

Procurement Guidelines

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NEFCO

Nefco Procurement Guidelines¹

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¹ These Procurement Guidelines adopted by the Board of Directors of NEFCO on 12 December 2013 replace the Procurement Guidelines of November 1998 as revised in October 1999 and the internal Procurement Instruction of 1 May 2004

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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 in Eastern Europe by contributing to the financing of projects benefiting the environment in these countries.

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 countries of operation.

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 execution and the ultimate performance of the operation. Good procurement practices should lead to significant time and money savings for NEFCO's clients² and help ensure successful project implementation.

1.4 In its commitment to the environment, NEFCO pursues the application of the environmental policy priorities as stipulated in NEFCO's Environmental Guidelines³ and as further detailed in the documentation for specific projects. This will be reflected in the procurement practice in the NEFCO operations to the extent appropriate.

1.5 This document sets out the procurement rules to be followed in NEFCO-financed operations⁴. Section 2 describes general principles and considerations that are applicable for all operations. Section 3 contains rules for procurement of goods, works and non-consulting services in NEFCO-financed operations involving the public sector⁵. Section 4 describes procurement arrangements in NEFCO-financed operations in the private sector. Section 5 concerns the selection of consultants by clients in NEFCO-financed public sector operations and by NEFCO when administering trust funds or engaging consultants directly.

² In these Procurement Guidelines the term "client" means an entity responsible for implementation of a NEFCO-financed project. 'Client' may be the borrower/recipient of NEFCO funds or appointed by such borrower/recipient and a secondary beneficiary of NEFCO financing.

³ NEFCO's Environmental Guidelines are accessible at www.nefco.int under Introduction/Legal Framework.

⁴ In these Procurement Guidelines, the terms "NEFCO-financed operations", "NEFCO-financed projects" and "NEFCO-financed contracts" refer to operations, projects and contracts that are financed from the authorised capital of NEFCO or from trust funds administered by NEFCO to the extent that the application of these Procurement Guidelines has been agreed with the donors of such funds.

⁵ For definition of public sector operations see Paragraph 3.2.

2. Principles and Considerations

2.1 The underlying principle of NEFCO's Procurement Guidelines is that public sector contracts for goods, works and non-consulting services should normally be awarded on the basis of open tendering. Contracts for consulting services should normally be awarded on the basis of competing proposals from qualified shortlisted consultants. Contracts within the public sector 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 prescribed thresholds for use of the above mentioned methods. The rules and practices for carrying out procurement should not discriminate 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 including the European Bank for Reconstruction and Development, the Nordic Investment Bank, the European Investment Bank, the World Bank and the International Finance Corporation, and seeks to increase the flow of investments to its countries of operation by co-financing projects with multilateral and bilateral development agencies, export credit agencies and commercial entities. When projects are co-financed NEFCO may agree, on a case-by-case basis, to the application of procurement guidelines of a co-financier, provided NEFCO is satisfied that those alternative procedures are fair and transparent, and that acceptable monitoring procedures are in place.

2.3 NEFCO's concerns for economy and efficiency, 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 NEFCO's Procurement Guidelines or alternative guidelines accepted by NEFCO for that project or contract. NEFCO may issue specific rules on the applicability of these Procurement Guidelines to certain programmes and facilities of NEFCO.

Eligibility

2.4 NEFCO permits firms⁶ and individuals⁷ from all countries to offer goods, works and services for NEFCO-financed projects. Any conditions for participation shall be limited to those that are essential to ensure the capability of an eligible firm or individual to fulfil the contract in question.⁸ Clients of NEFCO may not exclude a firm or an individual from competition for a contract for reasons unrelated to (i) its capability to perform the contract in question; or (ii) conflict of interest situations covered under Paragraphs 3.26-3.28 below, unless the firm or individual has been declared, and remains, as at the relevant date, ineligible pursuant to the NEFCO Board Resolution on Fighting Corruption⁹, or unless, as a matter of law or official regulation, the client's country prohibits commercial relations with the country of the firm or

⁶ In these Procurement Guidelines the term "firm" covers also institutions, organisations and other types of entities providing goods, works or services, and associations of such entities in forms of joint ventures and sub-contracting.

