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Procurement Policies and Rules



European Bank
for Reconstruction and Development

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Purpose

This Policy sets out the Bank's policies and rules governing procurement of good, works, services and consultancy services contracted by the Bank's clients in Bank-financed projects¹.

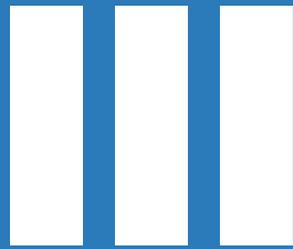
This Policy supersedes the Procurement Policies and Rules (BDS08-205/F/REV1)

¹ In these policies and rules, the terms Bank-financed operations, Bank-financed projects and Bank-financed contracts refer to operations, projects and contracts that are financed in whole or in part from the ordinary capital resources or Special Funds resources of the Bank or from any other resources or grants administered by the Bank

Definitions

As used in this Policy, the following terms have the meanings set out below:

consultancy services	Professional advisory and consultancy services delivered by individuals and/or consulting firms.
control (including, with correlative meanings the terms “controlled by” and “under common control with”)	Means, in relation to an entity, the ability to effectively determine the decisions and policies of such entity.
Enforcement Policy and Procedures	The Enforcement Policy and Procedures [BDS10-126/f/REV1] as amended from time to time.
Environmental and Social Policy	The Environmental and Social Policy [BDS14-091F] as amended from time to time.
Framework Agreement	An agreement with suppliers, contractors or consultants to establish terms governing contracts that may be awarded during the life of the agreement. In other words, it is a general term for agreements that set out terms and conditions for making specific call-offs.
goods	Tangible products such as: vehicles, pumps, meters, turbines, etc.
Incoterms	Trade terms established by the International Chamber of Commerce
Open Tendering	Has the meaning given to it in Section III, Article 3.8.
Prohibited Practice	As defined in the Enforcement Policy and Procedures.
Public Information Policy	The Public Information Policy [BDS14-084 (F)] as amended from time to time.
services	Non-tangible services, including major labour contracts such as, maintenance, training delivery, as well as software licensing and maintenance and more incidental assistance in the form of equipment rental, etc.
Simplified Open Tendering	Has the meaning given to it in Section III, Article 3.8.
supply and installation contract	An agreement which is a mixture of service or labour and transfer of goods, where the goods element is more predominant than the labour. Under a Supply and Installation contract the contractor agrees to do certain job i.e. an agreement of building construction, manufacture, processing, fabrication, erection, installation, repair or commissioning of any movable or immovable property such as major plants, etc.
works contract	An agreement which is a mixture of service or labour and transfer of goods but where the labour element is more predominant than the goods and equipment. Under a works contract the contractor agrees to do certain job i.e. an agreement of building construction, manufacture, processing, fabrication, erection, installation, repair or commissioning of any movable or immovable property such as roads, bridges etc.



Scope

1

Introduction

1.1 The establishment of sound procurement policies and practices is an integral part of the transition process and the Bank's transition mandate. In their transition to market economies and in applying the principles of multiparty democracy, the countries of operations of the European Bank for Reconstruction and Development need to achieve economy and efficiency in both public and private sector operations, and transparency and accountability in public administration. Competition is the proven way to achieve economy, and it is also the fundamental principle of good procurement practice.

1.2 Open and fair procedures for awarding public sector contracts for goods, works and services help to create dependable and stable markets for efficient private enterprises. They also form the basis for establishing accountability and encourage the cost-effective use of public funds, a matter that is of concern for both the Bank and its countries of operations. Article 13 of the Agreement Establishing the European Bank for Reconstruction and Development requires that:

“(xii) the Bank shall place no restriction upon the procurement of goods and services from any country from the proceeds of any loan, investment or other financing undertaken in the ordinary or special operations of the Bank, and shall, in all appropriate cases, make its loans and other operations conditional

on international invitations to tender being arranged; and (xiii) the Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank, or any equity investment, are used only for the purposes for which the loan or equity investment was granted and with due attention to considerations of economy and efficiency.”

1.3 At the level of specific projects, which are the focus of the Bank's operations, the efficiency of the procurement process directly affects the costs and the time required for project execution and the ultimate performance of the operation. Good procurement practices should lead to significant time and money savings for the Bank's clients and help ensure successful project implementation and sustainable operation. The Bank encourages the use of electronic procurement platforms as a tool for efficiency and may require clients to use Bank accepted platforms for specific projects or contracts.

1.4 The Bank will help countries of operations meet their objectives of achieving economic development and transforming their public administration systems by carefully selecting and designing the projects it supports and by assisting in the development of appropriate institutions that are consistent with the philosophy and needs of market economies. Fostering sound procurement regulations and practices and institutional capacity building is essential in this effort.

1.5 The Bank, as part of its commitment to sustainable economic development, promotes the application of good international practice regarding environmental, health and safety, and social matters as stipulated in the Environmental and Social Policy and as further detailed in the legal documentation for specific projects. This commitment will, to the extent appropriate, be reflected in the procurement documents used in Bank operations.

1.6 Supplementing the principles contained in the Agreement Establishing the Bank, this document sets out the procurement policies and rules to be followed in Bank-financed operations. Section III, Article 2 describes general principles and considerations that are applicable for all Bank financed operations involving the public sector. Section III, Article 3 contains rules for procurement of goods, works and services in Bank financed operations involving the public sector². Section III, Article 4 describes procurement considerations in Bank-financed operations in the private sector. Section III, Article 5 contains rules for the selection of consultants by clients in Bank-financed public sector operations.

² See Section III, Article 3.2.

2

Principles and Considerations

2.1 The “Chairman’s Report on the Agreement Establishing the European Bank for Reconstruction and Development”, Article 13, Paragraph 6, notes agreement:

“... upon completely open procurement (and not procurement open only to members) based on international tendering, where appropriate, and ... such tenders should be genuinely competitive, in line with the GATT Agreement on Government Procurement.”³”

The WTO/GPA (Government Procurement Agreement) establishes a framework of rights and obligations with respect to laws, regulations, procedures and practices regarding public procurement. The aim of the WTO/GPA is to achieve greater liberalisation and expansion of world trade by establishing transparent, fair and open procurement practices. The Bank supports the development of public procurement laws and practices within its countries of operations that are consistent with the principles of the WTO/GPA.

