African Development Bank

Beneficial Ownership & Politically Exposed Persons

August 2020
<table>
<thead>
<tr>
<th>Acronyms</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>BPS</td>
<td>Borrower Procurement System</td>
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<tr>
<td>BPAR</td>
<td>Bank Procurement Assessment Report</td>
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<td>FATF</td>
<td>Financial Action Task Force</td>
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<td>PEPs</td>
<td>Politically Exposed Persons</td>
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<td>PIAC</td>
<td>Integrity &amp; Anti-Corruption Department</td>
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<tr>
<td>RFP</td>
<td>Request for Proposals</td>
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<tr>
<td>SD</td>
<td>Solicitation Document</td>
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<tr>
<td>SNFI</td>
<td>Fiduciary Services &amp; Inspection Department</td>
</tr>
</tbody>
</table>
## Table of Contents

A. INTRODUCTION ......................................................................................................................... 1

B. DEFINITIONS .......................................................................................................................... 2

C. DISCLOSURE REQUIREMENTS ............................................................................................... 2

D. PROCUREMENT-RELATED DUE DILIGENCE REQUIREMENTS ............................................. 3

E. IMPLEMENTATION .................................................................................................................... 5

F. SOLICITATION DOCUMENTS ................................................................................................. 6

Annex 1: Beneficial Ownership Disclosure Form ........................................................................ 7
A. INTRODUCTION

1. The term ‘beneficial owner’ is defined for purposes of Bank-financed transactions\(^1\), to be the natural person(s) who directly or indirectly owns or controls an Entity or on whose behalf a transaction is or proposed to be conducted. Where the Entity is a publicly held company, the Beneficial Owners are natural persons who directly or indirectly own at least 5% of the total (voting or non-voting) share capital of the Entity. For other Entities, the Beneficial Owners are all-natural persons who control or own the Entity (or the persons on whose behalf the transaction is or proposed to be conducted). Where ownership or control is exercised through a chain of ownership or indirect control, the Beneficial Owner is the ultimate natural person with interests in the Counterparty or Significant Related Party.

2. Front or shell companies, whose beneficial owner(s) is not apparent, have great potential for misuse for criminal purposes, including money laundering or terrorism financing, corruption, tax fraud, trafficking and organized crime. A common law enforcement concern, therefore, is the difficulty to obtain information on the ownership of foreign companies, firms, trusts or other entities, and little, if any, cooperation on identifying beneficial ownership in some countries.

3. The lack of timely access to adequate and accurate beneficial ownership information facilitates bribery and other corrupt activities, money-laundering and financing of criminal (including terrorism-related) activities by disguising identity of suspected criminals, obscuring the true purpose of the transaction and the source or use of funds associated with the relevant corporate vehicle\(^2\).

4. In the interest of transparency, the Bank requires that a successful bidder under a Bank-financed contract above a specified monetary threshold\(^3\) disclose its beneficial ownership in its ownership structure. Further, the Bank encourages the government or any other agency responsible for award of such Bank-financed contract to publicly display such beneficial ownership information in an official gazette or a web-site that permits free viewing. Bank Borrowers are also required to convey to the Bank, in order for it to display on the Bank’s external web-site, such information, if available, in respect of contracts above specified thresholds financed by the Bank but procured under the Borrower Procurement System (BPS). The TOOLKIT sets out the country transactional

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\(^1\) Integrity Due Diligence (IDD) Implementation Guidelines for Non-Sovereign Operations, AfDB


\(^3\) The Bank will periodically determine the applicable monetary thresholds for such purpose.
threshold(s) above which information on beneficial ownership is required to be disclosed from successful bidders, whether such contracts are procured under the Bank’s Procurement Policy or under BPS.

