

# **Sida Procurement Guidelines (SPG)**

The purpose of SPG is to define the procurement policies and rules to be applied by Co-operation partners or by Sida in Sida financed operations. A prerequisite for applying SPG as regulatory framework is however the existence of an agreement between the governments of Sweden and the country of the co-operation partner or between Sida and the co-operation partner.

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Swedish International Development Cooperation Agency  
Division for Legal Services and Procurement Advice

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# 1 INTRODUCTION

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## 1.1 Preamble

These Procurement Guidelines (SPG), enters into force on June 1, 2004 and will thereby replace the previous version of the Procurement Guidelines<sup>1</sup>.

The SPG serve as an instrument for undertaking efficient and sound procurement in projects/programmes financed by Sida, whilst at the same time ensuring a strong degree of transparency, fairness and integrity in the procurement and contract management process.

In terms of guiding principles and basic tendering procedures, these SPG essentially follow the World Bank and The European Bank for Reconstruction and Development's (EBRD) Procurement Guidelines, the European Directives on public procurement, and consequently also the Swedish Public Procurement Act (LOU), as well as the World Trade Organisation (WTO)/Government Procurement Agreement (GPA). If a question is raised how to interpret SPG in matters not addressed in SPG, a comparison with LOU shall be done. If there exists an established LOU legal interpretation for a corresponding situation, this interpretation shall be also be applicable for SPG.

## 1.2 The Purpose

These Sida Procurement Guidelines (SPG) set out the procurement policies and rules to be followed in Sida-financed operations, when so agreed in the Agreement, for contracts covering goods, works and consultant services between Sida and the Co-operation Partner.

Sida adopts a variety of financing and co-operation instruments in its development co-operation assistance. Those instruments should, whenever appropriate, address the procurement issue as well as define the relevant procurement policy framework and the specific provisions to be applied for the procurement of contracts subject to Sida-financing.

Unless Sida has otherwise agreed, procurement shall not be initiated before there is an effective Agreement concluded between Sida and the Co-operation Partner.

## 1.3 Definitions and Terminology

For the purpose of clarity and simplicity these SPG apply the following definitions:

- a) The term **Co-operation Partner** is used throughout the SPG as a common expression for the party, which enters into the Agreement with Sida and is thereby responsible under the Agreement for the correct application of these SPG.
- b) Sida's **Representative** is the common expression for a staff member of Sida's organisation who is granted the authority to issue a "no objection" in respect of

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<sup>1</sup> SPG was first adopted on 24 September 2002 by the Director General of Sida and entered into force on 15 January 2003. The present revision was adopted in May 2004.

the various steps and components in the procurement and contract administration process.

- c) With **Firms** means all suppliers of goods, works and services.
- d) **Agreement** is used throughout the SPG as a common expression for the various financing and co-operation agreements and instruments applied by Sida in its development co-operation work.
- e) The term “**No objection**”, whenever used in the SPG, constitutes Sida’s written communication to the Co-operation Partner that Sida’s review of tendering procedures and contract management concludes that agreed procedures have been followed as required by SPG and the Agreement.
- f) “**Procurement**”: the purchase, leasing, rental or hire-purchase of goods, works or services.
- g) with “**Contract document** means the basic documentation for either “Tender Dossier” (services) or “Tender Documents” (goods and works).

These SPG apply British English terminology using terms and expressions that are based on the vocabulary practised within the EBRD and WTO/ Government Procurement Agreement (GPA). Co-operation Partners are requested to use the same terminology in procurement documentation to be used for prequalification or tendering.

#### 1.4 Applicability of the SPG

Subject to an effective Agreement established with the Co-operation Partner, these SPG, unless otherwise agreed, shall be applied in the following circumstances:

- a) The Co-operation Partner undertakes the procurement and is the party to the contract;
- b) The Co-operation Partner is the party to the Agreement, but another entity under a sub-agreement with the Co-operation Partner undertakes the procurement and concludes the contract;
- c) The Agreement specifies that Sida may undertake procurement and conclude contracts subject to financing under the Agreement for the purpose of efficiently serving or monitoring the project.

#### 1.5 When Sida applies the SPG

With reference to Clause 1.4 Applicability para c), Sida shall apply these SPG, when so agreed in the Agreement, on the same condition as the Co-operation Partner but with the following exceptions:

- The word Co-operation Partner shall be replaced by Sida where applicable
- Clause 2.2 second paragraph on eligibility will not apply
- Clause 2.7 Procurement Secrecy and 5.13 on Confidentiality will not apply since the Swedish Secrecy Act will apply;
- Clause 3.14, second paragraph on Pre-Tender meeting will not apply;

- Clause 3.16.1 and 3.16.2 on Tender Opening: (b) will apply and (a) will not apply.
- Clause 3.14 fourth paragraph on Submission of tenders in separate envelopes is optional for Sida
- Clause 3.19 regarding Appeal will not apply
- Section 6 regarding Review of procurement decisions will not apply

## **2 PRINCIPLES AND CONSIDERATION**

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### **2.1 Basic Principles**

Open and fair competition is the foundation for good procurement practice. In addition to economy, efficiency and to ensure that procurement decisions are based on commercial grounds only, Sida requires transparency and accountability in conjunction with the use of its financing of projects and programmes. This will affect the choice of procurement method and the documents and procedures that are used and Sida, therefore, requires its Co-operation Partners and own organisation, in all appropriate cases, to undertake the procurement of goods, works and services through competitive tendering procedures in accordance with the rules outlined in these SPG.

### **2.2 Eligibility**

Procurement of goods, works and services for contracts financed by Sida shall be open to all firms and individuals from any country.

Where another rule on eligibility restricting participation is considered for a certain project or contract as a result of a decision by the Swedish government, the applicable rule should be clearly addressed in the Agreement. The relevant eligibility rule to be applied should also be stated in the invitation to tender or to prequalify (Letter of invitation or/and publication notice) irrespective of the procurement method used.