2.2 The underlying principle of WTO/GPA and the underpinning for the Bank’s policies is that public sector contracts should normally be awarded on the basis of open competitive tenders. Bank financed contracts may be awarded on the basis of procurement methods other than Open Tendering or Simplified Open Tendering only in specially justified cases or when contract values are expected to be below the prescribed thresholds for use of the open tender procedures. The laws and practices for carrying out procurement should not discriminate or provide unfair advantages between foreign and local products, suppliers or contractors and the procedures should be transparent and fairly applied.

2.3 The Bank may periodically review the procurement laws, regulations and procedures in its countries of operations and may provide advisory services, technical assistance and capacity building to assist in reaching consistency with the principles of the WTO/GPA and good international practice such as those reflected in the UNCITRAL Model Law.

2.4 The Bank works in close cooperation with other multilateral financial institutions and development support initiatives such as the EC Cohesion and Structural Funds and seeks to increase the flow of investments to its countries of operations by co-financing projects. When projects are co-financed on a joint basis, this Policy will apply for co-financed contracts. However, in exceptional cases the Bank may agree, on a case by case basis and subject to the approval of the Board of Directors, to the application of alternative procurement rules as applied by other institutions, provided the Bank is satisfied that those alternative procedures are fair and transparent, generally in line with the key principles of this Policy and good international practice and that acceptable alternative monitoring procedures are in place. When projects are co-financed on a parallel basis, the co-financiers’ procurement procedures will normally apply for contracts financed by them but the Bank will assure itself that contracts adequately support the successful implementation of the project.

2.5 The Bank’s concerns for value for money through efficient, effective and economic use of resources, and the concern for, sustainability, quality of results, contractual protection and timely completion cover an entire project even if Bank funds are applied only to a portion of the project. The Bank will finance only those contracts that are an agreed part of a project and that have been awarded and executed in accordance with the agreed procedures to be applied to that project.

Eligibility

2.6 The Bank permits firms and individuals from all countries to offer goods, works and services, including consultancy services, for Bank-financed projects regardless of whether the country is a member of the Bank. Firms and individuals from developing countries as well as from the Bank’s countries of operations are encouraged to participate on equal terms and thereby assist their own country’s development process. Any conditions for contract award shall be limited to those that are essential to ensure the eligible firm or individual’s legal, financial, commercial and technical capability to fulfil the contract in question. Clients of the Bank will not exclude a firm or individual from participation in a tender process⁴ or contract award for reasons unrelated to its capability to perform the contract unless the firm or individual (a) has been declared, and remains, as at the relevant date, ineligible pursuant to the Enforcement Policy and Procedures; (b) has a conflict of interest or an unfair competitive advantage; (c) has been convicted of an intentional crime, or an affiliate of the firm has been convicted of an intentional crime, and any such criminal conviction is final in the relevant national jurisdiction, with no more than ten years having lapsed between the date on which the

³ Replaced by WTO/GPA (Government Procurement Agreement).

⁴ See also Section III, Articles 3.23, 3.24 and 3.25.

criminal conviction became final and the date of eligible assessment, and the Bank concludes that the judicial proceedings provided for adequate due process acceptable to the Bank; or (d) is prohibited under relevant national law from entering into commercial relations with the client, provided the prohibition relates to a Prohibited Practice, which had been determined through judicial or administrative proceedings with adequate due process acceptable to the Bank.

2.7 Consistent with international law, the proceeds of the Bank's loans, equity investments, guarantees or grants shall not be used for payment to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. Persons or entities, or suppliers offering goods, works and services, covered by such prohibition shall therefore not be eligible for the award of Bank-financed contracts.

Responsibilities

2.8 Clients are fully responsible for implementing Bank-financed projects, including all aspects of the procurement process from the planning stage through the award of contracts, as well as the administration and implementation of the contracts including resolving claims and disputes. The Bank reviews the procurement delivery strategy and the relevant documents in the procurement process and may advise and assist clients in the procurement process and institutional development for specific projects but is not a party to the resulting contracts. The rights and obligations of the client vis-à-vis tenderers for goods, works, services and consultancy services to be furnished for the project will be governed by the tender or selection documents issued by the client and not by this Policy. When required by the Bank, clients must use the electronic procurement portals mandated by the Bank. The use of electronic procurement portals by the client

does not create any obligation or liability on the part of the Bank in respect of the procurement process, which remain the responsibility of the Bank's client.

Prohibited Practices

2.9 The Bank requires that clients (including beneficiaries of Bank-financed operations), as well as tenderers, suppliers, contractors, and consultants under Bank-financed contracts including any sub-supplier, sub-contractor or sub-consultant, observe the highest standard of transparency and integrity during the procurement, execution and implementation of such contracts.

Any occurrence, or suspected occurrence, of a Prohibited Practice in the procurement, award, or implementation of a Bank-financed contract shall be dealt with in accordance with the provisions of the Enforcement Policy and Procedures. Suppliers and contractors selected pursuant to Section III, Article 2.4 and Article 3 (Procurement Rules for Public Sector operations), and consultants selected pursuant to Section III, Article 5 (Procurement of Consultancy Services) and any sub-supplier, sub-contractor or sub-consultant thereof, as well as the Bank's clients shall fully cooperate with the Bank in any investigation into an alleged Prohibited Practice to be carried out pursuant to the Enforcement Policy and Procedures and shall permit the Bank or its representative to inspect such of their accounts and records as may be relevant for such investigation and to have such records and accounts audited by the auditors appointed by the Bank. Provisions to this effect will be included in the Bank's financing agreements with its clients, and in any contracts awarded pursuant to Section III, Article 3 (Procurement Rules for Public Sector operations, (excluding Article 3.10) or Section III, Article 5 (Procurement of Consultancy Services).

