualification criteria and all the forms that shall be submitted with the Bid.

d) Technical Requirements and Drawings

It shall include a section on the technical requirements and drawings.

e) Eligibility and Statement of Integrity

It shall specify the eligibility requirements and include the mandatory Statement of Integrity.

f) Contract and Contract Forms

It shall include:

- a copy of the proposed contract, comprising the general conditions and the particular conditions;
- the contract agreement, that indicates the order of preference of the different documents comprising the contract; and
- the contract forms associated with the contract.

### **2.2.3 Bid opening**

The opening of Bids shall be made in public, i.e. allowing the presence of representatives of the Bidders that wish to attend. Such a meeting shall be held very shortly after the deadline time for the submission of Bids. The opening shall take place regardless of the number of Bids received, provided that the Bids are received earlier than the Bid submission deadline. Unless otherwise approved by AFD, the Bids shall comprise one single envelope containing both technical and financial information.

The name of the Bidder, the price of the Bid<sup>6</sup>, and any alternatives bids or discounts, shall be read aloud at the opening of each Bid. Minutes of the meeting shall be prepared and signed by the different members of the Bid opening committee, and optionally by the representatives of the Bidders that wish to do so.

### **2.2.4 Evaluation of Bids**

The Bids, and the qualification of the Bidders (or the verification of their qualification when there was a Prequalification stage), shall be subject to separate evaluations by exclusively applying the criteria set out in the Bidding Documents.

Qualification determination should be carried out as specified in Article 2.2.1 above.

Unless otherwise prohibited by the laws applicable to the Beneficiary, any change in a joint venture between the Application (Prequalification) and the Bid will be accepted, provided that the new joint venture fulfills all the criteria specified at the Prequalification stage. Otherwise, the Bid of the new joint venture will be rejected.

The contract shall be awarded to the Bidder whose Bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified. However, in specific cases ('design, build' and 'design, build and operate' contracts for instance), a selection method including a technical scoring may be considered and shall require prior approval from AFD. In addition, for 'design, build' and 'design, build and operate' contracts, the financial evaluation of the Bids may take into account the life cycle cost of the plant.

As a derogation and with the prior approval from AFD, a two-envelope process may be used: one envelope containing the technical proposal and another envelope the price of the bid. In the first stage, only the envelope containing the technical proposal shall be opened and evaluated. In the second stage only the envelopes containing the price of the bids whose technical proposals have been deemed substantially compliant with the requirements of the Bidding Documents are opened and evaluated. The contract is awarded as indicated above. The financial envelopes of the Bidders whose technical proposals have not been deemed compliant with the requirements of the Bidding Documents will not be opened and will be returned to the respective Bidders.

The evaluation committee must pay special attention to abnormally low-priced bids and, where a bid is twenty per cent (20%) or more lower than the Beneficiary's estimate, and unless the Beneficiary can demonstrate that the estimate is inaccurate, it shall ask for clarifications and require a detailed price breakdown from the concerned Bidder. The Bid in question shall be rejected in the absence of satisfactory answers from the Bidder to those requests for clarification or if the detailed price breakdown evidences one or several inconsistencies between the technical proposal and the price offered in its Bid. However, in accordance with International Good Practices, setting a threshold amount (or percentage) beyond or below which the Bids are automatically rejected is not acceptable for AFD.

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<sup>6</sup> Unless a two-envelope process is implemented as described in Article 2.2.4.

### **2.2.5 Alternative bids**

The instructions to Bidders may allow Bidders to submit alternative bids, particularly for works contracts, in order to minimise costs or allow technically attractive solutions. The Bidding Documents shall, in such case, indicate the evaluation method of such alternative bids. The price of the different alternative bids proposed in such case must be read aloud during the public Bid opening.

### **2.2.6 Discounts**

A Bid may include an unconditional discount, which is always taken into account during the evaluation, subject to it having been read aloud during the public Bid opening. A Bidder can propose a conditional discount if the Bidder indicates the manner in which the discount is to be applied. If the Bid is divided into several lots, a Bidder may also offer one or several conditional discounts in the case it would be awarded several lots. In such a case, this discount should only be taken into consideration under the terms indicated in the Bidding Documents and provided that all the Bids, for all the lots, are submitted and opened at the same time.

### **2.2.7 Transport and insurance**

Bidders must be invited to submit their Bid according to the international rules established by the International Chamber of Commerce for the interpretation of commercial terms used for international trade (Incoterms). The Bids shall preferably be requested on the basis of CIP (Carriage and Insurance Paid to a named place of destination) for goods.

