



**SAHARA
AND SAHEL
OBSERVATORY**

OSS PROCUREMENT RULES

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DEFINITIONS

All terms which begin with a capital letter have the following meaning.

Terms beginning with a capital letter and not defined below have the meaning given to them in the applicable Financing Agreement.

Call for Expressions of Interest (CEI)	Refers to a public and open invitation allowing interested consultants to apply. The CEI specifies the content of the contract, the qualifications of the consultants and indicates the maximum number of consultants who will be shortlisted.
International Call for Tenders (ICT)	Refers to a competitive process with a view to awarding a contract for works, supplies, equipment, intellectual services (consultants) or other services, aimed at attracting the participation of foreign bidders.
National Call for Tenders (NCT)	Refers to a competitive process with a Call for Tenders. This procurement procedure targets primarily national candidates, without excluding foreign ones. It assumes the existence of a local sufficient, competitive and qualified offer, making the participation of foreign entities very unlikely.
Call for Tenders	Refers to an announcement made by the Beneficiary, inviting any supplier of works, goods, equipment or services (other than consultants) who meets the eligibility and qualification criteria mentioned in the Tender Documents, to submit an offer.
No Objection Notice (NON)	Refers to the no-objection notice issued by the OSS as part of its examination of the procurement process.
Beneficiary	Any direct or indirect beneficiary of an OSS funding, under a Financing Agreement.
International Good Practices	The principles of open, fair and transparent competition in the award of contracts, making it possible to make sure that the successful bidders provide enough guarantees as to their ability to carry out said contracts.
Financing Agreement	Any contract between a Beneficiary and the OSS governing an OSS financing for the benefit of the Beneficiary.
Corruption	Any act of active (act of corrupting) or a passive Corruption (act of being corrupted) of a Public Official or a Private Person.
Corruption of a Public Official	<p>Refers to :</p> <ul style="list-style-type: none"> • The fact of directly or indirectly promising, offering or granting an undue advantage of any kind to any Private Person, for themselves or for another person or entity, so that, in violation of their legal, contractual or professional obligations, they perform or refuse to perform an act; • The fact that any Private Person directly or indirectly, asks for or accepts, an undue advantage of any kind, for themselves or for another person or entity, in order to accomplish or refuse to accomplish an act, in

	violation of their legal, contractual or professional obligations.
Corruption of a Private Person	<p>Refers to :</p> <ul style="list-style-type: none"> • The fact of directly or indirectly promising, offering or granting, an undue advantage of any kind to any Private Person, for themselves or for another person or entity, so that, in violation of their legal, contractual or professional obligations, they perform or refuse to perform an act; • The fact that any Private Person directly or indirectly, asks for or accepts, an undue advantage of any kind, for themselves or for another person or entity, in order to accomplish or refuse to accomplish an act in violation of their legal, contractual or professional obligations.
Request for Proposals	Refers to the documents, information and forms prepared by the Beneficiary. They explain the rules to be observed when responding to an International or National Call for Tenders for the award of a contract for intellectual services.
Procurement Rules	Refers to this document (hereinafter "Rules") relating to the award of contracts financed through the OSS in foreign States, a copy of which is given to the Beneficiary.
Tender Documents	Refers to all documents, information and forms prepared by the Beneficiary.
Procurement Documents	Refers to all documents relating to a procurement process, including procurement notices, Calls for Expressions of Interest, Prequalification documents, Call for Tender Documents, Requests for Proposals, evaluation reports as well as contract models provided by the Beneficiary.
Fraud	Refers to any unfair action or omission, whether or not criminally incriminated, intended to deliberately deceive others, to intentionally conceal elements or to surprise or vitiate their consent, to evade legal or regulatory obligations and/or to violate internal rules in order to obtain an illegitimate benefit.
Over-the-counter	Refers to a process of awarding a contract to a service provider or consultant without prior competition (also referred to as "direct agreement").
Restricted List	Refers to the list of consultants who need to submit proposals for intellectual services, established by the Beneficiary after analysis of the applications received as part of a Call for Expressions of Interest. The Shortlist must include 4 (four) to 6 (six) consultants (subject to receiving a sufficient number of qualified applications).
Person	Refers to any person, any enterprise, any society, any government, any State or any dismemberment of a State, as well as any association or group of several of these persons, whether or not having legal entity.
Procurement Plan	Refers to the document established by the Beneficiary, listing all contracts financed through the OSS to be awarded, in the process of being awarded or already awarded (in the event of refinancing) as well as the key information relating thereto.
Anticompetitive Practice	Refers to:

Any coordinated or tacit action having the object or effect of preventing, restricting or distorting competition on a market, in particular when it aims to: (i) limit access to the market or the free exercise of competition from other Persons; (ii) obstruct the price setting by intentionally encouraging their increase or decrease; (iii) limit or control production, outlets, investments or technical progress; or (iv) allocate markets or sources of supply;

Any abusive exploitation by a Person or group of Persons of a dominant position on an internal market or a substantial part of it;

Any offer of abusively low prices, with the aim of eliminating a Person or one of its products from a market or preventing its access to a market.

Pre-Qualification	Refers to an initial (optional) stage of a competitive bidding for works, supplies or equipment, intended to select qualified candidates who will subsequently have to submit an offer.
Public Procurement Regulations	Refers to all applicable legislative and regulatory provisions in the country of the Beneficiary, to any award and execution of contracts.

SECTION I - GENERAL PROVISIONS APPLICABLE TO ALL TYPES OF CONTRACTS

1- GENERAL CONSIDERATIONS

The Beneficiary is responsible for the execution of the project and, consequently, for the award and monitoring of the execution of the contracts under the project. The OSS will make sure that “the funding it grants is exclusively dedicated to the purposes for which it was granted” and establishes detailed procedures to this end. The procurement rules and procedures to be followed for a given project vary depending on the different circumstances.

Generally speaking, three considerations will define the choice of conditions required by the OSS:

- a) The need to execute the project, including the procurement for supplies, works and services, under good conditions of economy and efficiency;
- b) The OSS desire to give all bidders meeting the eligibility criteria, whether they come from developed or developing countries, the same information and equal opportunities to obtain supply or works contracts that it finances;
- c) The importance of transparency in procurement.

Open competition is essential for effective procurement. Beneficiaries must select the method best suited to the specific procurement. In most cases, issuing an International Call for Tenders (ICT) is the best way to meet these requirements, if the competitive bidding is well organized and provides a preference for locally-manufactured supplies as well as, under certain conditions, in favor of national entrepreneurs. In most cases, the OSS asks its Beneficiaries to award contracts for supplies, works and services necessary for the project through international calls for tender open to all suppliers and contractors meeting the eligibility criteria.

2- SCOPE OF APPLICATION OF THE PROCUREMENT RULES

The procurement procedures described in these Rules apply to all contracts financed, in whole or in part, with the OSS funds. The Beneficiary may follow other procedures for any contract that is not financed by the OSS. In this case, the OSS must be able to make sure that the procedures adopted will enable the Beneficiary to execute the project with the required diligence and efficiency and that the supplies and work i) will meet quality standards and comply with the remainder of the project, ii) can be delivered or completed within the required time frame; and iii) the prices do not compromise the economic and financial viability of the project.

3- THRESHOLDS APPLICABLE TO CONTRACTS

A- The value of the commitment is equal to or greater than 30,000 USD

Contracts that are equal to or greater than 30,000 USD must be the subject of an international call for tenders after publication of a notice of call for tenders with the ToRs of the contract and the indication of the file application form to be presented by each bidder. The notice of call for tenders (or contract) is published in any appropriate media, in particular on the Beneficiary's website, in the world or country press. A minimum of three (3) applicants must be guaranteed for a true competition to take place. Failing this number of bidders, the procurement committee may accept the offers received, after the OSS "no-objection".

B- The value of the commitment is less than 30,000 USD and greater than or equal to 8,000 USD

Contracts that are less than 30,000 USD and greater than or equal to 8,000 USD must be the subject of a national call for tenders after publication of a call for tenders. This notice is published in any appropriate media, in particular on the Beneficiary's website, in the widest and most common national press. The number of candidates must make it possible to ensure real competition (at least 3).

C- The value of the commitment is less than 8,000 USD

These contracts are subject to a competitive negotiated procedure without publication, in which the Beneficiary chooses and consults at least three service providers and negotiates the contract with one or more of them.

4- CRITERIA OF ORIGIN

In order to promote competition, the OSS authorizes companies and nationals of all countries to provide supplies, works and services as part of projects it finances.

When a contract is fully or partially financed by the OSS, the Beneficiary cannot refuse either the prequalification or post-qualification of a company, nor its application, for reasons other than the capacities and resources available to this company to execute the contract. The Beneficiary cannot exclude a bidder for these same reasons either. This is why Beneficiaries must pay particular attention to the technical and financial qualifications of the bidders to make sure they have the capabilities required to have the contract executed.

Here follow the exceptions to this principle:

- a) Companies from a country or supplies manufactured in a country may be excluded if the law or regulation of the Beneficiary's country prohibits commercial relations with said country,
- b) No company hired by the Beneficiary to provide consultancy services for the preparation or execution of a project, nor any company affiliated with it, is subsequently admitted to provide goods, works or services which follow or are directly linked to the consulting services of said company relating to the said preparation or execution. This provision does not apply to the various companies (consultants, contractors, or suppliers) which contribute to the execution of the obligations of a turnkey contract holder or a design and construction contract,

- c) Public companies from the Beneficiary's country can participate only if they can prove: i) they are legally and financially secure, ii) they are managed according to the rules of commercial law and iii) they are not agencies that depend on the Beneficiary or the Secondary Beneficiary.
- d) A company excluded by the OSS under the OSS sanction rules and procedures in the fight against corruption cannot be awarded a contract financed by the OSS or benefit financially or in any other way from a contract financed by the OSS during the period determined by the OSS.

5- ANTICIPATED PROCUREMENT AND RETROACTIVE FINANCING

The Beneficiary may wish to initiate procurement before signing the corresponding OSS financing agreement. In this case, the procedures followed, including those relating to advertising, must comply with these Rules so that the resulting contracts can be financed by the OSS which will examine the Beneficiary procedures. The Beneficiary who awards contracts in this way bears all risks and the OSS is on no account compelled to provide funding for the project in question, after having approved the procurement procedures, documents or proposals. If the contract is signed, the OSS reimbursing any amount of money paid by the Beneficiary under the contract before signing the financing is called retroactive financing and is only authorized within the limits provided for in the Financing Agreement.

6- GROUPS OF BUSINESSES/CONSULTANTS

Any company can bid alone or in association, confirming joint and several liability, with local and/or foreign companies. The OSS does not accept that the submission of a bid is subject to the formation of groups or other forms of compulsory association between companies.

Consultants can join forces to pool their respective skills, strengthen the technical compliance of their proposals and provide access to a larger pool of experts, offer better approaches and methodologies and in some cases, offer lower prices. It may be a long-term association regardless of any specific mission or an association limited to a given mission.

If the Beneficiary engages a group, said group must designate one of these members to represent it. All participants, or their authorized representatives, must sign the contract. All participants are jointly and severally responsible for carrying out the entire mission.

7- EXAMINATIONS CARRIED OUT BY THE OSS

The OSS examines the Beneficiary's procurement procedures, the tender documents, the bid evaluation, the market award recommendations and the contract to ensure that the contract is awarded in accordance with the applicable procedures.

The Procurement Plan approved by the OSS specifies to what extent these examination procedures apply to the different categories of contracts which will be entirely or partially by the OSS.

8- PROCUREMENT INCOMPLIANT WITH THE RULES

The OSS does not finance expenses incurred under contracts for supplies, works, services and intellectual services, if the OSS finds out that the contract:

- a) Was not awarded in accordance with the provisions of the Financing Agreement and subsequently detailed in the Procurement Plan for which the OSS issued a no-objection notice;
- b) Could not be awarded to the tenderer, which should have been successful, due to deliberate delaying practices or other actions of the Beneficiary resulting in unjustifiable delays, the expiration of the validity period of the successful bid, or the unfounded rejection of any bid; or
- c) Involves a representative of the Beneficiary, or a beneficiary of any part of funding, who has engaged in corruption or fraudulent practices.

In these cases, whether during the prior or subsequent examination, the OSS declares the procurement non-compliant and cancels the part of the financing allocated to the services which have not been acquired in accordance with the agreed procedures. The OSS may also take other measures provided for by the Convention. Even after having expressed its no-objection and the contract is awarded, the OSS may declare the procurement non-compliant and apply all its corrective policies and measures, regardless of whether the financing is closed or not, if it turns out that the no-objection was issued based on incomplete, inaccurate or misleading information provided by the Beneficiary or that the terms of the contract were substantially modified without the OSS no-objection notice.

