



Danida Business Finance

Rules for Procurement

March 2017

The present rules concern procurement supported by Danida Business Finance (DBF), Ministry of Foreign Affairs of Denmark. They are intended to ensure that the procurement is in accordance with Danida's requirements and internationally recognised good practise.

Rules for Procurement

1. The project's feasibility study and appraisal report will include requirements regarding sustainability in order to improve resource efficiency and protect the environment. At this stage a checklist of sustainability considerations specific for the project shall be elaborated.

The project sustainability process shall be an overriding issue throughout the project development, implementation, operation until decommissioning and include all relevant stakeholders. This will include life-cycle or whole-life cost calculations as a tool during all stages of the project.

Based on choices made at the conceptual stage, specific design objectives and indicators for the project's components shall be reflected in the tender documents including the tender evaluation criteria.

2. The requirement to observe Danida's zero tolerance towards corrupt, facilitating, fraudulent, collusive and coercive practises and the Ten Principles of the UN Global Compact applies for all parties involved in the project preparation, implementation and operation.
3. Procurement shall follow the FIDIC Procurement Procedures Guide, 1st Edition 2011 or similar procedures if agreed with DBF.
4. The entire procurement process is the responsibility of the Employer (Buyer) who shall also be responsible for full compliance with national procurement rules and tender laws and regulations.

DBF provides technical assistance in relation with the tendering process and requires free access to all parts of this process.

5. The works shall be tendered and contracted as one contract with one single contractor/supplier or joint venture.
6. Variations and contractor's claims will not be financed under the DBF Loan unless otherwise agreed with DBF.
7. All documents, including pre-qualification documents, tender documents, tenders, evaluation reports as well as the final contract shall be prepared in the English language, which shall also be the ruling language, unless otherwise agreed with DBF.
8. The Particular Conditions of Contract Part 1, enclosed as Annex A to these rules, are mandatory for projects receiving support from DBF and must be part of the tender documents and the contract. Changes to these Particular Conditions of Contract Part 1 may only take place following DBF's prior consent. In case further particular conditions of contract are required for a specific project, these shall form a new Part 2.

9. The contractor shall be chosen through competitive tendering. Prequalification is mandatory unless otherwise agreed with DBF.

Participation in the tender process is open to Danish companies and Danish company-led joint ventures only ¹. In order to be joint venture lead the Danish company shall have a substantial turnover in fields relevant for the project.

The Danish company may subcontract parts of the works. The intention to subcontract more than 30% of the value of the contract shall be stated in the application for prequalification together with a tentative list of the elements in question. There are no requirements to the nationality of subcontractors. Subcontractors' references (qualifications, capacity and resources) can only be considered when the subcontracting concerns highly specialised elements of the works.

The Danish company may form a joint venture (JV) with one or more joint venture partners, having the Danish company as leader. The joint venture must satisfy collectively the prequalification criteria. The Danish company (together with its sub-contractors) shall undertake minimum 60 % of the contract value. Proof hereof shall appear in a letter of intention to form a joint venture to be signed by all joint venture members and included in the prequalification application. There are no requirements to the nationality of joint venture partners.

10. There are no requirements as to the origin of the goods and services to be proposed by the tenderer.
11. References to brand names, catalogue numbers, etc. in the Employer's Requirements are not allowed or must be supplemented by the possibility to offer alternatives with similar performance.
12. The contract shall not be exonerated and the total price be inclusive of all taxes, duties and fees unless otherwise agreed with DBF.
13. DBF shall give no-objection to the prequalification dossier, announcement of pre-qualification, pre-qualification evaluation report, tender documents, tender evaluation report and memorandum of pre-award clarification and approve the commercial contract including the format of advance payment and performance securities. Prequalification will be announced on DBF's Internet site.
14. Nominated sub-contracting shall not be used in connection with the tendering or award of contracts.
15. Tender fees and tender securities are not accepted.

¹ In case of Tied Financing. Untied Financing requires DBF's prior consent.

