

Procurement Guidelines for AFD-Financed Contracts in Foreign Countries

February 2024

Version 2

#WorldInCommon

FOREWORD

As a public entity, Agence Française de Développement (**AFD**) is required to ensure that the financing it provides for its activities in foreign countries is used for the intended purpose. This specifically involves verifying that funds are properly allocated and that the principles of economy and efficiency are complied with, in line with international good practices, when works, plants, equipment, goods, consulting services and non-consulting services are procured by the Contracting Authorities implementing its financing.

The purpose of the present Procurement Guidelines for AFD-Financed Contracts in Foreign Countries (the Guidelines) is to establish the good practices expected by AFD in terms of procurement, and to specify the scope and procedures for the reviews that AFD conducts concerning compliance with the conditions for the provision of its financing.

These Guidelines comprise five sections:

- Section 1 – The general framework
- Section 2 – The types of competition
- Section 3 – The requirements applicable to the procurement of AFD-financed Contracts
- Section 4 – Procurement of works, plants, equipment, goods and non-consulting services
- Section 5 – Procurement of consulting services

2024 revision:

The present version, dated February 2024, amends the previous version (October 2019) in order to clarify the document, simplify the approaches, and take better account of certain key issues. To this end, there have been changes in the terminology; substantive changes in the requirements; and a major restructuring. Details of these changes are given at the end of this document.

This Version 2 corrects a number of minor typos from the version published in February 2024.

TABLE OF CONTENTS

DEFINITIONS 6

SECTION 1. GENERAL FRAMEWORK..... 12

1.1	Scope of application of the Guidelines.....	12
1.1.1	Persons subject to the Guidelines	12
1.1.2	Contracts subject to the Guidelines	12
1.1.3	Contracts not subject to mandatory competitive bidding	12
1.1.4	Specific case of concessions granted by public authorities	12
1.2	Principles governing Contract procurement and performance	13
1.2.1	Compliance with Laws and Regulations.....	13
1.2.2	Compliance with international good practices	13
1.2.3	Absence of Prohibited Practices.....	13
1.2.4	Responsibilities relating to the procurement and performance of Contracts.....	13
1.3	Eligibility criteria	14
1.3.1	Rules of nationality and origin	14
1.3.2	Grounds for exclusion.....	14
1.3.3	Conflict of interest.....	15
1.3.4	Embargos	16
1.4	Prohibited Practices	16
1.5	Environmental, Social, Health and Safety (ESHS) Responsibility, and Security	17
1.5.1	Environmental, Social, Health and Safety (ESHS) Responsibility	17
1.5.2	Security	17
1.6	Reviews carried out by AFD.....	18
1.6.1	Procurement Plan and strategy	18
1.6.2	Prior reviews	19
1.6.3	Post reviews	20
1.6.4	Contracts to be refinanced	21
1.6.5	Non-compliance of the procurement process.....	21

SECTION 2. TYPES OF COMPETITION..... 22

2.1	International Procurement Competition	22
2.2	National Procurement Competition	23
2.3	Requests for Quotations	24
2.4	Direct Contracting	24

SECTION 3. REQUIREMENTS APPLICABLE TO THE PROCUREMENT OF AFD-FINANCED CONTRACTS 26

3.1	Common provisions	26
3.1.1	Statement of Integrity.....	26
3.1.2	Confidentiality	26
3.1.3	Evaluation of Applications, Bids, Proposals and Quotations.....	26

3.1.4	Retention of documentation.....	26
3.2	Provisions applicable to the procurement process	26
3.2.1	Advertising	26
3.2.2	Electronic Procurement (E-procurement)	27
3.2.3	Exclusion lists of the Contracting Authority	27
3.2.4	Measures to support the local economy.....	27
3.2.5	Proprietary technologies	27
3.2.6	Submission deadlines.....	28
3.2.7	Preparatory meeting, clarifications and addendums	28
3.2.8	Bid securities	28
3.2.9	Arithmetical correction of pricing	28
3.2.10	Taxes, duties and levies	28
3.2.11	Claims, appeals and complaints.....	29
3.2.12	Additional information provided at the request of unsuccessful Bidders or Consultants ..	29
3.3	Provisions applicable to the contractual terms and conditions of the Contract	29
3.3.1	Contractual bank securities	29
3.3.2	Price adjustment.....	29
3.3.3	Amendments to Contracts	30
3.4	Specific case of Contracts with partially or fully deferred triggers	30
3.4.1	Contracts with triggered phases	30
3.4.2	Purchase order Contracts and framework agreements.....	30
3.5	Other types of Contract.....	31
SECTION 4.	PROCUREMENT OF WORKS, PLANTS, EQUIPMENT, GOODS AND NON-CONSULTING SERVICES	32
4.1	Preselection	32
4.2	Letter of Invitation for Bids and Bidding Documents.....	32
4.3	Bid opening	33
4.4	Evaluation of Bids	34
4.5	Alternative Bids	34
4.6	Lots.....	35
4.7	Discounts.....	35
4.8	Transport and insurance	35
4.9	Contract award.....	35
4.10	Unsuccessful bidding process.....	36
4.11	Force account	36
SECTION 5.	PROCUREMENT OF CONSULTING SERVICES.....	37
5.1	Request for Expressions of Interest.....	37
5.2	Request for Proposals.....	38
5.3	Opening of Proposals.....	38
5.4	Evaluation of Proposals	39
5.5	Negotiations	40

5.6	Personnel replacement	40
5.7	Case of Contracts for individual consultants	41
5.8	Unsuccessful selection.....	41
APPENDIX 1 – Statement of Integrity, Eligibility and Environmental and Social Responsibility.....		43
APPENDIX 2 – Statement for Contracts to be refinanced		47
APPENDIX 3 – Environmental, Social, Health and Safety (ESHS) Statement of Commitment		48
APPENDIX 4 – Security Statement of Commitment		50
APPENDIX 5 – Minimum Content for Evaluation Reports on Applications, Bids or Proposals		51

DEFINITIONS

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

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

If the context so requires, the singular shall include the plural for each of the terms defined, and vice versa.

AFD Website	Means the Internet website of AFD https://www.afd.fr/en or any other website that may replace it.
Amendment	Means an amendment to the Contract, which may also be referred to as an addendum. It is a written legal act signed by the signatories to the initial Contract, with the purpose of amending the provisions of a Contract. Amendments may neither substantially change the economy of the Contract, nor modify its purpose, except in the case of unforeseen circumstances or technical constraints not caused by the signatories to the initial Contract.
Appendix	Means an appendix to the present Guidelines.
Applicant	Means any Person that prepares and/or submits an Application as part of a Request for Expressions of Interest, Prequalification, or Initial Selection.
Application	Means all the documents submitted by an Applicant in response to a Request for Expressions of Interest, a Prequalification process, or an Initial Selection.
Beneficiary	Means any Person, government, State, or devolved State service, benefiting from AFD financing, whether a direct borrower of a loan or a direct Beneficiary of a grant under a Financing Agreement.
Bid	Means all the documents submitted by a Bidder in response to an International or National Procurement Competition, for the procurement of works, plants, equipment, goods, or non-consulting services.
Bidder	Means any Person that prepares and/or submits a Bid, or a Quotation, in the framework of an International or National Procurement Competition, or a Request for Quotations, respectively, for the procurement of works, plants, goods or non-consulting services.
Bidding Documents	Means all the documents, information and forms as listed in Article 4.2 of the present Guidelines and prepared by the Contracting Authority for the procurement of works, plants, equipment, goods, or non-consulting services. They specify the rules to be followed when submitting a Bid in an International or National Procurement Competition.
Consultant	Means any Person that prepares and/or submits a Proposal or a Quotation, as part of a Request for Proposals or Quotations, respectively, for the procurement of consulting services.
Consultation Letter	Means all the documents, information and forms mentioned in Article 2.4 of the present Guidelines and prepared by the Contracting Authority. They specify the rules to be complied with for Direct Contracting.
Contract	Means any written agreement concluded for pecuniary interest, irrespective of its amount, signed between a Provider and a Contracting Authority, or an Implementing Agency (or Delegated Contracting Authority), meeting the needs of the latter. In the present Guidelines, this term may apply to: • Works Contracts, for all the activities necessary for the construction, rehabilitation, demolition, and maintenance of building and civil

engineering structures, or other facilities. In certain cases, design and/or operation activities for the structure may also be included. For example, this corresponds to buildings, civil engineering structures, linear infrastructure, wastewater treatment plants, dams, irrigation channels etc.;

- **Plant or Equipment Contracts**, for all the activities necessary for the design or adaptation of a plant or of equipment, based on the technical specifications determined by the Contracting Authority, as well as their on-site delivery, installation, and commissioning. In certain cases, maintenance activities may also be included. For example, this corresponds to simple water treatment units, hydropower plants, pumping stations, rolling stock, telecommunications centers, etc.;
- **Goods Contracts**, for the procurement of existing products (that are not manufactured based on technical specifications determined by the Contracting Authority), as well as their on-site delivery. In certain cases, related services such as transport, insurance, the installation of the goods, their commissioning, training and maintenance may also be included. For example, this corresponds to basic products, raw materials, furniture, IT equipment, and vehicles, etc.;
- **Consulting services Contracts**, for the procurement of advisory, expert, management or training services. For example, this corresponds to feasibility studies, structure design studies, works supervision, training, technical assistance, management or strategic consultancy, financial and accounting audits, etc.;
- **Service Contracts (other than consulting services)**, for the procurement of services to obtain measurable results for which the performance standards can be clearly identified and systematically applied. For example, this corresponds to topographical surveys, printing services, data collection, vehicle rental, room and office rental, electricity supply, telecommunications, etc.

Contracting Authority	Means any Beneficiary or Final Beneficiary who is responsible for the implementation of the project for its own account, and who is the owner of the investments (works, plant, equipment, goods) or deliverables, or the recipient of services, partly or fully financed by funds from AFD loans or grants.
Direct Contracting	Means a procedure for awarding a Contract to a Person without a prior competitive procedure (also referred to as a “single source selection”).
Director	Means any natural person who is a member of the administrative, management or supervisory bodies of a legal entity, or who is vested with powers of representation, decision-making, or control over a legal entity.
ESHS Statement of Commitment	Means the Environmental, Social, Health and Safety Statement of Commitment appended to the present Guidelines, which must be attached by any Applicant, Bidder or Consultant, in accordance with the provisions set out in Article 1.5.1 of the present Guidelines.
Final Beneficiary	Means any Person to which the Beneficiary on-grants or on-lends all or part of the funds from AFD's grants or loans.
Financing Agreement	Means any agreement between a Beneficiary and AFD documenting financing granted by AFD to the Beneficiary, regardless of whether it takes the form of a loan or of a grant.
Implementing Agency (or Delegated Contracting Authority)	Means any Person who, by virtue of a mandate, Contract or any other empowerment of such effect, is entrusted by the Contracting Authority, in

	its name and on its behalf, with the procurement of a Contract financed by AFD.
Initial Selection	Means an initial mandatory stage of a competitive selection procedure for the procurement of works including design and/or operation activities, through a public and open invitation (Initial Selection Notice) intended to select qualified Applicants who will subsequently be invited to submit a Bid, in accordance with the provisions of Article 4.1 of the present Guidelines.
International Procurement Competition	Means a competitive selection procedure for awarding a Contract with the purpose of attracting foreign Bidders or Consultants to participate in the procurement process, as specified in Article 2.1 of the present Guidelines.
Invitation for Bids	Means a public notice published by the Contracting Authority, inviting any provider of works, plants, equipment, goods or non-consulting services that meet the eligibility and qualification criteria of the Bidding Documents, to submit a Bid.
Laws and Regulations	Means all the legal and regulatory provisions, and internal rules and procedures, related to the procurement and performance of public Contracts, purchases, and any other acquisition of services, works or goods, applicable to the Contracting Authority.
National Procurement Competition	Means a competitive selection procedure for awarding a Contract with the purpose of attracting mainly national Bidders or Consultants, without excluding foreign Bidders or Consultants, as specified in Article 2.2 of the present Guidelines.
No Objection Letter	Means a no objection letter issued by AFD in the context of its prior review of the procurement process, as described in Article 1.6.2 of the present Guidelines.
Person	Means any natural or legal person, as well as any association or group of several such persons.
Prequalification	Means an initial and optional stage of a competitive selection procedure for the procurement of works, plants, or equipment, through a public and open invitation (Prequalification Notice) intended to select the qualified Applicants who will subsequently be invited to submit a Bid, as specified in Article 4.1 of the present Guidelines.
Procurement Documents	Means all the documents, including any addenda, associated with a Procurement process. This includes Procurement Plans, Invitations for Bids, Requests for Expressions of Interest, Prequalification Documents, Initial Selection Documents, Requests for Quotations, Bidding Documents, Requests for Proposals, Consultation Letters, evaluation reports, as well as template contract conditions and contract forms, established by the Contracting Authority.
Procurement Guidelines	Means the present document and its Appendix (hereinafter “ Guidelines ”), for the procurement and implementation of AFD-financed Contracts in foreign countries.
Procurement Plan	Means the document defined in Article 1.6.1 of the present Guidelines and prepared by the Contracting Authority, listing all the AFD-financed Contracts that will be or are in the process of being procured, or have already been awarded (case of Contracts to be refinanced), as well as the key related information.
Prohibited practices	Means Anti-Competitive Practices, Acts of Corruption, Fraud, Fraud to the European Union’s Financial Interests, Non-Cooperative Practices, the Misappropriation of AFD’s Funds or Assets, as well as the violation of any applicable law relating to the Fight Against Money Laundering and Terrorist Financing.

- **Act of Corruption.** This term means:

- a) The fact of promising, offering or giving, directly or indirectly, a Public Official, or any other Person who directs a private sector entity or works for such an entity, in any capacity whatsoever, an undue advantage of any kind, for themselves or another person or entity, in order to act or refrain from acting in a manner that breaches their official duties or legal, contractual or professional duties and that affects their own actions or those of another Person or entity; and
- b) The solicitation, acceptance to solicit, or acceptance, directly or indirectly, by a Public Official or any other Person who directs a private sector entity or works for such an entity, in any capacity whatsoever, of an undue advantage of any kind, for themselves or another Person or entity, in order to act or refrain from acting in a manner that breaches their official duties or legal, contractual or professional duties and that affects their own actions or those of another Person or entity.

- **Act of Terrorism.** This term means:

- a) Any act prohibited by the Conventions and Protocols of the United Nations relating to the fight against terrorism (available for consultation on the website: <https://www.un.org/ola/>);
- b) All the offences referred to in Articles 3 to 10 of the Directive (EU) 2017/541 of 15 March 2017 relating to the fight against terrorism; or
- c) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

- **Anti-Competitive Practice.** This term means:

- a) Any concerted or implicit action which has as its object or effect the prevention, restriction or distortion of competition in a market, in particular when it aims to: (i) restrict access to the market of, or the exercise of free competition by, another Person; (ii) hamper price-fixing by the free play of market forces by artificially encouraging an increase or decrease in the prices; (iii) limit or control production, markets, investments or technical development; (iv) share markets or sources of supply;
- b) Any abuse by one or more undertakings of a dominant position on a domestic market or on a substantial part of it;
- c) Any predatory price offering or sale price, the object or effect of which is to eliminate a company or one of its products from a market or prevent it from accessing a market.

- **Fraud.** This term refers to any operation (act or omission), whether or not it is a criminal offence, intended to deliberately deceive another Person, intentionally withhold information from them or fraudulently obtain or vitiate their consent, circumvent legal or regulatory obligations and/or violate internal rules in order to obtain an illegitimate advantage.

- **Fraud to the European Union's Financial Interests.** This term refers to any intentional act or omission aimed at causing damage to the European Union's budget and involving (i) the use or presentation of false, incorrect or incomplete statements or documents which has as its effect the misappropriation or wrongful retention of funds or the illegal diminution of resources from the general budget of the European Union;

(ii) the non-disclosure of information with the same effect, and (iii) the misapplication of such funds for purposes other than those for which they were originally granted.

- **Misuse of AFD's Funds or Assets.** This term refers to the improper, inappropriate and/or abusive use of the resources, property or assets belonging to AFD, intentionally, recklessly or by negligence.
- **Money Laundering.** This term means:
 - a) The act of facilitating, by any means, the false justification of the origin of the property or income of the perpetrator of a felony or misdemeanor which has brought them a direct or indirect benefit;
 - b) The act of assisting in investing, concealing or converting the direct or indirect products of a felony or misdemeanor.
- **Non-Cooperative Practices.** This term refers to any action that seeks to destroy, falsify, alter, conceal or (unreasonably) withhold material evidence or any other information, documents or records requested in the context of an investigation conducted by AFD of potential or actual Prohibited Practices, with the objective of materially obstructing this investigation; or the act of making false statements with the objective of materially obstructing an investigation of potential or actual Prohibited Practices; or the act of threatening, harassing or intimidating any Person in order to prevent them from disclosing information known to them, in the context of an investigation conducted by AFD, or in order to prevent AFD from continuing an investigation; or any act carried out in order to materially obstruct AFD in exercising its contractual rights to audit, inspect or access information required in the context of an investigation of potential or actual Prohibited Practices.
- **Terrorist Financing.** This term refers to the act of providing or collecting, directly or indirectly, funds or managing funds with the intention that they should be used or in the knowledge that they are to be used to commit a terrorist act.

