



Guidelines for the Procurement of AFD-Financed Contracts in Foreign Countries

- July 2011 -

FOREWORD

As a public institution, 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 goods or services are procured by the Beneficiaries of its financing.

The undertakings made by the Beneficiary of AFD financing in this respect and the controls made by AFD are strictly defined in the Financing Agreement signed between these two parties.

The purpose of the present Guidelines is to specify AFD's requirements for procurement and the type of controls it makes.

It comprises three sections:

1. a common framework applicable to all AFD-financed contracts;
2. the provisions applicable to foreign Beneficiaries subject to national public procurement regulations;
3. the provisions applicable to foreign Beneficiaries that are not subject to national public procurement regulations.

The present Guidelines do not concern AFD's procedure for procurement for its own account (commonly referred to as "Purchasing"), which comes under a specific regulatory framework and procedures. It also does not apply to AFD's activities in the French Overseas Communities.

Should you require any further information or have a suggestion concerning the present document, please write to: passationmarche@afd.fr

AFD's website: <http://www.afd.fr/>

ABBREVIATIONS

AFD	Agence Française de Développement
CIF	Cost Insurance Freight
CIP	Cost Insurance and Freight paid to [place of destination]
DAC	Development Assistance Committee (OECD)
EXW	Ex works
ICB	International Competitive Bidding
MRI	Mutual reliance initiative
NCB	National Competitive Bidding
OECD	Organisation for Economic Co-operation and Development
REOI	Request for Expressions of Interest
SBD	Standard Bidding Documents
SDR	Special Drawing Right

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1. Common framework applicable to all AFD-financed contracts

1.1 General principles governing procurement

Compliance with law applicable to the Beneficiary

The Beneficiaries¹ of AFD's financing are fully responsible for the implementation of AFD-financed projects in compliance with the law that is applicable to them (see also 1.5). This specifically concerns all aspects of the procurement procedure, from the drafting of bidding documents to the performance of contracts, including the award of the latter. AFD only intervenes to verify that the terms of its financing are fully met.

Compliance with international good practices

In addition to compliance with applicable regulations, where appropriate, contracts financed by AFD (in whole or in part) shall be awarded in accordance with the principles of open, fair and transparent competition, while ensuring that the contractors present sufficient qualifications that they are able to implement them. The selection procedures in this respect shall comply with the relevant internationally recognised practices, particularly those recommended by the OECD. This specifically concerns the information provided to potential providers, their pre-selection, the content and publication of bidding documents (BDs), the evaluation of bids and the award of contracts.

AFD has made a set of standard bidding documents (SBDs) available to Beneficiaries on its website² for the procurement of goods, works, equipment and consulting services based on the best international practices. It is strongly recommended to use these SBDs, particularly for international competitive bidding.. It is ultimately the responsibility of the Beneficiary to ensure that they comply with the law that is applicable to it.

Direct contracting

On the basis of the above, the use of the direct contracting (single source) is generally not accepted by AFD.

Any exemption to the requirement for competition shall be exceptional, based on sound justification and must be permitted under the regulations applicable to the Beneficiary,³ although the latter condition is not sufficient in itself.

¹ Beneficiary is understood to mean the recipients of AFD grants or loans. In some cases, the direct Beneficiary is an intermediary only, and the financing is reallocated or used by another entity (final Beneficiary). In the present document, Beneficiary shall mean both the direct Beneficiary and any final Beneficiaries of AFD financing.

² AFD's website (www.afd.fr) see "About AFD / Business Opportunities / Contracts awarded abroad under AFD-financed projects".

³ Examples likely to justify an exemption to the principle of competition are: (i) operations which require a homogeneous set of materials; (ii) operations that come under an "owner system"; (iii) cases where there is only one provider; (iv) unforeseeable cases of extreme urgency (e.g. : response to natural disaster).

Responsibilities for contract procurement and performance

AFD only finances projects subject to its own conditions, which are set out in its financing agreement. No legal relationship exists between AFD and any natural or legal person other than the Beneficiary of the financing.

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

The Beneficiary, as the Employer, remains entirely responsible for the preparation and implementation of the procurement process and the subsequent administration of the contract performance. In this framework, the relations between the Beneficiary and a bidder, contractor, supplier or consultant are exclusively governed (i) by the bidding documents issued by the Beneficiary, and (ii) by the contract signed with the Beneficiary.

AFD may be led to suspend or definitively terminate disbursements in the context of the project, without the providers of goods, works or services being informed beforehand and being entitled to claim from AFD any direct right to the amounts which, as the case may be, originate from such financing. The providers alone shall assume any possible consequences of unpaid amounts and disputes which may arise in the context of their relationship with the Beneficiary of the financing.

Advertising

Pursuant to the principles of open competition and transparency, the procurement of AFD-financed contracts shall, except in duly justified cases, be subject to wide advertising by the Beneficiaries which shall allow appropriate conditions for bid preparation and submission, particularly for application or bid preparation time. The corresponding notices (request for expressions of interest or prequalification notices, specific procurement notice...) shall be published in paper or electronic media, widely advertised and sufficiently in advance to allow candidates to prepare high quality submissions.

Contracts subject to international competition (see international competitive bidding in sections 2.2 and 3.1 below) must at the minimum be published on AFD's website. ⁴
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1.2 Eligibility criteria

Rules of nationality and of origin

Financing allocated by AFD has been entirely untied since 1st January 2002.⁵ Consequently all goods and services are eligible for AFD financing regardless of the country of origin⁶ of the supplier, contractor, provider or sub-contractors, as well as of the inputs or resources used in the implementation processes. This decision not only concerns the "Least Developed Countries" (LDCs), pursuant to the OECD/DAC Recommendation of 20th April 2001 on untying aid, but also all the other foreign countries where AFD operates.

⁴ www.afd.fr – see "About AFD / Business Opportunities / Procurement Notices".

⁵ With the exception of long-term residential consultants when the Beneficiary requires the mobilization of French civil servants. In such case, a contract is negotiated directly with the "France Coopération Internationale" public institution.

⁶ Except in case of a national embargo.

Grounds for exclusion

Natural or legal persons (including all members of a joint venture or any of their subcontractors) shall not be awarded an AFD-financed contract if they:

- (1) are bankrupt or being wound up, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from a similar procedure under their national law;
- (2) have been convicted within the past five years by court decision, which has the force of *res judicata* in the country where the project is implemented, of any offence committed during the procurement or performance of a contract, particularly for fraud or corruption;
- (3) are listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight against terrorist financing and maintaining international peace and security;
- (4) have committed serious professional misconduct within the past five years during the procurement or performance of a contract, as evidenced by the Beneficiary;
- (5) have not fulfilled their obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where they are established or the Beneficiary's country;
- (6) have been excluded from participating in AFD-financed contracts;
- (7) have committed misrepresentation in documentation requested by the Beneficiary for their participation in the contract;
- (8) for consultancy services, are in a conflict of interests situation which is incompatible with their duties as an independent consultant working in the sole interest of the Beneficiary (see also Section 2.3 below).

The notices published and other selection documents issued by the Beneficiary shall stipulate the above exclusion criteria at the earliest possible stage.

