



**PROCUREMENT POLICIES & GUIDELINES**

**FOR THE**

**ASSOCIATION OF AFRICAN UNIVERSITIES**

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## **Acronyms**

AAU	The Association of African Universities
CIF	Cost, Insurance, and Freight
CIP	Carriage and Insurance Paid (place of destination)
CPT	Carriage Paid To (named place of destination)
DDP	Delivered Duty Paid
EXW	Ex services, Ex factory, or Off the Shelf
FCA	Free Carrier (named place)
ICB	International Competitive Bidding
LIB	Limited International Bidding
NCB	National Competitive Bidding
NGO	Nongovernmental organization
RFP	Request for Proposals
SA	Special Account
SBDs	Standard Bidding Documents
UN	United Nations
UNDB	United Nations Development Business



# I. Introduction

## Purpose

- 1.1 The purpose of these Guidelines is to inform Project recipients implementing a project that is financed in whole or in part by a Project from the Association of African Universities<sup>1</sup> (AAU) of the policies that govern the procurement of goods<sup>2</sup>, non-consulting-services<sup>3</sup>, and consultant services<sup>4</sup> required for the project. The Project Agreement governs the legal relationships between the Project recipient and AAU, and the Guidelines are made applicable to procurement of goods, non-consulting services, and consultant services for the project, as provided in the Project Agreement. The rights and obligations between the Project recipient and the providers of goods, non-consulting services and consultant services for the project are governed by the bidding<sup>5</sup> documents, and by the contracts signed by the Project recipient with the providers of goods, non-consulting services and consultant services, and not by these Guidelines or the Project Agreement. No party other than the parties to the Project Agreement shall derive any rights there from or have any claim to Project proceeds.

## General Considerations

- 1.2 The responsibility for the implementation of the project, and therefore for the award and administration of contracts under an AAU project, rests with the AAU. It is the responsibility of the Procurement unit to ensure that the Annual Work Plan and Budget, and the Annual Procurement Plan have been cleared by AAU Senior Management and approved by Secretary General before actual implementation begins. Subsequently, any other activities proposed to be financed from AAU resources, but which are not included in the approved Annual Work Plan and Budget, and the Annual Procurement Plan are not to be implemented before No Objection clearance from the Secretary General. However, AAU has the responsibility to ensure that the proceeds of any financing it provides are used only for the purposes for which the financing was provided, with due attention to considerations of economy, efficiency and technical viability.

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<sup>1</sup> The Association of African Universities (AAU) was established in Rabat, Morocco in 1967 by 34 African Universities. The creation of the Association was based on the recommendation of UNESCO to have such an apex body for higher education on the continent. The AAU serves as the forum for consultation and exchange of information and cooperation among institutions of higher education in Africa. It serves as the voice of higher education in Africa on regional and international bodies and supports networking by institutions of higher education in teaching, research, information exchange and dissemination.

<sup>2</sup>—Goods means commodities, raw materials, products and equipment and objects in solid, liquid or gaseous form, and related services if the value of such services does not exceed that of the Goods themselves.

<sup>3</sup>—Non-Consulting Services include related services such as transportation, insurance, installation, commissioning, surveys, training, and initial maintenance and similar services.

<sup>4</sup> —Consultants include a wide variety of private and public entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, United Nations (UN) agencies and other multinational organizations, investment and merchant banks, universities, research institutions, government agencies, nongovernmental organizations (NGOs), and individuals. The Project recipients use these organizations as *consultants* to help in a wide range of activities—such as policy advice; institutional reforms; management; engineering services; construction supervision; financial services; procurement services; social and environmental studies; and identification, preparation, and implementation of projects to complement Project recipients' capabilities in these areas.

<sup>5</sup> For the purposes of these Guidelines, the words —bid and —tender shall have the same meaning.

To this end these Procurement Guidelines are intended to provide detailed procedures for this purpose. While in practice the specific procurement rules and procedures to be followed in the implementation of a project depend on the circumstances of the case, the following considerations generally guide AAU's requirements:

- (a) The need for economy and efficiency;
- (b) the need to give all eligible bidders and consultants the same information and equal opportunity to compete in providing goods, non-consulting services and consultant services financed by AAU;
- (c) The need for high quality of services; and
- (d) The importance of transparency in the procurement process.

Open competition is the basis for efficient public procurement. AAU Project recipients shall therefore select the most appropriate method for the specific procurement.

- 1.3 In most cases, International Competitive Bidding (ICB), properly administered, and with the allowance for preferences for domestically manufactured goods, where appropriate, is the most appropriate method.
- 1.4 Where ICB is not the most appropriate method of procurement, other methods of procurement may be used with prior authorization of AAU. Goods, non-consulting services and consultant services to be financed under the project, and their method of procurement, consistent with the Project Agreement, are specified in the Procurement Plan as required by these Guidelines.

### **Applicability of Guidelines**

- 1.5 The procedures outlined in these Guidelines apply to all contracts for goods, non-consulting services and consultant services financed in whole or in part from AAU Project proceeds. For the procurement of those contracts for goods, non-consulting services and consultant services not financed from AAU Project proceeds, the AAU may adopt other procedures. In such cases AAU shall be satisfied that the procedures to be used will fulfill the donors obligations to cause the project to be carried out diligently and efficiently, and that the goods, non-consulting services and consultant services to be procured:
  - (a) are of satisfactory quality and compatible with the purpose of the project;
  - (b) will be delivered or completed in timely fashion; and
  - (c) are priced so as not to affect adversely the economic and financial viability of the project.

To the extent that these Guidelines conflict with any obligations of AAU or the other party under or arising from any other agreements to which AAU is party, the requirements of such agreement shall prevail over these Guidelines (where applicable)

## **Eligibility**

- 1.6 To foster competition AAU permits all bidders or firms from all countries to offer goods, non-consulting services and consultant services for AAU funded projects. Any conditions for participation shall be limited to those that are essential to ensure the bidder's capability to fulfill the contract in question.
- 1.7 As exceptions to the foregoing:
- (a) Firms of a country or goods manufactured in a country may be excluded if, (i) as a matter of law or official regulation, the recipient's country prohibits commercial relations with that country, provided that AAU is satisfied that such exclusion does not preclude effective competition for the supply of goods or non-consulting services required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the recipient's country prohibits any import of goods from, or payments to, a particular country, person, or entity. Where the recipient's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.
  - (b) A firm that has been engaged by the AAU to provide goods or services (other than consulting services covered by these Guidelines) for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, or services (other than consulting services covered by these Guidelines) resulting from or directly related to the firm's consulting services for such preparation or implementation. Neither consultants (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants.
  - (c) Consultants (including their personnel and sub-consultants) that have a business or family relationship with any member of the project recipient who are directly or indirectly involved in any part of: (i) the preparation of the TOR of the contract, (ii) the selection process for such contract, or (iii) supervision of such contract may not be awarded a consultant services contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the AAU throughout the selection process and the execution of the consultant services contract

- (d) Government-owned enterprises in project recipient's country may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the project recipient or Sub-project recipient.
- (e) Government officials and civil servants may only be hired under consulting contracts, either as individuals or as members of a team of a consulting firm, if they (i) are on leave of absence without pay; (ii) are not being hired by the agency they were working for immediately before going on leave; and (iii) their employment would not create a conflict of interest.
- (f) A firm declared ineligible by AAU in accordance with the provisions of these Guidelines will not be allowed to participate during the period of ineligibility.

