

ANNEX IV

PROCUREMENT PROCEDURES TO BE APPLIED BY THE BENEFICIARIES OF GRANTS AWARDED BY EXPERTISE FRANCE

1. GENERAL PRINCIPLES

Where the implementation of a Project requires beneficiaries to place contracts, said contracts must be awarded to the beneficiary making the most financially advantageous bid, i.e. that which offers the best value for money; for contracts covering works or supplies, namely without after-sales service, the sole award criterion must be the lowest price.

Contracts must be awarded in accordance with the award principles and rules applicable to public procurement:

- in compliance with the principles of transparency, prior publication, fair competition, equality of treatment, proportionality and non-discrimination, while ensuring the absence of conflicts of interest throughout the tender procedure;
- contracts must not be artificially divided in order to circumvent tender thresholds.

To this end, beneficiaries must comply with the procurement rules set out in this annex, or their own rules if they are more restrictive. In the event of any non-compliance with these rules, the expenditure in question will be treated as ineligible by Expertise France.

Beneficiaries undertake, and shall obtain a similar undertaking from any subcontractors they may engage, to comply with the environmental and social standards recognised by the international community, including the fundamental conventions of the International Labour Organisation (ILO) and international agreements on environmental protection, in compliance with the laws and regulations applicable in the country of Project implementation.

The Beneficiaries undertake to include within tenders specific measures to take account of environmental, social and safety/security risks as set out in the special conditions.

The provisions of this annex shall apply mutatis mutandis to contracts entered into by the Beneficiaries' partners.

2. AUDIT OF PROCUREMENT CONTRACTS

Expertise France conducts 2-level control on Beneficiaries' compliance with these rules.

Ex ante control documented by a non-objection opinion (NOO) covering the following:

- a) From the entry into force of the grant agreement, and at regular intervals thereafter (at least annually), in order to obtain a non-objection notification the coordinating Beneficiary shall forward to Expertise France an overall procurement plan covering the contracts to be placed by all Beneficiaries over the entire coming implementation period of the Project or work programme;
- b) In the case of AFD financing, for purchases of more than €200,000 exc. VAT, for all procurement segments (services, supplies and works), the Beneficiary shall submit to Expertise France for the purposes of obtaining a non-objection notification:
 - i. the tender documents incorporating the specifications, draft contract and rules covering competitive tendering and bidder selection, prior to launch of the tender procedure;
 - ii. the contracts prior to their signature by the Beneficiaries.

Ex post control is conducted in the context of the expenditure verification audit and covers compliance with principles and rules set out in this Annex IV.

3. CONTRACT ELIGIBILITY

3.1. Nationality rule applicable to EU funding

Participation in tenders managed by Beneficiaries shall be open under equal conditions to all natural persons and legal entities established in a state, country or territory expressly eligible under the applicable EU instrument where the contract is funded by the EU. Bidders must state their nationality in their offer and provide the usual proof thereof as required under their national legislation.

This rule does not apply to experts proposed in the context of service offerings financed by the grant.

3.2. Rule of origin applicable to EU funding

Where the funding of the Contract is provided by the EU and required under other applicable instruments, the bidder shall substantiate the origin of supplies of a value in excess of¹ €100,000 exc. VAT which are to be acquired under the Grant.

Where the rule of origin applies, the contracting parties must provide the Beneficiaries with proof of origin by presentation of the first invoice at the latest. The certificate of origin must be issued by the authority designated for this purpose in the country of origin of the supplies and meet the rules set out in applicable EU legislation.

3.3. Rapid detection and contract award exclusion system

In accordance with Article 10 of Annex II (general conditions), the Beneficiary shall adopt reasonable measures in accordance with its own rules and regulations to ensure that applicants and potential bidders are excluded from participating in all procedures covering procurement or the awarding of grants, public contracts or subsidies, should the Beneficiary learn or suspect that any such entity is in

¹ For the purposes of this annex, the term “origin” is defined in Chapter 2 of Regulation (EU) No. 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code).

any of the situations described in the “Sworn declaration by candidates/bidders involved in the implementation of a Grant financed by Expertise France”, as provided below.

Applicants and bidders taking part in contract procedures carried out by the Beneficiary must at least certify that they are not in any of the aforementioned situations stated in the “Sworn declaration by candidates/bidders involved in the implementation of a Grant financed by Expertise France”, as provided below.

Should it establish a condition for exclusion within the meaning of Article 10 of Annex II (general conditions) or of their own rules or regulations evaluated in a positive manner, as applicable, or establish any fraud and/or irregularity in relation to Project implementation, the Beneficiary shall notify Expertise France thereof without undue delay. The Beneficiary shall not notify the entity in question without authorisation from Expertise France.

Expertise France and, as applicable, the Donor behind or supporting the Project, or any entity of the Agence Française de Développement group, may exploit such information in their rapid detection and exclusion system. The Beneficiary shall notify Expertise France if it deems that the information provided must be rectified, updated or deleted.

These requirements shall lapse on conclusion of the Project implementation period.

4. RULES COMMON TO ALL TENDERS

The tender documents are established on the basis of the best international practices.

Neither Expertise France nor any other donor will publish tender documents produced by the Beneficiary.

The deadlines for application and/or bid submissions are sufficiently generous such that the interest parties have adequate time to prepare and submit their offers.

An evaluation committee must be established by the Beneficiary in order to assess applications and/or bids of EUR 40,000 or more, based on selection, exclusion and award criteria published by the Beneficiary in advance in the tender documents. Said committee shall be composed of an odd number of at least three members possessing the necessary technical and administrative expertise to be able to validly assess the bids.

5. SPECIFIC RULES APPLICABLE TO SERVICE CONTRACTS

5.1. Contracts of EUR 200,000 and above

Service contracts of EUR 200,000 and above must be subject to a restricted international tender after publication of a tender notification.

The tender notification shall be published via any appropriate medium, notably a Beneficiary website, the international press, the press of the country of Project implementation or in trade journals. It shall state the number of applicants invited to submit a bid, within the range of four to eight bidders; the number must be sufficient to ensure genuine competition. For AFD funding, the notification will be published at www.afd.dgmarket.com.

Any interested service provider meeting the conditions set out in Section 3 may request participation, but only applicants satisfying the published selection criteria may submit a bid, on written invitation from the Beneficiaries.

5.2. Contracts of more than EUR 40,000 and less than EUR 200,000

In such cases, the applicable procedure is the open tender published locally: the tender notification shall be published via an appropriate medium at least in the country of Project implementation.

Local open tenders must guarantee other eligible service provider the same participation conditions as local suppliers.

5.3. Contracts of more than EUR 1,000 and less than EUR 40,000

These contracts are subject to an unpublished but competitive negotiated procedure during which the Beneficiaries shall consult at least three service providers able to deliver the service and shall negotiate the contractual conditions with one or more of said providers.

5.4. Contracts of EUR 1,000 and below

For contracts of EUR 1,000 and below, the procedures adopted by the Beneficiaries must comply with the principles set out in Sections 1, 2 and 3 hereof. Direct contract award without competitive tender is authorised.

6. SPECIFIC RULES APPLICABLE TO SUPPLY CONTRACTS

6.1. Contracts of EUR 200,000 and above

Supply contracts of EUR 200,000 and above must be subject to an open international tender after publication of a tender notification.

The tender notification shall be published via any appropriate medium, notably a Beneficiary website, the international press, the press of the country of Project implementation or in trade journals. For AFD funding, the notification will be published at www.afd.dgmarket.com.

Any interested provider meeting the conditions set out in Section 3 may submit an offer.

6.2. Contracts from EUR 40,000 and less than EUR 200,000

In such cases, the applicable procedure is the open tender published locally: the tender notification shall be published via an appropriate medium at least in the country of Project implementation.

Local open tenders must guarantee other eligible suppliers the same participation conditions as local suppliers.

6.3. Contracts of more than EUR 1,000 and less than EUR 40,000

These contracts are subject to a competitive negotiated procedure without publication of notification of tender, during which the Beneficiaries shall consult at least three suppliers able to deliver the required supplies and shall negotiate the contractual conditions with one or more of said suppliers.

6.4. Contracts of EUR 1,000 and below

For contracts of EUR 1,000 and below, the procedures adopted by the Beneficiaries must comply with the rules and principles set out in Sections 1, 2 and 3 hereof. Direct contract award without competitive tender is authorised.

7. SPECIFIC RULES APPLICABLE TO WORKS CONTRACTS

7.1. Contracts of EUR 5,000,000 and above

Works contracts of EUR 5,000,000 and above must be subject to an open international tender after publication of a tender notification.

The tender notification shall be published via any appropriate medium, notably a Beneficiary website, the international press, the press of the country of Project implementation or in trade journals. For AFD funding, the notification will be published at www.afd.dgmarket.com.

Any interested contractor meeting the conditions set out in Section 3 may submit an offer.

7.2. Contracts of more than EUR 40,000 and less than EUR 5,000,000

In such cases, the applicable procedure is the open tender published locally: the tender notification shall be published via an appropriate medium at least in the country of Project implementation.

Local open tenders must guarantee other eligible contractors the same participation conditions as local contractors.

