

**PROCUREMENT POLICY FOR THE PROJECTS  
FINANCED BY THE EURASIAN  
FUND FOR STABILIZATION AND DEVELOPMENT**

**November 2018**

## **Section 1. GENERAL**

- 1.1 This Procurement Policy for the projects financed by the Eurasian Fund for Stabilization and Development (“Policy”) sets:
  - Procurement management objectives and procurement principles;
  - Applicable procurement procedures and general procurement requirements;
  - Procurement supervision provisions and responsibility of the Recipients and the Bidders for noncompliance with procurement rules and procedures.
- 1.2 This Policy is applicable to the Procurement Processes in the Projects that are financed in whole or in part by Investment Credits or Grants from the Eurasian Fund for Stabilization and Development (“Fund”).
- 1.3 The Recipients must adhere to this Policy in carrying out the Procurement Processes and in financing the Contracts out of the proceeds of the Fund in accordance with the agreement between the Administrator and the Recipient for providing Investment Credit or Grant by the Fund (“Financing Agreement”).
- 1.4 The provisions of this Policy applicable to the Recipients apply in the same way to the Project Companies that carry out the Procurement Processes under the Project in accordance with the Financing Agreement.

## **Section II. TERMS AND DEFINITIONS**

- 2.1. The terms and definitions used in this Policy shall have the same meanings as are ascribed to them in the Regulation on Provision of Investment Financing by the Fund and in the Regulation on Provision of Grants by the Fund, as approved by the Fund Council.

The terms which are not defined in the said documents are defined in the relevant sections of the Policy or have the following meanings:

**Procurement Documents** are any documents provided by the Recipient to the Bidders that contain procedures and conditions for participation in the Procurement Process.

**Procurement Process** is the selection of the Supplier by the Recipient and the execution of the Contract to be financed by the Fund.

**Prohibited Practice** is any of the following actions taken by the Recipient and/or the Bidder and/or the supplier and/or their employees to influence improperly the Procurement Process.

- Corrupt Practice is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of public officials acting in relation to the Procurement Process;
- Fraudulent Practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, public officials acting in relation to the Procurement Process to obtain a financial or other benefit or to avoid an obligation during the Procurement Process;
- Collusive Practice is an arrangement between two or more Bidders designed to achieve an improper purpose, including to influence the action of another party to simulate competition or to establish bid prices at artificial, non-competitive levels, or to obtain the information on prices proposed by other Bidders.

- Coercive Practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party involved in the Procurement Process or the property of such party to influence the actions of this party during the Procurement Process or the implementation of the Contract;
- Obstructive Practice is deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an 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 acts intended to materially impede the exercise of the Administrator’s inspection and audit rights provided for under this Policy;
- Non-compliance with this Policy, procurement rules and procedures set forth in the respective Financing Agreement, and applicable law.

**Contract** is any agreement entered into by the Recipient for the supply of goods, completion of works and/or provision of services to be paid, in whole or in part, out of the proceeds of the Fund.

**Conflict of Interest** is the differences between property interests of the Recipient and the Bidder that may arise in the following cases:

- (a) The Bidder is offering goods, works and non-consulting services resulting from consulting services provided to the Recipient:
  - by this Bidder; or
  - by any of its affiliates that directly or indirectly control, are controlled by, or are under common control with that Bidder.

This provision does not apply to the Bidders which provide design, supply and installation under a turnkey contract, as well as in other cases provided for in the Financing Agreement.

- (b) The Bidder (including its personnel) has a close business relationship with the personnel of the Recipient who are directly or indirectly involved:
  - in the preparation of the Procurement Documents; or
  - in the evaluation of bids; or
  - in the supervision of such Contract.
- (c) The Bidder's personnel have a close family relationship with personnel of the Recipient who are directly or indirectly involved:
  - in the preparation of the Procurement Documents; or
  - in the evaluation of bids; or
  - in the supervision of such Contract.
- (d) The Bidder is the Recipient's parent or subsidiary company.

