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PART III: PROCUREMENT PROVISIONS

APPLICABLE TO GRANTS FROM

THE NORWEGIAN MINISTRY OF FOREIGN AFFAIRS

AND NORAD

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PART III: PROCUREMENT PROVISIONS

This Part III of the Agreement sets out the minimum rules and principles which shall be applied by the Grant Recipient and their sub-grantees for all procurements under the Project/Activity funded by grants received from MFA or Norad.

These minimum rules and principles shall contribute to increased value by ensuring efficient use of resources based on transparency, good business ethics and equal treatment. The provisions aim to ensure that grant recipients act with great integrity when procuring goods, works and services for projects and programmes.

PRINCIPLES

1 SOUND FINANCIAL MANAGEMENT

- 1.1 All procurement must be justified, reasonable and compliant with sound financial management.
- 1.2 Sound financial management means that the Grant must be used in accordance with the principles of economy, efficiency, and effectiveness:
 - a) The principle of economy refers to resources required being made available in due time, in appropriate quantity and quality and at the best price.
 - b) The principle of efficiency refers to the relationship between the resources spent and results achieved.
 - c) The principle of effectiveness refers to the degree of which the procurement process meets the intended outcome.

2 EQUAL TREATMENT AND NON-DISCRIMINATION

- 2.1 Fair competition is the foundation for sound procurement. Tenderers shall be treated equally and without discrimination throughout the procurement process.
- 2.2 Open and transparent processes are essential for promoting competition and minimising the risk of corruption. Where the design or execution of a procurement process is made with the intention of unduly favouring or disadvantaging certain tenderers the competition will be considered artificially narrowed and in breach with the principle of equal treatment and non-discrimination.

3 ETHICS IN PROCUREMENT

- 3.1 Grant recipients, as well as tenderers, suppliers, contractors, and consultants under contracts financed in whole or in part by the Grant shall observe the highest standards of ethics during the procurement and execution of contracts.
- 3.2 This shall always include:
 - a) Respecting minimum ILO standards such as the respect of working conditions and avoidance of child labour.

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- b) Respecting basic social rights and environmental aspects.
- c) Having zero-tolerance for corruption and financial irregularities.
- d) Having zero-tolerance for inaction to sexual exploitation, sexual abuse, and sexual harassment (SEAH).

4 SUSTAINABLE PROCUREMENT

- 4.1 Grant recipients shall endeavour to consider environmentally-sound products and/or services when defining criteria and requirements for procurement.
- 4.2 The Grant recipients shall take into account universal design and the potential environmental impact of any planned procurements. Grant recipients shall, when procuring services, endeavour to limit the amount of travel needed to perform the services and when relevant and appropriate instead use virtual meetings and/or phone conferences.

GENERAL RULES

5 NOTORIETY

- 5.1 Grant recipients shall keep sufficient and appropriate records and documentation about the procurement procedure, the selection criteria set, evaluations made and award decisions.

6 CONFLICT OF INTEREST

- 6.1 Grant recipients shall avoid any situation of conflict of interest. Conflict of interest refers to any situation where the impartial and objective exercise is, or may be, compromised for reasons involving family, personal life, political or national affinity, economic interest or any other connection or shared interest with another person.
- 6.2 Contracts may not be awarded to tenderers that are subject to a conflict of interest without an explicit written approval from MFA/Norad.
- 6.3 The obligation to avoid conflict of interest applies to anyone acting on behalf of the grant recipient.

7 VALUATION OF CONTRACTS AND THRESHOLDS

- 7.1 All monetary amounts referred to in this Part III are amounts excluding value-added tax (VAT).
- 7.2 To determine the applicable procurement method, grant recipients shall ensure that the estimation of the contract value is made correctly and includes all costs related to the specific contract.
- 7.3 Any form of options and extensions of the contract shall be included when estimating the contract value.
- 7.4 No contract may be split-up with the intention of avoiding the application of a formal procurement method.