In order to ensure fair competition, except in cases duly accepted by AFD, natural or legal persons (including all members of a joint venture or any of their subcontractors) may not take part in a competitive bidding process if they:

- (9) have an affiliate or reference shareholder relationship with the Beneficiary;
- (10) have business or family relationship with a member of the Beneficiary's department involved in the selection procedure or the supervision of the resulting contract, unless the ensuing conflict has been brought to the attention of AFD and resolved to its satisfaction;
- (11) are or have been associated in the past with a consultant that has worked on the preparation of the specifications, drawings, calculations and other documents used in the competitive bidding procedure for the relevant works, supply or equipment contracts;
- (12) are government-owned entities which (a) are not legally and financially autonomous and/or (b) do not operate under commercial law.

In addition to providing the documentary evidence required, the candidates or bidders shall certify that they are not in any one of the situations listed above.

Embargos

The Beneficiary undertakes not to acquire or supply any equipment or to operate in any sector which is subject to an embargo by the United Nations, the European Union or France.

1.3 Corruption and fraud

AFD requires that Beneficiaries of its funds, employers, contractors and suppliers observe the highest standard of ethics during contract procurement and performance.

The Beneficiary consequently undertakes to insert clauses in all contracts financed in whole or in part by AFD whereby the contractor or supplier declares that (i) *"it did not engage in any practice likely to influence the Project's implementation process to the Beneficiary's detriment, and that there was not and will not be collusion"*, and that (ii) *"the negotiation, the procurement and the performance of the contract did not give rise to and shall not give rise to corruption, as defined in the United Nations convention against corruption dated 31st October 2003"*.

AFD reserves the right to take any action it deems appropriate to enforce this policy. In this regard, for the procurement of the works, supplies and services that it finances, as well as the performance of such contracts, AFD:

- shall reject a proposal for award if it is established that during the selection process the bidder that is recommended for award has engaged in fraudulent, collusive or coercive practices or that it has engaged, directly or through an agent, in corruption or an act that constitutes or may constitute a corruption offence as defined by the United Nations Convention against corruption dated 31st October 2003;
- shall cancel all or part of the allocated funds, or shall request the full reimbursement of the disbursed amounts, if it is established at any time during the contract procurement or performance that representatives or employees of a Beneficiary have engaged in corruption, fraudulent, collusive or coercive practices, without the Beneficiary having taken appropriate action satisfactory to AFD to remedy the situation;
- may require that the Beneficiary insert a provision in the bidding documents (or otherwise in the contracts) by which the contractor or supplier permits AFD, or auditors appointed by AFD, to verify its accounts and records relating to the AFD-financed contract;
- may declare a natural or legal person ineligible, either indefinitely or for a stated period of time, to be awarded an AFD-financed contract if at any time the natural or legal person has engaged in corruption, fraudulent, collusive or coercive practices during contract procurement or performance. More generally, should an international or national organisation determine that a natural or legal person has engaged in corruption or fraud, AFD reserves the right to declare such person ineligible to be awarded an AFD-financed contract for a stated period of time.

1.4 Social and Environmental Responsibility

In order to promote sustainable development, AFD seeks to ensure that internationally recognised environmental and social standards are complied with. Candidates for AFD-financed contracts shall consequently undertake to:

- comply with and ensure that all their subcontractors comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the Project, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties;
- adopt any environmental and social risk mitigations measures as defined in the environmental and social management plan or the notice of environmental and social impact issued by the Beneficiary.

1.5 Controls made by AFD

Although procurement ultimately remains the sole responsibility of the Beneficiary (see §1.1 above), AFD verifies that the corresponding processes take place in the required conditions of transparency, fairness and efficiency.

As an exception to the provisions below, operations through a financial intermediary do not systematically require Procurement Plans to be prepared. Moreover, in this particular case the control method is by default an *ex post* control.

Procurement Plan

The Beneficiary is required to establish a Procurement Plan⁷ (preferably prior to, or alternatively, immediately after the signing of the financing agreement) as part of the project preparation procedure. This document identifies the contracts to be awarded under the AFD-financed project (and at the minimum for the following 18 months), by determining for each of them: its purpose, the nature of the contract, the cost estimate or main quantities, the planned procurement method, the type of procedure (international or national), the selection method to be used and the intended procurement timetable.

This document which is essential for the upstream organisation and planning of procurement activities must be subject to AFD's prior "no objection". It shall be updated as and when required and at least annually; each updated version shall also be subject to AFD's "no objection".

The Beneficiary undertakes to implement the Procurement Plan as approved by AFD.

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 publication contributes to more transparency and allows potential candidates to prepare themselves for when a specific procurement notice is published.

Moreover, unless otherwise specified, the Beneficiary shall permit AFD to provide third parties with information contained in the Procurement Plan on contracts that are required to be advertised, notably under AFD's obligations to notify *ex ante* the OECD Development Assistance Committee (DAC) of financing that qualifies as Official Development Assistance.

⁷ AFD recommends the use of a Procurement Plan template, which is available on its website (www.afd.fr) under the heading About AFD / Business Opportunities / Contracts awarded abroad under AFD-financed projects.

AFD's "no objection" (prior review)

By default and unless other provisions are expressly notified by AFD to the Beneficiary, AFD's controls are conducted *ex ante* (prior review) through the issuance by AFD of a "no objection" notice.

Consequently, prior to any advertising or notification of third parties, the Beneficiary is required to submit for the prior "no objection" of AFD:⁸

- the request for expressions of interest (REOI – where applicable)
In the case of consulting services for which prior advertising is provided in order to establish the shortlist of candidates invited to submit a proposal, the Beneficiary shall provide AFD with the draft REOI prior to its publication;
- the prequalification document (where applicable)
In the case of contracts for works or goods, for which prequalification is used,⁹ the Beneficiary shall provide AFD with the prequalification notice, the prequalification document and the evaluation method envisaged, for its "no objection" prior to publication;
- the results of the prequalification or shortlist (where applicable)
Prior to notifying candidates whether or not they have been prequalified / preselected, the Beneficiary shall provide AFD with the evaluation report of the applications received and the list of candidates proposed to be invited to submit a proposal;
- the draft bidding documents¹⁰
Prior to launching the bidding process, the Beneficiary shall provide AFD with the draft bidding documents, including the instructions to bidders (including the bid evaluation criteria), the technical requirements and contract conditions,, together with the procurement notice to be published (if preselection or prequalification have not been used). Any amendment made to the bidding documents during the bid preparation phase shall also be subject to AFD's "no objection" prior to its notification to bidders;
- the bid evaluation report(s) and the recommendation for award
Following the evaluation of bids, and prior to notifying the results to the bidders, the Beneficiary shall provide AFD with a detailed report on the evaluation and comparison of bids received, recommendations for contract award and a copy of the bid submitted by the bidder recommended for award. The Beneficiary may award the contract only after receiving AFD's "no objection".

In the case of a two-stage evaluation process, whereby bids are submitted in two separate envelopes (for the technical, and the financial proposals respectively), AFD's "no objection" shall be requested for both stages: the first on the result of the evaluation of the technical proposals, the second after the opening and evaluation of the financial proposals on the recommendation for award;

⁸ In the case of public procurement, if the process is subject to a review and approval by the national regulatory or procurement control entity, it is preferable for AFD's "no objection" to be obtained prior to such review or approval.

⁹ The term "preselection" is also used in the case of consulting services. The preselection leads to a restricted number of candidates being invited to submit a proposal among those that meet the qualification criteria and that are deemed capable to provide the required services. "Prequalification" is used more for the procurement of works or goods and leads to all candidates that meet the qualification criteria being invited to submit a bid, regardless of their number.