B. DEFINITIONS

5. Irrespective of the definition mentioned under Paragraph (1) above and for the only purpose of application of the Bank’s Procurement Policy (and Framework), a ‘beneficial owner’ is: (i) an individual directly or indirectly owning or controlling 25% or more of the voting shares of the firm or other legal entity; and/or (ii) two or more individuals who are closely related, directly or indirectly owning or controlling cumulatively 25% or more of the voting shares of the firm or other legal entity. For this purpose, (a) ‘closely related’ means individuals related to each other through consanguinity or by marriage or similar (civil) forms of partnership or habitual association; and (b) ‘control’ means the right to determine election of directors or to direct management or policy decisions through any express or implied arrangement, including by virtue of shareholding or management rights, shareholder agreements, voting agreements, or through use of nominees or similar agents.

6. Beneficial owners may include individuals who are politically exposed persons. The term ‘politically exposed person’ (PEPs) for purposes of Bank-financed procurement of goods, works and consulting services refers to foreign or domestic individuals who are or have been entrusted with prominent public functions by their country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, and/or important political party officials.

C. DISCLOSURE REQUIREMENTS

7. For transactions involving procurement of goods and works, or engagement of consultants, financed by the Bank in excess of particular country thresholds set

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4 Under BPS in some countries, local regulation may already require such disclosure of beneficial ownership and, in such cases, the Bank will permit application of the local regulatory provisions on disclosure of beneficial ownership provided they are acceptable to the Bank.

5 See FATF Recommendations, p. 109 et seq. While the FATF Recommendations suggested different levels of due diligence for ‘foreign,’ ‘domestic’ and ‘international organization’ PEPs (see: FATF Guidance: Politically Exposed Persons (Recommendations 12 and 22)), for AfDB procurement purposes, the level of required due diligence in any of such cases is the same. In the context of international organizations, ‘international organization’ PEPs are persons who are or have been entrusted with a prominent function by an international organization and refer to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions. The definition of PEPs in either foreign, domestic or international organization context is not intended to cover middle ranking or more junior individuals. FATF Recommendations, p. 119-120.
down from time to time, the relevant solicitation and request for proposal (RFP) documentation must require winning bidders or proposers that are firms or other legal entities, but excluding publicly listed companies, to agree to disclose any beneficial ownership and identify such beneficial owner(s) (including PEPs) with particularity.

8. The applicable thresholds are set down for the relevant Bank-financed transaction based on country conditions identified in the applicable Bank’s Procurement Assessment Report (BPAR). Information on beneficial ownership will be disclosed on the Bank’s website for a period of five (5) years after contract award or two (2) years after contract completion, whichever period expires later.

D. PROCUREMENT-RELATED DUE DILIGENCE REQUIREMENTS

9. The Bank carries out (with inputs from the Governance, the Regional and the Integrity Departments) due diligence in respect of the potential for money laundering and/or terrorist financing. At the procurement level, in addition to considering FATF country-level risk assessments\(^6\), such inputs typically inform the relevant BPAR and are critical factors to be considered in setting the relevant country-level thresholds for requiring disclosure of beneficial ownership (and PEPs) in bidding and contract documentation.

10. The BPAR must assess, *inter alia*, the extent and adequacy of country-level measures to prevent misuse of ‘legal entities’ and ‘legal arrangements’ for money laundering or terrorism financing. The BPAR will include a determination of whether, and the extent to which, the relevant country has safeguards in place and their effectiveness in implementation. This information is collected by the Bank’s Integrity and Anti-Corruption Department (PIAC) as a part of its assessments of countries and will be an input to the BPAR.

11. Such BPAR related review will help determine country specific thresholds for transactions involving procurement of goods, works and/or consulting services above which the relevant solicitation documents will be required to include provisions that mandate disclosure of beneficial ownership by winning bidders or proposers.

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\(^6\) FATF country-level risk assessments result from application of FATF’s methodology for this purpose as detailed in FATF Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems (February 2013) ['Methodology']. This Methodology is typically applied, at a country level, through Mutual Evaluation Reports (MERs), the template for which is provided in Annex II of the Methodology.
12. Where BPS or third-party systems are applicable, the relevant Borrower or third-party documentation will be used whether or not such documentation includes provisions for disclosure of beneficial ownership or not. There may thus be situations where a particular country has been classified by FATF as higher-risk in terms of potential abuse for money laundering and/or terrorist financing but where the Bank has nevertheless concluded that BPS or third party systems are applicable. Normally, in such cases, local Borrower or third party documentation will apply. However, in exceptional circumstances (typically involving FATF higher-risk countries), the Bank reserves the right to mandate inclusion of appropriate beneficial ownership disclosure information for winning bidders in transactions over a specified threshold, following the approach described in the previous paragraph.

**Handling Politically Exposed Person (PEPs)**

13. Due to their influence, PEPs are typically in positions that can be abused for bribery and corruption. Therefore, the potential risks associated with PEPs justify the application of additional due diligence measures\(^7\). The responsibility for this additional or enhanced due diligence is primarily that of the Bank’s operational department responsible for the project, with guidance provided, as necessary, by PIAC.

14. Involvement of PEPs, as in the case of beneficial ownership in general, typically occurs in higher value procurement or consulting transactions. In such cases, the bidder is required to disclose if the beneficial owner of such bidder (or any party comprising the bidder) is a PEP. Some countries may have legislation that sets out the applicable definitions of PEPs and the related disclosure requirements and, to the extent BPS apply, such local definitions will apply for purposes of satisfying the requirements for PEP disclosure in solicitation documents used under Bank-financed projects\(^8\). Similarly, in the case of application of third-party procurement systems, the approach to PEPs will follow the requirements, if any, of such third-party systems. However, if the relevant BPS or third-party system has no expressly articulated approach to either beneficial ownership and/or PEPs, the Bank’s approach will be held to apply.

15. When the Bank’s procurement procedures and related documentation apply, the PEPs definition set out above is applicable. Importantly, once a PEP has been identified in the context of a beneficial ownership disclosure or otherwise, it is necessary to identify ‘family members’ and ‘close associates’ as

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\(^7\) See FATF Guidance: Politically Exposed Persons (Recommendations 12 and 22) [June 2013].

\(^8\) Country-based definitions of PEPs can take different approaches. For example, in some cases, ‘prominent public function’ is defined by an express ‘baseline list’ of government officials (e.g. President, Ministers, etc.) while, in others, such PEPs may be only those individuals who, under local law, are required to file asset disclosure declarations. In yet other cases, ‘prominent public functions’ are locally defined by the type of responsibility entrusted to the relevant public official.
well, as these latter two categories of persons attract the same enhanced level of due diligence as PEPs themselves\textsuperscript{9}. ‘Family members’ may include parents, siblings, spouses / partners, children, grandparents and grandchildren. ‘Close associates’ may include extra-marital partners, prominent members of the same political party, civil organization, labor or employee union as the PEPs, or business partners.

16. Once a PEP (and any family members or close associates of such PEP) has been identified in the context of disclosure of beneficial ownership under a particular procurement transaction, the Borrower must notify the Bank of the particulars of the role of the PEP. Further investigation of the propriety of the PEP involvement will be undertaken, as necessary, by PIAC. Normally, the relevant procurement transaction financed by the Bank will be permitted to continue unless it is determined that the identified PEP (and/or any family member or close associate) has been sanctioned by the Bank and/or other multilateral development banks for which cross-debarment sanctions may apply or there are other reasons (including conflict-of-interest) that justify declaring such bidder/s ineligible for participation.

E. IMPLEMENTATION

Procedure

17. For each Bank-financed procurement transaction, once the relevant BPAR has been completed, taking into account the considerations discussed above to assess the effectiveness of the relevant Borrower’s approach to prevent money laundering/terrorist financing (and related FATF classifications of country-level risk of money laundering and financing of terrorist activities), the Bank will assign a risk-level for such purpose to the Borrower for the relevant transaction and determine the applicable threshold figure (of public contracts) for declaration of beneficial ownership. A standard checklist template for assessing country risk in terms of potential for money laundering and related need for beneficial ownership disclosure will be included in the TOOLKIT.

