

## AFD FINANCED PROCUREMENT IN FOREIGN COUNTRIES

### INTERVENTION PRINCIPLES

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As a public development agency, the *Agence Française de Développement* (AFD) is required to ensure that resources made available through its financial assistance are properly used. Its Financing Agreements provide that procurement modalities and contracts are subject to AFD's prior no-objections. This document is meant to provide information to potential Project Owners and contracting parties of AFD financed contracts, concerning AFD's procurement directives and procedures. It is divided into three sections as follows:

1. General intervention principles,
2. Procurement of goods and works: specific points on which AFD lays particular emphasis with respect to internationally recognized principles, and
3. Procurement of intellectual services: specific points on which AFD lays particular emphasis, with respect to internationally recognized principles.

It should be noted that, notwithstanding the terms of the Financing Agreement signed between AFD and the Project Owner (the recipient of the AFD loan or grant), the relationship between the Project Owner and the supplier of goods, works or services is solely governed by: (i) the Project Owner's bidding documents and (ii) the finalized contract between the Project Owner and the supplier of goods, works or services. The Project Owner shall ensure compliance with local regulations applicable to externally financed contracts, and if warranted, shall seek advices from local legal services.

The *Agence Française de Développement* only finances projects in accordance with its own conditions as determined by its financing agreement. No privity shall be deemed to exist between the *Agence Française de Développement* and any third party apart from the Project Owner (the recipient of its financing).

The *Agence Française de Développement* may suspend or definitively stop payments made under a project without prior notification to the supplier of goods, works or services, and with no subsequent entitlement for the latter to direct legal rights to the amounts that could have been provided under the project financing. The suppliers of goods, works or services have to bear the consequences of any overdue payments and disputes that may arise in their relationship with the Project Owner (the recipient of the financing).

Any interactions that may occur between any person other than the Project Owner (recipient of the financing) and the *Agence Française de Développement* on a project, is not and shall not be construed as implying an obligation or a stipulation by the *Agence Française de Développement* in favor of that person or any third party.

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## **General Intervention Principles**

- Untied Financing.

Since January 1, 2002, AFD's assistance has always been untied<sup>1</sup>. AFD finances any goods and services irrespective of country of origin<sup>2</sup> of the supplier or service provider nor the amount of the contract. This policy is not only implemented in "Less Developed Countries" (LDCs) in compliance with the OECD recommendation of April 20, 2001 but also in all AFD partner countries.

- Competition and Transparency.

AFD requires the Project Owner to ensure competition and transparency in compliance with internationally recognized practices and as recommended by the OECD, for the information and short listing of potential providers, the content and publication of bidding documents, the bids evaluation and award of contracts.

Generally, AFD does not authorize direct contracting. Derogation from competitive bidding may be allowed on an exception basis provided it is backed by overriding arguments and authorized by national regulations<sup>3</sup>.

- Advertising.

The Project Owner should advertise widely calls for expressions of interest and calls for bids. Procurement notices should be published in websites and appropriate "print media"; in a national media whatever the case, and in an international media for international competitive bids. AFD should be able to verify the effectiveness of the advertising.

Recommended websites:

- AFD's website should take precedence given that access to and the management of publications on the website has been developed in partnership with *DGMarket* of the *Development Gateway Foundation*;
- the website of Ubifrance;
- any national websites giving free access (for instance, the official website of the Central Procurement Directorate).

Furthermore, in compliance with the untied development aid policy, AFD is required to provide information on the website of the Development Aid Committee (DAC) of the OECD on the organization of any procurement it finances greater than 700,000 SDRs<sup>4</sup> or 130,000 SDRs for "technical cooperation" activities linked to an investment project. AFD must also ensure that the results of its calls for bids are published. The Project Owner

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<sup>1</sup> With the exception of long-term in country expertise where the request of the project management has to do with members of the French Civil Service. In this case, a direct contracting is made with the public interest group, "France Coopération Internationale".

<sup>2</sup> Except for a national embargo.

<sup>3</sup> Cases where a derogation to the principle of competitive bidding will be justified: (i) operations requiring a homogenous set of materials; (ii) operations belonging to a "proprietary system"; (iii) where there is only one provider; (iv) in cases of emergency (after an earthquake).

<sup>4</sup> Special Drawing Rights (SDRs) refers to an international currency with potential claim used by member countries of the International Monetary Fund (IMF).

shall thus take any measures required to transfer the necessary information to AFD to enable the fulfillment of this obligation.

- Implementation of National Regulations.

National procurement regulations of the partner country apply to AFD financing in compliance with the relevant internationally recognized good practices and subject to AFD's specific provisions reflecting its financing conditions of and France's international obligations, especially with respect to money laundering and terrorism financing.