¹⁰ Also referred to as Request For Proposals (RFP) in the case of consulting services.

- draft contracts and any subsequent amendments

The Beneficiary shall provide AFD with the purchase order, contract or contract amendment prior to their signing.

When a procurement procedure must be launched prior to the finalisation of the corresponding financing, AFD may, at the request of the Beneficiary, issue provisional "no objection" notices which shall become effective if and when AFD's financing is effective. However, such notices may in no circumstances constitute a commitment on the part of AFD to finance the project, which remains strictly conditional on the signing of the financing agreement.

***Ex post* controls (post review)**

When AFD deems it appropriate,¹¹ it may notify the Beneficiary, particularly at the time of issuing its "no objection" on the Procurement Plan, that in lieu of *ex ante* controls on the procurement procedure for specified contracts, AFD will exercise *ex post* controls using modalities to be specified by AFD. For such purpose, the Beneficiary undertakes at the minimum to retain and make available to AFD (or an entity mandated by AFD) the documentation on such procedures for a period of five years,¹² as from the Deadline for Drawdown set out in the financing agreement. Such documentation includes, but is not limited to, the documents subjected to "no objection" in the case of the above-mentioned *ex ante* controls.

When the beneficiary of AFD's financing is not the entity in charge of the procurement (reallocation, financial intermediation), all provisions shall be made (e.g.: Beneficiary's authorisation, lifting banking and/or professional secrecy in case of intermediation...) so that such commitments apply to the implementing entity or to the final Beneficiary of the funds.

If AFD's financing occurs when the procurement process has already started or been completed, AFD shall also conduct an *ex post* control in order to ensure that the said process substantially meets its requirements and that the resulting contract is eligible for its financing.

Misprocurement

Should the controls conducted by AFD, whether *ex ante* or *ex post*, reveal that procurement activities of the Beneficiary are not in compliance with the financing agreement, AFD shall have the right to declare misprocurement and:

- either cancel the part of the funds allocated to supplies, works or services which have not been procured in compliance with such agreement;
- or, in the case of a grant, request the reimbursement of the full amount of the disbursed funds;
- or, in the case of a loan, declare the mandatory prepayment of the full amount of the loan.

Even when a contract is awarded following AFD's "no objection", AFD may still declare misprocurement should it determine that the "no objection" 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.

¹¹ The relevance of the use of *ex post* controls is determined on a case-by-case basis, particularly when the project involves numerous small, standard contracts with a limited impact.

¹² Save other statutory time periods for retaining documents under regulations applicable to the Beneficiary.

1.8. Joint cofinancing

In the case of a contract being cofinanced by AFD and one or several other financial institutions, prior consultation shall take place between the co-financiers and the beneficiary in order to determine (i) the applicable eligibility rules (ii) the procurement procedures to be followed, and (iii) the corresponding controls and their modalities.

Subject to being in compliance with the core principles of the present Guidelines, AFD shall as far as possible make every effort to coordinate with other financiers in order to facilitate to the extent possible, procurement activities of the Beneficiary.¹³

¹³ In order to facilitate cofinancing, EIB, KFW and AFD have engaged in a Mutual Reliance Initiative (MRI) whereby the three donors agree to generally follow the procedures of one of them, which is appointed as lead financier and as such monitors and controls the procurement procedures for the cofinanced contracts on behalf of the other financiers.

2. Contracts awarded by foreign Beneficiaries subjected to public procurement regulations

2.1 Legal and regulatory framework

Pursuant to Section 1.1 of the present Guidelines, AFD-financed contracts awarded by a Beneficiary subjected to national regulations on public procurement shall comply with the said regulations.

However, this requirement does not exempt the Beneficiary from complying with AFD's own terms described in Parts 1 and 2 of the present Guidelines, particularly on compliance with international good practices, social and environmental responsibility, the obligation to combat fraud, corruption, money laundering and the financing of terrorism. The Beneficiary is required to report to AFD and document any incompatibilities between these terms and the public procurement regulations applicable in case of external financing with the objective to reach a mutually agreeable solution.

2.2 International and national competitive bidding

Selection of type of procedure

Pursuant to the principles of free access and equal treatment, and in the interest of the Beneficiary in obtaining the widest possible competition, contracts which are likely to draw interest from foreign contractors, suppliers or consultants shall be subject to international competitive bidding.

International competitive bidding is a bidding process with provisions that aim to emulate international competition through the participation of foreign bidders.

There are no absolute criteria that would make it necessary to organise international competitive bidding. Although the estimated contract cost is a key factor, other considerations (nature of the contract, complexity, works or supplies scattered over space or time, local supply market ...) are also relevant. On this basis, and in the absence of specific provisions in the national public procurement regulations, a case-by-case analysis shall be conducted on the specific characteristics of the contract and its circumstances. The selected procedure shall be set out in the Procurement Plan approved by AFD.

As an indication, and without necessarily being restrictive, AFD generally considers that contracts above the thresholds given below should by default be subject to international competitive bidding:

- €5,000,000 for works or heavy equipment contracts¹⁴
- €200,000 for supply or consultancy contracts

¹⁴ Contracts for the construction of industrial facilities comprising supply and installation components (water treatment units, hydropower facilities, pumping stations, telecommunications exchanges...).

Requirements of international competitive bidding

Except in duly justified cases approved by AFD, international competitive bidding shall meet the requirements set out below.

- Language
The prequalification / expressions of interest documents, bidding documents and bids 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 shall be in the language selected for the bidding documents, and the said language shall govern the contract. The Beneficiary may also choose to translate the prequalification documents and bidding documents in another language. In such case, the bidders shall be authorised to submit their bid in either of these two languages and the contract signed with the selected bidder shall be in the language in which its bid was submitted. If the language is neither English, French nor Spanish, and if the contract is subject to AFD's prior "no objection", the Beneficiary shall provide AFD with a translation in English, French or Spanish in which the bidding documents was written. The contractors shall sign the contracts in one language only.
- Advertising
In addition to the normal advertising methods that the Beneficiary is required to use for public procurement, in the case of international procedures, the procurement notices (request for expressions of interest, prequalification notice, bid invitation notices...) shall be published in electronic or paper media with international circulation and at the minimum on AFD's website (<http://afd.dgmarket.com/>).¹⁵
- Time for the submission of bids
In order to allow foreign bidders that may be far from the Beneficiary's country to participate under satisfactory conditions, the time period for the submission of bids shall be somewhat longer than for national procedures.

The following time periods for submission of bids shall be considered as the minimum¹⁶ in international selection procedures:

- Time for the preparation of an expression of interest / prequalification application (from the date of the publication of the notice to the application submission deadline): 4 weeks
- Time for the preparation of a bid for consultancy services (from the sending of the request for proposals to the shortlisted candidates to the deadline for submission of proposals): 6 weeks¹⁷
- Time for the preparation of a bid for works, supplies / equipment (from the date of the publication of the bid invitation notice to the deadline for the submission of bids): 8 weeks¹⁸

¹⁵ Or through access on AFD's website (www.afd.fr) About AFD / Business Opportunities / Procurement Notices.

¹⁶ In order to allow a sufficient number of high quality bids to be submitted, it may be necessary to extend these time periods, particularly in the case of complex bids that require information to be collected on site, or the site to be visited, or when the bid preparation period coincides with periods of annual leave (middle and end of the calendar year) when the staff available to the candidate may be reduced.