Proposal	Means all the documents submitted by a Consultant in response to a Request for Proposals for the procurement of consulting services.
Provider	Means a Person who has signed a Contract with a Contracting Authority. A Provider may be a supplier, a construction company or a contractor, a Consultant or a service provider (non-consulting services).
Public Officer	A "Public Officer" shall be construed as meaning: – Any natural person who holds a legislative, executive, administrative or judicial mandate (within the State of the Beneficiary), regardless of whether that natural person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position, and regardless of the hierarchical level the natural person occupies; – Any other natural person who performs a public function, including for a State institution or a State-owned company, or who provides a public service; – Any other natural person defined as a public officer by the Laws and Regulations applicable to the Beneficiary.
Quotation	Means all the documents submitted by a Bidder or Consultant in response to a Request for Quotations.
Request for Expressions of Interest	Means an initial stage of a competitive selection procedure for the procurement of consulting services, through a public and open invitation,

	intended to select qualified Applicants who will subsequently be invited to submit a Proposal.
Request for Proposals	Means all the documents, information and forms as listed in Article 5.2 of the present Guidelines and prepared by the Contracting Authority for the procurement of consulting services. They specify the rules to be followed when submitting a Proposal in an International or National Procurement Competition.
Request for Quotations	Means a competitive selection procedure for awarding a Contract without prior advertising, intended for potentially interested Providers identified by the Contracting Authority. By extension, it also refers to all the Bidding Documents prepared by the Contracting Authority as part of this procedure.
Security Statement of Commitment	Means the Security Statement of Commitment appended to the present Guidelines, which must be attached by any Applicant, Bidder or Consultant, in accordance with the provisions set out in Article 1.5.2 of the present Guidelines.
Shortlist	Means a list of Persons who have been selected to submit Quotations or Proposals for consulting services.
Small Expenses	Means occasional and non-recurrent purchases that are not subject to a procurement process and the formalization of a Contract, purchase order or quotation.
Statement of Integrity	Means the Statement of Integrity, Eligibility and Environmental and Social Responsibility appended to the present Guidelines, which must be attached by any Applicant, Bidder or Consultant, in accordance with the provisions set out in Article 3.1.1 of the present Guidelines.

SECTION 1. GENERAL FRAMEWORK

1.1 Scope of application of the Guidelines

1.1.1 Persons subject to the Guidelines

The provisions of the present Guidelines apply to all Beneficiaries for the procurement and performance of Contracts financed in whole or in part by AFD in foreign countries.

In case of an on-lending or on-granting of AFD financing to a Final Beneficiary, or in case of recourse to an Implementing Agency, for the implementation, in part or in full, of AFD financing (be it a loan or a grant), the Beneficiary undertakes to ensure that the Final Beneficiary or the Implementing Agency complies with the present Guidelines, unless otherwise provided in the Financing Agreement.

Consequently, the provisions of the present Guidelines shall bind such Final Beneficiary or Implementing Agency to the same extent as they are binding for the Beneficiary, acting as Contracting Authority. This is also the case for all the contractual obligations related to procurement set out in the Financing Agreement signed between the Beneficiary and AFD.

1.1.2 Contracts subject to the Guidelines

The provisions of the present Guidelines apply to all AFD-financed Contract procurement and performance in foreign countries. They do not apply to Small Expenses.

The provisions of the present Guidelines also apply, in the context of AFD's refinancing activities, to Contracts that are in the process of being procured, or have already been signed by a Contracting Authority, whether such Contracts are under implementation or fully performed.

Co-financing:

The present Guidelines are intended to apply in the case of a procurement process or a project being co-financed by one or several other development partners. However, in such an event, a prior arrangement between the different co-financiers may determine (i) the applicable rules of eligibility, (ii) the procurement procedures to be followed, and (iii) the applicable reviews and their modalities.¹ Within this framework, the present Guidelines may be, fully or in part, replaced by rules set out jointly with the other development partners. Specific provisions for co-financing regarding the Statement of Integrity and advertising are provided in Articles 3.1.1 and 3.2.1, respectively.

1.1.3 Contracts not subject to mandatory competitive bidding

The Guidelines do not apply to the types of contracts that do not fall into the scope of the Laws and Regulations (common examples: public-public cooperation agreement, cost-free contract, partnership, etc.) whenever the local Laws and Regulations so specify, with the exception of Articles 1.6.2.a) (8), 1.6.2.a) (9) and 1.6.5. However, in this case the Contract in question shall include the Statement of Integrity set out in Appendix 1, duly signed by the Contract's signatory. In the case of refinancing, for this Contract, the Contracting Authority shall provide the duly signed statement for Contracts to be refinanced set out in Appendix 2, as well as the Statement of Integrity set out in Appendix 1, duly completed by the Contract's signatory.

In the event of an on-lending or on-granting of AFD's financing to a Final Beneficiary, and notwithstanding the provisions of Article 1.1.1 concerning compliance with the present Guidelines by the Final Beneficiary, AFD does not require the selection of the Final Beneficiary to be subject to mandatory competitive bidding.

1.1.4 Specific case of concessions granted by public authorities

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

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

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

1.2 Principles governing Contract procurement and performance

1.2.1 Compliance with Laws and Regulations

The Contracting Authority is fully responsible for ensuring that the implementation of AFD-financed projects complies with the relevant applicable Laws and Regulations, in particular concerning Contract procurement and performance.

The Contracting Authority shall also comply with the provisions of the present Guidelines.

In the event the Laws and Regulations are not compatible with the Guidelines, the Contracting Authority undertakes to inform AFD prior to the procurement of any Contract. Without the express agreement of AFD, the Contracting Authority shall apply the provisions of the Guidelines.

1.2.2 Compliance with international good practices

The Contracting Authority undertakes to ensure that AFD-financed Contracts are procured and performed in accordance with the relevant recognized international good practices, particularly those recommended by the Organisation for Economic Co-operation and Development (OECD). The principles of economy and effectiveness shall thereby guide the procurement of all Contracts. Consequently, a Contract shall be awarded following a competitive selection process, which shall be transparent, open and fair, and guided by a principle of proportionality (context, risk analysis).

AFD makes standard Procurement Documents available to Contracting Authorities on its Website for the procurement of works, plants, equipment, goods and consulting services based on the best international practices. The Contracting Authority is encouraged to use these documents, it being understood that it is ultimately the Contracting Authority's responsibility to ensure that these documents comply with the Laws and Regulations. In case of unavailability of the aforementioned documents on its Website, AFD shall transmit a copy of such documents to the Contracting Authority, upon its request.

1.2.3 Absence of Prohibited Practices

The Contracting Authority shall respect the highest ethical principles during the procurement and performance of Contracts and not engage in a Prohibited Practice.

1.2.4 Responsibilities relating to the procurement and performance of Contracts

a) Responsibility of the Contracting Authority

The Contracting Authority retains exclusive and full responsibility for the preparation and implementation of the procurement processes and performance of the Contracts. The Contracting Authority thereby has under its sole responsibility (i) the preparation and content of the Procurement Documents, (ii) the evaluation of documents submitted by the Applicants, Bidders or Consultants in response to National or International Procurement Competitions, or in the context of a Direct Contracting procedure or Request for Quotations, (iii) the award of the Contract and the content of the Contract it has concluded with the awardee for the Contract, (iv) the content of any Amendments made to the Contract, and (v) the handling of any claims, appeals or complaints received.

The relations between the Contracting Authority and an Applicant, Bidder, Consultant or Provider are exclusively governed (i) by the Procurement Documents established by the Contracting Authority, and (ii) by the Contract signed between the Contracting Authority and the Provider.

b) Relations between AFD and the Beneficiary

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

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

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

c) Specific case of AFD's technical assistance to the Contracting Authority free of charge

Upon the Contracting Authority's request, AFD may provide it with technical assistance with the procurement of certain Contracts, free of charge. This service may include the selection of the initial technical assistance for the project. The respective roles and responsibilities of AFD and the Contracting Authority shall be set out in a specific agreement signed by the parties, on the understanding that the Contracting Authority bears full responsibility for ensuring that the procurement process complies with the Laws and Regulations. The corresponding procurement processes may be subject to post review, if AFD so requests.

1.3 Eligibility criteria

The Contracting Authority shall ensure that the Applicants, Bidders or Consultants are eligible to AFD's financing, based on the criteria defined below.

1.3.1 Rules of nationality and origin

Financing allocated by AFD has been entirely untied since 1 January 2002. All procurement of works, plants, equipment, goods, consulting services and non-consulting services are eligible for AFD financing regardless of the nationality of the awardee (or of its suppliers and subcontractors), except where an international embargo applies.

1.3.2 Grounds for exclusion

A Person may not be awarded an AFD-financed Contract if, on the date of submission of its Application, Bid, Proposal or Quotation, or at any time between this date and that of the corresponding Contract award, it or any of its subcontractors, Directors, employees or agents (be it declared or not):

- (1) Is bankrupt, being wound up or ceasing its activities, is having its activities administered by the courts, has entered into receivership, or is in any analogous situation arising from any similar procedure;
- (2) Has, within the past five years, been subject to a final administrative sanction, a final conviction issued by a competent authority, or any other non-court resolution² having notably an extinctive effect on public action, either (i) in the country of constitution of the Person, (ii) in the country of performance of the Contract, (iii) in the context of the procurement or performance of an AFD-financed Contract, (iv) pronounced by a European Union institution or (v) pronounced by a competent authority in France, for:
 - a) Prohibited Practices, or any other offence committed in the context of the procurement or performance of a Contract, subject to additional information, such as a compliance program, that such Person (or, respectively, their subcontractor, Director, employee or agent) may consider useful to provide in the context of the Statement of Integrity, that would give grounds

² Including the Judicial Public Interest Agreement (CJIP), a decision following an Appearance on Prior Admission of Guilt (CRPC), a negotiated resolution agreement, or any other similar form of transaction ending the proceedings.

to consider that this sanction, conviction or other resolution is not relevant in the context of the present Contract;

- b) Participation in a criminal organization, terrorist offences or offences related to terrorist activities, child labor, or other offences related to human trafficking;
 - c) Having created an entity in a different jurisdiction with the intention of avoiding tax or social obligations, or any other legal obligation applicable in the jurisdiction where it has its registered office, its central administration or its principal place of business, or for being an entity created with the intention of avoiding such obligations;
- (3) Has been subject to a termination fully settled against it within the past five years due to a significant or persistent breach of its contractual obligations during the performance of a Contract, unless (i) such termination was challenged and (ii) dispute resolution is still pending or has not confirmed a full settlement against it.;
 - (4) Has been declared ineligible by one of the multilateral development banks signatories to the Mutual Recognition Agreement of 9 April 2010.³ In the event of such ineligibility, the Person may attach additional information to the Statement of Integrity that would give grounds to consider that this ineligibility is not relevant in the context of this Contract;
 - (5) Has not fulfilled their obligations relating to the payment of their taxes or social contributions, in accordance with the legal provisions of their country of incorporation, or those of the country of the Contracting Authority;
 - (6) Has produced falsified documents or has been guilty of misrepresentation when providing the information requested by the Contracting Authority in the context of the procurement and award process for this Contract.

In addition, a Person may not be awarded an AFD-financed Contract if, on the date of submission of its Application, Bid, Proposal or Quotation, or at any time between this date and that of the corresponding Contract award, it or any of its subcontractors, Directors, employees, agents (be it declared or not), direct or indirect shareholders, or subsidiaries, acting with its knowledge or consent:

- 1. Is directly or indirectly subject to, controlled by a person or an entity subject to, or acting in the name or on behalf of a person or entity subject to individual sanctions measures adopted by the United Nations, the European Union and/or France;
- 2. Is directly or indirectly subject to, controlled by a person or an entity subject to, or acting in the name or on behalf of a person or entity subject to sectoral sanctions measures adopted by the United Nations, the European Union and/or France;
- 3. Is ineligible for the implementation of the Project by way of any other international sanctions measures pronounced by the United Nations, the European Union or France.

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

1.3.3 Conflict of interest

Unless expressly agreed by AFD, a Person may not be awarded an AFD-financed Contract if, on the date of submission of its Application, Bid, Proposal or Quotation, or at any time between this date and that of the corresponding Contract award, it or any of its subcontractors, Directors, employees or agents (be it declared or not):

- (1) Is a subsidiary controlled by the Contracting Authority or a shareholder controlling the Contracting Authority, unless the resulting conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
- (2) Has business or family relations with a member of the Contracting Authority's services involved in the procurement process or the supervision of the resulting Contract, unless the resulting conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;

³ World Bank, Inter-American Development Bank, African Development Bank, Asian Development Bank and European Bank for Reconstruction and Development.

- (3) Is controlled by or controls another Applicant, Bidder or Consultant, or is under common control with another Applicant, Bidder or Consultant, receives from or grants subsidies directly or indirectly to another Applicant, Bidder or Consultant, has the same legal representative as another Applicant, Bidder or Consultant, maintains direct or indirect contacts with another Applicant, Bidder or Consultant allowing it to (i) have given and/or give access to information contained in the respective Applications, Bids or Proposals likely to distort competition, (ii) influence it, or (iii) influence the decisions of the Contracting Authority;
- (4) Is engaged in a consulting services mission which, by its nature, is or may be in conflict with the mission envisaged for the Contracting Authority;
- (5) Has itself prepared, or is or has been associated with a Person who has prepared specifications, terms of reference or other documents that have been used for the procurement process in question and that contain provisions likely to favor this Person;
- (6) Has or has had access to, itself prepared, is or has been associated with, a Person who has, has had access to or prepared specifications, plans, calculations, studies or other documents that have not been communicated to all the Applicants, Bidders or Consultants, and which thereby give it an unfair competitive advantage;
- (7) In the case of a procurement procedure for works, plants equipment or goods, has itself been selected, or is proposed to be selected, or any of its subsidiaries has been or is proposed to be selected, to carry out works supervision or inspection in the context of this Contract.
- (8) Is a state-owned entity unable to provide evidence that (i) it is legally and financially autonomous and/or (ii) it operates under commercial law.

1.3.4 Embargos

The Contracting Authority undertakes not to finance, acquire or provide any goods or services, nor to operate in any sector subject to an embargo by the United Nations, the European Union or France.

1.4 Prohibited Practices

The Applicants, Bidders, Consultants or Providers shall respect the highest ethical principles during the procurement and performance of Contracts.

Regarding Prohibited Practices, AFD has established a preventive and remedial mechanism, as set out in the General Policy to Prevent and Combat Prohibited Practices freely available on its Website.

For this purpose, in order to detect and effectively combat Prohibited Practices, AFD has established a whistleblowing mechanism open to third parties: anyone can thereby directly report an allegation of a Prohibited Practice to AFD's Investigations Function, either:

- By e-mail, to the address investigationsGroupeAFD@tutanota.com, or
- By sending a letter to AFD's Compliance Department, 5 rue Roland Barthes, 75012 Paris.

A Person may not be awarded an AFD-financed Contract if, on the date of submission of its Application, Bid, Proposal or Quotation, or at any time between this date and that of the corresponding Contract award, it or any of its subcontractors, Directors, employees or agents (be it declared or not), has engaged in a Prohibited Practice, directly or by means of an agent (be it declared or not), for the purpose of being awarded this Contract.

To this end, in the procurement process for Contracts financed in part or in full by AFD, the Contracting Authority undertakes to:

- (1) Insert clauses in all Procurement Documents and in the Contracts related thereto, whereby any Applicant, Bidder, Consultant or Provider shall declare that (i) it has not engaged in any practice likely to influence the procurement process and corresponding Contract award to the detriment of the Contracting Authority, and that it has not and shall not become involved in any Prohibited Practice, and that (ii) the negotiation, the procurement process and the performance of the Contract have not and shall not give rise to a Prohibited Practice;
- (2) Include in all Procurement Documents and in the Contracts related thereto, a provision requiring that any Applicant, Bidder, Consultant or Provider shall permit AFD to conduct investigations, and

examine documents and accounting records relating to the procurement process and performance of the Contract, and to have them audited by auditors appointed by AFD.

These undertakings are set out in the Statement of Integrity to be signed and included as a contractual document of the Contract, as specified in Article 3.1.1.

In the case of Contracts to be refinanced, the Contracting Authority shall request that the Providers sign the Statement of Integrity, whether the Contract is in the procurement process or already signed.

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

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

In order to promote sustainable development, AFD seeks to ensure that internationally recognized ESHS standards are complied with in the Contracts it finances. Consequently, the Contracting Authority undertakes to ensure, by requesting a signed Statement of Integrity, that Applicants, Bidders and Consultants in AFD-financed Contracts shall undertake to:

- (1) Comply with, and ensure that all their subcontractors comply with, ESHS standards recognized by the international community, consistent with applicable Laws and Regulations in the country of implementation of the Contract, including the fundamental conventions of the International Labour Organization (ILO) and international environmental treaties;
- (2) Implement any ESHS risk mitigation measures, when defined in the Environmental and Social Commitment Plan annexed to the Financing Agreement, and in the Environmental and Social Management Plan.

In addition, for works and plants Contracts:

- In the context of a National Procurement Competition, a Request for Quotations, or a Consultation Letter, the Contracting Authority shall add the ESHS Statement of Commitment, available in Appendix 3 to the present Guidelines, to the Procurement Documents. It shall be duly signed by the Bidders and submitted with their Bid or Quotation. This signed statement will be a contractual document of the Contract;
- The Contracting Authority shall include in the Procurement Documents appropriate ESHS requirements in order to prevent and address the ESHS impacts identified for the worksite management. AFD's reference ESHS requirements for the procurement and contractual terms of Contracts shall be used for International Procurement Competitions. They are available in AFD's standard Bidding Documents for the procurement of works, and are to be adapted depending on the conclusions of the Environmental and Social Management Plan and the Environmental and Social Impact Assessment, where appropriate.