18. Bidders and proposers will be required to disclose details of beneficial ownership for procurement and RFP transactions beyond the targeted threshold. Accordingly, it will be necessary for executing and/or implementing

\textsuperscript{9} FATF Recommendation 12 applies to family members and close associates of a PEP, although these two terms are not expressly defined in that Recommendation but will depend on the socio-economic and cultural structure of the country of the PEP. The process of enhanced due diligence in circumstances in which PEPs have been identified is the responsibility of the relevant operational department, in coordination with IACD. It is responsibility of the procurement function to inform the relevant operational and integrity personnel regarding the identification of PEPs in those circumstances in which beneficial ownership disclosure has highlighted the presence of PEPs to the executing or implementing agency concerned.
agencies concerned, and the Bank, to carefully review such beneficial ownership declarations, when applicable, to determine if any listed beneficial owners have been sanctioned by the Bank.

**Ongoing Training**

19. Periodic training of both Bank and Borrower staff is necessary to understand how to handle beneficial ownership and PEPs in Bank-financed projects. To this end, the project launching workshops for implementation agency staff shall include a briefing on the details of relevant FATF Recommendations, and related materials before project procurement or consultant recruitment commences. Such training shall be up-to-date, obligatory and appropriately tailored to ensure that such compliance awareness is firmly embedded in Bank and implementing agency staff.

**F. SOLICITATION DOCUMENTS**

20. When the applicable country-level thresholds apply that require disclosure of beneficial ownership (and, as applicable, PEPs) by winning bidders or proposers for Bank-financed procurement of goods, works or consulting services, appropriate solicitation documents must be used. **Annex 1** includes the template for the Beneficial Ownership Disclosure Form.
Annex 1: Beneficial Ownership Disclosure Form – Standard Bidding Documents

Beneficial Ownership Disclosure Form

Instructions to Bidders: Delete this Box Once you have Completed this Form

This Beneficial Ownership Disclosure Form (“Form”) is to be completed by the successful Bidder. In case of joint venture, the Bidder must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission. For the purposes of this Form, a Beneficial Owner of a Bidder is any natural person who ultimately owns or controls the Bidder by meeting one or more of the following conditions:

- directly or indirectly holding 25% or more of the shares.
- directly or indirectly holding 25% or more of the voting rights.
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder.

Request for Bid No.: [insert number of the process]

To: [insert complete name of Employer]

In response to your request in the Letter of Acceptance dated [insert date of letter of Acceptance] to furnish additional information on beneficial ownership: [select one option as applicable and delete the options that are not applicable]

(i) we hereby provide the following beneficial ownership information.

Details of beneficial ownership

<table>
<thead>
<tr>
<th>Identity of Beneficial Owner</th>
<th>Directly or indirectly holding 25% or more of the shares (Yes / No)</th>
<th>Directly or indirectly holding 25% or more of the Voting Rights (Yes / No)</th>
<th>Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Bidder (Yes / No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>[include full name (last, middle, first), nationality, country of residence]</td>
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<td></td>
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</tbody>
</table>
(ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions:

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder

(iii) We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Bidder shall provide explanation on why it is unable to identify any Beneficial Owner]

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder]“

Name of the Bidder: *[insert complete name of the Bidder]*
Name of the person duly authorized to sign the Bid on behalf of the Bidder: **[insert complete name of person duly authorized to sign the Bid]**
Title of the person signing the Bid: [insert complete title of the person signing the Bid]
Signature of the person named above: [insert signature of person whose name and capacity are shown above]
Date signed [insert date of signing] day of [insert month], [insert year]

* In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder. In the event that the Bidder is a joint venture, each reference to “Bidder” in the Beneficial Ownership Disclosure Form (including this Introduction thereto) shall be read to refer to the joint venture member.

** Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules.