



# **PROCUREMENT POLICY AND PROCEDURES**

*Adopted by the Board of Directors of the Nordic Environment Finance Corporation on 23 December 2020 with entry into force as of 1 January 2021.*

# NEFCO PROCUREMENT POLICY AND PROCEDURES

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Green Transition Eastern Europe

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This Policy shall be reviewed at least every five (5) years.

## DEFINITIONS

As used in this Policy, the following terms have the meanings set out below:

<b>affiliate</b>	means in relation to an entity (the <b>First Entity</b> ), (i) any entity controlled, directly or indirectly, by the First Entity, (ii) any entity that controls, directly or indirectly, the First Entity or (iii) any entity directly or indirectly under common control with the First Entity.
<b>client</b>	means an entity responsible for implementation of a NEFCO-financed project, such as borrower/recipient of NEFCO Funds or an entity appointed by such borrower/recipient and a secondary beneficiary of NEFCO Funds.
<b>conflict of interest</b>	is defined in Articles 3.27 - 3.29 and applies to private sector projects as well as public sector projects.
<b>consultancy services</b>	mean professional advisory and consultancy services delivered by consultants.
<b>consultant</b>	covers, as the context requires, both individual consultants and consulting firms, organisations, institutions and other types of entities providing services of intellectual or advisory nature, and associations of such entities in form of joint ventures, consortia or sub-consultancy.
<b>firm</b>	covers institutions, organisations and other types of entities providing goods, works or services, and associations of such entities in forms of joint ventures, consortia and sub-contracting.
<b>framework agreement</b>	means an agreement with suppliers, contractors or consultants to establish terms governing contracts that may be awarded during the life of the agreement. In other words, it is a general term for agreements that set out terms and conditions for making specific call-offs.
<b>goods</b>	mean permanent plant, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided by a contractor under a contract (including spare parts) but does not include contractor's equipment.
<b>Incoterms</b>	mean the trade terms established by the International Chamber of Commerce.
<b>legal framework</b>	consists of documents issued by, and binding on, NEFCO governing the operations, administration and employment related matters of NEFCO.
<b>NEFCO Activity</b>	means any activity which is financed, administered or supported by NEFCO, or proposed to be financed, administered or supported by NEFCO, specifically including, but not limited to procurement and any projects financed by NEFCO.
<b>NEFCO Funds</b>	means funds held, administered, committed or disbursed by NEFCO, whether NEFCO's own funds or funds belonging to a third party.
<b>NEFCO-financed operations</b>	means any activity which is financed with NEFCO Funds, or proposed to be financed with NEFCO Funds, specifically including but not limited to any projects and contracts financed with NEFCO Funds.
<b>no-objection</b>	where required according to this Policy, must be obtained by the client from NEFCO in writing, and means a statement issued by NEFCO authorising the client to proceed in accordance with its proposal.

<b>Policy on Anticorruption and Compliance</b>	is available on <a href="http://www.nefco.org">www.nefco.org</a> .
<b>procurement documents</b>	means all documents related to procurement activities and covers “ <b>tender documents</b> ” for goods, works and non-consulting services (see Article 3.17) and “ <b>requests for proposals</b> ” for consulting services (see Article 5.6).
<b>Prohibited Practice</b>	means any of the practices set out in NEFCO’s Policy on Anticorruption and Compliance.
<b>project country</b>	means a country where a NEFCO-financed project is implemented.
<b>public sector operations</b>	have the meaning given to them in Article 3.2.
<b>recommended tender documents</b>	also referred to as RTDs, mean templates issued by NEFCO for procurement of (i) goods (equipment) and related works, and (ii) works, and as may from time to time be issued by NEFCO.
<b>utilities</b>	mean authorities or undertakings which provide or operate services to the public in water, wastewater, waste, electricity, gas, heat, telecommunications or rail transport.

## 1. INTRODUCTION

1.1 Nordic Environment Finance Corporation (NEFCO) was established in 1990 by Denmark, Finland, Iceland, Norway and Sweden as a common international financial institution of the Nordic countries. NEFCO promotes investments of Nordic environmental interest, with a focus on Eastern Europe.

1.2 Competition is the fundamental principle of good procurement practice. Open, transparent and fair procedures for awarding public sector contracts for procurement of goods, works and services help to create dependable and stable market conditions for private enterprises. They also form the basis for establishing accountability and encourage the cost-effective use of public funds, a matter that is of concern for NEFCO, its owners as well as its project countries.

1.3 At the level of specific projects, which are the focus of NEFCO's operations, the efficiency of the procurement process directly affects the costs and the time required for project implementation and the ultimate performance of the sustainable operation.

1.4 In its commitment to the environment, NEFCO pursues the application of the environmental policy priorities as stipulated in NEFCO's environmental and sustainability policies and guidelines<sup>1</sup> and as further detailed in the documentation for specific projects. This approach shall accordingly be reflected also in the procurement practice in NEFCO-financed operations.

1.5 NEFCO is committed to ensuring that NEFCO Funds are used for their intended purposes, and to taking all reasonable steps to ensure that resources entrusted to NEFCO are managed with the highest level of integrity. NEFCO expects all clients as well as all consultants, service providers, suppliers and contractors procured by the client for the purpose of a NEFCO Activity and/or to be financed by NEFCO Funds to adhere to the highest ethical standards. The Policy on Anticorruption and Compliance<sup>2</sup> is applicable to all procurement activities under NEFCO's Procurement Policy and Procedures (**this Policy**).

1.6 This Policy sets out the procurement rules to be applied in (a) NEFCO-financed operations and (b) procurement by NEFCO. More detailed guidance on applicability of this Policy is provided under Section 6.

1.7 **Section 2** describes general principles and considerations that are applicable for all NEFCO operations. **Section 3** contains rules for procurement of goods, works and non-consulting services in NEFCO-financed operations involving the public sector. **Section 4** describes procurement considerations in NEFCO-financed operations in the private sector. **Section 5** contains rules for selection of consultants by clients in NEFCO-financed public sector operations and by NEFCO itself when engaging consultants for its own use or for a trust fund administered by NEFCO. **Section 6** defines the applicability and effectiveness of this Policy.

