

The Coordination Group
Arab Funds Procurement Modernization Project

**Operational Document—Environmental and Social
Aspects of Procurement**

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A. General

This Operational Document, together with the *Appendix* and *Checklist* thereto, sets out the requirements of members of the Coordination Group (as this term is hereinafter defined; each member being hereinafter referred to as a “Fund”) in relation to projects to be supported by a Fund through investment project financing. The *Appendix* sets out the definitions of certain terms used in this document while the *Checklist* provides the actions to be taken by a Fund at each of the four stages of the procurement process.

Members of the Coordination Group are: the Abu Dhabi Fund for Development (ADFD), Arab Bank for Economic Development in Africa (BADEA), Arab Fund for Economic and Social Development (AFESD), Kuwait Fund for Arab Economic Development (KFAED), Islamic Development Bank (IsDB), OPEC Fund for International Development (OFID), Qatar Fund for Development (QFFD), and Saudi Fund for Development (SFD) (collectively, the “Arab Funds”), and such other Fund, or Funds, as may be approved for inclusion in the Arab Fund Group.

B. Stage 1—Project Identification and Initial Consideration

Stage 1 in the procurement cycle involves understanding the environmental and social (ES) risks and issues to be reflected in the procurement and contractual arrangements, and setting a clear expectation for ES performance in the form of an ES policy/statement prepared by the Beneficiary (as this term is defined in *Appendix* to this *Guidance Note*).

Understanding Environmental and Social Aspects

Identifying the ES risks and impacts normally requires input from Beneficiary’s specialists, including environment, social, health and safety, construction, legal, technical, and procurement skills. Specialists from other disciplines may contribute on specific aspects, for example, dam safety or road safety. The Fund may advise the Beneficiary on the types of expertise and information required, and the levels of knowledge, skills, and experience needed by the specialists. The ES risks and issues to be considered include those arising from the design and construction of the Works (as this term is defined in *Appendix* to this *Guidance Note*), as described in project preparation documents such as:

- a. Environmental and Social Impact Assessment (as this term is defined in *Appendix* to this *Guidance Note*)
- b. Environment and Social Management Framework (as this term is defined in *Appendix* to this *Guidance Note*)
- c. Environmental Management Plan or Environmental and Social Management Plan (as this term is defined in *Appendix* to this *Guidance Note*)
- d. Resettlement Policy Framework (as this term is defined in *Appendix* to this *Guidance Note*)

e. Resettlement Action Plan (as this term is defined in *Appendix* to this *Guidance Note*)

f. Such other project preparation documents as may be required under the project such as climate risk assessments, biodiversity action plans, waste management plans, permit or consent conditions, or any form of regulatory authority conditions attached to any permits or approvals for the project, and/or regulations, general specifications, sector specific specifications or standard operating procedures.

In addition, the Beneficiary's environmental and social specialists should consider contextual issues and risks that may be specific to the sector, country, region, or operating and regulatory regime. This may include, for example:

a. The availability of mitigation measures (such as traffic control, waste facilities, spill kits, etc.)

b. The traditionally accepted methods of work

c. The extent of application of Good International Industry Practice (as this term is defined in *Appendix* to this *Guidance Note*).

Beneficiary's Environmental and Social Aspects Policy

The Beneficiary should set out its expectations to bidders/proposers with respect to ES performance during Works implementation. This is best achieved in the form of a statement (for example, an ES policy) that captures and clearly communicates the overall aims of the Beneficiary's legislation, regulation, standards, practice, specifications, and requirements. The Beneficiary's ES policy should be a simple, brief, and unambiguous series of statements appropriate for the Works, and specific to the ES issues, risks, and impacts for the project. It should require, for example, Good International Industry Practice, a safe and healthy worksite, and the intent of applicable laws, regulation etc., so that it is clear how they are to be interpreted in practice.

As the Beneficiary's ES policy specifies what the contractor and Contract Manager will be required to deliver, it describes the standards against which performance will be measured to drive ES outcomes.

Some Beneficiaries (or their implementing agencies) may have an existing ES policy that is appropriate or may be adapted (to consider the specific environmental and social issues) for use on a project. An ES policy that is specifically prepared for a project is likely to be applicable for subsequent projects implemented by that agency, and should therefore be a worthwhile investment.

As described in the Standard Procurement Documents (SPDs—as this term is defined in *Appendix* to this *Guidance Note*), the ES policy should be signed by a senior manager of the Beneficiary such as a managing director, department head, board chairman, or equivalent.

The Beneficiary's ES policy should be included in the Works requirements or terms of reference of the procurement documents. In addition, consideration should be given to publishing the ES policy on the implementing agency's or the project's website.

The Fund's environmental and social specialists may advise the Beneficiary during the preparation of the Beneficiary's ES policy on content appropriate to the risks of the Project.

C. Stage 1—Summary

At the end of Stage 1, the Beneficiary should:

- a. Have identified the key ES issues, risks, and impacts related to the Works, together with the requisite mitigation measures
- b. Have established the multi-disciplinary team required to prepare and administer the procurement
- c. Be able to articulate, through a succinct policy statement, the minimum ES performance requirements.

D. Stage 2—Market Research, Analysis and Planning

This section provides guidance on considering ES aspects:

- a. During market research and analysis
- b. When approaching the market (including assessing the national procurement procedures)
- c. In the organization of the procurement function. It also explains where to record the decisions made.

Market Research and Analysis

The Beneficiary is required to carry out market research and analysis to inform the optimal approach for procurement under a Project. The assessment should be adequate to understand the capacity of the market to manage ES aspects of the Project including whether:

- a. The current ES industry practice and track record is adequate to deliver the ES requirements
- b. There is a need for innovative solutions or technological advances that improve ES outcomes and deliver Good International Industry Practice.

With respect to these issues, the Fund's environmental and social specialists may support the Beneficiary in this research, for example, by providing a broader regional/international perspective on ES performance and solutions.