¹⁷ Exceptionally 4 weeks.

¹⁸ Exceptionally 6 weeks.

- Currencies
The bidding documents (or request for proposals in the case of consultancy services) shall allow bidders to price their bid in one or several reference foreign currencies, including at least the euro.

The Beneficiary may, if it wishes, require in the bidding documents that the part of the bid reflecting local costs (to be incurred in the Beneficiary's country) be priced in the local currency.

For the purpose of bid evaluation and comparison, the bidding documents shall indicate an official source for the exchange rates and a reference date (for instance the deadline for the submission of bids), which shall be used to convert all the bids into one currency.

- Registration and other administrative requirements
In the case of international competitive bidding, registration and other administrative requirements shall not *de facto* constitute a barrier to the participation of foreign bidders. Wherever possible, the prequalification documents or bidding documents shall consequently give the possibility of submitting documentary evidence of an equivalent nature in the bidder's country. The registration of the bidder or the presentation of administrative documentary evidence in the country where the project is implemented may be a condition precedent to the signing of the contract (in such case this is stipulated in the bidding documents), but not to the prequalification of a candidate or to the submission of a bid.

- Applicable norms and standards
The norms and standards required in international competitive bidding shall not unduly favour providers or suppliers from one country over another one. References to international norms and standards should be used whenever possible. Alternatively, bidding documents that refer to a non-international norm or standard shall permit a bidder to use an equivalent or higher norm or standard, provided that the bidder shall justify and document its choice to the satisfaction of the Beneficiary.

- Contract law and settlement of disputes
Although the law of the contract shall normally be the law of the Beneficiary's country, in the case of international competitive bidding it is preferable for the competent authority for the settlement of disputes to be external to the country in question.

For this reason AFD recommends that beneficiaries use international commercial arbitration. AFD shall not be appointed as an arbitrator, nor be requested to appoint one.

The contract provisions on settlement of disputes should also include simplified conciliation or mediation mechanisms in order to expedite their settlement.

AFD has a set of standard bidding documents made available to Beneficiaries. They may be accessed on its website (www.afd.fr) and comply with the provisions of the present Guidelines, in particular those above for international competitive bidding. In the case of international competitive bidding (but not only), Beneficiaries are consequently strongly encouraged to use these standard documents, which considerably reduce the time for AFD to review and give its "no objection", as well as the risks of misprocurement. These documents are based on the harmonised documents of multilateral development banks¹⁹ and are consequently tried-and-tested and widely known.

¹⁹ Notably the World Bank, African Development Bank, Asian Development Bank and Inter-American Development Bank.

National competitive bidding

When international competitive bidding is not required (i.e. it is highly unlikely that bidders that are not established in the Beneficiary's country will submit bids), the Beneficiary may use the national competitive bidding procedure for which the provisions in the previous section are not required. On such aspects (language, advertising, currency of the bid, administrative formalities, applicable norms and standards or settlement of disputes), the provisions for public procurement in force in the Beneficiary's country may normally be used. However, these shall in no case depart from the core principles of economy, openness, fairness and transparency in public procurement. In this respect, a national competitive bidding procedure must not exclude the participation of foreign bidders.

The bid invitation notices shall be widely advertised by the Beneficiary. Such notices shall be published on websites and in the appropriate national "paper media". AFD shall have the possibility of verifying the effectiveness of such advertising.

The deadlines for submissions may be reduced slightly compared to those for international competitive bidding, without undermining the conditions for adequate competition or the preparation of high quality bids.

Other applicable provisions

- Domestic preference

AFD may, on a case-by-case basis, agree to the use of domestic preference provisions if this is provided for in the applicable legislation.

However, this shall be conducted in a fully transparent manner by applying a margin of preference for supplies produced locally, or for contractors from the Beneficiary's country, expressly provided for in the bidding documents, and shall not lead to a *de facto* exclusion of foreign competition.²⁰

- Price adjustment

The bidding documents shall indicate whether the bid is required to be presented (i) on the basis of fixed prices, or (ii) on the basis of adjustable prices; the adjustment shall apply in the case of cost variations (upward or downward) of the main inputs to the contract (labour, equipment, materials and fuels, etc.).

It is normally not necessary to include a price adjustment clause in simple contracts providing for the delivery of supplies, or the implementation of works, in less than 18 months. However, it should be included in contracts with a duration of over 18 months, or if the contract includes substantial inputs (materials, fuel, labour...) for which there is a high price volatility.

²⁰ The domestic preference margin shall not exceed 15% of the pre-tax import price in the case of a supply contract or 7.5% of the price in the case of a works contract.

2.3. Works, supply and equipment contracts

Open competitive bidding is the method recommended for procurement of works, supply and equipment contracts.²¹

It may or may not be preceded by a prequalification stage.

Prequalification of candidates (optional)

The issue of whether to use a prequalification stage, which extends somewhat the duration of the overall selection procedure, is especially relevant in the case of complex or major works or supply contracts. The main benefit of prequalification is to stimulate competition, notably when the bid preparation costs are high, by informing bidders of the competitors that they will be facing. The use of prequalification is therefore especially justified in the case of major international competitive bidding for which the risk of collusion between prequalified bidders is low.

The prequalification notice shall be widely advertised. The prequalification document issued by the Beneficiary shall provide information on the scope of the works, supplies or services to be procured, as well as a full description of the eligibility conditions and the qualification criteria to be used. The deadline for the submission of applications shall not be less than 3 weeks (4 weeks in the case of an international procedure).

The qualification criteria shall relate to the ability of candidates to perform the contract in a satisfactory manner, given in particular (i) their recent experience with similar contracts, (ii) their capacity in terms of personnel, construction or production equipment, and (iii) their financial situation. The qualification criteria shall be as objective as possible. "Pass" / "fail" criteria shall generally be preferred to scoring grids that lead to combine aspects that are totally independent of one another.

All candidates that are eligible and meet the qualification criteria shall be allowed to submit a bid, with no pre-established limit to their number.

The bidding documents must be issued to the prequalified candidates at the earliest possible date.

Bidding documents

The bidding documents shall, at a minimum, comprise the following items:

i. Letter of invitation for bids / Contract notice

It is the cover letter or publication document for the bidding documents. The contract notice (or procurement notice) is used in the case of an open bid invitation without prior prequalification. The period between the publication of such notice (or the bidding documents being made available) and the submission of bids shall not be less than six weeks (8 weeks in the case of an international procedure).

ii. Bid invitation rules / Instructions to bidders

It is the document that governs the bidding process. It specifically defines the purpose of the contract, the eligibility / exclusion criteria, the bid preparation modalities (site visit, prebid meeting, requests for clarification), the modalities for the submission of bids (content and format, number of copies, place of submission, deadline date and time...), the evaluation method (including of alternatives, as the case may be) and the award procedure.

²¹ Equipment contracts are different from supply contracts in that they usually include a component for technical design for adaptation to the site and a local component for installation and commissioning.

iii. Bid submission forms

Formats and models for submission of technical and financial aspects of the bid.

iv. Technical specifications / plans / specifications

v. Contract model

It usually comprises general administrative conditions and particular administrative conditions. These conditions are later completed with the various components of the bid of the selected bidder in order to constitute the contract.

