



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

- April 2014 -

FOREWORD

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

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

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

These Guidelines comprise three sections:

- common provisions applicable to all AFD-financed contracts;
- provisions applicable to Beneficiaries that are subject to public procurement regulations; and
- provisions applicable to Beneficiaries that are not subject to public procurement regulations.

For the purposes of these Guidelines, "*public procurement*" should be construed as any contract for the supply of goods, services, or equipment or for the performance of works which is subject to procurement rules or regulations in the State of the Beneficiary.

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

Revision 2014:

This Revision dated April 2014 incorporates the following changes to the previous Revision dated March 2013:

- additional clauses on budget support (1.1.3) and individual consultants (2.3.6):
- a few wording improvements, clarifications and minor modifications (1.2.4, 1.2.6, 1.6.2, 2.1.4, 2.2.1, 3.4.1).

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Definitions

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

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

Act of Corruption	means any act of Corruption of a Public Officer or Corruption of a Private Person, it being understood that corruption can be active (act of promising or giving an advantage to somebody) or passive (act of receiving an advantage).
Anti-Competitive Practices	<p>means:</p> <ul style="list-style-type: none">• any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply.• any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it.• any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.
Beneficiary	means any direct or indirect beneficiary of AFD financing, regardless of whether it is a borrower, beneficiary of a grant under a Financing Agreement or a Final Beneficiary.
Bidding Documents	means documents contained in the Set of Bidding Documents; comprising at least the items listed in Articles 2.2.2 or 2.3.2 as appropriate according to the subject matter of the contract.
Contracting Authority	means any Beneficiary who acquires goods, services or equipment or commands works as part of a project financed by AFD.
Corruption of a Private Person	<p>means:</p> <ul style="list-style-type: none">• the act of promising, offering or giving to any Private Person, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Private Person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or• the act by which any Private Person solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Private Person to perform or

refrain from performing any act in breach of its legal, contractual or professional obligations.

Corruption of a Public Officer

means:

- the act of promising, offering or giving to a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity; or
- the act by which a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity.

A "*Public Officer*" shall be construed as meaning:

- any person who holds a legislative, executive, administrative or judicial mandate (within the State of the Beneficiary) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;
- any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
- any other person defined as a Public Officer by the national laws of the Beneficiary.

Direct Consultation

means a competitive procedure for potential providers identified by the Contracting Authority, without prior advertising (e.g. request for quotation for the supply of goods or request for proposals sent to a Shortlist of candidates established without a prior Request for Expressions of Interest). This type of procedure is normally only used for the procurement of standard goods or services of lower value where the Contracting Authority is familiar with the existing supply market.

Direct Contracting

means a procedure for awarding a contract to a provider without prior competitive bidding (also referred to as a "direct agreement" or a "negotiated procedure without advertising or competitive bidding").

Final Beneficiary

means the Final Beneficiary of the whole or of a part of AFD's grant or loan in the case of an onlending or a Financial Intermediation.

Financial Intermediation

means the financing provided by a bank or a financial institution to a Final Beneficiary after it was granted a loan by AFD.

Financing Agreement

means any Agreement between a Beneficiary and AFD documenting funding granted by AFD to the Beneficiary, regardless of whether it takes form of a loan or of a grant.

Fraud

means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order

	to obtain illegitimate profit.
Guidelines	means the present contractual provisions for the procurement of AFD-financed contracts in foreign countries , copy of which has been given to the Beneficiary.
Implementing Agency	means any person who - by virtue of a mandate or any other empowerment of such effect - is entrusted by the Contracting Authority with the execution of a contract for the procurement of works, goods or services with the objective to carry out a project financed by AFD.
Initial Beneficiary	means the initial beneficiary of the whole or of a part of AFD's grant or loan in the case of an onlending or a Financial Intermediation.
International Competitive Bidding	means a selection procedure to emulate international competition (participation of foreign bidders) namely through advertising in international media, the use of an international language as a work language, longer deadlines for bid submissions, the use of international standards, and suitable financial arrangements (bid currencies, payment currencies...) and contractual arrangements (international arbitration).
International Good Practices	means the principles of open, fair and transparent competition in procurement, provided further that adequate capacity to perform the contract is evidenced by the providers.
National Competitive Bidding	means a selection procedure mainly intended for national bidders, without excluding foreign candidates, with the assumption that the local supply market is adequate and competitive, making it unlikely that entities that are not-established locally will participate.
No Objection Letter	means a no objection letter issued by AFD in the context of its control over the procurement process, as described in Article 1.6.2.
Open Invitation for Bids	means a competitive bidding procedure organised for the purpose of awarding a contract, preceded by a publication and open to all bidders that meet the eligibility and qualification criteria, with no limit as to their number. The Open Invitation for Bids is the procurement procedure that is normally used for supply, equipment and works contracts. It may or may not be preceded by Prequalification (in which case the qualification process is part of the bidding procedure).
Prequalification	means a procedure (which is optional) preceding an Open Invitation for Bids intended to select the candidates that will subsequently be invited to submit a bid. The prequalification is subject to wide advertising. The prequalification document gives a full definition of the qualification criteria and the procedures for the submission of applications, without predetermining a maximum number of candidates to be prequalified.
Private Person	means any person other than a Public Officer.
Procurement Plan	means a plan of procurement set up by the Beneficiary following the template which can be found on AFD's website in the category "AFD > Business Opportunities > Contracts awarded abroad under AFD-financed projects".

Public Procurement	means any contract for the procurement of goods, services, equipment or works, the award of which is subject to a set of legal rules or regulations in the state of the Beneficiary.
Request for Expressions of Interest	means a publication to inform about an upcoming Restricted Competitive Bidding and to invite interested candidates with the required qualifications to express their interest in being included in the Shortlist. In addition to information about the project and the required profile for providers, it indicates, to the extent possible, the maximum number of candidates to be included in the Shortlist.
Restricted Competitive Bidding	means a competitive bidding procedure for which access is limited to a Shortlist of bidders by the Contracting Authority with a maximum number predetermined in advance. This procedure is usually used for consultancy services contracts.
Set of Bidding Documents	means the set of documents, information and items prepared by the Contracting Authority or the Implementing Agency which are handed over to bidders allowing them to submit their bids.
Shortlist	means the list of candidates who have been selected to submit their bids either under the Restricted Competitive Bidding or Direct Consultation. The list is set up by the Contracting Authority or the Implementing Agency.
Statement of Integrity	means a statement of integrity, eligibility and social and environmental responsibility in the form attached to the present Guidelines. Such a statement is to be given by any contractor or bidder following the procedure defined in Article 1.2. 3 of the Guidelines.
Website	means the Internet website of AFD http://www.afd.fr/lang/en/home or any other website which would replace it.