9- THE OSS REFERENCE

The Beneficiary must use the following text to mention the OSS in the procurement documents:

« *[Name of the Beneficiary]* obtained [or, where applicable, “requested”] funding through the OSS from (name of donor), of an amount equivalent to ... USD in order to finance the [name of the project] and intends to use this financing to settle the payments authorized under this contract. The OSS will make payments only at the request of [name of the Beneficiary or designated person] and after having approved said payments, which will be subject, in all respects, to the provisions of the [Financing] Agreement. The [Financing] Agreement prohibits any withdrawal from the Financing Account intended for the payment of any natural or legal person, or any importation of supplies when, to the knowledge of the OSS, said payment, or said importation, would fall under the following ban pronounced by the Security Council of the United Nations under Chapter VII of the Charter of the United Nations. No party other than [Name of the Beneficiary] may avail itself of the rights stipulated in the Agreement, nor pretend to have a claim on the funds of the [financing] ».

10- FRAUD AND CORRUPTION

The guiding principle of the OSS is to ask the Beneficiaries as well as the bidders, contractors, or suppliers of the contracts that it finances, to observe, during the award and execution of these contracts, the highest standards of professional ethics. Under this principle, the OSS:

- a) Defines the following expressions for the purposes of this provision:
 - i) Is guilty of “corruption”, anyone who directly or indirectly, offers, gives, asks for or accepts any advantage with a view to unduly influencing the action of another person or entity (including OSS staff and employees of other organizations that make or review procurement decisions) during the award or execution of a contract;
 - ii) Engages in “fraudulent maneuvers”, anyone who misrepresents, omits or distorts facts in order to influence the award or execution of a contract;
 - iii) Engages in “collusive practices”, a system or arrangement between two or more bidders, whether the Beneficiary is informed or not, with the aim of setting prices at artificial and non-competitive levels;
 - iv) Engages in “coercive practices”, harm or threat of harm, directly or indirectly, to persons or their property with a view to influencing their participation in the procurement process or affecting the execution of the contract;
 - v) Engages in “obstructive practices”, anyone who deliberately destroys, fakes, alters or conceals evidence on which an OSS investigation into corruption or fraudulent, coercive or collusive conduct is based, or makes false statements to his investigators with the aim of obstructing an investigation; or threatens, harasses or intimidates someone to prevent them from sharing information relating to this investigation, or from continuing the investigation.
- b) Will reject the proposal for award of the contract if it establishes that the bidder to whom it is recommended to award the contract is, directly or indirectly, guilty of corruption or has engaged in fraudulent, collusive, coercive or obstructive maneuvers with a view to obtaining this contract;
- c) Will declare the procurement non-compliant and cancels the portion of the funding allocated to a contract if it determines, at any time, that the Beneficiary has engaged in corruption, fraudulent, collusive, coercive or obstructive practices during the award procedure or execution of the contract in question, without the Beneficiary having taken, in due time and to the satisfaction of the OSS, the necessary measures to correct this situation;
- d) Will condemn a candidate or company at any time by excluding it indefinitely or for a specific period from any contract award, if the OSS establishes at any time that the company or candidate has directly or indirectly engaged in corruption, fraudulent, collusive, coercive or obstructive practices with a view to obtaining or executing a contract that the OSS finances;
- e) Will ask that the tender documents and contracts financed by the OSS contain a provision requiring bidders, suppliers, consultants, contractors and their subcontractors, representatives, staff, consultants, service providers or suppliers to “authorize the OSS to examine all accounts, accounting documents, statements and other documents relating to the submission of bids and the execution of the contract and to submit them to auditors designated by the OSS for verification”.

As for the contracts financed by the OSS, the Beneficiary may, with the express agreement of the OSS, include in the bid model, a provision by which the bidders will undertake to tender for and execute these contracts in compliance with the laws of the country against fraud and corruption (including illicit payments) listed in the tender documents. The OSS accepts the inclusion of such a commitment, at the request of the Beneficiary's country, provided that it has been able to ensure that the arrangements governing said commitment are acceptable.

11- CONFLICT OF INTEREST

Unless otherwise duly accepted by the OSS, these persons will be disqualified from the competitive process:

- 1) Are a subsidiary controlled by the Beneficiary or a shareholder controlling the Beneficiary, unless the resulting conflict has been brought to the attention of the OSS and positively resolved;
- 2) Have business or family relations with a member of the Beneficiary's services involved in the procurement process or the supervision of the resulting contract, unless the resulting conflict has been brought to the attention of the OSS and positively resolved;
- 3) Are controlled or control another bidder, are placed under the control of the same company as another bidder, directly or indirectly receive or award subsidies from and to another bidder, have the same legal representative that another bidder, directly or indirectly maintain contacts with another bidder allowing them to have and to give access to the information contained in their respective offers, to influence them or to influence the decisions of the Beneficiary;
- 4) Are engaged in an intellectual services mission which, by its nature, might be incompatible with their missions on behalf of the Beneficiary;
- 5) In the case of a procedure that aims at awarding a contract for works, supplies or equipment: i) have prepared or have been associated with a consultant who has drawn up specifications, plans, calculations and other documents used within the framework of the procurement procedure in question; ii) are themselves or one of the companies to which they are affiliated, recruited or must be recruited by the Beneficiary to supervise or control the works within the framework of the contract.

12- PROCUREMENT PLAN

The elaboration of a practical Procurement Plan is essential for the proper supervision and execution of a project. As part of the project preparation, the Beneficiary must develop a preliminary Procurement Plan, that might be provisional, for the entire project. The Beneficiary must come-up with a detailed and exhaustive Procurement Plan including all contracts for which procurement procedures will be initiated within the first 18 (eighteen) months of the project execution. An agreement with the OSS must be concluded during the financing negotiations. Throughout the project duration, and at least once a year, the Beneficiary must update the Procurement Plans previously awarded and those to be awarded within the following 12 (twelve) months. All Procurement Plans, their updates and modifications must be subject to prior review and a no-objection notice before execution.

SECTION II - PROVISIONS RELATING TO CALLS FOR TENDER

There can be an international or a national Call for Tenders.
International and National Calls for Tenders can be made as:

Open Call for Tenders

Refers to a competitive process organized with a view to awarding a contract, preceded by a publication and open, without limited number, to all bidders meeting the eligibility and qualification criteria. This is the award method usually used for supply, equipment or works contracts. It may or may not be preceded by prequalification (the prequalification then being integrated into the Call for Tenders process).

Restricted Call for Tenders

Refers to a competitive process organized with a view to awarding a contract to which access is limited to a Restricted List of bidders established by the OSS and whose number is previously limited. This is the method of award usually used for intellectual service contracts.

1-TENDER FILE

The tender file must contain all the information that a candidate/prospective bidder may need to prepare a tender. The detail and complexity of the documents vary depending on the scope and nature of the proposed contract, but the file generally includes: the call for tenders notice; instructions for bidders and specific details of the call for tenders; a template or offer letter; a market model; the book of general administrative clauses and the book of specific administrative clauses; specifications and technical studies; relevant technical data (including geological and environmental data); the list of supplies or the bill of quantities; delivery or completion times; the specifications and necessary plans and annexes such as models of the various guarantees to be provided. The criteria which will be applied for the bid evaluation are specified in the instructions to tenderers. For works, the tender documents may indicate the total estimated cost of the contract, but must not indicate accurate cost estimates established by the beneficiaries such as quantitative estimates.

The tender file must indicate the nature of the contract to be concluded and the contractual provisions.

1.1- Announcement and advertising

Each contract must give rise to the publication of a specific notice, which will be inserted at least in a nationally distributed newspaper in the Beneficiary's country or on an e-portal or a website in common use and with national and international access, in English or French, or in a national language of the Beneficiary's choice. Notices will be published sufficiently in advance so that interested companies have time to collect the tender documents.

1.2- Bid validity and bid guarantee

The bids submitted by the candidates/bidders will remain valid for a sufficient period, indicated in the tender documents, so that the Beneficiary compares the bids and evaluates them, and collects all necessary approvals from the Beneficiary's organization responsible for awarding the contract, as well as the no-objection notices from the OSS (if so required by the Procurement Plan) for recommendations relating to the award of the contract during this period.

The Beneficiaries may ask candidates to provide a bid guarantee, the amount and form of which will be specified in the Tender file. If it is provided, the bid guarantee must, as a general rule, remain valid 4 (four) weeks longer than the bid, in order to give the Beneficiary time to act. The guarantees of unsuccessful candidates will be returned to them when the contract has been signed with the successful bidder. Instead of a bid guarantee, the Beneficiary may ask tenderers to sign a declaration in which they acknowledge that, if they withdraw or modify their tender during the validity period or, if the contract is awarded to the one of them but does not sign it, or does not submit a performance guarantee before the deadline set in the tender file, then the bidder will be excluded for the duration provided for in the tender file for the markets of the Organization which launched the call for tenders.

1.3- Languages

The tender documents must be submitted in English or French according to the Beneficiary choice. The Beneficiary may decide to translate these documents into another language (hereinafter referred to as the "National Language") which may be: a) the national language of the Beneficiary; or b) the language used in commercial transactions in the country of the Beneficiary. If these documents are published in two languages, bidders may submit their application or offer in one or the other of these two languages. The contract signed with the successful bidder must always be drawn up in the language in which the offer was submitted and said language will govern the contractual relations between the Beneficiary and the successful bidder. If the contract is signed in the National Language, the Beneficiary will provide the OSS with an accurate translation of the contract in English OR French, at the time of submission of the original copy of the contract in accordance with Annex 1. Bidders must not be required or authorized to sign contracts in more than one language.

1.4- Clarity of the Tender file

The tender documents must be drawn up in such a way as to allow and encourage international competition; it must clearly and precisely describe the services to be carried out, the execution or delivery times, the minimum performance standards, the maintenance and technical guarantee conditions, as well as all other necessary conditions and terms.

The tender documents must indicate all the factors which, in addition to the price, will be considered when evaluating the offers and specify how these factors will be assessed or evaluated.

All potential candidates/bidders must receive the same information and be able to obtain additional information in time. In the case of complex works or supplies, in particular for contracts involving the renovation of existing works or equipment, potential candidates may be invited to a preparatory (in person or online) meeting during which they can request clarifications to representatives of the Beneficiary. The minutes of the meeting must be communicated to all potential candidates, with a (hard or soft) copy sent to the OSS. All modifications to the Tender file, including additional information, clarifications, corrections and modifications must be communicated to all those who requested the initial file and to all registered candidates duly before the deadline for the tender submission to enable them to make the



necessary arrangements. Any change in the tender file must be introduced as an amendment. If applicable, the deadline will be extended. The OSS will receive a hard or soft copy which will be consulted for the issuance of a no objection when the contract is subject to prior examination.

1.5- Standards

The standards and technical specifications mentioned in the call for tenders must encourage the widest possible competition, and ensure that the supplies and/or work requested meet the main and required performance criteria. The Beneficiary will set the standards to which the equipment, materials and methods of execution must meet international standards, such as those of the International Organization for Standardization. If international standards do not exist or are not suitable, the Beneficiary may specify national standards. In all cases, the tender file will indicate that equipment, materials or methods of execution conforming to other standards will also be accepted, provided that these make it possible to obtain a substantially equivalent quality.

1.6- Use of brand names

Specifications must be defined based on the required characteristics and/or performance criteria. Any reference to brand names, catalog numbers or similar classifications should be avoided. If it is necessary to use a brand name or catalog number of a particular manufacturer to complete a specification which would otherwise not be sufficiently accurate, the words "or equivalent" should be added after that brand name or catalog number. The specifications must make it possible to accept offers for supplies that have similar characteristics and whose performance is at least substantially equivalent to that of the specified supplies. Review and issuance of a no-objection from the OSS is required before the Beneficiary publishes the Tender Document for supplies with a specific brand name that does not have an equivalent, in particular for Technological Information Systems. The Beneficiary must provide exhaustive justification, including elements of compatibility with existing systems and previous investments in the brand's product.