Finally, the Contracting Authority may use procurement methods promoting sustainable development, understood in particular as valuing certain technical characteristics of the goods, works, or services procured (in terms of sustainability, carbon footprint, eco-design, consumption of inputs...), or basing the financial evaluation on the lifecycle cost, subject to AFD's express agreement on these methods and their implementing arrangements. The principles of openness, transparency and fairness shall continue to be respected.

1.5.2 Security

In accordance with Article 1.2 above, the Contracting Authority is fully responsible for analyzing and taking into account security conditions in the context of the procurement and performance of Contracts.

If the Contract is to be performed in an area or areas classified as orange or red by the French Ministry for Europe and Foreign Affairs,⁴ the Contracting Authority shall include in the Procurement Documents requirements relating to the security of persons and property in the context of the Contract. Such requirements shall, among others, take into account the possibility of security conditions deteriorating during the performance of the Contract.

⁴ Or any other French Ministry responsible for establishing the ranking of foreign countries' security conditions, if applicable.

To this end, for National Procurement Competitions, Requests for Quotations and Consultation Letters,⁵ the Contracting Authority shall add in the Procurement Documents:

- The Security Statement of Commitment available in Appendix 4 of the present Guidelines, to be included in the model submission letter. This statement shall be duly signed by the Bidders or Consultants and submitted with their Quotation, Bid or Proposal, and this signed statement shall be a contractual document of the Contract; and
- The information indicated in the document entitled “Security Aspects except for International Competitive Bidding” available on the Website.

For International Procurement Competitions and Consultation Letters,⁶ minimum security requirements are available in AFD’s standard bidding documents⁷.

The Contracting Authority remains fully responsible for strengthening the minimum requirements above, should the situation so require.

1.6 Reviews carried out by AFD

AFD carries out reviews to ensure that the Beneficiary conducts the procurement process in compliance with the conditions for the provision of the financing it allocates, including the implementation of the present Guidelines. These reviews are conducted prior to (*ex ante*) or after (*ex post*) the signing of AFD-financed Contracts, at the various stages of their procurement process.

1.6.1 Procurement Plan and strategy

a) Preparation and implementation of the Procurement Plan

In the context of the project preparation, the Contracting Authority establishes a procurement strategy, which is reflected in the Procurement Plan, identifying the procurement process for the Contracts to be procured under the project financed by AFD. These are key framework and organizational documents, and it is essential to prepare them before the procurement of any Contract. The procurement strategy shall not provide for modalities (division into lots, splitting...) to artificially reduce the value of the Contracts in order to end up below thresholds corresponding to specific procurement procedures (thresholds of Laws and Regulations, and of the Guidelines).

The Procurement Plan shall at a minimum cover the coming 18 months. It is updated as and when required. It specifies for each Contract: the estimated Contract amount, the type of Contract, the type of advertising, the procurement procedure, the selection method, and the estimated timeline for the procurement and performance of each Contract.

The Procurement Plan also sets out the arrangements for the review of the procurement procedure agreed with AFD (complete prior review, simplified prior review, or post review), in relation to Articles 1.6.2 and 1.6.3 below. Depending on its analysis of the project, AFD determines the arrangements for the reviews of the procurement of the various Contracts, given that:

- Direct Contracting for an amount higher than €40,000 may not be subject to post review, nor Contracts not subject to mandatory competitive bidding;
- Contracts procured under International Procurement Competitions shall be subject to full prior reviews.

A template Procurement Plan is available on the Website. The Procurement Plan, as well as any subsequent significant update, shall be subject to a No Objection Letter from AFD prior to the procurement of any Contract. The issuance of this No Objection Letter shall not replace the notices provided for at the various stages of the procurement process pursuant to Article 1.6.2 for each Contract, including Contracts planned under Direct Contracting, where applicable.

The Contracting Authority undertakes to implement the Procurement Plan under the conditions that have been subject to a No Objection Letter from AFD.

⁵ Only in the case of Direct Contracting with a company from the country of the Beneficiary.

⁶ Only in the case of Direct Contracting with a company outside the country of the Beneficiary.

⁷ In accordance with Article 1.2.2 above

b) Communication of the Procurement Plan

In the case of major projects comprising several substantial Contracts to be awarded, the Contracting Authority should publish the information set out in the Procurement Plan approved by AFD through a general procurement notice, at least on the <http://afd.dgmarket.com> website. Such publication contributes to more transparency and allows potentially interested Applicants, Bidders or Consultants to prepare themselves for when (specific) procurement notices are published. However, unless required by the Laws and Regulations, the estimated amount of the Contracts shall not be published (neither with the Procurement Plan, nor in the Bidding Documents for each Contract).⁸

The Contracting Authority shall permit AFD to provide third parties with information contained in the Procurement Plan in relation to Contracts that are required to be advertised, particularly under AFD's obligations to notify *ex ante* the Organisation for Economic Co-operation and Development (OECD)/Development Assistance Committee (DAC) of any financing that qualifies as Official Development Assistance.

1.6.2 Prior reviews

AFD may conduct prior reviews to ensure that the procurement process complies with the conditions for the provision of the financing.

a) Documents reviewed by AFD

The documents reviewed by AFD are the following:

- (1) The Request for Expressions of Interest, when it is organized, to constitute the Shortlist of Consultants;
- (2) The invitation for Prequalification and the Prequalification Documents, when a Prequalification is organized;
- (3) The invitation for Initial Selection and the Initial Selection Documents, when an Initial Selection is organized;
- (4) The Evaluation Report of Applications (following a Prequalification, an Initial Selection or a Request for Expressions of Interest) and the list of Bidders or Consultants selected to take part in the Bid Invitation or Request for Proposals or Quotations;
- (5) The Bidding Documents, the Request for Proposals or the Request for Quotations documents, and the invitation letter, or the associated bid invitation notice;
- (6) The detailed report on the evaluation and comparison of Bids, Proposals or Quotations received, including the elements set out in Appendix 5. In the case of a two-stage evaluation process, whereby Bids or Proposals are submitted in two separate envelopes (one for the technical Bid or Proposal, and the other for the financial Bid or Proposal), AFD's No Objection Letter shall be requested twice: first, after the opening of the technical Bids or Proposals, on the result of the technical evaluation, and, second, after the opening and evaluation of the financial Bids or Proposals, on the recommendation for the Contract award. A copy of the Bid, Proposal or Quotation of the preferred Bidder or Consultant (including the signed Statement of Integrity) shall be communicated to AFD. In addition, the Contracting Authority undertakes to provide AFD with all the Bids, Proposals or Quotations, should it so request;
- (7) Where applicable, the decision to cancel the bidding process or to declare it unsuccessful, as well as all the possible follow-up that the Contracting Authority may propose in this instance;
- (8) Prior to their signing, the draft Contract and/or purchase orders (including the signed Statement of Integrity), including for a Contract signed through Direct Contracting, where applicable;
- (9) If applicable, any subsequent Contract Amendments or activation of contractual clauses having the effect of modifying the initially accepted amount of the Contract; and
- (10) If applicable, any change or addendum to any of the documents mentioned in points (1) to (9) above.

⁸ Except for Contracts for consulting services, and then only when the estimated budget in expert-days or expert-months is not communicated.

The Contracting Authority shall inform AFD of any claim or complaint received during the procurement process or after the signing of a Contract. It shall communicate to AFD all information concerning how those have been handled, and the response provided, by the Contracting Authority, prior to the initiation of any Contract termination procedure.

The Contracting Authority shall communicate to AFD the documents provided for in points (6) and (8) in due course, in particular to allow AFD to issue a No Objection Letter before the validity period for Applications, Bids, Proposals and Quotations expires.

b) AFD's No Objection Letter

AFD examines each document listed in Article 1.6.2.a) above when it is communicated by the Contracting Authority, and verifies its compliance with the conditions for the provision of its financing. The No Objection Letter is AFD's formal notice to the Contracting Authority of the absence of non-compliance with these conditions.

In the event that non-compliance is found, AFD sends its comments or requests for clarification to the Contracting Authority concerning the aspects which may make the corresponding Contract ineligible for its financing. When the analysis shows that there is no non-compliant aspect, or that the clarifications provided are satisfactory, AFD indicates to the Contracting Authority that it has no objections on this stage. Otherwise, AFD indicates its objection to financing the Contract that would result from the corresponding procurement process.

The Contracting Authority undertakes to use the Procurement Documents for which AFD has issued a No Objection Letter. Furthermore, the Contracting Authority shall communicate to AFD the final version of the documents that it publishes or sends to the Applicants, Bidders or Consultants, as well as the clarifications given in response to requests from the Applicants, Bidders or Consultants, where appropriate.

c) Complete prior review

In this case, the Contract's eligibility for AFD financing is conditional on the Contracting Authority obtaining a No Objection Letter from AFD for each of the documents listed in Article 1.6.2.a) above, prior to sharing or notifying the document concerned⁹ to a third party.

d) Simplified prior review

In this case, the Contract's eligibility for AFD financing is conditional on the Contracting Authority obtaining a No Objection Letter from AFD for the documents listed in Article 1.6.2.a) (5) (should AFD so request), and 1.6.2.a) (8) and (10), prior to sharing or notifying the document concerned⁹ to a third party. However, the Contracting Authority communicates to AFD all the documents listed from points 1.6.2.a) (1) to (10) above when they are available.

e) Provisional prior review

At the request of the Contracting Authority, when a procurement process is launched prior to the signing of the corresponding Financing Agreement, AFD may conduct a prior review provisionally (complete or simplified). Such review shall in no way constitute any commitment to finance the Contract by AFD, which remains strictly conditional upon the signing of the Financing Agreement. In this case, the Contract's eligibility for AFD financing, once AFD's financing has become effective, is conditional on the Contracting Authority obtaining a provisional No Objection Letter from AFD in advance in compliance with Articles 1.6.2 c) et 1.6.2 d).

1.6.3 Post reviews

In this case, the Contracting Authority provides, at the request of AFD or any other auditor entrusted with the review, all the documents listed from Articles 1.6.2.(a) (1) to (10). AFD or the auditor examines these documents and reviews the compliance with the conditions for the provision of AFD's financing. Any non-conformities are recorded in a report. The Contract's eligibility for AFD's financing is conditional on the conclusions of this report.

⁹ And, unless otherwise required by the law applicable to the Contracting Authority, before any communication for approval to a national regulatory or supervisory public procurement entity.

AFD may request that the model Procurement Documents used by the Contracting Authority for the relevant Contracts receive a No Objection Letter from AFD prior to the launch of any competitive bidding process.

1.6.4 Contracts to be refinanced

A Contract to be refinanced refers to a Contract for which the Contracting Authority has already engaged in the procurement process, or which has already been signed by the Contracting Authority (whether partly or entirely performed), without a prior formal involvement of AFD.

AFD may accept to finance or refinance such a Contract, on condition that it determines to its satisfaction that the procurement process has been conducted in compliance with international good practices, including the handling of any claims, appeals, complaints or disputes, and that the Provider of the Contract to be refinanced is not in one of the cases of ineligibility set out in Article 1.3. In particular, AFD shall systematically verify that there has been a prior competitive selection procedure deemed effective (or, where appropriate, for a Contract signed through Direct Contracting, that the terms provided for in the conditions referred to in Article 2.4 above were satisfied at the time of the signing of the Contract). Furthermore, AFD shall ensure that the contractual terms and conditions are fair and reasonable, and that the Contract has been implemented (where appropriate) in a satisfactory manner.

To this end, the Contracting Authority shall:

- (1) Provide AFD with all the Procurement Documents relating to the procurement process and performance (where appropriate) of the Contract including, if there have been claims, appeals, complaints or disputes, all elements concerning the response and how they were handled;
- (2) Sign and submit to AFD the statement given in Appendix 2 of the present Guidelines; and
- (3) Obtain from the Provider of the Contract to be refinanced (or from the Applicants, Bidders or Consultants for a Contract to be refinanced in the process of being procured), the duly signed Statement of Integrity (and its inclusion as a contractual document of the Contract for a Contract to be refinanced in the process of being procured), the model of which is in Appendix 1 of the present Guidelines, and submit it to AFD.

Contracts to be refinanced may be included in the Procurement Plan for the purposes of structuring the framework of the AFD-financed project.

1.6.5 Non-compliance of the procurement process¹⁰

AFD reserves the right to take any action it deems appropriate, including the right to declare the procurement procedure non-compliant with the present Guidelines and exercise its rights under the provisions of the Financing Agreement, if it establishes, at any time, that the Beneficiary or any other Person acting on its behalf in the context of the implementation of the project:

- (1) Has engaged in a Prohibited Practice during the procurement procedure or Contract performance, without the Beneficiary having taken, in due course and to the satisfaction of AFD, appropriate action to remedy this situation, including by failing to inform AFD at the time they knew of such practices;
- (2) Has not complied with the provisions of the present Guidelines.

AFD also reserves the right to refer the matter to the competent public authorities, in France or in any other country.

AFD may declare the procurement of a Contract non-compliant with the present Guidelines even after the issuance of a No Objection Letter, if it concludes that this No Objection Letter has been issued on the basis of incomplete, inaccurate or misleading information provided by the Beneficiary or the Applicants, Bidders or Consultants, or that the terms and conditions of the Contract have been modified without AFD's agreement.

¹⁰ In this Article, the term "Contract" may include any contract not subject to mandatory competitive bidding as referred to under Article 1.1.3.

SECTION 2. TYPES OF COMPETITION

2.1 International Procurement Competition

An International Procurement Competition must be organized (i) when in the country of implementation of the Contract there is not a sufficient number of companies that qualify in view of the nature and complexity of the Contract to be awarded, to ensure a competitive procedure compliant with the principles set out in Article 1.2.2, and (ii) when the Contract amount is above the thresholds given below.

Unless otherwise agreed by AFD, Contracts with an estimated amount (excluding taxes, duties and levies applicable in the country of the Contracting Authority) above the thresholds given below shall be subject to an International Procurement Competition:

- €5,000,000 for Contracts for works or plants
- €200,000 for Contracts for goods, consulting services or non-consulting services

In the case of an International Procurement Competition, the Contracting Authority is strongly encouraged to use AFD's standard bidding documents (see Article 1.2.2) which will significantly reduce the time for AFD reviews and reduce any risks of non-compliant procurement. These documents are based on the harmonized documents of multilateral development banks.

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

a) Language

The Procurement Documents, Applications, Bids, and Proposals shall be prepared in one of the three following languages at the Contracting Authority's discretion: English, French or Spanish. The language selected shall govern the procurement process, and the Contract signed with the Bidder or Consultant shall be drafted in this language.

The Contracting Authority may also choose to draft the Procurement Documents in an additional language. In such case, the Applicants, Bidders or Consultants shall be authorized to submit their Applications, Bids or Proposals in either the language governing the procurement process or in the additional language. The Contract shall be signed in one language only: the language in which the awardee has submitted its Bid or Proposal. If the language is not one of the three languages mentioned above, the Contracting Authority shall provide AFD with a translation of the Bid or Proposal and of the draft Contract in the language governing the procurement process (English, French or Spanish).

b) Advertising

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

c) Application, Bid or Proposal submission deadlines

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

- Time for the preparation of an Application in response to a Request for Expressions of Interest, a Prequalification or an Initial Selection (from the date of publication on <http://afd.dgmarket.com> to the Application submission deadline): 3 weeks;
- Time for the preparation of a Proposal (from the date at which the Request for Proposals is sent to the Consultants on the Shortlist to the Proposal submission deadline): 6 weeks. However, this time period shall not exceed 3 months;
- Time for the preparation of a Bid for works, plants, equipment, goods or non-consulting services (from the date of the publication of the Bid Invitation Notice on <http://afd.dgmarket.com> to the Bid submission deadline): 8 weeks;

- Time for the preparation of a Bid for “design and build” or “design, build and operate” (from the date at which the Bidding Documents are sent to the initially selected Applicants to the Bid submission deadline): 12 weeks.

In the event of a substantial modification to the Procurement Documents published shortly before the deadline for the submission of Applications, Proposals or Bids, these time periods shall be extended to allow the Applicants, Consultants or Bidders to take such modification into account.

d) Currencies

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

In the Procurement Documents, the Contracting Authority may, if it wishes, require that the Bidders or Consultants price the part of their Bid or Proposal reflecting the local costs they expect to be incurred (in the country of the Contracting Authority) in the local currency. No other requirement to price the Bid in local currency shall be possible.

For the purposes of evaluating and comparing the Bids or Proposals, the Procurement Documents shall indicate an official published source for the exchange rate and a reference date (in general prior to the deadline for the submission of Bids or Proposals) which shall be used to convert all the amounts of the Bids or Proposals into a single currency.

e) Registration and other administrative requirements

If the Laws and Regulations so specify, the Contracting Authority may require the provision of administrative documents in the Procurement Documents. In such case, it shall accept the provision by a foreign Applicant, Bidder or Consultant of documents of an equivalent nature to those required in its own country. In addition, the registration of an Applicant, Bidder or Consultant with the competent authorities of the country where the Contract is implemented, and/or the submission of administrative documents issued in the country where the Contract is implemented, may be a prerequisite to the signing of the Contract if the Laws and Regulations so specify (in such case, these conditions shall be stipulated in the Procurement Documents). However, the absence of such registration or administrative documents at the time of the selection of an Applicant, or of the evaluation of a Bid or Proposal, shall not lead to an automatic rejection of the Application, the Bid or the Proposal.

f) Applicable norms and standards

The Procurement Documents shall use, whenever possible, references to international norms and standards. Alternatively, Procurement Documents that refer to a non-international norm or standard shall permit a Bidder or Consultant to use an equivalent or higher norm or standard, provided that the Applicant, Bidder or Consultant substantiates its choice to the satisfaction of the Contracting Authority.

g) Settlement of contractual disputes

The Contracting Authority shall include conciliation or mediation mechanisms in the Procurement Documents for the purposes of settling contractual disputes out of court. To address contractual disputes which could not be settled out of court, the Contracting Authority shall, unless otherwise agreed by AFD, propose in the Procurement Documents exclusive recourse to international commercial arbitration.