1 Common provisions applicable to all AFD-financed contracts

1.1 Scope of application of the Guidelines

1.1.1 Persons subject to the Guidelines

All Beneficiaries are subject to the provisions of the present Guidelines, whenever they act as a Contracting Authority or as an Implementing Agency for procurement of contracts necessary to the implementation of AFD-financed projects.

If the Contracting Authority is the direct Beneficiary of the AFD financing, the provisions of the present Guidelines shall bind that Contracting Authority to the same extent as those contractual obligations set out in the Financing Agreement entered into with AFD.

In case of an onlending, or in case of a recourse to an Implementing Agency, the Initial Beneficiary guarantees that the Final Beneficiary or the Implementing Agency shall comply with the present Guidelines.

1.1.2 Contracts subject to the Guidelines

The provisions of the present Guidelines apply to all AFD-financed contracts, the term "contract" being understood to mean any agreement concluded for pecuniary interest by a Contracting Authority or an Implementing Agency pertaining to purchase of works, supplies, equipment or services, regardless of the contract price.

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

The present Guidelines are intended to apply in case of one contract or one 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 corresponding controls and their modalities. Within such a framework, the present Guidelines may be, in all or in part, replaced by rules set out jointly with other development partners ¹.

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

1.1.3 Specific cases

- **Financial Intermediation**

When AFD allocates financing through an intermediary, the contracts financed by such reallocated funds shall exclusively be allocated for the purposes of the project defined in the Financing Agreement, in compliance with the relevant regulations applicable to the Final Beneficiary. In such case, the provisions of the present Guidelines do not 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).

- **Budget Support**

Budget support to a State or a local authority is among the various aid modalities implemented by AFD. The OECD definition outlined in recent DAC guidelines defines budget support “as a method of financing a partner’s country budget through a transfer of resources from an external financing agency to the partner government’s national treasury”. The funds thus transferred are managed in accordance with the recipient’s budgetary procedures, provided that such procedures, subject to prior review, in particular procurement rules, are acceptable to AFD. In such case, the provisions of the present Guidelines do not apply.

1.2 General principles governing procurement

1.2.1 Compliance with law applicable to the Beneficiary

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

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

1.2.2 Compliance with International Good Practices

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

AFD makes a set of standard bidding documents available to Beneficiaries on its Website for the procurement of supplies, works, equipment and consultancy services based on the best international practices. The Beneficiary may rely on this, it being understood that it is ultimately the Beneficiary's responsibility to ensure that these documents comply with the laws and regulations that are applicable to it. In case of unavailability of the aforementioned documents on the Website, AFD shall transmit a copy of such documents to the Beneficiary, upon its request.

1.2.3 Statement of Integrity

The Beneficiary must require that candidates or bidders provide a duly signed Statement of Integrity which covers the criteria and requirements set out in Articles 1.2 to 1.5. The Beneficiary undertakes to require the Statement of Integrity (the model of which is appended to the Guidelines) at any Prequalification, Bidding

(regardless of the type, Open or Restricted, International or National) and shall become part of the contractual documents of the relevant agreement. In the case of a project financed within the MRI, the Statement of Integrity shall be replaced by an equivalent and specific Statement approved by the development partners of the MRI.

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

1.2.4 Direct Contracting

The Beneficiary can only be exempted from the requirement for competition when the following cumulative conditions are met: (i) the Direct Contracting shall be exceptional and based on sound justification, (ii) the Beneficiary must have obtained the prior approval of AFD and (iii) if the Beneficiary is subject to a set of laws and regulations, these must provide for Direct Contracting.

The Beneficiary may have recourse to Direct Contracting:

- a) where, for reasons of pressing urgency resulting from unstoppable events that could not have been foreseen and that are in no way attributable to the Contracting Authority, the timeframe required by the bidding procedures as described below cannot be kept;
- b) for supplies or services for which the provision, for technical reasons or for reasons related to the protection of exclusive rights, may only be entrusted to a particular provider;
- c) when the contract amount does not exceed €15,000.

The acceptance of Direct Contracting will also be subject to verification by AFD that the contract price is consistent with initial estimates and usual market prices and that the terms and conditions of the contract are fair and reasonable.

1.2.5 Contract Procurement and Performance Responsibility

AFD provides financing pursuant only to the terms and conditions as set out in the Financing Agreement. No contractual relationship shall be deemed to exist between AFD and any natural or legal person other than the Beneficiary.

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

When acting in its capacity of Contracting Authority, the Beneficiary remains entirely responsible for the preparation and implementation of the procurement process and the subsequent administration of the contract performance. In this framework, the relationships between the Beneficiary and a bidder, contractor, supplier or consultant are exclusively governed (i) by the Bidding Documents issued by the Beneficiary, and (ii) by the contract signed between the Beneficiary and the contractor, supplier, or consultant.

AFD may suspend or definitively terminate the financing in the context of the project, without the providers of goods, works or services being informed beforehand or being entitled to claim from AFD any direct right to the amounts which, as the

case may be, originate from such financing. The providers alone shall assume any possible liability for unpaid amounts and disputes which may arise in the context of their relationship with the Beneficiary.

1.2.6 Advertising

Pursuant to the principles of open competition and transparency, the procurement of AFD-financed contracts shall, except in duly justified cases or in case of refinancing (see Article 1.6.4), be subject to wide advertising by the Beneficiary which shall set out appropriate conditions for bid preparation, particularly an adequate bid submission deadline. The corresponding notices shall be published sufficiently in advance, in widely available paper or electronic media, to allow candidates to prepare high quality submissions. In the case of funds delegated by the European Union to AFD, for contracts amounting to €15,000 or more and subject to advertising, the publication of the notification of award in the same media is compulsory. In the case of a project financed within the MRI, the publication of procurement notices in the Official Journal of the European Union is compulsory.

In case of contracts subject to international competition, the Beneficiary must publish the procurement notices at least on the AFD's Website (category About AFD/Business Opportunities/Procurement notices – website <http://afd.dgmarket.com> developed in partnership with DG Market Foundation).