This provision does not constitute a conflict of interest where the Recipient uses, in accordance with this Policy, commercial practices by which the engagement of other Bidders, except Recipient's parent or subsidiary companies, is not possible.

- (e) The Bidder submits more than one bid, either individually or as a joint venture partner in another bid. This will result in the disqualification of all bids in which the Bidder is involved.

This provision does not apply to the sub-contractors (who may participate in more

than one bid) and where submission of alternative bids is permitted by the Procurement Documents.

(f) The Bidder meets the definition of the conflict of interest specified in the Financing Agreement or in the Procurement Documents issued by the Recipient.

**Supplier** is the Bidder with whom the Contract is signed upon completion of the Procurement Process.

**Eligibility** is the right to participate as a Bidder in the Procurement Process under the Projects, which can be granted to any person or entity, except:

- a) a person or entity registered in a country or offering goods manufactured in a country if:
  - as a matter of law the Recipient's country prohibits commercial relations with that country; or
  - by an act of compliance with a decision of the United Nations Security Council, the Recipient's country prohibits any import of goods from, or payments to, that country and person or entity registered in that country;
- b) a person or entity that is under economic sanctions, in accordance with the laws of EU, UN, USA OFAC, UKHMT, prohibiting or restricting any actions/operations with that person or entity that may be necessary in connection with the execution and implementation of the Contract;
- c) a person or entity sanctioned by the Administrator's decision for noncompliance with the Financing Agreement or this Policy;
- d) a person or entity sanctioned in accordance with the public procurement laws of the Fund member states;
- e) a person or entity sanctioned by the international development banks who joined the Agreement for Mutual Enforcement of Debarment Decisions, in accordance with the procurement rules and procedures used by these banks;
- f) a person or entity that has a Conflict of Interest with the Recipient or the Project Company;
- g) a person or entity that was found to have been engaged in any Prohibited Practice.

The list of categories of persons or entities declared ineligible for participation in the Procurement Process may be revised from time to time by the Decision of the Fund Council or by the relevant Agreement.

**Recipient's Country** - a state-recipient of the proceeds of the Fund or a state in which the Project Company – the Recipient is registered as a legal entity.

**Bidder** - a person/entity or association of entities participating in the Procurement Process as a potential supplier of goods, works or services.

### **Section III. POLICY OBJECTIVES AND PRINCIPLES**

- 3.1 The objective of this Policy is:
  - To ensure that the Fund's proceeds are used for the intended purposes;
  - To ensure the most efficiency of Project implementation with economical use of the proceeds.
- 3.2 For purposes of this Policy, the Procurement Processes shall be carried out based on the following principles:
  - Openness: guidelines with description of Procurement Processes, rules and

procedures, including qualification requirements, Procurement subject matter, time frame, evaluation criteria and other relevant information, shall be made available for all eligible Bidders by open-source;

- Integrity: clearness of the requirements for Bidders in Procurement documents; compliance of actual and claimed Procurement procedures; timely informing of Bidders in case of Procurement documents alteration; unfair Procurement Processes prevention and undoing; timely provision of clarifications in response to Bidders complaints;
- Competitiveness in the Procurement Processes: priority shall be given to the use of competitive procurement methods; any eligible person or entity that meets the reasonable qualification requirements shall be given an opportunity to participate in the Procurement Processes; technical requirements shall be developed so as to allow the maximum number of manufacturers to participate in the Procurement Processes;
- Fit for purpose: the procurement arrangements must be determined to meet the project development objectives, taking into account the context and the risk and complexity of the procurement;
- Accountability: all procurement stages must be clearly documented; all Procurement parties responsibilities must be exactly determined, key procurement aspects must be agreed in accordance with the procedure stipulated in this Policy and in the Financing Agreement; imposition of sanctions in case of rules and procedures violation must be provided”.