Sida shall not finance a contract or make payment to firms or individuals that are prohibited from participation by any act taken in compliance with a decision of the United Nations (UN) Security Council taken under Chapter VII of the Charter of the UN

### **2.3 Co-operation Partner Responsibilities**

Co-operation Partners are responsible for implementing Sida financed projects and contracts, including all aspects of the procurement process from the stage of planning through to the award of contracts, as well as the administration of the contracts themselves.

The rights and obligations of the Co-operation Partner vis-à-vis tenderers for goods, works and services to be furnished will be governed by the tender documents issued by the Co-operation Partner and not by these SPG.

### **2.4 Sida Responsibilities**

Sida conducts reviews, in accordance with Section 6 Sida's Review of Procurement Decisions, to ensure that the tendering process has been carried out in accordance with agreed procedures, as required in the Agreement. Sida is responsible for procurement contracts concluded by itself.

If at any time in the procurement process (even after the award of contract) Sida concludes that the agreed tendering or contract administration procedures were not substantially followed in any material respect, Sida may declare that the contract is no longer eligible for financing. Sida will also declare a contract ineligible for financing if it determines that its "no objection" was based on incomplete, inaccurate or misleading information furnished by the Co-operation Partner.

## 2.5 Ethics in Procurement

It is a requirement of Sida that the Co-operation Partners, as well as tenderers, suppliers, contractors, and consultants under Sida-financed contracts observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, Sida requires that all parties concerned take measures to ensure that contracts and purchase orders relating to Sida financing are not used as devices for the transfer of gifts, payments or other benefits to public officials and/or procurement management/staff members with decision making responsibility or influence.

For the purpose of this provision, the terms set forth below shall have the following meaning:

"corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business; and

"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Co-operation Partner and includes collusive practices among tenderers (prior to or after submission of tenders) designed to establish prices at artificial, non-competitive levels and to deprive the Co-operation Partner of the benefits of free and open competition.

Sida reserves the right where a Co-operation Partner, firm or individual has been found by a judicial process, or an official enquiry undertaken by any of the IFI (International Financial Institutes) or bilateral donors, or by an independent review of Sida, to have engaged in corrupt or fraudulent practices to cancel all Sida financing for such Co-operation Partner, firm or individual. In a contract financed by Sida, a provision shall be included requiring firms or individuals to permit Sida to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by Sida.

## 2.6 Conflict of Interest

No affiliate of the Co-operation Partner 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 between the Co-operation Partner and the affiliate.

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 and vice versa, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control. The only exceptions would be turn-key, single responsibility, public works concessions or similar undertakings where design, supply and construction activities are an integral part of the contract or where certain critical items of equipment are an essential part of the process design.

A tenderer may submit or participate in any capacity whatsoever in only one tender for each contract. Submission or participation by a tenderer in more than one tender for a

contract (other than alternatives, which have been expressly permitted or requested by the Co-operation Partner) will result in the disqualification 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.

Consultants shall provide professional, objective and impartial advice and at all times hold the Co-operation Partner's interests paramount, without any consideration for future works, and strictly avoid conflicts with other assignments or their own corporate interests. Consultants or any of their affiliates shall not be engaged for any assignment which, by its nature, may be in conflict with another assignment of the consultant. Sida may accept the participation of a consultant in a tender that has been engaged in the preparation of a project if it can be demonstrated that no unfair advantage is given to the consultant and that the tendering process offers equal opportunities to all tenderers.

## **2.7 Procurement Secrecy**

The procurement process, generally, is confidential from the time of receipt and opening of tenders to the notification of the award. The handling of the issue of confidentiality may differ depending on whether it is the Co-operation Partner who undertakes the procurement or Sida itself. The invitation to tender or the instructions to tenderers shall state the applicable rule for the specific tender.

## **2.8 Green Procurement – Environmental considerations**

The sustainable use of natural resources and the protection of the environment belong to the fundamental objectives of Swedish development cooperation.

The Co-operation Partner shall give preference to environmentally sound products and/or services<sup>2</sup> and shall follow the requirements stated in Sida's Policy for Green Procurement for Co-operating partners<sup>3</sup> and where appropriate, special requirements stipulated in the Agreement. Environmental demands shall be clearly stipulated in the tender documents.

Procurement undertaken by Sida shall also take into consideration the environmental demands stated in the Guideline for Ecologically Sustainable Public Procurement which is a tool developed by The Committee for Ecologically Sustainable Procurement<sup>4</sup>.

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<sup>2</sup> Such independent services that may not be procured in accordance with section 5.

<sup>3</sup> [www.sida.se/partnerpoint](http://www.sida.se/partnerpoint)

<sup>4</sup> [www.eku.nu](http://www.eku.nu)



## 2.9 Social Considerations

Sida requires Co-operation Partners and tenderers to respect and safeguard human rights as defined in the Conventions of International Labour Standards of ILO (International Labour Organisation)<sup>5</sup>.

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<sup>5</sup> Freedom of Association and Protection of the Right to Organize Convention, (No. 87 and 98), Forced Labour Convention, (No. 29 and 105), Minimum Age Convention, (No. 138 and 182), Equal Remuneration Convention, (No. 100 and 111)

### 3 PROCUREMENT METHODS AND COMMON RULES APPLICABLE TO ALL CONTRACTS

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#### 3.1 Procurement Planning

Sound and efficient planning of procurement is crucial for the successful outcome of a project. The Co-operation Partner must determine what goods, works and services, including such independent services that may not be procured under Section 5, are required to carry out the project, when they must be delivered, what standards and other considerations are needed, and which procurement and contracting procedure is most suitable for each contract. Sida's requirement of a procurement plan shall be specified in the Agreement.