1.7- Price setting

In the case of supply contracts, candidates will have to submit their bids based on CIP (named place of destination) prices for supplies manufactured abroad and intended to be imported. As for the supplies that have been previously imported, candidates will have to submit their bids based on CIP prices, indicating separately the amount of customs duties and import taxes already paid. For supplies manufactured or assembled in the Beneficiary's country, candidates will have to submit their bids based on EXW (factory, in-store) prices plus domestic transportation costs to the place of destination and insurance. Bidders must be authorized to contact any company meeting the eligibility criteria for the maritime transport or otherwise, of the supplies and their insurance. When the bidder must be responsible for installation, commissioning or other similar services, as in the case of "Supply and Installation" contracts, he must indicate the price of these services.

In the case of single responsibility contracts (turnkey contracts), bidders must indicate the price of the equipment or work once its installation is completed on the project site, considering all the costs relating to the supply of materials, maritime and inland transport services and their insurance, installation and commissioning, as well as the corresponding works and all other services included in the contract (design, maintenance, exploitation, etc.). Unless the tender documents state otherwise, a turnkey price must include all duties and taxes.

For works contracts, bidders must indicate the unit prices or fixed prices for the execution of the works. These prices must include all duties and taxes. Bidders must be allowed to go to any supplier meeting the criteria of origin to obtain all the inputs they will require (except unskilled labor), so that they are able to submit the most competitive bid possible.



1.8- Price-revision

The tender file must indicate whether the bid must be presented i) based on firm prices or ii) based on revisable prices; the review will apply in the event of variations (upwards or downwards) in the main elements of the market price (labor, equipment, materials and fuels, etc.). Generally speaking, there is no need to insert a price review clause in simple contracts providing for the delivery of supplies or the execution of works in less than 18 (eighteen) months, but it should be done within contracts lasting more than 18 (eighteen) months. However, for certain categories of equipment, it is common practice to request firm prices, regardless of the delivery time, and, in this case, there is no need to include a review clause of the prices in the contract.

Prices must be reviewed using one or more formulas whereby the total market price is broken down into components which are adjusted according to price indices specified for each of them. The tender documents must clearly define the method that will be used, the formula chosen (if applicable) and the date used to do the math. If the settlement currency is different from the currency of the country from which the input in question comes and from the corresponding index, the formula(s) used must include a correction factor, in order to prevent the price review from leading to a wrong correction. In exceptional circumstances, the tender documents may provide for a review of the price based on supporting documents (including invoices) produced by the supplier or contractor.

1.9- Transport and insurance

The tender documents must authorize suppliers and contractors to contact companies of their choice, provided that they meet the criteria of origin, to obtain the transport and insurance services they will need. It must also specify the types and terms of insurance that the candidate must take out. Compensation payable under transport insurance must represent at least 110% (one hundred and ten percent) of the contract amount in the market currency or in a freely convertible currency so that it is possible to quickly replace lost or damaged supplies. For large construction or Supply and Installation projects, bringing together several contractors on the same site, the Beneficiary can take out a global policy covering the entire project. For this to happen, he will have to call on competition.

1.10- Currency provisions

The tender documents must indicate the currency or currencies in which the candidates/bidders must give their prices, the method which will be followed to convert the prices expressed in various currencies into a single currency to compare the bids, and the currencies in which the market price will be settled. The following provisions are intended: i) to give candidates the possibility of minimizing any exchange risk relating to the bid and payment currency, and therefore to offer the best possible price; ii) to give candidates from countries with weak currencies the possibility of using a stronger currency and therefore to establish the price of their bid on a firmer basis; and iii) make sure that the evaluation process is fair and transparent.

1.11- Bid currency

The tender documents must indicate that the candidate/bidder can quote the price of their bid in any currency of their choice. A candidate/bidder who wishes to submit an offer corresponding to the sum of amounts denominated in several foreign currencies may do so, provided that no more than three foreign currencies are used. In addition, the Beneficiary may request candidates/bidders to denote the portion of their bid price representing local expenses incurred in the currency of the Beneficiary's country.

If the contract is about works, the Beneficiary may call upon the candidates to express the entire bid price in the national currency and indicate, expressing them as a percentage of the bid price and specifying the exchange rates used for calculations, payments to be made in a maximum of three foreign currencies for inputs to come from a country other than the Beneficiary's country.

1.12- Conversion for bid comparison purposes

The bid price is the sum of all payments requested by the bidder in various currencies. For comparison purposes, the prices offered must be converted into a single currency chosen by the Beneficiary (national currency or freely convertible foreign currency) and specified in the tender file. For this conversion to be carried out, the Beneficiary must use the selling price given by an official source (for example, the Central Bank), or by a commercial bank or by an international publication for similar transactions on a date chosen in advance; the tender file must specify said source of information and said date, not to exceed 4 (four) weeks before the deadline for receiving the tenders, nor after the expiration date of the initial period of the bid validity.

1.13- Settlement currency

The market price must be settled in the currency or currencies in which payment was requested in the successful bid.

Where the bidder must quote its bid price in the national currency, and has requested foreign currency for certain payments expressed as a percentage of the bid price, the bid rates currencies to be used for settlement purposes must be those that the candidate has specified in his bid, so that the value of the foreign currency fraction of the bid price is maintained without loss or gain.

1.14- Settlement Terms

Payment terms must be consistent with international commercial practices applicable to the supplies, works and services (other than consultancy services) considered.

a) As for supply contracts, payment will be made, in full, upon delivery at the agreed point in the contract, after inspection, where applicable, of the supplies purchased; as for contracts providing for the installation and commissioning of these supplies, part of the total due may be withheld until the supplier has fulfilled all contractual obligations. Generally speaking, the OSS requires the use of documentary credits for the supplier to be paid quickly. For large material and equipment contracts, it will be necessary to provide for the granting of sufficient advances and, for long-term contracts, payments in installments during the manufacturing or assembly period.

b) As for works contracts, it will be appropriate to provide for, where applicable, start-up advances, advances for the contractor's equipment and materials, payments in installments, and the establishment of reasonable security deductions which will be released when the contractor has fulfilled all obligations under the contract.

Any advance paid for start-up costs and similar costs, paid after the signing of a contract for supplies, works, or services (other than consultancy services) must be calculated based on the estimated amount of these expenses and be specified in the call for tenders. The amount and payment schedule for other advances (for example, for the purchase of materials to be delivered to the site and used for the execution of the work), must also appear in the tender file which will also specify how to constitute the guarantees requested for these advances.

The tender document must indicate the conditions and payment methods chosen, specify whether other provisions will be accepted and, in this case, to what extent the conditions will influence the bid evaluation.

1.15- Variant bids

When bidders are allowed to submit alternative bids, the Tender Document must clearly state how such bids are to be submitted, how such bids are to be priced and the basis on which the variants will be evaluated.

1.16- Contract clauses and conditions

The contract documents must clearly define the works to be carried out, the goods and services (other than consultancy services) to be provided, the rights and obligations of the Beneficiary and the supplier or contractor, as well as, where applicable, the functions and powers of the consulting engineer, the architect or the Delegate Project Manager with regard to the supervision and monitoring of the contract execution. The general administrative clauses are always supplemented by specific administrative clauses applicable to the supplies, works or services (other than consultancy services) and to the project location. Market conditions must provide for a balanced distribution of the risks and responsibilities.

1.17- Guarantee of good performance and guarantee deduction

For works contracts and single liability contracts, the contract must request the provision of a guarantee of a sufficient amount to protect the Beneficiary if the contractor fails to fulfill contractual obligations. The terms and amount of the performance guarantee must be adequate, as specified by the Beneficiary in the tender documents. The amount of the guarantee may vary and is determined depending on the nature of the guarantee provided and the nature and importance of the works. A part of this performance guarantee (known as the performance guarantee) will remain valid during the technical or maintenance guarantee period until final receipt by the Beneficiary. Instead of this performance guarantee, the works contract may provide for a guarantee deduction, i.e. a deduction made on each periodic payment and retained until final receipt. Contractors may be authorized to replace this deduction with an equivalent bank guarantee after provisional acceptance.

For supply contracts, the obligation to provide a performance guarantee will depend on market conditions and commercial practices in force for the relevant supplies. The Beneficiary can protect himself against suppliers/manufacturers who fail to fulfill their contractual obligations and ask them to provide a guarantee of a reasonable and appropriate amount. The Beneficiary may also request that the guarantee covers the technical guarantee obligations, as well as the obligations to be fulfilled regarding installation or commissioning, in accordance with the applicable DTAO.

1.18- Contractual penalties and bonuses

The terms and conditions of the contract must provide for penalties or other monetary sanctions of a reasonable amount in the event that delayed delivery of the supplies or in the completion of the works, or the non-compliance of the supplies, works or services (other than consultancy services) with the specifications, would result in additional expenses or loss of revenue or other benefits to the Beneficiary. Conversely, they may provide for the payment of a bonus to suppliers who deliver the supplies or to contractors who complete the work before the deadlines specified in the contract, if the Beneficiary takes advantage of it.

1.19- Applicable law and dispute resolution

The clauses and conditions of the contract must indicate the applicable law and the relevant body for the resolution of disputes. International commercial arbitration in a neutral venue has certain practical advantages over other methods of dispute resolution. This is why the OSS requires that the Beneficiaries go for such an arbitration for contracts for supplies, works and services (other than consultancy services), unless the OSS has expressly agreed to deviate from this requirement for justified reasons, such as the equivalence of national provisions and arbitration procedures or when the contract has been awarded to a bidder from the Beneficiary's country. The OSS must not be appointed as an arbitrator, nor be invited to appoint one. In the case of works contracts, Supply and Installation contracts and single responsibility contracts (turnkey contracts), the provisions concerning the resolution of disputes must also provide for the use of conciliation or mediation mechanisms to speed up the dispute resolution.

2- OPENING OF THE BIDS, EVALUATION OF THE BIDS AND AWARD OF THE CONTRACT

2.1- Bid preparation Deadline

The time allowed for the bid preparation and submission must be set considering the conditions specific to the project and the scale and complexity of the contract. As a general rule, for an ICT, 6 (six) weeks from the date of the call for tenders or the date of the file release would be appropriate. When it comes to large works or complex equipment, it is necessary to give at least 12 (twelve) weeks to allow potential candidates to carry out the necessary research before submitting their bids. Bidders will be able to apply by mail or in person. Beneficiaries may also use a system allowing bidders to apply electronically. The call for tenders' notice must specify the submission deadline and place.

2.2- Terms of Bid Opening

The bid opening session must take place on the deadline set for the bid submission or very shortly thereafter; the date and place of this session must be announced in the call for tenders. The Beneficiary must open all bids received by the bid submission deadline at the venue announced in the Call for Tenders file, regardless of the number of bids received by the deadline. When opening the bids, the Beneficiary must neither comment on the good or not so good points of the bids. The bid opening session must be public, i.e. the tenderers or their representatives may be present (in person or online when bids are submitted electronically). The name of each bidder and the total amount of each bid, and any variation it has been authorized or invited to submit, must be read aloud (and posted online when bids are submitted electronically), and recorded in the minutes of the meeting. A copy of these minutes must be sent as soon as possible to the OSS and to all bidders who submitted their bids on time. Bids received after the established deadline, and those which have not been opened and read aloud during the bid opening session, must be rejected.

2.3- Clarifications and modifications to be made to the bids

No bidder may be invited or permitted to modify his bid, including any voluntary increase or decrease in bid prices, after the bid receiving deadline. The Beneficiary may ask any bidder to specify a given point of his bid for evaluation, but he must neither invite nor authorize him to modify the content or the price after the bid opening. Requests for explanations and responses from bidders must be communicated in writing, in paper or by an electronic system approved by the OSS.

2.4- Confidential nature of the procedure

After the bid opening public session, no information relating to the bid examination, the explanations requested and the bid evaluation, or the recommendations relating to the award of the contract, must be communicated to the tenderers or to any other person ineligible to participate in the selection procedure until the award of the contract has been published.

2.5- Review of the Bids

The Beneficiary must check whether the bids are 1) duly signed; 2) supported by the requested guarantees or a signed declaration; 3) in accordance with the provisions of the tender file; and 4) admissible. Any bid that does not substantially comply with the clauses, conditions and specifications of the Tender documents, to the extent that it presents material differences with these, or include significant reservations, must be rejected. Once bids have been opened, the Bidder shall neither be authorized nor requested by the Beneficiary to correct or remove material differences or reservations.

2.6- Evaluation and Comparison of the Bids

There might be different evaluation methods depending on the contract.

2.6.1- Bid evaluation methods for Intellectual Services Contracts

The choice of the most interesting bid is made based on the method provided for in the ToRs.