### **2.2.8 Contract award**

The Beneficiary shall endeavor to sign the contract during the Bid validity period (including any extension thereof).

The Bidder shall not be required to provide works, plants or goods that are not set out in the Bidding Documents or to modify its initial Bid as a condition to the award of the contract.

The practice of financial negotiations is prohibited, except in the specific case of unsuccessful bidding as described below or if explicitly agreed upon by AFD.

### **2.2.9 Unsuccessful bidding**

The Bidding Documents normally state that the Beneficiary may reject all the Bids received and declare the bidding unsuccessful when (i) there has been no real competition<sup>7</sup>, (ii) the Bids received are not substantially compliant with the requirements of the Bidding Documents, or (iii) the Bids prices are significantly higher than the available budget. In any case, the Beneficiary shall obtain AFD's No Objection Letter on the unsuccessful nature of the bidding process, as well as on any subsequent steps proposed by the Beneficiary. The Beneficiary shall analyse all the causes that led to this situation (advertising, conditions and scope of contract, design and specifications, etc.) and remedy those before re-launching the Bid invitation; consequently, a Beneficiary may not reject all the Bids and re-launch a Bid invitation solely for the purpose of seeking lower prices.

If the unsuccessful bidding is due to a lack of competition, the Bid invitation shall subsequently be more widely advertised.

If this situation stems from the fact that none of the Bids are substantially compliant with the requirements of the Bidding Documents, the Beneficiary should investigate the reasons for such non-compliance and consequently adjust the Bidding Documents. In such case, the Beneficiary may request new Bids from all of the initially prequalified Applicants (if a Prequalification stage had taken place) or, upon AFD's prior approval, only from those that submitted a Bid in response to the Invitation for Bids or the initial letter of invitation for Bids.

If the price of the lowest evaluated and substantially compliant Bid significantly exceeds the estimated amount established prior to the Bid invitation, the Beneficiary should investigate the reasons for such

<sup>7</sup> The submission of a single Bid does not necessarily account for absence of competition. In this case, if (i) the bidding has been correctly published and a sufficient response time has been granted (ii) the Bid received is substantially compliant with the Requirements of the Bidding Documents, (iii) the prices are reasonable compared to market prices, and (iv) this complies with rules and regulations applicable to the Beneficiary, then the procurement procedure can be carried through to contract award.

overrun and envisage increasing the budget, or re-launching the Bid invitation as per the provisions above. Alternatively, it may, with AFD's agreement and subject to compliance with regulations applicable to the Beneficiary, enter into negotiations with the lowest evaluated Bidder who submitted a substantially compliant Bid to seek to obtain a satisfactory contract on the basis of a reduction to the scope of the contract and/or a modification to the sharing of risks and responsibilities in order to reduce the contract price. This is only allowed when the modifications envisaged do not call into question the initial ranking of compliant Bids following the evaluation.

### **2.2.10 Force account**

Recourse to force account, i.e. the implementation of works using the Beneficiary's own personnel and equipment, may in certain cases be envisaged if it is the only available method, and in particular, but not exclusively, in the case of works which cannot be quantified in advance, small and scattered works (routine maintenance on an infrastructure network, for instance) or emergency works, and is subject to AFD's prior approval. To obtain AFD's prior approval, the Beneficiary shall provide AFD with (i) information justifying the use of force account, (ii) information evidencing its capacity of performing the said work, (iii) the implementation schedule along with a breakdown of the estimated cost.

## **2.3 Procurement of Consulting services**

Consulting services shall be procured through either a Request for Expressions of Interest followed by a Request for Proposals sent to the Consultants of the Shortlist, or a Request for Quotations.

### **2.3.1 Request for Expressions of Interest**

The Request for Expressions of Interest specifies the content of the contract as well as the Candidates' required qualifications, and indicates the maximum number of Consultants that may be selected on the Shortlist.

Unless otherwise approved by AFD, it is mandatory to use a Request for Expressions of Interest and to establish a Shortlist for the procurement of consulting services contracts estimated to exceed €200,000.

Below this threshold, and subject to compliance with regulations applicable to the Beneficiary, the Beneficiary may use a Request for Quotations, incorporating the provisions of Article 2.3.2 below to the best extent possible.