## 2. PRINCIPLES AND CONSIDERATIONS

2.1 The underlying principle of this Policy is that public sector contracts for goods, works and non-consulting services should normally be awarded on the basis of open competitive tendering. Contracts for consulting services should normally be awarded on the basis of competing proposals from qualified consultants. NEFCO-financed contracts may be awarded on the basis of procurement methods other than open tendering only in specially justified cases or when contract values are expected to be below the

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<sup>1</sup> NEFCO's environmental and sustainability policies and guidelines are available at [www.nefco.org](http://www.nefco.org).

<sup>2</sup> NEFCO's Policy on Anticorruption and Compliance is available on [www.nefco.org](http://www.nefco.org).

prescribed thresholds for use of open tender procedures. The rules and practices for carrying out procurement should not discriminate or provide unfair advantages between foreign and local products, suppliers, contractors, service providers or consultants and the procedures should be transparent and fairly applied.

2.2 NEFCO works in close cooperation with other international financial institutions, and seeks to increase the flow of investments to its project countries by co-financing projects also with bilateral development agencies, export credit agencies and commercial entities. When projects are co-financed on a joint basis, this Policy will apply for co-financed contracts. However, in exceptional cases NEFCO may agree, on a case-by-case basis, to the application of a procurement policy of a co-financier, provided that NEFCO is satisfied that those alternative procedures are fair and transparent, generally in line with the key principles of this Policy and good international practice and that acceptable monitoring procedures are in place.

2.3 NEFCO's concerns for value for money through efficient, effective and economic use of resources, and the concern for sustainability, transparency, quality of results, contractual protection and timely completion cover the entire project even if NEFCO Funds are used to finance only a part of the project. NEFCO will only finance contracts that are an agreed part of a project and that have been awarded and executed in accordance with the agreed procedure for that project or contract.

### **Eligibility**

2.4 NEFCO permits firms and individuals from all countries to offer goods, works and services, including consultancy services, for NEFCO-financed projects. Any conditions for contract award shall be limited to those that are essential to ensure the eligible firm's or individual's legal, financial, commercial and technical capability to fulfil the contract in question<sup>3</sup>. Clients of NEFCO shall not exclude a firm or an individual from participation in a tender process or contract award for reasons unrelated to its capability to perform the contract in question, unless the firm or individual (a) has been declared, and remains, as at the relevant date, ineligible pursuant to a decision on debarment in accordance with NEFCO's Policy on Anticorruption and Compliance; (b) has a conflict of interest or an unfair competitive advantage; or (c) is prohibited under relevant national law from entering into commercial relations with the client, provided the prohibition relates to a Prohibited Practice, which had been determined through judicial or administrative proceedings with adequate due process acceptable to NEFCO.

### **Sanctions**

2.5 Consistent with international law, the proceeds of NEFCO's loans, equity investments, guarantees or grants shall not be used for payment to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations or by any sanctions authority determined as relevant by NEFCO for a NEFCO-financed project. Persons or entities, or suppliers, contractors or consultants offering goods, works, and/or services, or consultancy services, covered by such prohibition or sanction shall therefore not be eligible for the award of a NEFCO-financed contract.

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<sup>3</sup> For conflict of interest see also Articles 3.27 - 3.29.

## **Client Responsibilities**

2.6 Clients are fully responsible for implementing NEFCO-financed projects, including all aspects of the procurement process from the planning stage through integrity due diligence of the winning tenderer to the award of contracts, as well as the administration and implementation of the contracts, including resolving claims and disputes. NEFCO reviews the procurement strategy and the relevant documents in the procurement process and may advise and assist clients in the procurement process and the institutional development for specific projects, but NEFCO is not a party to the resulting contracts. The rights and obligations of the client vis-à-vis the tenderers for goods, works and services to be furnished for the project will be governed by the procurement documents issued by the client and by the subsequent contracts, and not by this Policy. When required by NEFCO, clients shall use electronic procurement portals mandated by NEFCO.

## **Prohibited Practices**

2.7 NEFCO's Policy on Anticorruption and Compliance sets out the principles and obligations that apply to all NEFCO counterparties. The client shall promptly report to NEFCO any occurrence or suspected occurrence of a Prohibited Practice in the procurement, award or implementation of a NEFCO-financed contract, which shall be dealt with in accordance with the provisions of NEFCO's Policy on Anticorruption and Compliance and any other relevant provisions in NEFCO's legal framework. Suppliers, contractors and service providers selected pursuant to Section 3 (Procurement in Public Sector Operations), consultants selected pursuant to Section 5 (Procurement of Consultancy Services) and any sub-supplier, sub-contractor or sub-consultant thereof as well as NEFCO's clients shall fully cooperate with NEFCO in any investigation into an alleged Prohibited Practice and shall permit NEFCO, or its representative, to inspect such of their accounts and records as may be relevant for such investigation and to have such records and accounts audited by the auditors appointed by NEFCO. Provisions to this effect are included in NEFCO's financing agreements with its clients, and the client shall ensure that relevant provisions to that effect are included in any NEFCO-financed contracts the client enters into.

2.8 Occurrence of a Prohibited Practice may lead to contractual, judicial or other measures, including the sanctions set out in the Policy on Anticorruption and Compliance. In case of any occurrence, or suspected occurrence, of a Prohibited Practice in a procurement process, NEFCO may withhold its no-objection until the matter has been investigated and concluded upon.

## **Procurement Related Complaints**

2.9 Participants in a procurement process governed by this Policy<sup>4</sup> are entitled to a debriefing, which may be monitored by NEFCO, and to submit a procurement related complaint in accordance with NEFCO's procurement complaint procedures<sup>5</sup>.

2.10 When a complaint regarding any aspect of a tender procedure is received by NEFCO in accordance with its procurement complaint procedures, NEFCO will ensure that the complaint is fully reviewed and that NEFCO's conclusion is communicated to the complainant and NEFCO's client. When a complaint is addressed to the client, the client will review and respond to the complaint.

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<sup>4</sup> Excluding under other procurement arrangements agreed in accordance with Articles 2.2, 3.15, 3.16 or Section 4.

<sup>5</sup> Further guidance and form for procurement complaints are available on [www.nefco.org](http://www.nefco.org).