Where there are needs for customized solutions or innovations to meet the requirements, the Beneficiary should consult with the market on potential solutions. This may be done by the Beneficiary through market engagement (e.g., contractor/supplier workshops), road shows, or industry consultations, for example, with civil engineering institutions. The key findings, risks, and recommendations from the ES market research should be summarized in the Project Procurement Strategy and Development (PPSD) (as this term is defined in *Appendix* to this *Guidance Note*).

Approaching the Market

How ES risks and impacts are managed depends on whether international or national markets are to be approached. The Beneficiary recommends which market to approach based on the market research. If the Beneficiary recommends approaching the national market, an assessment of the national procurement procedures should be undertaken, as described in this section.

Approaching the National Market

For the Fund to accept the use of NPP under national open competitive procurement, the Procurement Regulations (as this term is defined in *Appendix* to this *Guidance Note*) require that the procurement documents include provisions intended to adequately mitigate against ES risks and impacts. The Fund undertakes an assessment to confirm that the provisions are acceptable.

Assessing the National Procurement Procedures

The Fund should provide the proposed National Procurement Procedures (NPP) procurement documents and any relevant supporting information (e.g., general specification) for the Fund's assessment. When reviewing the NPP documents, the Fund's team (including procurement, environmental and social specialists) should consider the adequacy of the NPP documents to manage the ES risks and impacts (as identified in Stage 1) using the following factors:

- a. Bidders' commitments
- b. Code of conduct
- c. Management strategies and implementation plans
- d. Declarations of ES past performance
- e. Qualification criteria/ES experience
- f. Key personnel
- g. Reporting requirements
- h. Environmental and social aspects policy and specifications

- i. Terms of reference for supervision
- j. Contract variations
- k. Remedies.

All relevant aspects of the procurement documents, including conditions of contract, the specifications, the bid qualification, and evaluation criteria should be reviewed to determine if the provisions are adequate.

Addressing Environmental and Social Aspects in National Procurement Procedures (NPP)

Based on the findings of the assessment, and in consultation with the Beneficiary, the Fund should recommend one of the following approaches:

Approach A—Adopt the NPP document: should be applied if the Fund’s team (including procurement, environmental and social specialists) consider that the NPP documents are adequate to manage the ES risks, impacts, and performance.

Approach B—Amend/strengthen the NPP document: should be applied if the NPP documents are in a form that can be reasonably adapted to adequately manage ES risks, impacts, and performance. The Fund’s team (including procurement, environmental and social specialists) should identify the missing aspects and suggest, through reference to the SPDs, the measures that the Beneficiary should take to ensure that the NPP documents are acceptable to the Fund. Caution needs to be exercised in integrating provisions directly from the SPDs into other procurement documents to ensure there is no inconsistency and/or confusion with other provisions of the NPP documents.

Approach C—Adapt an appropriate Fund’s SPD for use in NPP: should be used if the NPP documents are not acceptable to the Fund and/or require significant amendment and/or amendment or adapting/strengthening the NPP documents are not feasible options.

Approaching the International Market

When approaching the international market, the Fund requires the use of an applicable SPD. An SPD typically provides a framework for managing ES risks as further discussed in Stage 3 of this *Guidance Note*.

Procurement Organization

The Beneficiary should gain a clear understanding of the procedures and process required to deliver the ES outcomes, through consideration of:

- a. Available in-house (Beneficiary’s) resources: including the number, skill, and experience of environment, social, health, safety specialists, to assist, for example, in the preparation of ES specifications, contract provisions, bid/proposal evaluation, pre-contract discussions, and in monitoring/supervising contract execution. Any gaps may be filled through external expertise (e.g., consultant support, contract manager, third-party monitor) and/or training

- b. Organizational set-up and authority matrix—roles and responsibilities for managing the ES aspects, as well as decision making matrix
- c. Availability and quality of information—for example, finalized Environmental and Social Impact Assessment, permit, and consent conditions, or general specifications.

Depending on the ES risks and the procurement organization, the use of a third-party monitor (for example, independent environmental and social consultant, lender’s technical advisor, etc.) should be considered.

Recording the Market Research Analysis and Planning

The market research findings and analysis are recorded in the PPSD template prepared by the Beneficiary. The information collected and analyzed informs the strategic approach to market, selection of the contractor and consultant(s), and management of the contract.

If, following discussion with the Fund, the national market is to be approached, the Beneficiary should record in the PPSD the preferred approach, and any measure to be taken to strengthen ES provisions in the NPP. If the international market is to be approached, the Beneficiary should record within the PPSD the applicable SPDs to be used.

Procurement Plan

The Procurement Plan is one of the outputs of the PPSD and among others sets out whether:

- a. The international or the national market will be approached
- b. Pre-qualification/initial selection or post qualification will be used
- c. A contract will be subject to the Fund’s prior—or post—review (based on the procurement risk level).

The Procurement Plan and any updates should be subject to Fund’s approval.

E. Stage 2—Summary

At the end of Stage 2, the Beneficiary should have

- a. Assessed the capacity of the market to manage ES risks
- b. Identified which market (national or international) to approach
- c. Decided on the applicable SPDs and/or any ES strengthening of NPP documents
- d. An understanding of the organization and internal processes for delivering ES aspects during the procurement
- e. Completed the PPSD and prepared the Procurement Plan.

At the end of Stage 2, the Fund should have:

- a. Assessed the adequacy of the NPP to manage ES risks and impacts, as needed
- b. Discussed and agreed with the Beneficiary the ES strengthening measures for the NPP as appropriate and/or agreed the appropriate SPDs to be adopted for international competitive procurement
- c. Reviewed the PPSD and approved the Procurement Plan.

F. Stage 3—Preparing Procurement Documents

The following procurement documents are prepared at this stage.

Environmental and Social Aspects Common to Civil Works and Contract Managers

The following aspects apply to the preparation of both civil works and contract managers (for civil works) procurement documents.