### **Advance Contracting and Retroactive Financing**

1.8 The Project recipient may wish to proceed with the initial steps of procurement after notification of approval of the Project by the AAU Secretary General. In such cases, the procurement procedures, including advertising, shall be in accordance with these Guidelines in order for the eventual contracts to be eligible for AAU financing, and AAU shall review the process used by the Project recipient. A Project recipient undertakes such advance contracting at its own risk, and any concurrence by AAU with the procedures, documentation, or proposal for award does not commit AAU to make a Project for the project in question. If the contract is signed, reimbursement by AAU of any payments made by the Project recipient under the contract prior to Project signing is referred to as retroactive financing and is only permitted within the limits specified in the Project Agreement and with written permission of AAU.

### **Joint Ventures**

1.9 Any firm may bid/participate independently or in joint venture confirming joint and several liabilities, either with domestic firms and/or with foreign firms, but AAU does not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

### **Professional liability**

1.10 In the case of Consultant Services, consultants are expected to carry out their assignment with due diligence and in accordance with prevailing standards of the profession. As applicable law will govern the consultant's liability to the Project recipient, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that: (i) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (ii) the consultant's liability to the Project recipient may in no case be limited to less than the total payments expected to be made under the consultant's contract, or the proceeds

the consultant is entitled to receive under its insurance, whichever is higher; and (iii) any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability towards third parties.

### **Miss-procurement**

1.11 AAU does not finance expenditures for goods, non-consulting services and consultant services, which have not been procured in accordance with the provisions of the Project Agreement and as further elaborated in the approved Procurement Plan<sup>8</sup> or with the provisions of the present guidelines. In such cases, AAU will declare mis-procurement, and request reimbursement of the portion of the Project allocated to mis-procured goods or services from the Project recipient. AAU may, in addition, exercise other remedies provided for under the Project Agreement. Even once the contract is awarded after obtaining a —no objection from AAU, AAU may still declare mis-procurement if it concludes that the —no objection was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Project recipient or the terms and conditions of the contract had been modified without AAU's approval.

### **References to AAU**

1.12 The Project recipient must refer to AAU in procurement documents. The following language shall be used:

—(name of Project recipient) has received (or in appropriate cases has applied for) a Project from the Association of African Universities (the —AAU) in an amount equivalent to USD... toward the cost of (name of project), and intends to apply a portion of the proceeds of this Project to eligible payments under this contract. Payment will be subject, in all respects, to the terms and conditions of the Project Agreement signed between AAU and [Name of Project recipient] AAU has no liability in the procurement or selection process despite having the role to ensure that the selection or procurement process is carried out in a transparent manner and in accordance with Procurement Guidelines for AAU Project Recipients and that the ensuing contract between (name of Project recipient) and (name of supplier/consultant) is carried out in a manner consistent to the said Guidelines.

### **Fraud and Corruption**

1.13 It is AAU's policy to require that Project recipients (including sub-recipients of AAU Projects), as well as bidders, suppliers, and contractors and their subcontractors under AAU-financed contracts, observe the highest standard of

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<sup>8</sup> See paragraph 1.14.

ethics during the procurement and execution of such contracts<sup>9</sup>. In pursuance of this policy, AAU:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) —corrupt practice<sup>10</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - (ii) —fraudulent practice<sup>11</sup> is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - (iii) —collusive practice<sup>12</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
  - (iv) —coercive practice<sup>13</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (v) —obstructive practice<sup>14</sup> is
    - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a AAU investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
    - (abs) acts intended to materially impede the exercise of AAU’s inspection and audit rights provided for under par. 1.13 (e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent,

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<sup>9</sup> In this context, any action taken by a bidder, supplier, consultant to influence the procurement process or contract execution for undue advantage is improper.

<sup>10</sup> For the purpose of these Guidelines, —another party refers to a public official acting in relation to the procurement process or contract execution. In this context —public official includes AAU staff and employees of other organization taking or reviewing procurement decisions

<sup>11</sup> For the purpose of these Guidelines, —party refers to a public official; the terms —benefit and —obligation relate to the procurement process or contract execution; and the —act or omission is intended to influence the procurement process or contract execution

<sup>12</sup> For the purpose of these Guidelines, —parties refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels

<sup>13</sup> For the purpose of these Guidelines, —party refers to a participant in the procurement process or contract execution

collusive, coercive or obstructive practices in competing for the contract in question;

- (c) will request reimbursement of the portion of the Project allocated to a contract if it determines at any time that representatives of the Project recipient or of a Project recipient of the Project engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Project recipient having taken timely and appropriate action satisfactory to AAU to address such practices when they occur;
- (d) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a AAU-financed contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a AAU-financed contract; and
- (e) will have the right to require that in bidding documents and in contracts financed by a AAU Project, a provision be included requiring bidders, suppliers and contractors to permit AAU to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by AAU.
- (f) Project Recipients shall respect list of sanctioned/debarred firms and individuals by the Funding Partner(s) as may be updated from time to time. The Funding Partner(s) and sources of such sanctioned list will be disclosed to the Project Recipient during Negotiations

### **Separation of Functions**

1.14 AAU is required to ensure that the Project proceeds are used only for the purpose for which the Project was approved and with due respect for economy and efficiency. The Project Recipient shall therefore only undertake procurement actions that are in the approved Procurement Plan for the year. Project Recipients shall seek and obtain a No-Objection from AAU before undertaking any unplanned procurement activity. The Project Recipient shall ensure that AAU procedures and policy guidelines are adhered to in all procurement processes relating to Goods and Services, and Consultancy Services.