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8 TENDER DOCUMENTS

- 8.1 The tender documents shall furnish all information necessary for a prospective tenderer to prepare a responsive tender for the goods, works or services to be provided.
- 8.2 The tender documents shall be drafted to encourage the widest possible competition. They shall clearly define the scope of works, goods, or services to be supplied, the rights and obligations of the tenderer and the grant recipient and set out fair and non-discriminatory criteria for selecting the winning tender.

9 EVALUATION OF TENDERS

- 9.1 The evaluation of tenders shall be made in a neutral and transparent manner and in accordance with the criteria pre-determined in the call for tenders.
- 9.2 Where the value of the contract exceeds NOK 1,300,000 an evaluation committee must be set up to evaluate the received tenders. This committee must have an odd number of members with the technical and administrative capacities to give an informed opinion of the tenders.

10 GROUNDS FOR DISQUALIFICATION OF TENDERERS

- 10.1 A tenderer should be excluded from the evaluation and the award of a contract, if:
 - a) They are bankrupt or is being wound up, whose affairs are being administered by court, has entered an arrangement with creditors, has suspended business activities or is subject of an injunction against running business by court.
 - b) They are the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by court, or for an arrangement with creditors or of any other similar proceedings.
 - c) They have been found guilty of grave professional misconduct by any means which the grant recipient can justify.
 - d) They are not registered in a national official register or registered for declaration and payment of tax in accordance with national legislation.
 - e) They have not fulfilled obligations relating to payments of taxes or social security contributions.
 - f) They or persons having powers of representation, decision-making or control over them have been convicted for fraud, corruption, involvement in a criminal organisation or money laundering.
 - g) They or persons having powers of representation, decision-making or control over them have been convicted of an offence concerning their professional conduct.

11 VERIFICATION OF QUALIFICATIONS

- 11.1 Grant recipient shall, unless deemed unnecessary, ensure that a tenderer meets formal requirements as stipulated under this Part III and national law.
- 11.2 A tenderer should normally be required to include in its tender evidence that:
 - a) It is registered by a national registrar of companies.
 - b) It is registered for declaration and payment of tax in accordance with national legislation.
 - c) It is free from debts regarding taxes and social security contributions.

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12 PROCUREMENT PROTOCOL

12.1 For contracts with a value exceeding NOK 100,000, the grant recipient shall compile a written protocol with documentation of all assessments and decisions made during all steps of the procurement process from the planning stage until the signing of the contract.

12.2 The protocol shall as a minimum include:

- a) A description of the service, goods or works to be procured,
- b) the value of the contract,
- c) the selected tender procedure,
- d) the name of all received tenderers,
- e) the selection criteria,
- f) the assessment of the tenders and tenderers,
- g) an assessment of conflict of interest, and
- h) the name of the selected tenderer.

Where simplified tendering in accordance with art. 15 is used the protocol shall also include a brief justification for the selection of tenderers. When an exemption from the procurement thresholds is given in accordance 16.4 a justification for the use of the exemption shall be included in the protocol.

12.3 Upon request by MFA/Norad, the grant recipient shall submit the procurement protocol to MFA/Norad and grant MFA/Norad access to all relevant information and documentation related to the procurement procedure and practices applied.

12.4 Failure to provide the procurement protocol shall render expenditure ineligible for MFA/Norad funding.

13 CONTROL AND COMPLIANCE

13.1 MFA/Norad may carry out ex post controls of the grant recipients' compliance with the rules set forth in this Part III.

13.2 Non-compliance with the minimum procurement rules and principles in this Part III shall render expenditure ineligible for MFA/Norad funding.

13.3 Non-compliance with the minimum procurement rules and principles in this Part III may be viewed as a material breach in accordance with General Conditions article 18.

PROCUREMENT METHODS

14 OPEN TENDERING

14.1 Open tendering is mandatory for procurement where the contract value exceeds NOK 1,300,000 (Norwegian kroner one million three hundred thousand).