During project preparation, the Project Owner shall prepare and submit a satisfactory procurement plan to AFD specifying: (a) the procurement of goods and works required to carry out the project during an initial period of at least 18 months, (b) proposed procurement methods and (c) AFD review procedures. The Project Owner shall update the said procurement plan yearly or at any time during project execution as needed. The Project Owner shall implement the procurement plan as approved by AFD.

For contracts likely to involve international competitive bidding, AFD could provide useful recommendations to the Project Owner at the time of the project appraisal, for instance with respect to: implementing multilateral donors regulations (World Bank, Regional Development Banks) with which the Project Owner is already familiar, AFD standard bidding documents or harmonized standard bidding documents of multilateral donors.

Where there is co-financing by AFD and other donors, a prior consultation between the donors and Project Owner will define a set of applicable rules which complies with the procedures of all co-financiers.

- Project Owner's exclusive responsibility in defining and managing Procurement, including the awarding of contracts.

While contract awarding responsibility definitely lies solely with the Project Owner, AFD must ensure that the entire procurement process meets transparency, fairness and effectiveness criteria required by French and International partner institutions. Consequently, AFD's no-objections will be required at specific stages of the procurement process. A no-objection is given to the Project Owner after submission of:

- **Prequalification documents** (if applicable).

Where there is a prequalification<sup>5</sup>, the Project Owner shall provide AFD with the invitation to pre-qualify, the prequalification documents and the proposed method of evaluation before any publication of a call for bids.

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<sup>5</sup> The term "short listing" is also used for the procurement of intellectual services. Short listing refers to the selection of a limited number of potential bidders who are invited to bid, among those who meet up with the qualification criteria and are considered capable of providing the services sought. With "prequalification", often used in the procurement of goods and works, an invitation is made to all bidders who meet up with the qualification criteria to bid, no matter their number.

- **Results of the prequalification or the shortlist** (if applicable).

Before notifying bidders on the decision taken, the Project Owner shall submit a report on the bids evaluation and the proposed list of pre-qualified bidders to AFD.

- **Draft bidding documents.**

Before launching the call for bids, the Project Owner shall submit the draft bidding documents to AFD. This should consist of instructions to bidders, including the criteria for bids evaluation, and the applicable administrative and technical conditions as well as the call for bids where there is no prequalification stage. It is recommended to use AFD standard bidding documents (see AFD's website).

- **Award of contract.**

After the bids evaluation and before a final award decision is reached, the Project Owner shall submit: a detailed report on the evaluation and comparison of the bids received; recommendations for the award of the contract; and a copy of the bid submitted by the bidder provisionally awarded contract. The Project Owner shall then award the contract only after receiving a no-objection from AFD.

- **the draft contract.**

Before endorsement, the Project Owner shall communicate to AFD the draft contract, and subsequently any draft amendment that may modify any terms and conditions of the contract.

• Compliance with Environmental and Social Responsibility

To promote sustainable development, AFD ensure compliance with environmental and social responsibility. In this regard bidders should:

- comply with national and international standards of environmental protection and labor law applicable in the country where the contract is executed, as well as with key International Labor Organization (ILO) conventions and international agreements on environmental protection;
- implement these standards during the contract execution using the World Bank Group's environmental and social safeguard policies as well as pertinent OECD Council recommendations;
- take measures to mitigate environmental and social risks identified through the environmental and social risks control approach which will have been communicated to them.

• Fight Against Fraud and Corruption

AFD requires that recipients of its financing (Project Owners and successful bidders) comply with the highest ethical standards during the award and execution of contracts.

To withhold this principle, and after carrying out investigations and drawing conclusions in accordance with its own procedures, AFD will take appropriate measures if it finds out that the procurement process of a project it finances has been tainted by corruption, fraudulent activities, collusive or coercive practices, or extraordinary commercial expenses.

- Fight Against Terrorism

The Project Owner shall not be involved in any business relationship with any person or entity included in any embargo or anti-terrorism lists published by the United Nations, European Union or French government lists.

## **“Good Practices” in the Procurement of Goods and Works**

Open bidding is the recommended practice, with or without prequalification.

- Deadline for Submission of bids

Where there is prequalification, the time allowed for preparing and submission of bids must not be less than 4 weeks beginning from the publication date of the Invitation to Pre-qualify.

Generally, for international competitive bidding, the time allowed for preparing and submission of bids submission should be a minimum of 8 weeks (and exceptionally 6 weeks) beginning from the publication date of the call for bids or the Invitation to Bid where the bid is preceded by prequalification.