Project Recipients shall conduct procurement activities in a manner that reflects the principles of transparency, openness and competitiveness, as outlined in these Procurement Guidelines. The Directors, Managers or Coordinators of AAU supported projects or programmes shall ensure that, in the procurement process, the principal of separation of duties is maintained at all times. Project Recipients shall undertake procurement actions in a manner that does not assign control to one single individual but which ensures that checks and balances are adhered to as listed below:

- (i) Project Recipients shall establish Tender Committees for award of contracts and Tender Evaluation Panels for evaluation of bids and consultants proposals. These tender structures shall be responsible for review of tenders estimated to cost US\$10,000 equivalent and above, and those that may be specifically stated in the procurement plan
- (ii) The Tender Committee shall be a standing body that will consider award of contracts to suppliers and consultants
- (iii) The Tender Committee shall appoint Tender Evaluation Panels which shall evaluate tenders or proposed bids and make recommendations for an award of contract to the most competitive bidder. These Tender Evaluation Panels shall be ad hoc for each particular procurement and shall comprise between 3-5 experts, depending on nature and value of the procurement.
- (iv) Project Recipients shall develop and implement their internal procurement set up, which provides for openness and promotion of a free and fair competitive process as provided for in the AAU Procurement Guidelines for Project Recipients.
- (vi) Oversight bodies and Members of staff of Project Recipients, Members of Tender Committees and Tender Evaluation Panel shall not have interest in the procurement activities of the Project Recipient organization. Any members who have such interest shall declared it publicly and recuse themselves from any involvement in the procurement process
- (vii) The Project Recipients shall make procurement-related information (except for information on other bidders) readily available and accessible to bidders for consultation, and be willing to provide any additional information that shall be required.
- (viii) Project Recipients shall allow all bidders to have equal and timely access to all forms of information.

AAU staff shall not be involved in evaluation of tenders or provision of firms/individuals that may be considered by the Project Recipient for specific tenders except where such assistance has been requested by the Project Recipient in writing to AAU.

### **Procurement Plan**

1.15. As part of the preparation of the project AAU will require the Project recipient to prepare and, before Project negotiations, furnish a Procurement Plan to AAU for its approval. The Procurement Plan shall set forth: (a) the particular contracts for the goods, non-consulting services and consultant services required to carry out the project during the initial period of 18 months; (b) the proposed methods for procurement of such contracts that are permitted under the Project Agreement, and (c) the related AAU review procedures, as provided in Appendix 1. The Project

recipient shall update the Procurement Plan annually and submit it to AAU, together with its annual work plan, for review and approval. The Project recipient shall implement the Procurement Plan in the manner in which it has been approved by AAU.

# **GOODS AND NON-CONSULTING SERVICES**

## **II. International Competitive Bidding**

### **A. General**

#### **Introduction**

- 2.1 The objective of International Competitive Bidding (ICB) as described in these Guidelines is to provide all eligible prospective bidders with timely and adequate notification of an AAU Project Recipient's requirements and an equal opportunity to bid for the required goods and non-consulting services.

#### **Notification and Advertising**

- 2.2 Timely notification of bidding opportunities (at least four weeks before closure date) is essential in International Competitive Bidding. For all Projects that include ICB, the Project Recipient is required to prepare and submit to AAU a draft General Procurement Notice. AAU will arrange its publication in AAU media outlets and that of its partner institutions. The Notice shall contain information on Project Recipient, amount and purpose of Project, scope of procurement under ICB, name, telephone address of Project recipient's agency responsible for procurement and when applicable, the address of the Website where specific procurement notices will be posted.

### **B. Bidding Documents**

#### **General**

- 2.3 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods and non-consulting services to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data; list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. The basis for bid evaluation and selection of the lowest evaluated bid shall be clearly outlined in the instructions to bidders and/or the specifications. If a fee is charged for the bidding documents, it shall be reasonable and reflect only the cost of their printing and delivery to prospective bidders, and shall not be so high as to discourage qualified bidders.
- 2.4 Project recipients shall use the Bidding Documents acceptable to AAU. Where no relevant bidding documents exist, the Project recipient shall use other internationally recognized standard conditions of contract and contract forms acceptable to AAU.

## **Validity of Bids**

- 2.5 Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable the Project recipient to complete the comparison and evaluation of bids, review the recommendation of award with AAU (if required in the Procurement Plan), and obtain all the necessary approvals so that the contract can be awarded within that period. The minimum validity period of bids will be 90 days.

## **Language**

- 2.6 Bidding documents and the bids shall be prepared in one of the following languages, relevant to the Project recipient environment: English, French, or Portuguese. The contract signed with the winning bidder shall be written in the language so selected for the bidding documents, and this language shall be the one that governs the contractual relations between the Project recipient and the winning bidder. The contract signed with the winning bidder shall be written in the language in which its bid was submitted, in which case this language shall be the one that governs the contractual relations between the Project recipient and the winning bidder. If the contract is signed in a language other than English, French or Portuguese and the contract is subject to AAU's prior review, the Project recipient shall provide AAU with a translation of the contract in the AAU official language. Bidders shall not be required nor permitted to sign contracts in two languages.

## **Clarity of Bidding Documents**

- 2.7 Bidding documents shall be so worded as to permit and encourage competition, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or services as performed, with the specifications.
- 2.8 All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. Recipients shall provide reasonable access to project sites for visits by prospective bidders. Any additional information, clarification, correction of errors, or modifications of bidding documents shall be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to

enable bidders to take appropriate actions. If necessary, the deadline shall be extended. AAU shall receive a copy (in hard copy format or sent electronically) and be consulted for —no objection clearance when applicable.

## **Standards**

- 2.9 Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or non-consulting services under procurement. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words —or equivalent shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

## **Bid Price**

2.10 Bids for goods shall be invited as follows:

- (a) For Goods manufactured outside the Purchaser's country and to be imported: on the basis of CIP (named place of destination) **plus** the estimated custom duties and other import taxes **plus** Cost of installation, training, commissioning, and other similar services, when required.
- (b) For Goods already imported: Original import value **plus** any mark-up (or rebate) **plus** cost of inland transportation, insurance, and other local services required to deliver the goods from the Supplier's premises to Purchaser's final destination **plus** Cost of installation, training, commissioning, and other similar services, when required.
- (c) For Goods manufactured in the Purchaser's Country: EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as appropriate) price of goods **plus** cost of inland transportation, insurance, and other local services required to deliver the goods from the Supplier's premises to Purchaser's final destination **plus** Cost of installation, training, commissioning, and other similar services, when required.

The Purchaser's Country sales and other taxes, payable by the Purchaser once the contract is awarded shall be quoted separately

## **Currency Provisions**

- 2.11 Bidding documents shall state the currency or currencies in which bidders are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the contract price will be paid.

### **Currency Conversion for Bid Comparison**

2.12 The bid price is the sum of all payments in various currencies required by the bidder. For the purpose of comparing prices, bid prices shall be converted to a single currency selected by the Project recipient (local currency or fully convertible foreign currency) and stated in the bidding documents. The Project recipient shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank) or by a commercial Bank or by an internationally circulated newspaper for similar transactions on a date selected in advance, such source and date to be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity.

### **Currency of Payment**

2.13 Payment of the contract price shall be made in the currency or currencies in which the bid price is expressed in the bid of the successful bidder.

