BANQUE D'INVESTISSEMENT ET DE DEVELOPPEMENT DE LA CEDEAO
ECOWAS BANK FOR INVESTMENT AND DEVELOPMENT
BANCO DE INVESTIMENTO E DE DESENVOLVIMENTO DA CEDEAO

RULES AND CRITERIA FOR EXCLUSION FROM ACCESS TO FUNDING THROUGH PROCUREMENT, GRANTS AND/OR FINANCIAL INSTRUMENTS

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I. Introduction

1. The purpose of this document is to approve a framework for the exclusion of third parties from access to EBID funding. The objective of the exclusion from access to EBID funding is to protect the financial interests of EBID from unreliable persons and entities applying for EBID funds or entering into legal commitments with the Bank.

2. This document defines the situations that may lead to the exclusion of third parties from access to EBID funding through procurement, grants and/or financial instruments. It also indicates the grounds for exclusion in case of verification of certain conditions relating to the entity or to the person having the power of representation, decision or control over it or a member of its administrative, management or supervisory body.

3. It is important to ensure that EBID's decisions are based on recent information, in particular with regard to the grounds for exclusion, as important changes can occur quite quickly, for example in case of financial difficulties that would render the economic operator unfit or, on the contrary, because arrears of social security contributions have been paid in the meantime. It is therefore preferable that, as far as possible, EBID verifies this information by gaining access to the pertinent databases of its Member States, where possible.

4. The Bank understands that for the protection of its financial interests, it is crucial to implement the following measures:
   a) Identify persons or entities that pose a risk to its financial interests;
   b) Exclude from access to funding, participation in selection and award procedures, persons or entities that are in the situations of exclusion identified in this document.

5. Finally, the Bank shall include these rules and criteria for exclusion from access to funding in the contracts signed by the Bank within the framework of procurement, award of grants and/or financial instruments.

II. Incorporation of exclusion criteria into EBID contracts

6. Annex A of this document contains the rules that apply to the exclusion of access to EBID funding. It shall be included in the rules and procedures for procurement, grant awards and financial instruments, adapted as appropriate, and incorporated in contracts signed with third parties.

7. Furthermore, the sworn statement, included in Annex B, shall be signed and attached to the contract each time the Bank awards a contract, grant or financial instrument.

III. Application of the exclusion criteria

8. The Bank shall apply the criteria for exclusion from access to finance on the basis of:
   a) A final judgment or final administrative decision;
   b) Findings of anti-fraud units, statutory auditors, auditors or any other audit body, made under the responsibility of the Bank;
   c) Decisions of ECOWAS and WAEMU institutions;
   d) Decisions of international organisations;
   e) Cases of fraud and/or irregularity reported by the authorities of ECOWAS Member States.

IV. Legal status of the third party and assessment of its financial and technical capacity

9. Documents on tender, grant application, financial instrument award or other similar documents shall indicate the legal status of the third party and demonstrate his/her financial and technical capacity to perform his/her obligations under the contract signed with EBID without default.

10. To this end, the third party shall submit a sworn statement concerning the rules on exclusion from funding and, where appropriate, any supporting documents requested, based on a risk assessment. The prerequisite documents shall be indicated in the evaluation or tender phase.

    The verification of financial standing shall not apply to natural persons who are beneficiaries of scholarships, the neediest natural persons and those receiving direct support from public bodies.

V. Grounds for Exclusion

11. Third parties shall be excluded from access to funding and the award of contracts where one of the applicant entities or a person with powers of representation, decision-making or control over them, or a member of their administrative, management or supervisory body has been the subject of a final judgment or a final administrative decision for one of the following reasons:
    a. bankruptcy; domestic or foreign insolvency proceedings
    b. legal proceedings have been instituted against them which may result either in a declaration of bankruptcy, suspension of payment, insolvency, judicial liquidation proceedings or in the total or partial loss of the right to administer and dispose of their property;
    c. failure to comply with obligations relating to the payment of taxes or social security contributions in accordance with applicable national law;
    d. payments to them have been suspended in accordance with a court decision and have resulted in the total or partial loss of the right to administer and dispose of their property;

e. they have been convicted, by final judgment, of any crime or offence involving professional misconduct, fraud, corruption or conflict of interest;
f. they have been found guilty of serious misrepresentation of the information required to participate in a tender;
g. they have been found guilty of corruption of any sort;
h. their conduct is linked to a criminal organisation;
i. they have been convicted of money laundering or terrorism financing;
j. they have been found guilty of child labour or other human trafficking; ;
k. they have created a fictitious company or have a fictitious company with no substantial activity or professional, technical or material resources to deliver on the grant; or
l. they have been sanctioned under the provisions of the Bank's rules on procurement, grants or financial instruments.