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- 14.2 Open tendering are procedures under which all firms/individuals are given sufficient notification of contract requirements, and all eligible tenderers are given an equal opportunity to submit a tender. The time-limits set must be sufficient to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.
- 14.3 Open tender requires that the tendering opportunities are published to notify eligible tenderers about the contract opportunity.
- 14.4 Under open tendering the grant recipients are required to publish the invitation to tender in an appropriate national or international media outlet.
- 14.5 The grant recipient must give sufficient public notification of tendering opportunities to allow potential tenderers to determine their interest and to prepare their tenders. Open tendering may be conducted with or without prequalification proceedings.
- 14.6 Grant recipients are encouraged to apply open tendering in all procurement to increase transparency and promote competition.

15 SIMPLIFIED TENDERING

- 15.1 Simplified tendering may be used when the value of the contract is less than NOK 1,300,000 (Norwegian kroner one million three hundred thousand).
- 15.2 Simplified tendering is a procedure where a minimum of three - 3 – potential, relevant and qualified tenderers are invited to tender by direct invitation in writing. As for open tendering the time-limit set must be sufficient to allow the invited parties a reasonable and appropriate period to prepare and submit their tenders.
- 15.3 A simplified tender process shall always include the following features:
- a) A written invitation to tender which includes the tender and contract information, cf. article 8.
 - b) A procurement protocol cf. article 12.

16 SINGLE SOURCE PROCUREMENT

- 16.1 Single source procurement may be used when the contract value is less than NOK 100,000 (Norwegian kroner one hundred thousand), and for all procurements made through a DG-ECHO certified Humanitarian Procurement Centre (HPC).
- 16.2 The contract may be awarded using any procedure established by the grant recipient while respecting the principles of sound financial management, conflict of interest, ethics in procurement, sustainable procurement, and notoriety.
- 16.3 Single source procurement may also be used where the extension of an existing contract clearly would be economic and efficient. The extended contract's maximum value shall not exceed 50 % of the original contract value.

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16.4 MFA/Norad may in exceptional cases upon written and justified request from the grant recipient, also allow single source procurement where:

- a) A product or services can only be provided by a single firm because of exclusive capabilities, exceptional worth for the Project or proprietary rights.
- b) Standardisation with existing equipment is determined to be important and justified, and compatible goods cannot be provided by other suppliers.
- c) It is a case of extreme urgency not foreseeable or attributable to the grant recipients.

The exceptions set out in points (a) and (b) shall only apply when no reasonable alternative or substitute exists, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.

17 NEGOTIATED PROCEDURE

17.1 Under a negotiated procedure the grant recipient may approach one or more suppliers to negotiate a contract directly.

17.2 A negotiated procedure may only be used where no tenders or no acceptable tenders are received after an open tender procedure. A negotiated procedure may then be applied without further publication of a procurement notice provided that the original contract terms are not substantially altered.

17.3 An unacceptable tender is a tender that significantly deviate from the procurement requirements, is not delivered within the set deadline, is delivered by a supplier who does not meet the qualification requirements, or where there is evidence of illegal bid collusion or corruption.

18 FRAMEWORK AGREEMENTS

18.1 Where the grant recipients enter into framework agreements¹ for procurement of goods, works or services needed the initial framework tender process must corresponds to the requirements for tender procedures as set out in these Procurement Provisions. The estimated total value of contracts that may be entered under the framework agreement during its period of validity shall form the basis for the evaluation of which tender procedure to apply.

18.2 The grant recipients may utilize existing framework agreements or other types of pre-qualified suppliers for procurement of goods, works or services needed for an activity funded by the Grant if the initial contractual process corresponds to the requirements for tender procedures as set out in these Procurement Provisions. The procurement protocol documenting the initial tender procedure and a copy of the initial contract shall be submitted to MFA/Norad upon request.

18.3 Framework agreements should not exceed five years.

¹ a framework agreement is an agreement which establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.