### **Terms and Methods of Payment**

2.14 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and non-consulting services. Contracts for supply of goods and Non-consulting services shall provide for suitable advances (if agreed by AAU) and the remaining payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the remaining payment may be made after the Supplier has complied with all its obligations under the contract. The bidding documents shall specify the arrangements for any security required for advance payments, if allowed by AAU.

### **Conditions of Contract**

2.15 The contract documents shall clearly define the goods to be supplied, the rights and obligations of the Project recipient and of the supplier, and the functions and authority of the Project Recipient in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods or non-consulting services to be procured and the location of the project shall be included. The conditions of contract shall provide a balanced allocation of risks and liabilities.

## **Force Majeure**

- 2.16 The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

## **Applicable Law and Settlement of Disputes**

- 2.17 The conditions of contract shall include provisions dealing with the applicable law and the settlement of disputes. AAU shall not be named arbitrator or be asked to name an arbitrator.

## **C. Bid Opening, Evaluation, and Award of Contract**

### **Time for Preparation of Bids**

- 2.18 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than four weeks from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for competitive procurement. Bidders shall be permitted to submit bids by mail or by hand. The deadline and place for receipt of bids shall be specified in the invitation to bid.

### **Bid Opening Procedures**

- 2.19 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. The Project recipient shall open all bids at the stipulated time and place. Bids shall be opened in public; bidders or their representatives shall be allowed to be present. The name of the bidder, total amount of each bid along with any modifications or discounts shall be read aloud and recorded. The minutes of bid opening shall be signed by the bidders' representatives and the representatives of the Project recipient. The minutes of bid opening shall immediately be shared with all the participating bidders. Bids received after the time stipulated, as well as those not opened and read out at bid opening, shall not be considered.

### **Clarifications or Alterations of Bids**

- 2.20 Bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. The Project recipient shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders'

responses shall be made in writing, in hard copy or by an electronic system satisfactory to AAU.

## **Confidentiality**

2.21 After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the publication of contract award.

## **Examination of Bids**

2.22 The Project recipient shall ascertain whether the bids (a) meet the eligibility requirements specified in paragraph 1.6 of these Guidelines, (b) have been properly signed, (c) respond to the bidding documents, and (d) are otherwise generally in order. If a bid is not responding, that is, it contains material deviations<sup>14</sup> from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened.

## **Evaluation and Comparison of Bids**

2.23 The purpose of bid evaluation is to determine the cost to the Project recipient of each bid in a manner that permits a comparison on the basis of their evaluated cost. The bid with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be selected for award.

2.24 The evaluation and comparison of bids shall be based on comparison of the following prices, as quoted by bidders in their bids:

- (a) For Goods manufactured outside the Purchaser's country and to be imported: CIP (named place of destination) **plus** the estimated custom duties and other import taxes **plus** Cost of installation, training, commissioning, and other similar services, when required.
- (b) For Goods already imported: Original import value **plus** any mark-up (or rebate) **plus** cost of inland transportation, insurance, and other local services required to deliver the goods from the Supplier's premises to Purchaser's final destination **plus** Cost of installation, training, commissioning, and other similar services, when required.
- (c) For Goods manufactured in the Purchaser's Country: EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as appropriate) price of goods **plus** cost of inland transportation, insurance, and other local services

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<sup>14</sup> A material deviation is one that, if accepted, would (i) affect in any substantial way the scope, quality or performance of the contract; or (ii) limit in any substantial way, inconsistent with the bidding document, the Purchaser's rights or the bidder's obligations under the proposed contract; and (iii) if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

required to deliver the goods from the Supplier's premises to Purchaser's final destination **plus** Cost of installation, training, commissioning, and other similar services, when required.

The Purchaser's evaluation of a bid will exclude and not take into account the Purchaser's Country sales and other taxes payable by the Purchaser once the contract is awarded.

- 2.25 The Project recipient shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of the contract.

### **Extension of Validity of Bids**

- 2.26 Project recipients shall complete evaluation of bids and award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing by the Project recipient from each bidder before the expiration date, upon prior approval by AAU. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals, and award the contract. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the quoted (base) price or other conditions of their bid.

### **Post qualification of Bidders**

- 2.27 The Project recipient shall determine whether the bidder whose bid has been determined to offer the lowest evaluated cost has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, the Project recipient shall make a similar determination for the next-lowest evaluated bidder.

### **Award of Contract**

- 2.28 The Project recipient shall award the contract within the period of the validity of bids and only after receiving AAU no-objection when applicable. Contract shall be awarded to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (i) to respond to the bidding documents and (ii) to offer the lowest evaluated cost. A bidder shall not be required, as a condition of award, to undertake responsibilities outside the scope in the bidding documents or otherwise to modify the bid as originally submitted. Quantity of goods, prior to signing of contract may be increased or decreased by a margin not exceeding 15%, upon agreement by AAU. Once the contract is signed, a conformed copy of the signed contract shall be forwarded to AAU for records.

## **Publication of the Award of Contract**

2.29 Within two weeks of receiving AAU's —no objection, when applicable, to the recommendation of contract award, the Project recipient shall publish the results in a newspaper of national circulation. A similar publication shall be made in the AAU media outlets. The following information should be disclosed: (a) name of each bidder who submitted a bid; (b) bid prices as read out at bid opening; (c) name of bidders whose bids were rejected and the reasons for their rejection; and (d) name of the winning bidder, and the price it offered.

## **Rejection of All Bids**

2.30 Bidding documents usually provide that Recipients may reject all bids. Rejection of all bids is justified when there is lack of effective competition, or bids are not responding or when bid prices are substantially higher than existing budget. Lack of competition shall not be determined solely on the basis of the number of bidders. If all bids are rejected, the Project recipient shall review the causes justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids. If the rejection of all bids is due to lack of competition, wider advertising shall be considered

2.31 AAU's prior approval shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder.

2.32 Information relating to evaluation of bids and recommendations concerning awards shall not be disclosed to the bidders who submitted bids or to other persons not officially concerned with the process, until the publication of the award of contract.

### III. Other Methods of Procurement

#### General

- 3.1 This Section describes the methods of procurement that can be used where International Competitive Bidding would not be the most economic, efficient and effective method of procurement, and where other methods are deemed more appropriate, and is allowed by the Project Agreement.