⁷ In these Procurement Guidelines the term "individual" means individuals also when working through a one-man-firm.

⁸ For eligibility and conflict of interest see also Paragraphs 3.26, 3.27 and 3.28.

⁹ NEFCO Board Resolution on Fighting Corruption is accessible at www.nefco.org under Introduction/Legal Framework.

individual, provided that NEFCO is satisfied that such exclusion does not preclude effective competition for the supply of goods, works or services required for the project in question.

2.5 Consistent with international law, the proceeds of NEFCO's loans, equity investments or guarantees 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. Persons or entities, or suppliers offering goods and services, covered by such prohibition shall therefore not be eligible for the award of NEFCO-financed contracts.

Client Responsibilities

2.6 Clients are responsible for implementing NEFCO-financed projects, including all aspects of the procurement process from the planning stage through the award of contracts, as well as the administration of the contracts. NEFCO, or consultants contracted by NEFCO, 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 documents¹⁰ issued by the client and by the subsequent contracts and not by these Procurement Guidelines. The tender documents will include, to the extent appropriate, provisions that are in conformity with NEFCO's Sustainability Policy¹¹.

Prohibited Practices

2.7 NEFCO requires that clients (including beneficiaries of NEFCO-financed operations), as well as tenderers, suppliers, contractors, service providers, concessionaires and consultants under NEFCO-financed contracts, observe the highest standard of transparency and integrity during the procurement, execution and implementation of such contracts.

In pursuance of this policy, NEFCO defines the terms set forth below as Prohibited Practices:

- (i) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (ii) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iii) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party; and
- (iv) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

¹⁰ In these Procurement Guidelines, the term "procurement documents" covers "tender documents" for goods, works and services and "requests for proposals" for consulting services and the term "tender documents" is equivalent to "bidding documents".

¹¹ The Sustainability Policy of NEFCO is accessible at www.nefco.int under Introduction/Legal Framework.

Any occurrence, or suspected occurrence, of a Prohibited Practice in the procurement, award or implementation of a NEFCO-financed contract shall be dealt with in accordance with the provisions of the NEFCO Board Resolution on Fighting Corruption¹². Suppliers, contractors, service providers, concessionaires and consultants 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 will be included in NEFCO's financing agreements with its clients (including any concessionaires), in the tender documents and in any NEFCO-financed contracts.

3. Procurement of Goods, Works and Non-consulting Services in Public Sector

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 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 the Procurement Guidelines

3.2 For the purpose of these Procurement Guidelines, public sector operations¹³ are operations:

- (a) which are extended to or guaranteed by the national or local government, or a national, regional or local public entity or instrumentality of the country of operation; or
- (b) for utilities¹⁴ majority owned by national or local governments, or government agencies of the country of operation, other than such utilities operated by concessionaires who were awarded their concession following competitive tendering procedures acceptable to NEFCO, and which in

¹² NEFCO Board Resolution on Fighting Corruption is accessible at www.nefco.int under Introduction/Legal Framework.

¹³ "Operations" refer to loans, grants, equity investments, or guarantees of NEFCO.

¹⁴ "Utilities" are authorities or undertakings which directly provide or operate fixed networks intended to provide a service to the public in water, wastewater, waste, electricity, gas, heat, telecommunications or rail transport.

NEFCO's judgement are operating autonomously and are subject to bankruptcy and insolvency law; or

- (c) for national or local governments of the country of operation or for agencies and enterprises majority beneficially owned by any of them, other than such enterprises that in NEFCO's judgement are operating autonomously¹⁵ in a competitive market environment and are subject to bankruptcy or insolvency law.

3.3 The rules for procurement outlined in this Section 3 shall apply to procurement of contracts for goods, works, supply and installation, and services (including, inter alia, purchase, hire-purchase, rental and leasing contracts) - with the exception of consulting services (for which the procedures described in Section 5 shall apply), when such contracts are financed, in whole or in part, by NEFCO in public sector operations. The rules in this Section 3 shall also be followed in the case of grants which are financed from trust funds administered by NEFCO, whether in public sector or private sector operations, to the extent that they do not conflict with agreements reached with the donors of such funds.