Beneficiary's Environmental and Social Aspects Policy

The Beneficiary's ES policy (prepared in accordance with the guidance in Stage I) should be included in the Work's requirements/employer's requirements/terms of reference of the procurement documents.

Code of Conduct

All parties to the works are expected to maintain the highest standards of behavior during the execution of the contract. This includes interactions among the parties and with the local communities. The expected standards of behavior should be set out in a Code of Conduct (CoC), which responds to the specifics of the contract and local context. The CoC should be followed by the workforce and clearly communicated to the local communities.

The procurement documents should require an appropriate CoC to be submitted by each bidder/proposer/consultant. The content of a CoC prepared by the organization that will implement it should provide an indication of that organization's depth of understanding, intention, and commitment to the CoC. Therefore, the Beneficiary should not provide the CoC but include the minimum content that the bidder's/proposer's/consultant's CoC should incorporate.

The minimum content for the bidder's/proposer's/consultant's CoC should be included by the Beneficiary in the Work's requirements/employer's requirements/terms of reference.

In addition to submitting a CoC, bidders/proposers/consultants should be required to describe the implementation arrangements. This includes:

- a. How the CoC will be communicated to personnel, including any sub-contractors/day workers

- b. How the CoC will be introduced into conditions of employment/engagement, and how violations will be handled
- c. How compliance with the CoC will be monitored and reported
- d. What measures will be taken to ensure local communities are aware of the CoC and how they may raise any concerns.

Contract managers for civil works that are selected using a simplified technical proposal (in accordance with the Fund's SPD for consulting services) are not required to submit the CoC implementation arrangements, although these may be requested after contract award.

Reporting Requirements: Immediate Notification

Information about what is happening on the site is fundamental to understanding whether ES requirements are being adequately applied. Although there are various sources of information about ES performance, the contract conditions should require regular reporting and immediate notifications. Incidents subject to immediate notification should include:

- a. Fatality or serious injury
- b. Damage to property
- c. Damage to protected areas
- d. Allegation of sexual misbehavior.

Immediate notifications provided by the contractor should be passed to the Beneficiary through the contract manager. The contract manager is also required to immediately notify such incidents occurring as a result of the contract manager's activities.

On receipt of such notification, the contract manager and/or Beneficiary should take timely action to understand:

- a. The incident, and ensure it is contained to prevent further harm or damage
- b. The causes of the incident
- c. What remedial action the contractor and/or the contract manager will take to resolve the issue and prevent recurrence.

The Beneficiary should also be aware of any obligation (e.g., in the legal agreement) with respect to reporting to the Fund.

The purpose of an immediate notification is to inform what control measures and subsequent investigations should be instigated. It is not a presumption of guilt. The Beneficiary, in consultation with the Fund, may prompt the involvement of appropriate bodies in a timely manner to assist in the investigation. With respect to allegations of gender-based violence (GBV), the Beneficiary is expected to consult with the Fund.

Additional Aspects for Civil Works

This section describes the additional ES aspects applicable only to civil works procurement documents.

Environmental and Social Aspects Declaration

As part of the qualification criteria, each applicant/bidder/proposer should be required to submit an ES declaration to attest to their past ES performance. The ES declaration should require details of any civil work contracts (during the preceding five years) that have been suspended or terminated, and/or performance security called by an employer, for reasons related to noncompliance with ES requirements. The ES declaration should apply to the applicant/bidder/proposer and any specialized sub-contractor.

Key Personnel

The Beneficiary should identify the environmental, social, safety, and health skills that will be needed by the successful bidder/proposer to manage the ES risks. The required skills should be indicated in the procurement documents using a key personnel table by specifying the relevant academic qualification and required level of experience, proportional to the ES risks. The level of experience should be indicated not only by specifying the number of years but also by describing the relevant activities that should have been undertaken to demonstrate the skills.

The focus on the skill means that bidders/proposers may not necessarily propose a different person for each specialization, but may propose the same person who demonstrates skills that can cover more than one specialization.

The bidders/proposers are required to submit the names, resumes, and declaration for their proposed key personnel. The information to be provided should be guided by using forms acceptable to the Fund.

The first form should be a schedule listing the names of the candidates, and details of their availability as follows:

- a. Duration of appointment, which indicates if the person will be available for the entire contract period or only part of it
- b. Time commitment, which provides the total number of days (weeks/months etc.) that the person will work on the contract during the appointment
- c. Time schedule, which describes the program for deployment, for example, whether all the key person days will be at the beginning, at the end or spread evenly during the appointment.

The second form should comprise the resume of the person, a declaration signed by both the individual and the authorized representative to confirm the accuracy of the detail, and the time commitment.

Specification

The specification is one of the most important parts of the procurement documents because it is where the Beneficiary identifies what is to be delivered and monitored. Therefore, the ES specifications should be clear and unambiguous, and set the well-defined ES outcomes that are to be achieved.

The specification is an integral part of the contract and should be consistent with the general and particular conditions of contract. The conditions of contract govern the contractual relationship, liabilities, and application of remedies etc., whereas the specification sets out the performance and standards that the contractor shall meet in delivering the contract.

Any technical, scope, or implementation requirements should be included in the specification. In preparing the specifications, the Beneficiary should consider any applicable technical specification, and any terms and conditions required as part of the permits or consents that have been obtained.

In preparing the specifications, caution needs to be exercised so as not to dilute/confuse/create inconsistency with the conditions of contract (which may result in, among other things, problems with the application of remedies).

The ES specifications should, as far as practicable, be outcome oriented, i.e., specify the end results as opposed to the method of achieving it. This allows the contractor to demonstrate innovation or efficiency or apply a “fit for purpose” approach to achieve the desired outcomes. An outcome-oriented approach is not prescriptive, and may help achieve cost efficiencies.

Where possible, the language of the ES specifications should be modeled on the language contained in technical specifications.