When there is a substantial cost for reproducing the bidding documents (and notably in the case of an open bid invitation without prequalification), a payment may be required against the delivery of the bidding documents. In such case, in order not to unduly limit competition, the amount to be paid should be indicated in the bid invitation notice as a single, reasonable sum (*i.e.* in relation to the marginal cost of printing a document and any dispatch).

Bid opening

The opening of bids which include price data shall be made in public, *i.e.* in the presence of representatives of the bidders that wish to attend. This meeting shall be held very shortly after the deadline time for the submission of bids. The price of the bid, and any alternatives 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.

Evaluation of bids

The bidders' bids, and the qualification of the bidders (or the verification of their qualification if the bid invitation was preceded by a prequalification) to perform the works or provide goods, shall be subject to separate evaluations by exclusively applying the criteria set out in the bidding documents.

For the sake of objectivity, it is recommended to only envisage one of two responses for each criterion, "pass" or "fail", and to reject a bid failing on one or several of these criteria, rather than use a weighted combined scoring.

Subject to compliance with the administrative and technical requirements included in the bidding documents, the bid price shall take precedence in the evaluation of bids for works, supplies or equipment.

One of the following evaluation methods is normally used:

- Single envelope method: envelopes containing the technical and financial bids are all opened in one session, the winning bid is the bid evaluated with the lowest cost and which is technically and administratively acceptable.
- Two envelope method: one envelope containing the technical bid, the other the financial bid: after the opening and evaluation of the envelopes containing the technical bids only, the envelopes containing the financial bids of the candidates whose technical bids have been deemed acceptable are opened and evaluated. The winning bid is then the bid with the lowest cost.

The evaluation committee must pay special attention to abnormally low priced bids and, where necessary, ask for clarifications from the bidder concerned. The bid in question may be disqualified in the absence of satisfactory answers from the bidder to the requests for clarification.

Alternative bids

The instructions to bidders may invite candidates to submit alternative bids, particularly for works contracts, in order to minimise costs or permit technically attractive solutions. The bidding document shall, in such case, indicate the method selected for the evaluation of such alternative bids. The price of the different alternative bids proposed in such case must be read aloud during the public bid opening.

Should the instructions to bidders not explicitly provide for one or several specific alternative bids, any alternative bids spontaneously proposed by a bidder may only be taken into account if the bidder has also submitted a bid for the basic solution (in line with the bidding documents) and if its basic bid is evaluated as being the best ranked bid. Only the alternative bids offered by the lowest evaluated bidder may then be considered when the contract is finalised.

Consideration of discounts

A bid may include a discount, which is always taken into account during the evaluation, subject to it having been read aloud during the public bid opening. An unconditional discount does not pose a specific problem 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 case, this discount is only 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.

Transport and insurance

Bidders are 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 bid shall preferably be requested on the basis of CIP²² prices (place of destination agreed) for goods manufactured abroad and on the basis of EXW²³ prices (ex factory or off-the-shelf) for goods manufactured or assembled in the Beneficiary's country, to which the inland transport and insurance costs to the final destination are added.

Contract award

The Beneficiary shall award the contract during the bid validity period to the bidder that (i) meets the appropriate qualification criteria and whose bid has been (ii) determined to substantially comply with the provisions of the bidding documents; and (iii) evaluated as the lowest cost bid.

The bidder may not be asked as a condition for contract award to provide works, supplies or services that are not set out in the bidding documents or to modify its initial bid in any other manner.

In order to avoid bidders including a margin for negotiation in their bid, and therefore to encourage the bidder to submit a bid as competitive as possible from the very beginning, the practice of financial negotiations is prohibited, except in the specific case of unsuccessful bidding as described below.

Unsuccessful bidding

The bidding documents normally state that the Beneficiary may reject all the bids received and declare the bidding unsuccessful. This is warranted when there has

²² CIP: Carriage and Insurance Paid to.

²³ EXW: EX Works.

been no real competition,²⁴ or the bids received do not substantially comply with the provisions of the bidding documents, or the bid prices are much higher than the available budget. In any case, the Beneficiary shall obtain AFD's "no objection" prior to declaring the bidding unsuccessful and on the subsequent steps. The Beneficiary shall analyse all the causes that led to this situation (advertising, conditions and scope of contract, design and specifications...) and remedy this before relaunching the bid invitation; however, a Beneficiary may not reject all the bids and request new ones on the same basis solely for the purpose of seeking lower prices.

If the unsuccessful bidding is due to a lack of competition, the bid invitation shall be more widely advertised. If it stems from the fact that the majority or all of the bids do not comply with the provisions of the bidding documents, the Beneficiary may request new bids from all the initially prequalified companies or, with AFD's agreement, only from those that submitted a bid in response to the initial bid invitation.

If the price of the lowest evaluated and compliant bid significantly exceeds the estimate established prior to the bid invitation, the Beneficiary should investigate the reasons for such overrun and envisage relaunching the bid invitation as per the provisions above. Alternatively, it may, with AFD's agreement, enter into negotiations with the the lowest evaluated bidder 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 distribution of risks and responsibilities in order to reduce the contract price. An award is then possible if the modifications envisaged do not call into question the initial ranking of compliant bids following the evaluation.

Force account

Recourse to force account, that is the implementation of works using the Beneficiary's personnel and equipment, may in certain cases be the only possible method: in the case of works which cannot be quantified in advance, small and scattered works (routine maintenance on an infrastructure network), emergency works... In such case the Beneficiary shall obtain AFD's prior agreement. To do so it shall provide AFD with (i) information justifying the use of force account, (ii) information attesting that it is capable to perform the said work, (iii) the implementation schedule along with a breakdown of the estimated cost.

²⁴ The submission of a single bid does not necessarily mean that there was no competition. If the bid invitation has been correctly published and the prices proposed are reasonable in terms of market value then, subject to being authorized by the applicable regulation, the procurement procedure may be brought to completion.

2.4. Consultancy services contracts

Restricted bidding shall be the standard rule for the procurement of consultancy services contracts.

Restricted bidding means a bid invitation where the number of candidates invited to participate and submit a bid (*i.e.* the shortlisted candidates) is *a priori* arbitrarily limited.

Preparation of the shortlist

Recourse to a prior publication (Request for Expressions of Interest – REOI) and a preselection of applications shall be systematic for consultancy services contracts estimated to exceed €200,000. The deadline for the submission of applications shall not be less than 3 weeks (4 weeks in the case of international selection) as from the REOI publication date.

Below this threshold, if the Beneficiary is familiar with the supply side (potential providers), a shortlist may discretionarily be established without prior publication. In this case, the Beneficiary must ascertain that the potential candidates are available and interested before issuing bidding documents to them.

