

Annex¹

Guidance to tenderers

Purpose

1. This annex provides guidance to potential tenderers wishing to compete for NEFCO-financed contracts for goods, works and non-consulting services to be procured in accordance with Section 3 and for consulting services to be procured in accordance with Section 5 of the NEFCO Procurement Guidelines.

Responsibility for Procurement

2. The client of NEFCO is responsible for all aspects of the procurement of contracts in accordance with Sections 3 and 5. Accordingly the client (possibly assisted by an external consultant) invites, receives and evaluates tenders/proposals and awards the contract, which in all cases is concluded between the client and the supplier, contractor, service provider, consultant or concessionaire. NEFCO is responsible for the procurement of consulting services in accordance with Section 5 only when engaged by NEFCO in its own name.

Role of NEFCO in Procurement Carried out by Clients

3. NEFCO reviews the procurement procedures, documents, tender/proposal evaluation reports, award recommendations and contracts to ensure that the tendering process is carried out by the client in accordance with agreed procedures. In the case of major contracts (defined usually as those exceeding a particular euro threshold established in the project documentation), the procurement documents are to be reviewed by NEFCO prior to their release by the client to tenderers, while evaluation report, award recommendation and draft contract are to be reviewed by NEFCO prior to signing of the contract. If at any time in the procurement process (even after award of contract), NEFCO concludes that the agreed tendering or contract administration procedures were not followed in any material respect,² NEFCO may declare that the contract is no longer eligible for financing, consistent with Paragraphs 3.41 and 5.20.

However, if the client has proceeded to award such a contract after NEFCO's issuance of a no objection, NEFCO will declare the contract to be ineligible for financing if it determines that its no objection was based on incomplete, inaccurate or misleading information about the procurement process furnished to it by the client, or if it determines that the client or the successful tenderer has engaged in corrupt, fraudulent, coercive or collusive practices. During the administration of the contract, NEFCO may also declare a

¹ To the NEFCO Procurement Guidelines 12 December 2013

² The determination as to whether a procedural or other deviation is considered "material" will be made exclusively by NEFCO based on a reasonable assessment of all the facts in each case.

contract or a portion of it to be ineligible for NEFCO financing if it appears that it has not been carried out by the client in accordance with the agreed procedures (consistent with Paragraphs 3.33, 3.34, 5.13 and 5.14), or if NEFCO determines that either the client or the successful tenderer has engaged in corrupt, fraudulent, coercive or collusive practices in tendering for or implementation of such contract. Any such declaration of ineligibility shall be without prejudice to the enforcement action available to NEFCO under the NEFCO Board Resolution on Fighting Corruption³.

4. As stated in Paragraphs 3.16, 3.24 and 5.7, clients are recommended to use the internationally recognised standard procurement documents⁴ when preparing specific tender documents and requests for proposals as applicable to each type of procurement, with minimum changes and additions to address country, NEFCO, project and contract-specific issues and requirements.

Information on Tendering

5. Information about tendering opportunities which are procured through Open Tendering procedures in accordance with Paragraph 3.9 may be obtained from General Procurement Notices and specific invitations to prequalify or tender published by NEFCO's clients in various types of media, as described in Paragraphs 3.7 and 3.8. General guidance on how to participate, as well as advance information on business opportunities in upcoming projects, may also be obtained in the procurement section of NEFCO's website (www.nefco.org), which also contains invitations for expressions of interest for large consulting services contracts, in accordance with Paragraph 5.6.

Guidance for Tenderers

6. Once a potential tenderer finds or receives an invitation for prequalification, tender document or invitation for expressions of interest, the tenderer should first study the documents carefully to determine if it can meet the key eligibility, technical, commercial and contractual requirements, conditions and qualification criteria. If that is not the case, the effort and cost of preparing and submitting a prequalification document, tender or expression of interest would not be justified. The tenderer should next critically review the documents to see if they contain any ambiguity, omission or internal contradictions, or if any features in the technical specifications or elsewhere appear to be unclear, discriminatory or restrictive. If so, it should seek clarification from the client, in writing, within the time period specified in the documents for seeking clarifications. Failure to seek clarification with the time period specified may result in the tender being rejected.

7. The criteria and methodology for selecting the successful tenderer are defined in the tender documents, usually in the Instructions to Tenderers (ITT) for tenders for goods, works or non-consulting services and in the Instructions to Consultants (ITC) for proposals for consulting services. If these are not clear, or if there are apparent ambiguities or inconsistencies between the criteria and methodology set forth in the ITT/ITC and other sections of the tender documents, e.g. the technical specifications, clarification should be similarly sought from the client. It should be emphasised that the specific tender documents issued by the client govern each tender process, as stated in Paragraph 3.30. If a tenderer finds that certain tender

³ NEFCO Board Resolution on Fighting Corruption is accessible at www.nefco.org under Introduction/Legal Framework.