7.3. Contracts of more than EUR 1,000 and less than EUR 40,000

These contracts are subject to a competitive negotiated procedure without publication of notification of tender, during which the Beneficiaries shall consult at least three contractors able to perform the required works and shall negotiate the contractual conditions with one or more of said contractors.

7.4. Contracts of EUR 1,000 and below

For works contracts of EUR 1,000 and below, the procedures adopted by the Beneficiaries must comply with the rules and principles set out in Sections 1, 2 and 3 hereof. Direct contract award without competitive tender is authorised.

8. UTILISATION OF THE DIRECT NEGOTIATION PROCEDURE

Beneficiaries may use the direct negotiation procedure on the basis of a single offer in the following circumstances:

- a) In the context of humanitarian aid and civil protection, or aid to tackle crisis situations. Such crisis situations must have been officially declared by the European Commission or the French public authorities. Expertise France shall notify the coordinating Beneficiary if a crisis situation has been declared and the period during which the declaration shall remain valid;
- b) Where services are entrusted to public bodies or profit institutions or associations whose purpose is institutional activities or the provision of social assistance to populations;
- c) Where the object of the contract is to extend ongoing activities:
 - (i) not covered by the main services contract but which have become necessary for execution of the contract as a result of unforeseen circumstances, provided said additional services cannot be technically or economically separated from the main contract without causing major disruption for the Beneficiaries and the total amount of the additional services does not exceed 50% of the value of the main contract; or
 - (ii) consisting of delivering further similar services awarded to the holder of the first contract, provided:
 - a) that the first service had been covered by a published notification of tender and that the possibility of exploiting the direct negotiation procedure for new Project services and the estimated cost had been clearly stated in the published notification of tender for the first service; and
 - b) that the extension of the contract covers a value and duration not exceeding those of the first contract;
- d) for additional deliveries carried out by the initial supplier for the purposes of partially renewing supplies or installations of limited duration or to extend existing supplies or installations where a change of supplier would oblige the beneficiaries to acquire equipment of different technical properties giving rise to incompatibility or disproportionate technical difficulties during use and maintenance;
- e) for additional works not included in the first contract which have become necessary as a result of circumstances that were not foreseen for execution of the service, provided said works cannot be technically or economically separated from the main contract without causing major disruption for the Beneficiaries or, although they can be separated from execution of the initial contract, they are strictly necessary for its completion and the total amount of contracts placed for additional works does not exceed 50% of the value of the main contract;

- f) where a tender has been unsuccessful, namely it has not generated any bid worthy of selection in quality and/or financial terms, in which case, after having cancelled the tender, the Beneficiaries may commence negotiations with one or more bidders of their choice who participated in said tender, provided the initial conditions of the contract have not been substantially modified;
- g) where the contract in question is subsequent to a competitive tender and must, under the applicable rules, be awarded to the winner or one of the winners, in which case all winners of the tender shall be invited to take part in negotiations;
- h) for services of which the execution can only be entrusted to a given provider for technical reasons or reasons relating to the protection of exclusivity rights;
- i) where justified by the nature of particular properties of certain supplies, such as where execution of the contract is exclusively reserved for the holders of patents or licences governing their use;
- j) where orders are placed with a central procurement body (see Section 9.5);
- k) for delivery of the expenditure verification and financial guarantee report, where provided for under the contract;
- l) for contracts declared to be secret, or for contracts where execution must be accompanied by special safety measures, or where required in order to protect the essential interests of the EU or Partner country;
- m) for contracts covering listed supplies purchased from a commodities exchange;
- n) for contracts covering supplies acquired under especially advantageous terms, namely from a supplier definitively ceasing its commercial activities, a bankruptcy receiver or liquidator or resulting from an arrangement with creditors, or via a procedure of a similar nature under domestic legislation.
- o) where the new contract must be entered into following the early termination of an existing contract.

9. SPECIAL CASES

Different rules from those set out in Articles 4 to 8 hereof may apply with ex ante approval from Expertise France (compliance with good international practices) in the following circumstances, with the exception in the case of AFD financing of an obligation to publish on the website www.afd.dgmarket.com in situations covered by Articles 4 to 7.

9.1. Financing

Where the Project is financed by multiple donors and another donor whose contribution is greater than that of Expertise France imposes conditions for the placing of contracts by beneficiaries that are different from those set out in Sections 4 to 8, the Beneficiaries may apply the rules imposed by said donor.

9.2. Public authorities of member states

Where a Beneficiary or Partner is a contracting authority or entity within the meaning of EU directives applicable to tender procedures, they shall apply the pertinent provisions of said regulations rather than the rules set out in Sections 4 to 8 hereof. The general rules and principles of nationality and origin set out in Section 3 shall apply in all circumstances.

9.3. International organisations

Where a Beneficiary or related entity is an international organisation, it shall apply its own procurement rules provided they offer guarantees equivalent to internationally recognised standards. Where the fundamentals of its rules have been positively assessed, the pertinent rules shall be deemed to be equivalent. Should the organisation in question not offer such equivalent guarantees or, in specific cases, Expertise France and the Beneficiaries shall agree to apply other rules that provide such guarantees. Any such rules shall form part of the special conditions.

If the Project financing is provided by the EU and provided it is permitted under applicable regulatory provisions, the origin of the assets and the nationality of the organisations, companies and experts selected to perform the Project activities shall be determined in accordance with the organisation's applicable rules. In all circumstances, the assets, organisations, companies and experts eligible under the applicable regulatory provisions of the EU are eligible. In all other cases, the contracting parties and assets must originate from the EU and/or the countries, territories or regions that are eligible under the financing instrument applicable to the grant.

9.4. Traditional agencies

Where a Beneficiary or any related entity is a traditional agency (public legal entity founded by the French or EU legislator to exercise powers on behalf of France or the EU in specific fields of expertise), they shall apply their own procurement rules.

9.5. Central procurement/humanitarian central procurement

Where a Beneficiary uses the services of a central procurement body as service provider, the latter shall be selected in accordance with the procedures set out above covering service contracts.

The same rules shall apply to such central procurement bodies as apply to Beneficiaries.

**SWORN DECLARATION
BY TENDERERS INVOLVED IN THE IMPLEMENTATION OF A GRANT
FINANCED BY EXPERTISE FRANCE**

To be attached to the [application/tender/contract]¹

Object of the service/supply/works purchase contract: XXXXXXXX

In the context of the Grant contract covering: XXXXXXXX

1. We acknowledge and accept that, in the aforementioned circumstances, Expertise France shall be entitled to exclude our company from the tender procedure for services/supplies/works in the context of the implementation of a Grant financed by Expertise France and, should the contract be awarded to our company, any such situation may lead to termination of the contract, in accordance with the terms of the latter.
2. We hereby declare that neither we, nor any member of our consortium, nor any supplier, service provider, consultant or subcontractor (including the directors, employees and agents of said entities) nor any person holding the power of representation, decision-making or control over said persons, is in any of the following situations:
 - a) Bankruptcy or proceedings relating to bankruptcy, liquidation, safeguarding or cessation of operations, or any similar situation resulting from proceedings of the same nature;
 - b) Or has been the subject of:
 - i. A ruling dated from within the past five years with the force of res judicata in the country of implementation of the contract for fraud, corruption or any offence committed in the context of an award or performance of a tender or contract; in the event of any such ruling, we reserve the right to append additional information to this Integrity Undertaking specifying that said ruling is not relevant to the contract;
 - ii. An administrative sanction dated from within the past five years by the European Union or by the competent authorities of the country in which we are established for fraud, corruption or any offence committed in the context of an award or performance of a tender or contract; in the event of any such sanction, we reserve the right to append additional information to this Integrity Undertaking specifying that said sanction is not relevant to the contract;
 - iii. A ruling dated from within the past five years with the force of res judicata for fraud, corruption or any offence committed in the context of an award or performance of a contract financed by the AFD;

¹ This document must be appended to the application/bid of the applicant/bidder for all competitive tenders. This document must be appended to the contract for all non-competitive procedures.