The preparation of the shortlist of candidates that will be invited to submit proposals is in any case the responsibility of the Beneficiary. Unless otherwise provided, the short list shall be subject to AFD's "no objection". It is prepared on the basis of the capability and qualifications of the candidates to perform the requested services. It must be homogeneous, *i.e.* made up of candidates that are similar and subject to a similar economic framework.²⁵ The shortlist shall usually be limited to between 4 and 6 candidates.²⁶

Conflict of interest

Three types of conflict of interest are usually identified under the grounds for exclusion described in Section 1.2:

- i. A consultant hired to provide consultancy services for the preparation or implementation of a project is not accepted at a later stage to provide goods, works or services (other than the continuation of the consultancy services) related to its initial mission for the same project.
- ii. However, a consultant may in certain cases and under certain conditions be allowed to compete for consultancy services downstream. A consulting firm may consequently compete for the preliminary design, then the detailed design, and subsequently the preparation of the bidding documents and the supervision of works for the same project. A consultant may not be hired for a mission which, by its nature, may prove to be incompatible with another of its missions. For instance, a consultant who advises a client in privatising a state-owned company may not also advise potential buyers of the said company.
- iii. Particular vigilance is required as regards the fact that a corporate officer must not have an interest or family connection with a person (employed by

²⁵ It is, in this respect, strongly advised not to include companies and individual consultants on the same shortlist, or commercial companies and not-for-profit entities, or again companies with completely disparate sizes and competences. When it is impossible to do otherwise, specific precautions shall be taken, notably with the evaluation method, in order to avoid any competition distortion phenomena.

²⁶ The maximum number of candidates invited to submit a proposal is usually determined on the basis of the estimated cost of preparing a proposal and the size of the contract envisaged. The lower the ratio of the first to the second, the more the shortlist may be extended without, however, exceeding the number of 7.

the Beneficiary or an entity mandated by the latter) who participates in the definition, the procurement procedure or the supervision of the contract.

These rules apply to bidders, natural or legal persons and those that are affiliated to them.

Bidding documents

The bidding documents (also called Request for Proposals in the case of consultancy services) are sent directly to the shortlisted candidates. They include the following items:

i. Letter of Invitation

The Letter of Invitation usually identifies the shortlisted candidates invited to submit a proposal and requests:

- confirmation that the bidding documents have been received;
- confirmation of the intent to submit a proposal alone or in association²⁷.

ii. Bid invitation rules / instructions to candidates

It is the document 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, prebid meeting, requests for clarification), the modalities for the submission of proposals (content and format, number of copies, place of submission, deadline date and time...), the evaluation method and the award procedures. In order to avoid widely differing proposals, it is often useful to indicate an indicative man-month volume to be mobilised or, otherwise, a provisional budget.

iii. Bid Submission Sheets

Format to present the technical and financial elements of the proposal (Submission Letter, CV, timetable, breakdown of financial proposal).

iv. Terms of Reference

This document describes the context of the project, the expected outcomes of the mission (audit, study reports, plans, training, assignment of an expert...), the available resources (data and other available information, logistical resources...) and the duration of the service.

The purpose of the Terms of Reference is to provide all the information that shortlisted consultants require to establish an operational methodology, quantify the human and material resources that need to be mobilised and establish a proposal price on this basis.

v. Contract model

It generally comprises general administrative conditions and specific administrative conditions. These conditions shall then be completed with the different aspects of the proposal made by the consultant in order to establish the final contract.

The time period allowed for the preparation and submission of proposals, taking account of the scale and complexity of the services to be provided, shall not be less than 4 weeks (6 weeks in the case of international competitive bidding) or more than 3 months as from the sending date of the Request for Proposal.

²⁷ Candidates invited to submit a bid are normally allowed to reinforce their competences by partnering with consultants that are not included on the shortlist and are approved in advance by the contracting entity. The possibility for shortlisted candidates to associate with each other is normally addressed in the request for proposal and is rarely permitted in order not to unduly limit competition.

No payment shall be made to obtain the bidding documents for services.

Opening and evaluation of proposals

Quality shall take precedence over cost in the evaluation of proposals for consultancy services.

The most commonly used method recommended by AFD is that based on quality and cost, with a weighted score 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 the presence of consultants wishing to attend, and are subsequently evaluated in order to be scored out of 100. Non-compliant or inadequate technical proposals (either compared to a minimum threshold defined in absolute terms or compared to the best technical score obtained on the basis of methods defined in the request for proposals) are excluded at this stage. Except in cases of procedures subject to *ex post* controls, this first evaluation stage requires AFD's "no objection" before proceeding to open the financial proposals.

The financial envelopes are opened in public during a second stage (except for non-compliant proposals for which the financial envelopes shall not be opened). Once any arithmetic errors have been corrected, the financial proposals are scored according to the methods provided for in the request for proposals. The lowest proposal is scored 100 and the others are given an inversely proportional score based on their amount compared to the lowest proposal.

The proposal selected is the one that obtains the best technical/economical weighted score. The weighting coefficients are usually 80% for the technical score and 20% for the financial score.

Other possible evaluation methods are:

- Least cost: Method whereby the contract is awarded to the lowest priced compliant proposal. The technical compliance of the proposal may be considered in absolute terms on the basis of a minimum technical score or in a relative manner compared to the proposal with the highest score. This evaluation method lacks qualitative assessment and is generally not recommended, except for standard services for small amounts and with limited impacts.
- Quality alone: Method whereby the contract is awarded to the best evaluated technical proposal. 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 is highly qualitative and may be used for the short-term recruitment of individual consultants. It may also be considered for complex missions or missions with strong impacts, but with caution as it carries a risk of technical overpricing and requires an extremely good knowledge of market prices on the part of the contracting authority in order to conduct the financial negotiations properly.
- Fixed budget: Method whereby a budget ceiling is indicated in the consultation document and the best technical proposal is selected, provided that the financial proposal is within the budget. This method requires an appropriate determination of the budget ceiling (neither overestimated nor underestimated on the basis of a detailed determination of the resources required and of market prices) and sound technical capacities on the part of the evaluation committee. Subject to these key provisions, this simple and rapid method may be worthwhile, notably in the case of small study contracts and simple missions.

The opening of proposals including price information shall be conducted in public, *i.e.* in the presence of consultants that are still in competition and wish to attend.

Securities

The payment of a mobilisation advance is necessarily conditional upon the Consultant submitting an advance 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 price of contracts that themselves do not exceed €100,000, and subject to this being specified in the request for proposals.

The performance security is practically only warranted in the case of contracting for complex or innovative projects.

The requirement of a bid security or a performance security is not advised in the case of consultancy services contracts.

Negotiations

Unlike works, supply and equipment contracts, consultancy services contracts usually are subject to negotiations prior to signing. The purpose of such negotiations is notably to define 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.

If the evaluation method includes cost (i.e. all the methods set out above, except for quality alone), the unit prices offered by the consultant in its proposal may not be negotiated.

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

Personnel replacement

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

Replacement prior to the start of the services is not permitted, except in case of duly justified circumstances that are totally independent of the consultant.

2.5. Other types of contract

For types of contract other than those referred to in Sections 2.2 and 2.3 above, the Beneficiary shall use current international best practices as a basis for the definition of the Procurement Plan, the Bidding Documents and the contractual provisions, in consultation with AFD.

3. Contracts awarded by Beneficiaries not subject to national public procurement regulations

3.1 General framework

Whether they have public or private status, Beneficiaries that are not subject to the public procurement regulations of their country generally conduct their procurement for goods and services according to established practices, guided by the need for economy and efficiency.

AFD shall, however, ensure that the procurement methods are fair and transparent and that they guarantee the most economically advantageous bid is selected, *i.e.* the bid with the best price-quality ratio on the basis of an appropriate implementation schedule. In this context, AFD shall verify that to the extent possible, at least three qualified companies have been consulted and that the corresponding bids have been evaluated by a committee of 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 suppliers, with the exception of any provisions for domestic preference, the acceptability of which shall be confirmed on a case-by-case basis.