3.4 Contracts shall be procured following Open Tendering¹⁶ if their value is estimated to equal or exceed EUR 100,000 for goods and services and EUR 500,000 for works and supply and installation contracts. If NEFCO deems that the above thresholds may have the effect of limiting competition or are not likely to ensure the most economic and efficient outcome, thresholds more appropriate for such specific circumstances would be agreed between NEFCO and the client and specified in the project documentation. No procurement shall be divided to several contracts with the sole intent of reaching contract values below the above thresholds. For procurement of goods, works, supply and installation and services contracts below the above threshold values, clients are encouraged to follow Open Tendering but may, on prior acceptance by NEFCO, use other procurement methods¹⁷ that are consistent with principles concerning competition, transparency, economy and efficiency.

Procurement Processing

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

- (a) notification of opportunities for tendering;
- (b) prequalification when appropriate;
- (c) invitation to tender and issuance of tender documents;
- (d) receipt of tenders, evaluation of tenders and contract award; and
- (e) contract administration.

¹⁵ Meaning that the enterprise in question follows, to NEFCO's satisfaction, sound procurement practices comparable to those described in Section 4 of these Procurement Guidelines.

¹⁶ For Open Tendering see Paragraph 3.9.

¹⁷ For other procurement methods see Paragraphs 3.10, 3.11, 3.12, 3.13, 3.14 and 3.15.

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

Procurement Planning

3.6 Sound planning of procurement is crucial. The client (possibly assisted by an external consultant) shall complete the overall procurement plan defining the contracts for goods, works and services to be procured, and for each contract, the cost estimate, the proposed procurement method, and planned dates for main steps in the procurement procedure. 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

3.7 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 the financing and the overall procurement plan, including:

- (a) the goods, works and services to be procured;
- (b) the expected timing; and
- (c) a name and address to contact 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 practical, in a newspaper with wide circulation in the client's country or in official gazettes and, 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 (www.nefco.org). Normally the notice shall be published not later than 45 days before first invitation to tender is issued. The General Procurement Notice shall be updated and published annually so long as any substantial contracts for goods, works or services remain to be procured.

Advertising

3.8 Under Open Tendering for individual contracts, invitations for prequalification where required and invitations to tender shall be advertised on the client's own website and official government procurement portal, where practical, and as widely as appropriate in other media such as newspaper(s) with large circulation in the client's country, official gazettes and international trade publications. NEFCO will arrange for publication of the invitations in the procurement section of NEFCO's website. Tender and prequalification notices shall also be sent to potential tenderers that have responded with an expression of interest to the General Procurement Notice. In order to facilitate the participation of sub-contractors and

suppliers in contracts, and the creation of joint ventures and consortia, the client shall make available to interested parties the list of potential tenderers that have purchased the tender documents and, in case of prequalification, the list of the prequalified entities.

Open Tendering

3.9 Open Tendering is the procurement method under which all interested tenderers have access to published information on the contract requirements and all tenderers who meet the eligibility and qualification criteria are given an equal opportunity to submit a tender and to be awarded the contract. Open Tendering 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.¹⁸ In Open Tendering award of contract requires that the offered goods, works or 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. The capability of the tenderer to perform the contract is assessed through either prequalification or post-qualification process.

Prequalification for Tenderers

Clients shall when appropriate require potential tenderers to prequalify for large and complex contracts. In such case 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 these Procurement Guidelines. The list of prequalified and conditionally prequalified companies shall be advertised on NEFCO's website before the issuance of tender documents. Prequalification is not a form of Selective Tendering. The prequalification criteria, which shall be specified in the prequalification documents, shall be based entirely upon the capability and resources of prospective tenderers needed to perform the particular contract satisfactorily, taking into account such factors as their (a) experience and past performance on similar contracts, (b) capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position. The prequalification process shall be inclusive rather than exclusive.

Two-stage Tendering

It may be undesirable or impractical to prepare complete technical specifications in advance in the case of turnkey contracts or contracts for large complex plants, works of a special nature or equipment subject to rapid technological advances, such as major computer and communication systems. In such cases, a two-stage tendering procedure shall be used when appropriate. In two-stage tendering procedure un-priced technical proposals are first invited on the basis of conceptual design or performance specifications, subject to technical as well as commercial clarifications and adjustments, to be followed by amended tendering documents and the submission of final technical proposals and priced tenders in the second stage.