#### National Competitive Bidding

- 3.2 National Competitive Bidding (NCB) is the competitive bidding procedure normally used for public procurement in the country of the Project Recipient, and may be the most appropriate way of procuring goods or works which, by their nature or scope, are unlikely to attract foreign competition. To be acceptable for use in AAU-financed procurement, these procedures shall be reviewed and modified as necessary to assure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of these Guidelines. NCB may be the most appropriate method of procurement where foreign bidders are not expected to be interested because (a) the contract values are small, ((b) the goods are available locally at prices below the international market. NCB procedures may also be used where the advantages of ICB are clearly outweighed by the administrative or financial burden involved.
- 3.3 Advertising may be limited to the national press or official gazette, or a free and open access website. The currency of the country of the Project Recipient is generally used for the purposes of bidding and payment. In addition, the bidding documents shall provide clear instructions on how bids should be submitted, how prices should be offered, and the place and time for submission of bids. Adequate response time for preparation and submission of bids shall be provided. The procedures shall provide for adequate competition in order to ensure reasonable prices, and methods used in the evaluation of bids and the award of contracts shall be objective and made known to all bidders in the bidding documents and not be applied arbitrarily. The procedures shall also include public opening of bids, publication of results of evaluation and of the award of contract and provisions for bidders to protest.
- 3.4 National Competitive Bidding shall be subject to the following specific provisions:
- (i) Eligibility. No bidder, foreign or domestic, shall be precluded from participating in the bidding process for reasons unrelated to their eligibility or capability to perform the contract. Examples of reasons that may not be used to preclude a bidder from so participating include the following: proof that the bidder is not under bankruptcy proceedings; appointment by the bidder of a local representative; prior registration by the bidder; or license or agreement allowing the bidder to operate.

- (ii) Qualification. Bidders shall be post-qualified unless the related procurement plan explicitly provides otherwise. Irrespective of whether post qualification or prequalification is used, both national and foreign bidders who meet the qualification requirements stated in the bidding documents shall be allowed to participate in the bidding process.
- (iii) Bidding Documents. Project Recipients shall use bidding documents for the procurement of goods and services, consistent with the provisions of these Procurement Guidelines and acceptable to AAU.
- (iv) Preferences. No preference for domestically manufactured goods shall be allowed.
- (v) Bid evaluation. The qualification criteria shall be clearly specified in the bidding documents, and all criteria so specified, and only such criteria so specified, shall be used to determine whether a bidder is qualified; the evaluation of the bidder's qualifications should be conducted separately from the technical and commercial evaluation of the bid. Evaluation of bids shall be made in strict adherence to the criteria set forth in the bidding documents; criteria other than price should be quantified in monetary terms. A contract shall be awarded to the qualified bidder offering the lowest technically responsive evaluated bid. Bidders shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.
- (vi) Rejection of All Bids and Re-bidding. AAU's prior approval shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder.
- (vii) Right to Inspect/Audit. Each bidding document and contract financed out of the proceeds of the Project shall provide that the bidder or supplier, and any subcontractor, shall permit the Funding Partner and AAU, at either of its request, to inspect their accounts and records relating to the bid submission and performance of the contract, and to have these accounts and records audited by auditors appointed by the Funding Partner. An act by the bidder, supplier or subcontractor intended to materially impede the Funding Partner exercise of its inspection and audit right constitutes an Obstructive Practice.

## **Shopping**

- 3.5 Shopping is a procurement method based on comparing price quotations obtained from several suppliers. A minimum of three suppliers shall be considered to assure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification commodities or non-consulting services.

Requests for quotations shall indicate the description and quantity of the goods or specifications of non-consulting services, deadline for submission of quotations, as well as desired delivery (or completion) time and place. Quotations should be submitted in sealed envelopes within the deadline and be opened by the Project recipient at the same time. The evaluation of quotations shall follow the same principles as of open bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

### **Direct Contracting**

- 3.6 Direct contracting is contracting without competition (single source) and might be considered only under the following circumstances, upon agreement by AAU:
- (a) An existing contract for goods or non-consulting services, awarded in accordance with procedures acceptable to AAU, may be extended for additional goods or non-consulting services of a similar nature.
  - (b) Standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original Supplier. For such purchases to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable, and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to AAU.
  - (c) The required equipment is proprietary and obtainable only from one source.
  - (d) In exceptional cases, such as in response to natural disasters.

# **CONSULTING SERVICES**

## **IV. Selection of Consultants.**

### **Quality- and Cost-Based Selection (QCBS)**

#### **A. General**

##### **Introduction**

AAU considers that, in the majority of cases competition among qualified short-listed firms in which the selection is based on the quality of the proposal and cost of the services to be provided (Quality and Cost Based Selection – QCBS) is the most appropriate method of selection. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment. However, in case of highly specialized assignments or those which invite innovation, selection based solely on the quality may be more appropriate, in which case the weight of cost should be considered zero.

4.1 The selection process shall include the following steps:

- (A) preparation of the TOR;
- (B) preparation of cost estimate and the budget;
- (C) advertising;
- (D) preparation of the short list of consultants;
- (E) preparation and issuance of the RFP [which should include: the Letter of Invitation (LOI); Instructions to Consultants (ITC); the TOR and the proposed draft contract];
- (F) receipt of proposals;
- (G) evaluation of technical proposals: consideration of quality;
- (H) public opening of financial proposals;
- (I) evaluation of financial proposal;
- (J) combined evaluation of quality and cost; and
- (K) negotiations and award of the contract to the selected firm.

##### **Terms of Reference (TOR)**

4.2 The Project recipient shall be responsible for preparing the TOR for the assignment. The scope of the services described in the TOR shall be compatible with the available budget. TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable consultants to estimate the required resources. TOR shall list the

services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). However, TOR should not be too detailed and inflexible, so that competing consultants may propose their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The Project recipient's and consultants' respective responsibilities should be clearly defined in the TOR.

### **Cost Estimate (Budget)**

- 4.3 Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Project recipient's assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs. Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used) and (b) re-imbursables, and further divided into foreign and local costs. The cost of staff time shall be estimated on a realistic basis for foreign and national personnel.

### **Advertising**

- 4.4 Project recipient shall advertise a request for expressions of interest for each contract for consulting firms in a national newspaper or in an electronic portal of free access. In addition, contracts expected to cost more than US\$ 200,000 or as per threshold specifically agreed in the Procurement Plan shall be advertised in *UNDB online dgMarket* and AAU website. Project recipients may also advertise requests for expressions of interest in an international newspaper or a technical magazine. The information requested shall be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage consultants from expressing interest. Not less than 14 days from date of posting shall be provided for responses, before preparation of the short list.

### **Short List of Consultants**

- 4.5 The Project recipient is responsible for preparation of the short list. Short lists shall comprise three to six firms with no more than two firms from any one country. For the purpose of establishing the short list, the nationality of a firm is that of the country in which it is registered or incorporated and in the case of Joint Venture, the nationality of the firm appointed to represent the Joint Venture. Once AAU has issued a —no objection to a short list, the Project recipient shall not add or delete names without AAU's approval. Firms that expressed interest, as well as any other firm that specifically so request, shall be provided the final short list of firms.
- 4.6 The short list should preferably comprise consultants of the same category, similar capacity, and business objectives. Consequently, the short list should normally be composed of firms of similar experience or of not-for-profit organizations (NGOs, Universities, UN Agencies, etc.) acting in the same field of expertise. If mixing is

used, the selection should be based on quality only and weight for price should be zero. The short list of firms shall not include Individual Consultants.