- Opening of the Bids

Bids containing price information (except for application documents in the case of prequalification) must be opened in public, that is, in the presence of representatives of bidders who intend to attend the bid opening. Bid opening should preferably take place immediately after the deadline for the submission of bids. Bid prices, and prices of alternative offers, should be read out loudly during the opening of each bid.

- Bids Evaluation

The bid and the bidder’s qualification to carry out the works or supply the goods should be evaluated separately, without cross-weighting, using only the criteria specified in the bidding documents. To maintain objectivity, it is recommended that outcomes for each criterion be limited to either “acceptable” or “unacceptable”, and that unacceptable bids be eliminated on the basis of one or a group of criteria without weighted evaluation of said criteria.

The bidder’s financial proposal should take precedence. Two evaluation methods are generally used.

- 1/ The one-envelope system, in which the technical and financial proposals are contained in one envelope: after all bids have been opened, the successful bid is the lowest evaluated bid which is technically and administratively acceptable.
- 2/ The two-envelope system, in which one envelope contains the bid’s technical proposal and the other the financial proposal: First, the technical proposals are opened to evaluate the technical qualifications. If said qualifications are satisfactory, the second envelope containing the financial proposal is opened to evaluate the financial proposal. The successful bid is the lowest evaluated bid.

- Consideration of Alternative Bids

The section “Instructions to the Bidders” (in the bidding documents) could mention the possibility for the bidders to make alternative offers, as may be the case for the procurement of works, with the objective of reducing costs or enhancing technical solutions. In that case, the bidding documents must specify the chosen method for the evaluation of the alternative offers.

If the “Instruction to Bidders” does not explicitly invite alternative offers, any alternative offer submitted by a bidder can only be considered if said bidder has also submit a proposal for the basic solution as it is specified in the bidding documents and if the Project Owner considers said proposal as the most responsive to said basic solution. Therefore a bid responding to the basic solution is mandatory and is the only base for awarding the contract. Only alternative offers proposed by the provisionally successful bidder can be considered at the time when the contract is being finalized.

- Consideration of Discounts

Some bids may also have discounts and these are always considered during evaluation. An unconditional discount is acceptable so long as the bidder demonstrates the method by which said discount will be applied. In the case of slice (individual contract) and package (group of contracts), a bidder may also offer one or more discounts conditional upon the award of several slices. In this case, conditions provided in the bidding documents will determine how said discount(s) must be taken into account, provided that all bids for all slices have been submitted and opened at the same time.

- Transportation and Insurance

Bidders are invited to submit their bids in compliance with international regulations defined by the International Chamber of Commerce for the interpretation of International Commercial Terms used in foreign trade (Incoterms). Their bids should preferably be charged on the basis of CIP<sup>6</sup> prices (named place of destination) for goods manufactured abroad, and EXW<sup>7</sup> prices (named factory or warehouse) for goods manufactured and assembled in the country of the Project Owner and where further internal transportation and insurance costs are incurred up to the place of destination.

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<sup>6</sup> CIP : Carriage and Insurance Paid to.

<sup>7</sup> EXW : EX Works (named place)

## **“Good practices” in the Procurement of Consulting Services**

Generally, limited bidding should be the rule.

- **Establishing a Short List**

Consulting services contract greater than 210,000 euros should systematically use prequalification. Below this amount, establishing a discretionary list of several names is acceptable.

The deadline for submitting applications should be no less than 4 weeks beginning from the publication date of invitation to pre-qualify.

The Project Owner is responsible for establishing a short list of potential bidders to bid. Potential bidders in said short list should have the abilities and qualifications needed to effectively provide the services under the contract. The short list should include potential bidders pertaining to the same category with similar abilities and commercial goals.

- **Receipt of Bids**

The deadline for submission of proposals, taking into account the importance and complexity of services to be provided, shall be no less than 6 weeks (and exceptionally 4 weeks) nor more than 3 months beginning from the letter of invitation sent to the potential bidders in the short list.

- **Opening of the Bids**

Bids with price information (except for applications from short listed potential bidders or technical proposals in the case of the two-envelope system) must be opened in public, that is, in the presence of representatives of bidders who intend to attend.

- **Bids Evaluation**

The selection is generally based on quality and cost, with weighted technical and financial proposals.

The technical proposal of the bid should take precedence over the financial proposal. The two-envelope system, in which the technical proposal is in one envelope and the financial proposal in the other, is recommended. The technical proposals are examined and evaluated before the financial proposals are opened. The weights (in percentage) used in each evaluation tend to vary. Weights for the technical evaluation note usually vary between 70 and 80%, while weights for the financial evaluation note vary between 20 and 30%. An eliminatory mark for the technical proposal is also established either below a predetermined threshold or relative to the best obtained mark. The successful bid is the bid with the best combined (technical and financial) mark.