¹⁸ For time limits see Paragraph 3.23.

Other Procurement Methods

3.10 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 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 approval, invite tenders from a list of qualified firms, selected in a non-discriminatory manner. This list shall include foreign firms whenever possible.

3.11 Direct Contracting may be used only in exceptional cases where:

- (a) an extension of an existing contract, awarded in accordance with procedures acceptable to NEFCO, for additional goods, works or 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 these Procurement Guidelines;
- (c) a product can only be provided by a single supplier because of exclusive capabilities or rights;
- (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 approval, invite a single firm to present its tender without prior public notification.

3.12 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.

3.13 Local Competitive Tendering in accordance with national procurement procedures may be the most economic and efficient method of procuring goods, works or services when: (a) contract values are small; (b) works are scattered geographically or spread over time; (c) the goods, works or 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 under which Local Competitive Tendering is carried out, including the means of notifying the market, shall be acceptable to NEFCO. They should provide for

adequate competition in order to ensure reasonable prices, evaluation criteria should be made known to all tenderers and should be applied fairly, and the conditions of contract should be fair and appropriate to the project. Foreign firms should be allowed to participate in accordance with national procedures.

3.14 Call for Proposals is a competitive method for selection of recipients of grants or other funds. This method is comparable to Open Tendering and is typically used for allocating funds from trust funds administered by NEFCO for projects complying with themes and objectives defined by NEFCO, if relevant, with its co-financiers.

3.15 Utilities¹⁹ which are moving towards majority private ownership or control²⁰ by implementing programmes in this respect, and already have a significant degree of private ownership and control, should normally be expected to follow Open Tendering. However, where such utilities are operating autonomously and are subject to or have adopted sound procurement procedures, NEFCO may agree that such utilities follow competitive tendering procedures in accordance with their own procedures. In order for such procedures to be acceptable to NEFCO, they should provide for adequate international notification,²¹ non-discriminatory competition, transparent and fair evaluation procedures, monitorable compliance, as well as fair and balanced contracts.

Tender Documentation

3.16 Tender documents are the basis for informing potential tenderers of the requirements they need to fulfil to supply specific goods or services or to construct works. Therefore the tender documents shall 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 works, goods or 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, and the 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, the form and conditions of the intended contract, advance payment guarantee and performance security requirements, technical specifications and drawings, and delivery and completion schedules, terms and requirements. In drafting the tender documents, the clients should make use of internationally recognised standard tender documents²² appropriate for each type of procurement where available.

3.17 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 lowest evaluated tender. Factors which may be taken into consideration include, inter alia, the costs of inland transport to the project site, the payment schedule, the time of completion of

¹⁹ See Paragraph 3.2 (b).

²⁰ Control is measured by the ability to effectively determine the decisions and policies of the utility, and not merely by the ability to set utility tariffs.

²¹ For general procurement notice see Paragraph 3.7.

²² Such as the standard tender/procurement documents of the EBRD, the World Bank or the FIDIC with adjustments for NEFCO specific requirements.

construction or delivery, the operating and maintenance costs or lifetime costs, the efficiency and compatibility of the equipment, performance and quality,²³ environmental benefits, and availability of service and spare parts or costs for providing those. The factors to be considered for determining the lowest evaluated tender shall be expressed in monetary terms. A responsive tender with the lowest evaluated cost, but not necessarily the lowest submitted tender price, shall be selected for award, provided that the tenderer is assessed to be capable to complete the contract, in accordance with the qualification criteria defined in the tender documents.

3.18 Language. Except for Local Competitive Tendering or Local Shopping, all tender and contract documents, including published procurement notices shall, unless otherwise agreed with NEFCO, be prepared and issued by the client in English and tendering in English language shall be allowed.

The client may prepare the tender documentation and all procedural documentation in the local language or another commercially accepted language in order to enable local firms to tender. In such a situation, also the tenders may be submitted in that language.

Contract documents shall normally be prepared and signed in the same language in which the tender was submitted.

All documents required by NEFCO for review purposes shall be submitted to NEFCO in English. In the event of a procurement complaint, NEFCO may require certified translations of the relevant documents.