## **Misprocurement**

2.11 If at any time in a procurement or consultancy selection process for a NEFCO-financed contract, even after award of contract, NEFCO finds that the procurement, selection, award, or administration of a contract, including any agreed modification or waiver of such contract, or handling of a procurement related complaint, has not been carried out materially in accordance with the agreed procedures, it will promptly inform the client and state the reasons for such determination. The contract may no longer be eligible for NEFCO financing and the outstanding portion of the financing allocated to the contract may be cancelled by NEFCO. If the client has proceeded to award such a contract after issuance of NEFCO's no-objection, NEFCO may declare the contract to be ineligible for financing if it determines that its no-objection was based on incomplete, inaccurate or misleading information furnished by the client about the procurement or contract administration process, or if it determines that the client or the successful tenderer has engaged in Prohibited Practices.

### **3. PROCUREMENT IN PUBLIC SECTOR OPERATIONS**

#### **General**

3.1 Competition is the foundation for good procurement practice. In addition to sound economy and efficiency, the public sector requires transparency and accountability for the use of public funds. This affects the choice of the procurement method and the documentation and procedures that are used. Therefore NEFCO requires its public sector clients, in all appropriate cases, to obtain goods, works and non-consulting services through Open Tendering procedures in accordance with the rules outlined in this Section 3. Other methods may be appropriate for special circumstances, depending on the nature and value of the goods, works or non-consulting services to be obtained, the required completion time and other considerations. All procurement methods other than Open Tendering shall be clearly justified, approved by NEFCO, and specified in the project documentation before starting the procedure.

#### **Applicability of this Policy**

3.2 For the purpose of this Policy, public sector operations are operations:

- (a) which are extended to or guaranteed by a project country; or
- (b) for utilities majority owned or controlled by national or local governments, or government agencies of a project country; or
- (c) which are extended to or guaranteed by national or local governments of a project country or for agencies and enterprises majority owned or controlled by any of them, other than such enterprises that in NEFCO's judgement are operating autonomously<sup>6</sup> in a competitive market environment and are subject to bankruptcy or insolvency law.

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<sup>6</sup> Meaning that the enterprise in question is not subject to national public procurement law or similar provisions and follows, to NEFCO's satisfaction, sound procurement practices comparable to those described in Section 4 (Procurement in Private Sector Operations).

3.3 The rules for procurement outlined in this Section 3 shall apply to all forms of acquisition of goods, works and non-consulting services<sup>7</sup>, including, inter alia, purchase, hire-purchase, rental and leasing contracts.

#### **Procurement Process**

3.4 The normal process for public sector procurement involves the following steps:

- (a) procurement planning including a project implementation plan;
- (b) notification of opportunities for tendering;
- (c) prequalification when appropriate;
- (d) invitation to tender and issuance of tender documents;
- (e) submission of tenders, evaluation of tenders and contract award; and
- (f) contract implementation, administration and monitoring.

The extent of the process and the specific procedures to be followed for each step will depend on the used procurement method.

#### **Procurement Planning**

3.5 Sound planning of procurement is crucial for efficient project implementation. The client shall elaborate a procurement plan defining the contracts for goods, works and non-consulting services to be procured, and for each contract, the cost estimate, proposed procurement method, source of funding and planned dates for main steps in the procurement procedures. NEFCO shall provide its no-objection to the procurement plan before any procurement begins. Possible adjustments and refinements to the procurement plan can be made subject to NEFCO's no-objection as needed throughout the duration of the project. Review and approval of the procurement plan by NEFCO is one of the essential steps for establishing the cost efficient use of the proceeds of the financing by NEFCO.

#### **Notification**

3.6 After the procurement plan has been prepared and as early in the project cycle as possible, the client shall issue a General Procurement Notice that advises the business community about the nature of the project and business opportunities in it. This notice shall include the amount and purpose of NEFCO financing and the overall procurement plan, including:

- (a) the rules and procedures to be applied;
- (b) the goods, works and non-consulting services to be procured;
- (c) the expected timing; and

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<sup>7</sup> Rules applying to consulting services are described in Section 5 (Procurement of Consulting Services).

- (d) a name and contact address where to express interest and to obtain additional information.

The General Procurement Notice shall be published on the client's own website and official government procurement portal where available, in a newspaper with wide circulation in the client's country or in official gazettes and/or, when appropriate, in international trade publications. In addition, the notice shall be submitted to NEFCO which will arrange for publication of the notice in the procurement section of NEFCO's website to make potential tenderers aware of upcoming opportunities. The General Procurement Notice shall be updated at least annually and published as long as any substantial contracts for goods, works or non-consulting services remain to be procured. An invitation to tender shall not be published before the General Procurement Notice has been published.

### **Advertising**

3.7 Open Tendering for individual contracts shall be advertised in the same media and manner as the General Procurement Notice. In order to facilitate the participation of suppliers and contractors in contracts, and the creation of joint ventures and consortia, the client shall upon request make available the list of potential tenderers that have formally obtained the tender documents and when prequalification is used, the list of prequalified entities.

### **Open Tendering**

3.8 Open Tendering procedures are those procedures under which all interested tenderers are given adequate notification of contract requirements and all such tenderers are given an equal opportunity to submit a tender. It provides the greatest opportunity for competition and satisfies the requirement of economy and efficiency. The client shall give sufficient advance public notification of Open Tendering opportunities for the potential tenderers to determine their interest and to prepare and submit their tenders. In Open Tendering the award of contract requires that the offered goods, works or non-consulting services meet the specifications defined in the tender documents. Furthermore, the tender and the tenderer have to meet the criteria defined in the tender documents; the tender to be considered responsive and the tenderer to be qualified to perform the contract.

### **Prequalification for Tenderers**

3.9 Clients shall when appropriate require potential tenderers to prequalify for e.g. large and complex contracts. In such cases all interested tenderers that meet the prequalification criteria shall be invited to submit a tender. The notification for prequalification and the evaluation procedure shall be consistent with those applicable for Open Tendering in this Policy. The list of prequalified and conditionally prequalified companies shall be advertised on NEFCO's website before the issuance of tender documents. The prequalification process shall be inclusive rather than exclusive.

### **Two-stage Tendering**

3.10 Two-stage tendering procedures may be used in cases when it is not convenient to prepare complete technical specifications at an early stage for contracts for complex plants, works of a special nature or equipment subject to rapid technological advances. In a first stage interested tenderers are requested to submit un-priced technical proposals based on conceptual design or performance specifications. In the second stage complete technical proposals and priced tenders are requested based on tender documents elaborated according to additional findings of the first stage.