#### I. PROCUREMENT METHODS

The following procurement methods, under the rules and conditions described below, shall be used in the procurement of contracts for goods, works and services, including consultant services that are financed by Sida.

#### 3.2 Open Tendering

Open Tendering procedures are those procedures under which all interested firms are given adequate notification of contract requirements and all *eligible* tenderers are given an equal opportunity to submit a tender. The Co-operation Partner must give sufficient public notification of tendering opportunities for potential tenderers to determine their interest and to prepare their tenders. Open Tendering may be conducted with or without prequalification proceedings.

Open Tendering is the principal method for procurement when the individual contract value in Swedish Kronor (SEK) exceeds:

	<u>SEK</u>
<b>Goods</b>	2,000 000
<b>Consultant Services</b>	2,000 000
<b>Works</b>	10,000 000

Co-operation Partners are also encouraged to apply Open Tendering below the above thresholds, but may use other methods where the conditions specified further in this section are met.

##### 3.2.1 Open Tendering with Prequalification

Co-operation Partners may require potential tenderers to prequalify when that is justified by the nature of the contracts and all tenderers that meet the prequalification criteria should be invited to submit tenders. The notification for prequalification and the evaluation procedure shall be consistent with those for Open Tendering in these rules. In the procurement of consultant contracts, the prequalification proceedings correspond to the request for "Expressions of Interest" and the short-listing of qualified firms. The prequalification criteria, which shall be specified in the prequalification documents or in the invitation to prequalify, shall be based entirely upon the capability and resources of the prospective tenderers to perform the particular contract satisfactorily and they shall be in the form of pass/fail criteria as regards contracts for goods and works.

Prequalification or shortlisting for consultancy services will use another methodology as further described in 5.9.

### 3.2.2 Negotiated Procedure

If no tenders or no appropriate tenders are submitted subject to a notification under open tender procedure, the Client may initiate a Negotiated Procedure without further publication of a Procurement Notice provided the contract terms originally laid down in the contract documents have not been substantially altered. Such procedure shall, with the exemption of notification, be carried out in accordance with the procedure stated for Open Tendering, and subject to "No-objection" from Sida.

### 3.3 Selective Tendering

Selective Tendering procedures are similar to those for Open Tendering, except that qualified firms are preselected for each tender and invited in writing by a direct invitation. In order to ensure sufficient competition, the number of invited tenderers, normally, should not be less than three (3) firms. A tender from a firm, which is not pre-selected, shall be treated in the same way as a tender from an invited firm.

Selective Tendering may be used for awarding contracts when the value of the contract is less than:

	<u>SEK</u>
<b>Goods</b>	2,000 000
<b>Consultant Services</b>	2,000 000
<b>Works</b>	10,000 000

Selective Tendering includes the preparation of a complete set of tender documents and the use of formal opening procedures.

### 3.4 Simplified Tendering

Simplified Tendering is a procedure where prospective tenderers are invited by direct invitation in writing and the formal requirements are less strictly set compared to the procedures for Open and Selective Tendering. It may be used when the contract value is less than:

	<u>SEK</u>
<b>Goods</b>	300 000
<b>Consultant Services</b>	300 000
<b>Works</b>	1,000 000

Simplified Tendering should be used in cases where a Co-operation Partner will carry out procurement for readily available off-the shelf items or products and services of a similar nature, and will include the following features:

- the invitation, normally to not less than three (3) firms,
- the tender and contract documentation can be prepared in a simple format;
- no public or formal opening of tenders is required;
- tenders can be submitted by fax or electronic mail.

### 3.5 Single Source Procurement/Selection

Single source procurement for goods or Single Selection for consultant services may be used in exceptional cases or when the contract value is less than:

	<u>SEK</u>
<b>Goods</b>	100 000
<b>Consultant Services</b>	300 000

Single source procurement, when the above thresholds are exceeded, may be justified in the following cases:

- a) The extension of an existing contract awarded in accordance with the procedures for Open or Selective Tendering for additional goods, works or services of a similar nature would clearly be economic and efficient and where no advantage would be obtained by further competition. In the case of a consultant contract, the contracts maximum value shall not exceed 50% of the original contract, unless otherwise agreed with Sida.
- b) A product or consultant services can only be provided by a single firm because of exclusive capabilities, exceptional worth for the assignment or proprietary rights;
- c) Standardisation with existing equipment is determined to be important and justified, and compatible goods cannot be provided by other suppliers;
- d) It is a case of extreme urgency not foreseeable or attributable to the Co-operation Partner.

## II. OTHER RULES

### 3.6 Valuation of Contracts and Thresholds

For the purpose of determining the applicable procurement method, Co-operation Partners shall ensure that the estimation of the contract value is made correctly and cover all costs related to the specific contract, whether it is a so called one-off contract or a time-based contract for a certain period of time.

No procurement requirement for a given quantity or input of a contract may be split-up with the intention of avoiding the application of a formal procurement method.

### 3.7 Notification and Advertising

Timely notification of tendering opportunities is essential in competitive tendering. For this purpose, Sida requires Co-operation Partners under Open Tendering to publish invitations to prequalify or to tender and to make known the requirements to the public in the following manner:

- a) Whenever applicable, in at least one newspaper of national circulation in the country of the Co-operation Partner;

- b) The Co-operation Partner shall submit a "Procurement Notice"<sup>6</sup> to Sida for publication.
- c) For large contracts, when so required by Sida, in one or more of the following publications; publication in the UN publication Development Business, the Tenders Electronic Daily (TED) of the Official Journal of the European Communities, and the DAC's Internet Procurement Bulletin Board. Publication of notices in international technical magazines and newspapers of wide circulation is encouraged.