16. Pre-qualification documents, tender documents and contract documents shall use the structure, formats, wording and templates of:
- FIDIC Procurement Procedures Guide, 1st Edition 2011
 - FIDIC - Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant, and for Building and Engineering Works Designed by the Contractor (1999) or
 - FIDIC - Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (1999)
 - ISO Life-cycle costing (ISO 15686-5 2008)
 - FIDIC Project Sustainability Manual (PSM II 2013)
- or similar documents if approved by DBF.

Annexes:

Annex A, Particular Conditions of Contract, Part 1

Annex B, Terms and explanations

Annex C, Form of Buyer/End User's Declaration (March 2017)

Annex D, Form of Exporter's Declaration, (March 2017)

Annex E, Form of Borrower's Declaration (March 2017)

Conditions of Contract

The Conditions of Contract comprise the "General Conditions" [*reference to be inserted to General Conditions used, e.g. Conditions of Contract for Construction/ Conditions of Contract for Plant and Design-Build, First Edition 1999 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC)*] and the following "Particular Conditions", which will include amendments and additions to such General Conditions.

Particular Conditions of Contract Part 1

For words and expressions specific for projects receiving support from DBF, the enclosed annex: "Terms and explanations" refers.

Priority of documents forming the Contract GCC 1.5	The present Particular Conditions of Contract Part 1 take precedence over any other document deemed to form and be read and construed as part of the Contract Agreement except the Memorandum of Pre-Award Clarifications (if any).
Contract coming into Force GCC 1.1.1.3	This contract shall come into force on the date when all of the following conditions have been fulfilled: (a) The Contract Agreement has been approved by DBF and signed by the Employer and the Contractor. (b) All conditions precedent and necessary approvals with regard to the loan agreement have been fulfilled or obtained. (c) The Contractor has submitted to the Employer the performance security and the advance payment guarantee in the required format. (d) The Employer has paid the Contractor the advance payment. Disbursements under the loan are conditioned by the availability of signed declarations by Buyer/End User and Exporter.
Changes to the Contract GCC 3.1	No changes to this Contract shall be made without prior written approval from DBF.
Ruling Language GCC 1.4	The English Language
Employer's Claims GCC 2.5	Payment in connection with the Employer's claims shall be deducted in the payments under the Contract or credited the balance of the DBF Loan unless otherwise agreed with DBF.

Performance Security
(Demand Guarantee)
GCC 4.2

The amount of the performance security shall correspond to 10 % of the contract amount and may be reduced to half that amount at Taking Over of the entire Works.

Any amount paid under the Performance Security shall be transferred to an escrow account with the Ministry of Foreign Affairs of Denmark as beneficiary, and placed in the Danish bank acting as Lender of the DBF Loan.

Amounts in the escrow account may only be released subject to acceptance from DBF, and shall be credited to the loan account unless an acceptance of the use of the amount is obtained from DBF within 18 months from the payment under the guarantee. However, if a dispute regarding the amount paid under the guarantee is brought before arbitration or the judicial system, the escrow account shall remain open and no amount shall be transferred until a settlement has been reached by the judicial system.

Plant and Materials
GCC 7.1
Taking Over
GCC 10.1/10.2

All plant and materials supplied for incorporation in the Works shall be new and never used.

A condition for issuing the Taking-Over Certificate is that an independent third party appointed and paid by DBF and referred to in the following as the Verification Party, VP, has verified the Works.

60 days prior to the expected Taking Over the Contractor informs the Engineer and DBF hereof. When the Contractor applies for a Taking-Over Certificate the Engineer presents a draft certificate following which the VP verifies the Works and issues a report for comments by the parties. The Engineer issues the Taking-Over Certificate when DBF has issued no-objection to the final verification report and its findings have been integrated in the certificate.

The periods of 28 days mentioned in clause 10.1 shall be substituted by periods of 56 days.

In case of Taking Over according to clause 10.2, the issuance of a certificate by the Engineer is mandatory when the verification process has been completed.

Performance Certificate
GCC 11.9

A condition for issuing the Performance Certificate is that an independent third party appointed and paid by DBF and referred to in the following as the Verification Party, VP, has verified the Works and the performance as well as the history of defects and remedy hereof.