## Thresholds

3.11 Except as otherwise provided for in Articles 3.12 - 3.16, contracts shall be procured following Open Tendering, if their value is estimated to equal, or exceed **EUR 100,000** for goods, including related works, and non-consulting services, and **EUR 500,000** for works and supply and installation contracts. No procurement requirements shall be divided with the intent of reducing the value of the resulting contract(s) below these thresholds with the purpose of circumventing these rules. For goods, works, non-consulting services and supply and installation contracts below these threshold values, clients are encouraged to follow Open Tendering but may use other procedures provided for in this Policy.

## Other Procurement Methods and Procedures

3.12 **Selective Tendering** procedures are similar to those for Open Tendering except that the client pre-selects qualified firms, who will be invited to submit tenders. Selective Tendering may be used for awarding contracts only where:

- (a) the required product or service is highly specialised and complex;
- (b) there are only a limited number of suppliers of the particular goods or non-consulting services needed;
- (c) other conditions limit the number of firms that are able to meet contract requirements.

In the above cases a client may, with NEFCO's prior written approval, invite tenders from a list of qualified firms, selected in a non-discriminatory manner. This list shall include foreign firms whenever possible.

3.13 **Direct Contracting** may be used where:

- (a) an extension of an existing contract, awarded in accordance with procedures acceptable to NEFCO, for additional goods, works or non-consulting services of a similar nature would clearly be economic and efficient and no substantial advantage could be expected or obtained by further competition;
- (b) there has been an unsatisfactory response to Open or Selective Tendering carried out in accordance with this Policy;
- (c) a product, works or service can only be provided by a single supplier or contractor because of exclusive capabilities, rights or availability of required products;
- (d) standardisation with existing equipment is determined to be important and justified, the number of new items are generally less than the existing number and compatible goods cannot be provided by other suppliers; or
- (e) it is a case of extreme urgency brought about by unforeseeable events not attributable to the procuring entity.

In the above cases a client may, with NEFCO's prior no-objection, invite a single firm to present its tender without prior public notification. Prior to NEFCO's no-objection to the signed contract the client shall submit to NEFCO the draft contract together with an appropriate justification demonstrating the basis upon which the contract represents value for money.

3.14 **Shopping** procedures may be agreed to by NEFCO for contracts of a value **equal to or less than EUR 100,000** for (a) readily available off-the-shelf items; (b) standard specification goods; and (c) routine and other minor works. Shopping is a simplified form of competitive purchasing that only requires written price quotations from at least three suppliers, contractors or service providers, including foreign firms wherever possible.

3.15 **Tendering based on national procurement law** may be the most economic and efficient method of procuring goods, works or non-consulting services when: (a) contract values are small; (b) works are scattered geographically or spread over time; (c) the goods, works or non-consulting services are available locally at lower prices than from the international market; or (d) by their nature or scope the contracts are unlikely to attract foreign competition. The procedures applied must be acceptable to NEFCO and shall provide for adequate timely notification and fair competition in order to ensure value for money. Evaluation methodology, eligibility requirements and contract conditions shall be acceptable to NEFCO and shall be made known to all tenderers and applied fairly. Foreign firms shall be allowed to participate on equal terms. NEFCO may require the use of its recommended tender documents with adjustment for local provisions and publication of tender opportunities on its website. NEFCO may allow clients to use national electronic procurement platforms when acceptable to NEFCO.

3.16 **Utilities**, agencies and enterprises, defined as public sector entities under Articles 3.2(b) or 3.2(c), which have a significant degree of private ownership and control, are expected to follow Open Tendering. However, where such entities have adopted sound procurement rules and procedures, NEFCO may agree that such entities follow competitive procedures in accordance with their own rules provided such procedures are acceptable to NEFCO. To be acceptable for use in the procurement of NEFCO-financed contracts, the procedures of the entity should provide for adequate international notification, non-discriminatory competition, transparent and fair evaluation procedures, verifiable compliance and independent complaints mechanisms, as well as fair and balanced contracts. NEFCO may request adjustments to the procedures to ensure compliance with the principles and considerations of this Policy.

### **Tender Documents**

3.17 Tender documents are the basis for informing potential tenderers of the requirements they need to fulfil to supply specific goods or non-consulting services or to construct works and they must furnish all information necessary to enable tenderers to submit responsive tenders. Tender documents shall be drafted so as to permit and encourage international competition. They shall clearly define the scope of goods, works or non-consulting services to be supplied, the rights and obligations of the client and of the supplier, contractor or service provider, the conditions to be met in order for a tender to be declared responsive. They shall set out criteria to be met by the tenderer to be considered capable to fulfil the contract. Tender documents shall set out fair and non-discriminatory criteria for selecting the winning tender. The detail and complexity of the tender documents will vary according to the size and nature of the contract but generally they should include an invitation to tender, instructions to tenderers, the forms of tender, tender security requirements, qualification and evaluation criteria, the conditions of contract, advance payment guarantee and performance security requirements, technical specifications and drawings, schedule of requirements for the goods, works or non-consulting services, and the form of contract. Clients shall use NEFCO's recommended tender documents appropriate for each type of procurement.

3.18 **Evaluation Criteria.** The tender evaluation aims at identifying the most economically advantageous responsive tender. Tender documents shall specify the relevant factors to be considered in the tender evaluation in addition to the submitted tender price and the manner in which they will be applied for the purpose of determining the most economically advantageous tender. Factors which may be taken into consideration include, inter alia, the payment schedule, the time of completion of construction or delivery,

the operating and maintenance costs or lifetime costs, the efficiency and compatibility of the equipment, performance and quality, environmental considerations and requirements, availability of service and spare parts and minor deviations or omissions, if any. The factors related to the subject matter, other than price to be used for determining the most economically advantageous tender shall be expressed in monetary terms or, where that is not possible for demonstrable reasons, given a relative weight in the evaluation provisions of the tender documents. The tender, which is the most economically advantageous tender, but not necessarily with the lowest submitted tender price, submitted by a qualified tenderer, shall be selected for award.