3.3 To carry out functions related to administration of proceeds of the Fund as required by this Policy, the Administrator may hire on a contractual basis the consultants - firms and/or individuals specialized in procurement management, including relevant international financial organizations (IFOs). The Consultants may be engaged to perform both specific functions and overall procurement management functions under specific projects during the preparation and/or implementation of such projects, including examination of compliance of the proposed procurement rules, procedures and methods with this Policy, monitoring of compliance with the established procurement rules and procedures, as well as any other functions.

#### **Section IV. APPLICABLE PROCUREMENT PROCEDURES**

- 4.1 The following Procurement Procedures may be used under the Contracts financed by the Fund:
- (a) Procurement Procedures of the Eurasian Fund for Stabilization and Development, approved by the Fund Council (Fund's Procurement Procedures);
  - (b) Procurement procedures used by other IFO;
  - (c) Procedures for procurement of goods, works and services used by the Project Company for its own needs (Commercial Practices) when the Fund member state as the Recipient signed Financing Agreement with the End Recipient;
  - (d) Procurement procedures prescribed by the laws of the Recipient's Country when the Recipient is the Project Company to which these laws apply.
- 4.2 If Project is financed in cooperation with other creditors, procurement processes under the Contracts not financed by the Fund may be regulated based on the requirements of organizations that provide financing to cover payments under such Contracts.
- 4.3 The Recipient shall include in its Request for Financing out of the Proceeds of the

Fund the justified proposals on the use of procurement procedures and methods under the Project, specifically:

- (a) Draft Procurement Strategy - a document justifying the use of procurement procedures and methods proposed by the Recipient for the Project, taking into account the analysis of markets of goods, works and services to be procured, the Recipient's resources and previous procurement experience;
  - (b) Draft Procurement Plan - a document prepared by the Recipient in the format agreed with the Administrator. This document shall include the list of Contracts for procurement of goods, works and services under the Project, indicating for each Contract cost estimates, procurement method, timing of the procurement process, and procurement thresholds.
  - (c) If the Commercial Practices are used, in addition to the documents listed in paragraphs a) and b) above:
    - Current procurement regulations adopted by the Project Company;
    - Description of procurement practices used by the Project Company;
    - List of all Contracts for which procurement processes were carried out based on such procedures for the last 3 (three) years, indicating, at the minimum, the subject of procurement, procurement method, whether adequate competition has been secured during the selection process, contract implementation period, names of suppliers, and contract prices.
  - (d) In the case where procurement procedures of the other financiers are applied for the Contracts not financed by the Fund under the joint Projects, the evidence satisfactory to the Administrator confirming that the procedures to be used will:
    - fulfill the Recipient's obligations to cause the Project to be carried out in full scope, diligently and efficiently;
    - ensure that the goods, works and services to be procured are of satisfactory quality and are aligned with the Project objectives, will be delivered or completed in timely fashion; and are priced so as not to affect adversely the economic and financial viability of the Project.
- 4.4 The Administrator shall review the information included in the Request with the aim to check the compliance of the proposed procurement procedures with Project objectives, requirements set forth in the Fund's documents, content and complexity of project components, total cost of the Project and its components, availability and type of co-financing and co-financing organizations.
- 4.5 In order to check the compliance of the Recipient's procedures with this Policy, the Administrator may request additional information and supporting documents, and, if the Commercial Practices are used, perform a sample procurement audit of Contracts entered into by the End Recipient in accordance with the proposed Commercial Practices during the last three years.
- 4.6 If, upon completion of review of the procedures used by other IFO or proposed Commercial Practices, it is determined that such procedures can be used for the project procurement, the Administrator shall include in the opinion on the Request to be prepared by the Fund Council the section describing the extent to which the proposed procurement procedures and methods, including procurement thresholds, are consistent with this Policy and shall prepare recommendations regarding the use of certain procurement procedures and conditions under which they can be used or regarding rejection of such procedures in case of substantial nonconformities. Upon

approval by the Fund Council, these recommendations shall be included in the procurement section of the respective Financing Agreement and shall be deemed to be a prerequisite for the financing.

## **Section V. GENERAL PROCUREMENT RULES**

- 5.1 In pursuance of this Policy, the Recipient shall:
- (a) As part of the project preparation, select the appropriate procurement procedures and methods and furnish to the Administrator the justification of the selection as per Section IV of the Policy;
  - (b) Carry out the Procurement Process in full conformity with the Financing Agreement, this Policy and the Procurement Plan;
  - (c) Ensure openness of the Procurement Process by publishing on the Recipient's official websites the approved Procurement Plans (updated versions), general and special procurement notices, the information about the selection results and signed contracts, any other documents as required by applicable procurement procedures;
  - (d) Grant a margin of preference to the Bidders registered in the Fund member states in accordance with terms and conditions of the respective Financing Agreement;
  - (e) Maintain the archive of all procurement documents under the Project and ensure its safety during 2 (two) years upon completion of availability period, unless a longer retention period is stipulated in the Financing Agreement;
  - (f) Upon receipt of Administrator's first request, provide any documents related to the Procurement Process for review by the Administrator or its authorized organization and include in the Procurement Documents the provisions requiring suppliers of goods, works and services, and their sub-contractors, to permit the Administrator or its authorized representative (auditor) to inspect all accounts, records, and other documents relating to contract performance;
  - (g) Inform the Administrator of all procurement-related complaints concerning actions of the Recipient/Project Company, which were received by the Recipient/Project Company, or, to the knowledge of the Recipient, were received by authorized bodies of the Recipient's country, as well as of measures taken to resolve the conflict situation;
  - (h) Neither permit the Bidders who fail to meet the eligibility criteria to participate in the Procurement Process, nor award and sign the Contracts with such Bidders;
  - (i) Provide an equal opportunity to participate in the Procurement Process for Bidders from any country that meet the eligibility criteria and are financially and technically capable to perform the Contract.
- 5.2 During the preparation and implementation of the Procurement Process and during implementation of the Contract the Bidders and their personnel shall observe the generally accepted standards of business ethics; shall have no conflict of interest and shall not use the Prohibited Practices.
- 5.3 The contracts entered into by the Recipient before signing the Financing Agreement may be financed by the Fund (retroactive financing) only if so provided in the respective Financing Agreement, and if such contracts have been concluded in accordance with procurement requirements set forth in the respective Financing

Agreement using the appropriate procurement supervision mechanism described in these requirements.

The Recipient undertakes advance contracting at its own risk, and any concurrence by the Administrator with any procurement procedures before signing the Financing Agreement does not constitute an obligation to provide financing for the Project and the Contract.

## **Section VI. THE USE OF STANDARD PROCUREMENT DOCUMENTS**

- 6.1. The Procurement Documents shall be prepared by the Recipient:
  - (a) If the Fund's Procurement Procedures are used, the Procurement Documents shall be prepared based on the Standard Procurement Documents approved by the Administrator. If any particular type of the Standard Procurement Documents is not available, the Recipient may, upon agreement with the Administrator, use the similar standard documents issued by other IFO by adjusting it to applicable provisions of this Policy and the Fund's Procurement Procedures. If Procurement Procedures of other IFO are used, the Procurement Documents shall be prepared based on the Standard Documents used by this IFO.
  - (b) If Commercial Practices are used, the Procurement Documents shall be prepared based on the previously used standard documents of the Project Company adjusted to meet the requirements of the Financing Agreement.
  - (c) If Procurement Procedures stipulated by the laws of the Recipient's country are used, the Project Company shall use the documents required under such laws.
- 6.2. The applicability of standard documents for the specific Project shall be determined in the respective Financing Agreement.

## **Section VII. PROCUREMENT SUPERVISION**

- 7.1 The Administrator shall check that this Policy and applicable procurement procedures are adhered to in the Contracts financed by the Fund, including:
  - Monitoring/supervision of procurement planning process
  - Monitoring/supervision of procurement processes and contract performance
- 7.2 Supervision of procurement processes and contract performance shall be carried out in the form of prior or post review.

