

Annex 10b

Procurement Guidelines for projects funded by GIZ

GCF Funding Proposal

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1. Purpose of Guidelines

The Procurement Guidelines set forth the policies, procedures and minimum standards to be applied by the Recipients for procurements required for the project financed in full or in part by GIZ. The responsibility for the implementation of the project, and therefore for the award and administration of contracts under the project, rests with the Recipient. The Recipient therefore has the contracting authority.

Procurement in the context of these guidelines means the overall process of purchasing goods, construction works, consulting services and general standard services. This includes all steps from the identification of needs, solicitation and selection of suppliers, award of contract.

The Procurement Guidelines provide guidance on each phase of the procurement process as well as an overview of the different procurement procedures.

Please note that the Procurement Guidelines shall not contradict the applicable regional procurement law and/or regulations for public procurement, which apply in the Recipient's country. In principle, the regulations of the Recipient's country are to be observed; the procurement procedures mentioned here are obligatory minimum standards. While implementing a project with public funds the Recipient should take reasonable account of economic efficiency as well as ecological and social aspects.

2. General Provisions and Communication

The Recipient is responsible for protecting the integrity of the process and ensuring that all bidders / vendors / service providers are treated on a fair and impartial basis. The Recipient has to ensure the compliance of all persons involved in the procurement process with these Procurement Guidelines.

2.1. General Principles for awarding contracts

All procurement activities have to be conducted in compliance with five general principles:

The principle of transparency requires that all contracts must be awarded by means of transparent procedures. Compliance with transparent procedures helps to prevent corruption and other fraudulent conduct.

The principle of economic effectiveness shall ensure that funds granted to the Recipient are used economically, efficiently and effectively.

The principle of competition ensures that eligible bidders have the opportunity to compete to provide goods, construction works, consulting services or general standard services.

The principle of non-discrimination requires that all bidders in a contract award procedure must be treated equally. The Recipient is therefore obliged to handle the procedure in a standard manner. Terms of reference or specifications may not be tailored to individual bidders or products. If individual applicants or bidders have prior knowledge in comparison to other potential bidders regarding a specific tender, the Recipient must ensure that gaps in knowledge are filled (provision of knowledge in tender documents).

The principle of neutrality and confidentiality means that all stakeholders in the process are obliged to remain neutral and maintain confidentiality during the whole procurement process including documentation. Confidentiality enables the Recipient to organize fair and transparent competition.

These principles shall guarantee an equal access to the supply chain and ensures that the grant provided by GIZ is used economically, efficiently and effectively. In the following, some principles are explained in more detail.

2.2. Maintenance of confidentiality

Unless otherwise specified in these Guidelines or other provisions of the agreement, the Recipient may not share any information revealed by the bidders, which has been marked as confidential. This expressly includes business and trade secrets and other confidential aspects of the bidders, including their enclosures.

The Recipient must safeguard the integrity of the data and the confidentiality of the requests to participate and bids, including their enclosures, for the entire communication and during the exchange and storage of information. The requests to participate and bids, including their enclosures, as well as the documentation of opening and assessment of the requests to participate and bids shall also be treated confidentially following completion of the procurement procedure.

The Recipient may prescribe targeted requirements for the bidders to protect the confidentiality of the information in the course of the procurement procedure. The submission of a non-disclosure agreement should be included in the tender documents.

2.3. Anti-bribery, anti-terrorism financing, compliance with embargoes

The Recipient shall ensure that the persons it entrusts with the preparation and implementation of the project and the awarding of contracts for the provision of materials and services to be financed do not demand, accept, provide, grant, promise or accept promises for illegal payments or any other advantages in connection with these tasks.

The Recipient shall not make available any financial or other economic resources to third parties under the grant that are listed on an UN and/ or EU sanction list, neither directly or indirectly. Within the implementation of the project, the Recipient may only enter into contractual or business relations and/or maintain such relations with third parties that are reliable and to whom no statutory ban on entering into contractual or business relations applies. Furthermore, the Recipient shall respect embargoes and other trade restrictions of the UN, the

EU or the Federal Republic of Germany within the implementation of the project funded by GIZ.