**3.19 Language.** Unless otherwise agreed with NEFCO, tender documentation, including all published procurement notices, shall be prepared and issued by the client in English. In the interest of broad competition as well as economy and efficiency, the client may prepare further sets, or parts, of the tender documentation in the local language in order to assist local firms in tendering. All documents required by NEFCO for review and notification purposes shall be submitted to NEFCO in English. In the event of a procurement complaint, NEFCO may require certified translations of the relevant documents which the client shall provide without delay. NEFCO will determine on the basis of such English language documentation whether procurement has been carried out in accordance with the agreed procedures.

**3.20 Standards and Specifications.** Specifications shall be based on relevant quality characteristics and/or performance requirements. Clients shall use international standards and specifications wherever these are available and appropriate. If particular national or other standards are used, the tender documents shall state that other standards that ensure equivalent or higher quality or performance than the specified standard would also be accepted. The use of brand names or other designations that would discriminate among suppliers shall be avoided. If they are necessary to clarify the nature of the product requirements, the tender documents shall state that other products of equivalent or higher quality would also be acceptable.

**3.21 Tender Prices.** Tender prices for the **supply of goods** shall be requested on the basis of relevant Incoterms, as agreed with NEFCO, provided that the evaluation ensures a fair and equal comparison between locally and foreign supplied goods. Tender prices for **works and non-consulting services** contracts may be requested inclusive of all duties, taxes and other levies. The evaluation and comparison of tenders shall be on this basis and the selected contractor would be responsible for all duties, taxes and levies in the performance of the contract.

**3.22 Currency.** Clients shall, with the written agreement of NEFCO, determine the currency or currencies in which the tender prices shall be quoted. The use of multiple currencies shall as a rule be avoided, but if permitted, tender prices shall, for the purpose of tender evaluation and comparison only, be converted to a single currency, selected by the client, using the selling (exchange) rates for the currencies of the tender quoted by an official source (such as the central bank) for similar transactions on a date 28 days before the deadline for submission of tenders, unless otherwise agreed with NEFCO, and specified in the tender documents. Payments under the contract will be made in the currency or currencies of the contract, unless otherwise agreed with NEFCO.

**3.23 Payment.** Payment terms and procedures shall be in accordance with the internationally accepted commercial practices applicable to the goods, works or non-consulting services in question. Contracts for supply of goods shall provide for full payment in accordance with the Incoterms used. For contracts involving installation and commissioning, a portion of the payment may be retained until the supplier or contractor has complied with all its obligations.

**3.24 Time Limits.** Prescribed time limits for preparation and submission of tenders shall be adequate for all tenderers to prepare and submit tenders. Generally not less than **40 days** from the publication of the

invitation to tender or the availability of tender documents, whichever is later, should be allowed for the preparation and submission of tenders. For Open Tendering procedures using an electronic procurement platform, the period may be further reduced, with the written agreement of NEFCO. Tender validity periods and delivery dates shall be consistent with the client's reasonable requirements but shall not be used to discriminate against any potential tenderer. In exceptional cases it may be necessary to request tenderers to extend the validity of their tenders. In such cases tenderers shall not be allowed or required to change their tender and shall be free to reject the request without penalty. Where the tender is for a fixed price, provision must be made in the tender documents for the tender price of the successful tenderer to be adjusted for inflation<sup>8</sup> up to the date of contract award, so as to mitigate the risk accruing to tenderers offering such an extension.

**3.25 Conditions of Contract.** The form of contract to be used shall be appropriate to the objectives and circumstances of the project. Contract conditions shall be drafted so as to allocate the risks associated with the contract fairly, with the primary aim of achieving the most economic price and efficient performance of the contract. The contract shall clearly define the scope of goods, works or non-consulting services to be supplied or performed, the rights and obligations of the client and of suppliers and contractors and should include, inter alia, appropriate provisions for guarantees of performance and warranties, time limits, liability and insurance, acceptance, payment terms and procedures, price adjustment (where appropriate), liquidated damages and bonuses, handling of changes and claims, audit rights, ethical standards, force majeure, termination, settlement of disputes and governing law. Wherever required by NEFCO, standard forms of contract incorporating generally accepted international conditions shall be used.

3.26 Nothing in the tender documents shall be designed to restrict competition or offer an unfair competitive advantage to a tenderer. Clients shall not provide to any potential supplier or contractor information regarding a specific procurement which would have the effect of providing an unfair competitive advantage and/or reducing or precluding competition. All amendments and clarifications to tender documents shall be made available to all participants that have requested or obtained tender documents directly from the client.

### **Conflict of Interest**

3.27 This Policy requires that a firm participating in a procurement process under a NEFCO-financed public sector project shall not have a conflict of interest. Any firm found to have a conflict of interest shall be ineligible for award of contract. In this respect, a tenderer may submit only one tender or participate as a joint venture partner or consortium member in only one tender for each contract. Submission or participation by a tenderer in more than one tender for a contract will result in the rejection of all tenders for that contract in which the party is involved. For the purpose of this Article, a subcontractor is not deemed to be participating in a tender. A firm shall also be considered to have a conflict of interest in a procurement process if such firm (including its personnel) has a close business, family or other relationship with the client or a professional staff of the client (or of the project implementing agency, or of a recipient of a part of the NEFCO Funds) who: (i) are directly or indirectly involved in the preparation of the tender documents or specifications of the contract, and/or the tender evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract, unless the conflict stemming from such relationship has been resolved in a manner acceptable to NEFCO throughout the procurement process and execution of the contract.

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<sup>8</sup> An appropriate and official index, such as the official cost of living index in a country, expressed in the currency of the tender, must be used.

3.28 No affiliate of the client, or of a procurement agent engaged by the client, shall be eligible for contract award unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the client or the client's agent and the affiliate.

3.29 Where a firm, its affiliates or parent company, in addition to consulting, also has the capability to manufacture or supply goods or to provide works, that firm, its affiliates or parent company cannot be a supplier of goods or works on a project for which it provides or has provided consulting services directly related to the contract in question, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control or that the involvement does not provide the firm with an unfair competitive advantage.

### **Tender Opening**

3.30 Tenders shall be received and opened under procedures and conditions guaranteeing the regularity of the opening as well as the availability of information from the opening. The time and place for the opening, and any information announced at the tender opening shall be strictly in accordance with the relevant provisions contained in the tender documents. Tenders shall be opened in the presence of tenderers who wish to attend or their representatives. If an electronic procurement platform is used the procedures shall provide an equivalent level of transparency as described in this Article. The client shall maintain a complete record of the tender opening, which shall be copied to NEFCO directly after tender opening. Tenders received after the stipulated deadline for the submission of tenders shall be returned unopened to the tenderer.