The preparation of the Shortlist of Consultants who will be invited to submit Proposals is in any case the responsibility of the Beneficiary. AFD does not recommend the scoring of Applications, and its Request for Expressions of Interest template does not provide for this. However, if the Beneficiary wishes to proceed with a scoring, the criteria and their respective weightings in the scoring will have to be specified in the Request for Expressions of Interest for transparency purposes. The Shortlist shall be subject to a No Objection Letter. The Shortlist should comprise Consultants of the same category with similar business objectives. It is therefore strongly advised that consulting firms and individual consultants not be included on the same Shortlist, or private sector firms and non-profit organisations. It is prepared on the basis of the capacity and qualifications of the candidates to perform the requested services. The Shortlist shall be limited to between four (4) and six (6) Consultants. A template of Request for Expressions of Interest can be found on AFD's Website.

### **2.3.2 Request for Proposals (RFP)**

The RFP is sent only to the shortlisted Consultants. No payment shall be required to obtain the RFP. It includes the following items:

a) Letter of invitation

The letter of invitation must identify the shortlisted Consultants.

b) Instructions to Consultants

This is the section of the RFP that governs the selection process. It specifically defines the purpose of the contract, the eligibility / exclusion criteria, the modalities for preparation of the Proposal (site visit, pre-proposal meeting, requests for clarification), the modalities for the submission of Proposals (content and format, number of copies, place of submission, deadline date and time, etc.), the selection method,

the evaluation criteria and their respective weights, the minimum technical score required and the award procedure. In order to avoid receiving financial proposals significantly exceeding the allocated budget, an indicative number of required expert-months or alternatively an estimated budget, shall preferably be specified, but not both. Unless a Fixed Budget Selection Method (FBS) is used (see Article 2.3.3 hereafter), this information shall be stated as being indicative and shall not constitute a maximum budget (ceiling) not to be exceeded.

c) Submission forms

Forms for the submission of the technical and financial proposals (Submission letter, schedules of prices) must be provided.

d) Terms of reference

These describe the context of the project, the expected outcomes of the services (audit, study reports, drawings, training, number and qualifications of required expertise, etc.), the expected deliverables and their schedule, the available resources (data and other available information, logistical resources, etc.) and the duration of the service. These also provide all information necessary for the Consultants to establish an operational methodology and quantify the number of experts and physical resources that need to be mobilised in order to establish a financial proposal on this basis.

e) Conditions of Contract

This usually comprises the general conditions, specific conditions and the contract agreement which shall later be supplemented by various sections of the selected Proposal in order to constitute the final contract.

### **2.3.3 Opening and evaluation of Proposals**

The opening of Proposals shall be made in public, i.e. allowing the presence of representatives of the shortlisted Consultants that wish to attend. The opening shall take place regardless of the number of Proposals received, provided that the Proposals are received earlier than the Proposal submission deadline. Minutes of the meeting shall be prepared and signed by the different members of the bid opening committee and optionally by the representatives of the Consultants that wish to do so.

Unless otherwise prohibited by the regulations applicable to the Beneficiary, any change in a joint venture between the Application (Request for Expressions of Interest) and the Proposal will be accepted, provided that the evaluation of the new joint venture according to the criteria specified at the Request for Expressions of Interest stage leads it to be shortlisted. Otherwise, the Proposal of the new joint venture will be rejected.

Quality shall normally outweigh price in the evaluation of Proposals for consulting services.

Quality and cost-based selection (QCBS):

The Beneficiary will use, to the best extent possible, the most commonly used and AFD-recommended method which is a selection based on quality and cost, with a weighted scoring of the technical and financial proposals.

Proposals are submitted in two separate envelopes (technical and financial). In the first stage only the technical envelopes are opened in public, evaluated and scored out of 100. Non-compliant or inadequate technical proposals (i.e. scored below a minimum technical score specified in the RFP) are rejected at this stage. This first evaluation stage requires a No Objection Letter from AFD before proceeding to open the financial proposals.

The financial envelopes are opened in public as well during a second stage (except for non-compliant technical proposals for which the financial envelopes shall not be opened and must be sent back to the respective Consultants). At this opening, proposal prices and technical scores shall be read aloud. Once evaluated, the financial proposals are scored according to the methods provided for in the RFP. Normally, the financial proposal with the lowest price is scored 100 and the others are given an inversely proportional score based on their price compared to the lowest priced financial proposal.

The Proposal selected is the one that obtains the highest technical/financial weighted score. The weightings should be around 80% for the technical score and 20% for the financial score.