2.6.1.1- The selection method based on quality/price ratio.

It is the most commonly practiced method. It is based on quality and cost, with a weighted rating between the technical bid and the financial bid.

The selected bid is the one collecting the best technical-economic weighted average.

The tender documents must specify the minimum score that the technical proposals must have.

The relative weighting of quality and cost criteria depends on the nature of the combined mission. The highest is considered to be the most advantageous proposal.

In the case of SMBQ, the total score will be obtained by adding the technical and financial scores, after introducing a weighting according to the formula and the indications appearing in the ToRs.

The Consultant having presented the most advantageous Proposal, i.e. having obtained the highest (technical and financial) combined score, will be invited to negotiate a contract.

The evaluation of proposals will be done in two stages: 1) technical quality, 2) cost. Those responsible for evaluating technical proposals will only have access to the financial proposals following the technical evaluation, including the OSS reviews and no objection. That is when financial proposals will be open. The evaluation will be carried out in full compliance with the provisions of the Request for Proposals.

Due to the need for high quality services, the quality of the evaluation of technical proposals is highly important. The Beneficiary will evaluate each technical proposal using an evaluation committee of at least 3 (three) and at

most 7 (seven) members, including qualified specialists in the sector corresponding to the mission in question. Before participating in the evaluation, all members of the committee must certify that they have no conflict of interest. When the OSS has decided that the technical evaluation does not comply with the provisions of the Request for Proposals or does not adequately evaluate the strengths and weaknesses of the proposals, and the committee is unable to resolve the situation in a timely manner, the OSS may request the Beneficiary to create a new evaluation committee comprising international specialists in the sector of the mission in question, if necessary.

The Request for Proposals will describe each criterion and sub-criteria and their respective maximum score, and will disclose the minimum overall technical score below which proposals will be rejected and deemed unfruitful. The indicative range for the minimum overall technical score is between 70 and 85 (seventy and eighty-five) on a 1 to 100 (one to one hundred) scale. The maximum score for each criterion and the minimum overall technical score will be determined based on the nature and complexity of the mission.

The criteria will include a) the experience of the consultant applicable to the assignment in question, b) the quality of the proposed methodology, c) the qualifications of the key experts proposed, d) the transfer of knowledge, if required by the ToRs and e) the number of national experts for the execution of the mission. They will be included in the indicative range indicated below, any exception being subject to a no objection from the OSS. The maximum score for "participation of experts from the beneficiary's country" as indicated below will not exceed 10 (ten).

Experience of the Consultant applicable to the mission: Methodology	0 to 10 20 to 50
Key experts :	30 to 60
Knowledge transfer :	0 to 10
Participation of experts from the country: (Not exceeding 10 points)	0 to 10
Total	100

The Beneficiary generally refines the evaluation criteria by splitting them into sub-criteria. Each criterion will then be rated based on the weighting assigned to each sub-criterion. Thus, the sub-criteria relating to the methodology could be **innovation** and the **degree of detail**. However, the number of these sub-criteria better be appropriate.

The methodology will be all the more important as the mission is complex (for example, multidisciplinary feasibility studies or management studies).

Only key experts should be evaluated for they are the ones who ultimately determine the quality of services. The more weight the proposed mission will be, the more weight it will need to give to this criterion. The Beneficiary will assess the qualifications and experience of the proposed key experts based on CVs, which must be accurate, complete and signed by an authorized manager of the consultant and by the proposed person himself. Individuals will be judged based on the following three sub-criteria:

- General qualifications: level of education and training, years of experience, positions held, missions carried out as an expert, experience in developing countries, etc.;
- Specific qualifications: studies, training and experience in the sector, field, subject of the mission in question, etc.; and

- Experience relating to the region: knowledge of the country's language, culture, administrative and political organization, etc.

Beneficiaries will evaluate each proposal based on its compliance with the ToRs. Any proposal that does not meet important elements of the Request for Proposals will be rejected at this stage. Technical proposals containing financial information will be deemed non-compliant.

Members of the evaluation committee will evaluate the proposals, in accordance with the evaluation criteria specified in the Request for Proposals, regardless of each other and of any external influence exerted by any person or entity. Proposals that do not obtain the minimum technical score as provided for in the Request for Proposals will be rejected. At the end of the evaluation process, this report will justify the evaluation results and the total technical score of each proposal by describing the respective pros and cons of the proposals. Significant differences between the individual scores assigned by different members to a proposal for the same criterion or sub-criterion will be examined and a justification must be provided in the technical evaluation report. In the case of contracts subject to prior examination, the technical evaluation report, including the detailed evaluation sheets of each member of the committee, will be submitted to the OSS for examination and issuance of a no-objection notice. All documents relating to the assessment, such as individual rating sheets, will be saved.

When the technical evaluation report is completed (and the OSS has issued its no-objection opinion for the contracts subject to prior review), the Beneficiary will inform the consultants, whose proposals have not obtained the minimum overall technical score or have been deemed non-compliant with the Request for Proposals and the ToRs, their financial proposal will be returned to them without having been opened after signing the contract. In addition, the Beneficiary will inform each of said consultants of their overall technical score as well as the scores obtained for each of the criteria and sub-criteria, if applicable. The Beneficiary will also notify consultants who have obtained the minimum overall technical qualification score of the date, time and place of financial proposals opening. This date will be set to allow the consultants to make the necessary arrangements to attend the financial proposal opening session. Financial proposals will be opened in the presence of consultant representatives who wish to attend (in person or online). The consultant's name, technical scores, including breakdown by criterion, and total prices will be read aloud (and posted online for e-proposals) and recorded in writing upon financial proposals opening. The Beneficiary will prepare the minutes of the opening and a copy will be sent to the OSS and to all consultants who submitted proposals as soon as possible.

The Beneficiary will then evaluate and compare the financial proposals in accordance with the following procedures. Prices will be converted into a single currency chosen by the Beneficiary (national currency or freely convertible foreign currency), specified in the Request for Proposals. The Beneficiary will carry out this conversion based on the sales prices of these currencies provided by an official source or by a commercial bank, or by an international newspaper for similar transactions. The Request for Proposals will specify the source to be used for determining these exchange rates as well as the date to be considered. It is, however, understood that this date cannot exceed four weeks earlier than the deadline for submitting proposals, nor later than the initial date of expiry of the proposals' validity. For contracts paid based on the time spent, any calculation error will be corrected, and prices will be adjusted if they do not reflect the inputs included in each of the technical proposals. For lump sum contracts, the consultant is supposed to have included all prices in his financial proposal, so that no arithmetic corrections or price adjustments will be made.

2.6.1.2- The selection method based on quality only SMBQ

This method is suitable for the following types of mission:

- i. Complex or very specialized missions for which it is difficult to precisely define the ToRs and what is required of the consultant and for which the consultant is expected to bring innovation in his proposals,
- ii. Missions with a significant downstream impact; and
- iii. Missions that may be executed in significantly different ways, so proposals will not be comparable.

The call for proposals file specifies the minimum score for technical proposals.

In the event of selection based on technical quality only, and after ranking of the Technical Proposals, the consultant having obtained the highest score will have to submit his financial proposal.

If the financial proposal was requested with the technical proposal, only the financial proposal of the Consultant having obtained the highest technical score is opened.

All other financial proposals will be returned unopened after successful contract negotiations and signing.

2.6.1.3- The selection method based on the determined budget SMBDB

This method is suitable when:

- i. The type of service required from the consultant is simple and can be properly defined;
- ii. The budget is reasonably estimated and fixed; and
- iii. The budget is sufficient to allow the consultant to carry out the mission:
 - In the call for proposals file, the cost of services is indicated as a determined budget which must not be exceeded.
 - The call for proposals file specifies the budget and the minimum score for technical proposals.
 - The proposal with the highest technical score and which falls within the determined budget is considered the most advantageous proposal.
 - In case of SMBDB, proposals exceeding the indicated budget are rejected.
 - The OSS selects the consultant who presented the most advantageous proposal, i.e. the highest ranked technical proposal within the limits of the indicated budget and invites this consultant to negotiate the contract.

2.6.1.4- The Least Cost Selection Method LCSM

- The call for proposals file specifies the minimum score that technical proposals must achieve.
- Of all the proposals that obtain a score higher than the minimum technical score, the lowest evaluated proposal is considered the most advantageous proposal.
- This method is generally suitable for standard or routine missions for which practices and standards are well-established.
- In the event of Least Cost Selection (LCS), the OSS selects the consultant who presented the most advantageous proposal, i.e. the lowest cost proposal evaluated among those who obtained the minimum required technical score.

2.6.2- Bid Evaluation Methods for Goods, Works and Services Contracts

The choice of the most interesting bid is made based on the method mentioned in the specifications (“best bid” or “lowest bid”).

The tender judgment commission carries out the following operations:

- **If the award is favorable to the “lowest bidder”:**
 1. Bottom-up ranking of all financial bids.
 2. Verification of the compliance of the tenderer technical bid having presented the lowest financial offer, with the requirements of the specifications.
 3. The award of the contract to the best financially ranked bidder whose offer complies with the specifications.

The winning bid is then the lowest evaluated offer in accordance with the specifications.

- **If the award is favorable to the “highest bidder”:**
 1. In the evaluation of technical bids.
 2. A l'évaluation des offres financières des offres techniques jugées acceptables seulement.

The selected bid is the one having obtained the best weighted average of the technical score and the financial score.

The winning bid is then the best evaluated bid.

Preferences in favor of the Beneficiary's country

- 3.1.** At the request of the Beneficiary, a margin of preference, as specified in the Procurement Plan and in the tender documents, may be granted during the bid evaluation:
- a) For supplies manufactured in the Beneficiary's country, when comparing bids offering such supplies with bids offering supplies manufactured abroad;
 - b) For works carried out in member countries whose Gross National Product per capita is below a certain threshold, when comparing bids submitted by eligible contractors from the Beneficiary's country with bids from foreign companies.

Extension of the bid validity

The Beneficiaries must complete the bid evaluation and the award of the contract before the initial period of the bid validity expires, to avoid any extension request. Any request to extend the bid validity, with exceptional circumstances, must be presented in writing to all candidates before the initial period expires. The duration of the requested extension must be limited to the time necessary to complete the bid evaluation, obtain the required no-objection, and award the contract. In the case of fixed price contracts, any extension request, with the exception of the first, may be granted only if the Beneficiary has provided a price updating mechanism, in accordance with the provisions of the OSS DTAO, to adjust the price of the accepted bid in order to consider any increase in the cost of inputs necessary for the execution of the contract that might have occurred during the extension period. Applicants must not be asked or allowed to change the (base) price or other conditions of their bid. They will have the right to refuse the requested extension. If the tender document provides for a bid guarantee, bidders may exercise their right to refuse an extension and not lose the bid guarantee or find themselves disqualified, but those who agree to extend the validity of their bid will also have to extend the warranty.

Award of the contract

The Beneficiary awards the contract, during the bid validity period, to the tenderer who meets the appropriate capacity and resources criteria and whose offer has been found substantially compliant with the provisions of the Call for Tender documents. The tenderer may neither be authorized nor required to accept to provide services not included in the tender documents or to modify in any other way the initial bid, as a condition of winning the contract.

Negotiations and award of the contract

The negotiations will focus on the ToRs, the methodology proposed to carry out the mission, the resources made available to the consultant by the Beneficiary, and the specific conditions of the contract. These discussions will not significantly modify the scope of services defined by the initial ToRs nor the contract conditions, so that the technical quality of the final product, its cost, and the relevance of the initial evaluation are not affected. The planned human resources must not be significantly reduced for the sole purpose of complying with the available or estimated budget. The final ToRs and the agreed methodology will be incorporated into the Services Description, part of the contract.

The selected entity will not be authorized to replace key experts, unless both parties agree that such replacement has become unavoidable by excessive delay in the selection process, or that such replacement(s) is (are) essential to the achievement of the mission objectives. If this is not the case, and if it has been found that the entity included key experts in the proposal without ensuring their availability, this company may be disqualified and the selection process will proceed with the consultant who came in second. Key experts proposed as replacements must be as or more qualified than the experts initially proposed.