3.19 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 should be avoided. If they are necessary to clarify the nature of the product requirements, the tender documents shall state that other products of equal or higher quality would also be acceptable.

3.20 Tender Prices. Tender prices for the supply of goods shall be requested on the basis of appropriate and internationally recognised delivery terms such as Incoterms²⁴. Clients shall ensure that the evaluated prices have the same basis regarding the total costs including also, as applicable, the cost of freight, transport, insurance, clearing, forwarding, import duties, taxes, installation, training etc. Tender prices for works and services contracts are usually requested inclusive of all duties, taxes and other levies, applicable at a set date prior to submission of tenders.

3.21 Currency. Clients are encouraged to allow tendering in any freely convertible currency or combination of not more than three such currencies. Clients may, with the agreement of NEFCO, determine the currency or currencies in which the tender prices shall be quoted. Mandatory use of local currency by foreign tenderers should be avoided. Where multiple currencies are 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) or by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance and specified in the tender documents. Such date should not be earlier than 28

²³ For standards and specifications see Paragraph 3.19.

²⁴ See www.iccwbo.org for information on Incoterms.

days before or 14 days after the deadline for submission of tenders. Payments under the contract will usually be made in the currency or currencies of the tender.

3.22 Payment. Payment terms and procedures shall be in accordance with the international commercial practices applicable to the goods, works or services and the market in question. Contracts for supply of goods shall provide for full payment on delivery and inspection, if so required, of the contracted goods, except for contracts involving installation, commissioning or other incidental services, in which case a portion of the payment may be retained until the supplier or contractor has complied with all its obligations. However, supplier's or contractor's obligations related to lengthy warranty periods may be secured by performance securities and/or bank guarantees for payments or advance release of retentions made upon acceptance of delivery or works.

3.23 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 45 days²⁵ 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 large or complex works or items of equipment, this period should be extended to 60 days or more. 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 consequences. Where the tender is for a fixed price contract and the required extension of tender validity period may be significant, provision should be made in the tender documents for the adjustment of the tender price of the successful tenderer for inflation²⁶ from the original end of validity period up to the date of contract award.

3.24 Conditions of Contract. Tender documents shall include the form and conditions of the intended contract, completed to the level of detail that is possible to achieve at the tendering stage. The form of contract to be used shall be appropriate to the objectives and circumstances of the project and to the goods, works or services to be provided. 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 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, liability and insurance, acceptance, payment terms and procedures, price adjustment, liquidated damages and bonuses, handling of changes and claims, force majeure, termination, settlement of disputes and governing law. Wherever appropriate, standard forms of contract incorporating generally accepted international conditions shall be used. Finalisation of the contract documents after the award of the contract shall usually include only filling information on the contracted party, dates and prices from the tender but not any substantial changes to the conditions.

3.25 Nothing in the tender documents shall be designed to restrict competition or offer an unfair advantage to a tenderer. Clients shall not provide to any potential supplier or contractor information regarding a

²⁵ For Shopping and Local Competitive Tendering (see Paragraphs 3.12 and 3.13) shorter time limits may be agreed to by NEFCO.

²⁶ Increase in the cost of inputs for the contract as defined in the tender documents.

specific procurement which would have the effect of reducing or precluding competition. All amendments to tender documents shall be sent to each recipient of the original tender documents.

Conflict of Interest

3.26 NEFCO's 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. However, this does not limit the inclusion of the same subcontractor in more than one tender or a tenderer from being a subcontractor of standard goods or services in another 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.

3.27 No affiliate²⁷ of the client, or of a procurement agent engaged by the client, shall be eligible to tender or participate in a tender in any capacity whatsoever 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.

3.28 Where a firm, its affiliates or parent company, in addition to consulting, also has the capability to manufacture or supply goods or to construct works, that firm, its affiliates or parent company normally cannot be a supplier of goods or works on a project for which it provides consulting services, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control. The only exceptions would be turnkey, single responsibility, public works concessions or similar undertakings where design, supply and construction activities are an integral part of the contract or where certain proprietary and critical items of equipment and materials are an essential part of the process design.