Other possible selection methods are:

- **Least Cost Based Selection (LCS):** The contract is awarded to the lowest-priced compliant Proposal. The compliant technical proposals are those scored equal to or higher than a minimum technical score. This selection method may only be envisaged for standard and simple consulting services of limited impact and cost (for instance translation work).
- **Quality Based Selection (QBS):** The contract is awarded to the highest scored technical proposal (which also must be higher than the minimum technical score set out in the RFP). The financial proposals may be submitted at the same time as the technical proposal (in such case in a separate envelope) or at a later stage during the negotiation of the contract. This method may be used (i) for the short-term recruitment of individual consultants<sup>8</sup> or (ii) for complex projects or projects with major technical impacts, but in this case caution is required as it carries a risk of technical overpricing and requires an extremely good knowledge of market prices on the part of the Beneficiary in order to conduct the financial negotiations properly.
- **Fixed Budget based Selection (FBS):** A maximum budget is indicated in the RFP and the highest scored technical proposal (which must also be higher than the minimum technical score set out in the RFP) is selected, provided that the price proposal is within the budget. The maximum budget must be determined appropriately (neither overestimated nor underestimated on the basis of a detailed assessment of the expert-months/days required and of market prices). Subject to this important reservation, this method may be worthwhile, notably in the case of small studies and simple services.

The evaluation committee must pay special attention to abnormally low-priced proposals and, where a financial proposal is twenty per cent (20%) or more lower than the Beneficiary's estimate, and unless the Beneficiary can demonstrate that the estimate is inaccurate, it shall ask for clarifications and shall require a detailed price breakdown from the concerned Consultant. The Proposal in question shall be rejected in the absence of satisfactory answers from the Consultant to those requests for clarification or if the detailed price breakdown evidences one or several inconsistencies between the technical proposal and the price offered in its financial proposal. However, in accordance with International Good Practices, setting a threshold amount (or percentage) beyond or below which the Proposals are automatically rejected is not acceptable for AFD.

### **2.3.4 Negotiations**

Unlike for the procurement of works, plants or goods, in the procurement of consulting services negotiations may be held prior to signing the contract. The purpose of such negotiations is predominantly to adjust the final contractual content of the services to be provided on the basis of the terms of reference, any comments made by the selected Consultant in its Proposal and the proposed work methodology. Substantial modification of the terms of reference, of the Consultant's methodology, or of the proposed team of experts are prohibited.

If the evaluation method includes cost, the unit prices offered by the Consultant in its Proposal may not be negotiated.

In the case of foreign Consultants, the negotiation shall also determine the taxes and duties applicable to the contract that shall be due locally (they may be estimated on a provisional basis in the financial proposal but are not to be evaluated) and decide the manner in which they will be paid for, taking into account the provisions set out in the RFP.

### **2.3.5 Personnel replacement**

Should it be necessary to replace experts during the performance of contract, the proposed replacement personnel shall possess an equivalent or higher level of qualification and experience and shall receive the same remuneration as the original personnel.

<sup>8</sup> See Article 2.3.6 of the present Guidelines.

Replacement of experts prior to the start of performance of services is not permitted, except in case of duly justified circumstances that are totally beyond the Consultant's control.

### **2.3.6 Individual consultants**

Individual consultants are employed on assignments for which (i) a team of experts is not required, (ii) no additional professional support is required, and (iii) the experience and qualifications of the individual consultant are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individual consultants, it would be advisable to employ a consulting firm.

Unless otherwise approved by AFD, the use of individual consultants<sup>9</sup> is relevant for small value contracts (not exceeding €50,000) and when the required technical proposal, if any, is succinct.

A Request for Expressions of Interest is not required. However, it is recommended when the Beneficiary does not have knowledge of experienced and qualified individuals or of their availability.

Selection shall consist of comparing the overall relevant skills of at least three (3) qualified consultants. The selection of individual consultants shall take into account their experience, their relevant qualifications and their capacity to provide the services.

### **2.3.7 Unsuccessful selection**

The RFP normally states that the Beneficiary may reject all Proposals received and declare the RFP unsuccessful when (i) there has been no real competition<sup>10</sup>, (ii) none of the Proposals received are compliant with the requirements of the RFP, or (iii) the financial proposals prices are much higher than the available budget. In all cases, the Beneficiary shall obtain AFD's No Objection Letter prior to declaring the RFP process unsuccessful, and on the subsequent steps. The Beneficiary shall analyse all the causes that led to this situation (procedure to establish the Shortlist, content of the RFP including the terms of reference, etc.) and remedy those before re-launching the RFP; consequently, a Beneficiary may not reject all the Proposals and re-launch the RFP process solely for the purpose of seeking lower prices.