1.3 Eligibility criteria

1.3.1 Rules of nationality and of origin

Financing allocated by AFD has been entirely untied since 1st January 2002. All goods and services are eligible for AFD financing regardless of the country of origin (except where an international embargo applies) of the supplier, contractor, consultant, sub-contractors, inputs or resources used in the implementation processes. This decision not only concerns the “Least Developed Countries” (LDCs), pursuant to the OECD/DAC Recommendation of 20th April 2001 on untying aid, but also all the other foreign countries where AFD operates.

1.3.2 Grounds for exclusion

Natural or legal persons (including all members of a joint venture or any of their subcontractors) shall not be awarded an AFD-financed contract if, on the date of submission of an application or of a bid or on the date of award of a contract, they:

- (1) are bankrupt, being wound up or ceasing their activities, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from any similar procedure;
- (2) have been convicted within the past five years by a court decision, which has the force of *res judicata* in the country where the project is implemented, of fraud or corruption or any other offence committed during the procurement or performance of a contract, unless they provide supporting information together with their Statement of Integrity which shows that this conviction is not relevant in the context of this AFD financed project;
- (3) are listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight against terrorist financing or threat to international peace and security;

- (4) have committed serious professional misconduct within the past five years during the procurement or performance of a contract, as evidenced by any means by the Beneficiary;
- (5) have not fulfilled their obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where they are established or the Beneficiary's country;
- (6) have been convicted within the past five years by court decision, which has the force of *res judicata*, of fraud or corruption or any other offence committed in the context of an AFD-financed contract procurement or performance;
- (7) are subject to an exclusion decision of the World Bank, since 30 May 2012, and are listed on the website <http://www.worldbank.org/debarr>, unless they provide supporting information together with their Statement of Integrity which shows that the exclusion is not relevant in the context of this AFD-financed project;
- (8) have committed misrepresentation in documentation requested by the Beneficiary as part of the contract procurement procedure.

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

1.3.3 Conflict of interest

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

- (1) are an affiliate controlled by the Beneficiary or a shareholder controlling the Beneficiary, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
- (2) have a business or a family relationship with a Beneficiary's staff involved in the selection procedure or the supervision of the resulting contract, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
- (3) are controlled by or control another bidder or are under common control with another bidder, receive from or grant subsidies directly or indirectly to another bidder, have the same legal representative as another bidder, maintain direct or indirect contacts with another bidder which allow them to have or give access to information contained in the respective bids, to influence them or influence the decisions of the Beneficiary;
- (4) are engaged in a consultancy activity which, by its nature, may be in conflict with the assignments that they would carry out for the Beneficiary;
- (5) in the case of a work or goods procurement procedure :
 - (i) prepared or have been associated with a consultant who prepared specifications, drawings, calculations and other documentation that are subject of the bid;

- (ii) have been recruited or are proposed to be recruited, themselves or any of their affiliates, to carry out works supervision or inspection for this contract.
- (6) are government-owned entities which are not able to provide evidence that (a) they are legally and financially autonomous and/or (b) they do operate under commercial law.

1.3.4 Embargos

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

1.4 Corruption and Fraud

The Beneficiary, the Implementing Agency and the contractors, suppliers or consultants must observe the highest standard of ethics during contract procurement and performance.

The Beneficiary undertakes to insert clauses in all contracts financed in whole or in part by AFD whereby the contractor, supplier or consultant declares that (i) “*it did not engage in any practice likely to influence the contract award process to the Beneficiary's detriment, and that it did not and will not get involved in any Anti-Competitive Practice*”, and that (ii) “*the negotiation, the procurement and the performance of the contract did not and shall not give rise to any Act of Corruption or Fraud*”.

Moreover, the Beneficiary undertakes to include in the Bidding Documents and AFD-financed contracts a provision requiring that bidders and contractors, suppliers and consultants will permit AFD to inspect their accounts and records relating to the procurement and performance of the AFD-financed contract, and to have them audited by auditors appointed by AFD.

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

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

1.5 Social and Environmental Responsibility

In order to promote sustainable development, AFD seeks to ensure that internationally recognised environmental and social standards are complied with and the Beneficiary undertakes that bidders for AFD-financed contracts shall commit themselves to:

- comply with and ensure that all their subcontractors comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the project, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties; and
- adopt any environmental and social risk mitigation measures, where appropriate and in compliance with the Financial Agreement, as defined in the environmental and social management plan or in the environmental and social impact assessment notice issued by the Contracting Authority.

1.6 Controls made by AFD

In accordance with Article 1.2.4 above, the contract procurement ultimately remains the sole responsibility of the Contracting Authority. Nevertheless, AFD is entitled to verify that the procurement processes take place under the required conditions of transparency, fairness and efficiency.

1.6.1 Procurement Plan

The Beneficiary is required to establish a Procurement Plan as part of the project preparation procedure, which identifies the contracts to be awarded under the AFD-financed project (at the minimum for the following 18 months), by determining for each of them: its purpose, the nature of the contract, the cost estimate or main quantities, the planned procurement method, the type of procedure (international or national), the selection method to be used and the intended procurement timetable. A template of Procurement Plan can be found on AFD's Website (<http://www.afd.fr/lang/en/home/AFD/opportunites-d-affaires/marches-sur-projets-afd/Modeles-de-documents>).

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

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

In the case of a major project comprising several large contracts to be awarded, the Beneficiary should publish the information set out in the Procurement Plan approved by AFD through a general procurement notice. Such a publication contributes to more transparency and allows potential candidates to prepare themselves for when a specific procurement notice is published.

Moreover, unless otherwise specified in the Financial Agreement, the Beneficiary shall permit AFD to provide third parties with information contained in the Procurement Plan in relation to contracts that are required to be advertised,

particularly under AFD's obligations to notify *ex ante* the OECD Development Assistance Committee (DAC) of any financing that qualifies as Official Development Assistance.

1.6.2 No Objection Letter

Unless otherwise notified by AFD to the Beneficiary, AFD's controls are conducted *ex ante* through the issuance by AFD of No Objection Letters.