AFD shall not be appointed as arbitrator, nor be requested to appoint one.

2.2 National Procurement Competition

When an International Procurement Competition is not required, the Contracting Authority shall use National Procurement Competition procedures. This may be used provided that the local supply market is adequate, qualified and competitive, making it highly unlikely that entities that are not established locally will participate. In this case the provisions set out in Article 2.1 above are not mandatory, although AFD recommends their application. In this case, the provisions set out in Articles 2.1 (a) to (g) above may be substituted by the provisions of the Laws and Regulations, as long as they comply with international good practices. In this respect, a National Procurement Competition procedure shall in particular not exclude the participation of foreign Applicants, Bidders or Consultants.

The Requests for Expressions of Interest, invitations for Prequalification, invitations for Initial Selection and Invitation for Bids shall be widely advertised by the Contracting Authority. Such notices shall be published on electronic platforms or websites and in the appropriate national paper media. It must be possible for AFD, or any Person mandated by AFD, to verify the effectiveness of such advertising.

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

2.3 Requests for Quotations

This type of procedure is intended to be used for the procurement of standard low-value Contracts. Provided that the Laws and Regulations so allow, and unless different thresholds are approved by AFD, Contracts with an estimated amount (excluding taxes, duties and levies applicable to the Contract in the country of the Contracting Authority) below the following thresholds may be subject to a Request for Quotations:

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

This type of procedure is used for the procurement of standard low-value Contracts. The Contracting Authority shall establish a Shortlist of between three (3) and six (6) Bidders or Consultants, after ensuring their qualification, experience, availability and interest, as well as their eligibility and the absence of conflict of interest. It shall send them the Request for Quotations, including the names of the Bidders or Consultants selected on this Shortlist.

For Contracts for works, plants, goods, equipment and non-consulting services, the Contracting Authority shall select the technically compliant Quotation with the lowest price.

For Contracts for consulting services, the quality of the Quotation shall outweigh price in the selection of the Consultant. The financial evaluation shall only be conducted after the finalization of the technical evaluation. The Contracting Authority shall negotiate the terms and conditions of the Contract with the best-ranked Consultant.

2.4 Direct Contracting

In the context of AFD-financed projects, the Contracting Authority can only be exempted from the requirement for a competitive selection procedure when AFD's prior agreement is obtained and when the following cumulative conditions from (i) to (iv) are met:

- (i) Direct Contracting is authorized by and complies with the Laws and Regulations;
- (ii) The absence of a competitive selection procedure is based on sound justification for one of the following reasons:
 - a) A case of extreme emergency resulting from unforeseeable and unpreventable events that are in no way attributable to the Contracting Authority, which require the implementation of the Contract within a timeframe that is not compatible with the deadlines required by the procurement procedures set out in the present Guidelines; or
 - b) The provision of the works, plants, goods, equipment, consulting or non-consulting services may only be entrusted to a single Provider for technical reasons, for reasons related to a recognized unique expertise, or to the protection of exclusive rights;
- (iii) The preferred Bidder is qualified and experienced for the provision of the services;
- (iv) The Contract price is consistent with the initial estimates and usual market prices, and its contractual terms and conditions are fair and reasonable.

For contracts which amount does not exceed €40,000, Direct Contracting is possible as long as conditions (i), (iii) and (iv) above are met. It remains always preferable to conduct a competitive selection procedure, whenever possible.

Above this threshold, the Contracting Authority shall (and below this threshold, the Contracting Authority may) send a Consultation Letter to the Provider with which it wishes to enter into contract, setting out the technical specifications of the expected services, the contractual terms and conditions, and the content of the technical and financial Bid or Proposal expected from the Provider. It shall evaluate the

technical and financial Bid or Proposal received, in particular so as to justify the conditions (iii) and (iv) above.

Any Contract awarded through Direct Contracting shall comply with the requirements of the present Guidelines concerning the contractual terms and conditions of Contracts.

SECTION 3. REQUIREMENTS APPLICABLE TO THE PROCUREMENT OF AFD-FINANCED CONTRACTS

3.1 Common provisions

3.1.1 *Statement of Integrity*

The Contracting Authority shall require that Applicants, Bidders and Consultants provide a duly signed Statement of Integrity (the model of which is available in Appendix 1 of the present Guidelines) which covers the criteria and requirements set out in Articles 1.2 to 1.5. The Contracting Authority undertakes to require the submission of this signed Statement of Integrity in any Prequalification, Initial Selection, Request for Expressions of Interest, Invitation for Bids (International or National), Request for Proposals or Quotations, and in the context of the Direct Contracting procedure. The Statement of Integrity signed by the successful Bidder shall form part of the Contract.

In the case of a project co-financed with one or several other development partners, the Statement of Integrity may be replaced by an equivalent ad hoc document, approved by the development partners in question, pursuant to Article 1.1.2.

Should the Statement of Integrity not be provided, or should one of the commitments included therein not be complied with, AFD may apply the actions provided for in Article 1.6.5.

3.1.2 *Confidentiality*

Information relating to the estimated budget of Contracts for goods, works, plants, equipment or non-consulting services, to the Applications, Bids, Proposals or Quotations received and their evaluation (except for the overall technical score for Contracts for consulting services, following the technical evaluation), and to the recommendation for the award of the Contract is confidential. Unless otherwise required by the Laws and Regulations, this information shall in no case be disclosed to the Applicants, Bidders, Consultants, or to any other Person not officially involved in the procurement process until the publication of the award of the Contract.

3.1.3 *Evaluation of Applications, Bids, Proposals and Quotations*

The Contracting Authority ensures the set-up of an evaluation committee for the Applications, Bids, Proposals or Quotations at the earliest possible stage (during the finalization of the Procurement Documents at the latest). The committee shall comprise at least three technically competent members, with no reporting relationship between them. It may be necessary to hire external technical assistance in order to strengthen the capacities of the evaluation committee.

All Applications, Bids, Proposals or Quotations shall be evaluated by the evaluation committee, on the basis of the exclusion, qualification and award criteria established in advance in the Procurement Documents.

The evaluation committee shall prepare and sign a detailed report on the evaluation of the Applications, Bids, Proposals or Quotations. For the evaluation of Applications, Bids and Proposals, this report shall comprise at a minimum the elements set out in Appendix 5.

3.1.4 *Retention of documentation*

The Contracting Authority undertakes to retain and maintain at the disposal of AFD (or of any organization mandated by it) for a minimum of ten (10) years from the date of the deadline for the drawdown of funds set out in the Financing Agreement, the documentation relating to the advertising, procurement and performance of Contracts, in particular the documents listed in Article 1.6.2.

3.2 Provisions applicable to the procurement process

3.2.1 *Advertising*

In accordance with the principles of opening up to competition and transparency, the procurement of AFD-financed Contracts shall, unless otherwise agreed by AFD, be subject to wide advertising by the Contracting Authority, specifying the arrangements for obtaining the Procurement Documents, the deadline for the submission of the expected responses, and the contact details of the Contracting Authority responsible for the procurement procedure. The corresponding notices shall be published in widely available paper or electronic media, and sufficiently in advance to allow Applicants, Bidders or

Consultants to submit high quality Bids or Proposals. For each Contract above €40,000 subject to a competitive selection procedure, the Contracting Authority shall also ensure wide publication (for example, on at least one of these media, or on its website), at least annually, of a Contract Award Notice indicating the name of the successful Bidder and the purpose and amount of the Contract.

For Contracts subject to an International Procurement Competition, the Contracting Authority shall:

- Ensure the publication, on the terms set out above, on the website <http://afd.dgmarket.com>, of all Requests for Expressions of Interest, invitations for Prequalification, invitations for Initial Selection or Invitations for Bids, as well as the Contract Award Notice;
- In the case of a project co-financed with the European Investment Bank under the MRI,¹¹ ensure the publication of these notices in the Official Journal of the European Union.

3.2.2 Electronic Procurement (E-procurement)

The use of electronic procurement methods (in particular e-mails, e-platforms for procurement management and e-catalogues) for the submission of Bids or Proposals, including for electronic reverse auctions, shall require AFD's prior approval.

The Contracting Authority shall be required to demonstrate the security and confidentiality conditions of the system, as well as its technical reliability and its compliance with international good practices (in particular, the absence of discrimination). In particular, the system used shall be required to record the dates and times of the submission of Bids or Proposals, as well as of any opening of such documents. In the case of a two-stage opening, the system shall also be required to allow separate openings for the technical and financial envelopes, and ensure the confidentiality of the financial Bids or Proposals during the technical evaluation.

The Contracting Authority may in particular submit to AFD all the analyses already conducted, where applicable, by other international development partners on such a system.

3.2.3 Exclusion lists of the Contracting Authority

Exclusion lists (blacklists) imposed by the Laws and Regulations shall only be applied upon AFD's prior approval. The Contracting Authority shall be required to demonstrate that the sanctions are imposed transparently, according to formalized procedures, by an officially established committee dedicated to this task.

3.2.4 Measures to support the local economy

When, and only when, the Laws and Regulations require the Contracting Authority to apply domestic preference policies, AFD may agree to this, on the condition that (i) it is conducted in a fully transparent manner by applying a margin of preference expressly provided for in the Procurement Documents, and listing exhaustively the criteria to determine the Bidders that may benefit from it, and (ii) it shall not lead to a de facto exclusion of foreign competition. In any case, the domestic preference margin shall not exceed 15% of the import price in the case of the procurement of goods, and 7.5% of the price in the case of the procurement of works. No margin of preference shall be applied for Contracts for consulting services.

Any other form of support for the local economy (such as requiring a minimum of local labor or locally manufactured products, or a partnership with a local company) shall not be eligible for AFD financing, unless (i) it is required by the Laws and Regulations, and (ii) AFD determines that such provision does not undermine compliance with international good practices, or the fulfilment of the expected outcome of the financing.

3.2.5 Proprietary technologies

The specifications shall be based on relevant technical characteristics and/or performance requirements. References to brands, catalogue numbers or similar classifications shall be avoided. If there is a valid reason for specifying a brand or the catalogue number of a manufacturer in particular to clarify a specification that would otherwise be incomplete, such reference shall be accompanied by the term "or equivalent" to allow the acceptance of Bids or Proposals for goods, plants or equipment with

¹¹ See the footnote of Article 1.1.2.

similar characteristics and performance, at least equivalent to those indicated in the Procurement Documents.

3.2.6 Submission deadlines

The deadlines for the preparation of Applications, Bids, Proposals or Quotations shall provide sufficient time to allow interested parties to have a reasonable and appropriate period to gather information and prepare and submit high quality Applications, Bids, Proposals or Quotations.

3.2.7 Preparatory meeting, clarifications and addendums

The Procurement Documents may indicate that a preparatory meeting will be organized by the Contracting Authority before the submission of Bids or Proposals. A written record of the minutes of this meeting shall be provided to all the Applicants, Bidders or Consultants that have obtained the Procurement Documents, or that may request them during the submission period. Non-attendance at this meeting shall under no circumstances be a disadvantage or distort the rules of competition.

Furthermore, any Applicant, Bidder or Consultant wishing to obtain clarifications about the Procurement Documents shall submit their request to the Contracting Authority in writing¹² to the address, and within the timeframe, stipulated in the Procurement Documents. The Contracting Authority shall inform AFD about any request for clarifications thereby received, answer them in writing, and communicate the answer to AFD for information. In the event that the Contracting Authority deems it necessary to modify the Procurement Documents in response to the clarifications requested, it may do so through the publication of an addendum to these documents, at any time prior to the deadline for the submission of Applications, Bids or Proposals, extending the submission deadline where necessary.

The Contracting Authority shall provide a copy of its answer to the requests for clarifications, as well as any addendums to the Procurement Documents, simultaneously to all the Applicants, Bidders or Consultants that have obtained the Procurement Documents. It shall also ensure that this is promptly published on the same media as the initial publication. Any addendum thereby published shall be considered an integral part of the Procurement Documents.

In any case, the Contracting Authority shall not disclose any information that may give an advantage to an Applicant, Bidder or Consultant or distort competition. In particular, in its answer to the requests for clarifications, it shall mention the question asked without mentioning the questioner's identity.

3.2.8 Bid securities

It is recommended to request a bid security for the procurement of works, plants, equipment or goods. It is not recommended in the case of Contracts for consulting services.

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

3.2.9 Arithmetical correction of pricing

The Bidding Documents or Requests for Proposals shall include provisions for the correction of arithmetical errors identified by the Contracting Authority in the financial Bids or Proposals of the Bidders or Consultants for Contracts based on time spent or unit prices.

3.2.10 Taxes, duties and levies

Unless otherwise agreed by AFD, the evaluation of Quotations, Proposals or Bids shall be carried out excluding the taxes, duties and levies applicable to the Contract in the country of the Contracting Authority. The other applicable taxes, duties and levies shall be deemed to be included in the Quotation, Proposal or Bid of the Consultant or Bidder. The taxes, duties and levies excluded from the evaluation shall be exhaustively defined in the Procurement Documents. The latter shall indicate the terms of

¹² The expression "in writing" means communicated or recorded in written form. For example, this includes mail, e-mail, faxes or communications through an electronic system for procurement (subject to AFD's prior approval on the use of electronic procurement methods as set out in Article 3.2.2 above).

payment of each of these taxes, duties and levies (exemptions, or payment by one of the parties, to be specified).

3.2.11 Claims, appeals and complaints

Pursuant to Article 1.2.4, the Contracting Authority is responsible for handling any complaints, appeals and claims received, in accordance with the Laws and Regulations. The Contracting Authority shall acknowledge receipt of any claim within five (5) business days, and provide the Applicant, Bidder or Consultant that filed the claim with its response and information on how its claim is being handled, no later than ten (10) business days following the date of acknowledgement of receipt.

The appeals and complaints lodged with any competent administrative or judicial authority, where applicable, shall be handled by the latter in accordance with the Laws and Regulations.

The Contracting Authority shall inform AFD without delay of any claim, appeal or complaint that has come to its attention, and provide it with all the information at its disposal concerning how those have been handled, and the response provided, for the procurement of AFD-financed Contracts. In the context of prior reviews, AFD may only issue a No Objection Letter on the draft Contract when the complaints, appeals or claims have been resolved to its satisfaction.

3.2.12 Additional information provided at the request of unsuccessful Bidders or Consultants

The Bidding Documents and Requests for Proposals shall provide that the unsuccessful Bidders or Consultants may request, in writing and within five (5) business days following the date of the notification of the results, additional information concerning the reason(s) for which their Bid or Proposal has not been selected. The Contracting Authority shall provide such information at the earliest opportunity, and no later than fifteen (15) business days following the date of receipt of the request for additional information.

Such information shall concern the main shortcomings and weaknesses of the Bid or Proposal compared to the Bid or Proposal of the successful Bidder or Consultant. No additional information shall be disclosed, in particular no information from the Bid or Proposal of another Bidder or Consultant (notably, no point-by-point comparison with the content, or details of the scores, where relevant, of the other Bids or Proposals) shall be shared, for reasons of confidentiality.

The answers to the requests for information may be given in writing, or orally during a meeting for which a written record of the minutes shall be established by the Contracting Authority. The Bidders or Consultants shall bear their own costs for attending such information meeting, where appropriate. The Bidders or Consultants may not request further or additional information following this written or oral feedback.

3.3 Provisions applicable to the contractual terms and conditions of the Contract

3.3.1 Contractual bank securities

Any advance payment is necessarily conditional upon the party awarded the Contract submitting an advance payment bank guarantee for the same amount, or an equivalent security instrument approved by the Contracting Authority. The Contracting Authority may, however, decide to waive this condition in the case of advances for amounts that do not exceed €10,000, and subject to this being specified in the Procurement Documents.

It is recommended to require a performance security on first demand, and to include a retention money mechanism, in the case of Contracts for works, plants, equipment or goods. They are not recommended in the case of consulting services.

When Contracts provide for the provision of an advance payment or performance guarantee, or a retention money security, the Contracting Authority undertakes to promptly delegate the whole or a part of this security in favor of AFD, should AFD so request.

3.3.2 Price adjustment

The Procurement Documents shall indicate whether the Bid or Proposal is required to be presented (i) on the basis of fixed prices, or (ii) on the basis of adjustable prices.

The inclusion of a price adjustment clause is not required in the procurement of simple Contracts for the delivery of goods, plants or equipment, or the performance of works, within a period of less than 12 months. However, it shall be included in all types of Contract with a duration of more than 12 months, as well as for Contracts comprising substantial inputs (materials, fuel, labor, etc.) for which there is a high price volatility.

The frequency of price adjustments shall be indicated in the Procurement Documents, where applicable. An adjustment shall apply in the event of variations (upward or downward) in the main components of the Contract price (labor, equipment, materials, fuels, etc.). Its application shall not be capped. Bidders or Consultants shall be able to indicate in their Bid or Proposal, at their convenience, the price adjustment indexes to be used and their source, at least for the part of the Bid or Proposal denominated in a foreign currency, on the understanding that the Contracting Authority may verify the consistency of the use of the proposed indexes with the Bid or Proposal submitted by the selected Bidder or Consultant, prior to the signing of the Contract.