- Conflict of Interest

The most common types of conflict of interest are:

1. A company selected to provide consultancy services for the project preparation and execution cannot be subsequently allowed to supply goods, carry out works or provide services (other than the services involved in the continuation of its consultancy services) associated to its initial mission in the same project.

However, in some cases a company that provides consultancy services can be authorized to make another bid for upcoming consultancy services. Thus, a consultant firm may bid for the preliminary engineering, and then for the detailed engineering, for the preparation of bidding documents and finally for the control of works under the same project.

2. A company cannot be selected for a mission which by its very nature could subsequently be incompatible with another mission undertaken by said company. Thus, a consultant firm providing consultancy services to a customer for the privatization of a public corporation cannot be involved in the provision of consultancy services to potential buyers of said corporation at the same time.
3. Particular effort should be made to ensure that a corporate officer of a bidding company should not have any personal interest or family relationship with any member involved in the project management who participates in the contract definition, award, execution or supervision.

These rules apply to bidding companies and their subsidiaries.

- Securities

Bid securities and performance securities are not advisable in the procurement of intellectual services. The use of Performance bonds should be restricted to the recruitment of engineers managing complex and innovative projects.

- Staff Replacement

If it becomes necessary to replace experts working in an ongoing mission, the new staff proposed must have an equal level of qualification at the very least, and is entitled to an identical remuneration.

Any staff replacement before the beginning of the service provision should not be allowed unless the reasons provided have been deemed satisfactory.

## **Glossary of some of the terms used in this document**

<b>Terms</b>	<b>Meaning</b>
• Recipient	The contracting party to a financing agreement with AFD.
• Assistance	A grant or loan provided by AFD to a recipient.
• Financing Agreement	A contractual document cosigned by AFD and a recipient (Foreign state, company, public institution, etc.) that provides a legal framework to AFD's assistance to a project.
• Project Appraisal	It refers to a study carried out during project preparation by the donor(s) to determine whether financing said project is advisable. The corresponding French term is "évaluation" which must not be confused with the English term "evaluation" which refers to a review of the execution and results of a completed project.
• Consultant	This generic term has a number of meanings: it could be the Engineer, or an assistant or consultant of the Engineer, or a consultant delegated by the donor to evaluate the technical and financial aspects involved in the use of the funds allocated to the project <sup>8</sup> .
• Engineer	The Engineer is accountable <sup>9</sup> to the Project Owner for the design and control the work execution. The Engineer's services are specified in a management contract <sup>10</sup> signed with the Project Owner. The Engineer's functions usually include: <ul style="list-style-type: none"> <li>• conducting project-related studies programmed by the Project Owner<sup>11</sup>;</li> <li>• preparing the bidding documents;</li> <li>• assisting the Project Owner in selecting the contractor and in finalizing the contract;</li> <li>• directing and controlling the project works<sup>12</sup>;</li> <li>• scheduling, managing and coordinating on the work site;</li> <li>• assisting the Project Owner with acceptance of project works.</li> </ul>
• Project Owner	The person for whom works, supply of goods or services are provided and for whom the project is carried out (cf. the "owner").
• Open / Limited bidding	Competitive bidding is the procedure by which the Project Owner selects the successful bidder on the basis of objective criteria which have been made known to the bidders in advance. Competitive bidding is said to be open when any business person or entity can submit a bid. It is said to be limited when only business persons who have been pre-qualified are authorized to bid.

<sup>8</sup> This mission shall be carry out by the Engineer, if there is one, who will report to both the Project Owner and the donor.

<sup>9</sup> According to civil law (French Law), for a building or civil engineering work, the contractor as well as the engineer have a decennial liability towards the Project Owner for any hidden defects which may undermine the strength of the building or the use to which it is supposed to be put.

<sup>10</sup> There is no separate engineer in the "design-execution" approach. The Project Owner deals only with the company which in turn carries out the design and execution by itself.

<sup>11</sup> Where detailed surveys, particularly construction surveys, are carried out by the contractor, the Engineer oversees the work by endorsing the documents developed by the contractor.

<sup>12</sup> It is the sole duty of the Engineer to enjoin routine orders to the company for the contract execution.

<ul style="list-style-type: none"><li>• Extraordinary Commercial Expenses</li></ul>	<p>“Extraordinary Commercial Expenses” refer to: any commission which is not mentioned in the main contract or which does not at least result from an unrelated contract made in due form with a reference to the main contract; any commission which does not remunerate any effective legitimate service; any commission paid to a tax haven; any commission paid to a beneficiary who is not clearly identified or to any company which is evidently a front company. Extraordinary commercial expenses are prohibited and could result in the cancellation of AFD financing.</p>
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