Moreover, particularly for major contracts intended for international competitive bidding²⁸, AFD shall request Beneficiaries to use either open or restricted competitive bidding procedures with, at the minimum, prior publication of a notice on AFD's website. It may then be necessary to take precautionary measures to preserve, under the procurement procedures, the legitimately confidential nature of certain data concerning the Beneficiary or the other contracting parties.

A company that either directly or indirectly has a relationship as a subsidiary or reference shareholder with the Beneficiary shall not be authorised to participate in the bidding launched by the latter for the award of an AFD-financed contract. In such case, a directly negotiated contract (without prior competitive bidding) may possibly be signed between such parties subject to the provisions given in the following paragraph.

Any exception to the requirement of competition mentioned above, and notably direct contracting, shall be duly justified and expressly accepted by AFD in order to benefit from its financing. For such purpose, AFD shall verify that the negotiated amount is in line with the initial estimate and current market prices, and more generally that the contractual terms are fair and reasonable. This analysis shall be even more detailed in the case where the funds allocated by AFD include a grant element or loan subsidy.

3.2 Specific cases

Intermediated financing

When AFD allocates financing through an intermediary to final Beneficiaries that are not subject to public procurement (generally a financial institution that lends to private small- and medium-sized enterprises), the contracts financed by such reallocated funds shall exclusively be allocated for the purposes of the project

²⁸ The choice of international competitive bidding does not only depend on the amount of the contract to be awarded, but also on its nature and on local supply market (in terms of competitiveness and quality). However, by way of indication, it can be considered that contracts for amounts above the thresholds indicated in Section 2.2 are likely to attract international competition.

defined in the financing agreement, in line with practices usually followed in private sector operations and deemed to be acceptable by AFD.

Concessions granted by public authorities

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

- If the concessionaire has been selected following a competitive bidding procedure (which may include different stages, but shall begin with large-scale international competitive bidding) deemed to be acceptable by AFD,²⁹ and has been expressly entrusted with the implementation of works and the provision of services under its concession, the said concessionaire may freely procure the works, goods, and services financed by AFD using its own procedures. However, AFD shall encourage the concessionaire to publish a general procurement notice on AFD's website for the part of its investment programme to be procured. In any case, AFD shall reserve the right to exclude contracts awarded by the concessionaire from its financing for which the conditions of award would be found by AFD not to be compliant with the provisions of the present Guidelines.
- If the concessionaire has not been selected in the manner explained above, the works, supplies and services to be financed by AFD shall be considered by AFD as public sector operations and should be procured in compliance with local public procurement regulations or, if such regulations do not apply, according to the principles of the common framework set out in Sections 1 and 3.1 of the present Guidelines.

Refinancing operations

When AFD refinances a contract that has already been awarded or is in the process of being awarded, it shall ensure that the corresponding works, goods or services have been procured in compliance with the principles set forth in the present Guidelines (see Sections 1 and 3.1 – except for the requirement of prior publication on AFD's website).

AFD shall systematically ensure that the refinanced contracts are economical, fair and reasonable, either by verifying that the prior competitive bidding has been effective, or otherwise through a specific analysis as described at the end of Section 3.1.

In any case, a prerequisite for refinancing contracts that have already been awarded or are in the process of being awarded is to obtain a formal statement from the Beneficiary identifying any claim or complaint, whether resolved or not, addressed directly or indirectly (through the media, other project stakeholders...) concerning the procurement of the contracts in question, as well as those for any other component of the same project. On the basis of the content of said statement and its own analysis, AFD may decline to finance the whole project or part of it.

²⁹ In the case of a private initiative for a public-private partnership, also called "unsolicited proposal" (a private investor bears the entire cost of the preparation of a project for which the public Employer subsequently launches international competitive bidding), AFD may accept that the private investor benefit from limited compensatory advantages for such bid invitation, provided that such advantages do not compromise the transparency, impartiality and competitiveness of the procedure.

Beneficiaries having no purchasing / procurement procedures

Beneficiaries that are not subject to their country's public procurement regulations and do not have procedures for their purchasing or procurement procedures may use the Procedures Manual given in the Appendix. Alternatively, they shall be required to submit a document for AFD's prior approval presenting the procedures that they intend to use to procure works, goods or services to be financed by AFD.

GLOSSARY

Direct Contract	Procedure for awarding a contract to a provider without prior competitive bidding (also referred to as a "negotiated procedure without advertising or competitive bidding"). This procurement procedure departs from the fundamental principle of competitive bidding and may therefore only be used in exceptional cases. It must have a sound justification and be provided for in the national public procurement regulations applicable to the Employer.
Direct Invitation	Competitive procedure for potential providers identified by the Employer, without prior advertising (e.g. request for quotation for the supply of goods or request for proposals sent to a shortlist of candidates established without a prior REOI). This type of procedure is normally only used for the procurement of standard goods or services of small values by an Employer that is familiar existing supply market.
International Competitive Bidding	Selection procedure to emulate international competition (participation of foreign bidders) through: advertising in international media, the use of an international language, longer deadlines for bids, the use of international standards, and suitable financial arrangements (bid currencies, payment currencies...) and contractual arrangements (international arbitration).
Restricted competitive bidding	Competitive bidding procedure organised to award a contract for which access is limited to a shortlist of bidders established by the Employer following the REOI, with a maximum number predetermined in advance. If no REOI is published, the term used is Direct invitation. Restricted competitive bidding is the procurement procedure generally used for consultancy services contracts.
National Competitive Bidding	Selection procedure mainly intended for national bidders, without excluding foreign candidates, with the assumption that the local supply market is adequate and competitive, making it is unlikely that entities that are not-established locally will participate.
Open Invitation for Bids	Competitive bidding procedure organised for the purpose of awarding a contract, preceded by a publication and open to all bidders that meet the eligibility and qualification criteria, with no limit to their number. The Open Invitation for Bids is the procurement procedure that is normally used for supply, equipment and works contracts. It may or may not be preceded by prequalification (the qualification process is part of the bidding procedure in such case).
Prequalification	(Optional) procedure preceding an Invitation for Bids intended to select the bidders that will subsequently be invited to submit a bid. The prequalification is subject to wide advertising. The prequalification document gives a full definition of the qualification criteria and the procedures for the submission of applications, without predetermining a maximum number of candidates to be prequalified.
Request for expressions of interest	Publication to inform about an upcoming Restricted competitive bidding and to invite candidates with the required qualifications to express their interest in being Shortlisted. In addition to information about the project and the required profile for providers, the REOI indicates, to the extent possible, the maximum number of candidates to be shortlisted.

APPENDIX

Procurement manual for beneficiaries that are not subject to national public procurement rules

Procurement manual for AFD-financed contracts to be used by beneficiaries that are not subject to national public procurement regulations

FOREWORD

In cases where the implementation of a project financed by Agence Française de Développement (AFD) requires procurement by the Beneficiary, the latter shall award the contract, in compliance with the principles of transparency and fairness, to the most economically advantageous bid (i.e. the bid with the best price-quality ratio), while ensuring that the contractor presents sufficient qualifications regarding its capability to complete the contract in question.

For such purpose, it shall comply with the rules set forth below. In case of non-compliance, the related expenditures will be ineligible for AFD financing.

AFD conducts an *ex ante* control (or prior review through issuance of “no objection” notices), or an *ex post* control, on the Beneficiary’s compliance with such rules. In the latter case in particular, the documents for the procurement procedure shall be retained and made available to AFD for a duration of five years¹ as from the Deadline for Drawdown set out in the financing agreement.