In the specification, the Beneficiary should also provide any information that it may have on permits or consents that it or the contractor may yet be required to obtain. As stated in conditions of contract, the Beneficiary may be required to provide reasonable assistance to the contractor in obtaining permits or consents.

Where a third-party monitor will be used, the Beneficiary should include in the specification a requirement for the contractor to provide support to the third-party monitor, for example, by assisting with logistics, meetings, translation etc., as well as providing the information necessary for the third-party monitor to undertake their duties.

Where the specifications require the contractor to prepare management plans, method statements or implementation plans, an outline content of each plan should be provided by the Beneficiary to ensure that the contractor understands what they are required to provide. Examples of such plans include health and safety management plan, traffic management plan, and water protection management plan.

The effective management of risks during Works contract implementation requires regular review and update of the contract risk register. The contractor should participate in the review and update of the risk register, and therefore, an appropriate requirement should be included in the specifications. For design and build contracts, the proposer is required to submit a risk register identifying the risks anticipated during the execution of the contract. The specification should require a contractor to regularly review the ES risks, keep the register up to date, and to submit with the contract handover documentation a register that reflects maintenance and operational risks.

Management Strategy and Implementation Plans

To prepare the Contractor's Environmental and Social Management Plan (C-ESMP—as this term is defined in the *Appendix* to this *Guidance Note*), the contractor will need to understand fully the requirements of the contract (specification, works information, conditions of contract), and the details of how they will deliver the activities (e.g., the program, approach, and equipment they will bring). This normally requires considerable investment of time and resources, including assembling the site team with the right mix of specialist skills and experience. Assembling the full team and planning the work in sufficient detail to prepare a meaningful C-ESMP can normally be achieved during the early stages of the contract, but not at the time of bidding. In addition, the time and resources required from the Borrower to evaluate C-ESMPs from all bidders/proposers could be onerous in the context of the bid/proposal evaluation.

It is therefore not recommended to request a complete C-ESMP at the bid/proposal stage.

However, bidders should be requested to submit a few Management Strategies and Implementation Plan (MSIPs—as this term is defined in *Appendix* to this *Guidance Note*), as part of bid, to demonstrate their understanding of, and ability to manage, the key ES risks. The ES risks that may arise during mobilization or pre-construction phases (i.e., early activities) or those that are key issues for the contract should be identified, for example:

- a. Unplanned land clearance due to unpredicted mobilization activities
- b. Works in advance of consent/permit issue
- c. Construction traffic impacts on the community
- d. Pollution of drinking water
- e. Incursion into private land/impacts on property
- f. Impacts on rare species or endangered habitat.

The appropriate MSIPs to manage these risks or issues to be requested in the procurement documents, may include:

- a. A mobilization strategy
- b. A strategy for obtaining consents/permits

- c. A traffic management plan including measures for safe working on operational roads
- d. A water resource protection plan
- e. A strategy for marking and respecting work site boundaries
- f. A biodiversity protection/management plan.

The MSIPs provided in the bid should be comprehensive but concise, and explain the specific actions the bidder proposes to manage the ES risks, including the materials, equipment, and management processes that will be used.

The procurement documents should require the contractor not to carry out any activity unless the contract manager is satisfied that measures are in place to address the ES risks and impacts of the activities. The MSIPs submitted as part of the bids/proposals that have application for early works would assist the contractor in achieving this approval during the mobilization phase.

During contract execution, the MSIPs should be developed, and additional MSIPs prepared to reflect the work program and meet the requirements of the contract. Collectively, the MSIPs form the C-ESMP and should be reviewed by the contractor and contract manager and updated by the contractor as necessary to remain appropriate to the works being carried out.

Access to and Possession of Site

The Beneficiary should specify in the procurement document a realistic program for providing access to, and possession of, the site. In determining this program, the Beneficiary should:

- a. Allow time for surveys (for example to establish ownership, or land value)
- b. Agreeing and making compensation payments
- c. The challenge or review process
- d. Any other activities that may be required by a relevant resettlement action plan.

The program may indicate a phased release of land (e.g., sections along a road corridor), and it is recommended, in developing the program, that the Beneficiary consider

- a. Likely critical path construction activities
- b. The access needed to support the critical path activities.

Setting a realistic program clearly in the procurement document minimizes the risk of delays and additional costs during contract implementation.

Pricing

There are two main approaches for pricing works:

- a. Where the Beneficiary provides the design, detailed pricing can be provided against Bill of Quantities (BoQ) items
- b. For design-and-build—and similar contractual arrangements where the design is not ready at the time of requesting Bids/Proposals—pricing can be provided on a lump sum, milestone or service level basis.

In both cases, provisional sums may be used. This section discusses the use of BoQ and provisional sums for ES aspects.

Bill of Quantities

The Beneficiary should list in the procurement documents the items to be priced by the bidders, using templates acceptable to the Fund. If an item can be clearly defined, Bidders can price the item with accuracy. Items or scope that may vary or cannot be defined in advanced are not suitable for a BoQ.

In relation to ES requirements, it is possible, for example, to include a BoQ item for the preparation and approval of a management plan. It is not recommended that BoQ items be used for implementing the plan. The ways of implementing the plan may not be known at bidding, may vary during the works and, as advised in this *Guidance Note*, should be based on outcome-based ES specifications (rather than defined actions).

Where an item is listed in the BoQ, the Beneficiary is limited generally to using that BoQ price in the application of remedies with respect to that item. Therefore, the full effect of remedies (e.g., withholding payments) cannot be applied.

Payment for the implementation of the ES requirements should therefore generally be a subsidiary obligation of the contractor covered under the prices quoted for other BoQ items such as earthworks, asphaltting, and other tasks. The ES requirements may not be easily disaggregated into separate cost items.

Provisional Sums

Provisional sums are amounts set aside in the contract for discrete activities, not covered by the priced BoQs or lump sum payments. A provisional sum enables a budget to be allocated for activities that cannot be adequately defined in advance to enable pricing, or that may require an unknown number and/or extent of interventions.