The invitation to prequalify or tender may be sent by fax or electronic mail and shall contain all information necessary to guide the prospective tenderers about the requirements, the means and the cost, if any, of obtaining the tender documents, and the place and deadline for submission of tenders.

Only a nominal fee should be charged for the tender documents, solely to cover the costs of reproduction and of despatching the documents by courier.

### 3.8 Time Limits

Prescribed time limits for the preparation and submission of applications to prequalify or tenders shall be sufficient for all tenderers to prepare and submit applications or tenders. The following minimum time limits apply from the date of publication:

- a) Open Tendering with Prequalification
  - Prequalification/ "Expressions of Interest" 30 days
  - Submission of Tender 30 days
- b) Open Tendering 30 days
- c) Selective Tendering 30 days
- d) Simplified Tendering 15 days

For large and complex contracts, the time limits under Open Tendering should be extended considerably, normally to not less than 90 days.

### 3.9 Language

Tender documentation, including all published procurement notices, shall be prepared in English, French or Spanish. The chosen and governing language shall be stated in the Agreement between Sida and the Co-operation partner. In addition, the Co-operation Partner may prepare a further set of the tender documentation in other languages in order to assist local firms in tendering. However, the English, French or Spanish text and the interpretation thereof govern the tender documentation. A text in another language than the governing language is to be regarded only as a translation and as a guide to local firms.

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<sup>6</sup> [www.sida.se/partnerpoint](http://www.sida.se/partnerpoint)

### 3.10 Qualification of Tenderers

In tenders where a prequalification of tenderers has not been carried out, the Co-operation Partner shall assess the qualifications of a tenderer as part of tender evaluation in order to determine whether it is capable of performing a possible contract satisfactorily.

The qualification of tenderers may be undertaken as a post-qualification in the final step of the tender evaluation for goods and works. Alternatively, the assessment of tenderer qualifications may take place during the preliminary examination of tenders. The qualification of tenderers for consultant contracts should always be undertaken before the detailed technical evaluation of tenders is initiated.

The tender documents for goods and works and the tender dossier for consultant services should state the minimum qualification requirements that have to be met by the tenderers in order to qualify for the award of contract. Such minimum requirements may cover the following aspects, as appropriate:

- a) Necessary professional, technical and organisational capacity, financial resources and other required facilities to perform a contract;
- b) Proven experience, including the satisfactory completion of similar contracts;
- c) Legal capacity to enter into a contract.

To satisfy itself that the firms are qualified in accordance with the criteria referred to in the above section, the Co-operation Partner may, as appropriate, require the tenderers to provide the necessary documentary evidence or other information it may deem useful. The requirements specified shall be relevant for the particular procurement and be based on objective grounds. References shall, where possible, be made to European or international standards, such as EN 2900 and ISO 9000.

Consequently, the evaluation of the qualifications of the tenderers must be carried out in accordance with the criteria and procedures laid down in the tender documents, and nothing else.

### 3.11 Grounds for Disqualification

A firm may be excluded from the evaluation and the award of a contract, who:

- a) is bankrupt or is being wound up, whose affairs are being administered by court, who has entered into an arrangement with creditors, who has suspended business activities or who is subject of an injunction against running business by court;
- b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by court, or for an arrangement with creditors or of any other similar proceedings;
- c) has been convicted of an offence concerning his professional conduct by a court;
- d) has been found guilty of grave professional misconduct;
- e) has not fulfilled obligations relating to payments of taxes or social security contributions.

### 3.12 Verification of Qualifications

In addition to the verifications necessary to determine a firm's qualifications according to the various requirements set out above, prior to contract award, the Co-operation Partner, unless deemed unnecessary, shall ensure that a tenderer meets formal requirements as stipulated under national law. A tenderer would normally be required to include in its tender evidence that it:

- a) is registered by a national Registrars of Companies and a Trade Association (Patent och Registreringsverket, PRV or a corresponding national official register for non- Swedish firms);
- b) is registered for declaration and payment of value added tax or a similar sales tax in accordance with national legislation;
- c) has declared preliminary taxes for staff and employee contributions; and
- d) is free from debts regarding taxes and social security contributions.

In case of a request to the tenderer for the information referred to above, it shall be stated in the tender document/tender dossier, the procurement notice or letter of invitation in what manner the tenderer must provide such information. Failure to furnish such information may be a ground for rejection.

A firm not registered by the PRV or by a corresponding national official register as well one not registered for declaration and payment of value added tax in accordance with national legislation will be excluded from participation in the tender proceedings.

### 3.13 Clarifications

#### 3.13.1 *Clarification of Contract Documents*

Tenderers shall have the right to seek clarifications on any aspect of the Contract documents and receive responses from the Co-operation Partner in good time before the deadline for submission of tenderers, normally not less than 14 days prior to the deadline. The responses prepared by the Co-operation Partner shall be sent to all firms that have received the Contract Documents at the same time and without disclosing the names of the prospective tenderers.

#### 3.13.2 *Clarification of Tenders*

The Co-operation Partner may also request clarification or amplification of a tender, if this can take place without risk of preferential treatment or limitation of competition.

The Co-operation Partner may also request for clarification or amplification of a certificate, written proof or other documentation that has been submitted as laid down in Clauses 3.10, 3.11 and 3.12

### 3.14 Submission of Tenders

Tenders shall be submitted in writing, unless otherwise determined by SPG. The Co-operation Partner shall allow enough time for the consultants to prepare their tenders. The time allowed shall depend on the assignment but shall never be less than the minimum time limits set out in Clause 3.8.

For more complex procurements, it may be appropriate to arrange a pre-tender meeting between the invitation and the deadline for submission. This should be stated in the invitation to submit tenders and all firms that have declared their intention to submit a tender shall be invited to attend.

If necessary, the Co-operation Partner may extend the deadline for submission of tenders. If such a decision is taken, the tenderers shall be informed of the decision to extend the deadline, not less than 7 days before the deadline for submission of tenders.