The Financing Agreement shall set the thresholds for individual amounts of Contracts (per each applicable procurement method) above which a prior review procedure shall apply and below which a post review procedure shall apply.

Under prior review, each subsequent stage of the Procurement Process shall be carried out by the Recipient only upon approval of the previous stage by the Administrator.

Under post review, selection of Suppliers and the award of Contracts shall be carried out by Recipient in compliance with the rules and procedures stipulated in the Financing Agreement. The Administrator shall carry out a sample or complete review of documents relating to such Contracts.

The review frequency and form shall be defined in the Financing Agreement and will depend on project implementation period, project complexity and specific features.

- 7.3 If noncompliance with procurement rules and procedures specified in the Financing Agreement is found, the Administrator shall have the right to apply the following measures at its option:
- Request the Recipient to address noncompliance where possible. The Recipient shall satisfy such request within the period specified by the Administrator.
  - Reject a proposal for contract award.
  - Request the contract termination. The Recipient shall satisfy such request within the period specified by the Administrator.
  - Refuse to finance the misprocured Contract and claim compensation to be made to the Fund's account for amounts paid under such Contract. The Recipient shall satisfy such request within the period specified by the Administrator.
  - Declare the Bidder/Supplier that was found to have been engaged in Prohibited Practice ineligible for participation in the Procurement Process under all Projects financed by the Fund, either indefinitely or for a stated period of time.
  - Apply implications stipulated in the Financing Agreement.
- At the Administrator's option, multiple measures can be applied simultaneously for one noncompliance.
- 7.4 The Bidders are free to send to the Recipient the requests for clarification of various aspects of the Procurement Process or send to the Administrator the complaints against actions performed by the Recipient during the Procurement Process. The complaints shall be based on reliable information and shall be aimed to prevent the use of Prohibited Practice during the Procurement Process. No complaints aimed to delay or disrupt the Procurement Process or give advantages to a particular supplier shall be permitted. The Bidder who will submit such complaints may be declared ineligible for participation in the Procurement Process.
- 7.5 The complaints received by the Administrator from the potential Bidders prior to the deadline for submission of bids may be reviewed by the Administrator or forwarded to the Recipient with comments and advice for action and response.
- 7.6 The complaints received by the Administrator after the opening of bids shall be handled as follows. In the case of contracts not subject to prior review, the information shall be sent to the Recipient for due consideration and appropriate action. The Recipient shall provide to the Administrator all relevant documentation, including the response to the complaint. In the cases of contracts subject to the prior review process, the complaint will be examined by the Administrator, in consultation with the Recipient, subject to additional information and clarifications received from the Recipient and/or the Bidder. The Administrator may ask the Recipient to comment on clarification received from the Bidder or incorporate the relevant information, as appropriate, in the evaluation report. The Administrator's review will not be completed and the contract will not be signed until the information contained in the complaint is fully examined and considered, and the Bidder is provided with the appropriate response.
- 7.7 Except for acknowledgment of the complaint, the Administrator will not enter into discussion or correspondence with any Bidder during the Procurement Process, until the award of contract is published. After publication of the award, if the Bidder is not satisfied with the explanation given by the Recipient, the Administrator can arrange a meeting at the request of this Bidder in order to provide necessary clarifications. The purpose of such meeting is only to discuss the bidder's bid, and not to discuss the bids of competitors.

## **Section VIII. FINAL PROVISIONS**

- 8.1. The provisions contained herein shall not constitute, and cannot be construed as, a waiver, abandonment or variation in respect of immunities, privileges, benefits, and exemptions from liability provided under the treaties governing the establishment and operations of the Administrator or under other applicable treaties and laws.
- 8.2. Claims and actions against the Administrator can be instituted only provided that the Administrator has made a waiver of immunity, privilege or benefit to the extent, and on such terms, that it considers favourable to its interests. Such waiver of immunity, privilege or benefit (or any part thereof) shall be made in accordance with the procedure specified in the Agreement Establishing the Eurasian Development Bank dated January 12, 2006.