The amount of the provisional sum is estimated by the Beneficiary and included in the pricing tables. Provisional sums are to be used, in whole or in part, in accordance with the contract manager's instructions.

A provisional sum may have application where there is a need to separate out the ES implementation costs, for example, to mitigate the risk of underpricing or overpricing

(e.g., due to misunderstanding of the ES requirements, or for competitive advantage). The Beneficiary should include, with the agreement of the Fund, an adequate sum for the implementation of ES interventions and describe the mechanism for making payment on the basis of satisfactory performance. If this approach is to be taken, the Beneficiary is recommended to discuss early on with the Fund's team the adequacy of the sum (and how it takes into consideration the ES risks and impacts), and the mechanism by which the payments will be made (and how this will be linked to performance).

Other examples where provisional sums may be used are HIV counseling services, and GBV awareness and sensitization. A provisional sum may also serve as a contingency to reward contractors for good ES initiatives, if specified in the contract.

Reporting Requirements: Progress Reports

In addition to the immediate notification reporting described earlier, contractors should be required to provide information on ES performance as part of the regular progress reports. The ES metrics to be reported should be included in the procurement documents.

When using the Fund's SPDs, the Beneficiary should review and modify the metrics to ensure that they are appropriate to the contract, the Beneficiary's ES policy and the ES specifications. Progress reports should be required to provide information about past performance (lagging indicators), as well as details of the activities that the contractor is taking to prevent or avoid noncompliance (leading or forward-looking indicators).

In determining the metrics to be reported, the Beneficiary should recognize that, during contract implementation, the contract manager will review and discuss with the contractor the monthly progress reports, and, as necessary, give instructions to the contractor for any remedial actions to ensure compliance with the ES requirements based on the metrics provided.

Environmental and Social Performance Security

An ES performance security will normally be required for contracts where the ES risks are significant. The significance of the ES risks should be informed by the project category and the specific risks of the contract (or other environmental and social risk classification). However, where market analysis indicates systemic contractor ES poor performance, an ES performance security may be required notwithstanding the environmental and social risk classification (i.e., even if the environmental and social risks are low, an ES performance security may be required where there is a history of poor performance).

The ES performance security, should normally be in the form of a "demand guarantee," and should be between one percent (1%) and three percent (3%) of the contract value, depending on the significance of the risks, and potential for negative impacts.

The sum of the main performance security and the ES performance security when in the form of a "demand guarantee" will not normally exceed ten percent (10%) of the contract value.

Qualification Criteria

As specified in the Procurement Plan, civil works may be procured with or without pre-qualification, or with initial selection.

Pre-Qualification/Initial Selection Criteria

Requirements to select applicants should be specified in pre-qualification or initial selection documents and should be applied on a pass/fail basis. Advice and templates are provided in Qualification Criteria and Requirements section of the Fund's standard pre-qualification documents.

In a pre-qualification process, only prequalified applicants should be invited to submit Bids. In an initial selection process, applicants should also pass a second stage assessment based on rated criteria.

From an ES perspective, the qualification criteria should include historical contract non-performance (in the form of an ES declaration as described earlier), and may include relevant experience on similar contracts.

The Beneficiary's environmental and social specialists should work with the procurement specialists to define and set the qualification criteria.

Post-Qualification Criteria

If pre-qualification is not used, or in exceptional circumstances, if initial selection is not used, the procurement document should specify the post-qualification criteria. The post-qualification criteria should be prepared and specified as described for pre-qualification above.

Evaluation Criteria

If the procurement documents apply rated evaluation criteria, ES aspects may be included as part of the criteria.

If rated criteria are not applied, the ES requirements will normally be evaluated as part of substantial responsiveness as described in Stage 4.

The Beneficiary's environmental and social specialists should work with the procurement specialists to define and set the rated criteria.

Additional Aspects for Contract Managers (for Civil Works)

This section describes the additional ES aspects applicable only to contract managers (for civil works) procurement documents.

Shortlisting

Shortlisting should be used in the selection of contract managers. The shortlisting process should take place in accordance with the Procurement Regulations and will require the complete terms of reference to be attached to the Request for Expression of Interest (as this term is defined in *Appendix* to this *Guidance Note*).

The criteria to be used for shortlisting normally include:

- a. Core business and number of years in that business
- b. Relevant experience
- c. Technical and managerial capability of the consultant.

The scope of ES services is part of the terms of reference and should therefore be considered when assessing the experience and technical capability of the consultant to deliver the ES services.

Key personnel are not evaluated at the shortlisting stage. The evaluation of the shortlisted consultant's technical capability and proposed key personnel is undertaken in connection with the technical proposal.

Technical Proposal

When applying the Fund's SPD for consulting services, the Beneficiary will determine whether to require a simplified or full technical proposal and will indicate his choice accordingly.

Terms of Reference

The terms of reference should include the scope of services, team composition, reporting requirements, environmental and social policy, and CoC.

Fund's Review of Procurement Documents

When prior review is specified in the Procurement Plan, the Fund's team should review the Beneficiary's relevant procurement documents and provide a no objection before the Beneficiary proceeds to the next stage.

For contracts subject to post review, the Fund's team carries out a review of a sample of the procurement processes and documents (including contracts) after the Beneficiary has awarded the contract to ensure that the procurement processes are in compliance with the legal agreement.

G. Stage 3—Summary

At the end of Stage 3, the Beneficiary should have prepared the necessary procurement documents containing the:

- a. Environmental and Social aspects specifications/scope of services, and contractual provisions that are fit-for-purpose and proportional to the ES risks
- b. Skills and experience needed for ES personnel
- c. Immediate and regular reporting requirements
- d. Environmental and Social aspects evaluation and qualification criteria
- e. Relevant documents and information to be submitted by applicants/bidders/proposers/consultants.