Following receipt of information from the Contractor that the conditions for issuing the Performance Certificate are met, the VP proceeds with the verification and issues a report for comments by the parties. The Engineer issues the Performance Certificate when DBF has issued no-objection to the final verification report and its findings have been duly addressed by the Contractor.

UN Global Compact
GCC 4.1 and 6.11

The periods of 28 days mentioned in clause 11.9 shall be substituted by periods of 56 days.
The Contractor must observe the Ten Principles of the UN Global Compact.

Right of Stoppage by DBF
GCC 2.5 and 20.1

The Employer may, if it determines the Contractor in breach of the Ten Principles of the UN Global Compact during the execution of the contract, cancel the Contract and take such additional actions (civil and/or criminal) as the Employer finds appropriate.
A Party causing DBF to exercise its Right of Stoppage may become liable towards the other Party.

Parties:

Borrower: The public authority (ministry) or commercial bank being a party to the Loan Agreement and on-lending to the Employer (Buyer) or the End User if different from the Employer (Buyer).

Contractor (Supplier or Exporter): The entity being the party to the Contract undertaking execution of the Works.

Danida: The Ministry of Foreign Affairs of Denmark's International Development Cooperation.

Danida Business Finance (DBF): The team within Danida administering the DBF Programme including project preparation, appraisals, approvals for support, loan arrangement, payment of the interest subsidy, monitoring and verification of implementation and evaluation of impact. www.dbfinance.um.dk.

DBF Loan: An interest free loan with a maturity of 10 years aimed at financing contracts for supply and installation of plant and/or construction for governments or public entities in eligible developing countries.

Employer (Buyer): The contracting authority in whose name the pre-qualification process, the tender process and the conclusion and execution of the contract are carried out and who will be taking over the Works on completion.

End User: The party who will receive and be the user of the project, if different from the Employer.

Engineer: The person appointed by the Employer to act as the Engineer and carry out the duties assigned to him in the Contract between the Employer and the Contractor.

Lender: The Danish commercial Bank providing the DBF Loan and arranging payments on behalf of the Employer.

Tenderer (Bidder): Any natural or legal person or group thereof submitting a tender with a view to concluding a contract to provide certain services, to carry out certain works and/or certain plant.

The Contract:

Contract and Commercial Contract: The contract between the Employer and the Contractor, forming the legal, commercial and technical basis for the execution. The word "commercial" is sometimes used to distinguish this contract from the loan agreement.

Particular Conditions of Contract, Part 1: Contains mandatory conditions supplementing or amending the General Conditions of Contract and prepared by DBF.

Particular Conditions of Contract, Part 2: Contains conditions specific for the Contract supplementing or amending the General Conditions of Contract and prepared by the Employer.

Right of Stoppage by DBF: The right of stoppage by DBF means that the Exporter (Contractor) may be ordered directly or indirectly by DBF (i) to withhold supplies, e.g. by not shipping them, (ii) to prevent the delivery of the supplies to the Buyer (Employer)/End User, e.g. by stopping any goods shipped, even if shipment has been completed, or (iii) that the Lender may be ordered by DBF to stop disbursements under the DBF Loan.

In the case of failure by either or both parties to comply with the Exporter's (Contractor's) Declaration and/or the Buyer (Employer)/End User's Declaration, DBF is entitled to require the performance of the contract to be stopped, directly or indirectly - permanently or temporarily - so that design, works and shipment of supplies under the project and presentation of documents to the lender for payment be stopped forthwith.

In connection with a temporary stoppage, as indicated above, the contracting parties shall discuss the situation with DBF or an independent consultant appointed by DBF, in order to clarify the issues having arisen and to propose a possible solution acceptable to DBF.

If a stoppage, as indicated above, is due to a breach of the Buyer (Employer)/End User's Declaration, and no agreement acceptable to DBF is reached, DBF's support for the project will be discontinued, and any support already paid will have to be reimbursed by the Buyer (Employer)/End User, and the Lender and the Borrower will initiate negotiations of the possibilities for continuing financing without DBF's support.

The Ten principles of UN Global Compact: The UN Global Compact's Ten Principles are derived from: the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. The document may be downloaded from <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

Financing:

Exporter's Declaration: A statement signed by the Exporter (Contractor) referring to the interest subsidy and the export transaction, and confirming compliance with all the conditions for DBF support.

Buyer/End User's Declaration: A statement signed by the Buyer (Employer)/End User referring to the (commercial) Contract and confirming the complementary financing (if any) and the intention to implement the project in accordance with the Contract as well as compliance with all the conditions for the DBF Loan.

Borrower's Declaration: A statement signed by the Borrower regarding the project and the loan agreement between the Borrower and the Danish commercial bank. The declaration confirms the Buyer/End user commitment towards the conditions for DBF support and accepts DBF's right of stoppage.

Loan Agreement: The agreement between the Lender and the Borrower regulating the DBF Loan arrangement, the payments, and the repayment.

Tied Financing: A financing where only Danish contractors or Danish company-led joint ventures may tender. In particular cases where sufficient competition among Danish tenderers is not expected DBF may accept tenderers from OECD member states.

Untied Financing: A financing where OECD member states-based contractors or joint ventures led by companies from such states may tender.

Annex C
Form of Buyer/End User's Declaration (March 2017)

(Letterhead of the Buyer/End User)

Ministry of Foreign Affairs of Denmark (Danida)
Danida Business Finance
2, Asiatisk Plads
DK-1448 Copenhagen K
(Date and place of issue)

Buyer/End User's declaration regarding *(insert project title)*

Dear Sirs,

We refer to the Commercial Contract dated *(insert date)* and made between us (in the Contract called the Employer) and *(insert name of Exporter]* (in the Contract called the Contractor), hereinafter referred to as 'the Exporter' concerning the above project.

In relation to the Loan Agreement (to be) signed between *(insert name of the Borrower)* as Borrower and *(insert name of the Lender)* as Lender in order to finance the supply from the exporter under the said Commercial Contract, we hereby warrant:

- (a) That the complementary financing of the entire project investment is secured by firm commitment on the part of the other financiers.
- (b) That we intend to implement the project in accordance with the provisions of the Commercial Contract.
- (c) That the following issues are satisfactorily dealt with in connection with the execution of the project:
 -*(insert as appropriate)*
 -
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- (d) That we accept Danida's zero tolerance towards corrupt, facilitating, fraudulent, collusive and coercive practises and comply with the Ten Principles of UN Global Compact.
- (e) That we intend to report to DBF the following outcome and impact indicators identified during appraisal of the project:
 -*(insert as appropriate)*
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The information shall be collected and reported to DBF on an annual basis for 5 (five) consecutive years starting one year after issue of the Taking-over Certificate of the project.

We further undertake:

- (f) To notify you promptly of any serious delay in the project implementation or any major change to the project, whether actual or proposed.
- (g) To allow you or your representatives, including the independent consultant mentioned below, to enter upon sites where deliveries included in the Commercial Contract are being or have been stored, installed or erected, subject to reasonable advance notice being given.
- (h) To allow you and assist you in conducting project impact evaluations during implementation and after commissioning of the project and during a period of 5 (five) years following the final Taking Over of the project.
- (i) To provide you or your representative, including the independent consultant mentioned below, with any such supplementary information regarding the use of the proceeds of the loan as may reasonably be requested.

We also confirm that we accept:

- (j) The terms of DBF's Rules for Procurement(March 2017), including:
 - 1) The right of stoppage by DBF,
 - 2) That variations and contractor's claims will not be financed under the DBF Loan unless otherwise agreed with DBF,
 - 3) That payment in connection with Employer's claims shall be credited the balance of the DBF Loan.
- (k) That any major change to the Commercial Contract or any major de facto change in the project, including change of project location and implementation plan, is to be submitted to DBF for prior approval. Where any major changes are undertaken without DBF's approval and where DBF at its sole discretion considers any such change to be material to the proper implementation of the project, DBF may order the exporter to suspend shipments and work under the contract. DBF shall in this situation instruct an independent consultant to review the project. If the said consultant confirms that the changes can be vital to the proper implementation of the project, the consultant and DBF may recommend changes to the project. Where, following such recommendations DBF and the parties to the Commercial Contract cannot agree on a revised project concept, DBF may give notice to the Lender and the parties to the Commercial Contract that it is not bound by its commitment to further support the project.
- (l) That in this case the financial support already received from DBF is to be repaid by us no later than one month after DBF giving such notice, and the parties to the DBF Loan will enter into negotiations in order to arrange a new basis for continuation of the loan on market conditions.