3.3.3 Amendments to Contracts

Unless otherwise agreed by AFD, the total aggregate amount of Amendments to a Contract shall not exceed the most restrictive of the following limits: the maximum amount for Amendments as specified in the Laws and Regulations, where one exists, or 20% of the initial Contract amount.

3.4 Specific case of Contracts with partially or fully deferred triggers

3.4.1 Contracts with triggered phases

The Contracting Authority may conclude a Contract comprising a firm phase and one or several optional and/or conditional phases. The corresponding type of competition shall be determined taking into account all optional and/or conditional phases of the Contract.

In both cases, the Bidding Documents or the Request for Proposals shall clearly determine the content expected, respectively, for the firm phase, and for the optional/conditional phases, as well what is expected to be submitted in the technical and financial Bid or Proposal for each phase. Unless otherwise agreed by AFD, the estimated amount of the firm phase shall represent at least 80% of the estimated amount of the total Contract (including the optional/conditional phases). Furthermore, the procedures and a maximum date for the confirmation by the Contracting Authority of the decision to trigger the optional/conditional phases to a firm phase shall be set out in the Bidding Documents or the Request for Proposals.

An optional phase is one that is triggered by the Contracting Authority at its own discretion. In this case, the evaluation of the Bids and Proposals shall only be conducted on the basis of the firm phase. The amount of the optional phase(s) shall be provided for in the Contract.

A conditional phase is one that is triggered based on constraints external to the Contracting Authority (for example, obtaining financing, the passing of a law, access to a site...). In this case, the evaluation of the Bids and Proposals shall be conducted on the basis of the firm phase and all the conditional phases. The amount of the conditional phase(s) shall be provided for in the Contract.

3.4.2 Purchase order Contracts and framework agreements

When, for technical or financial reasons, the timetable or scope of the needs to be met cannot be fully defined in the Contract, the Contracting Authority may conclude a purchase order Contract or a framework agreement, which is implemented as and when the purchase orders or subsequent Contracts are issued, as provided for in the Contract. The corresponding type of competition shall be determined taking into account the maximum amount of the Contract.

The Bidding Documents or Request for Proposals shall specify the scope of the services, the evaluation methods allowing a comparable basis for the financial evaluation (for example, on the basis of a model order, quantities by type of expert, etc., defined in a manner representing the expected services), the allocation methods (to one or several Providers, and the following allocation of subsequent Contracts or purchase orders to each Provider, if applicable), the maximum amount of the Contract, any minimum amount (or quantity) for the services the Contracting Authority undertakes to contract (including for each Provider, where applicable), the duration of the Contract, the contractual and payment terms and whether there is a price adjustment clause and, if so, its implementation arrangements.

They shall also specify the implementation arrangements for the Contract:

- Purchase order Contract: deadline for the Provider(s) to respond to the purchase order (in particular in the case of consulting services), where applicable, contractual confirmation for the order, terms of payment;
- Framework Agreement (subsequent Contracts): at each subsequent consultation, the Contracting Authority shall specify its need (within the scope defined by the Framework Agreement) and consult in writing the Provider(s) contracted under the Framework Agreement, leaving sufficient time for them to submit a Bid or Proposal in response to this need. The Bids or Proposals submitted must comply with the characteristics defined by the Framework Agreement and the specific consultation documents for the subsequent Contract in question.

3.5 Other types of Contract

For types of Contracts other than those referred to in Sections IV and V below, such as concessions, Public-Private Partnerships (PPPs), Build-Operate-Transfer (BOT), etc., the Contracting Authority shall apply the prevailing international best practices for the preparation of the Procurement Plan, the Procurement Documents and the contractual provisions, in consultation with AFD.

SECTION 4. PROCUREMENT OF WORKS, PLANTS, EQUIPMENT, GOODS AND NON-CONSULTING SERVICES

The application of the present Section is mandatory for National and International Procurement Competitions. Its application is recommended, as far as possible, for Requests for Quotations, as well as for Contracts signed through Direct Contracting with regard to the contractual terms and conditions.

4.1 Preselection

In the case of an International Procurement Competition, a preselection stage is recommended for the procurement of complex works, plants or equipment, or for high amounts, in the form of a Prequalification. It aims to stimulate competition and obtain higher quality Bids, particularly when the Bid preparation costs are high.

However, and unless otherwise agreed by AFD, a preselection stage is required for “design and build” and “design, build and operate” Contracts, in the form of an Initial Selection.

The invitation for Prequalification or for Initial Selection shall be widely advertised. The Prequalification or Initial Selection documents established by the Contracting Authority shall provide information on the scope of the works, plants or equipment to be procured, as well as the full description of the eligibility conditions and the qualification criteria to be used. They shall not indicate the estimated Contract amount.

The qualification criteria shall be proportionate to the specific needs of the Contract. They shall relate to the ability of Applicants to perform the Contract in a satisfactory manner, given in particular (i) their recent experience with similar Contracts in scope and amount, and (ii) their financial situation. Each qualification criterion shall be evaluated as either “meeting” or “not meeting” the corresponding requirement. An Application for which one or more qualification criteria do not meet the corresponding requirement shall be rejected.

The evaluation of an Application for a Prequalification shall not be based on a weighted scoring of the qualification criteria. All Applicants that are eligible and meet the qualification criteria shall be invited to submit a Bid, with no limit to their number.

However, for “design and build” and “design, build and operate” Contracts, the number of prequalified Applicants shall be limited. Consequently, a scoring of the Applications meeting the qualification criteria shall be applied, if the number of qualified Applicants exceeds the maximum number of accepted Applicants set out in the Initial Selection documents.

The Contracting Authority shall provide written notification to all the Applicants of the names of the prequalified Applicants. The Applicants not selected shall receive written notification separately. The Bidding Documents shall subsequently be made available to the prequalified Applicants at the earliest opportunity.

4.2 Letter of Invitation for Bids and Bidding Documents

Letter of invitation or Invitation for Bids

When there has been a Prequalification or Initial Selection stage, the invitation to bid is in the form of a letter of invitation to the pre-selected Applicants indicating, at a minimum, the date, time, place and cost to collect the Bidding Documents.

When there was no Prequalification or Initial Selection stage, the invitation to bid is in the form of an Invitation for Bids indicating, at a minimum, the date, time, place and cost to collect the Bidding Documents, as well as the main qualification criteria.

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

Bidding Documents

The Bidding Documents shall comprise at least the following components:

a) Bidding rules / Instructions to Bidders

The bidding rules govern the bidding process. They shall define the procedures for the preparation, submission, opening, evaluation and comparison of Bids and how the Contract will be awarded.

b) Bid Data Sheet

It contains specific information about the bidding process in question, in particular, the purpose of the Contract, the origin of the funds, the name and contact details of the entity conducting the bidding process, the procedures for the preparation of Bids (preparatory meeting and/or site visit, requests for clarifications), the procedures for submitting and opening Bids (content and format, number of copies, place where Bids are to be submitted, deadline date and time, etc.), and the evaluation method.

c) Evaluation and qualification criteria

This comprises the evaluation and qualification criteria, which shall be proportionate to the specific needs and stakes of the Contract and will be used by the Contracting Authority to evaluate the Bids submitted by Bidders.

d) Bidding forms

These are all the forms that need to be completed and submitted by Bidders in their Bid.

e) Technical specifications

These are all the technical specifications of the services to be performed, including the plans, where applicable, as well as the duration and schedule to be followed. Depending on the Contract, they may also include the operational and performance requirements, the procedures for trials and tests, the environmental, social, health, and safety requirements, etc. They are required to provide all the information required for Bidders to establish an operational methodology and quantify the human and material resources that need to be mobilized, in order to establish their Bid on this basis.

f) Eligibility and Statement of Integrity

The Bidding Documents shall specify the eligibility requirements for the signing of the Contract and for AFD's financing, and shall in all cases include the Statement of Integrity, a signed copy of which must be provided by the Bidder.

g) Contractual Terms and Conditions

The Bidding Documents shall include the general and specific administrative clauses of the Contract in question, the model Contract Agreement (indicating the order of prevalence of the different constituent parts of the Contract), and the forms pertaining to the Contract.

4.3 Bid opening

The opening of Bids shall be made in public, *i.e.*, allowing the presence of representatives of the Bidders that wish to attend. This meeting shall be held very shortly after the deadline time for the submission of Bids. The opening of the Bids shall take place regardless of the number of Bids received, provided that the Bids have been received earlier than the submission deadline date and time.

The name of the Bidder, the existence of any alternatives, and the existence of a bid security, if required, shall be read aloud at the opening of each Bid.

For Contracts for works, plants, equipment, goods or non-consulting services, the Bids shall be submitted in the form of a single envelope containing both the technical and financial information of the Bid. The price of the Bid, of any alternative, and any discount shall also be read aloud at the opening of each Bid.

For “design and build” and “design, build and operate” Contracts, the Bids shall be submitted in the form of two separate envelopes,¹³ one containing the technical Bid, the other the financial Bid. In the first stage, only the technical envelopes are opened as described above. In the second stage, only the financial Bids of the Bidders whose technical Bids have been deemed substantially compliant with the requirements of the Bidding Documents are opened. The price of the Bid, of any alternative, and any discount shall then also be read aloud at the opening of each financial envelope. The financial Bids of the Bidders whose technical Bids have not been deemed compliant with the requirements of the Bidding Documents shall not be opened and shall be returned to the respective Bidders.

Minutes of the meeting shall be prepared and signed by the different members of the Bid opening committee at the end of each opening session. These minutes may also be signed by the representatives of the Bidders present that wish to do so.

4.4 Evaluation of Bids

The Bid of the Bidder, on the one hand, and the qualification (or the verification of their qualification if the bidding process was preceded by a Prequalification or Initial Selection) of the Bidder, on the other hand, shall be subject to separate evaluations by exclusively applying the criteria set out in the Bidding Documents. The latter shall not provide for the rejection of a Bid at the discretion of the Contracting Authority.

The qualification shall be determined as specified in Article 4.1 above.

Unless prohibited by the Laws and Regulations, any change in a joint venture (JV) between the Application (Prequalification or Initial Selection) and the Bid shall be accepted, provided that the new JV fulfills all the criteria specified at the Prequalification stage and that the ranking of the new JV according to the criteria specified in the Initial Selection documents, if applicable, lead to pre-select this new JV as well. Otherwise, the Bid of the new JV shall be rejected.

For Contracts for works, plants, equipment goods or non-consulting services, the Contract shall be awarded to the Bidder whose Bid has been determined to be the lowest evaluated Bid and is substantially compliant with the Bidding Documents, provided that the Bidder is determined to be qualified.

However, in certain specific cases (for example, “design and build” and “design, build and operate” Contracts), the Contracting Authority may carry out a scoring of the technical Bids substantially compliant with the Bidding Documents. The Contract shall be awarded to the Bidder whose Bid has been determined to be the best-ranked Bid on the basis of a weighted scoring between the technical Bid (substantially compliant with the Bidding Documents) and the financial Bid, with a higher weight given to the financial Bid, provided that the Bidder is determined to be qualified. Unless otherwise agreed by AFD, the financial evaluation of the Bids shall take into account the cost for the lifespan of the plants or equipment.

The evaluation committee shall pay special attention to abnormally low-priced Bids. When a Bid is twenty per cent (20%) or lower than the Contracting Authority’s estimate, and unless the latter can demonstrate that the estimate is inaccurate, the committee shall ask for clarifications and request a detailed price breakdown from the Bidder in question. The Bid in question shall be rejected in the absence of satisfactory answers, or if the detailed price breakdown evidences one or several inconsistencies between the technical Bid and the price details indicated in its Bid. However, the Contracting Authority shall not set a threshold amount (or percentage) beyond or below which the Bids are automatically rejected.

The Contracting Authority shall establish an evaluation report of the Bids comprising at a minimum the elements set out in Appendix 5.

4.5 Alternative Bids

The bidding rules may allow Bidders to submit alternative Bids, particularly for Contracts for works, in order to minimize costs or allow technically attractive solutions. The Bidding Documents shall, in such case, indicate the evaluation method of such alternative Bids. The price of the different alternative Bids proposed in such case shall be read aloud during the public Bid opening.

¹³ This method with two envelopes may be used for Contracts for works, plants, equipment or goods, only with the prior agreement of AFD.

Alternative Bids may only be evaluated if the Bidding Documents allow them to be submitted.

4.6 Lots

The bidding rules may invite Bidders to submit Bids for one or several lots.

A Bidder must be able to submit a Bid for one, several, or all the lots. The bidding rules shall provide for qualification conditions that allow the Bidder to be awarded one or several lots. Unless otherwise agreed by AFD, the Contracting Authority shall not limit the number of lots that the same Bidder may be awarded.

The evaluation shall be conducted by lot, taking into account the discounts offered, where applicable, for any combination of lots. The Contract(s) shall be awarded to the Bidder or Bidders that have submitted a Bid or Bids (i) substantially compliant with the Bidding Documents, (ii) allowing a combination of lots with the lowest total cost for the Contracting Authority, and (iii) provided that this Bidder or these Bidders meet the qualification criteria.

4.7 Discounts

A Bid may include an unconditional discount, which shall always be taken into account in the evaluation, subject to it having been included in the Bid submission letter and read aloud during the public Bid opening.

A Bidder can propose a conditional discount if it indicates in its Bid the manner in which the discount is to be applied. This discount and the corresponding condition shall also be read aloud during the public meeting for the Bid opening. In such case, this discount shall be taken into consideration under the terms indicated in the Bidding Documents, and the condition specified for this discount shall be evaluated by the Contracting Authority to determine whether it is acceptable. In particular, in the case of Bidding Documents providing for several lots, a Bidder may offer one or several discounts conditional upon being awarded several lots, provided that all the Bids, for all the lots, are submitted and opened at the same time.

4.8 Transport and insurance

For Contracts for goods requiring imports from abroad, the Bidding Documents shall include the international rules established by the International Chamber of Commerce for the interpretation of commercial terms used for international trade (Incoterms), in order to govern the respective responsibilities of the Contracting Authority and the supplier in terms of transport and insurance. The Bidding Documents shall preferably provide that the Bids be submitted on the basis of CIP prices (Carriage and Insurance Paid to a named place of destination).

4.9 Contract award

The Contracting Authority shall ensure that the evaluation of Bids and award of the Contract take place during the Bid validity period. It may request an extension to the validity period to all the Bidders if necessary. However, the Bidders shall not be required to accept such extension of the validity of their Bid.

A Bidder shall not be requested to accept, as a condition for being awarded the Contract, to perform services not included in the Bidding Documents, or to modify its initial Bid.

The specific terms and conditions of the Contract (schedule, place of arbitration, taxes, duties and levies applicable to the Contract in the country of the Contracting Authority) may be adjusted prior to the signing of the Contract.

However, the practice of financial negotiations is prohibited, except otherwise agreed upon by AFD.

Specific case: the Bid of the Bidder substantially compliant and evaluated as having the lowest price significantly exceeds the planned budget

Should the Bid substantially compliant and evaluated as having the lowest price significantly exceed the estimated amount established prior to the Bid Invitation, the Contracting Authority shall investigate the causes of this overrun and, in the first instance, consider increasing the available budget. Alternatively, it may, with AFD's agreement and subject to compliance with the Laws and Regulations, enter into negotiations with the Bidder that submitted this Bid, to seek to obtain a satisfactory Contract on the basis

of a reasonable reduction to the scope of the services and/or a modification to the sharing of risks and responsibilities in order to reduce the Contract price. This is only permitted when the modifications envisaged are not likely to call into question the initial ranking of compliant Bids following the evaluation, or the quality of the service.

4.10 Unsuccessful bidding process

As a rule, the Bidding Documents shall state that the Contracting Authority may reject all the Bids received and declare the bidding process unsuccessful when (i) there has been no real competition,¹⁴ (ii) none of the Bids received are substantially compliant with the provisions of the Bidding Documents, or (iii) the Bid prices are significantly higher than the planned budget. It is not permitted to reject all the Bids and re-launch a Bid Invitation on the same basis solely for the purpose of seeking lower prices.

Should the Bid Invitation be declared unsuccessful, the Contracting Authority shall analyze all the causes that have led to this situation (advertising methods, content of the Bidding Documents including the clauses of the Contract, technical specifications, etc.) and remedy them before re-launching the Bid Invitation:

- (i) If the unsuccessful bidding process is due to a lack of competition, the Invitation for bids will need to be more widely advertised, and the technical specifications and qualification criteria will also need to be reviewed, where appropriate, to ensure that they will generate interest among potential Bidders;
- (ii) If it is due to the fact that none of the Bids are substantially compliant with the provisions of the Bidding Documents, the Contracting Authority shall investigate the reasons that have led to this situation and modify these documents accordingly. In such case, the Contracting Authority may request new Bids from all of the initially prequalified Applicants (if a Prequalification or Initial Selection stage had taken place or for a Request for Quotations), provided that the list of prequalified Applicants remains relevant. The Contracting Authority may also request new Bids, with the agreement of AFD, only from those that submitted a Bid in response to the Bid Invitation Notice.
- (iii) If the substantially compliant Bid evaluated with the lowest price still significantly exceeds the planned budget established by the Contracting Authority prior to the Invitation for Bids, after having implemented the provisions of Article 4.9, the Contracting Authority shall investigate the reasons that have led to this situation and modify the Bidding Documents accordingly. In such case, new Bids may be requested by the Contracting Authority in the same conditions as in (ii) above.