Consequently, prior to any advertising or notification to third parties, and preferably before any communication for approval to a national regulatory or public procurement control entity, the Beneficiary is required to submit to AFD, for the purposes of a prior No Objection Letter:

- the Procurement Plan;
- the Request for Expressions of Interest, in cases of consultancy services for which prior advertising is provided, in order to establish the Shortlist of candidates invited to submit a proposal;
- the Prequalification notice, the Prequalification documents, and the evaluation method envisaged in the case of works or goods contracts, for which a Prequalification stage is organised;
- the evaluation report of the applications received and the list of candidates proposed to be invited to participate in the following stage of the relevant bidding process, in case of Prequalification or Shortlist establishment, before notification to bidders;
- prior to launching the bidding process, the draft Bidding Documents or the consultation document which comprises the instructions to bidders (including criteria for bid evaluation), the administrative and technical requirements, the contract model and the Statement of Integrity to be signed by the contractor as well as, in case of an Open Invitation for Bids without Prequalification, the procurement notice and, prior to their notification to bidders, if applicable, any amendments made to the Bidding Documents during the stage of bid preparation;
- following the evaluation of bids, and prior to notifying the results to the bidders, a detailed report on the evaluation and comparison of bids received, recommendations for contract award and a copy of the bid submitted by the bidder recommended for award (including the signed Statement of Integrity), it being understood that in case of a two-stage evaluation process, whereby bids are submitted in two separate envelopes (one for the technical proposals, and the other one for the financial proposals), AFD's No Objection Letter shall be requested twice: first, on the result of the evaluation of the technical proposals, and, second, after the opening and evaluation of the financial proposals, upon the recommendation for contract award; in addition, AFD reserves its right to obtain disclosure of all the bids from the Beneficiary;
- where applicable, the decision to cancel the bidding or to declare it unsuccessful;

- prior to their signature, the contract draft, the letters to place an order (including the signed Statement of Integrity);
- if applicable, any subsequent contract amendments.

It is specified that any change to any of the above cited documents shall be approved by a No Objection Letter.

The Beneficiary shall inform AFD prior to starting a contract termination procedure.

When a procurement procedure is launched prior to the finalisation of the corresponding financing, AFD may, at the request of the Beneficiary, issue provisional No Objection Letters which shall become effective if and when AFD's financing is effective, knowing that such letters may under no circumstances constitute a commitment on the part of AFD to finance the project, which remains strictly conditional upon the signing of the Financing Agreement.

1.6.3 *Ex post controls*

Should it deem appropriate, notably when the project covers a lot of small standard contracts of limited impact, AFD may notify the Beneficiary, particularly at the time of issuing its No Objection Letter on the Procurement Plan, that in lieu of *ex ante* controls on the procurement procedure for specified contracts as described in Article 1.6.2 here above, it will exercise *ex post* controls using modalities to be specified by itself. For such a purpose, the Beneficiary undertakes to retain and to make available to AFD (or an entity mandated by AFD) for a period of at least five years from the date of deadline for drawdown set out in the Financing Agreement, the documentation relative to those procedures, namely documents subject to the No Objection Letter in accordance with Article 1.6.2 here above.

When the Initial Beneficiary is not the entity in charge of the procurement, the Initial Beneficiary undertakes to take all measures so that all commitments as set out in the previous paragraph here above apply to the Final Beneficiary or to the Implementing Agency.

1.6.4 *Refinancing operations*

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

AFD shall systematically ensure that the refinanced contracts are economical, fair and reasonable, either by verifying that the prior competitive bidding has been effective, or otherwise through a specific analysis as described in Article 1.2.4 here above.

A prerequisite for refinancing of contracts that have already been awarded or are in the process of being awarded is to obtain a formal statement from the Beneficiary on the absence of any kind of claim or complaint, whether resolved or not, addressed to him directly or indirectly (through media or other project stakeholders) and concerning the procurement of the contracts in question, as well as those for any other component of the same project. In the absence of such a statement, AFD will be entitled to decline the financing.

1.6.5 Sanction for misprocurement

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

- to cancel the part of the funds allocated to supplies, works or services which have not been procured in compliance with these provisions;
- in the case of a grant, to request reimbursement of the full amount of the disbursed funds;
- in the case of a loan, to demand early repayment in full or in part of the amount of the loan.

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

2 Contracts awarded by Beneficiaries subject to public procurement regulations

2.1 International and National Bids

2.1.1 Selection of type of procedure

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

In order to determine whether an International Competitive Bidding should be organised, the Beneficiary takes into consideration the following criteria: the estimated contract amount, the nature of the contract, its complexity, the extent to which works or supplies are scattered over space or time, the local supply market in the context of a case-by-case analysis of the specific characteristics of the contract and its circumstances. The selected procedure shall be set out in the Procurement Plan approved by AFD by means of a No Objection Letter.

As an indication, AFD considers that contracts above the thresholds given below should be subject to International Competitive Bidding:

- €5,000,000 for works, heavy equipment contracts or industrial plants (water treatment units, hydropower facilities, pumping stations, telecommunication centres, etc.);
- €200,000 for supply or consultancy contracts.

2.1.2 Requirements of International Competitive Bidding

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

Except in duly justified cases approved by AFD, International Competitive Bidding must meet the requirements set out below.

- Language

The Prequalification / expressions of interest documents, Bidding Documents and bids shall be prepared in one of the three following languages at the Beneficiary's discretion: English, French or Spanish. The contract signed with the selected bidder shall be in the language selected for the Bidding Documents, and that language shall govern the contract. The Beneficiary may also choose to translate the Prequalification documents and Bidding Documents in another language. In such a case, the bidders shall be authorised to submit their bid in either of these two languages and the contract signed with the selected bidder shall be in the language in which its bid was submitted. If the language is neither English, French nor Spanish, and if the contract is subject to AFD's prior No Objection Letter, the Beneficiary shall provide AFD with a translation of the Bid and of the contract draft into one of

the international languages (English, French or Spanish) in which the Bidding Documents were written. The providers shall sign the contracts in one language only.

- Advertising

In addition to the advertising methods that the Beneficiary is required to use for public procurement in accordance with laws and regulations applicable to him, in the case of international procedures, the procurement notices (Request for Expressions of Interest, Prequalification notice, bid invitation notice, etc.) shall be published in electronic or paper media with international circulation and at a minimum on the following Website: <http://afd.dgmarket.com>.

- Bid Submission Deadlines

Unless otherwise approved by AFD, in order to allow foreign bidders that may be far from the Beneficiary's country to participate under satisfactory conditions, the minimum time periods for the submission of bids shall be as follows:

- time for the preparation of an expression of interest / Prequalification application (from the date of the publication of the latest notice to the application submission deadline): 4 weeks
- time for the preparation of a bid for consultancy services (from the sending of the request for proposals to the candidates on the Shortlist to the deadline for submission of proposals): 6 weeks; moreover this time period should not exceed 3 months.
- time for the preparation of a bid for works, supplies / equipment (from the date of the latest publication of the bid invitation notice to the deadline for the submission of bids): 8 weeks.