12. The Bank may also limit the award of a contract to third parties who cannot demonstrate that they have the legal, financial and technical capacity required by the applicable rules and procedures to successfully execute the contract.

VI. Waivers

13. The Bank may grant a waiver of the rules on exclusion from access to funding referred to in the preceding paragraphs where any of the following circumstances arise:
    a. Environmental protection situations;
    b. Public health situation;
    c. Force majeure or any other exceptional circumstance.
14. Waivers of the rules on exclusion from access to funding shall only be granted if they are:
    a. In compliance with the principle of proportionality;
    b. Duly substantiated in writing; and
    c. Approved by the contracting authority.

VII. Evidence in relation to the exclusionary situations

15. The Bank shall not require third parties to provide documentary evidence of their qualifications other than those required by Member States' legislation.
16. Third parties shall be given the opportunity to present evidence that they have not been exposed to the situations stipulated in the funding exclusion rules. Third parties shall be able to respond to any allegations and present evidence in their defence.
17. When an applicant declares one of the exclusionary situations listed in Section V, he or she may also indicate the corrective measures that have been or shall be taken to remedy the exclusionary situation, in order to enable the Bank to determine whether such measures are sufficient to demonstrate the applicant's reliability and creditworthiness.

VIII. Procedure for contesting the exclusion decision

18. The applicant may contest the exclusion decision in accordance with the rules by filing an appeal contesting the decision, where appropriate, to the:
    a. Grant Review Committee ;
    b. Procurement Complaints Committee ;
    c. Credit Risk Committee.
    d. The committees mentioned shall follow the rules applicable to contesting exclusion in procurement processes, grants and loans, guarantees and counter-guarantees.
19. The decision to exclude shall be discussed and confirmed or rejected by the appropriate committee.
20. If the exclusion is rejected, the application shall be considered valid.

ANNEX A: MODEL ARTICLE REFERRED TO IN SECTION II

Rules for exclusion from funding

(1) Documents on tender, grant application, financial instrument award or other similar documents shall indicate the legal status of the third party and demonstrate his/her financial and technical capacity to execute the proposed project. To this end, the third party shall submit a sworn statement concerning the rules on exclusion from funding and, where appropriate, any supporting documents requested, based on a risk assessment. The prerequisite documents shall be indicated in the tender phase or its equivalent. The verification of financial standing shall not apply to natural persons who are beneficiaries of scholarships, the neediest natural persons and those receiving direct support from public bodies.

(2) Third parties shall be excluded from access to funding and the award of contracts where one of the applicant entities or a person with powers of representation, decision-making or control over them, or a member of their administrative, management or supervisory body has been the subject of a final judgment or a final administrative decision for one of the following reasons:

- (a) bankruptcy; domestic or foreign insolvency proceedings
- (b) legal proceedings have been instituted against them which may result either in a declaration of bankruptcy, suspension of payment, insolvency, judicial liquidation proceedings or in the total or partial loss of the right to administer and dispose of their property;
- (c) failure to comply with obligations relating to the payment of taxes or social security contributions in accordance with applicable national law;
- (d) payments to them have been suspended in accordance with a court decision and have resulted in the total or partial loss of the right to administer and dispose of their property;
- (e) they have been convicted, by final judgment, of any crime or offence involving professional misconduct, fraud, corruption or conflict of interest;
- (f) they have been found guilty of serious misrepresentation of the information required to participate in a tender;
- (g) they have been found guilty of corruption of any sort;
- (h) their conduct is linked to a criminal organisation;
- (i) they have been convicted of money laundering or terrorism financing;
- (j) they have been found guilty of child labour or other human trafficking;
- (k) they have not been the subject of any irregularity;
- (l) they have created a fictitious company or have a fictitious company with no substantial activity or professional, technical or material resources to deliver on the grant; or
- (m) they have been sanctioned under the provisions of the Bank's rules on procurement, grants or financial instruments.

(3) The contracting authority may also limit the award of a contract to third parties who cannot demonstrate that they have the legal, financial and technical capacity required by the applicable rules and procedures to successfully execute the contract.

(4) The contracting authority may grant a waiver of the rules on exclusion from access to funding referred to paragraph 2 where any of the following circumstances arise:
    a) Environmental protection situations;
    b) Public health situation;
    c) Force majeure or any other exceptional circumstance.

(5) Waivers of the rules on exclusion from access to funding shall only be granted if they are:
    (a) In compliance with the principle of proportionality;
    (b) Duly substantiated in writing; and
    (c) Approved by the contracting authority.

(6) The contracting authority shall not require third parties to provide documentary evidence of their qualifications other than those required by Member States' laws.

(7) Third parties shall be given the opportunity to present evidence that they have not been exposed to the situations stipulated in the funding exclusion rules. Third parties shall be able to respond to any allegations and present evidence in their defence.

(8) When an applicant declares one of the exclusionary situations listed in paragraph 2 of regulation, he or she may also indicate the corrective measures that have been or will take to remedy the exclusionary situation, in order for the contracting authority to determine whether such measures are sufficient to demonstrate the applicant's reliability.

(9) The applicant may contest the exclusion decision in accordance with the applicable rules.

(10) The decision to exclude shall be discussed and confirmed or rejected by the appropriate committee.

(11) If the exclusion is rejected, the application shall be considered valid.

ANNEX B: MODEL SWORN DECLARATION

The sworn declaration of the beneficiary of a contract, grant or financial instrument is provided below and should be adapted as appropriate:

AFFIDAVIT (name of the legal instrument)

For natural persons	For legal persons
Name: Passport or national identification number:	Full official name: Legal form: Legal registration number: Full official address: VAT/Tax registration:
Signature: Date:	Signature of the director: Date:

Hereby declares that the above-mentioned person:

(1) Is eligible in accordance with the specific criteria stated in this Agreement (insert identification of the specific instrument);
(2) Has the required financial and operational capacity, as indicated in the specific solicitation documents;
(3) Has no established debt obligation to EBID; and
(4) Is not in one of the following situations:
    (a) he/she is bankrupt, is the subject of insolvency proceedings, has his/her assets administered by a liquidator or by a court, has entered into an arrangement with creditors, has suspended business activities or is in any analogous situation arising from a situation similar to that provided for under the national laws of ECOWAS Member States;
    (b) it has been established by a final judgment or a final administrative decision that the person has failed to pay taxes or social security contributions as required by applicable law;
    (c) it has been established by a final judgment or a final administrative decision that the person has been found guilty of gross professional misconduct by contravening applicable laws or regulations or the ethical standards of the profession to which he or she belongs, or by engaging in any misconduct affecting his or her professional credibility, where such conduct shows prejudicial intent or gross negligence, including in particular any of the following elements
        (i) fraudulently or negligently misrepresented information necessary for the verification of the absence of grounds for exclusion or compliance with eligibility or selection criteria or for the execution of a contract or agreement;

(ii) entered into agreements with other persons with the aim of distorting competition;
(iii) infringed intellectual property rights;
(iv) attempted to influence the decision-making process of the contracting authority during the award process; or
(v) attempted to obtain confidential information that could give him/her an unfair advantage in the award process.

(d) it has been established by a final judgment that the person is guilty of one of the following acts:
(i) Fraud or corruption under international, ECOWAS or Member State laws;
(ii) Conduct linked to a criminal organisation under international, ECOWAS or Member State laws;
(iii) Money laundering or terrorism financing under international, ECOWAS or Member State laws;
(iv) Terrorism offences or offences related to terrorist activities as well as inciting, aiding, abetting or attempting to commit such offences under international, ECOWAS or Member State laws; or
(v) Child labour or other offences related to trafficking in human beings as provided for in ECOWAS, international and Member State laws.