Procurement related Complaints

2.10 Participants in a procurement process governed by this Policy (excluding under other procurement arrangements agreed in accordance with Section III, Articles 2.4, 3.10, 3.11 or Article 4 (Procurement in Private Sector Operations)) are entitled to a debriefing, which may be monitored by the Bank, and to submit a procurement related complaint in accordance with the Bank's procurement complaints process.

2.11 When a complaint regarding any aspect of a tender procedure is received by the Bank in accordance with its procurement complaint process, the Bank will ensure that the complaint is fully reviewed to its satisfaction and that the Bank's conclusion is communicated to the complainant and the Bank's client. When a complaint is addressed to the client, the client will review and respond to the complaint.

Misprocurement

2.12 If at any time in a procurement or consultancy selection process for a Bank-financed contract, even after award of contract, the Bank finds that the procurement, selection, award, or administration of a contract, including any agreed modification or waiver of such contract, has not been carried out materially in accordance with the agreed procedures, it will promptly inform the client and state the reasons for such determination. The contract may no longer be eligible for financing and the outstanding portion of the financing allocated to the contract may be cancelled. If the client has proceeded to award such a contract after issuance of the Bank's no objection, the Bank may declare the contract to be ineligible for financing if it determines that its no objection was based on incomplete, inaccurate or misleading information about the procurement or contract administration process furnished by the client, or if it determines that the client or the successful tenderer has engaged in Prohibited Practices.

3

Procurement Rules for Public sector operations

General

3.1 Competition is the foundation for good procurement practice. In addition to economy and efficiency, the public sector requires transparency and accountability for the use of public funds, and this affects the choice of the procurement method and the documentation and procedures that are used. Therefore the Bank requires its public sector clients, in all appropriate cases, to obtain goods, works and services through Open Tendering or Simplified Open Tendering procedures in accordance with the rules outlined in this Article. Other methods may be appropriate for special circumstances, depending on the nature and value of the goods, works or services to be obtained, the required completion time and other considerations. All procurement methods other than Open Tendering or Simplified Open Tendering shall be clearly justified and agreed by the Bank, and specified in the legal documentation.

Applicability of these Rules

- 3.2** For the purpose of these rules, public sector operations are operations in a country of operation:
- a) which are extended to or guaranteed by such country of operations; or
 - b) for utilities⁵ majority owned or controlled by national or local governments, or government agencies of such country of operations; or
 - c) which are extended to or guaranteed by national or local governments of such country of operations or agencies and enterprises majority owned or controlled by any of them, other than such enterprises that in the Bank's judgement are operating autonomously⁶ in a competitive market environment and are subject to bankruptcy or insolvency law.
- 3.3** These rules apply to all forms of acquisition of goods, works and services (except consulting services for which the procedures are described in Section III, Article 5 (Procurement of Consultant Services), including, inter alia, purchase, hire-purchase, rental and leasing.

⁵ "Utilities" are authorities or undertakings which directly provide or operate fixed networks intended to provide a service to the public in water, waste water, electricity, gas, heat, telecommunications or rail transport.

⁶ Meaning that the enterprise in question is not subject to national public procurement law or similar provisions and follows, to the Bank's satisfaction, sound procurement practices comparable to those described in Section III, Article 4 (Procurement in private Sector operations) of these rules.

Procurement Process

- 3.4** The normal process for public sector procurement involves the following steps:
- a) procurement planning including a market analysis and a project delivery strategy;
 - b) notification of opportunities for tendering;
 - c) prequalification where appropriate;
 - d) invitation to tender and issuance of tender documents;
 - e) submission of tenders, evaluation of tenders and contract award; and
 - f) contract implementation and administration.

The extent of the process and specific procedures to be followed for each step will depend on the method of tendering that is used.

Procurement Planning

- 3.5** Sound planning of procurement is crucial. The client shall determine what goods, works and services are required or the defined functionality to carry out the project, when they must be delivered, what standards are needed, the resources and capacity needed to implement the procurement processes and the contracts, as well as the need for funding and which procurement and contracting procedure is most suitable for each contract. The client shall prepare and complete the overall procurement delivery strategy, including the procurement plan and the Bank shall provide its no objection to it before any procurement begins. The particular procedures and the goods, works and services to which they apply are determined by agreement between the Bank and the client and are specified in the legal documentation. Adjustments and refinements to the project delivery strategy and the procurement plan, with the Bank's no objection, may continue as needed throughout the duration of the project.

Notification

- 3.6** After the procurement plan has been prepared and as early in the project cycle as possible, the client shall issue a General Procurement Notice that advises the business community about the nature of the project. This notice shall include the amount and purpose of the Bank's financing and the overall procurement plan, including:
- a) the rules and procedures to be applied;
 - b) the goods, works, services and consultancy services to be procured;
 - c) the expected timing; and
 - d) a name and contact address where to express interest and obtain additional information.

This notice shall be published on the client's own website and/or official government procurement portal, where available, or in a newspaper with wide circulation in the client's country or in official gazettes or international trade publications, as appropriate. In addition, the notice shall be submitted to the Bank which will publish the notice on the Bank's website (www.ebrd.com) and/or the Bank's e-procurement portal to allow appropriate time for potential tenderers to be made aware of the upcoming opportunities. The Bank will also arrange for publication in the United Nations Development Business and in the Official Journal of the European Union as appropriate. The General Procurement Notice shall be updated annually as long as any goods, works, services or consultancy services remain to be procured. An invitation to tender shall not be published before the General Procurement Notice has been published.

3.7 Open Tendering and Simplified Open Tendering, including prequalification where required, for individual contracts shall be advertised in the same media and manner as the General Procurement Notice. In order to facilitate the participation of sub-contractors and suppliers in contracts or the creation of joint ventures and consortia, the client shall upon request make available the list of potential tenderers that have formally obtained the tender documents and, where pre-qualification is being followed, the list of pre-qualified entities.

Open Tendering and Simplified Open Tendering

3.8 Open Tendering and Simplified Open Tendering procedures are those procedures under which all interested suppliers or contractors are given adequate notification of contract requirements and all such tenderers are given an equal opportunity to submit a tender. It provides the greatest opportunity for competition and satisfies the needs for economy and efficiency. The client must give sufficient advance public notification of open tendering opportunities for potential tenderers to determine their interest and to prepare and submit their tenders⁷. Simplified Open Tendering follows the same process as for Open Tendering but with a set of standard tender documents that have been designed as suitable for predominantly low value, low complexity goods or works contracts.