- Currencies

The Bidding Documents (or request for proposals in the case of consultancy services) shall allow bidders to price their bid in one or several reference foreign currencies including, at least, the Euro.

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

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

- Registration and other administrative requirements

The Prequalification documents or Bidding Documents should provide the possibility of submitting documentary evidence of an equivalent nature to those required in the bidder's country. The registration of the bidder or the presentation of administrative documentary evidence in the country where the project is implemented may be a condition precedent to the signing of the contract (in such case this is stipulated in the Bidding Documents), but not to the Prequalification of a candidate or to the submission of a bid.

- Applicable norms and standards

In order to prevent that providers or suppliers from one country are unduly favoured, Bidding Documents should use, whenever possible, references to international norms and standards. Alternatively, Bidding Documents that refer to a non-international norm or standard shall permit a bidder to use an equivalent or higher norm or standard, provided that the bidder substantiates its choice to the satisfaction of the Beneficiary.

- Contract law and settlement of disputes

The Beneficiary should preferably have recourse to international commercial arbitration unless laws and regulations applicable to him prohibit it. AFD shall not be appointed as an arbitrator, nor be requested to appoint one.

The contract provisions on dispute resolution should also include prior conciliation or mediation mechanisms in order to expedite settlement, avoiding, if is not required by applicable regulations, recourse to alternative dispute resolution procedural rules involving the intervention of the Beneficiary's supervisory authorities.

2.1.3 National Competitive Bidding

When International Competitive Bidding is not required, the Beneficiary may use the National Competitive Bidding procedure to which the provisions set out in the previous Article do not apply, although AFD recommends to observe them anyway. On such matters (language, advertising, currency of the bid, administrative formalities, applicable norms and standards or settlement of disputes), the provisions for public procurement in force in the Beneficiary's country may normally be used as a substitute to those provisions, subject to compliance with International Good Practices. In this respect, a national competitive bidding procedure must not exclude the participation of foreign bidders.

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

The deadlines for submissions may be reduced compared to those for International Competitive Bidding, without undermining the conditions for adequate competition or the preparation of high quality bids.

2.1.4 Other applicable provisions

- Domestic preference

When, and only when, applicable rules and regulations require the Contracting Authority to revert to domestic preference, AFD may agree to the support of the domestic economy, on the condition that it is conducted in a fully transparent manner by applying a margin of preference for supplies produced locally, or for contractors from the Beneficiary's country, and that it is expressly provided for in the Bidding Documents and shall not lead to a *de facto* exclusion of foreign competition. The domestic preference margin shall not exceed 15% of the import price excluding taxes in case of a supply of goods contract or 7,5% of the price in case of a works contract.

- Price adjustment

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

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

- Securities

The payment of a mobilisation advance by AFD is necessarily conditional upon the contractor, supplier or consultant submitting an advance bank guarantee for the same amount under terms accepted by the Beneficiary. The Beneficiary may, however, decide to waive this condition in the case of advances for amounts lower than 10% of the amount of contracts that themselves do not exceed €100,000, and subject to this being specified in the Bidding Documents.

A performance security is recommended in the case of works and supply contracts but not in the case of consultancy services contracts, except in complex or innovative projects.

A bid security (also called bid bond) and a retention money security are recommended in the case of works and supply contracts, but not in the case of consultancy contracts.

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

2.2 Works, supply and equipment contracts

An Open Invitation for Bids is the recommended procedure for procurement of works, supply and equipment contracts (the latter, unlike supply contracts, imply a preliminary technical design for adaptation to the site and a local component for installation and commissioning).

This may or may not be preceded by a Prequalification stage.

2.2.1 Prequalification of candidates

A stage of Prequalification is recommended in the case of complex or major works or supply contracts for which the risk of collusion between Prequalified bidders is low². It stimulates competition, particularly when the bid preparation costs are high, by informing bidders of the competitors that they will be facing. .

The Prequalification notice shall be widely advertised. The Prequalification document issued by the Beneficiary shall provide information on the scope of the

² The use of Prequalification is therefore especially justified in the case of major International Competitive Bidding

works, supplies or services to be procured, as well as the full description of the eligibility conditions and the qualification criteria to be used. The deadline for the submission of applications shall not be less than 3 weeks (4 weeks in the case of an international procedure).

The qualification criteria shall relate to the ability of candidates to perform the contract in a satisfactory manner, given in particular (i) their recent experience with similar contracts, (ii) their capacity in terms of personnel, construction or production equipment, and (iii) their financial situation. The qualification criteria shall be as objective as possible. “pass” / “fail” criteria shall generally be preferred to scoring grids.

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

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

2.2.2 Bidding Documents

The Bidding Documents shall comprise at least the following items:

- Letter of invitation for bids

This is a cover letter or publication notice for the Bidding Documents. A letter of invitation for bids (or procurement notice) is used in the case of an Open Invitation for Bids without prior Prequalification. It is also used in the case of Restricted Competitive Biddings or Prequalification.

- Instructions to bidders

This is the document that governs the bidding process and must specifically define the purpose of the contract, the eligibility / exclusion criteria, the bid preparation modalities (site visit, pre-bid meeting, requests for clarification), the modalities for the submission of bids (content and format, number of copies, place of submission, deadline date and time...), the evaluation method (including alternatives, where applicable) and the award procedure.

- Bid submission forms

Forms and templates for submission of technical and financial proposals of the bid.

- Technical specifications / drawings / specifications

- Contract form

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

When the reproduction cost of the Bidding Documents is substantial (particularly in the case of an Open Invitation for Bids without Prequalification), a payment may be required to be made for the delivery of the Set of Bidding Documents. In such case, in order not to unduly limit competition, the amount to be paid should be indicated in the letter of invitation for bids as a single, reasonable sum (*i.e.* in relation to the marginal cost of printing a document and any dispatch).

2.2.3 Bid opening

The opening of bids which include price data shall be made in public, *i.e.* in the presence of representatives of the bidders that wish to attend. Such a meeting shall be held very shortly after the deadline time for the submission of bids. The price of the bid, and any alternatives or discounts, shall be read aloud at the opening of each bid. Minutes of the meeting shall be prepared and signed by the different members of the bid opening committee.

2.2.4 Evaluation of bids

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

For the sake of objectivity, qualification procedure should use just one of the two possible responses for each qualification criterion, "pass" or "fail", and reject any bid failing on one or several of these criteria, and should not use a weighted combined scoring.