⁴ Such as the standard procurement documents of the EBRD, the World Bank and the FIDIC with adjustments for NEFCO specific requirements.

document provisions are inconsistent with NEFCO's Procurement Guidelines, it should raise this directly with the client, copying NEFCO on the query.

8. The tenderer must raise any issue of ambiguity, contradiction, omission or any other issues of this nature prior to the deadline for submission of requests for clarifications specified in the ITT/ITC, to assure submission of a fully responsive and compliant tender, supported by all the necessary documents. Non-compliance with critical technical and/or commercial requirements will result in the rejection of the tender/proposal as non-responsive.⁵ If a tenderer wishes to deviate from a non-critical requirement or propose an alternative solution, and no specific guidance is provided in the ITT/ITC, the tenderer should submit a tender/proposal that is fully compliant with the tender documents in every respect, and separately indicate the adjustment in price associated with acceptance of the proposed deviation or alternative solution. Once tenders/proposals are received and publicly opened, a tenderer will not be required or permitted to change the price or substance of its tender/proposal.

Confidentiality of the Evaluation Process

9. The evaluation of tenders/proposals shall be confidential until the notification of award of contract is made. This is essential to enable the evaluators of the client and NEFCO to carry out their work without improper interference, and in recognition of the negative impact that a release of certain tender information might have on the market. If, at the evaluation stage, a tenderer wishes to bring additional clarification to the notice of the client or NEFCO, or both, the tenderer shall do so in writing. However, no assurance can be given that such additional information will be considered in the evaluation.

Procurement Queries and Complaints (in Procurement Carried out by Clients)

10. Tenderers are invited to send to NEFCO copies of correspondence with the client on issues, questions and complaints relating to the tendering process. Tenderer may write to NEFCO directly when the client does not respond promptly or when tenderers wish to complain about the client's handling of the procurement process. All such communications shall be addressed to the Managing Director of NEFCO.

11. Correspondence addressed directly to NEFCO prior to the closing date for submission of tenders will normally be referred to the client for action and/or response, along with comments as appropriate. Any complaints which have been addressed directly to NEFCO and not resolved by the client prior to the closing date for submission of tenders will be considered by an inspection panel established for this purpose by NEFCO.

12. Communications addressed to NEFCO after the opening of tenders will be handled as follows. In the case of contracts which are not subject to prior review by NEFCO, communication received by NEFCO will be sent to the client for due consideration and appropriate action, if any. Any such communication will further be reviewed by NEFCO during subsequent monitoring of the project. In the case of contracts which are subject to prior review, NEFCO will examine any issues brought up in such communications in

⁵ In its review of client evaluation reports, NEFCO will, among other things, before giving its no objection, examine the grounds for any rejection related to "substantial non-compliance" or "material" or "critical" deviations.

consultation with the client before the evaluation is completed. If additional information is required, it will be obtained from the client. If information or clarifications are required from the tenderer, NEFCO will ask the client to obtain it and take it into account, as appropriate, in the evaluation report to be submitted to NEFCO. NEFCO will not complete its review until the issues raised in the communication have been fully examined and considered.

13. Except for acknowledgement of receipt, NEFCO will not enter into discussions or correspondence directly with any tenderer, relating to the details of an on-going evaluation process during the actual evaluation and review process of the tender, until the notification of award of contract has been made.

Procurement Queries and Complaints (in Procurement of Consultants by NEFCO)

14. Requests for clarification concerning documents issued by NEFCO in connection with procurement of consultants engaged by NEFCO in its own name in accordance with Section 5 shall be addressed to the NEFCO staff member named in the procurement documents. Any complaints about the procurement process for such contracts shall be addressed in writing to the Managing Director of NEFCO.

Debriefings

15. If a tenderer, after notification of award of contract or where a formal decision to reject the tenders has been made prior to the award in accordance with a permitted procedure, wishes to ascertain the grounds on which its tender was not selected, it should address its request to the client, with a copy to NEFCO. The client should provide such debriefing to the tenderer. If the tenderer is not satisfied with the explanation given by the client and wishes to discuss the matter with NEFCO, it may ask the Managing Director of NEFCO to arrange a formal debriefing, copying the request to the client. In the case of consulting services contracts procured by NEFCO in its own name, the request shall be addressed to the Managing Director of NEFCO. NEFCO will arrange a meeting at the appropriate level and with the relevant staff from NEFCO, and the client as appropriate. In this debriefing, the relative strengths and weaknesses of the tender submitted and any other appropriate information necessary for the tenderer to better understand how it can improve its future chances of success will be discussed.