Thresholds

Except as otherwise provided for in Section III, Articles 3.9, 3.10 and 3.11, contracts shall be procured following Open Tendering, if their value is estimated to equal, or exceed €250,000 for goods and services and €7.5 million for works and supply and installation contracts. No procurement requirements shall be divided with the intent of reducing the value of the resulting contract(s) below these thresholds with the purpose of circumventing these rules. For goods, works, services and supply and installation contracts below these threshold values, clients are encouraged to follow Open Tendering but may use other procedures provided for in this policy.

Prequalification of Tenderers

Clients shall, unless based on a well justified rationale and subject to a prior no-objection by the Bank, require potential tenderers to prequalify for large and complex contracts and all firms that meet the prequalification criteria shall be allowed to submit tenders. The prequalification criteria, which shall be specified in the prequalification documents, shall be based entirely upon the capability and resources of prospective tenderers to perform the particular contract satisfactorily, taking into account such factors as their (a) experience and past performance on similar contracts, (b) capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position. The prequalification process shall aim at ensuring the broadest possible participation amongst firms capable of performing the contract and shall not be used to limit participation on unreasonable or non-material grounds.

Multi-stage Open Tendering

Detailed design and engineering of the goods and works to be provided, including the preparation of technical specifications and other tendering documents, normally precede the invitation to tender for major contracts. Procurement of works designed by the employer and procurement of standard production goods and equipment will normally be procured using a single stage tendering procedure. However, in the case of: a) turnkey contracts, where the contractor is responsible for the detailed design, b) contracts for large complex plants, c) works of a special nature, d) innovative or bespoke products, e) goods and equipment that are subject to rapid technological advances or which may be produced with many technical variables, or f) any other contracts of a similar nature and complexity, as may be determined by the Bank, a multi-stage Open Tendering procedure shall be used, unless based on a well justified rationale a single stage process has been agreed and the Bank has provided its no-objection. Under multi-stage tendering, first unpriced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments on an

iterative basis, to be followed by amended tender documents and the submission of final technical proposals and priced tenders in the final stage.

Other Procurement Methods and Procedures

3.9 Direct Contracting may be used where:

- a) the extension of an existing contract awarded in accordance with procedures acceptable to the Bank for additional goods, works or services of a similar nature would clearly be economic and efficient and no advantage would be obtained by further competition;
- b) there has been an unsatisfactory response to Open Tendering or Simplified Open Tendering carried out in accordance with this Policy;
- c) a product, works or service can only be provided by a single supplier or contractor because of exclusive capabilities, rights or availability of required products;
- d) standardisation with existing equipment is determined to be important and justified, the number of new items are generally less than the existing number and compatible goods cannot be provided by other suppliers; or
- e) it is a case of extreme urgency brought about by unforeseeable events not attributable to the procuring entity.

In these cases a client may, with the Bank's prior no-objection, invite a single firm to present its tender without prior public notification. Prior to the Bank's no-objection to the signed contract the client shall submit to the Bank the draft contract together with an appropriate justification demonstrating the basis upon which the contract represents value for money.

3.10 Alternative procurement procedures in accordance with national law may be the most economic and efficient method of procuring goods, works or services when: (a) contract values are small; (b) works are scattered geographically or spread over time; (c) the goods, works or services are available locally at prices less than the international market; or (d) by their nature or scope the contracts are unlikely to attract foreign competition.

The procedures applied must be acceptable to the Bank and shall provide for adequate timely notification and fair competition in order to ensure value for money. Evaluation methodology, eligibility requirements and contract conditions shall be acceptable to the Bank and should be made known to all tenderers and applied fairly. Foreign firms should be allowed to participate on equal terms. The Bank may require the use of its standard tender documents with adjustment for local provisions and publication of tender opportunities on its website. The national remedy system for complaints will apply and not the Bank's procurement complaints mechanism. The Bank will encourage clients to use national e-procurement platforms when available and acceptable to the Bank.

3.11 Utilities, agencies and enterprises defined as public sector under Section III, Articles 3.2(b) or (c) which have a significant degree of private ownership and control are expected to follow Open Tendering. However, where such entities have adopted sound procurement rules and procedures, the Bank may agree that such entities follow competitive procedures in accordance with their own rules, provided such procedures are acceptable to the Bank. To be acceptable for use in the procurement of Bank-financed contracts, the procedures of the entity should provide for adequate international notification,⁸ non-discriminatory competition, transparent and fair evaluation procedures, verifiable compliance and independent complaint mechanisms, as well as fair and balanced contracts. The Bank may request adjustments to the procedures to ensure compliance with the principles and considerations of this policy.

Commodities

3.12 The procurement of commodities such as oil and natural gas often involves multiple awards for partial quantities to assure security of supply and multiple purchases over time to take advantage of favourable market conditions. Procurement of commodities

⁷ See Section III, Article 3.20.

⁸ See Section III Articles 3.6 and 3.20.

requires greater flexibility than the Bank's Open Tendering procedures but the key principles of transparency, accountability, economy and efficiency must remain respected in the procurement process. It is recognised that internationally established market practices may be taken into account when agreeing on the procedures to be applied. The procedures applied shall however be acceptable to the Bank.

Tender Documentation

3.13 Tender documents are the basis for informing potential tenderers of the requirements to supply specific goods and services or to construct works, and they must furnish all information necessary to permit tenderers to submit responsive tenders. Tender documents shall be drafted so as to permit and encourage international competition. They shall clearly define the scope of works, goods or services to be supplied, the rights and obligations of the purchaser and of suppliers and contractors, and the conditions to be met in order for a tender to be declared responsive. They shall set out fair and non-discriminatory criteria for selecting the winning tender. The detail and complexity will vary according to the size and nature of the contract but generally they should include an invitation to tender, instructions to tenderers, the form of tender, tender security requirements, qualification and evaluation criteria, the conditions of contract, advance payment guarantees and performance security requirements, technical specifications and drawings, a schedule or requirements for the goods, works or services, and the form of contract. Clients shall use the Bank's standard tender documents appropriate for each type, complexity and value of procurement, where available.