1-ELIGIBILITY FOR CONTRACTS

Rule of nationality or of origin

Participation in bidding procedures administered by the Beneficiary is open on equal terms to all natural and legal persons, without consideration of nationality or of origin, except in the case of goods and services from countries under an embargo of the United Nations, European Union or France.

Grounds for exclusion

Candidates or bidders (including all members of a joint venture and any of their subcontractors) shall be excluded from the procurement or award procedures, where applicable, if they:

- (1) are bankrupt or being wound up, are having their activities administered by the courts, have entered into receivership, , or are in any analogous situation arising from a similar procedure under their national law;
- (2) have been convicted within the past five years by court decision which has the force of *res judicata* in the country where the project is implemented of any offence committed during the procurement or performance of a contract, particularly for fraud or corruption. Are notably excluded, entities and persons that are listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight against the financing of terrorism and maintaining international peace and security;

¹ Save other statutory time periods for retaining documents applicable under local regulations.

- (3) have not fulfilled their obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where they are established or the Beneficiary's country;
- (4) have been excluded from participating in AFD-financed contracts;
- (5) have a relationship of subsidiary or reference shareholder with the Beneficiary (except for in cases referred to in paragraph 7 (b) and (d) below);
- (6) would be in a situation of conflict of interest if they took part in the selection or performance procedures of the contract in question;
- (7) are government-owned entities which (a) are not legally and financially autonomous and/or (b) do not operate under commercial law;
- (8) have committed serious professional misconduct within the past five years during the procurement or performance of a contract, as evidenced by the Beneficiary;
- (9) have committed misrepresentation in documentation requested by the Beneficiary for their participation in the contract;

Candidates or bidders shall certify that they are not in any one of the situations 1 to 7 listed above.

2-RULES COMMON TO ALL BIDDING PROCEDURES

The bidding documents shall be prepared in accordance with international best practices. If they do not have their own documents, beneficiaries are invited to use the standard bidding documents that are made available by AFD on its website.

The time allowed for the preparation of bids (expressions of interest, prequalification applications and bids) shall be sufficient to afford interested parties reasonable and appropriate time to seek information, and prepare and submit high-quality submissions.

All bids determined to be compliant shall be evaluated by an evaluation committee on the basis of the exclusion, qualification and award criteria announced in advance. This committee shall be made up of at least three members, having all the technical and administrative capacities required to formulate a sound evaluation of the bids.

3-RULES APPLICABLE TO CONSULTANCY SERVICES CONTRACTS

Contracts of €200,000 or more

Consultancy services contracts with a value of €200,000 or more must be awarded by means of a restricted international bidding procedure. A request for proposals shall be sent to a limited number of candidates shortlisted after the publication of a request for expressions of interest.

The request for expressions of interest must be published in the media of the Beneficiary's country, if possible on the Beneficiary's website, and in all cases on AFD's website. It shall indicate the purpose of the services to be provided and the selection criteria that will be used to establish the shortlist comprising 4 to 6 candidates.

The request for expressions of interest and request for proposals must be issued in a commonly used international language (French, English or Spanish).

Contracts below €200,000

Consultancy services contracts with a value less than €200,000 may be awarded by means of a Direct Invitation, without prior publication, in which the Beneficiary must invite at least three candidates of its choice to submit proposals and negotiate the terms of the contract with the best ranked candidate.

For consultancy services contracts with a value less than €10,000, the Beneficiary may directly contract on the basis of a single proposal, after having verified that the candidate is qualified to provide the services and that the offered price is reasonable in line with current market prices.

4-RULES APPLICABLE TO SUPPLY CONTRACTS

Contracts of €200,000 or more

Supply contracts with a value of €200,000 or more must be awarded by means of open international competitive bidding following the publication of a procurement notice.

The procurement notice must be published in a newspaper of the Beneficiary's country, if possible on the Beneficiary's website, and in all cases on AFD's website.

The bidding documents must be issued in a commonly used international language (French, English or Spanish) and comply with the requirements referred to in Section 2.2 (sub-section "Requirement of international competitive bidding) of the Guidelines for the Procurement of AFD-Financed Contracts in Foreign Countries.

Any interested supplier should be allowed to bid.

Contracts below €200,000

Supply contracts with a value less than €200,000 may be awarded by means of a Direct Invitation, without prior publication, in which the Beneficiary must invite at least three suppliers of its choice to submit a bid and selects the most advantageous bid.

For supply contracts with a value less than €10,000, the Beneficiary may directly contract on the basis of a single offer, after having verified that the potential supplier is capable of meeting its contract obligations and that the offered price is reasonable in line with current market prices.

5-RULES APPLICABLE TO WORKS CONTRACTS

Contracts of €5,000,000 or more

Works contracts with a value of €5,000,000 or more must be awarded by means of open international competitive bidding following the publication of a procurement notice.

The procurement notice must be published in media newspaper of the Beneficiary's country, if possible on the Beneficiary's website, and in all cases on AFD's website.

The bidding documents must be issued in a commonly used international language (French, English or Spanish) and comply with the requirements referred to in Section 2.2 (sub-section "Requirement of international competitive bidding) of the Guidelines for the Procurement of AFD-Financed Contracts in Foreign Countries.

Any interested contractor should be allowed to bid.

Contracts of €300,000 or more and below €5,000,000

In such case, open competitive bidding published locally should be used: the procurement notice must be published in media newspaper of the Beneficiary's country and if possible on the Beneficiary's website.

The bidding documents must be issued in a language commonly used in the Beneficiary's country.

Potentially interested foreign contractors must be allowed to bid if they wish to do so, under the same conditions as contractors from the Beneficiary's country.

Contracts below €300,000

Works contracts with a value less than €300,000 are subject to Direct Invitation without prior publication in which the Beneficiary must invite at least three contractors of its choice to bid and select the most advantageous bid.

For works contracts with a value less than €10,000, the Beneficiary may directly contract on the basis of a single offer, after having verified that the contractor considered is capable to meet its contract obligations and that the proposed price is reasonable in line with current market prices.

6-USE OF THE DIRECT CONTRACTING (OR SOLE SOURCE) PROCEDURE

The use of direct contracting as an exception to the competitive procedures described in points 2 to 5 above must be justified by the Beneficiary and expressly accepted by AFD. The latter shall notably verify that the resulting contract is in line with the initial estimates and current market prices, and that the contractual conditions are fair and reasonable.

The direct contracting procedure may be used in the following cases:

- (a) where, for reasons of extreme urgency resulting from events that could not have been foreseen and are in no way attributable to the Beneficiary, the time required for a competitive procedure cannot be kept;
- (b) where the services are entrusted to public-sector bodies or to non-profit associations or institutions. However, whenever possible, the preferred procedure is through competitive bidding on an open and fair basis;
- (c) when the bidding procedure has been unsuccessful, that is when no qualitatively and/or financially worthwhile bid has been received. In such cases, after declaring the bidding unsuccessful, the Beneficiary may negotiate with one or more candidates of its choice, from among those that took part in the bidding procedure, provided that the initial terms of the bidding procedure are not substantially altered;
- (d) for supplies or services for which the provision, for technical reasons, or for reasons related to exclusive rights, may only be entrusted to a particular supplier or service provider;
- (e) when warranted by the nature or particular features of certain supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences.