

# Regulations

## Procurement Regulations

August 2017

### Preamble

*The Procurement Regulations (the “Procurement Regulations”) are issued by the Executive Director of the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Global Fund”) in consultation with the Audit and Finance Committee of the Global Fund’s Board, as required by the Global Fund Procurement Policy.*

*The purchase of goods and services shall be conducted in accordance with the following documents (listed in priority order): Procurement Policy<sup>1</sup>, the present Procurement Regulations<sup>2</sup>, and Procurement Procedures<sup>3</sup> issued by the Chief Procurement Officer of the Sourcing Department<sup>4</sup> (all together the “procurement rules”).*

### 1 Scope

The Procurement Regulations apply in the first place to all goods and services procured by and for the Global Fund. These Procurement Regulations may also apply to the procurement of goods and services performed by the Global Fund on behalf of its Principal Recipients with the use of grant funds, within the authorized limits given to the Global Fund’s Secretariat.

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<sup>1</sup> The Procurement Policy (2008) approved by the Finance and Audit Committee based on a delegation of authority by the Board outlines the principles applicable to the procurement of goods and/or services.

<sup>2</sup> The purpose of these Procurement Regulations is to elaborate on the principles outlined in the Procurement Policy, and set rules applicable to all procurement activities.

<sup>3</sup> The Procurement Procedures operationalize the Procurement Policy and the Procurement Regulations.

<sup>4</sup> The Procurement Regulations must be considered together with all applicable Global Fund’s rules, policies and procedures, in particular with the Procurement Policy (2008), the Procurement Procedures, the ethics and integrity-related policies and regulations, the Code of Conduct for Global Fund employees(2016), the Code of Conduct for Suppliers (2009), the Accountability and Escalation Framework (2017), the Guide to Global Fund Policies on Procurement and Supply Management of Health Products (2016), the Travel Regulation (2017), the Whistle-Blowing Policy and Procedures (2013), and the Signature Authority Procedure (2017), each as amended from time to time.

## 2 Responsibility and Accountability

The Executive Director is responsible for ensuring the effective implementation of the Procurement Policy. Pursuant to the principle of segregation of duties, where a distinct role and defined responsibility and accountability are assigned to each individual directly or indirectly involved in the procurement process, as further described in the Procurement Procedures, the Executive Director delegates his or her authority as follows:

- **The Requester:** has been given the authority to request goods and services on behalf of the Global Fund and is responsible for compliance with the procurement rules. The Requester is responsible for defining the need of the Global Fund and the specifications of the goods and services. In collaboration with the Sourcing Department, the Requester is also responsible for planning and executing procurement activities according to the procurement rules.
- **The Budget Holder:** has been given the authority to commit funds to finance the procurement of goods and services as identified by the Requester. The Budget Holder has the obligation to ensure the availability of funds, approve the request from the Requester based on approved workplan, corporate priorities or Global Fund's needs, and approve all invoices for payment after reviewing evidence of deliverables and suppliers' performance. The Budget Holder is accountable for compliance with the procurement rules for goods and/or services within his or her approval threshold.
- **Sourcing Officers** (Sourcing managers, specialists, analysts, etc.): shall ensure that procurement activities are executed in compliance with the procurement rules and bring any issue that he or she deems to be high risk or inappropriate to the attention of the competent authority (Line Manager or Chief Procurement Officer). Sourcing Officers are responsible for managing the procurement process and planning procurement activities across the Global Fund. Sourcing Officers shall use market research and other tools to ensure that Value for Money is achieved. Sourcing Officers conduct required negotiations with suppliers, and prepare related contracts with support from the Legal Department, as appropriate. Sourcing Officers and their Line Managers are responsible for the compliance with Procurement Principles (see below) and the Chief Procurement Officer is accountable.

## 3 Procurement Principles

The procurement of goods and services shall be conducted in a manner that is based on the principles set out in the Procurement Policy.

These principles are further detailed below. For the avoidance of doubt, the following principles should be read together with the principles included in the Procurement Policy.

### **3.1 Competition**

3.1.1 Competitive offers or proposals for the procurement of goods or services shall be solicited using the following methods: Request for Quotations (RFQ) or Request for Proposals (RFP). The appropriate method shall be determined by the Sourcing Officer in consultation with the Requester based on the estimated value of the goods and services to be procured, according to the nature of the goods and services and thresholds defined in Annex 1 to these Procurement Regulations.