Financial negotiations will determine the tax obligations of the consultants in the Beneficiary's country (if applicable) and how to consider this tax in the contract. Fixed-price contracts are based on the delivery of results (or products), the price proposed will therefore include all costs (experts' working time, overheads, travel, accommodation, etc.). Consequently, if the selection method for a fixed price contract included cost as an evaluation factor, the proposed price cannot be negotiated. In the case of time-based contracts, payment is based on inputs (the experts' working time and reimbursable costs), and the proposed price will include the remuneration of the experts and an estimate of the amount of reimbursable costs. If the selection method includes cost as an evaluation factor, the remuneration of the experts can be negotiated only in exceptional conditions, when the remuneration of the experts is proposed at levels much higher than those which are usually invoiced by the consultants for similar markets. This is why the negotiation ban does not keep the client from requesting clarification and, if the prices are very high, requesting changes to the remuneration after consultation with the OSS. Reimbursable costs must be paid based on costs actually incurred upon presentation of receipts; therefore, they cannot be negotiated. However, if the client wants to set maximum unit prices of certain reimbursable costs (such as travel or accommodation), he must indicate the maximum levels of these rates in the Request for Proposals or set a daily allowance in the Request for Proposals.

If negotiations with the first-ranked consultant are unsuccessful, the Beneficiary will inform said consultant in writing of all unresolved points and will give him one last opportunity to respond in writing. Negotiations can only be broken off for budgetary considerations. If the disagreement persists, the Beneficiary will inform the candidate in writing of his intention to break off the negotiations. The negotiations can then only be broken off after the issuance of the OSS no-objection notice, and the second-ranked consultant will be invited to sit for negotiations. The Beneficiary will provide the OSS with the minutes of the negotiations and all relevant communications for review, as well as the reasons justifying the termination of the negotiations. These negotiations cannot be resumed once negotiations with the second-ranked consultant have begun. Upon positive conclusion of the negotiations, and after issuance of the OSS no-objection notice, the Beneficiary will notify all other shortlisted consultants that they have not been retained, as soon as possible.

Rejection of all bids

1/ Goods, works and services

Generally speaking, the tender documents stipulate that the Beneficiary may reject all bids received. This rejection can be justified when there has been no real competition, or when all bids received do not comply with the provisions of the Call for Tenders file, or when none of the candidates meets the qualification criteria, or that the price of the accepted bid is significantly higher than the estimated cost updated by the Beneficiary or his budget. The lack of competition does not depend on the number of applicants only. Even if only one bid is submitted, the Tender process may be considered valid if the Tender was properly published, the qualification criteria were not unduly restrictive and the prices comply with the market values. When rejecting all bids, the Beneficiary must analyze the reasons for such a decision and make the appropriate modifications to the Call for Tenders before launching a new Call for Tenders. Changing the qualification criteria can only be justified if they were too restrictive.

The sole purpose of obtaining lower prices cannot be ground for the rejection of all bids and the request for new ones based on the same Tender and contract documents. If the compliant bid considerably exceeds the cost estimates established and updated by the Beneficiary, the Beneficiary must investigate the causes of this excess and consider relaunching the Call for Tenders in accordance with the provisions of the preceding paragraphs. He may also begin negotiations with the candidate to try to obtain an acceptable contract based on a reduction in the scope of services and/or a modification of the distribution of risks and responsibilities likely to result in a reduction of the market price. However, a substantial reduction in the scope of the contract or a substantial modification of the contract documents may justify the relaunch of the Call for Tenders.

The Beneficiary must obtain the prior no-objection notice from the OSS before rejecting all bids, requesting new bids, or entering into negotiations with the successful candidate.

2/ Intellectual services

The Beneficiary will be entitled to reject all proposals only if i) they are non-compliant because they do not meet important aspects of the ToRs or present major deficiencies with respect to the ToRs; or ii) all do not achieve the minimum technical score specified in the Request for Proposals; or (iii) if the offered price of the selected proposal is substantially higher than the available budget or recent updated cost estimate. In the latter case, as an alternative to a new call, it will be necessary to see, in consultation with the OSS, whether it is possible to increase the budget or reduce the scope of services. However, a substantial reduction in the scope of services is not acceptable and will require re-calling for new proposals. If cost is a factor in evaluating a time-based contract, the number of people per month proposed by the consultant may be negotiated, provided this does not compromise quality or affect the mission. Even in such cases, the remuneration of experts should not be negotiated.

Before rejecting all proposals and requesting new ones, the Beneficiary will explain his decision to the OSS and obtain a no-objection notice therefrom. The new selection process may be based on a review of the Call for Tenders, including the ToRs, and the budget. These revisions will be agreed with the OSS.

Publication of the contract award

The Beneficiary must make sure that the procedure for issuing the contract award is fully observed.

Debriefing by the Beneficiary

When issuing the contract award, the Beneficiary will specify that any bidder wishing to know the reasons for the rejection of his bid must make a request to the Beneficiary. The Beneficiary will promptly communicate in writing the reasons of such a rejection. If the bidder requests to attend a debriefing meeting, he will have to bear all costs.



3- OTHER PROCUREMENT METHODS

3.1- General

This section describes procurement methods that may be used when Calls for Tender are not the most cost-effective or efficient method of procurement and other procedures may be more suitable, or when the OSS has accepted the use of the national public procurement system of the Beneficiary's country.

3.2- Supplier consultation

Supplier consultation is a comparison of the quotations obtained from several suppliers (in the case of products) or several contractors (in the case of civil works), three (3) or more, to make sure competitive prices are obtained. This method is suitable for limited quantity supplies generally available on the market, low value standard products or simple low value civil works, where cost and efficiency considerations do not justify the use of more expensive competitive methods. If the Beneficiary has not been able to obtain at least three quotations, he must provide the OSS with the reasons why no other competitive method could be considered and obtain a no objection before proceeding with the only responses received so far. Requests for quotations must describe the supplies needed, indicating the quantity or specifications of the work and the date and location of delivery (or completion). Quotations may be sent by letter, fax or electronically and the buyer must have them evaluated in accordance with the same principles as those of the Open Call for Tenders. The conditions of the successful offer are indicated in the order slip.

3.3- Framework Agreements

A Framework Agreement (FA) is a long-term agreement concluded with suppliers of goods, works and services (other than consultancy services). It sets the terms and conditions for the award of subsequent individual contracts which may be awarded during the agreement. Framework Agreements are, as a general rule, based on prices which have been previously determined, or which are set during the re-competition or by a procedure allowing their modification without re-competition. FAs may be permitted as an alternative to supplier consultation and NCT methods for: a) commercially available supplies or common products in everyday use with standard specifications; b) simple and non-complex services (other than consultancy services) which may be requested periodically by the organization (or different organizations) of the Beneficiary; or (c) low value work in emergency operations. The Beneficiary must submit to the OSS the circumstances and justifications for the use of an FA, the approach and model adopted, the selection and award procedures, and the contract clauses and conditions for no-objection purposes. FAs must not limit the access of foreign companies and must be limited to a maximum duration of 3 (three) years. The FA procedures applicable to the project are those which have been deemed acceptable by the OSS and described in the Agreement. The maximum total amount of contracts awarded under an FA must be set in the Procurement Plan, be consistent with the risks and in no case exceed the maximum total amount applicable to NCTs. It must also be agreed upon with the OSS. FAs must comply with the procedures and guiding principles of NCTs provided for in paragraphs 3.3 and 3.4, including but not limited to, advertising procedures, fair and open competition, an independent and effective appeal mechanism, transparent selection and evaluation criteria of the bids. The publication of the FA award must comply with the procedure described in paragraph 7 of Annex 1.

3.4- Direct agreement

3.4.1- Definition: Over-the-counter contract

Direct agreement is an exceptional method for a contract awarding which allows the OSS to reach an agreement directly with a contractor or service provider of its choice without a call for competition.

3.4.2- When an over-the-counter contract is awarded?

The call for competition procedure may be waived by resorting to the over-the-counter contract, which is an exceptional method subject to the OSS no-objection procurement commission and the existence of one of these specific cases:

3.4.2.1- For contracts for goods, works or services

1. Contracts that complement an initial contract:
 - i. Not provided for in the functional program or preliminary estimates;
 - ii. Whose award by direct negotiation is beneficial in terms of the cost or deadlines or even the conditions of execution.
2. Supplies whose manufacture is exclusively reserved, by patent owners, to themselves or their representatives.
3. Services that can only be obtained from a single contractor or supplier.
4. In exceptional circumstances, for example, but not limited to, natural disasters or emergency situations.

3.4.2.2- For intellectual services contracts

1. For assignments that complement work previously performed by a consultant:
 - i. When it may be preferable to re-engage the consultant rather than to make a new call for tender, in order to benefit from the same technical approach, experience and the maintenance of professional responsibility.
 - ii. When the previous assignment(s) have been carried out satisfactorily;
2. In exceptional cases, such as, but not limited to, an intervention following a natural/health disaster or emergency situations.
3. When a company is the only one that has the required qualifications or an exceptional experience for the mission in question.
4. Consultancy services are of a unique nature.

Contracts for goods, works, services or intellectual services, which, following a call for competition procedure for at least two consecutive times, have been unfruitful, provided that such a situation is not the consequence of inadequacies of the specifications and this procedure allows the award of a contract under more advantageous conditions.

3.5- Management

The management, i.e. the execution of works such as the construction and installation of equipment and the provision of services (other than consultancy services) by an administration of the Beneficiary's country using its own staff and equipment, may be the only possible method of carrying out the works or services in particular circumstances. This requires the Beneficiary to set the maximum total amount allocated to management, for which the OSS must issue a no-objection notice and apply the same diligence, quality controls and inspections



as for contracts awarded to third parties. The management must be justified and may only be used after the OSS no-objection notice in the following circumstances:

- a) The volume of construction and installation works to be carried out cannot be defined in advance.
- b) The construction and installation works are not significant and are scattered or located in areas of difficult access and few qualified companies will submit bids with reasonable prices.
- c) The construction and installation works must be carried out without disrupting ongoing operations.
- d) The Beneficiary is more able to bear the risks of unavoidable interruption of the works, than the contractor.
- e) Specialized services (other than consultancy services), such as mapping and aerial surveys, may only be carried out by a specialized government department, for considerations imposed by the law or regulations of the Beneficiary's country, such as national security.
- f) Urgent repairs that need to be made rapidly in order to avoid further damage, or work to be carried out in conflict regions for which private companies would not be interested.

3.6- Contracts awarded to UN agencies

There may be cases where direct procurement from UN agencies, applying their own procurement procedures, is the most appropriate method of procurement:

- a) Small amounts of commercially available supplies, mainly for the education and health sectors;
- b) Medical supplies for the treatment of humans or animals, including vaccines, medicines and pharmaceutical products, preventive and contraception treatment, and biomedical equipment, to the extent that: (i) the number of suppliers is limited; (ii) the UN agency is solely or exceptionally competent to procure such supplies and, where applicable, related ancillary services (other than consultancy services); and (iii) the Beneficiary uses the Standard Contract for Agreements between Beneficiaries and UN Agencies for the Procurement of Supplies and the Provision of Certain Services approved by the OSS;
- c) Low-value contracts for easy works where the UN agency acts as a contractor, or directly engages small businesses, and skilled and unskilled staff; or
- d) In exceptional cases, such as in response to natural disasters or emergencies declared by the Beneficiary and recognized by the OSS.

3.7- Procurement specialists and delegated project managers

Should they have no experience or resources, Beneficiaries may use (or the OSS may request them to engage) as their agent, a company specializing in procurement. Delegate project managers may similarly be responsible, in exchange for payment, for the procurement of various construction, reconstruction, repair or restoration works in emergencies and post-conflict situations, or in the case of many small contracts, or where the Beneficiary has limited capacity. The procurement specialist or delegate project manager must apply all the procurement procedures specified in the Agreement and detailed in the Procurement Plan approved by the OSS, including the use of the standard tender documents published by the OSS, the examination procedures and the documentation. This requirement also applies to cases where the agent is a UN agency. The Beneficiary shall include in the contract capacity building measures, as agreed with the OSS.



3.8- Use of national systems

This means the use of procurement methods and procedures provided for by the public procurement system of the Beneficiary's country that comply with these Rules and deemed acceptable by the OSS. They may be used by Beneficiaries for pilot projects approved by the OSS.

SECTION III - DRAFT AGREEMENT AND FINANCIAL MANAGEMENT¹

File No.: Contract

Number:

Project: « project name »

Financing contract between the Beneficiary and the Sahara and Sahel Observatory (OSS)

On the basis of the technical cooperation agreement concluded between the Sahara and Sahel Observatory (OSS), represented by its Executive Secretary and the (Beneficiary) represented by the (Ministry ...), we respond favorably to your request as for the financing of the referenced project.

We are therefore ready to provide you with a financial contribution up to **xxx US\$** (in words).

A for the implementation of the measures described in point 1 below ("project"), in accordance with the project file presented to release this financial contribution, we propose to enter into an agreement in the following terms. For simplification purposes, you will be referred to as the "Beneficiary" and our Organization as "the OSS".

Project, destination of the financial contribution

The financial contribution aims to finance the agreed project activities only.

Thus, the Beneficiary will use the funds to finance the project activities listed in the financing contract as well as for the budget sections (or budget items) agreed in accordance with the Procurement Plan (PP).

The aforementioned forecast costs are firm. Additional costs caused by possible price increases will not be borne by the OSS. If necessary, the Beneficiary will ensure their own financing.

However, there might be overruns of up to 20% for individual budget sections to the extent that they can be offset by savings on other sections (or budget items).

The financial contribution must only be used for expenses that are not already financed by other grants or long-term loans.

The Beneficiary shall make sure the project is executed in compliance with the principles of technical and financial regularity and in accordance with the planning and forecasts it has submitted to the OSS.

The financial contribution may only be used to cover reasonable and locally customary costs of which proof can be provided. The Beneficiary shall use the tangible assets funded by the financial contribution exclusively for the project.

The Beneficiary shall make sure that the project elaboration and implementation staff, as well as those placing orders for the supplies and services to be financed, do not request, accept, pay, grant or promise unlawful payments in connection with the tasks to be accomplished or ask for such payments.

To the extent provided for in this agreement, the Beneficiary shall request the assistance of the OSS project manager in Tunis (hereinafter referred to as the consultant).

The agreed date for project completion is: xx/xx/xxx. The OSS may refuse to finance costs incurred after this date, from the funds of the financial contribution.

¹ This project will be completed by the references of the agreements between the OSS and its financial partners which allowed the OSS to grant this funding, as an executing agency or as an implementing partner.

Counterparty services, award of contracts for works, supplies and/or services

The Beneficiary shall fully and timely perform the counterpart services that he has undertaken to assume and shall provide adequate proof thereof at the OSS request and in the monthly financial reports.

The Beneficiary shall make sure that the declaration of commitment, attached hereto, is part of the supplier's bid as well as the contract between the supplier and the Beneficiary.

The contracting parties stress the importance of a free, transparent and fair competitive bidding procedure excluding any abuse and conflict of interest.

Therefore, the companies to be involved in the project implementation must confirm that, when participating in a call for tenders and for the entire project duration, they have neither offered nor granted, directly or indirectly, any unlawful advantages to public officials or other persons under their bid and do not intend to offer or grant such benefits or conditions during this award procedure or, in the event that it is successful, during the subsequent implementation of the contract.

Furthermore, the Beneficiary underlines the importance of observing minimum social standards ("core labor standards") during the project implementation. Consequently, he undertakes to observe the core labor standards ratified by (the Beneficiary's country).

The Beneficiary will inform his employees of their respective duties and their obligation to fully observe this voluntary commitment and to abide by the laws of (the Beneficiary's country).

For the award of a contract for supplies and/or services financed from the financial contribution, the Beneficiary will observe the applicable regulations of the Beneficiary's country. He will normally receive at least three written offers for comparison purposes.

If the value of the contract for supplies and/or services is greater than the equivalent of 30,000 USD, the Beneficiary will determine the tender procedure to be applied for the award of contracts (National or International Tender).

The same tender procedure is applicable for works contracts.

These tenders are subject to a request for the OSS no-objection before being launched.

At the OSS request and during the monthly reports, the Beneficiary will justify the regularity of the proper execution of the procedure. Contracts for works, supplies and services which have been awarded without complying with these provisions may not be financed from the Financial Contribution.

Payment of the contribution installments

The payment of the financial contribution will be made in installments, as soon as the Beneficiary has signed and approved, in due form, the content of the financing agreement.

The financial contribution will be paid into an account opened by the Beneficiary with a banking institution approved in the name of the project, after the Beneficiary has fulfilled all the obligations arising from this agreement, in particular the obligation to provide the references of the account dedicated to the project, the signatories of the account, the operating procedures and the monthly reports with the required documentation.

If the Beneficiary prepares a monthly report in accordance with the conventional requirements, the OSS undertakes to reimburse the amounts deducted in due form.

Reports

The Beneficiary will submit to the consultant (OSS) a monthly financial report covering the operations of the month financed by the project contribution, no later than the end of the following month.

This report must show the progress of the activities and the results of the operations compared to the project objectives.

This report will be signed by the Beneficiary and supported by the following documents:

- Monthly statement or extract from the dedicated account
- Statement of the operations financed by the project with the link to the operations of the bank statement
- Monthly bank reconciliation statement
- Budget statement of budget execution showing by section and/or component:
 - Forecasts,
 - Achievements for the previous month,
 - Achievements for the current month,
 - Cumulative achievements, and
 - The difference between the forecast and the cumulative achievements at the end of the month in question.

If an operation takes more than twelve (12) months to be completed, the Beneficiary may submit to the expert consultant (OSS) the disbursements for the month and the balance committed and not yet committed, in accordance with the project progress.

Billing

With each monthly, annual or final report submitted to the consultant (OSS) in accordance with point 4, the Beneficiary will transmit to the OSS, as a statement, a structured statement in accordance with point 1, of all income and expenses incurred for the project, chronologically classified, and indicating the place of the original supporting documents in the Beneficiary's accounting, with the origin of the income and the target of the expenses.

The statement of income and expenses must be signed by the Beneficiary, who must certify that the information provided is complete and accurate, and must be countersigned by the head of the Beneficiary's public structure.

If the amount exceeds the equivalent of 3,000 USD, the Beneficiary will attach to the statement the originals or photocopies, which he will certify as true copies, of the commercial invoices for the supplies and/or services financed with the funds of the financial contribution.

For supplies and services with a value equal to or greater than 12,000 USD, he will also attach to the invoices, photocopies of the corresponding supply and service contracts.

All documents will be provided by the Beneficiary in French or supported by their English version.

Accounting, project audit

The Beneficiary shall keep all accounting books and records clearly showing all the costs of the project and shall keep the original supporting documents, chronologically classified, over 10 years after the final project statement is settled.

The Beneficiary shall authorize at any time the OSS representatives to consult the accounting books and records kept within the framework of the project; he undertakes to facilitate their visit and consultation of all the Beneficiary's accounting documentation and to provide them with all the information requested.

Reimbursement

The OSS may demand immediate reimbursement of the amounts paid if it is proven that the Beneficiary does not use them as agreed or if he does not fulfil his other obligations stipulated in the agreement. In the first case, reimbursement will be limited to the amounts that the Beneficiary cannot prove were used for the agreed purposes or surpass what is budgeted.

Applicable law and place of performance

This agreement is subject to the applicable law in the Republic of Tunisia and to recognized international good practices.

This agreement is written in French.

The agreement is approved by the signature of the persons duly empowered and authorized to commit their respective Organization.

Done in good faith on:

For/Sahara and Sahel Observatory
The Executive Secretary

For/The Beneficiary
The Chief of Staff

ANNEX 1 - EXAMINATION BY THE OSS OF THE ACQUISITION PROCESS AND PUBLICATION OF THE AWARD OF CONTRACTS

Procurement schedule

1. The OSS shall review the Procurement Plans and their updates prepared by the Beneficiary in accordance with the provisions of paragraph 1.18. They shall be consistent with the Project Implementation Plan, the Agreement and these Rules.

Prior examination

2. For all contracts which must be subject to prior examination by the OSS:
 - a) Where prequalification is required and before issuing the prequalification notice, the Beneficiary shall provide the OSS with the documents he intends to use, including the prequalification notice, the prequalification questionnaire and the evaluation method, as well as a description of the advertising procedures he proposes to follow, and shall make any changes to such documents and procedures that the OSS may reasonably request. Before notifying candidates of his decision, the Beneficiary shall provide the OSS, for comment, with the evaluation report of the applications received by the Beneficiary, the list of proposed prequalified candidates, together with a description of their assets and the reasons why they were shortlisted and why the other candidates were rejected, and the Beneficiary shall revise this list by making any additions, deletions or changes that the OSS may reasonably request.
 - b) Before launching the call for tenders, the Beneficiary shall communicate to the OSS, for comments, the draft tender documents comprising the call for tenders notice, the instructions to tenderers, including the criteria for evaluating tenders and awarding the contracts, the administrative and technical clauses applicable to civil engineering works, supplies or installation of equipment, etc., as well as the description of the advertising procedure that he proposes to follow for the call for tenders (if there has been no prequalification), and the Beneficiary shall modify said documents as the OSS may reasonably request. Any subsequent modification must be the subject of a no-objection from the OSS before being communicated to potential tenderers.
 - c) After receipt and evaluation of the bids, and before a final decision is made, the Beneficiary shall provide the OSS, duly in advance to allow it to review these documents, with a detailed report (prepared, if requested by the OSS, by experts it approves) on the evaluation and comparison of the bids received (for each stage in the case of a two-stage call for tenders or a framework agreement), the recommendations relating to the award of the contract and any other information that the OSS may reasonably request. If the OSS finds out that the proposed award is inconsistent with the provisions of the Agreement and/or the Procurement Plan, it shall notify the Beneficiary as soon as possible, stating the reasons for its decision, otherwise the OSS shall issue its no-objection to the recommendation for the award of the contract. The Beneficiary shall award the contract only after receiving the no-objection from the OSS.
 - d) If it proves necessary to extend the validity of the bids to complete their evaluation, obtain the required internal clearances and no-objection notices from the OSS and award the contract, the Beneficiary must obtain the OSS prior approval upon the first request for an extension, if the requested extension exceeds 4 (four) weeks, and for any subsequent request, regardless of the extension requested.

- e) If, after the publication of the contract award, the Beneficiary receives objections or complaints from the bidders, a copy of the complaint, the Beneficiary's comments on each point raised by the complaint and a copy of the response prepared by the Beneficiary will be communicated to the OSS for review and comment.
- f) If, following the analysis of a complaint, the Beneficiary decides to modify its recommendation for the award of the contract, the reasons for this decision and a revised evaluation report must be submitted to the OSS for a no-objection notice. The Beneficiary will ensure a new publication of the award of the contract as specified in paragraph 7 of Annex 1 to these Rules.
- g) The terms and conditions of the contract may not, without the OSS having issued a prior no-objection notice, be anything different from those provided for in the Tender file or, where applicable, the prequalification of contractors.
- h) If required, a certified copy of the contract, the advance repayment guarantee and the performance guarantee, shall be provided to the OSS upon signature and before the submission to the OSS of the first request for cash withdrawal from the Loan Account under the said contract. Where payments need to be made from funds in a Special Account, copies of the contract, the advance repayment guarantee and the performance guarantee, if required, shall be provided to the OSS prior to the first withdrawal of funds from the Special Account under the contract.
- i) All evaluation reports shall be supported by a summary statement of the award of the contract drawn up in accordance with the model provided by the OSS. The description of the contract and its amount, the name and address of the successful bidder, shall be published by the OSS, in accordance with paragraph 2(h) above, upon receipt of a signed copy of the contract from the Beneficiary.
- j) The Beneficiary shall keep all documents relating to each contract during the project execution and up to 2 (two) years after the closing date of the Agreement.

These documents include, but are not limited to: (i) the signed original of each contract and all subsequent amendments and supplements; (ii) the original of the bids, all documents and correspondence relating to the tendering procedure and the performance of the contract, including those relating to the bid evaluation, and the recommendation for award of the contract transmitted to the OSS; and (iii) invoices or payment certificates, as well as certificates of inspection, delivery, completion, receipt of supplies and performance of works and services (other than consultancy services). For contracts awarded by direct agreement, the documents must include an explanation for the use of such method, the technical and financial capabilities of the company and the signed original of the contract. The Beneficiary will provide these documents upon request of the OSS for review by the OSS or its consultants/auditors.

- k) The OSS may declare the award of a contract non-compliant for any reason set out in paragraph 1.14 of these Rules. It may also determine that the contracts for supplies, works or services (other than consultancy services) have not been awarded in accordance with the agreed procedures and methods as specified in the Agreement and detailed in the Procurement Plan for which the OSS had issued a no-objection notice, or that the contract itself does not comply with such procedures. The OSS shall inform the Beneficiary of the reasons for this decision as soon as possible.
3. Modifications to the signed contract: For contracts subject to prior examination, before accepting (a) an extension of the time limit for the contract execution; (b) any substantial modification of the nature of the services or any other significant change in the terms and conditions of the contract; or (c) any change by way of service order or any amendment (except in cases of extreme urgency), when this decision alone or combined with all the changes by way of service order or the amendments previously made, increases the

amount of the contract by more than fifteen percent (15%) compared to its initial price; or (d) to modify the end date of the contract, the Beneficiary must request a no-objection notice from the OSS. If the OSS decides that the modification is incompatible with the provisions of the Agreement and/or the Procurement Plan, it shall promptly notify the Beneficiary, indicating the reasons for such decision. A copy of all changes made to the contract must be provided to the OSS for registration.

4. Translations: If a contract awarded on an ICT is subject to prior examination and is written in the national language, the Beneficiary must provide the OSS with an accurate translation of the bid evaluation report and the initial draft of the contract in the language of international use specified in the Call for Tender documents (English or French). In addition, the OSS must receive an accurate translation of any subsequent amendment to the contract.

Post-hoc examination

5. Post-hoc examinations of the procurement procedures shall normally be carried out by the OSS. The Beneficiary shall keep all documents relating to procurement that are not governed by the provisions of paragraph 2 of this Annex during the project execution and up to two (2) years after the closing date of the Financing Agreement. These documents shall include, but are not limited to, the signed original of the contract, all subsequent amendments and supplements, bids, the bid evaluation report and the recommendation for award of the contract, invoices or payment certificates, as well as certificates of inspection, delivery, completion, receipt of supplies, performance of works and services (other than consultancy services) and may be examined by the OSS or its consultants. The Beneficiary shall also hand over these documents to the OSS if needed. The OSS may declare the procurement non-compliant for any reason set out in paragraph 1.14 of these Rules. It may also determine that the contracts for supplies, works or services (other than consultancy services) have not been awarded in accordance with the agreed procedures and methods as specified in the Agreement and detailed in the Procurement Plan for which the OSS has issued a no-objection notice, or that the contract itself does not comply with such procedures and methods. The OSS will inform the Beneficiary of the reasons for this decision as soon as possible. Depending on the risks and the importance of the project (for example involving many simple and low-value contracts), the OSS may also agree with the Beneficiary that they will appoint independent entities to carry out post-hoc examinations of the procurement procedures, in accordance with terms, conditions and information procedures deemed acceptable by the OSS. In such cases, the OSS will review the reports submitted by the Beneficiary, and will preserve its right to directly carry out post-hoc examinations if necessary during the project execution.

Transition from post-hoc examination to preliminary examination

6. A contract, whose cost estimates are below the threshold of the OSS prior examination indicated in the Procurement Plan, must be subject to prior examination if the price of the lowest evaluated bid exceeds this threshold. All documents relating to the already completed stages of the procurement procedure, including the evaluation report and the recommendation for award of the contract, must be submitted to the OSS for prior examination and a no-objection notice before the award of the contract. Where, on the contrary, the price of the successful candidate is below the threshold for prior examination, the prior examination procedure shall continue. In special circumstances, the OSS may request the Beneficiary to follow a prior examination procedure for a contract below the threshold for prior examination in the case of a complaint that the OSS deems serious enough. In addition, where the procurement method needs to be changed due to higher or lower cost estimates than previously assessed, for example for the modification of an NCT into an ICT or vice versa, the Procurement Plan must be amended by the Beneficiary and submitted to the OSS for review and a no-objection notice.

Publication of the contract awards

7. The Beneficiary must publish on the OSS website, information for all contracts awarded under the ICT and RICT, contracts concluded with dealers under PPPs, sub-projects under financing granted by Intermediate Financing Institutions and Entities and all contracts awarded by direct agreement, except as provided below, and in the national press for all contracts awarded under the NCT, including those awarded under framework agreements, a public authority, and small low-value contracts directly awarded (see footnote 64). Publication must be made within two weeks after receiving the OSS no-objection notice to the contract award proposal for contracts subject to prior examination, and within two weeks of the Beneficiary's contract award decision for contracts subject to the OSS post-hoc control. Publications shall include the bid, batch ID and the following information, if relevant and applicable under each procurement method: (a) the name of each tenderer who submitted a bid; (b) the prices of the bids as read aloud at the opening of the bids; (c) the evaluated prices of each bid that was evaluated; (d) the names of the tenderers whose bids were rejected for non-compliance with the provisions of the tender documents or did not meet the qualification criteria, or which were not evaluated for the above reasons; and (e) the name of the successful tenderer, the total final price of the contract, as well as the duration and summary of the contract subject. The OSS shall be responsible for publishing the award of the contract subject to prior examination on its public website upon receipt of a certified copy of the signed contract and the performance guarantee if applicable in accordance with paragraph 2(h) above.

Verification of compliance with the OSS policies and rules on penalties

8. When evaluating the bids, the Beneficiary must make sure that bidders are allowed to participate given the lists of excluded and suspended firms and individuals established by the OSS, in accordance with paragraph 1.16(d) of these Rules and/or paragraph 1.23(d) of the Rules for the Selection of Consultants, which are published on the OSS website. The Beneficiary must give particular importance to any ongoing contract (subject to prior or post-hoc examination) by closely supervising and controlling it when it is performed by a firm or individual that has been sanctioned by the OSS after the signature of said contract. The Beneficiary shall not enter into new contracts or amendments, including an extension for the completion of the contract or a change by way of service order, for an ongoing contract with a firm or individual after the effective date of its suspension or exclusion, without prior review and a no-objection notice from the OSS. The OSS shall only finance additional expenditures if they occurred before the completion date of the original contract or before the completion date as amended (i) for contracts subject to prior review, in an amendment for which the OSS has issued a no-objection, and (ii) for contracts subject to post-review, in an amendment signed before the effective date of suspension or exclusion. The OSS shall not finance any new contract, amendment or rider introducing a significant change to any existing contract, which was signed with a firm or individual suspended or excluded, from the effective date of the suspension or exclusion decision.

ANNEX 2 - PREFERENCES IN FAVOUR OF THE BENEFICIARY'S COUNTRY

Preference for supplies manufactured in the Beneficiary's country

1. In order to evaluate bids received following an ICT, the Beneficiary may, with the agreement of the OSS, apply a margin of preference to bids proposing supplies manufactured in his country when comparing them with bids proposing supplies manufactured elsewhere. In such case, the tender documents must clearly indicate the preference that will be given and the information that must be provided for a bid to meet the conditions required to benefit from such preference. The nationality of the manufacturer or supplier is not part of such conditions. The evaluation and comparison of the bids must be carried out according to the following methods and process.
2. For comparison purposes, compliant bids are classified into one of the following three groups:
 - a) Group A: Bids that exclusively offer supplies manufactured in the Beneficiary's country if the Bidder proves, to the satisfaction of the Beneficiary and the OSS, that (i) manpower, raw materials and components from the Beneficiary's country will represent at least 30% or more of the EXW price of the product proposed and (ii) the production facility in which such products will be manufactured or assembled at least since the bid submission date.
 - b) Group B: All other bids that propose products manufactured in the Beneficiary's country.
 - c) Group C: Bids that propose supplies manufactured abroad that have already been imported or that will be directly imported.
3. The prices proposed for supplies in Group A and B bids shall include all duties and taxes paid or payable on locally purchased or imported raw materials or components, but shall exclude sales or similar taxes on the finished product. The prices proposed for supplies in Group A and B shall be CIP prices which shall exclude customs duties and other import taxes already paid or payable.
4. First, all evaluated bids in each group shall be compared to determine the lowest evaluated bid in each group. The lowest evaluated bids shall then be compared with each other and, if as a result of this comparison, a bid in Group A or Group B is evaluated as the lowest, that bid shall be selected for the contract award.
5. If, following the comparison carried out in accordance with the provisions of paragraph 4 above, a Group C bid is evaluated as the lowest, all Group C bids will be compared with the lowest Group A bid after adding to the evaluated price of the supplies proposed in the Group C bid, for comparison purposes only, an amount equivalent to 15% of the CIP price indicated in the bid for supplies to be imported or previously imported. Both prices must include unconditional discounts and be corrected to consider calculation errors. If the Group A bid is evaluated as the lowest, it will be retained for the contract award. Otherwise, it is the lowest evaluated Group C bid that will be retained in accordance with paragraph 4 above.

6. In the case of turnkey contracts for the supply of equipment as well as for installation, assembly and/or construction services as defined in paragraph 2.4 of Section II, no margin of preference will be granted. However, with the OSS no-objection notice, bids for turnkey contracts may be subject to a call for tenders and an evaluation based on DDP prices for supplies manufactured abroad.
7. In the case of single-responsibility contracts (other than turnkey contracts) for large-scale industrial equipment and works as defined in paragraph 2.4 of Section II, the margin of preference will only be granted for locally manufactured equipment. Equipment of foreign origin must be offered based on CIP prices and equipment of local origin must be evaluated based on EXW prices. All other components, such as design, construction, local transportation, insurance to the place of destination, assembly, installation and supervision, if applicable, shall be evaluated separately. Tenders shall not be classified into Groups A, B or C. When comparing tenders, only the CIP price of each tender for equipment from a country other than that of the Beneficiary shall be increased by 15%. No preference shall be given for related services or services (other than consultancy services) or works included in the contract. The lowest evaluated tender in accordance with the tender evaluation criteria, including the margin of preference if applicable and granted as provided above, shall be selected for the contract award.

Preference for entrepreneurs from the Beneficiary's country

8. For works contracts awarded based on an ICT, Eligible Beneficiaries may, with the agreement of the OSS, grant a margin of preference of 7.5% to contractors from their country, in accordance with and subject to the following provisions:
 - a) Contractors who need to benefit from this preference must provide, among the data necessary for their selection, all information, in particular on their capital structure, necessary to determine whether, according to the classification established by the Beneficiary and accepted by the OSS, a contractor or a group of contractors may benefit from said preference. The tender documents must clearly indicate the preference granted and the method of evaluation and comparison of the bids that will be followed to apply said preference.
 - b) After receipt and examination of the bids by the Beneficiary, the compliant bids are classified in one of the following groups:
 - (i) Group A: bids from contractors from the Beneficiary's country who can benefit from the preference.
 - (ii) Group B: bids from other contractors.
9. First, all the evaluated bids in each Group must be compared with each other in order to determine the lowest evaluated bid within the group, then the lowest evaluated bids of each Group are compared with each other. If, following this comparison, a bid from Group A is evaluated as the lowest, it will be retained for the contract award. If it is a Group B bid, then in a second stage of the evaluation, all Group B bids will be compared to the lowest bid from Group A. For comparison purposes only, an amount equal to 7.5% of the corrected bid price considering calculation errors, including unconditional discounts but excluding provisional sums and the cost of work days if applicable, must be added to the evaluated price of each Group B bid. If the Group A bid is still evaluated as the lowest bid, it will be retained for the contract award. Otherwise, the Group B bid evaluated as the lowest bid, as it had been evaluated during the first stage of the evaluation, will be retained for the contract award.

ANNEX 3 - RECOMMENDATIONS TO BIDDERS

Subject

1. This Annex is addressed to suppliers and contractors who wish to compete for the award of contracts financed by the OSS.

Procurement Responsibility

2. The Beneficiary alone assumes responsibility for the project execution, and therefore for the payment of supplies, works and services (other than consultancy services) under the project. The OSS, in accordance with its Statutes, must make sure that funds from the OSS financing are paid only as expenses are incurred. Disbursements are made only at the request of the Beneficiary. The Beneficiary submits his request for withdrawal of funds to the OSS supported by documents proving that the funds are or have been used in accordance with the Agreement and the Procurement Plan. As highlighted in paragraph 1.2 of these Rules, the Beneficiary is the entity legally responsible for the procurement. It launches the Call for Tenders, receives and evaluates the bids, and awards the contract. The contract is binding on the Beneficiary and the supplier or contractor. The OSS is not part of the contract.

Role of the OSS

3. In accordance with paragraph 1.13 of these Rules, the OSS shall review the procurement procedures, documents, evaluation of bids, recommendations for the contract award and the contract to ensure compliance with the agreed procedures, in accordance with the provisions of the Convention. In the case of major contracts, the documents shall be reviewed by the OSS before they are made available to bidders, as set out in Annex 1. If the OSS, at any stage of the process (even after the contract award), determines that the procedures agreed with the Beneficiary have not been substantially observed, it may find that the procurement process non-compliant with the agreed procedures, as set out in paragraph 1.14 of the Rules. However, if the Beneficiary has awarded the contract after receiving the OSS no-objection notice, the OSS will only declare the procurement non-compliant if it gave this notice based on the Beneficiary's provision of incomplete, erroneous or intentionally inaccurate information. Furthermore, if the OSS establishes that representatives of the Beneficiary or the bidder have engaged in corruption or fraudulent practices, it may apply the sanctions provided for in paragraph 1.16 of these Rules.
4. The OSS has published Standard Tender Documents for various categories of contracts. As specified in particular in paragraphs 2.10 and 2.12 of Section I of these Rules, the Beneficiary is required to use these documents, making only the minimum modifications necessary to meet the specific requirements of the project and the country. The prequalification and tender documents are definitively finalized and published by the Beneficiary.

Procurement Information

5. Information on procurement opportunities under the ICT can be obtained through the General Procurement Notice and the Specific Procurement Notices described in paragraphs 2.7 and 2.8 of these Rules. Interested companies will find general recommendations on the possibilities of participation, and preliminary indications on the opportunities that the projects currently being prepared could offer them on the OSS website.

Role of the candidate

6. Upon receipt of the prequalification or tender documents, the candidate should carefully study these documents to determine whether it will be possible to satisfy the various technical, commercial and contractual conditions and, if so, begin to prepare his bid. At this stage, the candidate needs to analyze the documents very carefully and spot any ambiguity, omission or internal discrepancy, or any element of the specifications or other clauses that he finds ambiguous, discriminatory or restrictive; in such cases, the candidate should request clarification from the Beneficiary, in writing, within the time limits specified for this purpose in the Tender documents.
7. The criteria and method for selecting the tenderer to whom the contract will be awarded are indicated in the Tender documents, generally in the instructions to tenderers and the contract specifications. Any clarification deemed necessary should similarly be requested from the Beneficiary.
8. In this regard, it is important to emphasize, as specified in paragraph 1.1 of these Rules, that each contract is governed by the Call for Tenders documents published by the Beneficiary for the award of this particular contract. If any of the provisions of these documents are found to be incompatible with these Rules, candidates must also contact the Beneficiary.
9. It is up to candidates to report any ambiguity, discrepancy, omission, etc., before submitting their bid, so that they fully comply with the provisions of the Call for Tenders documents, supported by all the documents requested in these documents. Bids that do not meet the essential provisions (technical and commercial) will be rejected. The candidate, who wishes to deviate from the provisions of the documents on a non-essential point, or propose a variation, must strictly apply the instructions provided by the specific provisions of the Beneficiary's Call for Tenders documents and relating to these issues, in particular those relating to deviations. Variants shall be proposed only when permitted by the tender documents. Unless the tender documents have clearly identified mandatory and non-mandatory technical and commercial requirements, bidders shall assume full responsibility for any deviation or conditions attached to their bid that may be considered substantial and lead to the rejection of their bid. After receipt of bids and opening of tenders in public session, bidders shall not be required or permitted to change the price or content of their bids.

Confidentiality of the procedure

10. As stated in paragraph 2.47 of these Rules, no information will be released about the ongoing evaluation before the publication of the contract award. This complete reservation is essential to protect those involved in the evaluation on the Beneficiary side and in the review of that evaluation on the OSS side from any real or perceived possibility of inappropriate interference. Tenderers who, at this stage, would like to provide additional information to the Beneficiary and/or the OSS, must do so in writing.

OSS Action

- 11.** Candidates are free to send to the OSS a copy of communications addressed to the Beneficiary concerning any question or problem, or to write directly to the OSS if they do not obtain a prompt response from the Beneficiary or if the subject of the communication is a complaint against the Beneficiary.
- 12.** When it receives communications from potential candidates before the tenders' submission deadline, the OSS, if it deems it useful, shall forward these communications to the Beneficiary for action, sharing its observations and opinion with him.
- 13.** Communications, including complaints, received from candidates after the opening of tenders shall be treated as indicated below. If the contract in question is not subject to prior examination by the OSS, the communications or their relevant extracts deemed appropriate shall be forwarded to the Beneficiary for due consideration and appropriate action. The Beneficiary shall provide the OSS with all relevant documents necessary for the OSS review and comments. In the case of contracts requiring prior review, the OSS shall review the communication, in consultation with the Beneficiary. Any additional information that may be necessary to complete this process shall be obtained from the Beneficiary. If the bidder needs to provide additional clarifications or information, the OSS shall request the Beneficiary to obtain them, comment on the information received and, where appropriate, insert them in the evaluation report. The OSS review shall not be completed until the communication has been fully considered. Communications received from candidates regarding allegations of fraud and corruption may warrant different treatment for confidentiality reasons. In such cases, the OSS shares with the Beneficiary the information deemed appropriate with discretion and diligence.
- 14.** Except to acknowledge receipt of communications received, the OSS will not make any contact or exchange any correspondence with candidates until the evaluation of the bids and the examination of the contract award have been completed and the contract award has been published.

OSS Debriefing

- 15.** As specified in paragraph 2.65, if, after notification of the contract award, a bidder wishes to know the reasons behind his refusal, he must contact the Beneficiary. If he is not satisfied with the written explanation received and if he wishes, he should meet with the procurement officer at the OSS and with the project monitoring officials. The purpose of this meeting is only to examine the bidder's bid, and not to reconsider the OSS position, nor to examine competing bids.

Annex 4 - OSS review of the consultant selection process and publication of the contract awards

Selection process timeline

1. The OSS shall review the Procurement Plans and their updates prepared by the Beneficiary. They shall be consistent with the Project Implementation Plan, the Agreement and these Rules.

Prior examination

2. For all contracts which are subject to the OSS prior examination:
 - a) Before asking for proposals, the Beneficiary shall provide to the OSS, for review and no-objection, the cost estimate and the Request for Proposals that he plans on using (including the shortlist). The Beneficiary shall make any changes to the shortlist and to the documents included in the Request for Proposals that the OSS may reasonably request. Any subsequent changes shall be subject to a no-objection notice from the OSS before the Request for Proposals is sent to the shortlisted candidates.
 - b) After evaluating the technical proposals, the Beneficiary shall provide the OSS with a technical evaluation report (prepared, if requested by the OSS, by experts acceptable to the Beneficiary), and a copy of the proposals if requested by the OSS. These documents shall be provided to the OSS sufficiently in advance to allow it to review them. If the OSS determines that the technical evaluation is inconsistent with the provisions of the Request for Proposals, it shall notify the Beneficiary as soon as possible, stating the reasons for its decision. Otherwise, the OSS shall grant its no-objection. The Beneficiary shall also request the OSS no-objection if the evaluation report recommends rejecting all proposals.
 - c) The Beneficiary may only proceed with the opening of the financial proposals after receiving the OSS no-objection regarding the technical evaluation. If cost is a criterion for selecting the Consultant, the Beneficiary may then proceed with the financial evaluation of the proposals in accordance with the provisions of the Request for Proposals. The Beneficiary shall provide the OSS with the final evaluation report and his recommendation regarding the Consultant to be retained. The Beneficiary shall inform the Consultant receiving the highest score in the final evaluation of his intention to award the contract to him and invite him to negotiate a contract. If the OSS finds any inconsistencies in the financial evaluation during its review or following a complaint, it shall promptly notify the Beneficiary so that he may resolve, to the satisfaction of the OSS, all the points raised as soon as possible before entering into negotiations with the successful Consultant or suspend negotiations if they have already been entered into. In such cases, no further action shall be taken until the OSS has issued a no-objection to the Beneficiary's recommendations.
 - d) If it is necessary to extend the validity of the proposals to complete their evaluation, obtain the required internal clearances and no-objection notices from the OSS and award the contract, the Beneficiary must obtain the prior approval of the OSS upon the first request for extension, if the requested extension exceeds 4 weeks, and for any subsequent request, regardless of the length of the additional period requested.

- e) If the Beneficiary receives complaints from consultants, he shall acknowledge receipt thereof to the consultant who filed the complaint as soon as possible, and shall send to the OSS a copy of the complaint, the comments he has prepared in response to each point of issue raised by the complaint and a copy of the proposed response to the complainant, for the OSS to review and comment on these documents.
 - f) If, following the analysis of a complaint, or for any other reason, the Beneficiary changes his recommendation for the contract award, the reasons for this decision and a revised evaluation report must be submitted to the OSS for a no-objection notice. The Beneficiary will ensure a new publication of the contract award. If negotiations with the successful consultant fail, the Beneficiary will provide the OSS, for review, with the minutes of the negotiations and the reasons for the failure. After obtaining the OSS no-objection notice, the negotiations may be terminated and the second-placed consultant will be invited to negotiate.
 - g) Upon completion of the negotiations or in the case of a selection by direct agreement, the Beneficiary will provide the OSS, sufficiently in advance to allow time for review, with a copy of the contract negotiated and initialed by the successful consultant and signed by the Beneficiary. If the negotiated contract has led to substitutions of key experts or changes to the ToRs and the initially proposed contract, the Beneficiary shall report the modifications, explain that they are necessary and make sure they are acceptable to the Beneficiary.
 - h) If the OSS determines that the final evaluation report, the proposed award and/or the negotiated contract are inconsistent with the provisions of the Request for Proposals, it shall notify the Beneficiary as soon as possible, indicating the reasons for its decision. If not, it shall send to the Beneficiary its final no-objection notice to the contract award. The Beneficiary shall confirm the contract award and sign it only after receiving the OSS no-objection notice.
 - i) A certified copy of the contract shall be provided to the OSS upon its signature and before the delivery to the OSS of the first request for withdrawal of funds from the Funding Account under said contract. Where payments under the contract are to be made from funds in a Special Account, a copy of the contract shall be provided to the OSS prior to the first withdrawal of funds from the Special Account under the contract.
 - j) As soon as the Beneficiary has provided a signed copy of the contract, the OSS may publish (i) above the description and amount of the contract, as well as the name and address of the successful bidder unless it is an individual consultant.
 - k) The Beneficiary shall retain all documents relating to each contract during the project execution and until 2 years after the closing date of the Financing Agreement. These documents shall include, but are not limited to: (i) the signed original of each contract and all subsequent amendments and riders thereto; (ii) the original of the proposals, all documents and correspondence relating to the tendering procedure and the contract execution, including those relating to the evaluation of the proposals (including individual scoring sheets), and the recommendation for the contract award handed over to the OSS; and (iii) invoices or payment certificates. For contracts awarded based on direct selection, the documents must include the justification for the use of this method, the technical and financial capacities of the selected consultant and the signed original of the contract. The Beneficiary will provide these documents at the request of the OSS for examination by the OSS or its consultants/auditors.
3. **Amendments to the signed contract.** For contracts subject to prior review, before accepting:
- a) an extension of the contract execution time; (b) any significant change in the nature of the services, replacements of key experts, or making any significant change to the terms and conditions of the contract; or (c) changing the contract end date, the Beneficiary must request a no-objection notice from

the OSS. If the OSS decides that the proposed amendments are inconsistent with the provisions of the Agreement and/or the Procurement Plan, it shall promptly notify the Beneficiary, stating the reasons for its decision. A copy of all changes to the contract must be provided to the OSS for record.

4. **Translation.** If a contract subject to prior examination is drafted in the Local Language, it is the responsibility of the Beneficiary to provide the OSS with an accurate translation of the technical and evaluation reports and the initialed draft negotiated contract in the language of international use specified in the Request for Proposals (English or French). In addition, the OSS must receive an accurate translation of any subsequent amendment to said contract.

Post-hoc Examination

5. Post-hoc examinations of procurement procedures shall normally be carried out by the OSS. The Beneficiary shall keep all documents relating to the procurement during the project execution and up to 2 years after the closing date of the Agreement. These documents shall include, but are not limited to, the original signed contract, all subsequent amendments and supplements, the original proposals, the technical evaluation report and the combined evaluation report, the contract award recommendation and invoices or payment certificates, and may be examined by the OSS or its consultants/auditors. For contracts awarded by direct agreement, the documentation shall include the report justifying the use of the direct agreement method, the qualifications and experience of the consultants and the original signed contract. The OSS shall inform the Beneficiary of the reasons for this decision as soon as possible. The OSS may also, depending on the risks and the importance of the project (for example involving many simple and low-value contracts), agree with the Beneficiary that they appoint independent entities to carry out post-hoc examinations of procurement procedures, in accordance with terms, conditions and information procedures deemed acceptable by the OSS. In such cases, the OSS will review the reports submitted by the Beneficiary, and will retain its right to directly carry out post-hoc examinations if necessary during the project execution.