If the unsuccessful nature of the RFP stems from the fact that none of the Proposals comply with the requirements of the RFP, the Beneficiary should investigate the reasons for such non-compliance and consequently adjust the RFP. In such case, the Beneficiary may request new Proposals from all of the initially shortlisted Consultants.

If the price of the Consultant's Proposal selected for award significantly exceeds the estimate established prior to the Request for Expressions of Interest, the Beneficiary should investigate the reasons for such overrun and envisage increasing the budget, or re-launching the RFP as per the provisions above. Alternatively, it may, with AFD's prior agreement and subject to compliance with regulations applicable to the Beneficiary, enter into negotiations with the selected Consultant to seek to obtain a satisfactory contract on the basis of a reduction of the scope of the services and/or a modification to the sharing of risks and responsibilities in order to reduce the contract price. This is only allowed when the modifications envisaged do not call into question the initial ranking of Proposals following the evaluation.

## **2.4 Other types of contract**

For types of contract other than those referred to in Articles 2.2 and 2.3 above, such as non-consulting services, concessions, public private partnerships, BOT, etc., the Beneficiary shall use current best international practices as a basis for drafting the Procurement Plan, the Procurement Documents and the contractual provisions, in consultation with AFD.

<sup>9</sup> A specific Standard Request for Proposals for Small Consulting Services (to be used for Individual consultants) is available on the Website.

<sup>10</sup> The submission of a single Proposal does not necessarily account for absence of competition. In this case, if (i) a sufficient response time has been granted (ii) the technical proposal obtains a score higher than the minimum technical score set out in the RFP, (iii) the prices are reasonable compared to market prices, and (iv) this complies with rules and regulations applicable to the Beneficiary, then the procurement procedure can be carried through to contract award.

### **3 CONTRACTS AWARDED BY BENEFICIARIES NOT SUBJECT TO PUBLIC PROCUREMENT REGULATIONS**

#### **3.1 General framework applicable to all Beneficiaries**

AFD's financing is subject to the condition, among others, that Beneficiaries observe all provisions set out in Article 1 of the present Guidelines for contracts to be considered as eligible expenses. In particular, provisions for eligibility, fraud and corruption, Direct Contracting, advertising on the website <http://afd.dgmarket.com>, the establishment of a procurement plan, reviews by AFD and requirement of a Statement of Integrity shall apply to all Beneficiaries (be them subject, or not subject to Public Procurement Regulations).

Whether they have public or private status, Beneficiaries that are not subject to the Public Procurement Regulations of their country will have to conduct their procurement of works, plants, goods, consulting services and non-consulting services according to pre-established practices, guided by the need for economy and efficiency.

AFD shall ensure that the procurement methods of the Beneficiaries not subject to Public Procurement Regulations are fair and transparent and that they guarantee that the most economically advantageous Bid or Proposal is selected, i.e. the Bid or Proposal with the best price / quality ratio on the basis of an appropriate implementation schedule. In this context, AFD shall verify that, except in the authorized cases of Direct Contracting as mentioned in Article 1.2.4 of the present Guidelines<sup>11</sup>, to the extent possible, at least three (3) qualified Bidders or Consultants have been consulted and that the corresponding Bids or Proposals have been evaluated by a committee set up by the Beneficiary. The contracts shall be awarded on an impartial (arm's length) basis and in a manner that best serves the interests of the project. AFD shall also ensure that there is no discrimination in terms of the nationality of Applicants, Bidders or Consultants, with the exception of any provisions for support to local economy or eligibility (lists of exclusion especially), the acceptability of which shall be confirmed on a case-by-case basis by AFD, according to the provisions of Article 2.1.5 of the present Guidelines.

AFD may request that the Beneficiary apply provisions set out in Articles 2.1 to 2.4 of the present Guidelines, with, at least, prior publication of a notice on the website <http://afd.dgmarket.com>. Precautionary measures to preserve, in the procurement process, the legitimately confidential nature of certain data concerning the Beneficiary or the other contracting parties must be taken by the Beneficiary.

Unless otherwise approved by AFD, the evaluation of the Bids or Proposals will be carried out excluding taxes applicable to the contract in the country of implementation. Specific taxes to be excluded from the evaluation will be specified in the Procurement Documents. These must indicate the terms of payment of each of these taxes (exemption or payment by one of the parties, to be specified).

#### **3.2 Beneficiaries having their own internal procurement procedures**

Beneficiaries that are not subject to Public Procurement Regulations and which have internal procurement procedures shall submit them to AFD which will verify their compliance with International Good Practices. They will also have to apply the provisions of Article 3.1 above.