Evaluation Criteria

3.14 Tender documents shall specify the relevant factors in addition to the submitted tender price to be considered in tender evaluation

and the manner in which they will be applied for the purpose of determining the most economically advantageous tender. Factors which may be taken into consideration include, inter alia, the payment schedule, the time of completion of construction or delivery, the operating and maintenance costs, the efficiency and compatibility of the equipment, performance and quality⁹, environmental considerations and requirements, the availability of service and spare parts, and minor deviations or omissions, if any. The factors, related to the subject matter, other than price to be used for determining the most economically advantageous tender shall be expressed in monetary terms or, where that is not possible for demonstrable reasons, given a relative weight in the evaluation provisions of the tender documents. The tender which is the most economically advantageous tender, but not necessarily with the lowest submitted tender price, submitted by a qualified tenderer, shall be selected for award.

Language

3.15 Unless otherwise agreed with the Bank, tender documentation, including all published procurement notices, shall be prepared and issued by the client in one of the Bank's working languages. In the interest of broad competition as well as economy and efficiency, the client may prepare further sets, or parts, of the tender documentation in the local language, in order to assist local firms in tendering.

All documents required by the Bank for review and notification purposes shall be submitted to the Bank in English. In the event of a procurement complaint, the Bank may also require certified English translations of the relevant documents. The Bank will determine on the basis of such English language documentation whether procurement has been carried out in accordance with the agreed procedures.

Standards and Specifications

3.16 Specifications shall be based on relevant quality characteristics and/or performance requirements. Clients shall use international standards and specifications wherever these are available and appropriate. If particular national or other standards are used, the tender documents shall state that other standards that ensure equivalent or higher quality or performance than the specified standard would also be accepted. The use of brand names or other designations that would discriminate among suppliers shall be avoided. If they are necessary to clarify the nature of the product requirements, the tender documents shall state that products of equivalent or higher quality would be acceptable.

Tender Prices

3.17 Tender prices for the supply of goods shall be requested on the basis of relevant Incoterms, as agreed with the Bank, provided that the evaluation ensures a fair and equal comparison between locally and foreign supplied goods. Tender prices for works and services contracts may be requested inclusive of all duties, taxes and other levies. The evaluation and comparison of tenders shall be on this basis and the selected contractor would be responsible for all duties, taxes and levies in the performance of the contract.

Currency

3.18 Clients shall, with the agreement of the Bank, determine the currency or currencies in which the tender prices must be quoted. Where multiple currencies are permitted, for the purpose of tender evaluation and comparison, tender prices shall be converted to a single currency, selected by the client, using the selling (exchange) rates for the currencies of the tender price quoted by an official source (such as the central bank) for similar transactions on the date of the tender

opening, unless otherwise agreed with the Bank, and specified in the tender documents. Payment under the contract will be made in the currency or currencies of the contract, unless otherwise agreed with the Bank.

Payment

3.19 Payment terms and procedures shall be in accordance with internationally acceptable commercial practices applicable to the goods, works or services in question. Contracts for supply of goods shall provide for full payment in accordance with the Incoterms used. For contracts involving installation and commissioning, a portion of the payment may be retained until the supplier or contractor has complied with all its obligations.

Time Limits

3.20 Prescribed time limits for preparation and submission of tenders shall be adequate for all tenderers to prepare and submit tenders depending on the complexity of the contract. Generally not less than 40 days from the publication of the invitation to tender or the availability of tender documents, whichever is later, should be allowed for the preparation and submission of tenders for simple goods, works or services. For large or complex works or equipment, this period should be extended in agreement with the Bank to provide for sufficient time to prepare responsive tenders. For small value contracts of minor complexity and following Simplified Open Tendering procedures or using an e-procurement platform, the period may be further reduced, with the agreement of the Bank. Tender validity periods and delivery dates shall be consistent with the client's reasonable requirements but shall not be used to discriminate against any potential tenderer. In exceptional cases it may be necessary to request tenderers to extend the validity of their tenders. In such cases tenderers shall not be allowed or required to change their tender and shall be free not to give such

⁹ See Section III, Article 3.16.

extension without penalty. Where the tender is for a fixed price contract, provision must be made in the tender documents for the tender price of the successful tenderer to be adjusted for inflation¹⁰ up to the date of contract award, so as to mitigate the risk accruing to tenderers offering such an extension.

Conditions of Contract

3.21 The form of contract to be used must be appropriate to the objectives and circumstances of the project. Contract conditions shall be drafted so as to allocate the risks associated with the contract fairly, with the primary aim of achieving the most economic price and efficient performance of the contract. The contract shall clearly define the scope of goods, works or services to be supplied or performed, the rights and obligations of the client and of suppliers and contractors and should include, inter alia, appropriate provisions for guarantees of performance and warranties, time limits, liability and insurance, acceptance, payment terms and procedures, price adjustment (where appropriate), liquidated damages and bonuses, handling of changes and claims, force majeure, termination, settlement of disputes and governing law. Wherever required by the Bank, standard forms of contract incorporating internationally accepted conditions shall be used.

3.22 Nothing in the tender documents shall be designed to restrict competition or offer an unfair competitive advantage to a tenderer. Clients shall not provide to any potential supplier or contractor information regarding a specific procurement which would have the effect of providing an unfair competitive advantage and/or reducing or precluding competition. All amendments and clarifications to tender documents shall be made available to all participants that have required the tender documents directly from the client.

Tender Participation

3.23 A tenderer may submit only one tender or participate as a joint venture partner or consortium member in only one tender for each contract. Submission or participation by a tenderer or joint venture partner in more than one tender for a contract will result in the rejection of all tenders for that contract in which the party is involved. For the purpose of this Article, a subcontractor is not deemed to be participating in a tender.

3.24 No affiliate¹¹ of the client, or of a procurement agent engaged by the client, shall be eligible for contract award unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the client or the client's agent and the affiliate.