2.4. Eligible bidders

In order to avoid a conflict of interest in the award process, the Recipient has to ensure the suitability of the bidders.

Bids from bidders will be admitted to the procurement procedure provided that none of the following reasons for exclusion apply:

- The bidder or individual members of the bidder's staff or a subcontractor has economic links or family ties with personnel of the Recipient who are involved in preparing the procurement documents, awarding the contract or supervising the execution of the contract.
- The bidder is or was involved as a consultant in the preparation or implementation of the project. The same applies to an enterprise or an individual that is closely connected to the bidder under a company group or a similar business link, or to several enterprises or individuals associated correspondingly.
- The bidder or individual members of the bidder's staff or a subcontractor are or were during the last 12 months prior to publication of the invitation to tender indirectly or directly linked to the project in question through employment as a staff member or advisor to the Recipient and are or were able in this connection to influence the award of the contract for services, or the bidder is or was otherwise able to influence the award of the contract for services.

Furthermore the bidder is excluded from the procurement process with legal effect of the country of the Recipient on grounds of criminal offences, especially fraud, corruption or other economic crimes;

By signing a declaration of undertaking the bidder attests that none of the above reasons for exclusion or conflicts of interest apply. This declaration is part of the bidding documents. In case of doubt, when tendering the bidder in question shall furnish proof to the satisfaction of the Recipient.

2.5. Publication

The purpose of publishing the invitation to submit bids is to draw the attention of all potential bidders to the intended procurement process and to the opportunity of participating. The procurement notice must be published in due time prior to issuing the prequalification and bidding documents and in an appropriate form specifying date and place of issue. The public invitation to participate in a procurement procedure is usually published by the Recipient in the Recipient's country, if appropriate also in international and German media (GTAI¹).

¹ GTAI: Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing mbH, www.gtai.de

Publication in the Recipient country will follow the rules and regulations applicable. Publication will in principle take place in the daily newspapers of the Recipient country.

The deadlines for preparation of the qualification documents and for preparation of the bids must take into consideration the particular circumstances of the project, its size and complexity and ensure adequate and transparent competition.

An extension of the bidding period may be granted in exceptional circumstances only. All bidders must be notified in writing and in due time before the expiration of the original period.

2.6. Communication and method of submission of bids

Communication in a procurement procedure may be oral if it does not pertain to the procurement documents, the requests to participate or the tenders and if it is adequately documented in an appropriate manner. Comments of the Recipient on inquiries from individual bidders during the bidding period will be communicated to all bidders in writing simultaneously and in due time.

The Recipient and the bidders may use devices and programs for electronic data transmission to send, receive, forward and store data in a procurement procedure. The principle of confidentiality has to be observed.

If bids are requested electronically, the Recipient has to specify the email address and any requirements in relation to document format (pdf, excel, word, etc.), size and number of attachments. If hard copy submission is required, the number of copies and complete address for submission has to be specified in the procurement documents.

2.7. Documentation

The Recipient assures the documentation of the procurement procedure from the outset in text form, so that the individual stages of the procedure, the individual measures and the justification of all individual decisions are recorded.

The documentation as well as the tenders, requests to participate and their enclosures, evaluation, negotiation, decision on award and the contract with amendments, further review or approval from GIZ, if agreed, must be kept on file for at least five years after end of the project financed by GIZ.

2.8. Examination Rights

The Recipient shall enable the representatives of the GIZ and/or the representatives of the audit company contracted by GIZ at any time to consult any records and documents and to visit all installations related thereto. This includes, where appropriate, on-the-spot checks and possible reviews of the procurement procedures and their documentation.

GIZ generally reserves the right to review the bids of all bidders or of specific bidders as well as all other documents in connection with the procurement procedure and awards up to five years after completion of the project.

In the case of a violation of the general principles described, GIZ may demand the cancellation of the procurement procedure.