A No Objection Letter from AFD will be required on the adopted procedures.

#### **3.3 Beneficiaries having no internal procurement procedures**

Beneficiaries that are not subject to Public Procurement Regulations and do which not have internal procurement procedures shall apply, in addition to the provisions of Article 3.1 above, the procedures set out in the present Article 3.3. Alternatively, they shall be required to submit a document for AFD's prior approval presenting the procedures that they intend to use to procure the works, plants, goods, consulting services or non-consulting services to be financed by AFD.

<sup>11</sup> Pursuant Article 1.2.4, after AFD's prior approval, a Person that, either directly or indirectly, has a relationship as a subsidiary or as a majority shareholder with the Beneficiary, may be awarded an AFD-financed contract without prior competitive bidding. Before accepting such procedure of Direct Contracting, AFD must verify (i) the nature of the relationship between the Beneficiary and the controlled Person, (ii) the consistency of the negotiated amount with the initial estimate and usual market prices, and (iii) fair and reasonable contractual terms and conditions.

### **3.3.1 Rules common to all procurement procedures**

The Procurement Documents shall be prepared in accordance with International Good Practices. Where they do not have their own documents, Beneficiaries are invited to use the standard Procurement Documents made available by AFD on its Website.

The time allocated for the preparation of Applications, Bids, Proposals or Quotations shall be sufficient to grant interested parties reasonable and appropriate time to seek information, prepare and submit high-quality Applications, Bids, Proposals or Quotations.

All Applications, Bids, Proposals or Quotations shall be evaluated by an evaluation committee, established in advance, on the basis of the exclusion, qualification and award criteria indicated in the Procurement Documents. This committee shall comprise at least three members, having all the technical and administrative capacities required to carry out a sound evaluation of the Applications, Bids, Proposals or Quotations.

### **3.3.2 Rules applicable to consulting services**

#### **3.3.2.1 Contracts of €200,000 or more**

Consulting services contracts with a value of €200,000 or more must be awarded by means of an International Procurement Competition procedure starting with a Request for Expressions of Interest, in accordance with provisions set out in Articles 2.1.2 and 2.3 of the present Guidelines.

The Request for Expressions of Interest must be published in the paper media of the Beneficiary's country, on the Beneficiary's website if applicable, and in all cases on the website <http://afd.dgmarket.com>.

#### **3.3.2.2 Contracts below €200,000€**

Consulting services contracts with a value less than €200,000 may be awarded by means of a Request for Quotations, without prior publication, in which the Beneficiary must invite at least three (3) Consultants of its choice to submit Proposals and negotiate the terms of the contract with the best-ranked Consultant. Quality of Proposals shall outweigh price in the selection.

For consulting services contracts with a value of less than €15,000, the Beneficiary may dispense with a competition and directly contract on the basis of a single Proposal, after having verified that the Consultant is capable of providing the services and that the offered price is reasonable and in line with current market prices.

### **3.3.3 Rules applicable to the procurement of goods**

#### **3.3.3.1 Contracts of €200,000 or more**

Procurement of goods with a value of €200,000 or more must be awarded by means of an International Procurement Competition following the publication of an Invitation for Bids and in accordance with provisions set out in Articles 2.1.2 and 2.2 of the present Guidelines.

The Invitation for Bids must be published in the paper media of the Beneficiary's country, on the Beneficiary's website if applicable, and in all cases on the website <http://afd.dgmarket.com>.

#### **3.3.3.2 Contracts below €200,000€**

Procurement of goods with a value less than €200,000 may be awarded by means of a Request for Quotations, without prior publication, in which the Beneficiary must invite at least three (3) Bidders of its choice to submit a Bid and select the lowest priced technically compliant Bid.

For goods contracts with a value less than €15,000, the Beneficiary may dispense with a competition and directly contract on the basis of a single Bid, after having verified that the potential Bidder is capable of meeting the requirements and that the offered price is reasonable and in line with current market prices.

### **3.3.4 Rules applicable to the procurement of works and plants**

#### **3.3.4.1 Contracts of €5,000,000 or more**

Works or plants contracts with a value of €5,000,000 or more must be awarded by means of an International Procurement Competition following the publication of an Invitation for Bids and in accordance with provisions set out in Articles 2.1.2 and 2.2 of the present Guidelines.

The Invitation for Bids, or the invitation for Prequalification if applicable, must be published in the paper media of the Beneficiary's country, on the Beneficiary's website if possible, and in all cases on the website <http://afd.dgmarket.com>.