3.25 Where a firm, its affiliates or parent company, in addition to consulting, also has the capability to manufacture or supply goods or to construct works, that firm, its affiliates or parent company cannot be a supplier of goods or works on a project for which it provides or has provided consulting services directly related to the contract in question, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control or that the involvement does not provide the firm with an unfair competitive advantage.

Tender Opening

3.26 Tenders solicited under Open and Simplified Open Tendering procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the opening as well as the availability of information from the opening. The time and place for the opening, and any information announced at the tender opening, shall be strictly in accordance with the relevant provisions contained in the tender documents. Tenders shall be opened in the presence of tenderers or their representatives

who wish to attend. If an e-tendering platform is used the procedures shall provide an equivalent level of transparency as described in this Article. The client shall maintain a complete record of the tender opening, which shall be copied to the Bank directly after the opening. Tenders received after the stipulated deadline for the submission of tenders shall be returned unopened to the tenderer.

Tender Evaluation and Contract Award

3.27 When competitive procedures are used, the client shall evaluate and compare tenders only on the basis of the evaluation criteria set out in the tender documents. The tender evaluation process shall be confidential but the result of the evaluation and a summary of the evaluation, once completed, shall be made available to all tenderers at the same time. Contracts should be awarded within the period of tender validity to the tenderer whose tender has been determined as being substantially responsive and, in terms of the specific evaluation criteria set forth in the tender documentation, is determined as the most economically advantageous tender and who has been determined to be fully capable of undertaking the contract. Tenderers shall not be allowed or asked to change their tender or required to accept new conditions during evaluation or as a condition of award. The terms and conditions of the contract shall not, without the Bank's no objection, materially differ from those on which tenders were invited. The client shall only reject all tenders if there has been unsatisfactory competition, including receiving tender prices that substantially exceed the cost estimates or funds available. In the event that a tender for works is identified during the evaluation process as being considered as abnormally low and the tenderer is subsequently unable to demonstrate beyond reasonable doubt through a clarification process its capability to perform the contract for the offered price, the tender may be rejected subject to prior no-objection by the Bank. In the event that the

client proposes to reject all tenders, the client shall obtain agreement from the Bank on the procedures to be followed.

3.28 The client shall submit to the Bank, in the required format, a report containing the results of the tender evaluation and its recommendation for the award of the contract. The Bank will review the findings and recommendations as the final step in establishing the eligibility of the contract for Bank financing.¹²

Advance Contracting

3.29 In some cases it may be advantageous for the client to sign a contract before the signing of the related Bank financing. Clients undertake such advance contracting at their own risk and the Bank's no objection given to the procedures, documents or the proposal for award does not commit the Bank to make financing available for the project. All procurement procedures must be consistent with this Policy in order for contracts signed in advance of loan approval to be eligible for Bank financing.

Contract Administration

3.30 The client shall administer contracts with due diligence and shall monitor and periodically report to the Bank on the performance of contracts.

3.31 Before agreeing to any modification or waiver of the terms and conditions of a contract or granting an extension of the stipulated time for performance (except in cases of extreme urgency brought about by unforeseeable events not attributable to the procuring entity), the client shall obtain the Bank's no objection to the proposed modification, waiver or extension. Change or variation orders made in accordance with the terms and conditions of the contract shall be subject to the Bank's review before a no objection can be given for disbursement.

¹⁰ An appropriate and official index, such as the official cost of living index in a country expressed in the currency of the tender, must be used.

¹¹ **Affiliate** means, in relation to an entity (the **First Entity**), any entity controlled, directly or indirectly, by the First Entity, any entity that controls, directly or indirectly, the First Entity or any entity directly or indirectly under common control with the First Entity.

¹² See Section III, Article 3.32.

Procurement Monitoring and Bank Review

- 3.32** As an integral part of their project implementation responsibilities, clients are required to prepare and maintain documents and records pertaining to the procurement process and the administration and implementation of contracts for the purpose of the Bank's review. The Bank's ongoing review of the procurement and contract implementation processes will focus on critical steps that are necessary to ensure eligibility of the contract for Bank financing, in particular the procurement plan, the tender documents, the tender evaluation and contract award recommendations, and changes and claims during execution of the contract. Review and approval of the procurement plan by the Bank is one of the essential steps for establishing the use of the proceeds of the loan and/or investment grant.
- 3.33** The client shall make such modifications in procurement documents or reports as the Bank may request. The approved documents or reports shall not be changed without the Bank's no objection.
- 3.34** All contracts to be procured following Open Tendering or Simplified Open Tendering shall normally be subject to the Bank's prior review. The agreed procedures for the project will determine the contracts subject to post review. The Bank may also conduct "independent" procurement reviews of contracts and projects.
- 3.35** For all contracts which are subject to the Bank's prior review process, the following will apply as a minimum:
- a)** prior to an invitation to prequalify or tender, the client shall submit the complete prequalification or tender documents to the Bank for its review and no objection;
 - b)** prior to finalising a prequalification list or awarding a contract, the client shall submit a detailed prequalification or tender evaluation report setting forth the specific reasons on which the recommendation to prequalify firms or award the contract is based, to the Bank for its review and no objection; and
 - c)** one copy of the signed contract shall be furnished to the Bank immediately upon signature of such contract; and
 - d)** Any other information that the Bank may request shall be submitted.
- 3.36** For contracts not subject to prior review, immediately upon signing of the contract the client shall furnish to the Bank, a copy of the signed contract, together with a tender evaluation report for its review and no objection.
- 3.37** The Bank will publish on a periodical basis a description of contracts awarded, the name and nationality of the entity to which the contract was awarded and the contract price.

4

Procurement in Private Sector Operations

- 4.1** The Chairman's Report, in Article 13, Paragraph 6, notes that:

"Private sector enterprises in which the Bank holds equity or debt might be encouraged, but not obliged, to use international tenders to obtain goods or services efficiently and economically."