3. Procurement Planning

As part of the project annual planning activity, the Recipient shall submit a Procurement Plan along with the annual Project Budget and workplan for prior review by GIZ. The Procurement Plan should list any procurement with a unit price equal or over EUR 1,000.00 and must identify the following for each of them:

- Type of procurement (goods, construction works, consulting services or general standard services)
- Description of the goods, construction works, consulting services or general standard services
- Budget estimation per procurement type

4. Procurement Procedures and Process

4.1. Definition and identification of procurement type

Definition of 'goods':

Goods are physical products purchased or manufactured on request. There might be an accompanying element of service, such as the assembly and/ or installation of the purchased goods. The service provided must be directly related to the goods purchased. Typical examples of goods are office supplies and equipment, furniture, IT equipment, books, vehicles, medical supplies and other commodities.

Definition of 'construction works':

Construction works are related to civil works; this includes new construction of structures of all kinds (buildings, highways, bridges, etc), renovations, extensions, repairs and maintenance. This category also includes water, sanitation, transportation and electrical plant infrastructure.

Definition of 'consulting services':

Consulting services are of an intellectual and advisory nature and are considered technical/ project related services which may include feasibility studies, project management, engineering services, architectural services, finance and accounting services, training and development.

Definition of 'general standard services':

General standard services, on the other hand, usually involve the use of equipment and specific methodologies to achieve their objectives. Some typical examples of general standard services are equipment maintenance and repair, operation and maintenance services, utility management, installation and maintenance services, surveys and field investigations.

To be able to identify the right procurement type and procurement procedure it is important to clearly distinguish between the types.

In case of mixed service types the procurement type and the procurement procedure is to be chosen based on the main objection and major proportion of the services (e.g. more than 50 percent of the overall contract amount).

4.2. Type of Procurement procedures

4.2.1. Public Invitation to Tender Procedure (PIT)

The Public Invitation to Tender is a procedure in which the Recipient publicly invites an unrestricted number of bidders to submit bids. The purpose of publishing the invitation to submit bids (procurement notice) is to inform all potential bidders about the possibility to participate in the procurement procedure. The Recipient should therefore publish the procurement notice on its website, the daily newspapers, if appropriate in the international media or any other media suited to reach potential bidders.

The procurement notice must specify the date on which bids are to be submitted. The bidding period must allow the bidders sufficient time to thoroughly prepare their bids. Therefore, when choosing the amount of days for the bidding period, the Recipient must take into consideration the particular circumstances of the procurement (size, complexity, scarceness) and ensure adequate and transparent competition.

The procurement notice also specifies the minimum requirements of qualification (eligibility criteria) a bidder must fulfill to be considered a capable and eligible bidder. The procurement notice must specify that bids are only evaluated, if the bidders have handed in the requested information regarding the qualification requirements and said information has been evaluated positively by the Recipient.

For the evaluation of the bids, please refer to Article 4.4.

When using the Public Invitation to Tender Procedure the Recipient may not negotiate the submitted bids (restriction for negotiation).

4.2.2. Negotiated Award Procedure with Prequalification (NAWP)

The Negotiated Award Procedure with Prequalification is the procurement procedure, where the Recipient publicly invites an unlimited number of potential bidders to submit their request to participate in a competitive tender. The Recipient should publish the Invitation to submit their request to participate on its website, the daily newspapers, if appropriate in the international media or any other media suited to reach potential bidders. Any interested bidder may submit a request to participate. After an evaluation of the requests to participate, the eligible bidders receive an invite to submit bids if they fulfil the eligibility criteria. Negotiations about the bids received are allowed, but need to follow the principle of equal treatment.

The Negotiated Award Procedure with Prequalification is a two stage procedure. In the first stage, the prequalification stage, the submitted documents are examined in order to establish whether the potential bidders are capable of duly and properly delivering the required goods/ works/ services (eligibility assessment). In the prequalification the following essential criteria are examined:

- a) relevant general and specific experience, and satisfactory past performance and successful completion of similar contracts over a given period;
- b) financial position; and, where relevant,
- c) capability of construction and/or manufacturing facilities (if applicable).

The invitation to the first phase, the prequalification, will specify the minimum requirements for the qualification, the eligibility evaluation criteria, the maximum number of bidders to hand in an bid in the second phase as well as the criteria for determining the bidders that will be invited to submit their bids. The maximum number of bidders should be decided by the Recipient based upon the nature of the project and the effort involved in preparing the bid/ conducting negotiations in the second stage. In appropriate cases, other factors such as infrastructure projects, environmental and social standards may be taken into account.