4.11 Force account

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

¹⁴ The submission of a small number of Bids or a single Bid does not necessarily account for absence of competition. In such case, if (i) the bid invitation has been correctly published and a sufficient response time has been granted (ii) the Bid evaluated as having the lowest price is substantially compliant from a technical perspective, and (iii) the prices proposed are reasonable compared to the Contract price, then the procurement procedure shall be carried through to its conclusion.

SECTION 5. PROCUREMENT OF CONSULTING SERVICES

The application of the present Section is mandatory for National and International Procurement Competitions. Its application is recommended, as far as possible, for Requests for Quotations, as well as for Contracts signed through Direct Contracting with regard to the contractual terms and conditions.

Contracts for consulting services shall be subject to a Request for Proposals among a Shortlist of consultants.

Unless otherwise agreed by AFD, it is mandatory to use a Request for Expressions of Interest to establish a Shortlist for the procurement of consulting services Contracts for an amount exceeding €200,000. It is also possible below this amount.

For Contracts below €200,000, the Contracting Authority may also use a Request for Quotations pursuant to Article 2.3 above, if authorized by the Laws and Regulations, and including as far as possible the provisions of Article 5.2 below.

The Contracting Authority shall inform all the Applicants in writing of the names of the Applicants selected on the Shortlist.

5.1 Request for Expressions of Interest

The purpose of a Request for Expressions of Interest is to compile a Shortlist of Applicants with the experience required to perform the Contract. To this end, the Request for Expressions of Interest shall briefly describe the services to be implemented, as well as the experience expected from the Applicants. It shall indicate the maximum number of Consultants that may be selected on the Shortlist. Unless otherwise agreed by AFD, the Shortlist shall comprise between four (4) and six (6) Consultants.

The Shortlist is established solely on the basis of similar experience and qualifications of the Consultants to perform the requested service. No nationality criterion that would restrict the principle of openness shall be taken into account for the preparation of the Shortlist. AFD does not recommend scoring the Applications, and this is not provided for in its template Request for Expressions of Interest. Should the Contracting Authority nevertheless proceed with a scoring, the criteria and their respective weightings in the scoring shall be specified in the Request for Expressions of Interest for reasons of transparency.

The Shortlist should be homogeneous, *i.e.*, composed of Consultants of the same category with similar business objectives. It is therefore strongly advised not to include consulting firms and individual consultants, or private sector firms and non-profit organizations, on the same Shortlist.

The Contracting Authority shall establish an evaluation report on the Applications comprising at a minimum the elements set out in Appendix 5.

In the event that the Request for Expressions of Interest does not identify a sufficient number of Consultants able to perform the requested service, the Contracting Authority shall analyze the causes that have led to this situation (advertising, experience and qualification criteria, etc.). Depending on the case and after the agreement of AFD, it may:

- (i) Continue the process by sending the Request for Proposals to a limited number of Consultants (less than four (4));
- (ii) Use a procedure authorized by the Laws and Recommendations that would make it possible to obtain a larger number of Applications, after ensuring that the additional Applicants have satisfactory experience and qualifications, and after they have confirmed in writing to the Contracting Authority their interest and willingness to submit a Proposal;
- (iii) Re-launch the Request for Expressions of Interest with revised criteria (but that remain acceptable in terms of the requirements for the Contract) in order to obtain more responses.

5.2 Request for Proposals

The Request for Proposals is sent only to the shortlisted Consultants. No payment shall be required to obtain the Request for Proposals. It shall at a minimum comprise the following elements:

a) Letter of Invitation

The Letter of Invitation identifies the shortlisted Consultants.

b) Instructions to Consultants

The Instructions to Consultants govern the selection process. They define the procedures for the preparation, submission, opening, evaluation and comparison of Proposals, as well as the way in which the Contract will be awarded.

c) Data Sheet

It contains specific provisions for the Request for Proposals in question, in particular, the purpose of the Contract, the origin of the funds, the name and contact details of the entity conducting the selection process, the procedures for the preparation of Proposals (preparatory meeting and/or site visit, requests for clarifications), the procedures for submitting and opening Proposals (content and format, number of copies, place where Proposals are to be submitted, deadline date and time, etc.), the evaluation method, the evaluation criteria and their respective weightings, and the minimum technical score required. The evaluation criteria shall be proportionate to the specific needs and stakes of the Contract.

The Contracting Authority shall specify an indicative number of expert-days required or, otherwise, a budget estimate, but not both. Except in the case of the fixed budget selection method (see Article 5.4 below), it shall be specified that this information is given on an indicative basis and shall in no way constitute a maximum budget not to be exceeded (budget ceiling).

d) Proposal submission forms

This concerns the expected format for the submission of the technical and financial aspects of the Proposal (technical and financial submission letters, technical Proposal and price schedules).

e) Terms of Reference

They describe the context of the project, the expected outcomes of the mission (audit, study reports, plans, training, number and qualifications of required experts, etc.), the expected deliverables and their schedule, the expected profiles of the experts, the available resources (data and other available information, logistical resources, etc.) and the duration of the service. They are also required to provide all the information necessary for the Consultants to establish an operational methodology and quantify the human resources and material resources that need to be mobilized in order to establish a financial Proposal on this basis.

f) Eligibility and Statement of Integrity

The Request for Proposals shall specify the eligibility requirements for the signing of the Contract and for AFD's financing, and shall in all cases include the Statement of Integrity, a signed copy of which must be provided by the Consultants.

g) Contractual terms and conditions

The Request for Proposals shall include the general and specific administrative clauses of the Contract in question, the model Contract agreement (indicating the order of prevalence of the different constituent parts of the Contract), and the forms pertaining to the Contract.

5.3 Opening of Proposals

The Proposals are submitted in two separate envelopes (technical and financial).

The opening of Proposals shall be made in public, *i.e.*, allowing the presence of representatives of the shortlisted Consultants that wish to attend. This meeting shall be held very shortly after the deadline time for the submission of Proposals. The opening of the Proposals shall take place regardless of the number of Proposals received, provided that they have been received earlier than the submission deadline date and time. Minutes of the meeting shall be prepared and signed by the different members

of the Proposal opening committee at the end of each opening session. These minutes may also be signed by the representatives of the Consultants present that wish to do so.

In the first stage, only the technical envelopes are opened in public, and the name of the Consultant must be read aloud. The technical Proposals are evaluated, and those determined to be non-compliant or inadequate (*i.e.*, with a technical score below the minimum technical score specified in the Request for Proposals) are rejected. In the case of prior reviews by AFD, a No Objection Letter is issued by AFD before proceeding with the opening of the financial Proposals, in accordance with Article 1.6.2.

The financial envelopes are opened, also in public, during a second stage (except for non-compliant or inadequate technical Proposals for which the financial envelopes shall not be opened and shall be returned to the respective Consultants). At this opening, the price of opened financial Proposals and their technical scores are read aloud.

5.4 Evaluation of Proposals

The Proposals are evaluated according to the methods provided for in the Request for Proposals. Quality shall, as a matter of principle, outweigh price in the evaluation of Proposals for consulting services.

Quality and cost-based selection (QCBS):

For services for studies, technical assistance or training, in particular, the Contracting Authority shall use the quality and cost-based selection method, which consists of a weighted scoring of the technical Proposal and the financial Proposal.

In general, the financial Proposal with the lowest price obtains a score of 100 and the others are given an inversely proportional score, based on their amount compared to the lowest price.

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

The other possible selection methods, with the prior agreement of AFD, include:

- Quality-based selection (QBS): The Contract is awarded to the Consultant whose technical Proposal obtains the highest score, higher than the minimum technical score set out in the Request for Proposals. The Request for Proposals may provide for the financial Proposal to be submitted at the same time as the technical Proposal (in such case, in a separate envelope; only the financial Proposal of the Consultant with the highest technical score will be opened), or at a later stage during the negotiation of the Contract. This method may be used (i) for the short-term selection of individual consultants,¹⁵ or (ii) for complex missions or missions with major technical issues. It 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 selection (FBS): A maximum budget is indicated in the Request for Proposals and the technical Proposal with the highest score, higher than the minimum technical score set out in the Request for Proposals, is selected, provided that the corresponding financial Proposal is within the budget. The maximum budget shall be determined appropriately (neither overestimated nor underestimated, on the basis of a detailed assessment of the resources – expert-days – required and of market prices). This method may typically be used in the case of small studies and simple missions
- Least-cost selection (LCS): The Contract is awarded to the Consultant with the lowest-priced compliant Proposal. The compliant technical Proposals are those scored equal to or higher than the minimum technical score required. This selection method may only be envisaged for standard minor consulting services for a small amount

Unless prohibited by the Laws and Regulations, any change in a joint venture (JV) of Consultants between the Application (Request for Expressions of Interest) and the Proposal shall be accepted, provided that the evaluation of the new JV on the basis of the criteria specified at the stage of the Request for Expressions of Interest leads to it also being selected on the Shortlist. Otherwise, the Proposal of the new JV shall be rejected.

¹⁵ See Article 5.7 of the present Guidelines.

The evaluation committee shall pay special attention to abnormally low-priced Proposals. When a financial Proposal is twenty per cent (20%) or lower than the Contracting Authority's estimate, and unless the latter can demonstrate that the estimate is inaccurate, the committee shall ask for clarifications and request a detailed price breakdown from the Consultant in question. The Proposal in question shall be rejected in the absence of satisfactory answers, or if the detailed price breakdown evidences one or several inconsistencies between the technical and financial Proposal. However, the Contracting Authority shall not set a threshold amount (or percentage) beyond or below which the Proposals are automatically rejected.

The Contracting Authority shall establish an evaluation report of the Proposals comprising at a minimum the elements set out in Appendix 5.

The Contracting Authority shall ensure that the evaluation of Proposals and the award of the Contract take place during the Proposal validity period. It may request an extension to the validity period to all the Consultants if necessary. However, the Consultants shall not be required to accept such extension of the validity of their Proposal.

5.5 Negotiations

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

If the financial Proposal has been subject to an evaluation, the unit prices proposed by the Consultant in its Proposal may not be negotiated. However, in the case of time-based Contracts, when the unit prices of the remuneration of staff are proposed at levels much higher than those usually billed by Consultants for similar Contracts, the Contracting Authority may request clarifications and, where appropriate, a reduction in the remuneration.

In the case of Consultants that are not based in the country where the services are to be performed, the negotiation shall also determine the taxes, duties and levies applicable to the Contract that shall be due in the country of the Contracting Authority (they may be estimated on a provisional basis in the financial Proposal but are not to be evaluated), and decide the manner in which they will be paid, taking into account the provisions set out in the Request for Proposals.

Specific case: The Proposal of the Consultant selected following the evaluation is significantly higher than the planned budget

Should the price of the Proposal of the Consultant selected following the evaluation to perform the Contract significantly exceed the estimated amount established prior to the Request for Proposals, the Contracting Authority shall investigate the causes of this overrun and, in the first instance, consider increasing the available budget. Alternatively, it may, with AFD's agreement and subject to compliance with the Laws and Regulations, enter into negotiations with the Consultant selected, to seek to obtain a satisfactory Contract on the basis of a reasonable reduction to the scope of the services and/or a modification to the sharing of risks and responsibilities in order to reduce the Contract price. This is only permitted when the modifications envisaged are not likely to call into question the initial ranking of the Proposals following the evaluation, or the quality of the service.

The negotiations shall be recorded in a report signed by the Consultant and the Contracting Authority, which shall be annexed to the signed Contract.

5.6 Personnel replacement

The Consultant may not request to replace experts prior to the start of the services or during the mission, except in case of duly justified circumstances that are totally beyond its control. Furthermore, the Contracting Authority may not impose a replacement of an expert prior to the start of the services, but the latter may request this during the mission when it is found that the expert does not have the required expertise, or is unable to perform its duties.

The Request for Proposals and the Contract shall make any replacement of an expert conditional on the submission by the Consultant of a replacement expert, who possesses an equivalent or higher level of qualification and experience compared to the expert to be replaced, and on a remuneration that shall not exceed the remuneration of the expert to be replaced.

5.7 Case of Contracts for individual consultants

Individual consultants may be selected for assignments for which (i) a team of experts is not required, (ii) no additional professional support (backstopping) is required, and (iii) the experience and qualifications of the consultant are the paramount requirement. If it is necessary to select several consultants that need to be coordinated for the performance of the expected assignment, or if they have similar activities and/or responsibilities, it is preferable to select a consulting firm.

Unless otherwise agreed by AFD, the use of individual consultants¹⁶ is limited to small value services for which the technical Proposal, if required, shall be succinct.

The selection of an individual consultant shall be based on a Shortlist of at least three (3) qualified and experienced individual consultants that are available and interested in the service. The publication of a Request for Expressions of Interest is not mandatory for the preparation of this Shortlist of individual consultants, but is recommended. An individual consultant shall be selected on the basis of their experience, their relevant qualifications, as well as their ability to carry out the assignment. The unit prices of the individual consultant selected may be negotiated if they are proposed at levels much higher than those usually billed by consultants for similar Contracts.

5.8 Unsuccessful selection

As a rule, the Request for Proposals shall state that the Contracting Authority may reject all the Proposals received and declare the Request for Proposals unsuccessful when (i) there has been no real competition,¹⁷ (ii) none of the Proposals received are compliant with the provisions of the Request for Proposals, or (iii) the Proposal prices are significantly higher than the planned budget. It is not permitted to reject all the Proposals and re-launch a Request for Proposals on the same basis solely for the purpose of seeking lower financial Proposals.

Should the Request for Proposals be declared unsuccessful, the Contracting Authority shall analyze all the causes that have led to this situation (modalities for the preparation of the Shortlist, content of the Request for Proposals including the clauses of the Contract, terms of reference, etc.) and remedy them before re-launching the Request for Proposals:

- (i) If the unsuccessful Request for Proposals is due to a lack of competition, the Contracting Authority shall seek the reasons that have led to this situation and, as the case may be, it may:
 - Modify the Request for Proposals in question accordingly and request new Proposals from all the Consultants on the Shortlist, provided that the latter remains relevant;
 - Establish a new Shortlist pursuant to paragraphs (ii) or (iii) of Article 5.1, then modify the Request for Proposals accordingly and request Proposals from the Consultants on the new Shortlist.
- (ii) If it is due to the fact that none of the Proposals are compliant with the provisions of the Request for Proposals, the Contracting Authority shall investigate the reasons that have led to this situation and modify the Request for Proposals in question accordingly. In such case, the Contracting Authority may request new Proposals from all of the Consultants on the Shortlist, provided that the latter remains relevant. The establishment of a new Shortlist, pursuant to paragraphs (ii) or (iii) of Article 5.1, may be required if substantial modifications are made to the Request for Proposals.

¹⁶ A standard Request for Proposals for Small Consulting Services (to be used for Individual consultants) is available on the Website.

¹⁷ The submission of a small number of Proposals or a single Proposal does not necessarily account for absence of competition. In such case, if (i) a sufficient response time has been granted (ii) the technical Proposal of the Consultant selected following the evaluation obtains a higher score than the minimum technical score set out in the Request for Proposals, and (iii) the prices proposed are reasonable compared to market prices, then the procurement procedure shall be carried through to its conclusion.

- (iii) If the price of the Proposal of the Consultant selected following the evaluation still significantly exceeds the planned budget established by the Contracting Authority prior to the Request for Proposals, after having implemented the provisions of Article 5.5, the Contracting Authority shall investigate the reasons that have led to this situation and modify the Request for Proposals accordingly. In such case, new Proposals may requested by the Contracting Authority in the same conditions as in (ii) above.

APPENDIX 1 – Statement of Integrity, Eligibility and Environmental and Social Responsibility

Reference name of the Bid/Proposal/Contract signed¹ _____ (the “**Contract**”)

To: _____ (the “**Contracting Authority**”)

1. We recognize and accept that Agence Française de Développement (“**AFD**”) only finances the projects of the Contracting Authority subject to its own conditions, as set out in the Financing Agreement that directly or indirectly binds it to the Contracting Authority. The Contracting Authority retains exclusive responsibility for the preparation and implementation of the procurement process and performance of the Contract. Consequently, no legal relationship exists between AFD and our company, our joint venture, and our subcontractors. The Contracting Authority may also mean the Client, Employer or Purchaser, as the case may be, for the procurement of works, goods, plants, equipment, consulting services, or non-consulting services.
2. We hereby certify that neither we, nor any person acting on our behalf,² nor any of the members of our joint venture, nor any of our subcontractors, are in any of the following situations:
 - 2.1 Being bankrupt, wound up or ceasing our activities, having our activities administered by the courts, having entered into receivership, or being in any analogous situation arising from any similar procedure;
 - 2.2 Having been, within the past five years, subject to a final administrative sanction, a final conviction issued by a competent authority, or any other non-court resolution³ having notably an extinctive effect on public action, either (i) in the country where we are constituted, (ii) in the country of performance of the Contract, (iii) in the context of the procurement or performance of an AFD-financed Contract, (iv) pronounced by a European Union institution, or (v) pronounced by a competent authority in France, for:
 - a) Prohibited Practices, as defined in Article 6.1 below, or for any other offence committed in the context of the procurement or performance of a Contract (in the event of such sanction, conviction or non-court resolution, we may attach additional information to this Statement of Integrity, such as a compliance program, showing that we (or the person acting on our behalf, the member of our joint venture, or our subcontractor) consider that this sanction, conviction or non-court resolution is not relevant in the context of the Contract, where applicable);
 - b) Participation in a criminal organization, terrorist offences or offences related to terrorist activities, child labor, or other offences related to human trafficking;
 - c) Having created an entity in a different jurisdiction with the intention of avoiding tax or social obligations, or any other legal obligation applicable in the jurisdiction of its registered office, central administration or principal place of business, or for being an entity created with the intention of avoiding such obligations;
 - 2.3 Having been subject within the past five years to a Contract termination fully settled against us for significant or persistent breach of our contractual obligations during the performance of the Contract, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
 - 2.4 Having been declared ineligible by one of the multilateral development banks signatories to the Mutual Recognition Agreement of 9 April 2010⁴ (in the event of such ineligibility, we may

¹ In the case of a Contract already signed to be refinanced.