When the procurement relates to consultant services, technical and financial proposals shall be submitted at the same time but in separate envelopes.

### **3.15 Validity of Tenders**

The period of validity of the tender should be specified in the tender documents and be sufficient to enable the Co-operation Partner to complete the evaluation of tenders and conclude a contract with the successful tenderer, including receiving Sida's "no objection" when so required. This would normally be in the range of 60 - 90 days. In exceptional circumstances, the Co-operation Partner may request the tenderers to extend the validity of their tenders, subject to Sida's "no-objection".

### **3.16 Tender Opening**

#### **3.16.1 Goods and Works**

Tenders solicited under Open and Selective Tendering procedures for goods and works 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 following procedures will apply:

- a) Tenders opened under procedures where the Co-operation Partner is responsible for the procurement.

At the time and place stated in the tender documents, the Co-operation Partner will open all tenders that have been received before the deadline for submission of tenders. Tenders shall be opened in the presence of the tenderers or their representatives that choose to attend. The name of the tenderers and the total price of each tender shall be read aloud and recorded when opened. Minutes of the tender opening shall be distributed to all tenderers that have purchased the tender documents as well as to Sida.

Sida shall have the right to nominate an observer to attend the meeting

A non-public procedure may be used by the Cooperation Partner for opening of tenders under Simplified Tendering and Single Source Procurement.

Tenders received after the deadline for submission will be rejected and returned unopened, see Clause 5.10, fourth paragraph.

- b) Tenders opened under procedures where Sida is responsible for the procurement.



Opening of tenders shall be carried out in a non-public meeting the second day after the deadline for submission of tenders and all tenders shall be recorded in a protocol issued and signed by two persons appointed by Sida.

### **3.16.2 Consultant services**

- a) Tenders opened under procedures where the Co-operation Partner is responsible for the procurement

The technical proposals shall be opened as soon as possible after the closing time for the submission of the tenders by a committee of at least three officials in a non-public session. The financial proposals shall remain sealed until the technical evaluation has been completed and thereafter opened, provided they meet the minimum technical score, and recorded in accordance with the same procedure as for the technical proposals above. Tender opening minutes shall be prepared. Any tender received after the closing time for submission shall be returned unopened.

A non-public procedure may be used by the Cooperation Partner for opening of tenders under Simplified Tendering and Single Source Procurement.

- b) Tenders opened under procedures where Sida is responsible for the procurement

Opening of tenders shall be carried out in a non-public meeting the second day after the deadline for submission of tenders and all tenders shall be recorded in a protocol issued and signed by two persons appointed by Sida.

### **3.17 Rejection of All Tenders**

Rejection of all tenders shall only be done in exceptional circumstances. It may be justified when there is a lack of effective competition, where the budget is extensively exceeded, or where there is a lack of responsive tenders.

### **3.18 Joint Ventures**

The formation of joint ventures is allowed in tendering for Sida-financed contracts when so stated in the pre-qualification or Contract Documents. Any tender shall be signed by all partners of the joint venture, so as to legally bind all partners, jointly and severally, and any tender shall be submitted with a copy of the joint venture agreement providing for joint and several liability with respect to the contract, including the nomination of the lead firm of the joint venture. The Co-operation Partner may request the successful joint venture tenderer to establish a special judicial form as a condition for contract execution.

### **3.19 Appeal**

Tenderers with the view they have been harmed by an error or irregularity during the award process may file a complaint with the Co-operation partner directly.

The Co-operation Partner shall immediately inform Sida of such complaint and must respond to the complainant within a reasonable time as well as send a copy to Sida.

If the outcome of above procedure does not satisfy the complainant, the tenderer may have recourse to procedures established under the Co-operation partner's national legislation.

## **4 PROCUREMENT OF GOODS AND WORKS**

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In this section, a number of areas related specifically to the procurement of goods and works will be addressed including such independent services that may not be procured in accordance with section 5.

### **4.1 Tendering Procedures**

The selection of procurement methods to be used in the procurement of goods and works are laid down in Section 3. Procurement methods and common rules applicable to all contracts, including the thresholds applicable for the various procurement methods and rules on advertising and time limits.

### **4.2 Tender Documents**

The tender documents are the focal point in the tendering process and shall furnish all information necessary for a prospective tenderer to prepare a responsive tender for the goods and works to be provided. While the detail and complexity of these documents may vary with the size and nature of the tender package and contract, they generally should include:

- a) Invitation to Tender;
- b) Instructions to Tenderers;
- c) General and Special Conditions of Contract;
- d) Technical Specifications;
- e) Schedule of Requirements;
- f) Tender Form;
- g) Contract Form;
- h) Appendices.

Tender documents shall be drafted so as to permit and encourage the widest possible competition. They shall clearly define the scope of works, goods and associated services to be supplied, the rights and obligations of the purchaser and of suppliers and contractors, and the conditions to be met in order for a tender to be declared substantially responsive, and they shall set out fair and non-discriminatory criteria for selecting the winning tender.

### **4.3 Standards and Specifications**

Standards and technical specifications referred to in tender documents shall promote and allow the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. Co-operation Partners should use European (EN) and international standards (ISO) and specifications wherever these are available and appropriate. The use of performance related specifications are encouraged and may be appropriate to include when full comparability for evaluation purposes between the tenders can be achieved. The use of brand names and similar references should be avoided. If it necessary to quote a brand name of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference.

#### **4.4 Domestic Preferences**

Sida does not allow the inclusion of domestic preferences for local firms in the tender documents for evaluation purposes.

#### **4.5 Tender Securities**

A tender security, in the amount specified in the tender documents, affording the Co-operation Partner reasonable protection against irresponsible tenders may be acceptable, but it shall not be set so high as to discourage tenderers and the amount would normally fall within the range of 2-5% of the estimated contract price.

#### **4.6 Evaluation Criteria**

The Co-operation Partner shall accepted either the tender, which is:

- a) the economically most advantageous in consideration of the given evaluation criteria, such as price, operating costs, quality, aesthetic and functional characteristics, service and maintenance, environmental impact etc. or
- b) the lowest price

Only one of these two evaluation principles may be given in the Contract Documents.

##### **4.6.1. *The economically most advantageous tender***

Tender documents, in the relevant section of the Instructions to Tenderers, shall specify the relevant factors in addition to price to be considered in the tender evaluation and in the manner in which they will be applied for the purpose of determining the most advantageous tender. Factors, which may be taken into consideration, include, inter alia, the time of completion of the construction or delivery, the operating costs, the efficiency and compatibility of the equipment, and the availability of service and spare parts.

Factors other than price to be used for determining the most economically advantageous tender should be quantifiable and expressed in monetary terms, or where that is not practicable, given a relative weight in the evaluation provisions of the tender documents.

##### **4.6.2. *Tender with the lowest price***

This method may be appropriate for goods and works of a standard or routine nature where well established specifications and standards exist. Under this method, a minimum of technical points for quality is established. Those tenders securing the minimum threshold are determined qualified. Thereafter the firm with the lowest price shall be selected.

#### **4.7 Award of Contract**

The Co-operation Partner shall award the contract to the tenderer whose tender has been determined to be substantially responsive and has been determined to be the most favourable tender, provided further that the tenderer is determined qualified to perform the contract satisfactorily. The award decision must be made in writing in an evaluation report and the report shall be distributed to all Tenderers.

## 4.8 Evaluation Procedure

The following steps and considerations should normally be followed and made in the examination and evaluation of tenders:

- a) Prior to the detailed evaluation, the Co-operation Partner will examine each tender to determine whether it is complete, the documents are properly signed, it is substantially responsive to the tender documents and any computational errors have been made;
- b) The Co-operation Partner may at this stage undertake an examination of the tenderer's qualifications in accordance with the qualification requirements specified in the tender documents in order to determine whether the tenderer is qualified to perform the contract satisfactorily. Alternatively, the determination of a tenderer's qualifications may be made when the evaluation is completed as a post-qualification of the tenderer whose tender has been determined the lowest evaluated;
- c) A substantially responsive tender is one that conforms to all the terms, conditions and specifications of the tender documents, without material deviation, reservation or omission. A material deviation, reservation or omission is one (i) which affects in any substantial way, the scope, quality or performance of the goods, (ii) which limits in any substantial way the rights and obligations under the contract, or (iii) the rectification of which would affect unfairly the competitive position of the other tenderers;
- d) The Co-operation Partner may waive any minor informality, non-conformity or irregularity, provided that such waiver does not prejudice or affect the relative ranking of any tenderer;
- e) If a tender is not substantially responsive, it will be rejected and may not subsequently be made responsive by any correction of the tender;
- f) The Co-operation Partner shall thereafter analyse the price and costs for those tenders determined substantially responsive, and the award shall be made to the tenderer that has submitted the most favourable tender

## 4.11 Negotiations

Negotiations on price are not permitted with tenderers prior to the award decision, other than in connection with Negotiated Procedure or single source procurement. Clarifications in writing in respect of a tender may be sought by the Co-operation Partner during the evaluation process.

In the course of concluding a contract with the successful tenderer, the Co-operation Partner may invite the winner for a meeting in order to discuss and agree on outstanding issues related to the contract to the extent that no substantial change is made to the basis on which the award decision was made.

## 4.10 Contract Models

Unless otherwise agreed, all contracts shall be concluded directly between the Co-operation Partner and the selected supplier or contractor. Co-operation Partners may use appropriate international contract models for the delivery of goods and works with

associated services, such as the World Bank's sample contracts for goods and works as well as the various FIDIC (the International Federation of Consulting Engineers) contract formats appropriately adapted to Sida's requirements as set out in the Agreement.

## 5 PROCUREMENT OF CONSULTANT SERVICES

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### 5.1 Introduction

The main concern when selecting consultants should be the quality of the services that are provided. The concept of quality in this context covers the entirety of factors subject to evaluation of the technical proposals, such as the qualifications of the consultant's team and the suitability of the approach and methodology indicated by the tenderer in its tender. The procedures for selecting consultants and contracting for their services should be competitive and transparent to ensure that assignments can be efficiently executed in a cost-effective way with high standards of performance, while providing the necessary degree of accountability.

### 5.2 Tendering Procedures

The selection of consultants will fundamentally rest on the same principles and basically follow the same procurement methods as laid down in Section 3. Procurement methods and common rules applicable to all contracts, including the thresholds applicable for the various procurement methods and rules on advertising and time limits. However, there are some significant features associated with the procurement of consultant services which generate the need to design and adopt special procedures to be used in order to ensure the quality of the firms to be retained as well as to secure the observation of requirements of objectivity and transparency in the evaluation and award of contracts. The term "Tender" as used in the following is normally composed of a Technical and Financial Proposal.

The following procurement procedures should be used:

#### a) Open Tendering with prequalification

This procedure should normally be used for large and complex consultant contracts where it is necessary to limit the number of tenderers for evaluation purposes.

The first step is the publication of an invitation notice where firms are invited to submit "Expressions of Interest " in order to establish a formal short list of qualified firms. The next step is to determine which firms are to be included in the short list based on the criteria stated in the invitation and thereafter invite those firms short-listed (in the range 3-6 firms) to submit a Tender based on the tender dossier issued by the Co-operation Partner.

#### b) Open Tendering

The invitation to tender, which may be combined, with a direct invitation of pre-identified firms, shall be made by the publication of a contract notice.