- 4.7 Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having previously provided consulting services related to the assignment in question. To that end, the Project recipient should make available to all the shortlisted consultants together with the RFP all information that would in that respect give a consultant a competitive advantage.

#### **Preparation and Issuance of the Request for Proposals (RFP)**

- 4.8 The RFP shall include (a) a Letter of Invitation, (b) Information to Consultants, (c) the TOR, and (d) the proposed contract. Project recipients shall use RFP acceptable to AAU.

#### **Letter of Invitation (LOI)**

- 4.9 The LOI shall state the intention of the Project recipient to enter into a contract for the provision of consulting services, the source of funds, the details of the client and the date, time, and address for submission of proposals.

#### **Instructions to Consultants (ITC)**

- 4.10 The ITC shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score. The ITC shall indicate an estimate of the level of key staff inputs (in staff time) required of the consultants. Consultants, however, shall be free to prepare their own estimates of staff time to carry out the assignment and to offer the corresponding cost in their proposals. The RFP shall specify the source of the exchange rate to be used and the date of that exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal. The ITC shall specify the proposal validity period, which should be adequate for the evaluation of proposals, decision on award, and finalization of contract negotiations. Whenever, the Project recipient envisages continuity of same services over multiple years, the requirements shall be so indicated in the RFP. The RFP and the proposals shall be prepared in one of the three following languages, selected by the Project recipient: English, French, or Portuguese. The contract signed with the winning consultant shall be written in the language so selected for the RFP, and this language shall be the one that governs the contractual relations between the Borrower and the selected consultant.

**TOR:** Please refer to paragraph 4.2 above.

### **Contract**

- 4.11 Contracts may be of two types: Lump sum or Time Based. (i) Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. Payments are linked to outputs (deliverables), such as reports, drawings, bill of quantities, bidding documents, and software programs. (ii) Time-Based contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required in order to attain the objectives of the assignment is difficult to assess. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract shall include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate.
- 4.12 RFPs shall clearly state that firms may express the price for their services, in a national currency or any fully convertible currency. Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during negotiations. Payments for advances (for example, for mobilization costs) should be backed by advance payment securities.
- 4.13 The contract shall be prepared with specific provisions among others: Project recipient contribution, conflict of interest, staff substitution and applicable law and settlement of disputes. In case of foreign consultants, Project recipients are encouraged to provide for international arbitration procedures for settlement of disputes.

### **Receipt of Proposals**

- 4.14 The Project recipient shall allow not less than four weeks for the consultants to prepare their proposals. During this interval, the firms may request clarifications about the information provided in the RFP. The Project recipient shall provide these clarifications in writing and copy them to all firms on the short list (who intend to submit proposals), without disclosing the source of clarification requests. If necessary, the Project recipient shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposal shall be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. The technical envelopes shall be opened immediately by a committee of officials drawn from the relevant

departments (technical, finance, legal, as appropriate), after the closing time for submission of proposals. The financial proposals shall remain sealed and shall be deposited with an independent authority or a responsible high level authority until they are opened publicly. Any proposal received after the closing time for submission of proposals shall be returned unopened.

### **Evaluation of Proposals: Consideration of Quality and Cost**

4.15 The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any AAU reviews and no objection, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

### **Evaluation of the Quality (Technical Proposal)**

4.16 The Project recipient shall evaluate each technical proposal (using an evaluation committee of three or more specialists in the sector), taking into account the following indicative criteria and their respective weights. The proposed weights shall be disclosed in the RFP.

Consultant's specific experience:	0 to 10 points
Methodology:	20 to 50 points
Key personnel:	30 to 60 points
Transfer of knowledge: <sup>15</sup>	0 to 10 points
Participation by nationals: <sup>16</sup>	0 to 10 points
Total:	100 points

The minimum qualifying mark shall be 60% or above

4.17 The CVs of the key personnel must be accurate, complete, and signed by an authorized official of the consulting firm and the individual proposed. The evaluation of the key personnel shall take into account the general qualifications (education, experience), adequacy for the assignment (experience in the specific sector).

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<sup>15</sup>Transfer of knowledge may be the main objective of some assignments; in such cases, it shall be indicated in the TOR and, only with AAU prior approval may be given a higher weight to reflect its importance.

<sup>16</sup>As reflected by nationals among key staff presented by foreign and national firms.

## **Public Opening of Financial Proposals**

4.18 After the evaluation of quality is completed and AAU has issued its no objection, the Project recipient shall inform the consultants who have submitted proposals, the technical points assigned to each consultant and shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered nonresponsive to the RFP and TOR that their financial proposals will be returned unopened after the signature of the contract. The Project recipient shall simultaneously notify the consultants that have secured the minimum qualifying mark, the date, time, and place set for opening the financial proposals. The opening date shall be defined allowing sufficient time for consultants to make arrangements to attend the opening of the financial proposals. The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical points, and the proposed prices shall be read aloud (and posted online when electronic submission of proposals is used) and recorded when the financial proposals are opened, and a copy of this record shall be promptly sent to AAU. The Project recipient shall also prepare the minutes of the public opening and a copy of this record shall be promptly sent to AAU and to all consultants who submitted proposals.

## **Evaluation of Cost (Financial Proposals)**

4.19 Following the public opening of the financial proposals, the Project recipient shall review them. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the costs shall be converted to a single currency selected by the Project recipient (local currency or fully convertible foreign currency) using the exchange rate stated in the RFP. The Project recipient shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions.

4.20 For the purpose of evaluation, —cost<sup>17</sup> shall exclude local identifiable indirect taxes<sup>17</sup> on the contract and income tax payable to the country of the Project recipient on the remuneration of services rendered in the country of the Project recipient by non-resident staff of the consultant. The cost shall include all consultant's remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices.

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<sup>17</sup> All indirect taxes levied on the contract invoices, at National, State (or Provincial) and Municipal levels.

## **Combined Quality and Cost Evaluation**

4.21 The methodology to be used for combined evaluation of quality and cost shall be described in the RFP. The weight for the —cost| shall not exceed 30 points out of a total score of 100. The proposed weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

## **Negotiations and Award of Contract**

4.22 Negotiations shall include discussions of the TOR, the methodology, staffing, Project recipient's inputs, and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated in the contract.