Tender Opening

3.29 Tenders solicited under open and selective procedures 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 specified for tender opening shall be the same as the deadline for submission of tenders or promptly thereafter. On the date and at the time and place defined in the tender documents, the client will open all tenders that have been received before the deadline. Tenders shall be opened in the presence

²⁷ In these Procurement Guidelines the term "affiliate" means, in relation to an entity (the First Entity), any entity controlled, directly or indirectly, by the First Entity, any entity that controls, directly or indirectly, the First Entity or any entity directly or indirectly under common control with the First Entity.

of tenderers who wish to attend or their representatives. The name of the tenderer and the total amount of each tender, including alternative tenders and discounts if permitted, shall be read aloud and recorded at the opening. The client shall maintain of the tender opening a complete record, 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

3.30 When competitive procedures are used, the client shall determine the responsiveness of all tenders and evaluate and compare responsive tenders only on the basis of the evaluation criteria set out in the tender documents. The tender evaluation process up to the award of the contract shall be confidential. 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 to have the lowest evaluated price provided that the tenderer 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. The terms and conditions of the contract shall not, without NEFCO's no objection, materially differ from those on which tenders were invited. The client shall reject all tenders only if there has been unsatisfactory competition, including in case it has received tender prices that substantially exceed the cost estimates or funds available. Before rejecting all tenders, the client shall obtain agreement from NEFCO on the procedures to follow.

3.31 The client shall submit to NEFCO a report containing the results of the tender evaluation and its 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.²⁸ After award of the contract the client shall notify the other tenderers of the result of the tender and is encouraged to publish an award notice in the same media where the tender notice was published.

Advance Contracting

3.32 In some cases it may be advantageous for the client 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 these Procurement Guidelines in order for any contracts to be eligible for NEFCO financing.

Contract Administration

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

²⁸ See Paragraph 3.35.

3.34 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 payments for such orders can be made.

Procurement Monitoring and NEFCO Review

3.35 As an integral part of their project implementation responsibilities, clients are required to prepare and maintain, for the purpose of NEFCO's review, documents and records pertaining to the procurement process and the administration of contracts following their award. 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 procedures, and possible changes and claims during the execution of the contract.

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

3.37 All contracts to be procured following open or selective tendering shall normally be subject to NEFCO's prior review. The procurement plan agreed for the project will determine which contracts are subject to NEFCO's review. NEFCO may periodically conduct post procurement reviews of other contracts.

3.38 For all contracts which are subject to NEFCO's prior review process the client shall:

- (a) prior to an invitation to prequalify or tender, submit the complete prequalification or tender documents to NEFCO for its review and no objection;
- (b) prior to finalising a prequalification list or awarding a contract, submit to NEFCO for its review and no objection a detailed prequalification or tender evaluation report setting forth the specific reasons on which the recommendation to prequalify firms or award the contract is based; and
- (c) upon signature of contract, immediately furnish NEFCO with a conformed copy of the signed contract.

3.39 For contracts not subject to NEFCO's prior review, the client shall furnish to NEFCO, prior to the submission of the first disbursement request in respect of a contract, a conformed copy of such signed contract, together with the tender evaluation report.

3.40 If a complaint regarding any aspect of a tender procedure is received by NEFCO (see Annex 1), NEFCO will ensure that the complaint is fully reviewed to its satisfaction and that, pending the outcome of such review, no decisions are made or approvals given which could prejudice the outcome of this review.

3.41 If NEFCO finds that the procurement, award, or administration of a contract, including any agreed modification or waiver of such contract, has not been carried out materially in accordance with the agreed

procedures, it shall promptly inform the client of, and state the reasons for such opinion. If the matter is not remedied or remediable, the contract may no longer be eligible for NEFCO financing, any outstanding portion of the financing allocated to the contract or for the project may be cancelled.

3.42 NEFCO will on a periodical basis publish a description 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

4.1 NEFCO's concerns for the appropriate use of funds and for economy and efficiency apply equally to its public sector operations (as defined in Paragraph 3.2) 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.

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 company as distinct from the sponsors. Where a shareholder of the client company or one of its affiliates, including parent companies and affiliates of such parent companies, is also a contractor or supplier 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 is 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 is undertaken in accordance with national procurement rules for public sector while ensuring competition.