#### **3.3.4.2 Contracts of €300,000 or more and below €5,000,000**

For these contracts, a National Procurement Competition should be used: in accordance with Article 2.1.3 of the present Guidelines: the Invitation for Bids, or the invitation for Prequalification if applicable, must be published in the paper media of the Beneficiary's country and on the Beneficiary's website if applicable. The contract should be awarded to the lowest priced technically compliant Bid.

The Bidding Documents must be issued in a language commonly used in the Beneficiary's country.

Interested foreign Bidders must be allowed to submit a Bid if they wish to do so, under the same conditions as Bidders from the Beneficiary's country.

#### **3.3.4.3 Contracts below €300,000**

Works or plants contracts with a value of less than €300,000 may be awarded by means of a Request for Quotations without prior publication in which the Beneficiary must invite at least three (3) Bidders of its choice to submit a Bid and select the lowest priced technically compliant Bid.

For works contracts with a value of less than €15,000, the Beneficiary may dispense with a competition and directly contract on the basis of a single Bid, after having verified that the proposed Bidder is capable of meeting the requirements and that the offered price is reasonable and in line with current market prices.

### **3.3.5 Other contract types**

For contracts other than those referred to in Articles 3.3.2, 3.3.3 and 3.3.4 above, the Beneficiary, when preparing the Procurement Documents, must act in accordance with the current best international practices to the best extent possible, in consultation with AFD.

## **3.4 Specific case of concessions granted by public authorities**

In cases where AFD finances a project implemented under a public concession, the Beneficiary shall apply one of the following procurement procedures:

- If the concessionaire has been selected following a competitive procedure AFD deems to be acceptable pursuant to the provisions of Article 1.6.4 of the present Guidelines and has been expressly entrusted with the procurement of works, plants, goods, consulting services or non-consulting services covered by AFD financing under its concession, said concessionaire may freely carry out such procurement using its own procedures;
- If the concessionaire has not been selected following a competitive procedure, the works, plants, goods, consulting services or non-consulting services to be financed by AFD shall be considered by AFD as public sector operations and should be procured in compliance with the provisions of the present Guidelines.

## APPENDIX 1 - Statement of Integrity, Eligibility and Environmental and Social Responsibility

Reference name of the bid or proposal \_\_\_\_\_ (the "**Contract**")

To: \_\_\_\_\_ (the "**Contracting Authority**")

1. We recognise and accept that *Agence Française de Développement* ("**AFD**") only finances projects of the Contracting Authority subject to its own conditions which are set out in the Financing Agreement which benefits directly or indirectly to the Contracting Authority. As a matter of consequence, no legal relationship exists between AFD and our company, our joint venture or our suppliers, contractors, subcontractors, consultants or subconsultants. The Contracting Authority retains exclusive responsibility for the preparation and implementation of the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.
2. We hereby certify that neither we nor any other member of our joint venture or any of our suppliers, contractors, subcontractors, consultants or subconsultants are in any of the following situations:
  - 2.1 Being bankrupt, wound up or ceasing our activities, having our activities administered by the courts, having entered into receivership, reorganisation or being in any analogous situation arising from any similar procedure;
  - 2.2 Having been:
    - a) convicted, within the past five years by a court decision, which has the force of *res judicata* in the country where the Contract is implemented, of fraud, corruption or of any other offense committed during a procurement process or performance of a contract (in the event of such conviction, you may attach to this Statement of Integrity supporting information showing that this conviction is not relevant in the context of this Contract);
    - b) subject to an administrative sanction within the past five years by the European Union or by the competent authorities of the country where we are constituted, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract (in the event of such sanction, you may attach to this Statement of Integrity supporting information showing that this sanction is not relevant in the context of this Contract);
    - c) convicted, within the past five years by a court decision, which has the force of *res judicata*, of fraud, corruption or of any other offense committed during the procurement process or performance of an AFD-financed contract;
  - 2.3 Being listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight-against-terrorist financing or threat to international peace and security;
  - 2.4 Having been subject within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
  - 2.5 Not having fulfilled our fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where we are constituted or the Contracting Authority's country;
  - 2.6 Being subject to an exclusion decision of the World Bank and being listed on the website <http://www.worldbank.org/debarr> (in the event of such exclusion, you may attach to this

Statement of Integrity supporting information showing that this exclusion is not relevant in the context of this Contract);