### **Tender Evaluation and Contract Award**

3.31 When competitive procedures are used, the client shall evaluate and compare tenders only on the basis of the evaluation criteria set out in the tender documents. The tender evaluation process shall be confidential but the result of the evaluation and a summary of the evaluation, once completed, shall be made available to all tenderers at the same time. Contracts should be awarded within the period of tender validity to the tenderer whose tender has been determined as being substantially responsive and, in terms of the specific evaluation criteria set forth in the tender documentation, is determined as the most economically advantageous tender and who has been determined to be fully capable of undertaking the contract. Tenderers shall not be allowed or asked to change their tender or required to accept new conditions during evaluation or as a condition of award<sup>9</sup>. The terms and conditions of the contract shall not, without NEFCO's no-objection, materially differ from those on which tenders were invited. In the event that a tender is identified during the evaluation process as being considered as abnormally low and the tenderer is subsequently unable to demonstrate beyond reasonable doubt through a clarification process its capability to perform the contract for the offered price, the tender may be rejected subject to prior no-objection by NEFCO.

3.32 The client shall submit to NEFCO, in the required format, a report containing the results of the tender evaluation, including the integrity due diligence carried out by the client on the winning tenderer, and a recommendation for the award of the contract. NEFCO will review the findings and recommendations as the final step in establishing the eligibility of the contract for NEFCO financing<sup>10</sup>.

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<sup>9</sup> Tenderers are allowed to correct minor clerical or mathematical errors.

<sup>10</sup> See Article 3.39.



## **Rejection of All Tenders**

3.33 Rejection of all tenders is justified when none of the tenders are substantially responsive, or no tenderer meets the specified qualification criteria, or the tender price of the lowest evaluated tender is substantially higher than the available budget. If all tenders are rejected, the client shall review the causes justifying the rejection of all tenders and make appropriate revisions to the tender documents<sup>11</sup> before re-inviting tenders.

3.34 If the lowest evaluated, and substantially responsive, tender exceeds the available budget, the client may negotiate with the lowest evaluated tenderer to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, as a rule NEFCO will require retendering in case of substantial reduction in the scope or modification to the tender documents.

3.35 NEFCO's prior no-objection shall be obtained before rejecting all tenders, soliciting new tenders, or entering into negotiations with the lowest evaluated tenderer.

## **Advance Contracting**

3.36 In some cases it may be advantageous for the client to initiate the procurement process and to sign a contract with a supplier or contractor before the signing of the related financing documents with NEFCO. Clients undertake such advance contracting at their own risk and NEFCO's no-objection given to the procurement procedures, documents or the proposal for award does not commit NEFCO to make financing available for the project. All procurement procedures shall be consistent with this Policy in order for any contracts to be eligible for NEFCO financing.

## **Contract Administration**

3.37 The client shall administer contracts with due diligence and shall monitor and periodically report to NEFCO on the performance and progress of the contracts.

3.38 Before agreeing to any modification or waiver of the terms and conditions of a contract or granting an extension of the stipulated time for performance (except in cases of extreme urgency brought about by unforeseeable events not attributable to the procuring entity), the client shall obtain NEFCO's no-objection to the proposed modification, waiver or extension. Change or variation orders made in accordance with the terms and conditions of the contract shall be subject to NEFCO's review before a no-objection can be given for disbursement.

## **Procurement Monitoring and NEFCO Review**

3.39 As an integral part of their project implementation responsibilities, clients are required to prepare and maintain documents and records pertaining to the procurement process and the administration and implementation of contracts for the purpose of NEFCO's review. NEFCO's review of the procurement and contract administration processes will focus on critical steps that are necessary to ensure eligibility of the contract for NEFCO financing, in particular the procurement plan, the tender documents, the tender evaluation and contract award recommendations, and changes and claims during the execution of the

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<sup>11</sup> Such revisions may relate to the scope or conditions of contract, or minimum qualification criteria, or the design and specifications, etc. or a combination thereof.

contract. Review and approval of the procurement plan by NEFCO is one of the essential steps for establishing the use of the proceeds of the loan and/or investment grant.

3.40 The client shall make such modifications in the procurement documents and/or reports as NEFCO may request. The approved documents or reports shall not be changed without NEFCO's prior no-objection.

3.41 All contracts to be procured following Open Tendering shall normally be subject to NEFCO's prior review. The procurement plan agreed for the project will determine which contracts are subject to post review, if any. NEFCO may also initiate reviews of procurements and contracts.

3.42 For all contracts which are **subject to NEFCO's prior review** process the following will apply as a minimum:

- (a) prior to an invitation to tender, the client shall submit the complete tender documents to NEFCO for its review and no-objection;
- (b) prior to finalising a contract award, the client shall submit to NEFCO for its review and no-objection a detailed tender evaluation report setting forth the specific reasons on which the recommendation to award the contract is based;
- (c) prior to signing, the client shall submit the draft contract to NEFCO for its review and no-objection;
- (d) one copy of the signed contract shall be furnished to NEFCO immediately upon signature of such contract; and
- (e) any other information that NEFCO may request shall be submitted.

3.43 For contracts **not subject to NEFCO's prior review**<sup>12</sup>, immediately upon signing of the contract the client shall furnish to NEFCO a copy of the signed contract, together with the tender evaluation report.

3.44 NEFCO will on a periodical basis publish a list of contracts awarded, the name and nationality of the entities to which contracts have been awarded and the contract prices.

#### **4. PROCUREMENT IN PRIVATE SECTOR OPERATIONS**

4.1 NEFCO's requirement for the appropriate use of NEFCO Funds and for economy and efficiency apply equally to its public sector operations and to its private sector operations. Private sector enterprises often meet these concerns by following established commercial practices other than formal Open Tendering for their procurement. Nevertheless, wherever appropriate, NEFCO will encourage the use of competitive tendering methods by its private sector clients, particularly for large contracts.

4.2 NEFCO will satisfy itself that private sector clients use appropriate procurement methods which ensure a sound selection of goods and services at fair market prices and that they are making their capital investments in an environmentally sound and cost effective manner. Careful procurement planning that takes into account the particular needs of the enterprise is essential for NEFCO's evaluation and agreement.