Since no formal short list is prepared, all eligible firms are invited to submit a tender. However, the invitation to tender and the tender dossier should state the minimum qualification requirements needed in order to determine which firms are qualified to perform the contract satisfactorily. Those firms not meeting the minimum qualification requirements will be rejected as non-responsive and excluded from further participation.

**c) Selective and Simplified Tendering**

This involves a direct invitation, normally not less than three firms chosen on objective grounds.

**d) Single Source Selection**

A qualified consultant firm or individual may be selected directly, when so justified (see Clause 3.5 Single source procurement/Selection), without the requirement to prepare a short list. The firm shall be asked to prepare a technical and financial proposal on the basis of a ToR furnished by the Co-operation Partner and acceptable to Sida, which may then be negotiated.

### **5.3 Selection and Evaluation Variants**

The selection and evaluation of tenders will be conducted on the basis of the following variants which will govern the design of the tender dossier, in particular the instructions to tenderers with the application of the evaluation criteria and procedure, and the choice of contract conditions:

**a) Quality and Cost- Based Selection (QCBS)**

This process takes into account both the quality of the technical proposal and the cost of the services in the selection of a successful firm. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment. Quality must be measurable.

The budget and funds available for the assignment may be stated in the tender dossier, where appropriate.

Normally, Quality and Cost- Based Selection shall be the guiding basis for procurement of consultant services financed by Sida.

**b) Least-Cost Selection**

This method may be appropriate for assignments of a standard or routine nature (audits and engineering design of non-complex works, and so forth) where well-established practices and standards exist. Under this method, a minimum of technical points for quality is established. Those tenders securing the minimum threshold are determined qualified. Thereafter the firm with the lowest price shall be selected.

### **5.4 The Procurement Process**

The procurement process for consultants under Open and Selective Tendering normally involves the following steps:

- a) Preparation of Terms of Reference (ToR) by defining the scope, objectives and deliverables, as well as determining the selection method and evaluation basis to be followed;
- b) Preparation of cost estimate and the budget;
- c) Preparation of the complete Tender Dossier normally comprising:
  - a. Invitation to Tender,



- b. Instructions to Tenderers,
  - c. Terms of Reference (ToR),
  - d. Draft Contract;
- d) Advertising and/or the preparation of a short list of qualified firms (which varies with the selection method chosen);
- e) Receipt of Tenders (Technical and Financial Proposals);
- f) Evaluation of Technical Proposals;
- g) Evaluation of Financial Proposals;
- h) Preparation of complete Tender Evaluation Report;
- i) Negotiations and award of contract to the selected firm.

When Simplified or Single Source Procurement is used all the steps as listed in the above process are not needed.

### **5.5 Terms of Reference (ToR)**

The ToR shall clearly and comprehensively describe the background, including objectives and scope of the project supported, the objectives, including intended longer-term effects, the scope of the assignment, the tasks to be performed and the time schedule for them, the deliverables, as well as the reporting requirements and other implementation arrangements.

Full harmonisation between objectives, tasks, deliverables and time schedule should be obtained.

The scope of the services described in the ToR shall be compatible with the available budget.

### **5.6 Cost Estimate (Budget)**

Preparation of a realistic cost estimate is essential for the financial planning and Sida's allocation of resources to a project and for the specific assignment and contract. Costs shall be divided into two broad categories (a) fees and (b) reimbursables.

### **5.7 Tender Dossier**

The Tender Dossier should furnish all information necessary for a prospective tenderer to prepare a responsive and competitive tender for the services to be provided. While the detail and complexity of these documents will vary with the size and nature of the proposed contract, they shall include:

- a) The Invitation to Tender which shall state the intention of the Co-operation Partner to enter into a contract for the provision of consulting services, the type of tendering method used, eligibility requirements, the source of funds (Sida), the details of the Co-operation Partner, any qualification requirements, the date, time and address for submission, and the required validity period of the tenders. The validity period shall be sufficient (normally 60-90 days) to enable the Co-

operation Partner to complete the comparison and evaluation of tenders, and to allow for Sida's review and "no objection".

- b) The Instructions to Tenderers which shall contain all necessary information that would help the consultants prepare responsive tenders, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score.
- c) The Tender Dossier, which shall normally include a draft contract proposal, that takes into account the special conditions and provisions applicable under Sida financing. The Co-operation Partner may use Sida's Contract for Consulting Services<sup>7</sup> or other appropriate international contract models, such as those issued by the World Bank or others acceptable to Sida. Any changes or amendments to the general conditions should be introduced as special conditions of contract, with the general conditions remaining unchanged.

## 5.8 Advertising

Invitations to tender for consultancy contracts shall be done in accordance with the notification and advertising rules and procedures laid down in Clause 3.7. Notification and Advertising.

In case no formal short list of consultants is prepared, as being the case under Open Tendering without prequalification, the invitation to tender instead shall state the minimum qualification requirements that will be applied to the tender. Tenderers that fail to meet these minimum qualification requirements will be excluded from further participation and evaluation.

## 5.9 Preparation of Short Lists of Consultants

The formal short-listing of qualified firms to be invited to submit a tender is the first step under Open Tendering with prequalification and requires the publication of a notice for "Expressions of Interest".

Formal short lists of consultants should normally include no less than three and no more than six qualified and experienced consultants.

All relevant expressions of interest and other information on consultants should be collected that would be considered for short-listing. The short-listing criteria should be worked out in advance, preferably in the form of short-listing grids. The three to six consultants having received the highest score then constitute the short list.

When the short-listed consultants have been invited to submit proposals, the other firms shall be informed in writing that they were not short-listed this time.

A short list of firms is also established in connection with the use of Selective Tendering and Simplified Tendering but without the publishing of an invitation notice. Instead, the short-listing will be based on market knowledge of qualified consultant

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<sup>7</sup> see model at "Partner Point - Business Opportunities" - [www.sida.se](http://www.sida.se)

firms and available lists of firms that have declared their interest with Sida or the Co-operation Partners to participate in tenders for certain areas of contracts.