- 2.7 Having created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of this Contract.
3. We hereby certify that neither we, nor any of the members of our joint venture or any of our suppliers, contractors, subcontractors, consultants or subconsultants are in any of the following situations of conflict of interest:
  - 3.1 Being an affiliate controlled by the Contracting Authority or a shareholder controlling the Contracting Authority, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
  - 3.2 Having a business or family relationship with a Contracting Authority's staff involved in the procurement process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
  - 3.3 Being controlled by or controlling another bidder or consultant, or being under common control with another bidder or consultant, or receiving from or granting subsidies directly or indirectly to another bidder or consultant, having the same legal representative as another bidder or consultant, maintaining direct or indirect contacts with another bidder or consultant which allows us to have or give access to information contained in the respective applications, bids or proposals, influencing them or influencing decisions of the Contracting Authority;
  - 3.4 Being engaged in a consulting services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the Contracting Authority;
  - 3.5 In the case of procurement of goods, works or plants:
    - a) Having prepared or having been associated with a consultant who prepared specifications, drawings, calculations and other documentation to be used in the procurement process of this Contract;
    - b) Having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract.
4. If we are a state-owned entity, and to compete in a procurement process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the Contracting Authority, which will inform AFD, any change in situation with regard to points 2 to 4 here above.
6. In the context of the procurement process and performance of the corresponding contract:
  - 6.1 We have not and we will not engage in any dishonest conduct (act or omission) deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate someone's consent, to make them circumvent legal or regulatory requirements and/or to violate their internal rules in order to obtain illegitimate profit;
  - 6.2 We have not and we will not engage in any dishonest conduct (act or omission) contrary to our legal or regulatory obligations or our internal rules in order to obtain illegitimate profit;
  - 6.3 We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to (i) any Person who holds a legislative, executive, administrative or judicial mandate within the State of the Contracting Authority regardless of whether that Person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the Person occupies, (ii) any other Person who performs a public function, including for a State institution or a State-owned company, or who provides a public service, or (iii) any other person defined as a Public Officer by the national laws of the Contracting Authority's country, an undue advantage of any kind, for himself or for another Person or entity, for such Public Officer to act or refrain from acting in his official capacity;

- 6.4 We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to any Person who occupies an executive position in a private sector entity or works for such an entity, regardless of the nature of his/her capacity, any undue advantage of any kind, for himself or another Person or entity for such Person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;
- 6.5 We have not and we will not engage in any practice likely to influence the contract award process to the detriment of the Contracting Authority and, in particular, in any anti-competitive practice having for object or for effect to prevent, restrict or distort competition, namely by limiting access to the market or the free exercise of competition by other undertakings;
- 6.6 Neither we nor any of the members of our joint venture or any of our suppliers, contractors, subcontractors, consultants or subconsultants shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or France;
- 6.7 We commit ourselves to comply with and ensure that all of our suppliers, contractors, subcontractors, consultants or subconsultants comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the environmental and social commitment plan (ESCP) provided by the Contracting Authority.
7. We, as well as members of our joint venture and our suppliers, contractors, subcontractors, consultants or subconsultants authorise AFD to inspect accounts, records and other documents relating to the procurement process and performance of the contract and to have them audited by auditors appointed by AFD.

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Duly empowered to sign in the name and on behalf of<sup>1</sup>: \_\_\_\_\_

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

<sup>1</sup> In case of joint venture, insert the name of the joint venture. The person who will sign the application, bid or proposal on behalf of the applicant, bidder or consultant shall attach a power of attorney from the applicant, bidder or consultant.

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**APPENDIX 2 -  
Statement for Contracts to be refinanced**

Reference name of the contract(s) to be refinanced by AFD: \_\_\_\_\_ (the "**Contract**")

To Agence Française de Développement ("**AFD**")

We, as the Beneficiary, with regards to the Contract for which we have requested AFD's financing, hereby certify that:

- (1) The negotiation, procurement and performance of the Contract did not give rise to any corrupt practices as defined in the United Nations Convention dated 31<sup>st</sup> of October 2003;
- (2) No claim or complaint has been formulated, whether addressed to us directly or indirectly (grievance mechanism, press article, other stakeholder's initiative...) regarding the procurement process and performance of the Contract. In the event that claims or complaints were formulated, we undertake to attach to this Statement all documents related to the investigations and their settlement;
- (3) The awarded bidder or consultant, each member of a joint venture, and each subcontractor, are not listed for financial sanctions by the United Nations, the European Union, and/or France for the purposes of the fight against terrorist financing or threat to international peace and security;
- (4) The awarded bidder or consultant, each member of a joint venture, and each subcontractor, have not acquired or supplied any good and have not operated in any sector subject to an embargo by the United Nations, the European Union or France.

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_