4.23 The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment.<sup>18</sup> If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

4.24 Financial negotiations shall include clarification of the consultants' tax liability in the Project recipient's country (if any) and how this tax liability has been or would be reflected in the contract. When the selection method includes price as a component, negotiations of staff rates should not take place. The prohibition of negotiation does not preclude the right of the client to ask for clarifications, and, if fee are very high, to ask for change of fees, after due consultation with and approval by AAU. Re-imbursables are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore are not subject to negotiations. However, if the client wants to define ceilings for unit prices of certain re-imbursables (like travel or hotel rates), they should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.

4.25 If the negotiations fail to result in an acceptable contract, the Project recipient shall terminate the negotiations and invite the next ranked firm for negotiations. The Project recipient shall consult with AAU prior to taking this step. The consultant

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<sup>18</sup> Defining realistic proposal validity periods in the RFP and carrying out an efficient evaluation minimizes this risk.

shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the Project recipient shall not reopen the earlier negotiations. After negotiations are successfully completed and AAU has issued its no objection to the initialed negotiated contract, the Project recipient shall promptly notify other firms on the short list that they were unsuccessful. Once the contract is signed, a conformed copy of the signed contract should be forwarded to AAU for records.

### **Publication of the Award of Contract**

4.26 After the award of contract, the Project recipient shall publish the award of contract in a national newspaper or in an electronic portal of free access. In addition, for contracts above US\$ 50,000, the award of contract shall be advertised in *UNDB online* and in *dgMarket*. The following information should be published: (a) the names of all consultants who submitted proposals; (b) the technical points assigned to each consultant; (c) the evaluated prices of each consultant; (d) the final point ranking of the consultants; (e) the name of the winning consultant and the price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals.

### **Rejection of All Proposals, and Re-invitation**

4.27 The Project recipient will be justified in rejecting all proposals only if all proposals are nonresponsive because they present major deficiencies in complying with the TOR or if they involve costs substantially higher than the original estimate. Before all the proposals are rejected and new proposals are invited, the Project recipient shall obtain AAU's —no objection. The revisions in the RFP and the shortlist, if required, for the new process shall be agreed upon with AAU.

### **Confidentiality**

4.28 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the publication of the award of contract.

## V. Other Methods of Selection

### General

The QCBS method is the one that best satisfies the considerations of these guidelines and, accordingly, is the preferred selection method for most types of consulting services. This Section describes the methods of selection that can be used where QCBS would not be the most appropriate method.

### Selection under a fixed budget

5.1 This method is appropriate only when the assignment is simple and can be precisely defined and the budget is fixed. The RFP is to indicate the available budget and request that consultants provide their best technical and financial proposals in separate envelopes, within the budget. Terms of reference are to be especially well prepared to make sure that the budget is sufficient for consultants to perform the expected tasks. Evaluation of all technical proposals is to be carried out first, as in the QCBS method. The price envelopes are then to be opened in public and the prices read out aloud. Proposals that exceed the indicated budget will be rejected. The consultant who has submitted the highest ranked technical proposal among the rest is to be selected and invited to negotiate a contract. The award of contract shall be published following the same procedures stated for QCBS.

### Least-Cost Selection (LCS)

5.2 This method is generally appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist. Under this method, a —minimum| qualifying mark for the —quality| is established. Proposals, to be submitted in two envelopes, are invited from a short list. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark<sup>19</sup> are rejected, and the financial proposals of the rest shall be opened as stipulated in paragraph 4.18. The firm with the lowest price shall then be selected. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on —cost.| The minimum qualifying mark shall be stated in the RFP. The award of contract shall be published following the same procedures stated for QCBS.

### Selection Based on the Consultants' Qualifications (CQS)

5.3 This method may be used for small<sup>20</sup> assignments or emergency situations declared by the Projectee and recognized by AAU for which the need for issuing an RFP, and preparing and evaluating competitive proposals is not justified. In such cases, the Projectee shall prepare the TOR and obtain expressions of interest that include

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<sup>19</sup>This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of very standard and routine technical nature where the intellectual component is minor. For this method the minimum qualifying mark shall be 70 points or higher.

<sup>20</sup>Dollar thresholds defining —small shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$200,000, other than in exceptional cases.

information on their experience and qualifications, eventually through a REOI as may be needed, from as many firms as possible, and at least three qualified, firms with relevant experience. Firms having the required experience and competence relevant to the assignment shall be assessed and compared, and the best qualified and experienced firm shall be selected. Only the selected firm shall be asked to submit a combined technical and financial proposal and, if such proposal is responsive and acceptable, be invited to negotiate a contract. Both technical and financial aspects of the proposal may be negotiated. If the negotiations fail with the selected firm, the provisions of paragraph 4.22 apply. The minutes of negotiations shall be prepared and signed by both parties

### **Single-source selection**

5.4 Single-source (or sole-source) selection of consultants does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection, and could thus encourage unacceptable practices. Therefore, single-source selection shall to be used only on exceptional cases with AAU's prior approval. The justification for single-source selection is to be examined in the context of the overall interests of the client and the project, and of AAU's responsibility to ensure economy and efficiency and provide an equal opportunity to all qualified consultants, to the extent possible. Single-source selection may be appropriate: (i) for tasks that represent a natural continuation of previous work carried out by the firm; (ii) when only one firm is qualified or has the experience of exceptional worth for the assignment; (iii) for very small<sup>21</sup> assignments. In all such cases, the Projectee is not required to issue an RFP and shall submit to AAU for its review and no objection the TOR of the assignment, a sufficiently detailed justification including the rationale for single source selection instead of a competitive selection process, and the basis for recommending a particular firm, except for contracts below a threshold defined on the basis of risks and the scope of the project, and set forth in the Procurement Plan.

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<sup>21</sup> Dollar thresholds defining —very small shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$100,000, other than in exceptional cases.

## VI. Selection of Individual Consultants

- 6.1 Individual consultants are employed on assignments for which (a) teams of personnel are 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. Individual consultants may be hired for a specific task with a defined output or to act as Project staff.
- 6.2 Individual consultants are selected on the basis of their qualifications for the assignment. Advertisement should be made in a national newspaper of wide circulation and in any public portal of free access, seeking expressions of interest along with CVs. Project recipients are also encouraged to publish the advertisement in the regional newspaper and/or UNDB online. Consultants shall be selected by a committee of experts appointed by the Project recipient. The selection should be through comparison of qualifications of the candidates who expressed interest in response to the advertisement. Capability of individuals is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organization.
- 6.3 From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Guidelines shall apply to the parent firm.
- 6.4 Individual consultants may be selected on a sole-source basis with due justification in exceptional cases such as: (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; and (b) when the individual is the only consultant qualified for the assignment.
- 6.5 Contracts with individual consultants may be of two types: Lump sum or Time Based. (i) Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. (ii) Time-Based contract is appropriate when the individual is hired as a Project staff. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract shall include a maximum amount of total payments to be made to the

consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate.