During the preparation of the procurement documents, the Fund may have provided advice to the Beneficiary, for example, on the appropriateness of any proposed provisional sum. For contracts subject to prior review, the Fund should have provided no objection to the procurement document.

H. Stage 4—Sourcing Process

This section describes how ES aspects are considered during Stage 4.

Inviting Applications/Bids/Proposals

The procurement plan identifies how applications/bids/proposals would be invited from the market.

Clarifications

Potential applicants/bidders/proposers/consultants may seek clarifications on the ES aspects or provisions of the procurement document. The Beneficiary may also hold pre-submission meetings to provide them the opportunity to ask questions, and to clarify the Beneficiary's requirements. It should be noted that all clarifications during this period should be provided in writing to all potential applicants/bidders/proposers/consultants without identifying the source of the request. Any verbal clarifications should be followed by written communication to all potential applicants/bidders/proposers/consultants.

The Beneficiary's environmental and social team should provide consistent advice on the ES aspects when requested, via the Beneficiary's representative entitled/assigned to provide the clarifications. The Beneficiary's environmental and social team may also be required to attend the pre-submission meetings. There should be no other communication with potential applicants/bidders/proposers/consultants outside of this framework.

Qualification and Evaluation

The Beneficiary should have established the evaluation team by the application/bid/proposal opening date. To enable evaluation of the ES aspects, the Beneficiary's team should have the appropriate skills and experience to advise on the content and adequacy of the submission to fulfill the Beneficiary's ES requirements and deliver appropriate ES performance during implementation. This may require an environmental and/or social specialist to be part of the team.

Evaluation should be carried out in accordance with the requirements and criteria specified in the procurement documents, developed as per the advice in Stage 3.

Assessment of Qualification

As required by the qualification requirements, applicants/bidders/proposers should submit an ES declaration and details of any requested ES experience.

Environmental and Social Aspects Declaration

Applicants/bidders/proposers are required to submit a declaration of whether they have had a contract terminated, suspended or a performance security called, for reasons of poor ES performance, and provide details as necessary.

The reasons for poor ES performance may be varied and do not always indicate systemic ES management failures, and as such, are not always a reliable measure of future poor performance. Therefore, having a contract terminated, suspended or a performance security called should not on its own be used to disqualify applicants/bidders/proposers.

The ES performance declaration should be examined to identify ES issues in past performance that may indicate deficiencies of management control. It should be used to focus further due diligence and obtain information to understand the applicants/bidders/proposer's ability to recognize, respond, and rectify problems. The due diligence should be carried out to establish if they have learned from the past experiences and how they have modified or implemented management controls to prevent recurrence.

The Beneficiary should consider the ES performance declaration and the information obtained from further due diligence to decide the appropriate action which may include the following:

- a. Risks are not foreseen for the contract and therefore no further measures are needed
- b. The risks/issues could be addressed through strengthening the bidding/request for proposals document (for pre-qualification/initial selection) or the contract (for post-qualification)
- c. The risks/issues, when considered with other findings, are of a material nature sufficient to disqualify the applicants/bidders/proposers from further consideration.

Specific Experience

The Beneficiary should assess whether the applicants/bidders/proposers/consultants meet the specified ES experience requirements. If they do not substantially meet the criteria, additional information may be requested, and the information considered in the assessment. If as a result of this additional assessment, they still do not substantially meet the criteria, they may be disqualified. If, however, the deficiencies are not substantial, they may be qualified. Professional judgement should be used to determine the degree to which the criteria are fulfilled.

Evaluation of Environmental and Social Aspects

The bid/proposal should describe how it will address the Beneficiary's ES requirements. The Beneficiary will evaluate the extent to which the submission meets the criteria and requirements specified in the procurement documents, using substantial responsiveness, and rated criteria as applicable.

Application of Substantial Responsiveness

A simple "pass/fail" test is not normally appropriate when assessing ES requirements. Instead, the "substantial responsiveness" test should be applied. This should take the form of an assessment of the materiality of deviations, if any, of the ES submission against the ES requirements.

If minor deviations are identified, the Beneficiary may request clarifications from the bidder and/or may address the deviations through pre-contract discussions.

If the ES deviation is considered to be material, i.e., impacting the substantial responsiveness of the submission, the bid/proposal should be rejected.

Application of Rated Criteria

The quality of the ES submission should be evaluated using the rated criteria, if specified in the procurement documents. Key areas to consider during evaluation include:

- a. Have all the required documents for the evaluation been provided
- b. Are there any missing elements within the documents provided
- c. Are there inconsistencies between documents or approaches
- d. Is there any programing discrepancy or illogical sequencing of events
- e. Is Good International Industry Practice proposed?

Environmental and Social Aspects to be Evaluated

Applying either substantial responsiveness and/or rated criteria, the Beneficiary should use professional judgement to review the submission, and confirm the adequacy of the proposed ES actions to deliver the requirements of the contract. In order to do this, the Beneficiary should have the right combination of skills (e.g., to recognize relevant Good International Industry Practice), and should ideally include the team that participated in the preparation of the procurement documents.

The components of the technical proposal to be evaluated are described below:

a. Environmental and Social Aspects Management Strategies and Implementation Plans (MSIPs)—These plans should be evaluated against the Work’s Requirements and/or specification set out in the procurement document. It should contain specific and practical measures that the contractor will implement. The emphasis should be on the activities to be undertaken, and not generic commitments to achieve an outcome. When management strategies have been requested (for example when adequate information is not available to prepare a comprehensive plan), the bidders/proposers should set out the detailed steps they propose to follow to implement the strategy.

b. Code of Conduct and Implementing the Code of Conduct—The CoC should meet or exceed the minimum requirements specified in the procurement documents. The CoC may take the form of staff rules, staff handbook, HR policies, or conditions of employment etc., and does not need to have been specifically prepared for the project. In terms of implementation, the evaluation should consider the aspects set out in the procurement documents for informing workers about the CoC, and how the CoC would be communicated to the community. The evaluation should also consider whether the proposed remedial measures are appropriate, and whether a clear process for reviewing allegations of infringements and applying disciplinary measures is provided. The process should include a right to challenge the application of the disciplinary measures.

c. Environmental and Social Aspects Bill of Quantities—Where line items for ES aspects are included in the BoQ, the Beneficiary should check that the bidder has adequately priced the line items. This should be informed by the pricing of the same items in other bids and any Beneficiary’s estimate such as may be included in the ESMP.

d. Key Personnel—In addition to evaluating the skills and experience demonstrated in the CV against the criteria included in the procurement document, the availability and time allocation, and the phasing of the inputs, should be reviewed against the work program. It should be clear that skills and experience will be available for the tasks that require them. Where provided, the roles, responsibilities, and organization chart should be reviewed to ensure that they meet the needs of the contract and demonstrate clear reporting lines.