The Bank's concerns for the appropriate use of funds and for economy and efficiency apply equally to its public sector operations (as defined in Section III, Article 3.2) and its private sector operations. Private sector enterprises often meet these concerns by following established commercial practices other than formal open tendering for their procurement. Wherever appropriate, the Bank will encourage the use of competitive tendering methods by its private sector clients, particularly for large contracts.

- 4.2** The Bank will satisfy itself that private sector clients use appropriate procurement methods which ensure a sound selection of goods and services at fair market prices and that they are making their capital investments in a cost effective manner. Careful procurement planning that takes into account the particular needs of the enterprise is essential for the Bank's evaluation and agreement.
- 4.3** Contracts awarded by private sector clients should be negotiated on an arm's length basis and should be in the best financial interest

of the client company as distinct from the sponsors. Where a shareholder of the client company or one of its affiliates, including parent companies and affiliates of such parent companies, is also a contractor or supplier to the project, the Bank will satisfy itself that the costs are in line with current market prices and the original cost estimates in the operation report, and that the contract conditions are fair and reasonable. The Bank will not finance costs that exceed market levels.

- 4.4** Where the Bank is financing private operators of a public concession, tendering procedures acceptable to the Bank, as set out in the Bank's policy document in respect of the financing of private parties to concessions, should be followed for the selection of the concessionaire.
- 4.5** Where an operation provides funds to a financial intermediary to finance sub-loans to private beneficiaries such as small and medium sized enterprises, the procurement under the sub-loan shall be undertaken by the respective beneficiaries in accordance with normal procurement practices for private sector operations acceptable to the Bank. Where sub-loans are made to public sector beneficiaries, procurement under such sub-loans may be carried out in accordance with Section III, Article 3.10 of this Policy or where the Bank does not have a legal agreement with the end beneficiary the applicable national public procurement laws and regulations.

5

Procurement of Consultant Services

General

5.1 The Bank's clients employ individuals and firms as consultants to provide a wide range of expert advice and consulting services in connection with their operations and management responsibilities. The main concern when choosing consultants should be the quality of the services that are to be provided. The procedures for selecting consultants and contracting for their services must be flexible and transparent to ensure that assignments can be efficiently executed with high standards of performance, while providing the necessary accountability. The procedures described below shall be followed for consultant contracts to be financed by the Bank under public sector operations. For consultant contracts financed with donor funds, which are to be contracted by the Bank's clients, these procedures shall also be followed. When required by the Bank, clients shall use the electronic procurement portal specified by the Bank.

Consultant Selection Procedures

5.2 The selection process for consultants normally involves the following steps:

- defining the scope, objectives and estimated budget, including any anticipated follow-on services and/or extensions, of the proposed assignment and determining the selection procedure to be followed;

- selecting the consultant in accordance with the procedures outlined in Section III, Article 5.3.
- negotiating a contract with the selected consultant; and
- contract administration.

5.3 Consultants shall be selected as follows:

- Direct selection:** For low value contracts, estimated to cost less than €75,000 (including any foreseeable follow on services), a qualified consultant may, subject to the Bank's no-objection, be selected directly, without the requirement to select the consultant competitively, and a contract negotiated with the selected consultant.
- Single stage open competitive selection:** For contracts with consultants that are estimated to cost €75,000 or more (including any foreseeable follow on services), a procurement notice soliciting responses¹³ from qualified consultants shall be published in the procurement section of the Bank's website (www.ebrd.com) and/or an electronic procurement portal as agreed with the Bank. The procurement notice shall include the scope, methodology and objectives of the assignment and the evaluation criteria for the award of the contract. The evaluation of the responses submitted shall be made on the basis of the criteria outlined in the

¹³ Depending on the nature of the assignment a response may take the form of a CV, a technical proposal, with or without a financial proposal, or otherwise as defined in the procurement notice.

procurement notice and the rationale for the choice shall be recorded.

c) Two stage open competitive selection: A detailed description of the scope, methodology and objectives of the assignment normally forms the basis for the selection of consultants through a single stage open competitive selection process. However, for services that are complex or of a special nature, where the objectives (what) can be established but the scope and methodology (how) to achieve the objectives cannot be defined by the client, as determined by the Bank, a two stage open competitive selection process shall be applied. Examples of assignments where it may be impractical to define the methodology to achieve the objectives may include conceptual design, complex IT services and framework arrangements.

In a two stage competitive selection process a procurement notice soliciting expression of interest from qualified consultants shall be published in the procurement section of the Bank's website (www.ebrd.com) and/or an electronic procurement portal as agreed with the Bank. The procurement notice shall include the objectives of the assignment and the criteria for the shortlisting of qualified consultants. The rationale for the inclusion in the shortlist shall be recorded.

The shortlisted consultants shall be invited to submit proposals. The invitation to submit proposals shall include the objectives of the assignment and the evaluation criteria for the award of the contract. The evaluation of the proposals that shall include the scope and methodology shall be made on the basis of the criteria outlined in the invitation to submit proposals and the rationale for the choice shall be recorded.

Shortlist

5.4 Unless based on a well justified rationale and subject to a no-objection by the Bank, shortlists of consultants shall include no less than three and no more than six qualified and experienced

consultants. The list shall comprise a wide geographic spread of consultants, including wherever possible at least one qualified consultant from one of the Bank's countries of operations and no more than two from any one country. The shortlist procedures may in the case of framework arrangements be modified in agreement with the Bank.

Eligibility

5.5 Consultancy contracts shall not be awarded to:

- any affiliate of the client unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the client and the affiliate and that the affiliate would not be placed in a position where its judgement in the execution of the assignment may be biased. Parties involved in the selection process shall not have a conflict of interest, as determined by the Bank.
- consultants who participate in more than one response/expression of interest/proposal for each contract. For the purpose of this Article a sub-consultant is not considered to be participating in a response/expression of interest/proposal.

Language

5.6 Unless otherwise agreed with the Bank, requests for proposals, including all published procurement notices, shall be prepared and issued by the client in one of the Bank's working languages. In the interest of competition as well as economy and efficiency, the client may prepare further sets, or sections, of the request for proposals in the local language, in order to assist local firms in participating.