All eligible bidders (if the Recipient specified a maximum number of bidders, only the number of bidders ranked highest in the eligibility evaluation) will be invited to submit a bid.

In the second phase, the Recipient evaluates the technical and price bids of the bidders. In preparation for the negotiation, notes are made for each bid, regarding technical and price related points. The entire content of the bids received, including the prices, may be negotiated, except for the minimum requirements and the award criteria stipulated by the Recipient in the procurement documents.

During the negotiations, the Recipient shall ensure the equal treatment of all bidders. In particular, it shall not provide information in a discriminatory manner, which may give some bidders an advantage over others. It shall inform all bidders of any changes in the procurement documents, particularly to the technical requirements or any other components. The Recipient shall not disclose confidential information of a bidder participating in the negotiations to the other bidders negotiating without his consent. Such agreement shall not take the form of a general waiver but shall be given only with reference to the intended communication of specific information.

When the Recipient intends to end the negotiations after all points intended to be negotiated where successfully addressed, the Recipient shall inform the bidders and set a common deadline to submit final bids, which may no longer be negotiated. The final bids are then evaluated based on the same award criteria as the initial bids.

4.2.3. Negotiated Award Procedure without Prequalification (NAwOP)

The Negotiated Award Procedure without Prequalification is the procurement procedure, where a limited number of eligible bidders are selected and invited to submit bids. The Recipient prepares a so-called shortlist with a minimum of five (5) bidders and invites them to submit a bid. The shortlist documents the eligibility of the bidders to establish whether they are capable of duly and properly delivering the required goods/ works/ services.

This procedure provides the opportunity to negotiate the bids received, see explanations under 4.2.2.

4.2.4. Price Quotation (PQ)

The Price Quotation is a procedure with a minimum of three (3) bidders. The Recipient invites at least three eligible bidders to submit a bid and awards the contract to the most economically advantageous bid. The shortlist documents the eligibility of the bidders to establish whether they are capable of duly and properly delivering the required goods/ works/ services.

This procedure does not provide the opportunity to negotiate the bids received.

4.2.5. Direct Order (DO)

This procedure does not provide the benefits of competition and transparency, hence it can be used only for contracts with an estimated amount of up to EUR 1,000.00. These contracts may be awarded directly to a qualified contractor without formal justification and without formal contract form. The budgetary principles of efficiency and economy must be taken into account.

4.2.6. Direct Award (DA)

In exceptional cases, a Direct Award (also referred to as discretionary award) is permitted. Direct Award is a procedure in which one contractor can be contracted directly. In Direct Awards the Recipient will examine whether the bid price and the other elements of the bid are reasonable.

Direct Awards are only permitted

- a) if for specific reasons only one specific contractor is suitable for supplying the goods, works or services (unique selling point/ sole supplier e.g. patent rights, special expertise or equipment);
- b) when amending existing or previously concluded contracts if the additional scope is minor in comparison with the existing contract, the nature of the goods/ works/ services is the same, and the award of these goods/ works/ services does not justify a new bidding process or cannot be separated without disadvantage from the already awarded goods/ works/ services;
- c) upon cancellation of a correctly executed procurement procedure if a renewed procurement process is unlikely to yield reasonable results
- d) If the performance is particularly urgent due to circumstances which the Recipient could not foresee and the reasons for the particular urgency are not attributable to the Recipient (especially response to disasters).

The justification detailing why a competitive procedure is no option and a Direct Award is the only possible procurement procedure based on one of the criteria mentioned above must be documented and the approval of GIZ regarding the choice of procurement procedure must be obtained in writing prior to initiating the procurement procedure.

Before the contract is awarded, the justification should including an analysis of costs, that the bid price and other elements are reasonable and within market rates and any other information that support and explains the circumstances that lead to the selection of this procurement procedure.

4.2.7. Thresholds for the procurement procedures

The following table provides an overview of the Procurement Procedures applicable for the different types of procurement and estimated contract value thresholds.