² Directors, (including any person who is a member of the administrative management or supervisory body, or with powers of representation, decision or control), employees, or agents (be them declared or not).

³ Including the Judicial Public Interest Agreement (CJIP), a decision following an Appearance on Prior Recognition of Guilt (CPRC), a negotiated resolution agreement, or any other similar form of transaction terminating criminal proceedings.

⁴ World Bank, Inter-American Development Bank, African Development Bank, Asian Development Bank, and European Bank for Reconstruction and Development.

- attach additional information to this Statement of Integrity showing that we consider that such ineligibility is not relevant in the context of the Contract, where applicable);
- 2.5 Not having fulfilled our fiscal obligations relating to the payments of our taxes or social contributions in accordance with the legal provisions of our country of incorporation or of the country of the Contracting Authority;
 - 2.6 Having created falsified documents or committed misrepresentation when providing the information requested by the Contracting Authority in the context of the procurement and award process for this Contract.
3. We hereby certify that neither we, nor any party acting on our behalf⁵, nor any members of our joint venture, nor any of our subcontractors, nor any of our direct or indirect shareholders, nor any of our subsidiaries acting with our knowledge or consent:
 1. Are directly or indirectly subject to, controlled by a person or an entity subject to, or acting in the name or on behalf of a person or entity subject to individual sanctions measures adopted by the United Nations, the European Union and/or France;
 2. Are directly or indirectly subject to, controlled by a person or an entity subject to, or acting in the name or on behalf of a person or entity subject to sectoral sanctions measures adopted by the United Nations, the European Union and/or France;
 3. Are ineligible for the implementation of the Project owing to any other international sanctions measures pronounced by the United Nations, the European Union or France.
 4. We hereby certify that neither we, nor any party acting on our behalf,² nor any of the members of our joint venture, nor any of our subcontractors, are [nor have been (*in the case of refinancing for a Contract already awarded*)] in any of the following situations of conflict of interest:
 - 4.1 Being a shareholder controlling the Contracting Authority or a subsidiary controlled by the Contracting Authority, unless the resulting conflict of interest has been brought to the attention of AFD and resolved to its satisfaction.
 - 4.2 Having business or family relations with a member of the Contracting Authority's services involved in the procurement process or the supervision of the resulting Contract, unless the resulting conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
 - 4.3 Controlling or being controlled by another applicant, bidder or consultant, or being under common with another applicant, bidder or consultant, receiving subsidies from another applicant, bidder or consultant, or granting subsidies to another applicant, bidder or consultant, directly or indirectly, having the same legal representative as another applicant, bidder or consultant, maintaining direct or indirect contacts with another applicant, bidder or consultant allowing us to (i) have given and/or give access to information contained in our respective applications, bids or proposals likely to distort competition (ii) influence them, or (iii) influence the decisions of the Contracting Authority;
 - 4.4 Being engaged for a consulting services mission which, by its nature, is or may be in conflict with the mission envisaged for the Contracting Authority;
 - 4.5 Having prepared ourselves, being or having been associated with a natural or legal person who has prepared, specifications, terms of reference or other documents that have been used for the procurement process in question, and that contain provisions likely to favor an application, bid or proposal;
 - 4.6 Having or having had access to, having prepared ourselves, being or having been associated with a natural or legal person who has or has had access to or prepared, specifications, plans, calculations, studies, or other documents that have not been communicated to all the applicants, bidders or consultants in the context of the present procurement procedure, and which thereby confer us an unfair competitive advantage;

⁵ Directors, (including any person who is a member of the administrative management or supervisory body, or with powers of representation, decision or control), employees or agents (be them declared or not).

- 4.7 In the case of a procurement procedure for works, plants, equipment or goods, having been selected ourselves or proposed to be selected (or any of our subsidiary companies having been or being proposed to be selected) to carry out supervision or inspection of the services in the context of this Contract.
5. If we are a state-owned entity or a public enterprise, to participate in a competitive procurement process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
6. In the context of the procurement and performance of the Contract:
 - 6.1 Neither we, nor any party acting on our behalf,² nor any members of our joint venture, nor any of our subcontractors, have committed or shall commit a Prohibited Practice as defined in the document entitled “AFD Group’s Policy to Prevent and Combat Prohibited Practices” available on AFD’s Website⁶
 - 6.2 Neither we, nor or any party acting on our behalf,² nor any members of our joint venture, nor any of our subcontractors, shall acquire or provide [have acquired or provided (*in the case of refinancing for a Contract already awarded*)] equipment nor to operate [nor have operated (*in the case of refinancing for a Contract already awarded*)] in sectors subject to an embargo by the United Nations, the European Union or France.
7. We hereby undertake to, and we undertake to ensure that any party acting on our behalf,² any members of our joint venture, and any of our subcontractors undertake to:
 - 7.1 Comply with the environmental standards recognized by the international community, including the international conventions for the protection of the environment and, in particular, take all reasonable steps to avoid or limit negative effects on vegetation, biodiversity, soils, groundwater and surface water, and on persons and property resulting from pollution, noise, vibration, traffic and other effects resulting from our activities, in accordance with the laws and regulations applicable in the country of performance of the Contract.
 - 7.2 Implement measures to mitigate environmental and social risks when they are indicated in the environmental and social management plan provided by the Contracting Authority, and ensure that the emissions, surface discharge and effluents produced by our activities respect the limits, specifications or requirements applicable to the Contract.
 - 7.3 Respect the rights of workers related to wages, working hours, rest periods and vacations, overtime, minimum age, regular payments, compensation and benefits, in accordance with the standards recognized by the international community, including the fundamental conventions of the International Labour Organization (ILO), in accordance with the laws and regulations applicable in the country of performance of the Contract; indicate these elements in a document annexed to the employment contracts of our employees and made available to the Contracting Authority; and respect and facilitate the rights of workers to organize themselves and set up a complaints management mechanism for direct or indirect workers.
 - 7.4 Implement practices for non-discrimination and equal opportunities, and ensure the prohibition of child labor and forced labor.
 - 7.5 Keep a record for each member of the local staff recording the hours worked by each person, the type of work, the wages paid and the training undertaken, and ensure that these records are available at all times to be inspected by the Contracting Authority and the authorized representatives of the government, in accordance with the laws and regulations applicable to the protection of personal data in the country of performance of the Contract.
8. We, any party acting on our behalf,² the members of our joint venture, our subcontractors, our direct or indirect shareholders, and our subsidiaries, authorize AFD to conduct investigations and, in particular, inspect the documents and accounting records relating to the procurement and performance of the Contract, including, but not limited to, our internal processes and rules related to the respect of international sanctions pronounced by the United Nations, the European Union and/or France, and to have them verified auditors appointed by AFD.

⁶ For informational purposes, this policy can be accessed via the following link: <https://www.afd.fr/en/combating-corruption>.

9. We declare that we have paid, or that we shall pay, the commissions, benefits, fees, gratuities or charges relating to the procurement procedure or the performance of the Contract to the following third party/parties (for example, an intermediary/agent)(*):

Name of beneficiary	Contact details	Purpose	Amount (indicate the currency)

(*): If no amount has been paid or is to be paid, indicate "None".

10. We undertake to promptly inform the Contracting Authority, which shall inform AFD, of any change of circumstance regarding the sections above, including in case of any sanctions or embargo measures adopted by the United Nations, the European Union and/or France, after we have signed the present Statement.

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf of:⁷ _____

Signature: _____

Dated: _____

⁷ In the case of a joint venture, insert the name of the joint venture. The person signing the bid, proposal or application on behalf of the bidder, consultant or applicant, shall attach a power of attorney from such bidder, consultant or applicant.

APPENDIX 2 – Statement for Contracts to be refinanced

Reference name of the Contract(s) to be refinanced by AFD: _____ (the “**Contract**”)

To Agence Française de Développement (“**AFD**”)

We, the Beneficiary, with regards to the Contract for which we have requested AFD’s refinancing, hereby certify that:

1. The Contract has not given rise (in particular during its negotiation, procurement and performance) to any Prohibited Practice as defined in the document entitled “AFD’s General Policy to Prevent and Combat Prohibited Practices”, available on AFD’s Website,¹ and in the Definitions section of the Procurement Guidelines for AFD-Financed Contracts in Foreign Countries currently in force;
2. The Contract has not given rise to any of the cases of conflict of interest listed in Article 1.3.3 of the Procurement Guidelines for AFD-Financed Contracts in Foreign Countries currently in force;
3. The Contract has not given rise to any claims, appeals or complaints, whether addressed to us directly or indirectly (referral to our complaints management mechanism, controversy in the press, procedures by other project stakeholders, etc.), regarding the procurement process or the performance of the Contract. In the event that such claims, appeals or complaints have been made, we undertake to attach to this Statement all the documents related to how they have been handled, and their settlement;
4. Neither the Contract holder, nor any party acting on our behalf, nor any members of our joint venture, nor any of our subcontractors nor any of our direct or indirect shareholders, nor any of our subsidiaries acting with our knowledge and consent:
 - (1) Are directly or indirectly subject to, controlled by a person or an entity subject to, or acting in the name or on behalf of a person or entity subject to individual sanctions measures adopted by the United Nations, the European Union and/or France;
 - (2) Are directly or indirectly subject to, controlled by a person or an entity subject to, or acting in the name or on behalf of a person or entity subject to sectoral sanctions measures adopted by the United Nations, the European Union and/or France;
 - (3) Are ineligible for the implementation of the Project by way of any other international sanctions measure by the United Nations, the European Union or France.
1. Neither the Contract holder, nor any of the members of the joint venture, where appropriate, nor any of its subcontractors, have acquired or provide any equipment or operate in sectors subject to an embargo by the United Nations, the European Union or France;
2. We shall make our contractual rights available to AFD, for the purposes that AFD or the auditors appointed by it may conduct the necessary verifications.

Name: _____ In the capacity of: _____

Signature: _____

Date: _____

¹ For informational purposes, this policy can be accessed via the following link: <https://www.afd.fr/en/combating-corruption>.

APPENDIX 3 – Environmental, Social, Health and Safety (ESHS) Statement of Commitment

[Statement to be attached to the Letter of Bid to be signed by the Bidders, for the procurement of works, plants or equipment through National Procurement Competition, Request for Quotations, or through Direct Contracting, in compliance with Article 1.5.1 of the Guidelines]

Date: _____

Invitation for Bids N°: _____

Reference of the Bid/Proposal/Contract signed¹ _____ (the “Contract”)

To: _____ (the “Contracting Authority”)

We hereby certify, in connection with the Contract, that:

1. **ESHS rules of procedure**

- 1.1 We have established, or shall establish, internal rules of procedure for our staff indicating:
- The safety rules applicable to our activities;
 - The prohibitions on consuming, possessing, distributing and selling illegal drugs, controlled substances and alcohol (as a minimum with regard to local legislation);
 - Rules relating to the preservation of the environment, in particular the management of waste and hazardous materials, the protection of water and soils, and the preservation of plant and animal species;
 - The dangers of sexually transmitted diseases (STDs), including HIV/AIDS;
 - Gender issues (in particular, gender-based violence and sexual abuse, with particular attention to risks of prostitution and human trafficking); and
 - Respect for the customs and traditions of people.

These internal rules of procedure will be available to the Contracting Authority.

- 1.2 We undertake not to discriminate against, or retaliate against workers who report a breach of the internal rules of procedure.

2. **ESHS training**

- 2.1 We have established, or shall establish, a training program for our staff, our suppliers and our subcontractors on the procedures relating to our ESHS commitments and obligations. The information and awareness-raising sessions relating to the Contract will be documented and the training material will be available to the Contracting Authority.

The ESHS training will include, at least:

- Aspects related to the environment and biodiversity that are relevant to our activities;
- Aspects related to health and safety that are relevant to our activities;
- Information and awareness-raising for local communities, in particular women, on the social and health risks related to sexual relations with staff;
- Information on the local laws and regulations that refer to sexual harassment, the exploitation of children and gender-based violence as punishable offences liable to lead to criminal prosecution and be reported to the authorities.

¹ In the case of a Contract already signed to be refinanced.

3. Health and safety of workers and the public

- 3.1 We shall take all reasonable steps to ensure the health and safety of our staff at all times.
- 3.2 We shall establish, and keep up to date with an objective of continuous improvement, our organization and procedures for the management of the health and safety aspects, which shall comply with the guidelines concerning management systems for occupational health and safety defined by the ILO, and with the measures indicated in the Environmental and Social Management Plan (ESMP) provided by the Contracting Authority and relevant to the Contract.
- 3.3 We shall ensure that every worker has adequate access to medical staff, first aid staff and facilities, and emergency medical treatment and evacuation, and that the necessary steps are taken to comply with applicable standards in terms of welfare and hygiene, and for the prevention of epidemics.

4. Monitoring and reports

- 4.1 We shall appoint, and maintain in office until the completion of the Contract, a team responsible for ESHS management (proportionate to the scope, size and complexity of the Contract) which will monitor the application of our ESHS procedures and the ESHS requirements of the Contract, where appropriate, and will prepare regular reports on this ESHS management. This team will have the powers necessary to take protective measures to minimize the risks in accordance with the Contract.
- 4.2 We shall inform the Contracting Authority about any ESHS incident or accident at the earliest opportunity after its occurrence indicating, in particular, if it concerns non-compliance with our procedures or the requirements of the Contract. We shall identify, take, document and assess the necessary remedial action and improvement measures to prevent the incident or accident from happening again, and to enable a continuous improvement in our organization and practices. We shall also inform the Contracting Authority of any complaint received regarding ESHS, and the measures taken to handle it.

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf of:² _____

Signature: _____

² In the case of a joint venture, insert the name of the joint venture. The person signing the bid, proposal or application on behalf of the bidder, consultant or applicant, shall attach a power of attorney from such bidder, consultant or applicant.

APPENDIX 4 – Security Statement of Commitment

[Paragraph to be included in the Letter of Bid to be signed by the Bidders or Consultants, for Contracts awarded through National Procurement Competition, Request for Quotations, or through Direct Contracting, in compliance with Article 1.5.2 of the Guidelines]

We hereby certify that we, the members of our joint venture, and our subcontractors, where appropriate, have been duly informed of the security situation and have assessed the associated risks in the context of the performance of the Contract for *[insert a brief description of the services to be performed]*.

We acknowledge that the security of the persons and property mobilized for the performance of the Contract financed by AFD remains our sole responsibility.

We undertake to take the steps we deem necessary and sufficient to ensure the security of such persons and property.

APPENDIX 5 – Minimum Content for Evaluation Reports on Applications, Bids or Proposals

The Contracting Authority shall prepare an evaluation report including the following minimum content for the phases of the Request for Expressions of Interest, Prequalification, Initial Selection, Invitation for Bids, and Request for Proposals.

The report shall be sufficiently detailed and reasoned to allow AFD, or any other external reviewer, to understand the entire procurement process, the evaluation method, the strengths and weaknesses of the Applications, Bids or Proposals, and the final recommendation (award, declaration of unsuccessful procurement, cancellation of the process).

The overall evaluation report may be compiled at each stage of the evaluation process, in particular when the financial evaluation is conducted after the validation of the technical evaluation report (submission of Bids or Proposals in two envelopes).

The evaluation report shall include, as a minimum, depending on the stage of the process in question:

1) Introduction

- a. Brief information on the project and the content of the Contract;
- b. Estimated budget for the Contract;
- c. Reminder of the procurement process used: type of advertising used (national/ international/no advertising), type of competition (International or National Procurement Competition, with or without a Prequalification stage, Request for Quotations, Direct Contracting), selection method (quality-cost, lowest cost...), as well as all the specific arrangements (procurement process in two stages, Contracts with lots, phases or purchase orders...);
- d. Stage/envelope evaluated in the present report (e.g.: evaluation of the qualification, technical evaluation of the Bid or Proposal, financial evaluation of the Bid or Proposal, combined evaluation of the technical Proposal and the financial Proposal) and stages/envelopes that have already been evaluated, where appropriate;
- e. Reminder of the schedule for the selection process: beginning and end of the period of Prequalification, Request for Expressions of Interest or Initial Selection, where appropriate, beginning and end of the period for the submission of Bids or Proposals, including details of any extension to these periods, with the reasons and evidence of the publications;¹ planned start date for the services;
- f. In the event of a preparatory meeting and/or site visit: date, time, place and list of participants (a written record of the minutes of the meeting shall be included as an annex);
- g. The main clarifications/amendments to the Procurement Documents during the submission period for Bids or Proposals (details of the clarifications requested and the Contracting Authority's responses shall be included as an annex).