All documents required by the Bank for review purposes shall be submitted to the Bank in English. In the event of a procurement complaint, the Bank may also require certified translations of the relevant documents. The Bank will determine on the basis of such English language documentation whether procurement has been carried out in accordance with the agreed procedures.

Evaluation and Selection

- 5.7** The evaluation of consultants should principally be based on quality, such as technical considerations including, but not limited to, experience in similar assignments, regional experience, qualifications of key personnel proposed for the assignment, and suitability and quality of the methodology and work plan. The price of the services may be a consideration. The consultant that submits the highest rated response/proposal should be invited to negotiate a contract.
- 5.8** Competition is preferred; however, in some circumstances it may be necessary or advantageous to select directly or continue the engagement with a specific consultant, where:
- a)** the consultant has unique expertise or experience; or
 - b)** the consultant has been or is involved in the early phases of the project such as feasibility or design and it has been determined that continuity is necessary and no advantage would be gained from following competitive procedures; or
 - c)** additional services not included in the original contract have, through unforeseen circumstances, become necessary for the performance of the contracted services, on condition that those additional services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities or when such services, although separable from the performance of the original contract, are strictly necessary for its completion; or
 - d)** there has been an unsatisfactory response to a selection process carried out in accordance with agreed procedures.

In such cases a client may, with the Bank's prior approval, invite the consultant in question to submit a proposal and negotiate a contract.

Contract Negotiations

- 5.9** During contract negotiations the client and the consultant may agree on non-material modifications to the contract. The client shall indicate any changes that may be desirable in the scope of services and in the staffing proposed by the consultant, and appropriate adjustments in the price of services shall then be agreed. The draft final contract must be presented to the Bank for its review and no objection before signing.

Contract Administration

- 5.10** In Bank-financed projects, the client is responsible for managing and administering the consultant's work to ensure high performance standards, authorising payments, making contract changes as may be needed, resolving claims and disputes, ensuring timely and satisfactory completion of the assignment and evaluating the performance of consultants. The client shall make available to the Bank a copy of the signed contract as soon as practical after signature by the parties to the contract.
- 5.11** Before agreeing to any modifications or waiver of the terms and conditions of a contract or granting an extension of the stipulated time for performance (except in cases of extreme urgency brought about by unforeseeable events not attributable to the procuring entity), the client shall obtain the Bank's no objection to the proposed modification, waiver or extension.

Bank Review

- 5.12** The qualifications, experience and terms and conditions of the contract shall be satisfactory to the Bank. The Bank will review, as a minimum, the proposed scope of services and terms of reference, the proposed procurement notice, the proposed shortlist of firms, the invitation to submit proposals (if applicable), the recommendation for consultant selection and the final contract to ensure that the assignment is eligible for Bank financing.
- 5.13** The client shall make such modifications in procurement documents or reports as the Bank shall reasonably request. The approved documents or reports shall not be materially changed without the Bank's no objection.
- 5.14** All consultancy contracts are normally subject to the Bank's prior review. Alternatively, the Bank may conduct post review of contracts and may also require an evaluation by the client of the consultant's performance.
- 5.15** For all contracts which are subject to the Bank's prior review process:
- a)** prior to issuing a procurement notice, if applicable, the client shall submit the complete selection documents to the Bank for its review and no objection;
 - b)** prior to an invitation to submit proposals, if applicable, the client shall submit the proposed shortlist of firms, the terms of reference and the evaluation criteria for the assignment to the Bank for its review and no objection;
 - c)** prior to inviting a selected firm for negotiations, the client shall submit a detailed evaluation report setting forth the specific reasons on which the recommendation to select the successful firm for negotiations is based and the items subject to negotiations, to the Bank for its review and no objection; and
 - d)** one copy of the signed contract shall be furnished to the Bank immediately upon signature of such contract.
- 5.16** For contracts not subject to prior review, the client shall furnish to the Bank, prior to the submission of a withdrawal application in respect of such contract, a copy of the signed contract, together with an evaluation report for its review and no objection.
- 5.17** The Bank shall publish on a periodical basis a description of contracts awarded, the name and nationality of the party to which the contract was awarded and the contract price, including details of qualified consultants who participated in the selection process leading to such contract award.

IV V VI

Waivers, Exceptions and Disclosure

Waivers

The Board of Directors may grant a deviation from a requirement of this Policy that is not explicitly permitted by the terms of this Policy.

Exceptions

The Board of Directors may grant an exception from this Policy in accordance with Section III, Article 2.4.

Disclosure

This Policy will be disclosed on the Bank's website in accordance with the Public Information Policy in effect from time to time.

Transitional Provisions

Transitional Provisions

This Policy shall apply to projects which have received approval of the Concept Memorandum by the Operations Committee (or under delegated authority) after the date referred to in Section VI.

In respect of projects which have received approval of the Concept Memorandum by the Operations Committee (or under delegated authority) before the date referred to in Section VI, the Procurement Policies and Rules (BDS08-205/F/REV1) shall continue to apply unless the client and the Bank have expressly agreed to follow this Policy.

Effective Date

Effective Date

This Policy is effective from 1 November, 2017.



Decision Making Framework

Accountable

The VP Risk and Compliance is the ExCom member accountable for this Policy.

Responsible

The Director of the Procurement Policy and Advisory Department is responsible for this Policy.

Review and Reporting

Review

This Policy will be reviewed in 2022.

Reporting

The Bank shall prepare an annual report on the procurement activities carried out under this Policy.

Related Documents

Related Documents

Enforcement Policy and Procedures [BDS10-126/f/REV1]

Environmental and Social Policy [BDS14-091F]

Public Information Policy [BDS14-084]

Procurement Complaints Directive [Dir...]

Definitions and abbreviations

Abbreviations

EBRD	European Bank for Reconstruction and Development
CIP	Carriage and insurance paid to
DDU	Delivered duty unpaid
EC	European Commission
ECA	Export Credit Agency
GATT	General Agreement on Tariffs and Trade
GPA	the Agreement of Government Procurement
ITT	instructions to tenderers
OECD	Organisation for Economic Co-operation and Development
STD	Standard Tender Documents
WTO	World Trade Organization

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