- (m) That DBF may give notice to the Lender and the parties to the Commercial Contract that it is not bound by its commitment to further support the project and that the financial support already received from DBF is to be repaid by us, if DBF at its sole discretion determines that, with respect to the Danish funds, corrupt or fraudulent practices were engaged in by persons representing the Borrower or us during procurement or during the execution of the contract.
- (n) That in case of our breach in whole or partially of this declaration, DBF may give notice to the Lender, and the parties to the Commercial Contract that it is not bound by its commitment to further support the project. Further, the financial support already received from DBF is to be repaid by us no later than one month after DBF giving such notice, and the parties to the DBF Loan will enter into negotiations in order to arrange a new basis for continuation of the loan on market conditions.
- (o) That we have neither the power nor the will to raise any claim against DBF or its representatives if DBF withdraws its support due to our non-compliance with the stipulations contained in the present declaration.

We finally confirm:

- (p) That any dispute arising in connection with this declaration shall be brought before the City Court of Copenhagen and shall be governed by Danish law.

Yours sincerely,

(Buyer/End User)

Danida Business Finance

EXPORTER'S DECLARATION to the Ministry of Foreign Affairs of Denmark (Danida) concerning Interest Subsidy etc. for DBF financing to Developing Countries

The Ministry of Foreign Affairs of Denmark (Danida) has issued a preliminary approval of interest subsidy etc. to *(insert name of bank)* in connection with the financing of the following export transaction:

Exporter (in the Contract called the Contractor): *(insert)*

Buyer (in the Contract called the Employer): *(insert)*

End User: *(insert if applicable, otherwise delete)*

Project title: *(insert)*

Contract amount and currency: *(insert)*

Contract date: *(insert)*

Lender: *(insert)*

Borrower: *(insert)*

Loan amount and currency: *(insert)*

The approval of DBF support is subject to the following conditions:

- (a) That the information given to the Lender for his application for interest subsidy and export credit guarantee is correct and exhaustive, and that the Lender has been made and will continue to be made aware of any subsequent changes to the matters already disclosed.
- (b) That the time plan under the contract is feasible and allows for minor delays in the implementation of the project.
- (c) That the undersigned Exporter complies with the obligations under the commercial contract.
- (d) That the undersigned Exporter accepts Danida's zero tolerance towards corrupt, facilitating, fraudulent, collusive and coercive practises and complies with the Ten Principles of UN Global Compact.

Further, the exporter shall have declarations from the sub-contractor(s) that the subcontractor(s) accept(s) Danida's zero tolerance towards corrupt, facilitating, fraudulent, collusive and coercive practises and abide with the UN Global Compact principles as above in case the subcontractor(s) holds ten percent or more of the total value of the contract.

- (e) That DBF may obtain documentation regarding the project at any time, including payment documents, supply contract, etc.
- (f) That during the implementation of the project the undersigned Exporter will file brief quarterly reports (January, April, July and October) within one month after the end of the quarter concerning:
 - Project implementation in relation to contract time schedule and budget.
 - Any other facts of material importance to project implementation.

However, this is not in any way to be interpreted as a renunciation by DBF of the Exporter's obligation to inform DBF immediately and explicitly about any material changes or problems in connection with the implementation of the project (cf. below).

- (g) That DBF be given written notice without delay of any contemplated material changes to the project or any substantial delays of supplies, more particularly of any delay of final taking over and the causes thereof.
- (h) That DBF be given notice without delay of any problems/disagreements arising between the Buyer/End User and the undersigned Exporter during the implementation as well as during the Defects Notification Period.
- (i) That the undersigned Exporter accepts the terms of DBF's Rules for Procurement (March 2017), including
 - The right of stoppage by DBF.
 - That variations and contractors claims will not be financed under the DBF Loan unless otherwise agreed with DBF.
- (j) That measures be taken to conduct the following verifications:
 - Before issue of the Taking-over Certificate (after completion and commissioning) and
 - Before issue of the Performance Certificate (at the end of the Defects Notification Period)by the verification party named in DBF's approval. DBF will pay for the verification.