- c) Feature on any sanctions list adopted by the United Nations, European Union or France, notably in respect of anti-money laundering, counter-financing of terrorism and the undermining of international peace and security.
 - d) Any termination issued solely due to failings on our part within the past five years as a result of us having committed any serious or persistent breach of our contractual obligations during the performance of a previous tender or contract, subject to said sanction not currently being contested by us or which has led to a court ruling dismissing said termination solely due to failings on our part;
 - e) Any breach of our obligations to pay taxes in accordance with the legal provisions of the country in which we are established or those of the country of the contracting authority;
 - f) Any exclusion decision issued by the World Bank or to feature in this regard on the list published at <http://www.worldbank.org/debarr>; in the event of any such exclusion decision, we reserve the right to append additional information to this Integrity Undertaking specifying that said exclusion decision is not relevant to the contract;
 - g) Or has produced false documents or been found guilty of false declarations when providing documents demanded by the contracting authority in the context of this contract award process.
3. We hereby declare that neither we nor any member of our consortium or our suppliers, contractors, consultants or service providers is confronted by any of the following conflicts of interest:
- a) Being a shareholder controlling the contracting authority or a subsidiary controlled by the contracting authority, unless the resultant conflict has been notified to Expertise France and been resolved to its satisfaction;
 - b) Having a business or family relationship with any member of the contracting authority's departments who is involved in the contract award or supervision process, unless the resultant conflict has been notified to Expertise France and been resolved to its satisfaction;
 - c) Controlling or being controlled by another bidder or consultant, being under the control of the same company as another bidder or consultant, receiving from another bidder or consultant or awarding a grant to another bidder or consultant, whether directly or indirectly, having the same legal representative as another bidder or consultant, directly or indirectly maintaining contacts with another bidder or consultant enabling us to have access and provide access to information contained in our respective bids or proposals, or of influencing such bids or proposals or the decisions of the bidder or consultant;
 - d) Having been engaged to provide intellectual services, the nature of which runs the risk of being incompatible with our assignments carried out on behalf of the bidder or consultant.
 - e) In the case of a procedure covering the award of a works, supplies or equipment contract:
 - i. We have ourselves prepared or have been supported by a consultant who has prepared the specifications, plans, calculations and other documents used in the context of the contract award procedure;
 - ii. We have ourselves, or one of the firms with which we are affiliated, been recruited, or will be recruited, by the contracting authority to supervise or audit the works under the contract.

4. If we are a public institution or public company, in order to be able to participate in a competitive tender we hereby certify that we enjoy legal and financial autonomy and that we are governed by the rules of company law.
5. We undertake to notify the contracting authority without undue delay, which will in turn notify Expertise France, of any change of situation with regard to points 2 to 4 above.
6. In the context of contract award and execution:
 - a) We have not committed and will not commit any unfair practices (action or omission) designed, with regard to any third party, to deliberately deceive, intentionally conceal information, inveigle or vitiate consent, circumvent legislative or regulatory obligations or violate internal rules in order to obtain an illegitimate benefit.
 - b) We have not committed and will not commit any unfair practices (action or omission) contrary to our legislative or regulatory obligations and/or internal rules in order to obtain an illegitimate benefit.
 - c) We have not promised, offered or granted, nor will do so in the future, whether directly or indirectly, to (i) any person holding a legislative, executive, administrative or judicial office within the country of the contracting authority, whether such person is appointed or elected, permanently or otherwise, remunerated or otherwise and regardless of their hierarchical level, (ii) any other person exercising a public function, including for a public body or public company, or which provides a public service, or (iii) any other person defined as a public official in the country of the contracting authority, any undue advantage of any kind, to the person directly or for any other person or entity, to incite said person to take action or omit to take action during the exercise of their official public functions.
 - d) We have not promised, offered or granted, nor will do so in the future, whether directly or indirectly, to any person managing a private-sector entity or working for any such entity in any capacity whatsoever, any undue benefit of any kind, to the person directly or for any other person or entity, to incite said person to take action or omit to take action in breach of their legal, contractual or professional obligations.
 - e) We have not committed, nor will do so in the future, any act likely to influence the contract award process to the detriment of the contracting authority, notably no anti-competitive practices having the purpose and effect of preventing, restricting or distorting fair competition, notably by limiting access to the contract or the free exercise of competition by other companies.
 - f) We hereby certify that neither we ourselves nor any member of our consortium or any of our subcontractors will acquire or supply goods or take action in sectors subject to embargo implemented by the United Nations, the European Union or France.
 - g) We undertake to comply with, and shall obtain a similar undertaking from all our subcontractors, the environmental and social standards recognised by the international community, including the fundamental conventions of the International Labour Organisation (ILO), conventions of freedom of association and collective bargaining, on the elimination of forced labour, on the elimination of discrimination in employment, on the elimination of child labour and international agreements on environmental protection, in compliance with the laws and regulations applicable in the country of contract implementation. Furthermore, we undertake to implement mitigation measures

against environmental and social risk where stated in the environmental and social management plan provided by the contracting authority.

We acknowledge and accept that, should any of the aforementioned situations be identified to apply to us, the Beneficiary of the Grant would be obliged to forward such information to Expertise France, or to the Donor of the financing or any other entity of the Agence Française de Développement group, and that said parties may integrate such information within a rapid detection and exclusion system, including publication on their website.

With regard to this declaration, we undertake to notify Expertise France without delay of any change to our situation during the tender process and, as applicable, during contract execution.

Name: _____ Function: _____

Duly authorised to sign on behalf of:¹ _____

Date: _____

Signature:

¹ State the name of the consortium, as applicable. The person signing the bid, offer or application on behalf of the bidder or consultant must attach to said bid, offer or application the authorisation provided by the bidder or consultant.