### **5.10 Evaluation of Tenders under Quality and Cost- Based Selection**

The evaluation of tenders shall be carried out in two stages: first the quality and then the cost. Evaluators of the technical proposals shall not have access to the financial proposals until the technical evaluation is concluded. Financial proposals shall be opened only after the technical evaluation has been completed. The combined evaluation of cost and quality shall be carried out in full conformity with the tender dossier.

The Co-operation Partner shall evaluate each technical proposal, taking into account several criteria such as: the consultant's experience, the quality of the methodology, the qualifications of key staff, and other factors as needed, all in accordance with the tender dossier. The Co-operation Partner shall further evaluate each proposal on the basis of its responsiveness to the ToR. A proposal shall be rejected at this stage if it does not respond to important aspects of the ToR or if it fails to achieve a minimum technical score as specified in the tender dossier. In the absence of a formal short listing of the tenderers, the Co-operation Partner shall conclude at this stage whether the tenderers meet the minimum qualification requirements as stated in the tender dossier.

At the end of the process, the Co-operation Partner shall prepare a technical evaluation report of the quality of the proposals. The report shall substantiate the results of the evaluation, describe the relative strengths and weaknesses of the proposals and indicate the technical scores of each proposal.

The Co-operation Partner shall open, under the procedures indicated above, the financial proposals of those proposals that met the minimum technical score, the other financial proposals to be returned unopened see Clause 3.16.1 a) and 3.16.2 b). The name of the consultant, the technical score, and the proposed total contract price (including fees and reimbursable costs) shall be recorded. The total score shall be obtained by weighting the quality and cost scores and adding them. The weighting principles for technical and financial merits shall be as specified in the tender dossier and, normally, the weight for cost shall be in the range of 20 – 40 points out of a total score of 100 points.

Evaluation procedures that include hearings or the presentation of tenders by the tenderers during this phase should not normally be practised, except for cases where it is determined necessary to conduct interviews with key members of the proposed team to determine their suitability for the positions.

The Co-operation Partner shall prepare a final evaluation report and the firm obtaining the highest total score shall be invited for negotiations.

### **5.12 Negotiations and Award of Contract**

Negotiations may include discussions of the ToR, the methodology, staffing, Co-operation Partner's input, tax liability and special conditions of contract. These discussions shall not alter the original ToR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. The

final ToR and the agreed methodology shall be incorporated as an attachment to the contract. Normally, proposed unit rates for fees shall not be negotiated, since these have already been a factor of selection in the cost of the financial proposal.

The selected firm shall not be allowed to substitute key staff, unless both parties agree. If it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the staff initially proposed.

If the negotiations fail to result in an acceptable contract, the Co-operation Partner shall terminate the negotiations and invite the next ranked firm for negotiations. The Co-operation Partner shall consult with Sida before taking this step. Once negotiations are commenced with the next ranked firm, the Co-operation Partner shall not reopen the earlier negotiations.

Negotiations with all firms meeting the requirements on technical scoring are not acceptable.

The award decision must be made in writing in an evaluation report and the report shall be distributed to all unsuccessful Tenderers.

### **5.13 Confidentiality**

Information related to evaluation of tenders and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the award of contract is notified to the successful firm, except as provided in the above paragraph.

Tenders and information concerning tenderers shall be regarded as classified until a contract has been signed or the procurement finalised in another fashion. The Co-operation Partner shall ensure that its employees, its consultants and their personnel and any other person involved respect the provisions regarding confidentiality set out in these SPG

## 6 SIDA'S REVIEW OF PROCUREMENT DECISIONS

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Sida reviews the procurement process for the procurement of goods, works and services with respect to its fiduciary responsibility to ensure that tendering and contract management are carried out in accordance with agreed procedures as required by Sida Procurement Guidelines and the Agreement. Sida will communicate the result of its review in the form of either a "no objection" or a statement that Sida is not in a position to issue a "no objection".

**1) *Sida's prior review is mandatory in the following manner for all SPG procurements with a contract value over the threshold value SEK 500.000 unless otherwise agreed in the Agreement***

**A. Goods and Works**

- Prior to an invitation to prequalify or tender, the Co-operation Partner shall submit the complete draft set of prequalification or tender documents to Sida for its review;
- Use of Negotiated Procedure in accordance with 3.2.2;
- Prior to finalising a prequalification list or awarding a contract, a detailed prequalification or tender evaluation report setting forth the specific reasons on which the recommendation to prequalify or award the contract is based shall be submitted, to Sida for its review;
- The Co-operation Partner shall submit the draft final contract and any amendments to Sida for its review.

**B. Consultant Services**

- Prior an invitation to prequalify or tender, the Co-operation Partner shall submit the complete draft set of prequalification or tender documents to Sida for its review;
- Use of Negotiated Procedure in accordance with 3.2.2;
- Prior to finalising a prequalification list a detailed prequalification evaluation report setting forth the specific reasons on which the recommendation to prequalify is based shall be submitted, to Sida for its review;
- Prior to opening the financial proposal, a detailed technical evaluation report shall be submitted to Sida for its review;
- Prior to inviting a selected firm for negotiations, a complete tender evaluation report setting forth the specific reasons on which the recommendation to select the successful firm is based, shall be submitted to Sida for its review;
- The Co-operation Partner shall submit the final draft contract and any amendments to Sida for its review.

**2) In addition, Sida may require the following prior review actions regarding all types of contracts (goods, works and services):**

- Use of Single source procurement;
- Extension of period of tender validity;
- Rejection of all tenders;
- The modification or waiver of the terms and conditions of a contract or granting a material extension of the stipulated time for performance or issuing any change.