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<sup>12</sup> For example, if NEFCO has agreed to application of national public procurement laws and regulations.

4.3 Contracts awarded by private sector clients should be negotiated on an arm's length basis and be in the best financial interest of the client as distinct from the sponsors. Where a shareholder of the client or one of its affiliates, including parent companies and affiliates of such parent companies, is also a supplier or contractor to the project, NEFCO will satisfy itself that the costs are in line with current market prices and the original cost estimates, and that the contract conditions are fair and reasonable. NEFCO will not finance costs that exceed market levels.

4.4 Where NEFCO is financing private operators of a public concession, tendering procedures acceptable to NEFCO should be followed for the selection of the concessionaire.

4.5 Where NEFCO provides funds to a financial intermediary to finance sub-loans to private beneficiaries such as small and medium sized enterprises, the procurement under the sub-loan shall be undertaken by the respective beneficiaries in accordance with normal procurement practices for private sector operations acceptable to NEFCO. Where sub-loans are made to public sector beneficiaries, the procurement under the sub-loans may be carried out in accordance with Article 3.15<sup>13</sup> of this Policy or, where NEFCO does not have a legal agreement with the final beneficiary, the applicable national public procurement laws and regulations.

4.6 In case grants in private sector operations are funded through **trust funds** administered by NEFCO, the rules in Sections 3 or 5 shall be followed, to the extent that they do not conflict with agreements reached with the donors of such funds.

## 5. PROCUREMENT OF CONSULTING SERVICES

### General

5.1 NEFCO and its clients engage consultants to provide a wide range of expert advice and consulting services in connection with their operations and management responsibilities. The main concern when procuring consultants should be the quality of the services that are provided. The procedures for selecting consultants and contracting consulting services shall be flexible and transparent to ensure that assignments can be efficiently executed with high standards of performance, while at the same time providing the necessary accountability. The procedures described in this Section 5 shall be followed for consulting contracts to be financed with the proceeds of NEFCO Funds under public sector operations and for contracts with consultants engaged directly by NEFCO for a NEFCO Activity. When required by NEFCO, clients shall use the electronic procurement portal specified by NEFCO.

### Consultant Selection Process

5.2 The selection process for consultants normally involves the following steps:

- (a) preparing terms of reference (ToR) that define the scope and objectives of the proposed assignment, including any anticipated follow-on services and/or extensions, determining the selection method to be followed and preparing cost estimate for the services;
- (b) identifying, through invitation for expressions of interest or otherwise, consultants that are interested and qualified to perform the required services and preparing a shortlist of such consultants;

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<sup>13</sup> See Article 3.15 (Tendering based on national procurement law).

- (c) preparing request for proposals and issuing it to the shortlisted consultants;
- (d) selecting the consultant in accordance with procedures outlined in Articles 5.3 and 5.4;
- (e) negotiating a contract with the selected consultant; and
- (f) contract administration.

5.3 Consultants shall be selected as follows:

- (a) **Direct selection:** for low value contracts estimated to cost **less than EUR 75,000** (including any foreseeable follow-on services), a qualified consultant may, subject to NEFCO's no-objection, be contracted directly, without the requirement to select the consultant competitively, and a contract negotiated with the selected consultant.
- (b) **Selection from a shortlist:** for contracts with an estimated value of **EUR 75,000 or more and less than EUR 150,000**, a shortlist of qualified consultants shall be prepared. The selection of the preferred consultant shall be based on evaluation of the shortlisted consultants' technical and financial proposal. Should the contract negotiations with the preferred consultant fail, the second ranked consultant may be invited to contract negotiations.
- (c) **Single stage open competitive selection:** for contracts with consultants that are estimated to cost **EUR 150,000 or more** (including any foreseeable follow on services), a procurement notice soliciting responses from qualified consultants shall be published in the procurement section of NEFCO's website and/or an electronic procurement portal or client's website, as determined by NEFCO. The procurement notice shall include the scope, methodology and objectives of the assignment and the evaluation criteria for the award of the contract. The evaluation of the responses submitted shall be made on the basis of the criteria outlined in the procurement notice and the rationale for the choice shall be recorded.
- (d) **Two stage open competitive selection:** when deemed appropriate and for services that are complex or of special nature, where the objectives (what) can be established but the scope and methodology (how) to achieve the objectives cannot be defined by the client, as determined by NEFCO, a two stage open competitive selection process shall be applied<sup>14</sup>.

In a two stage open competitive selection process a procurement notice soliciting expressions of interest from qualified consultants shall be published in the procurement section of NEFCO's website and/or an electronic procurement portal or client's website, as determined by NEFCO. The procurement notice shall include the objectives of the assignment and the criteria for the shortlisting of qualified consultants. The rationale for the inclusion in the shortlist shall be recorded.

The shortlisted consultants shall be requested to submit proposals. The request to submit proposals shall include the objectives of the assignment and the evaluation criteria for the award of the contract. The evaluation of the proposals that shall include the scope and methodology shall be made on the basis of the criteria outlined in the request for proposal and the rationale for the choice shall be recorded.

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<sup>14</sup> Examples of assignments for two stage open competitive selection may include conceptual design, complex IT services or framework agreements.

## Shortlists

5.4 Unless based on a well justified rationale and subject to a no-objection by NEFCO, shortlists of consultants shall include no less than three (3) and no more than six (6) qualified and experienced consultants. As a rule, the list shall comprise a wide geographic spread of consultants, including wherever possible at least one qualified consultant from other than the project country and no more than two from any one country. The shortlist procedures may in the case of framework agreements be modified in agreement with NEFCO.

## Eligibility

5.5 Consultancy contracts shall not be awarded to:

- (a) any affiliate of the client, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the client and the affiliate and that the affiliate would not be placed in a position where its judgement in the execution of the assignment may be biased. Parties involved in the selection process shall not have a conflict of interest, as determined by NEFCO.
- (b) consultants who participate in more than one expression of interest/proposal for each contract. For the purpose of this Article a sub-consultant is not considered to be participating in expression of interest/proposal.
- (c) consultants that have conflict of interest or would have conflict of interest if awarded the contract.<sup>15</sup>

5.6 **Request for Proposals (RfP).** The request for proposals shall usually include instructions to consultants for preparation and submission of proposals (including evaluation criteria), forms to be used for the proposals, terms of reference and the form and conditions of the intended contract.