(e) he/she has shown significant failures to comply with key obligations in the execution of a contract or agreement funded by the ECOWAS budget, which have led to its early termination or to the application of damages or other contractual penalties, or which have been discovered as a result of verifications, audits or investigations by an ECOWAS Contracting Authority, a Contracting Authority of a Member State or the Court of Audit;

(f) it has been established by a final judgment or a final administrative decision that the person has committed a serious irregularity under the laws of ECOWAS or the Member States;

(g) it has been established by a final judgment or a final administrative decision that the person has created an entity in another jurisdiction with the intention of evading tax, social security or other legal obligations in the jurisdiction of its registered office, main administration or principal place of business.

(h) (Only for legal persons) it has been established by a final judgment or a final administrative decision that the person was created with the intention stated in point (g).

(5) It also states that, for the situations mentioned in (c) to (h) above, in the absence of a final judgment or a final administrative decision, the person shall not be:

(a) Subject to alleged facts in the context of audits or investigations conducted by the Member State's Prosecutor's Office, Court of Auditors, or the ECOWAS Auditor General, or any other audits or inspections conducted under the responsibility of an ECOWAS contracting authority;

(b) subject to non-final judgements or non-final administrative decisions which may include disciplinary measures by the competent supervisory body responsible for monitoring compliance with ethical standards;

(c) subject to the facts mentioned in the decisions of the entities or persons in charge of implementing the ECOWAS budget;

(d) subject to the information provided by the Member States;
(e) informed, by any means, that he/she is the subject of an investigation by an anti-fraud agency of a Member State: either because he/she has been given the opportunity to comment on facts concerning him/her by the anti-fraud agency, or if he/she has been the subject of on-the-spot checks by an anti-fraud agency in the course of an investigation, or if he/she has been notified of the opening, closure or any circumstance relating to an investigation by an anti-fraud agency concerning him/her.

(6) Furthermore, he/she hereby declares that none of the natural or legal persons who bear unlimited liability for the debts of the above-mentioned legal persons, or who are members of the administrative, management or supervisory body of the above-mentioned person, or who have powers of representation, decision-making or control over the above-mentioned legal person, shall be in any of the situations listed above.

IN CASE OF A POSITIVE ANSWER TO ONE OF THE SITUATIONS, PLEASE INDICATE IN THE ANNEX TO THIS DECLARATION.

If the person declares one of the above listed exclusionary situations, he/she may indicate the corrective measures he/she has taken to remedy the exclusionary situation, in order to enable EBID to determine whether these measures are sufficient to demonstrate his/her reliability. This may include, for example, technical, organisational and personnel measures to prevent further occurrences, compensate for damages or the payment of fines or any taxes or social security contributions. Relevant supporting documentation illustrating the corrective measures taken should be provided as an annex to this declaration. This shall not apply to situations mentioned in point 4. d) of this declaration.

Upon request and within the time limit set by the contracting authority, the person shall provide information on the natural or legal persons who are members of the administrative, management or supervisory body or who have powers of representation, decision-making or control, including legal and natural persons within the ownership and control structure and beneficial owners, and appropriate evidence that none of these persons are in one of the situations of exclusion mentioned in points 4(c)-(f).

He/she shall also provide the following evidence concerning the person and the natural or legal persons on whose capacity he/she intends to rely on, or a subcontractor, and concerning the natural or legal persons who shall be indefinitely liable for the person's debts:

For the situations described in 4. (a), (c), (d), (f), (g) and (h) above, a recent police character certificate shall be requested or, failing this, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person certifying that these conditions have been fulfilled.

For the situation described in point 4 (a), (b), submission of recent certificates issued by the competent authorities of the country of establishment. These documents should serve as evidence of payment of all taxes and social security contributions for which the person is liable, including for example VAT, income tax (natural persons only), corporation tax (legal persons only) and social security contributions. Where a document referred to above is not issued in the country concerned, it may be replaced by a sworn statement before a judicial authority or a notary or, failing that, a sworn statement before an administrative authority or a qualified professional body in the home country.