- 6.6 Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during negotiations with the individual consultant. Advance payment may be considered for consultant hired for a specific task under lump sum contract. Amount for such advance payment shall be reasonable and be made payable upon submission of an Inception Report acceptable to the Project recipient. The Inception Report shall outline, at the least, a brief understanding of the assignment and a work plan.
  
- 6.7 The contract shall be prepared with specific provisions among others: Project recipient contribution, conflict of interest, contract ceiling amount, payment schedule, delivery schedules, reporting requirements, applicable law and settlement of disputes. In case of foreign consultants, Project recipients are encouraged to provide for international arbitration procedures for settlement of disputes with foreign individual consultants.

## **Appendix 1: Review by AAU of Procurement Decisions**

AAU shall review the procurement arrangements and procurement processes undertaken by the Project recipient for its conformity with the Project Agreement and these Guidelines, and upon satisfactory review, AAU will issue its —no objectionll.

### **1. Prior Review**

The Project recipient shall seek AAU's prior approval at the following stages of the procurement process, for those procurement estimated to cost above the threshold for prior review as defined in the Procurement Plan:

The process of selection of External Auditors irrespective of estimated value of contracts shall be subject to AAU's prior approval, as per the stages shown in the above Table for Selection of Consultants.

In the appointment of key Project Staff such as the Director, Coordinator, Finance Manager, Project Accountant or other Professional staff, the AAU's prior approval shall be obtained by the Project recipient irrespective of the contract amount.

## **2. Post Review**

The Project recipient shall retain all documentation with respect to each contract not subject to prior review during Project implementation and up to two years after the closing date of the Project Agreement. This documentation would include, but not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award, for examination by AAU or by its consultants. The Project recipient shall also furnish such documentation to AAU upon request. If AAU determines that the goods or services were not procured in accordance with the agreed procedures, as reflected in the Project Agreement and further detailed in the Procurement Plan approved by AAU or that the contract itself is not consistent with such procedures, it may declare mis-procurement as per the provisions in Section I of the Guidelines. AAU shall promptly inform the Project recipient the reasons for such determination. On annual basis, Project Recipient shall cause to be undertaken procurement audits by an independent person/firm on terms and conditions acceptable to AAU. The results of such audit shall be submitted to AAU not later than six months after end of fiscal year

## **Appendix 2: Guidance to Bidders/Consultants**

### **Purpose**

1. This Appendix provides guidance to potential bidders wishing to participate in AAU-financed procurement.

### **Responsibility for Procurement**

2. The responsibility for the implementation of the project, and therefore for the payment of goods and services under the project, rests solely with the Project recipient. It invites, receives, and evaluates bids, and awards the contract. The contract is between the Project recipient and the supplier or consultant. AAU is not a party to the contract.

### **AAU's Role**

3. AAU, for its part, is required by its Operations Manual to ensure that funds are paid from AAU Project only as expenditures are incurred. AAU reviews the procurement procedures, documents, bid/proposal evaluations, award recommendations, and the contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Project Agreement. If, at any time in the procurement process (even after the award of contract), AAU concludes that the agreed procedures were not followed in any material respect or, if AAU determines that corrupt or fraudulent practices were engaged in by representatives of the Project recipient or of the bidder/consultant, AAU may impose the appropriate actions as set forth in the Guidelines.

### **Bidder's/Consultant's Role**

4. Once a bidder/consultant receives bidding document/RFP, the bidder/consultant should study the documents carefully to decide if it can meet the technical, commercial, and contractual conditions, and if so, proceed to prepare its bid/proposal. The bidder/consultant should then critically review the documents to see if there is any ambiguity, omission, or internal contradiction, or any feature of specifications or other conditions which are unclear or appear discriminatory or restrictive; if so, it should seek clarification from the Project recipient, in writing, within the time period specified in the bidding documents/RFP for seeking clarifications.
5. The criteria and methodology for selection of the successful bidder/consultant are outlined in the bidding documents/RFP, generally under Instructions to Bidders/Consultants and Specifications/ToRs. If these are not clear, clarification should be similarly sought from the Project recipient.
6. In this connection it should be emphasized that the specific bidding documents/RFP issued by the Project recipient shall govern each procurement. If a bidder feels that

any of the provisions in the documents are inconsistent with the Guidelines, it should also raise this with the Project recipient.

7. It is the responsibility of the bidder/consultant to raise any issue of ambiguity, contradiction, omission, etc., prior to the submission of its bid/proposal, to assure submission of a fully responsive and compliant bid/proposal, including all the supporting documents requested in the bidding documents/RFP. Noncompliance with critical (technical and commercial) requirements will result in rejection of the bid/proposal.

### **Confidentiality**

8. As stated in the Guidelines, the process of bid/proposal evaluation shall be confidential until the publication of contract award. This is essential to enable the Project recipient and AAU reviewers to avoid either the reality or perception of improper interference. If at this stage a bidder/consultant wishes to bring additional information to the notice of the Project recipient, AAU, or both, it should do so in writing.

### **Action by AAU**

9. Bidders/Consultants are free to send copies of their communications on issues and questions with the Project recipient to AAU or to write to AAU directly, when Recipients do not respond promptly, or the communication is a complaint against the Project recipient. All such communications should be addressed to the Program Officer for the project, with a copy to the AAU Finance Department. Names of Program Officers and Finance Department Manager are available on AAU Web Site.
10. References received by AAU from potential bidders/consultants, prior to the closing date for submission of the bid/proposals, will, if appropriate, be referred to the Project recipient with AAU's comments and advice, for action or response.
11. Communication received from bidders/consultants after the opening of the bid/proposals, will be handled as follows. In the case of contracts not subject to prior review by AAU, the communication will be sent to the Project recipient for due consideration and appropriate action, if any, and these will be reviewed during subsequent supervision of the project by AAU staff. In the cases of contracts subject to the prior review process, the communication will be examined by AAU, in consultation with the Project recipient. If additional data is required to complete this process, these will be obtained from the Project recipient. If additional information or clarification is required from the bidder/consultant, AAU will ask the Project recipient to obtain it and comment or incorporate it, as appropriate, in the

evaluation report. AAU's review will not be completed until the communication is fully examined and considered.

12. Except for acknowledgment, AAU will not enter into discussion or correspondence with any bidder during the evaluation and review process of the procurement, until award of the contract is published.

### **Debriefing**

13. After notification of award, if a bidder/consultant wishes to ascertain the grounds on which its bid/proposal was not selected, it should address its request to the Project recipient. If the bidder/consultant is not satisfied with the explanation given and wishes to seek a meeting with AAU, it may do so by addressing the Program Officer, who will arrange a meeting at the appropriate level and with the relevant staff. In this discussion, only the bidder's/consultant's bid/proposal can be discussed and not the bid/proposals of competitors. The bidders/consultants will bear their own costs relating to the debriefing.