4.6 In case grants in private sector operations are financed from 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 consultants²⁹ 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 loans under public sector operations and for contracts with consultants engaged directly by NEFCO for NEFCO-financed projects. For consulting contracts financed from trust funds administered by NEFCO, whether in public sector or private sector operations, these procedures shall also be followed to the extent that they do not conflict with agreements reached with the donors of such funds.

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, including any anticipated follow-on services and/or extensions, of the proposed assignment and 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;
- (c) preparing request for proposals and issuing it to the shortlisted consultants;
- (d) receiving the proposals and evaluating and comparing technical and financial merits of the proposals and selecting the preferred consultant;
- (e) negotiating a contract with the selected consultant; and
- (f) contract administration.

5.3 Some of the steps of the consultant selection process may be simplified or omitted, depending on the value of the service contract to be procured:

²⁹ In these Procurement Guidelines, the term "consultant" covers, as the context requires, both individual consultants and 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 or sub-consultancy agreements.

- (a) For contracts with individuals³⁰ with an estimated value of less than EUR 50,000, a qualified consultant may be contracted directly, without the requirement to prepare a shortlist.
- (b) For contracts with individuals with an estimated value of EUR 50,000 or more, selection shall be made on the basis of an evaluation of shortlisted, qualified candidates and the rationale for the choice shall be recorded.
- (c) For contracts with firms with an estimated value of less than EUR 75,000, a qualified consultant may be contracted directly, without the requirement to prepare a shortlist.
- (d) For contracts with firms with an estimated value of EUR 75,000 or more and less than EUR 150,000, a shortlist of qualified firms shall be prepared. The selection of the preferred firm shall be based on evaluation of the shortlisted firms' proven experience and current expertise related to the assignment. Only the preferred firm shall be requested to submit technical and financial proposals to form basis of contract negotiations. Should the negotiations with the preferred firm fail, the second ranked firm may be requested to submit proposals and invited to negotiations.
- (e) For contracts with firms with an estimated value of EUR 150,000 or more, a competitive procedure shall be applied based on evaluation of technical and, when applicable, financial proposals requested from shortlisted qualified firms. If the estimated contract value is less than EUR 300,000 the shortlisting can usually be done without publishing formal invitation for expression of interest. Regarding shortlisting for contracts of EUR 300,000 or more, see Paragraph 5.6.

Shortlists

5.4 Shortlists of consultants shall normally include no less than three (3) and no more than six (6) qualified and experienced consultants (individuals or firms, as the case may be) and normally no more than two consultants from any one country.

5.5 Shortlists may not include:

- (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.
- (b) firms or individuals who have submitted more than one expression of interest or have participated or intend to participate as a joint venture partner or consortium member in more than one expression of interest/proposal for each contract. Submission or participation by a consultant in more than one proposal for a contract will result in the rejection of all proposals for that contract in which the consultant is involved. However, this does not limit the inclusion of the same sub-contracted consultant in more than one proposal submitted by a firm.

³⁰ In these Procurement Guidelines term "individual" means individual consultants also when offering services through a one-man-firm.

- (c) firms or individuals that have conflict of interest or would have conflict of interest if awarded the contract.³¹

5.6 Notice. For large assignments with firms with an estimated value of EUR 300,000 or more, for complex or specialised assignments, and for operations involving a significant number of similar assignments, a formal notice inviting expressions of interest from qualified firms should be published in the procurement section of NEFCO's website (www.nefco.org) and on the client's website and in other media in the client's country as appropriate. The shortlist shall normally be prepared on the basis of the responses to the invitation.

5.7 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. Clients should make use of internationally recognised standard request for proposals documents³².

5.8 Language. All procurement and contract documentation, including published procurement notices, shall be prepared and issued by the client in English unless otherwise agreed with NEFCO.

The client may prepare requests for proposals, including all published procurement notices, in the local language or other commercially accepted language in order to enable local consultants to take part, and tender proposals may be submitted in the chosen language.

All documents required by NEFCO for review purposes shall be submitted to NEFCO in English. In the event of a procurement complaint, NEFCO may require certified translations of the relevant documents.