Type of Procurement	Estimated Contract Value EUR	Procurement Procedure ²
1. Goods	> 200,000.01	PIT
	20,000.01 – 200,000.00	PIT
	1,000.01 – 20,000.00	PQ
	< 1,000.00	DO
2. Construction Works	> 200,000.01	NAwP
	20,000.01 – 200,000.00	NAwP
	1,000.01 – 20,000.00	PQ
	< 1,000.00	DO

3. Consulting Services	> 200,000.01 ³	PIT, NAWP (s. Footnote 3)
	20,000.01 – 200,000.00 ⁴	NAwP, NAwoP (s. Footnote 4)
	1,000.01 – 20,000.00	PQ
	< 1,000.00	DO
4. General Standard Services	> 200,000.01	PIT
	20,000.01 – 200,000.00	NAwoP
	1,000.01 – 20,000.00	PQ
	< 1,000.00	DO

² The direct award procedure (DA) may be used only in justified exceptional circumstances. Further information are displayed in 4.2.6 Direct Award (DA)

³ Services can be procured via the procurement procedure NAWP only if the services to be awarded, in particular its technical requirements, cannot be described so clearly and exhaustively before the procurement procedure is initiated that sufficiently comparable bids can be expected. Or if contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial framework.

⁴ Precondition for choosing the NAwoP is that the Recipient has an overview of the services available on the market and knowledge of the range of potential bidders in the required field of service. For architectural services, which belong to the consulting services, the NAWP is the only procurement procedure option.

Notice: The Procurement Procedures and the Steps these include are minimum standards. More comprehensive and/ or formal Procurement Procedures/ Steps are allowed.

4.3. Preparation of the Procurement Documents

To prepare the specific Procurement Documents the Recipient must identify the suitable Procurement Procedure based on a correct and realistic cost calculation of the estimated budget⁵ and the procurement type and details.

A procurement procedure requires clear, complete and comprehensive documents to ensure responsive bids that can be easily compared and evaluated. The Procurement documents should inform (potential) bidders about the:

- nature and scope of the goods/ works/ services to be provided;
- steps and conditions of the procurement procedure;
- evaluation/ selection criteria;
- conditions of the intended contract.

They are prepared with the general principles for awarding contracts (see article 2.1) serving as guidance.

Although the level of detail and complexity will vary, the following information is generally included in the procurement documents:

- general information about the context in which the required goods/ works/ services to be provided will be utilized;
- neutral technical specifications/performance criteria/ general information and technical conditions about the goods/ works/ services to be provided (usually in form of Specifications⁶/ Bill of quantity/ Terms of Reference);
- information on the execution of the bidding process (usually in form of general bidding conditions and specific Information provided in an Invitation Letter/ Procurement Notice);
- information on the evaluation method and criteria (usually in form of evaluation grids, Information provided in Invitation Letter/ Procurement Notice);
- general and specific conditions of contract (usually in form of general contract terms and conditions, specific draft contract)
- templates to be filled out by the bidders for increased uniformity (price bid, self-declaration bidder details).

⁵ For construction works the cost calculation is the priced bill of quantities.

⁶ Specifications must list performance requirements or salient characteristics as well as appropriate nomenclature

The following bullet points are a detailed list of information, which can be included within the Invitation Letter/ Procurement Notice/ bidding conditions depending on the complexity of the procurement procedure and type of procurement:

- Date and Time of Submission: The amount of time provided for the preparation and submission of bids varies depending on the nature and complexity of the procurement.
- A request to acknowledge receipt of the Invitation letter and information on whether a bid submission can be expected.
- Detailed Description of the Procedures related to the rejection of bids (late submission, non-responsive submission, missing documentation, etc.)
- Commencement and or/ completion date of the works or services.
- For consultant services, an indicative level of effort expected for key experts (in person days or weeks) or an indicative budget
- List of documents required for submission
- Language of the Bid
- Validity of the Bid
- Method of submission
- Any instructions for presenting the financial proposal (eg. for services, a budget providing line item detail showing unit cost, quantity, total amounts per budget category including personnel, travel, equipment and supplies, etc.)
- Information on how to ask clarification questions / how to handle modifications to bids/proposals before the due date.
- Details regarding the content/format of the submission including any templates to be used and any page size/font requirements.
- Request for a signed bid/proposal by an authorized representative of the bidder.
- Type of contract envisaged (cost reimbursable, fixed price, etc)
- payment currency
- Description of the quotes / bids / proposals evaluation process, the evaluation criteria with any weights, and the minimum qualifying score
- Any conditions on subcontracting (can, cannot, must identify sub-contractor in bid, etc).
- Reference to any laws that may be relevant, including tax obligations that must be considered when submitting a bid