2) Process for the evaluation of Applications, Bids or Proposals

- a. Names and positions of the members of the evaluation committee of the Applications, Bids or Proposals;
- b. Opening session for the Applications, Bids or Proposals: date, time, place and list of participants (a written record of the minutes of the meeting shall be included as an annex);
- c. Basis of the evaluation (including: use of AFD's standard bidding documents or of national template documents), in particular the list of elements that will be evaluated (administrative, technical...);
- d. Results of the evaluation (the detailed results, including the individual analysis of each member of the evaluation committee, shall be included as an annex):

¹ A screenshot of the publication on an electronic platform, and/or an electronic copy of any publication in paper media, clearly showing the publication date, must be attached to the evaluation report.

- For Applications: (i) determination of the qualification of Applicants, and/or the relevance of the references² submitted in the Applications; (ii) analysis of the main strengths and weaknesses identified;
- For Bids (works, plants, equipment, goods and non-consulting services):
 - i. *Results of the technical evaluation*: (i) determination of the compliance with each criterion, (ii) analysis of minor non-conformities, and of major deviations, reservations or omissions, for each Bid, where appropriate, to facilitate any debriefings (iii) justification for the Bids deemed non-compliant, where appropriate,
 - ii. *Results of the financial evaluation (in the case of a two-stage evaluation, this part of the report is completed after the public opening of the financial Bids)*: Bid amounts exclusive of taxes, duties and levies applicable to the Contract in the country of the Contracting Authority, specifying the corrections or adjustments made to each Bid, where appropriate. If it facilitates understanding, the amount of the Bids may be presented in the form of a table indicating the main items.
- For Proposals (consulting services):
 - i. *Results of the technical evaluation*: detailed evaluation matrix established by the evaluation committee, in accordance with the Request for Proposals, including the sub-criteria provided for and the corresponding detailed scorings; scores obtained for each evaluation criterion (consensus score of the committee); comments on the score for each criterion of the Request for Proposals and analysis of the main strengths and weaknesses identified, in order to facilitate any debriefings,
 - ii. *Results of the financial evaluation (in the case of a two-stage evaluation, this part of the report is completed after the public opening of the financial Proposals)*: amount of the financial Proposals of the Consultants having obtained a technical score above the minimum threshold, indicating if there have been any corrections (time-based Contracts) and separating the taxes, duties and levies applicable to the Contract in the country of the Contracting Authority; calculation of the corresponding financial score, according to the formula provided for in the Request for Proposals;
- e. Results of the overall evaluation, including:
 - In the case of a two-stage evaluation (separate technical and financial Bids or Proposals), application of the combined technical-financial evaluation methods provided for in the Procurement Documents (in particular, for Proposals for Consulting Services: results of the calculations of the overall scores according to the weighting formula between the technical score and the financial score as defined in the Request for Proposals)
 - Results of the qualification for Bids (works, plants, equipment, goods and non-consulting services): for the lowest and substantially compliant Bid, verification of the qualification based on all the criteria set out in the Bidding Documents.

3) Conclusion

- a. List of Bidders whose Bids have been deemed substantially compliant, or of Consultants having obtained the minimum technical score and are therefore considered for the financial evaluation;
- b. List of Applicants, Bidders or Consultants whose Applications, Bids or Proposals are rejected and the reasons for this: any rejection of an Application, Bid or Proposal shall be clearly justified by a reference to the Article of the Procurement Documents that provides for this rejection;
- c. Ranking:
 - For Applications, final ranking of the Applications and proposal for a Shortlist or list of Prequalified Applicants;
 - For Bids or Proposals, final ranking of the Bids or Proposals, and proposal for the recommended awardee;
- d. Comparison with the estimated budget, and any comments;

² For Requests for Expressions of Interest, the grid provided at the end of this Appendix 5 may be used to present the evaluation of Applications.

- e. In the case of Consulting Services, list of the points that will need to be negotiated and objectives of the negotiations with the recommended awardee;
- f. Signature of all the members of the evaluation committee.

4) Appendix

The following documents shall be included as an annex to the evaluation report:

- a. Evidence of the publication of the Request for Expressions of Interest, Prequalification, Initial Selection, Invitation for Bids, or of the sending to the pre-selected Bidders, or to the Consultants on the Shortlist, of the Bidding Documents or the Request for Proposals, where appropriate;
- b. The evaluation report on the Expressions of Interest, Prequalifications or Initial Selection, where appropriate, with the list of Candidates selected for the bidding phase;
- c. The minutes of the opening of the Bids/Proposals, containing the information required in accordance with the Procurement Documents;
- d. The minutes of the preparatory meeting held before the submission of Bids or Proposals, reporting on the main discussions with the Bidders or Consultants, where appropriate;
- e. Any request for clarifications from the Bidders or Consultants and the responses given to them during the bidding phase and any request for clarifications from the Contracting Authority and the responses given by Bidders or Consultants during the evaluation phase (including the dates of such requests and responses);
- f. The detailed evaluation grid for the technical Bids and Proposals:
 - i. Analysis of the compliance of Bids, criterion by criterion, for works, plants, equipment and goods,
 - ii. Detailed and reasoned individual scoring for each criterion and sub-criterion for the Proposals of Consultants, and calculation method for the overall scores. If there is an interview with the proposed team leader, the questions and answers shall be recorded in the evaluation report.

Matrix template for evaluating Expressions of Interest

The table below may be used to establish the Shortlist of Applicants. One table must be completed for each Applicant. For each experience submitted by the Applicant, the evaluator must check the boxes corresponding to the criteria it fulfills.

Name of Applicant: _____

	<i>[Criterion 1]¹</i>	<i>[Criterion 2]</i>	<i>[Criterion 3]</i>	<i>[Criterion 4]</i>	<i>[Criterion 5]</i>	<i>[Etc.]</i>
<i>[Experience A]²</i>						
<i>[Experience B]</i>						
<i>[Experience C]</i>						
<i>[Etc.]</i>						
Total³						

The selection of the Applicants to include on the Shortlist must comply with the following rules:

- The Applicant must have at least one reference for each criterion; otherwise, its Application will be rejected;
- The ranking of the Applicants is based on the largest number of criteria fulfilled (boxes checked);
- In the case of a joint venture, the experiences of all the members will be added up.

¹ Each column of criterion corresponds to a characteristic of similar experiences listed in the Request for Expressions of Interest such as (i) the type of services, (ii) the technical area and expertise, and (iii) the location.

² Each line of the table corresponds to a reference given by the Applicant in its Application.

³ The "total" for each column indicates the number of experiences that fulfill the criterion.

APPENDIX

Revisions to the Procurement Guidelines for AFD-Financed Contracts in Foreign Countries in their version of February 2024, compared to the previous version of October 2019.

This present version 2 of these Guidelines dated February 2024 corrects a few small errors and typos in the version published on 1st February 2024.

This present version dated February 2024 modifies the previous version of October 2019 by introducing the following main changes:

A. Terminology:

- **Throughout the document:**
 - The terms “local law”, “applicable law”, “applicable regulations”, “national legislation”, “national regulations” and “local regulations” have been replaced by “Laws and Regulations”, a term defined for the sake of harmonization
 - The term “Beneficiary” has been replaced by the term “Contracting Authority” when it refers to the party entering into a Contract in its own name and for its own account (as opposed to when it refers to the direct recipient of AFD’s financing, the signatory of the Financing Agreement)
 - The terminology used for taxation focuses on the “taxes, duties and levies applicable to the Contract in the country of the Contracting Authority”.
- **In the Definitions section:**
 - Addition of the following definitions for purposes of clarity:
 - “ESHS Statement of Commitment” and insertion of the corresponding Appendix 3
 - “Security Statement of Commitment” and insertion of the corresponding Appendix 4
 - “Director”,
 - “Consultation Letter”
 - “Contract”
 - “Prohibited Practices” (including all the practices liable to undermine AFD’s activities and operations). Consequently, the terms “Corruption”, “Corruption of a Public Officer”, “Corruption of a Private Person”, “Fraud”, and “Anti-Competitive Practice” have been removed from the definitions and are covered by the notion of “Prohibited Practices”
 - “Small Expenses”
 - “Provider”, and
 - “Initial Selection”
 - Revision of the definitions of “Beneficiary”, “Final Beneficiary”, “Shortlist”, “Contracting Authority”, “Person”, and
 - Deletion of the definitions of “International Good Practices” and “Private Person”

B. Structure

This February 2024 version of the Guidelines comprises a major restructuring of its content, to make them clearer and more coherent. Consequently, the Guidelines are now divided in five main Sections:

Section 1: General framework

- This Section outlines the roles and responsibilities of the various stakeholders, including the procedures for AFD’s verification.

Section 2: Types of competition

- This Section outlines the four main types of consultations: International Procurement Competition, National Procurement Competition, Request for Quotations, Direct Contracting.

Section 3: Requirements applicable to the procurement of AFD-financed Contracts

- This Section groups together all the applicable requirements in the same section.

Section 4: Procurement of works, plants, equipment, goods and non-consulting services

- This Section outlines the procurement procedure for these types of Contracts and contains much of Part 2.2 of the 2019 version of the Guidelines.

Section 5: Procurement of consulting services

- This Section outlines the procurement procedure for this type of Contract and contains much of Part 2.3 of the 2019 version of the Guidelines.

Part 3 of the 2019 version of the Guidelines has been removed. Its content is now in the other Sections of the February 2024 version of the Guidelines. Entities not subject to public procurement rules are no longer considered as separate entities, and are addressed like any other Beneficiary.

C. Major changes

In Section 1 of the Guidelines:

- Deletion of the reference to Budget Financing and Intermediated Financing, and clarification of the types of Contract excluded from mandatory competitive bidding
- Introduction of the concept of “Small Expenses”, which the Guidelines do not apply to
- In Articles 1.1.3 *Contracts not subject to mandatory competitive bidding*, and 1.6.4 *Contracts to be refinanced*, clarifications on the need to obtain a signed Statement of Integrity
- Revision of the Article 1.2 *General principles governing procurement*: modification of the order of its Articles, clarification of the principles that should guide the procurement procedure, and simplification of the Article *Responsibility relating to the procurement and performance of Contracts*
- Introduction of the concept of “incompatibility” between the Guidelines and the Laws and Regulations applicable to the Contracting Authority, instead of the concepts of “conflict”, and “more restrictive provisions”
- Emphasis on the key principles of economy and effectiveness, related to those of transparency, fairness, and opening up to competition, and addition of the principle of “proportionality”
- Modification to Article 1.3.2 *Grounds for exclusion*: these cases have been extended to subcontractors, Directors, employees or agents; integration of cases of non-court resolutions, criminal activities such as terrorist offences and child labor, and convictions for tax reasons, and harmonization of practices between the different grounds for exclusion; the consideration of ineligibility measures has been extended to all the multilateral development banks signatories to the Mutual Recognition Agreement of 9 April 2010
- In Article 1.3.3 *Conflict of interest*, clarification of the causes related to avoiding a conflict of interest, and those related to avoiding an undue competitive advantage
- Following the introduction of the term “Prohibited Practices”, modification to Article 1.4 *Prohibited Practices* (formerly *Corruption and Fraud*), and reference introduced to the whistleblowing mechanism set up by AFD
- Modification to Article 1.5 which strengthens the requirements in terms of (i) *Environmental, Social, Health and Safety (ESHS) Responsibility*, by adding a new ESHS Statement of Commitment (in the new Appendix 3) to be included for National Procurement Competitions, Requests for Quotations, and Direct Contracting, and by providing for the possibility of using procurement methods promoting sustainable development, and (ii) *Security*, by adding a Security Statement of Commitment (in the new Appendix 4) to be

included for National Procurement Competitions Requests for Quotations, and Direct Contracting,

- In Article 1.6.1 *Procurement Plan and Strategy*, addition of the preparation of a procurement strategy, clarification on the requirements of communication to the public of the Procurement Plan, and limitation of requests for No Objection Letters to only significant updates to the Procurement Plan
 - Addition of a simplified *prior review* procedure in Article 1.6.2
 - Modification to Article 1.6.4 *Contracts to be refinanced* for the sake of clarity, and to request the submission of the Statement of Integrity signed by the Bidders and/or holders of Contracts to be refinanced, and
 - Simplification of Article 1.6.5 *Non-compliance of the procurement process*
- **In Section 2 of the Guidelines:**
- In Article 2.1 *International Procurement Competition*, clarification concerning any obligation to submit a Bid in domestic currency; addition of a minimum period for the preparation of a Bid for “design and build” and “design, build and operate”; clarification of the need to provide for out-of-court settlement mechanisms for contractual disputes, before having recourse to international arbitration
 - In Article 2.3 *Requests for Quotations*, addition of an obligation to share the names of the Bidders or Consultants selected on the Shortlist
 - In Article 2.4 *Direct Contracting*, increase in the threshold below which Direct Contracting is authorized without justification by AFD, from €15,000 to €40,000. Introduction of the concept of Consultation Letter, for Contracts through Direct Contracting above this threshold
- **In Section 3 of the Guidelines:**
- For the sake of clarity, division of Article 2.1.5 *Other applicable provisions* of the October 2019 version, and reorganization of its paragraphs as follows: creation of Article 3.2 *Provisions applicable to the procurement process* and Article 3.3 *Provisions applicable to the contractual terms and conditions of the Contract*
 - To improve the Guidelines, introduction of the following new paragraphs relating to the procurement process: 3.2.5 *Proprietary technologies*, 3.2.7 *Preparatory meeting, clarifications and addendums*, 3.2.8 *Bid securities*, 3.2.9 *Arithmetical correction of pricing* (application now mandatory for Contracts based on time spent or unit prices), 3.2.11 *Claims, appeals and complaints* (taken from the previous Article 2.1.5 e)), and 3.2.12 *Additional information provided at the request of the unsuccessful Bidders or Consultants*, (in particular requiring the Contracting Authority to respond within a time limit to the requests of unsuccessful Bidders or Consultants, in terms of the strengths and weaknesses of their Bids or Proposals), and relating to the contractual terms and conditions of the Contract: 3.3.1 *Contractual bank securities*
 - In Article 3.1.2 *Confidentiality*, clarification on the confidentiality of the estimated budget of Contracts (excluding Consulting Services)
 - In Article 3.2.1 *Advertising*, addition of the obligation to publish the Contract Award Notice when there has been a competitive selection procedure
 - In Article 3.3.2 *Price adjustment*, reduction to 12 months of the minimum threshold above which this becomes mandatory, and inclusion of details on its implementation
 - Introduction of elements relating to the procurement of Contracts with partially or fully deferred triggers: Creation of Article 3.4.1 *Contracts with triggered phases* and Article 3.4.2 *Purchase order Contracts and framework agreements*

-
- In Article 3.2.11 *Claims, appeals and complaints*, introduction of minimum time limits to acknowledge receipt of and handle any claims, appeals and complaints received by the Contracting Authority
 - In Article 3.2.2 *Electronic Procurement (E-procurement)*, specification of the main technical characteristics expected in order to be able to use an electronic system
 - **In Section 4 of the Guidelines:**
 - Modification to Article 4.1 *Prequalification*, to differentiate between Prequalification and Initial Selection, and to add the obligation of providing the Applicants with the names of the shortlisted Applicants
 - Introduction of the obligation of proportionality between the qualification and evaluation criteria with the needs of the Contract awarded
 - Harmonization and clarification of the description of the constituent parts of the Bidding Documents
 - Modification to Article 4.3 *Bid opening*, to differentiate between Bids to be submitted in a single envelope and Bids to be submitted in two separate envelopes
 - Addition to Article 4.4 *Evaluation of Bids* of the obligation to include in the evaluation report the elements set out in the new Appendix 5 of the present Guidelines
 - Creation of an Article 4.6 *Lots*, specific to Bids for one or several lots
 - Modification to Article 4.9 *Contract award*, with the introduction of a Specific Case of a Bid substantially compliant and evaluated as having the lowest price significantly exceeding the planned budget
 - Restructuring of Article 4.10 *Unsuccessful bidding process* to clarify the course of action depending on the different cases that may lead to a bidding process being declared unsuccessful
 - **In Section 5 of the Guidelines:**
 - Modification to Article 5.1 *Request for Expressions of Interest* to provide additional details and, in particular, to indicate the course of action when it is not possible to identify a minimum of 4 Applicants able to perform the requested service
 - Addition to Article 5.4 *Evaluation of Proposals* of the obligation to include in the evaluation report the elements set out in the new Appendix 5 of the present Guidelines
 - Modification to Article 5.5 *Negotiations*, with the introduction of the Specific Case of a Bid substantially compliant and evaluated as having the lowest price significantly exceeding the planned budget
 - Strengthening of Article 5.7 *Case of Contracts for individual Consultants*, harmonized in particular with the provisions relating to the Request for Quotations
 - Restructuring of Article 5.8 *Unsuccessful selection* to clarify the course of action depending on the different cases that may lead to a selection process being declared unsuccessful
 - **Appendix:**
 - Modification to Appendix 1 of the present Guidelines entitled “Statement of Integrity, Eligibility and Environmental and Social Responsibility”, in order to include the extension of the definition to Prohibited Practices, but also the revision of eligibility criteria
 - Modification to Appendix 2 of the present Guidelines entitled “Statement for Contracts to be Refinanced”, in order to include an additional provision giving AFD, or any auditors mandated by it, the right to conduct verifications on the Beneficiary

-
- | |
|---|
| <ul style="list-style-type: none">• Addition of a new Appendix 3 of the present Guidelines entitled “ESHS Statement of commitment”, to be added in certain Procurement Documents• Addition of a new Appendix 4 of the present Guidelines entitled “Security Statement of commitment”, to be added in certain Procurement Documents• Addition of a new Appendix 5 of the present Guidelines entitled “Minimum Content for Evaluation Reports on Applications, Bids or Proposals” |
|---|