- (k) That the following remaining conditions stipulated for the project implementation by DBF are complied with:

.(insert remaining conditions)

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The undersigned Exporter **warrants** that the aforesaid conditions will be strictly complied with, and the undersigned Exporter further undertakes:

- (l) To stop the implementation of the contract and presentation of documents releasing disbursements under the loan, where so required by DBF.

(m) To reimburse DBF for any interest subsidy etc. paid to the Lender in case of our non-compliance in whole or partially by or through the Exporter with respect to this declaration.

Moreover, the undersigned Exporter accepts that DBF may revoke the interest subsidy approval and may in addition exclude the undersigned Exporter from any contracts financed under the Danish development assistance, where it is found that corrupt or otherwise illegal means have been used by the undersigned Exporter for the purpose of winning and/or performing the contract.

That we have neither the power nor the will to raise any claim against DBF or its representatives if DBF withdraws its support due to our non-compliance with the stipulations contained in the present declaration.

The undersigned Exporter is aware of the terms of the Buyer/End User's and Borrower's Declarations issued to DBF. In this connection the undersigned Exporter confirms that we do not intend to and are not entitled to raise claims against the Lender or DBF if the performance of the contract and the presentation of documents releasing disbursements are stopped owing to the Buyer's or the Borrower's failure to comply with the terms of the Buyer/End User's Declaration or the Borrower's Declaration respectively.

This declaration is subject to Danish law, and any dispute shall be brought before the City Court of Copenhagen.

.....
Place, date

.....
Binding signature

Notes of Guidance for Exporter's Declarations concerning DBF financing to Developing Countries.

Background

An Exporter's Declaration is issued in connection with the financing of a given export transaction being taken over by a bank and the interest subsidy etc. being duly paid to the financing bank. In that connection the Ministry of Foreign Affairs of Denmark (Danida) is required to ensure that the following conditions are met:

That the information given is correct and satisfactory.

That the Exporter is complying with his obligations.

That DBF is capable of exercising the necessary control in respect of the approval and application of the interest subsidy and the achievement of its object.

That repayment of the interest subsidy etc. or any part thereof may be claimed in case of any non-compliance by or through the Exporter with the conditions subject to which the interest subsidy etc. was approved.

Information to the lending bank and DBF

It is in the best interest of the Exporter that the lending bank and DBF are given correct and satisfactory information of the export transaction until completion.

Obtaining an Exporter's Declaration

The Exporter's Declaration shall be obtained by the lending bank (recipient of the DBF subsidy) and be submitted to DBF.

The final approval of interest subsidy etc. is subject to the submission of a duly signed Exporter's Declaration.

Annex E
Form of Borrower's Declaration (March 2017)

Ministry of Foreign Affairs of Denmark
Danida Business Finance
2, Asiatisk Plads
DK-1448 Copenhagen K

Date and place of issue

Borrower's Declaration regarding Project and the DBF Loan Agreement between and, signed on (date of signature).

Dear Sirs,

We enclose a Buyer's Declaration prepared and signed by in keeping with Appendix C to the above loan agreement.

We declare

- That the above declaration is signed with full binding effect by the [Buyer/End-user];
- That if the Ministry of Foreign Affairs of Denmark (Danida) requests the exporter to stop deliveries under the Commercial Contract or you withdraw your commitment to the Lender under the DBF Loan, we will enter into negotiations with the Lender as described in the relevant clause of the Loan Agreement.

We further declare

- That DBF shall not be liable to us for any loss arising from a demand for the exporter to stop or postpone deliveries under the Commercial Contract or to withdraw the unutilised support according to the relevant clause of the Loan Agreement.

We finally confirm

- That any dispute arising in connection with this declaration shall be brought before the City Court of Copenhagen and shall be governed according to Danish law.

Yours faithfully
[Borrower]