The bidder's/proposer's technical proposal may comprise various statements and schedules, covering topics such as design methodology, construction management strategy, method statement for key construction activity, work program, risk assessment, and contractor's equipment. This information should be provided in sufficient detail to demonstrate the adequacy of the proposed activity to meet the Work's requirements, including as necessary how ES aspects would be incorporated. Examples of the types of ES aspects that should be included within these various statements and schedules are:

a. **Design Methodology**—This may describe proposals for incorporating sustainability into the design, approaches for any sustainable procurement, strategy for gathering baseline ES information, managing ES risks through design, and obtaining environmental permits.

b. **Construction Management Strategy**—This is a key document for design and build contracts since it describes how ES risks and impacts will be managed during the construction period.

c. **Risk Assessment**—Where provided, the risk register should be reviewed to understand if the bidder/proposer has adequately identified the types of ES risks that may occur, and has proposed appropriate measures for managing the risks.

d. **Construction Schedule, Site Organization, Method Statement for Key Construction Activities Work Program**—Other parts of the technical proposal may include ancillary information useful to the ES evaluation. The Beneficiary should consider the alignment of all parts of the technical proposal during the review, for example, that the key personnel are available to meet the construction schedule, and the MSIPs protection measures are reflected in the site organization.

Bid/Proposal Evaluation Report

The findings of the evaluation of bids, including the ES evaluation, should be described by the Beneficiary in a bid/proposal evaluation report. The bid/proposal evaluation report may highlight issues or aspects where bids/proposals could be further enhanced to better align with the requirements.

With respect to works contracts, there are two processes which may be used to achieve this alignment, namely pre-contract discussion, or negotiations (if needed followed by pre-contract discussions). Both processes provide an opportunity for the Beneficiary to discuss with the contractor the proposals for managing ES risks and impacts until the Beneficiary is satisfied that the appropriate processes have been identified and will be put in place.

Pre-contract discussions normally involve clarifications of a minor nature, whereas negotiations are more comprehensive, and may involve improvement of the bid/proposal to the extent that there may be changes in the contract price. The Beneficiary's ES team should use professional judgement regarding the nature and extent of the ES deviations, to advise if they could be addressed through pre-contract discussions or negotiations.

With respect to contract managers, negotiation is part of the selection process and pre-contract discussions do not apply.

Pre-contract Discussion

When a bidder/proposer has been recommended for contract award, it is good practice to clarify key issues or aspects during the pre-contract discussions, to minimize any misunderstandings during contract execution. If there are ES issues or aspects to be discussed, the Beneficiary's ES team should be closely involved to ensure the discussions are focused and informed on the interventions necessary to satisfactorily resolve the issues.

The pre-contract discussions should be recorded in minutes of meeting which shall form part of the contract documents. In addition, it may be agreed that the recommended bidder/proposer may modify ES aspects of their bid/proposal which will also be part of the contract.

Negotiations

For selection of contract managers, and if the works procurement documents specify it, negotiations may apply. The negotiations will initially be held with the preferred bidder/proposer/consultant, but, if unsuccessful, it may be repeated with the next preferred bidder/proposer/consultant, and so on until a satisfactory outcome is achieved. Negotiations may include ES issues that have been identified in the bid/proposal evaluation report that require improvement to an acceptable level. The Beneficiary's ES team should be involved in these negotiations.

During the negotiations, the Beneficiary may request the recommended bidder/proposer to modify ES aspects of its bid/proposal. This may include additional or modified MSIPs or ES management processes or a strengthened CoC/implementation mechanism. The negotiations should be recorded in minutes of meeting which along with the agreed modified documents, shall form part of the contract.

Contract Documents

Following the evaluation and pre-contract award discussions/negotiations the Beneficiary's ES team should ensure that all relevant documents (such as including MSIP, CoC, ES requirements/specifications, technical proposal) are included as part of the contract documents.

Contract Award

All bidders/proposers (that have not already been notified that they are unsuccessful) will be notified by the Beneficiary of the intention to award the contract to the recommended bidder/proposer. This initiates a standstill of not less than ten (10) days, prior to contract signature. The contract only becomes effective (for works, referred to as Commencement Date) once all the pre-conditions listed in the contract (for example performance security, advanced payment, site handover) have been met. Only when contract becomes effective can the physical works start.

Fund's Review of Evaluation Report

When prior review is specified in the Procurement Plan, the Funds team should review the Beneficiary's evaluation report, award recommendation, and draft contract (as applicable), and provide a "no objection" before the Beneficiary proceeds to the next step. The review considers whether the Beneficiary's evaluation has been conducted in accordance with the provisions and requirements set out in the procurement documents.

I. Stage 4—Summary

At the end of Stage 4, the Beneficiary will have:

- a. Involved suitably qualified and experienced ES specialists in the evaluation
- b. Evaluated the proposals/bids and selected the Most Advantageous Proposal/Bid (as this term is defined in *Appendix* to this *Guidance Note*)
- c. Identified any issues or aspects to be clarified or improved
- d. Discussed and agreed with the recommended bidder/proposer the ES aspects such that the Beneficiary is confident that the bidder/proposer has a good understanding of the ES requirements
- e. Finalized the contract document.