Unless otherwise explicitly approved by AFD, two evaluation methods may be used:

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

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

2.2.5 Alternative bids

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

Should the instructions to bidders not explicitly provide for one or several specific alternative bids, only the spontaneous alternative bids of the lowest evaluated bidder conforming to the basic technical requirements (as per Bidding Documents) shall be considered at the time of contract finalisation.

2.2.6 Discounts

A bid may include a discount, which is always taken into account during the evaluation, subject to it having been read aloud during the public bid opening. A bidder can propose an unconditional discount if the bidder indicates the manner in

which the discount is to be applied. If the bid is divided into several lots, a bidder may also offer one or several conditional discounts in the case it would be awarded several lots. In such a case, this discount should only be taken into consideration under the terms indicated in the Bidding Documents and provided that all the bids, for all the lots, are submitted and opened at the same time.

2.2.7 Transport and insurance

Bidders must be invited to submit their bid according to the international rules established by the International Chamber of Commerce for the interpretation of commercial terms used for international trade (Incoterms). The bids shall preferably be requested on the basis of CIP (Carriage and Insurance Paid to a named place of destination) for goods manufactured abroad and on the basis of EXW prices (ex factory or off-the-shelf) for goods manufactured or assembled in the Beneficiary's country, to which the inland transport and insurance costs to the final destination are added.

2.2.8 Contract award

The Beneficiary shall award the contract during the bid validity period. Unless otherwise explicitly approved by AFD, the contract shall be awarded to the bidder that meets the appropriate qualification criteria, whose bid is determined as substantially compliant with the requirements of the Bidding Documents, and is the lowest evaluated bid.

The bidder may not be required to provide works, supplies or services that are not set out in the Bidding Documents or to modify its initial bid in any other manner as a condition to the award of the contract.

The practice of financial negotiations is prohibited, except in the specific case of unsuccessful bidding as described below.

2.2.9 Unsuccessful bidding

The Bidding Documents normally state that the Beneficiary may reject all the bids received and declare the bidding unsuccessful when (i) there has been no real competition, though the submission of a single bid does not necessarily account for absence of competition: if the bidding has been correctly published and if the prices are reasonable compared to market prices than, subject to compliance with applicable rules and regulations, the procurement procedure can be carried out until contract award; (ii) the bids received are not substantially compliant with the requirements of the Bidding Documents, or (iii) the bids prices are much higher than the available budget. In any case, the Beneficiary shall obtain AFD's No Objection Letter prior to declaring the bidding unsuccessful and on the subsequent steps. The Beneficiary shall analyse all the causes that led to this situation (advertising, conditions and scope of contract, design and specifications...) and remedy this before re-launching the bid invitation; consequently, a Beneficiary may not reject all the bids and request new ones on the same basis solely for the purpose of seeking lower prices.

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

If this situation stems from the fact that the majority or all of the bids do not comply with the requirements of the Bidding Documents, the Beneficiary may request new

bids from all of the initially prequalified contractors or, with AFD's agreement, only from those that submitted a bid in response to the initial invitation for bids.

If the price of the lowest evaluated and compliant bid significantly exceeds the estimate established prior to the bid invitation, the Beneficiary should investigate the reasons for such overrun and envisage re-launching the bid invitation as per the provisions above. Alternatively, it may, with AFD's agreement, enter into negotiations with the lowest evaluated bidder to seek to obtain a satisfactory contract on the basis of a reduction to the scope of the contract and/or a modification to the sharing of risks and responsibilities in order to reduce the contract price. This is only possible when the modifications envisaged do not call into question the initial ranking of compliant bids following the evaluation.

2.2.10 Force account

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

2.3 Consultancy services contracts

A Restricted Competitive Bidding shall be the standard rule for the procurement of consultancy services contracts.

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

2.3.1 Preparation of the Shortlist

Unless otherwise explicitly approved by AFD, recourse to a Request for Expressions of Interest and to a preselection of applications shall be systematic for consultancy services contracts estimated to exceed €200,000. The deadline for the submission of applications shall not be less than 3 weeks (4 weeks in the case of International Competitive Bidding) as from the publication date of the Request for Expressions of Interest.

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

The preparation of the Shortlist of candidates who will be invited to submit proposals is in any case the responsibility of the Beneficiary. Unless otherwise provided, the Shortlist shall be subject to a No Objection Letter. It is prepared on the basis of the capability and qualifications of the candidates to perform the requested services. It must be homogeneous, *i.e.* made up of candidates of similar nature and subject to a similar economic framework. It is, therefore, strongly advised that companies and

individual consultants are not included on the same Shortlist, or commercial companies and non profit organisations, or again companies with huge differences in sizes and expertise. When it is impossible to do otherwise, specific precautions shall be taken, particularly with the evaluation method, in order to avoid any possible competition distortion. The Shortlist shall be limited to between 4 and 6 candidates.

2.3.2 Bidding Documents

The Bidding Documents (also called request for proposals in the case of consultancy services) are sent directly to the Shortlisted candidates. They include the following items:

- Letter of invitation

The letter of invitation must identify the shortlisted candidates invited to submit a proposal and requests:

- A confirmation that the Bidding Documents have been received;
- A confirmation of the intent to submit a proposal alone, or in joint venture where the Bidding Documents allow for this.

- Instructions to consultants

This is the document that governs the selection process. It specifically defines the purpose of the contract, the eligibility / exclusion criteria, the modalities for preparation of the proposal (site visit, pre-bid meeting, requests for clarification), the modalities for the submission of proposals (content and format, number of copies, place of submission, deadline date and time...), the evaluation method and the award procedure. In order to avoid widely differing proposals, an indicative number of man-months of experts required or, otherwise, a provisional budget can be specified.

- Submission forms

Forms for the submission of the technical and financial proposals (Submission Letter, CV, timetable, breakdown of financial proposal) must be provided.

- Terms of reference

These describe (i) the context of the project, the expected outcomes of the services (audit, study reports, drawings, training, assignment of an expert...), the available resources (data and other available information, logistical resources...) and the duration of the service and (ii) provide all information necessary for the consultants to establish an operational methodology, quantify the number of experts and physical resources that need to be mobilised and establish a financial proposal on this basis.

- Contract form

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

No payment shall be made to obtain the Bidding Documents for consultancy services.

2.3.3 Opening and evaluation of proposals

Quality shall outweigh price in the evaluation of proposals for consultancy services.

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

Proposals are submitted in two separate envelopes (technical and financial). In the first stage only the technical envelopes are opened, evaluated and scored out of 100. Non-compliant or inadequate technical proposals (either compared to a minimum threshold defined in absolute terms or compared to the best technical score obtained in accordance with the methods provided for in the request for proposals) are rejected at this stage. Except in cases of procedures subject to *ex post* controls, this first evaluation stage requires a No Objection Letter before proceeding to open the financial proposals.

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

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

Other possible evaluation methods are:

- Least cost: The contract is awarded to the lowest-priced compliant proposal. The technical compliance of the proposal may be considered in absolute terms on the basis of a minimum technical score or in a relative manner compared to the proposal with the highest score. This evaluation method is generally not recommended, except for standard services of lower cost and with limited impacts.
- Quality alone: The contract is awarded to the best evaluated technical proposal. The financial proposals may be submitted at the same time as the technical proposal (in such case in a separate envelope) or at a later stage during the negotiation of the contract. This method may be used (i) for the short-term recruitment of individual consultants³ or (ii) for complex projects or projects with major impacts, but in this case caution is required as it carries a risk of technical overbidding and requires an extremely good knowledge of market prices on the part of the contracting authority in order to conduct the financial negotiations properly.
- Fixed budget: A budget cap is indicated in the consultation document and the best technical proposal is selected, provided that the financial proposal is within the budget. The budget cap must be determined appropriately (neither overestimated nor underestimated on the basis of a detailed assessment of the resources required and of market prices) and the evaluation committee must

³ Refer to Clause 2.3.6 of the present Guidelines

show sound technical capacities. Subject to these important reservations, this simple and rapid method may be worthwhile, notably in the case of small study contracts and simple services.

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

2.3.4 Negotiations

Unlike works, supply and equipment contracts, consultancy services contracts can give rise to negotiations prior to signing. The purpose of such negotiations is predominantly to define the final contractual content of the services to be provided on the basis of the terms of reference, any comments made by the selected consultant in its proposal and the proposed work methodology.

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

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

2.3.5 Personnel replacement

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

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

2.3.6 Individual consultants⁴

Unless otherwise approved by AFD, employment of Individual consultants⁵ is relevant for small value contracts (not exceeding €50 000) and when the required technical proposal, if any, is succinct.

Advertisement for seeking expressions of interest (EOI) is not required. It is recommended when the Beneficiary does not have knowledge of experienced and qualified individuals or of their availability.

Selection shall consist of comparing the overall relevant skills of at least three qualified candidates. The selection of individual consultants shall be based on “quality alone”⁶ and shall take into account their experience, their relevant qualifications and their capacity to provide the services.

⁴ Individual consultants are employed on assignments for which (a) a team of experts is not required, (b) no additional outside (home office) professional support is required, and (c) the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

⁵ A specific Standard Request for Proposals for Individual consultants is available on the Website.

⁶ Refer to Clause 2.3.3 of the present Guidelines

2.4 Other types of contract

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

3 Contracts awarded by Beneficiaries not subject to public procurement regulations

3.1 General framework

The authorisation of AFD's financing is subject to the condition that Beneficiaries observe all provisions set out in Article 1.

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

AFD shall, however, ensure that the procurement methods are fair and transparent and that they guarantee that the most economically advantageous bid is selected, *i.e.* the bid with the best price / quality ratio on the basis of an appropriate implementation schedule. In this context, AFD shall verify that, to the extent possible, at least three qualified companies have been consulted and that the corresponding bids have been evaluated by a committee of the Beneficiary. The contracts shall be awarded on an impartial (arm's length) basis and in a manner that best serves the interests of the project. AFD shall also ensure that there is no discrimination in terms of the nationality of suppliers, with the exception of any provisions for support to local economy, the acceptability of which shall be confirmed on a case-by-case basis.

Moreover, particularly in relation to major contracts intended for International Competitive Bidding, AFD shall request that the Contracting Authorities apply either Open Invitation for Bids or Restricted Competitive Bidding procedures, according to provisions set out in Articles 2.1 to 2.4, with, at least, prior publication of a notice on AFD's website. Precautionary measures to preserve, under the procurement procedures, the legitimately confidential nature of certain data concerning the Beneficiary or the other contracting parties must be taken.

A company that either directly or indirectly has a relationship as a subsidiary or as a majority shareholder with the Beneficiary may exceptionally be awarded an AFD-financed contract without prior competitive bidding. Before accepting the procedure of Direct Contracting, AFD must verify that the negotiated amount is in line with the initial estimate and usual market prices, and more generally that the contractual terms are fair and reasonable.

3.2 Beneficiaries having their own internal procurement rules

Beneficiaries having internal procurement rules shall submit them to AFD which verifies their compliance with International Good Practices. AFD shall issue a No Objection Letter on these procedures.

3.3 Beneficiaries having no internal purchasing / procurement procedures

Beneficiaries that are not subject to their country's public procurement regulations and do not have procedures for their purchasing or procurement procedures shall apply the procedures set out in the present Article. Alternatively, they shall be required to submit a document for AFD's prior approval presenting the procedures that they intend to use to procure the goods or services to be financed by AFD and in pursuance of the objectives of the present Guidelines.

3.3.1 Rules common to all bidding procedures

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

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

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

3.3.2 Rules applicable to consultancy services contracts

3.3.2.1 Contracts of €200,000 or more

Consultancy services contracts with a value of €200,000 or more must be awarded by means of an international Restricted Competitive Bidding procedure. A request for proposals shall be sent to a limited number of candidates shortlisted after the publication of a Request for Expressions of Interest.

The Request for Expressions of Interest must be published in the paper media of the Contracting Authority's country, if possible on the Contracting Authority's website, and in all cases on AFD's website. It shall indicate the purpose of the services to be provided and the selection criteria that will be used to establish the Shortlist comprising 4 to 6 candidates.

The Request for Expressions of Interest and request for proposals must be issued in a commonly used international language (French, English or Spanish) and comply with provisions set out in Article 2.3 of the present Guidelines.

3.3.2.2 Contracts below €200,000

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

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

3.3.3 Rules applicable to supply contracts

3.3.3.1 Contracts of €200,000 or more

Supply contracts with a value of €200,000 or more must be awarded by means of Open International Competitive Bidding following the publication of a procurement notice.

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

The Bidding Documents must be issued in a commonly used international language (French, English or Spanish) and comply with provisions set out in Article 2.2 of the present Guidelines

Any interested supplier should be allowed to bid.

3.3.3.2 Contracts below €200,000

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

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

3.3.4 Rules applicable to works contracts

3.3.4.1 Contracts of €5,000,000 or more

Works contracts with a value of €5,000,000 or more must be awarded by means of an Open International Competitive Bidding following the publication of a procurement notice.

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

The Bidding Documents must be issued in a commonly used international language (French, English or Spanish) and comply with the requirements set out in Article 2.2 of the Guidelines.

Any interested contractor should be allowed to bid.

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

For these contracts, open National Competitive Bidding published locally should be used: the procurement notice must be published in newspaper of the Contracting Authority's country and if possible on the Contracting Authority's website.

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

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

3.3.4.3 Contracts below €300,000

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

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

3.3.5 Other contract types

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

3.4 Specific case of concessions granted by public authorities

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

- If the concessionaire has been selected following a competitive bidding procedure (which may include different stages, but shall begin with large-scale International Competitive Bidding) deemed to be acceptable by AFD pursuant to the provisions of Clause 1.6.4 and has been expressly entrusted with the implementation of works and the provision of services under its concession, the said concessionaire may freely procure the works, goods, and services financed by AFD using its own procedures.
- If the concessionaire has not been selected during a competitive bidding procedure, the works, supplies and services to be financed by AFD shall be considered by AFD as public sector operations and should be procured in compliance with local public procurement regulations or, if such regulations do not apply, according to the principles of the common framework set out in Articles 1 and 3.1 of the present Guidelines.

Appendix - Statement of Integrity, Eligibility and Social and Environmental Responsibility

Reference name of the Bid :
("Contract")

To: ("Contracting Authority")

1. We recognise and accept that *Agence française de développement* ("AFD") only finances projects of the Contracting Authority subject to its own conditions which are set out in the Financing Agreement which it has entered into with the Contracting Authority. As a matter of consequence, no legal relationship exists between AFD and our company, our joint venture or our subcontractors. The Contracting Authority retains exclusive responsibility for the preparation and implementation of the contract procurement and its subsequent performance.
2. We hereby certify that neither we nor any other member of our joint venture or 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, reorganisation or being in any analogous situation arising from any similar procedure;
 - 2.2) having been convicted, within the past five years by decision of a court decision, which has the force of *res judicata* in the country where the project is implemented, of one of the acts mentioned in sections 6.1 to 6.4 below or of any other offense committed during the procurement or performance of a contract¹;
 - 2.3) being listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight-against-terrorist financing or threat to international peace and security;
 - 2.4) having committed serious professional misconduct within the past five years during the procurement or performance of a contract;
 - 2.5) not having fulfilled our obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of either the country where we are established or the Contracting Authority's country;
 - 2.6) having been convicted, within the past five years by a court decision, which has the force of *res judicata*, of one of the acts mentioned in sections 6.1 to 6.4 below or of any other offense committed during the procurement or performance of an AFD-financed contract;
 - 2.7) being subject to an exclusion decision of the World Bank since 30 May 2012, and being listed on the website <http://www.worldbank.org/debarr>²;

¹ In the event of such conviction, you may attach to this Statement of Integrity supporting information showing that this conviction is not relevant in the context of this AFD-financed contract.

² In the event of such exclusion, you may attach to this Statement of Integrity supporting information showing that this exclusion is not relevant in the context of this AFD-financed contract.

- 2.8) having committed misrepresentation in documentation requested by the Beneficiary as part of the contract procurement procedure.
3. We hereby certify that neither we, nor any of the members of our joint venture or any of our subcontractors are in any of the following situations of conflict of interest:
- 3.1) being an affiliate controlled by the Contracting Authority or a shareholder controlling the Contracting Authority, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
 - 3.2) having a business or family relationship with a Contracting Authority's staff involved in the selection procedure or the supervision of the resulting contract, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
 - 3.3) being controlled by or controlling another bidder or being under common control with another bidder, or receiving from or granting subsidies directly or indirectly to another bidder, having the same legal representative as another bidder, maintaining direct or indirect contacts with another bidder which allows us to have or give access to information contained in the respective bids, influencing them or influencing decisions of the Contracting Authority;
 - 3.4) being engaged in a consultancy activity, which, by its nature, may be in conflict with the assignments that we would carry out for the Contracting Authority;
 - 3.5) in the case of a works or goods procurement procedure:
 - i. having prepared or having been associated with a consultant who prepared specifications, drawings, calculations and other documentation that are subject of the bid;
 - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this contract;
4. If we are a government-owned entity, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the Contracting Authority, which will inform AFD, any change in situation with regard to points 2 to 4 here above.
6. In the context of procurement and performance of the contract:
- 6.1) We have not and we will not engage in any dishonest conduct (act or omission) deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate someone's consent, to make them circumvent legal or regulatory requirements and/or to violate their internal rules in order to obtain illegitimate profit.
 - 6.2) We have not and we will not engage in any dishonest conduct (act or omission) contrary to our legal or regulatory obligations or our internal rules in order to obtain illegitimate profit.
 - 6.3) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to (i) any person who holds a legislative, executive,

administrative or judicial mandate within the State of the Contracting Authority regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies, (ii) any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service, or (iii) any other person defined as a public officer by the national laws of the Contracting Authority, an undue advantage of any kind, for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.

6.4) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to any private person who occupies an executive position in a private sector entity or works for such an entity, regardless of the nature of his/her capacity, any undue advantage of any kind, for himself or another person or entity for such private person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.

6.5) We have not and we will not engage in any practice likely to influence the contract award process to the detriment of the Contracting Authority and, in particular, in any anti-competitive practice having for object or for effect to prevent, restrict or distort competition, namely by limiting access to the market or the free exercise of competition by other undertakings.

6.6) Neither we nor any of the members of our joint venture or any of our subcontractors shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or France.

6.7) We commit ourselves to comply with and ensure that all of our subcontractors comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties,. Moreover, we shall implement environmental and social risks mitigation measures such as specified in the environmental and social management plan or, if appropriate, in the environmental and social impact assessment notice provided by the Contracting Authority.

7. We, as well as members of our joint venture and our subcontractors authorise AFD to inspect accounts, records and other documents relating to the procurement and performance of the Contract and to have them audited by auditors appointed by AFD.

Name:_____ In the capacity of _____

Signature:_____

Duly empowered to sign the bid in the name and on behalf of³_____

³ In case of joint venture, insert the name of the joint venture. The person who will sign the bid on behalf of the bidder shall attach a power of attorney from the bidder.