It is common for more complex procurement procedures to include an opportunity for (potential) bidders to ask clarification questions related to the procurement documents. Bidders must direct any questions they may have on commercial, technical or procedural matters in written form to the Recipient. All questions and corresponding answers submitted by potential bidders should be made available to all potential bidders in an anonymous form.

4.4. Bid Opening, Evaluation and Award of Contract

4.4.1. Opening of Bids

The Recipient may not take note of the content of the bids until after the relevant time limit has expired. This does not apply if the procurement procedure is a direct order or direct award procedure.

The bids, which are to be submitted in a sealed envelope, should be jointly opened by at least two representatives of the Recipient at an arranged time immediately after the time limit for handing in bids specified in the procurement documents has passed.

A documentation of the bid opening will be prepared, signed by the representatives of the Recipient conducting the bid opening. It should contain bidders' names, the information if the bid is complete and the offered prices. If the documents are to be submitted in a separated form (e.g. separate technical and price bid), which will be evaluated consecutively, a documentation must be prepared for each opening.

4.4.2. Evaluation of bids and Award of Contract

Bids of bidders that have not met the selection criteria or that have been excluded due to being deemed not eligible based upon grounds for exclusion mentioned in 2.4 are not taken into consideration in the evaluation. In addition, all bids which do not meet the formal requirements, in particular bids that were received late or not in proper form, (unless this occurred for reasons not attributable to the bidder) or bids that do not include the documents requested initially or by follow-up request are to be excluded.

Requests to participate will be checked for compliance with the minimum requirements to ensure that there are no grounds for exclusion. If a limit has been placed on the number of permitted bidders, submissions will be rated in accordance with a weighted grid for assessing the eligibility of bidders specified in the procurement documents.

The evaluation criteria and evaluation system for bids must be defined and included within the procurement documents.

The general principle behind the evaluation process is the selection of a bid that provides the best value. Best value does not necessarily mean the lowest submitted price, although the price will have a preponderant weight when evaluating proposals for goods, works and general standard services. Rather, it represents a tradeoff between price and non-price factors (such as product performance, delivery schedule, technical capacity, past performance, etc.) that provides the greatest overall benefit to the Recipient.

Each bid will be evaluated based on the identical selected set of criteria. The evaluation criteria must be related to the subject matter of the contract. Based on the procurement type, these criteria vary. The following points will exemplify criteria per procurement type:

- Goods/ Non-consultant services
 - Conformity with specifications
 - Delivery time (date specified as “no later than...”)
 - Operating costs
 - Availability of post-delivery services or spare parts
 - Previous performance
 - Price
- Works
 - Conformity to specifications / tender documents
 - Price
- Consultant services
 - Experience with similar assignments
 - Timeframe
 - Key personnel
 - Methodology
 - Price
 - Transfer of knowledge, Consideration of national experts

The contract shall be awarded to the most economically advantageous bid. The most economical advantageous bid shall be determined on the basis of the bid offering the best price-quality ratio. Apart from the price or costs, the award decision may also take into account qualitative, environmental or social criteria.

The evaluation process should be documented and archived. The evaluation of all bids needs to be conducted by at least two representatives of the Recipient. In general, at least two representatives External experts can also take part in the evaluation if appropriate. The bids should be evaluated in accordance with the requirements and criteria outlined in the procurement documents. If ranking factors were given, which is recommended, they should be used in this process. The representatives of the Recipient conducting the evaluation should write a justification, including a written assessment of the evaluation criteria per bid, detailing why the selected bid is considered the best option. The consideration should be based on lowest cost/highest quality approach. All representatives should sign the justification. If a representative disagrees, the person can include a dissenting paragraph in the justification.

The Recipient shall promptly inform the successful bidder about the award of the contract and inform unsuccessful bidders that their bid was not selected.