Evaluation and Selection

5.9 When formal proposals are requested from shortlisted consultants, the request for proposals shall clearly state the criteria to be applied in the evaluation. The evaluation of consultants should normally be based on combined consideration of technical and financial merits of the proposals³³, often using the weight of 80% for technical merits weight of 20% for the price. The technical merits to be considered may include, but not be limited to, aspects such as experience in similar assignments, local experience and presence, qualifications of key personnel proposed for the assignment, and suitability and quality of the work plan. For some assignments of a straightforward technical nature, the weight for the price of the services can be higher than 20% but quality should always remain the primary factor in the selection. Evaluation of technical merits should be carried out without knowledge of the prices of the proposals. Therefore, financial proposals should be submitted in separate sealed envelopes that are not opened before completion of technical evaluation. When formal proposals have been requested, the consultant that submits the proposal with highest combined technical and financial score should be invited to negotiate a contract with the client.

³¹ See Paragraphs 3.26-3.28.

³² Such as the standard request for proposals documents of the EBRD, the World Bank or the FIDIC with adjustments for NEFCO specific requirements.

³³ In the World Bank guidelines this method is called Quality- and Cost-based Selection, QCBS.

5.10 Competition through a shortlist is preferred; however, in some circumstances it may be necessary or advantageous to engage or continue with a specific consultant, where:

- (a) the consultant has unique expertise or experience; or
- (b) the consultant has been or is involved in the early phases of the project such as feasibility 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.

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

Contract Negotiations

5.11 During contract negotiations the selected consultant's proposal may be modified by mutual agreement between the client and the consultant. 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 review before signing. If price of the services has been a factor in the evaluation of proposals, contract negotiations shall not involve negotiation on fees, rates and unit costs unless those are considered to be exceptionally high.

5.12 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

5.13 As in the case of other contracts 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.

5.14 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

5.15 Where consultants are being engaged by a client, the qualifications, experience and terms and conditions of engagement shall be satisfactory to NEFCO. NEFCO will review the proposed request for proposals including the terms of reference, the proposed shortlist of consultants, the evaluation results, the recommendation for consultant selection and the final contract to ensure that the assignment is eligible for NEFCO financing.

5.16 The client shall make such modifications in procurement documents or reports as NEFCO shall reasonably request. The approved documents or reports shall not be materially changed without NEFCO's prior no objection.

5.17 Consultancy contracts with individuals with an estimated value of EUR 75,000 or more and with firms with an estimated value of EUR 300,000 or more shall normally be subject to NEFCO's prior review. The agreed procurement plan will determine the contracts subject to NEFCO's review. NEFCO may periodically conduct post procurement review of other contracts and may also require an evaluation by the client of the consultant's performance.

5.18 For all contracts which are subject to NEFCO's prior review process the client shall:

- (a) prior to issuing the request for proposals, submit the proposed shortlist of consultants and the request for proposals to NEFCO for its review and no objection;
- (b) prior to inviting a selected consultant for negotiations, submit a detailed evaluation report setting forth the specific reasons on which the recommendation to select the successful consultant for negotiations is based, to NEFCO for its review and no objection; and
- (c) upon signature of contract, immediately furnish NEFCO with a conformed copy of the signed contract.

5.19 For contracts not subject to NEFCO's prior review, the client shall furnish to NEFCO, prior to the submission of the first disbursement request in respect of such contract, a conformed copy of the signed contract, together with an evaluation report.

5.20 If NEFCO finds that the procurement, award or administration of a contract, including any agreed modification or waiver of such contract, has not been carried out materially in accordance with the agreed procedures, it shall promptly inform the client of, and state the reasons for such opinion. In case the matter is not remedied or remediable, the contract may no longer be eligible for NEFCO financing and any outstanding portion of the financing allocated to the contract may be cancelled.

5.21 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 shortlisted consultants who have participated in the selection process leading to such contract awards.

Annex

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,³⁴ 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 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,

³⁴ 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.

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 Corruption³⁵.

4. As stated in Paragraphs 3.16, 3.24 and 5.7, clients are recommended to use the internationally recognised standard procurement documents³⁶ 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

³⁵ NEFCO Board Resolution on Fighting Corruption is accessible at www.nefco.org under Introduction/Legal Framework.

³⁶ 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.³⁷ 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

³⁷ 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.