## Language

5.7 Unless otherwise agreed with NEFCO, requests for proposals, including all published procurement notices, shall be prepared and issued by the client in English. In the interest of competition as well as economy and efficiency, the client may prepare further sets or sections of requests for proposals in the local language in order to assist local firms in participating. All documents required by NEFCO for review purposes shall be submitted to NEFCO in English. In the event of a procurement complaint, NEFCO may also require certified translations of the relevant documents which the client shall provide without delay. NEFCO will determine on the basis of the English language documentation whether procurement has been carried out in accordance with the agreed procedures.

## Evaluation and Selection

5.8 The evaluation of consultants should principally be based on quality such as technical consideration, including, but not be limited to, experience in similar assignments, regional experience, qualifications of key personnel proposed for the assignment, and suitability and quality of the methodology and work plan. The price of the services forms a part of the consideration. The consultant whose proposal is rated highest should be invited to negotiate a contract.

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<sup>15</sup> See Articles 3.27 - 3.29.

5.9 Competition is preferred; however, in some circumstances it may be necessary or advantageous to select directly or continue the engagement with a specific consultant, where:

- (a) the consultant has unique expertise or experience directly relevant for the assignment; or
- (b) the consultant has been or is involved in the early phases of the project such as feasibility study or design and it has been determined that continuity is necessary and little or no advantage would be gained from following competitive procedures; or
- (c) additional services not included in the original contract have, through unforeseen circumstances, become necessary for the performance of the contracted services, on condition that those additional services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities or when such services, although separable from the performance of the original contract, are strictly necessary for its completion; or
- (d) there has been an unsatisfactory response to a selection process carried out in accordance with agreed procedures.

In the above cases a client may, with NEFCO's prior written approval, invite the consultant in question to submit a proposal and negotiate the contract directly with this consultant.

### **Contract Negotiations**

5.10 During contract negotiations the client and the consultant may agree on non-material modifications to the contract. The client shall indicate any changes that may be desirable in the scope of services and in the staffing proposed by the consultant, and appropriate adjustments in the price of services shall then be agreed. The draft final contract shall be presented to NEFCO for its review and no-objection before signing.

5.11 After award of the contract the client shall notify the other consultants and is encouraged to publish an award notice in the same media where the tender notice was published. Any unopened financial proposals of consultants shall then be returned.

### **Contract Administration**

5.12 In NEFCO-financed projects, the client is responsible for managing and administering the consulting services contracts and work to ensure high performance standards, authorising payments, making contract changes as may be needed, resolving possible claims and disputes, ensuring timely and satisfactory completion of the assignment and evaluating the performance of consultants. The client shall make available to NEFCO a copy of the signed contract as soon as practical after signature by the parties to the contract.

5.13 Before agreeing to any modifications or waiver of the terms and conditions of a contract or granting an extension of the stipulated time for performance (except in cases of extreme urgency brought about by unforeseeable events not attributable to the procuring entity), the client shall obtain NEFCO's prior no-objection to any proposed modifications, waivers or extensions.

### **NEFCO Review**

5.14 The qualifications, experience and terms and conditions of the contract shall be satisfactory to NEFCO. NEFCO will review the proposed request for proposals including the terms of reference, the proposed procurement notice, the proposed shortlist of consultants, the invitation to submit proposals (if applicable),

the recommendation for consultant selection and the final contract to ensure that the assignment is eligible for NEFCO financing.

5.15 The client shall make such modifications in procurement documents and/or reports as NEFCO shall request. The approved documents or reports shall not be changed without NEFCO's prior no-objection.

5.16 All consultancy contracts are normally subject to NEFCO's prior review. Alternatively, NEFCO may conduct post review of contracts and may also require an evaluation by the client of the consultant's performance.

5.17 For all contracts which are **subject to NEFCO's prior review** process:

- (a) prior to issuing a procurement notice, if applicable, the client shall submit the complete selection documents to NEFCO for its review and no-objection;
- (b) prior to issuing the request for proposals, if applicable, the client shall submit the proposed shortlist of consultants and the request for proposals to NEFCO for its review and no-objection;
- (c) prior to inviting a selected consultant for negotiations, the client shall submit a detailed evaluation report setting forth the specific reasons on which the recommendation to select the successful consultant for negotiations is based and the items subject to negotiations, to NEFCO for its review and no-objection;
- (d) prior to signing, the client shall submit the draft contract to NEFCO for its review and no-objection; and
- (e) one signed copy of the contract shall be furnished to NEFCO immediately upon signature of such contract.

5.18 For contracts **not subject to NEFCO's prior review**<sup>16</sup>, the client shall furnish to NEFCO, prior to the submission of the first disbursement request in respect of such contract, a copy of the signed contract, together with an evaluation report for the review and no-objection of NEFCO.

5.19 NEFCO will on a periodical basis publish a description of contracts awarded, the name and nationality of the consultants to which contracts have been awarded and the contract prices, including details of qualified consultants who have participated in the selection process leading to such contract awards.

## 6. APPLICABILITY AND EFFECTIVENESS

6.1 This Policy supersedes the Procurement Guidelines of 12 December 2013, and applies to projects where the financing agreement is signed after entry into force of this Policy.

6.2 This Policy sets out the procurement rules to be applied in (a) NEFCO-financed operations and (b) procurement by NEFCO, taking into account that:

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<sup>16</sup> For example, in private sector operations or if NEFCO has agreed to application of national public procurement laws and regulations.

- (a) this Policy shall apply to procurement financed from trust funds administered by NEFCO to the extent that this Policy does not conflict with the agreements reached with the donors of such funds; and
- (b) NEFCO may issue specific rules on the applicability of this Policy to certain programmes and facilities of NEFCO.

6.3 This Policy may be supplemented by specific terms in the financing agreements between NEFCO and its clients.

6.4 The Managing Director shall establish operational and administrative procedures to implement this Policy. This Policy may be complemented by rules and guidelines issued by the Managing Director.

6.5 Any measures or action taken under this Policy are without prejudice to NEFCO's privileges and immunities as set forth in NEFCO's constituent documents or in applicable national or international law.