At the end of Stage 4, the Fund will provide its no objection as applicable.

Appendix—Environmental and Social Aspects in Procurement Definitions and Acronyms

Beneficiary means the recipient of investment project financing and any other entity involved in the implementation of a project financed by a Fund.

Bill of Quantities (BoQ) are items to be priced by the bidders, using templates acceptable to the Fund.

Environmental and Social Impact Assessment is an instrument to identify and assess the potential environmental and social impacts of a proposed project, evaluate alternatives, and design appropriate mitigation, management, and monitoring measures.

Environmental and Social Management Framework (ESMF) is an instrument that examines the risks and impacts when a project consists of a program or a series of sub-projects, and the risks and impacts cannot be determined until the program or sub-project details have been identified. The ESMF sets out the principles, rules, guidelines, and procedures to assess the environmental and social risks and impacts, and contains measures and plans to reduce, mitigate, and/or offset adverse risks and impacts, provisions for estimating, budgeting the costs of such measures, and information on the agencies responsible for addressing project risks and impacts.

Environmental and Social Management Plan (ESMP) is an instrument that details:

- a. The measures to be taken during the implementation and operation of a project to eliminate or offset adverse environmental and social impacts, or to reduce them to acceptable levels
- b. The actions needed to implement these measures.

(Note: “C-ESMP” means the contractor’s ESMP)

Gender-Based Violence (GBV)

Good International Industry Practice means the standards, practices, and methods conforming to the legal requirements and a degree of skill and diligence which would reasonably be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances.

General Procurement Notice (GPN)

Most Advantageous Proposal/Bid means the proposal/bid that fully meets the qualification criteria, that has been determined to be substantially responsive to the request for proposals document and that is also the highest ranked proposal/bid.

Management Strategy and Implementation Plan (MSIP) means, collectively, ES strategies and implementation plans.

Project Procurement Strategy and Development (PPSD) means, a project-level strategy document, prepared by the Beneficiary, that describes how procurement under a specific project supports the development objectives of the project, and delivers value for money.

Procurement Regulations means the procurement regulations of [Name of Fund].

Resettlement Action Plan means the Beneficiary's plan prepared and disclosed in accordance with the Resettlement Policy Framework (as this term is hereinafter defined) with respect to the project (or a sub-project) on [*insert applicable reference(s)*], which, inter alia:

- a. Contains a census survey of displaced persons and valuation of assets
- b. Describes compensation and other resettlement assistance to be provided to the displaced persons, consultation to be conducted with them about acceptable alternatives, institutional responsibilities for the implementation, and procedures for grievance redress, and arrangements for monitoring and evaluation
- c. Contains a timetable and budget for the implementation of all such measures.

Resettlement Policy Framework means the Beneficiary's framework with respect to the Project, prepared, and disclosed on [*insert applicable reference(s)*], outlining the policies and procedures to be implemented in the event that specific activities carried out under the project have potentially negative impacts on the livelihoods, assets, and land of the affected population, as the said framework may be amended and/or supplemented from time to time with the prior written consent of [*Name of Fund*], and such term includes any schedules to such document.

Request for Expressions of Interest means a public request made the Beneficiary seeking responses from potential bidders for the purposes of compiling a list of bidders who may be interested in carrying out Works under a project financed by the Fund

Standard Procurement Documents (SPD) are documents issued by the Fund to be used by Beneficiaries under Fund-financed projects. These include, without limitation, GPN, standard prequalification documents, initial selection documents, and Request for Expressions of Interest documents.

Works is a category of procurement that refers to construction, repair, rehabilitation, demolition, restoration, maintenance of civil work structures, and related services such as transportation, insurance, installation, commissioning, and training.

Checklist of Actions at Every Stage of the Procurement Process

Stage 1—By the end of Stage 1, the Beneficiary should:

- a. Have identified the key ES issues, risks, and impacts related to the Works
- b. Have established the multi-disciplinary team required to prepare and administer the procurement
- c. Be able to articulate, through a succinct policy statement, the minimum ES performance requirements.

Stage 2—By the end of Stage 2, the Beneficiary should have:

- a. Assessed the capacity of the market to manage ES risks
- b. Identified which market (national or international) to approach
- c. Decided on the applicable SPDs and/or any ES strengthening of National Procurement Procedures
- d. developed an understanding of the organization and internal processes for delivering ES aspects during the procurement
- e. Completed the PPSD and prepared the Procurement Plan.

By the end of Stage 2, the Fund should have:

- a. Assessed the adequacy of the NPP to manage ES risks and impacts, as needed
- b. Discussed and agreed with the Beneficiary the ES strengthening measures for the NPP, as appropriate, and/or agreed the appropriate SPDs to be adopted for international competitive procurement
- c. Reviewed the PPSD and approved the Procurement Plan.

Stage 3—By the end of Stage 3, the Beneficiary should have prepared the necessary procurement documents containing the:

- a. Environmental and Social aspects specifications/scope of services and contractual provisions that are fit-for-purpose and proportional to the ES risks
- b. Skills and experience needed for ES personnel
- c. Immediate and regular reporting requirements
- d. Environmental and Social aspects evaluation and qualification criteria

e. Relevant documents and information to be submitted by applicants/bidders/proposers/consultants.

Stage 4—By the end of Stage 4, the Beneficiary will have:

- a. Involved suitably qualified and experienced ES specialists in the evaluation
- b. Evaluated the proposals/bids and selected the Most Advantageous Proposal/Bid
- c. Identified any issues or aspects to be clarified or improved
- d. Discussed and agreed with the recommended bidder/proposer the ES aspects such that the Beneficiary is confident that the bidder/proposer has a good understanding of the ES requirements
- e. Finalized the contract document.

At the end of Stage 4, the Fund would have provided its no objection as applicable.