3.1.2 It is prohibited to divide the same category of goods or services intended for the same purpose to avoid the applicable thresholds and the use of a more stringent method, and to artificially combine different categories of goods and/or services to restrict the number of potential bidders.

3.1.3 In order to obtain value for money, or for efficient and effective procurement purposes, not all procurement must be done on a strict and traditional competitive basis. Other methods of procurement may be permitted, in accordance with these Procurement Regulations.

### **3.2 Efficient and Effective Procurement**

3.2.1 To facilitate efficient and effective procurement, the Sourcing Department shall develop a forecast on goods and services to be procured to be supported by an annual procurement plan.

3.2.2 Procurement planning includes starting procurement activities sufficiently in advance of the requirement in order to complete the entire procurement process and contract negotiations. The Sourcing Department will take the lead in aggregating demand for goods and services across the Global Fund, and developing contractual strategies to ensure continuity of supply.

3.2.3 As part of the procurement planning, standardization of certain goods from a specific brand or model, or services from a sole service provider may also allow for economies of scale.

### **3.3 Impartiality**

3.3.1 All potential suppliers shall be treated impartially. Information with respect to a particular procurement process cannot be released to one or several potential suppliers without such information being available to all potential suppliers.

3.3.2 As it may favor one or few suppliers or discourage competition, the use of unnecessarily restrictive specifications of the goods and services is forbidden.

3.3.3 Suppliers competing for a specific contract shall not derive a competitive advantage from having previously provided goods or services directly related to the contract in question to the Global Fund. The Global Fund may reject any proposal from those suppliers if it determines that a conflict of interest, a situation of favoritism or any other conduct from the suppliers or persons involved in the procurement process, has flawed the integrity or objectivity of the procurement process.

3.3.4 Where required, a Technical Evaluation Committee (TEC) shall be constituted to evaluate the technical aspects of suppliers' proposals in a transparent and impartial manner.

3.3.5 Procurement to the benefit of the Sourcing Department, procurement of Health Products or other products conducted by the Sourcing Department under pooled mechanisms, or procurement on behalf of PRs, shall follow a specific clearance process detailed in the Procurement Procedures, and the Sourcing Officer(s) acting as Requester shall not manage the procurement process.

### **3.4 Transparency**

3.4.1 All procurement process steps and decisions shall be documented. All relevant documents shall be filed and retained in accordance with the Procurement Procedures.

3.4.2 The independence and transparency in suppliers' selection shall be ensured:

- Requesters who select suppliers based on received quotations and TEC members shall be bound by confidentiality and conflict of interest requirements;
- Except where the Sourcing Department is the Requester unit or a Sourcing Officer is invited to be evaluating member of the TEC, Sourcing Officers are not part of the TEC but provide a support function to the TEC;
- Suppliers shall be evaluated on the basis of their legal, technical and financial abilities, and clearly articulated criteria established by the Global Fund.

3.4.3 Normally, Requests for Proposals are published on the Global Fund's website.

### **3.5 Accountability and Ethical Conduct**

3.5.1 All Global Fund employees and consultants directly or indirectly involved in procurement activities:

- Must comply with the procurement rules, the Code of Conduct for Staff or for Suppliers, as applicable, the ethics and integrity-related policies and regulations, and the Whistle-Blowing Policy and Procedure;
- Shall conform to a high standard of ethical conduct, and exercise skill in undertaking the procurement action;
- Shall avoid any situation of actual, potential or perceived conflict of interest, and shall disclose to the Sourcing Officer complete and relevant details pertaining to any conflict of interest, or situation that may appear to represent a conflict of interest, as soon as he or she becomes aware of such situation or conflict of interest. The Sourcing Officer shall consult with the Global Fund Ethics Office as required. The Ethics Office shall have the authority to determine whether an actual, potential or perceived conflict of interest exists and whether the staff or consultant in question should be removed from a particular procurement action;
- May be held responsible for their non-compliance with applicable rules, policies and contractual provisions, and misconduct (such as failing to disclose conflicts or otherwise biasing the process);
- Shall not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment or any promise of future employment from Global Fund's current or potential suppliers;

- Have a duty to report any concerns regarding potential non-compliance of procurement rules or improper conduct, in accordance with the procurement rules and the Whistle-Blowing Policy and Procedures.

### **3.6 Eligibility and Procurement Ethics**

3.6.1 Using a Due Diligence process the Sourcing Department will assess the supplier's financial condition, any ethical restrictions and any actual, potential or perceived conflicts of interest. Only upon completion of this process shall the supplier be eligible to participate in the procurement of goods and/or services. If there is any doubt about conflict of interest, actual, potential or perceived, the Sourcing Department will refer the matter to the Ethics Office of the Global Fund for final determination.

3.6.2 Suppliers' misconduct or breach of the Global Fund's Code of Conduct for Suppliers is subject to the Global Fund's internal policies, including the Sanctions Panel Procedures.

### **3.7 Confidentiality**

3.7.1 All information related to the procurement and evaluation processes should be handled appropriately and with care.

3.7.2 All Global Fund employees and consultants directly or indirectly involved in procurement activities shall not disclose, directly or indirectly, confidential or proprietary information, or any information related to suppliers' selection process to any person other than a person authorized to receive such information according to the Procurement Regulations and Procurement Procedures. Information marked as confidential communicated by the suppliers or potential suppliers should only be shared internally on a need-to-know basis and cannot be provided to partners or other suppliers or used in any other way without written consent of the relevant supplier.

3.7.3 TEC members are not allowed to discuss their personal views and scoring on potential suppliers before the first TEC meeting is held where suppliers' scores are compared.

3.7.4 Information received during the procurement process shall not be used by Global Fund employees and consultants for personal gain.

## **4 Procurement Methods**

The procurement method should be selected according to the estimated value of goods and/or services to be procured, the nature of these goods and/or services, and whether Long Term Agreements (LTAs) suppliers as defined in the Procurement Procedures, exist. The Procurement Procedures provide for specific requirements and processes for the procurement methods.

### **4.1 Request for Information (RFI)**

Although not a procurement method, an RFI (Also called "Request for Expressions of Interest" RFEI or "Request for Technical Expressions of Interest" (RFTEI)) may be issued to discover the number of suppliers in the market that have the capability and capacity to provide the required goods or services. The RFI may also be used to better understand the market with regard to services, goods and conditions of supply, and help the Global Fund to

refine its needs. An RFI does not lead to contract award, and may or may not lead to a procurement process.

## **4.2 Low Value Procurement Method**

Low Value Procurement method is the method used in situations where the estimated value of the goods and/or services to be procured are below the threshold indicated in Annex 1. For Low Value Procurement, the Requester is encouraged to use RFQ but is allowed to opt for direct purchasing from a particular supplier with no competition, subject to Budget Holder's approval. The Requester and Budget Holder each remain fully responsible and accountable for Low Value Procurement.

## **4.3 Request for Quotation (RFQ)**

4.3.1 The RFQ is the relevant method within thresholds defined in Annex 1 and through which the Requester shall endeavor to obtain at least 3 quotes from suppliers directly by telephone or email, or indirectly by consultation of published price lists (catalogues, suppliers' websites, etc.). Depending on the complexity of the goods or services, the Global Fund may require more than simple quotes and additional information to support the evaluation. By this method the Requester shall select the most responsive offer that would reasonably meet the Global Fund's need.

4.3.2 Where existing LTAs are in place, a separate RFQ process shall be followed: the Requester shall issue an RFQ requesting from all pre-qualified suppliers that have the ability to provide the required goods and/or services (e.g. all those operating in the country where the goods and/or services are to be provided) an offer comprising a short proposal and costs. The need to obtain at least 3 quotes is not applicable in all instances (e.g. If for a specific assignment, only one supplier among pre-qualified suppliers is able to provide the goods or services). The Requester shall make the selection decision on the choice of suppliers, in consultation with the Sourcing Officer. The thresholds applicable to RFQ when LTAs exist are defined in Annex 1. Other methods, such as allocation, may be used to apportion work among holders of LTAs. The Sourcing Department may establish different ways to allocate or divide requirements among LTAs suppliers depending upon procurement category and other factors.

## **4.4 Request for Proposals (RFP)**

4.4.1 An RFP is a formal invitation to suppliers to submit proposals through a bidding process that involves an evaluation process of technical and commercial offers by the Tender Evaluation Committee. The RFP method shall be selected according to the thresholds defined in Annex 1.

4.4.2 The RFP is also the method used to select a pool of pre-qualified suppliers with whom the Global Fund may sign Long Term Agreements (LTAs) (also called "Indefinite Quantity Contracts" (IQC)) or Framework Agreements (FA). Pre-qualified suppliers shall be selected according to technical criteria and commercial elements as relevant. RFPs leading to the LTAs (and IQC) can in some instances require the issuance of RFQ to select among pre-qualified suppliers, supplier(s) for a specific goods or service.

## **4.5 Direct Procurement**

4.5.1 Direct Procurement is the procurement method where only one supplier is invited to contract with the Global Fund.

4.5.2 Direct procurement shall be conducted when there is no competitive marketplace or the goods or services can only be procured from one source, due to: (1) the supplier has the exclusive possession or control of the supply of or trade in a commodity or service (e.g. state monopoly); (2) the supplier has exclusive proprietary rights in respect of the subject matter of the procurement (e.g. software licenses, publications, methodology etc.); and (3) the eligible suppliers or contractual counterparts are determined or identified through decisions taken by the Global Fund's Board or relevant Standing Committees.

4.5.3 The goods and services procured under Direct Procurement, together with the name of the relevant suppliers, shall be placed in a list to be maintained and updated by the Sourcing Department. Any change to the list, including the inclusion of a new supplier, shall be approved by the PRC. The Sourcing Officer with the Budget Holder will determine the supplier(s) of such goods or services and manage the list in two groups:

### **1. Indefinite Term Limit**

In situations in which the Global Fund is in a contractual agreement with a designated supplier including but not limited to:

- All agreements for software licenses; use of technology; publications; proprietary methodology;
- All agreements related to the leasing of the Global Fund Office and its management.

### **2. Fixed Term limit**

For procurement activities, where the Global Fund decides at the corporate level to standardize certain goods or services that are needed and purchased on a recurring basis, the procurement of those goods or services shall be conducted using the Direct Procurement method. A single source of supply is selected by the Global Fund pursuant to a procurement method and spare parts or additional goods or services are to be provided by the supplier (e.g. computers, printers, etc.). The standardization of a given item shall be reconsidered after a six-year period for further extension or new procurement.

4.5.4 The Sourcing Department will submit on a bi-annual basis, the list of the Direct Procurement suppliers and the estimated contract value to the MEC.

## **4.6 Procurement from Partner Organizations**

4.6.1 The relevant procurement method when procuring goods and/or services from Partner Organizations acting as suppliers (per Global Fund's determination) is direct purchasing, provided that the Partner Organization offers highly specialized products that are only available from a limited number of suppliers, and the use of the Partner Organization is deemed as being in the best interest of the Global Fund.

4.6.2 A Partner Organization is a United Nations system organization, a public international organization or a donor Government Agency.

## **4.7 Use of Partner Organizations' tender results**

If it is determined to be in the best interest of the Global Fund, the Global Fund may use the results of a Partner Organization's tender results, under the following conditions:

- the Partner Organization’s procurement rules have been reviewed by the Sourcing Department, and are considered by the Chief Procurement Officer to have the same rigorous level as the principles enunciated in the Global Fund’s Procurement Policy and Procurement Regulations;
- the supplier(s) selected by the Partner Organization have been selected following an open and competitive process;
- the contract of the Partner Organization is still in force and there is no indication that the market has changed;
- the supplier(s) selected by the Partner Organization agree to offer the goods or services to the Global Fund at a comparable price, and are willing to work with the Global Fund under the Global Fund’s standard contractual terms.

#### **4.8 Other Procurement Categories<sup>5</sup>**

Due to the specific nature or scope of certain goods or services, the Global Fund may conduct procurement processes according to methods that deviate from the procurement methods described above. These dedicated procurements shall be done in accordance with the relevant decisions by the Global Fund Board or its Standing Committees, and such internal procedures established to operationalize such decisions.

#### **4.9 Exceptions to the Procurement Process**

4.9.1 Exceptions to the rules outlined in the Procurement Regulations, in particular to the obligation to follow required procurement methods or to meet all requirements of a given method, must be avoided to the maximum extent possible. Exceptions may be justified in rare cases when the Requester determines that the required procurement method(s) cannot be used and another method or direct contracting is necessary.

4.9.2 All Exceptions to the procurement process as defined in this section have to be submitted by the requesting “MEC Member” cleared through the Chief Financial Officer and approved by the Executive Director. Allowable exceptions can include emergency and protection of Global Fund non-public or confidential information, but in all cases the MEC member must demonstrate why the exception is in the best interests of the Global Fund. The rationale and the applicable exception rule shall be detailed in an Exception to the Procurement Process Memo.

## **5 Documentation and Contracting Principles**

### **5.1 Procurement Documentation**

All procurement documents, including solicitation documents and contracts, should be in English, unless otherwise approved by the Executive Director.

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<sup>5</sup> This Section applies in particular, but not exclusively, to pooled procurement mechanisms, procurement for health products and Global Fund’s Local Fund Agents.

## **5.2 Solicitation Documents**

RFQs and RFPs shall be worded in such a way as to permit and encourage competition, and shall set forth clearly and precisely the goods and/or services to be supplied, the delivery conditions, minimum performance requirements, and all other pertinent terms and conditions. RFQs and RFPs shall specify all factors, in addition to price, that will be taken into account in evaluating the offers and proposals.

## **5.3 Contractual Provisions**

Global Fund's contract templates approved by the Legal Department should be used with suppliers to the maximum possible extent, as they include Global Fund's standard contractual terms, including provisions required by decisions of the Global Fund Board. As per such templates, suppliers shall be required to comply with applicable requirements with regard to prohibited practices as defined in the Global Fund's ethics and integrity-related policies and regulations and with the Code of Conduct for Suppliers.

## **5.4 Contract Term, Extensions and Amendments**

5.4.1 With the exception of indefinite term limit contracts stemming from the Direct Procurement (Section 4.5), the maximum contract duration is six years. For goods and/or services to be provided after this 6-year period, a new procurement action shall be conducted.

5.4.2 RFQs and RFPs should state the maximum potential duration of the contract in light of the needs: the intent is to show that internal approval has been given for an identified supplier and for a certain period of time, which would allow the Global Fund to use the supplier as needed during such period of time, if provided for in the contract (i.e. in a Framework Agreement, or a contract renewable up to the maximum period described in the RFQs or RFPs).

5.4.3 For fixed-term contracts, extensions are allowed within the limit of up to 50% of the contract initial value and up to 50% of the total contract duration, as defined in the Procurement Procedures, unless otherwise approved by the Executive Director. This extension period may be in addition to the full period specified in the tender.

## **5.5 Contract Performance Evaluation**

The Requester is responsible for managing the contract and evaluating the performance of the supplier. The Requester shall ensure that the goods and/or services have been delivered in accordance with the contract, and when applicable validate the invoice for payment. The Requester shall contact the Sourcing Officer in case he or she encounters any issues with the supplier.

# **6 Approval of Procurement Process**

Review of the procurement process, including review of exceptions to the procurement process are conducted after completion of the evaluation process as applicable and before contract award to the selected supplier, according to the conditions set forth below and to thresholds defined in Annex 1.

## **6.1 Procurement Review Committee (PRC)**

### **6.1.1 Role**

The PRC shall review the procurement processes and make the necessary recommendation on the proposed award of a contract for goods or services, or proposed modification of an existing contract based on the total estimated value of the goods or services to be procured under the contract, or under the contract as modified, within the thresholds defined in Annex 1 (over \$ 1 million) or the contract represents high risk to the Global Fund.

### **6.1.2 Composition**

The PRC shall comprise both permanent and term-limit members appointed by the Executive Director; and for the term limit members, it will be for a two-year term renewable consecutively once (with the exception of the rotating member), as follows:

- The Chief Procurement Officer who shall chair the committee;
- Head, Program Finance and Controlling;
- One representative of the Ethics Office;
- One representative of the Legal Department;
- One representative of the Risk Department;

One member that will rotate from the other departments (Grant Management; SIID; OED etc.). This member will be appointed by the Executive Director for one year and his or her term will not be renewable.

Members can have alternates who shall attend PRC's meetings and/or take part of PRC's decision only in case of absence or incapacity<sup>6</sup> of the member from their department, and that person should not be more than one grade level below that of the member being represented.

### **6.1.3 Method of Work**

The PRC shall meet periodically or upon request for urgent procurement. The reviews may be by electronic circulation, as decided by the Chair in consultation with PRC members.

Submissions to the PRC shall be in writing by contacting the PRC Chair. The Procurement Compliance Manager shall support the Chief Procurement Officer in its role as Chair to ensure timely delivery of the relevant documents and any other information or documents the PRC may request for their decision-making process.

The PRC decision shall be filed by the Sourcing Department and a copy shall be sent to the Requester.

The approval decision shall be made on a consensus basis. In case of strong disagreement between PRC members the matter should be referred to the MEC.

Above a certain threshold as defined in Annex 1, all procurement actions shall be reviewed by the PRC and submitted to the MEC for approval.

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<sup>6</sup> Incapacity includes cases where because of a conflict of interest (e.g. the Requester is a PRC member, relationship with proposed supplier, etc.), a PRC member recuse himself or herself from the decision

## **6.2 Approval by the Management Executive Committee**

The MEC shall review and approve all procurement actions submitted by the PRC whose estimated value is above the threshold defined in Annex 1, and/or where proposed contracts include high risk or raise particular issues, or if there is no consensus among PRC members with regard to a contract award or procurement action.

The Chief Procurement Officer shall submit to the MEC any case of non-compliance to the procurement rules that could not be addressed through the mechanism described in Section 8 below, for the MEC consideration as to whether the procurement process should nevertheless be pursued or the contract awarded.

Contracts shall not be awarded if the PRC or MEC does not approve the award.

## 7 Compliance

The Sourcing Department shall monitor and report on compliance with the Procurement Regulation and related Procedures and escalate issues of noncompliance as required.

## 8 Non Compliance and Mis-procurement

If the procurement process has not been followed according to the procurement rules or there are good reasons to believe that the integrity of the process has been compromised in any way whatsoever, the issue should be addressed per mitigation and escalation procedures to ensure that the Sourcing Compliance Officer and the Chief Procurement Officer are informed and involved in decision making where appropriate. The Chief Procurement Officer has the authority to declare mis-procurement and cancel the procurement action. In considering the matter, the Chief Procurement Officer should consult with the General Counsel and the Ethics Officer as appropriate. If the problem cannot be resolved through mis-procurement or any other action, the Chief Procurement Officer shall submit the case to the MEC.

The Chief Procurement Officer may permit a retendering after declaring mis-procurement.

## Annex 1 to the Procurement Regulations

Procurement Process <sup>7</sup>				
Procurement Method		Direct purchasing	RFQ	RFP
Estimated Value Of Contract (in USD)				
0-10.000		<b>X</b>	<b>X</b>	
10.000 -100.000			<b>X</b>	<b>X</b>
100.000-250.000	No LTA in place			<b>X</b>
	LTA in place		<b>X</b>	
250.000 -1 Million				<b>X</b>
1 Million-10 Million				<b>X</b>
Above 10 Million				<b>X</b>

Approval <sup>8</sup>			
Review Mechanism <sup>9</sup>	Review by Sourcing	Review by the PRC <sup>10</sup>	Approval by the MEC <sup>11</sup>
Estimated Value of Contact (in USD) or specific process			
1 Million-10 Million		<b>X</b>	
Above 10 Million		<b>X</b>	<b>X</b>
Direct Procurement (irrespective of amounts)	<b>X</b>		

<sup>7</sup> The use of the other procurement process methods described in Sections 4.5 – 4.8 of the Procurement Regulations may be allowed upon meeting requirements specified in the Procurement Regulations.

<sup>8</sup> Based on explanatory documentation that may be requested.

<sup>9</sup> Exceptions to competition are approved by the ED and not the MEC.

<sup>10</sup> All contracts that involve high risks shall be submitted to the PRC for review.

<sup>11</sup> Approval from the MEC is required for all requests submitted by the PRC (where contracts involve high risks, the PRC has identified issues, or the PRC cannot find a consensus).