

*Procurement Policies
and Rules*



European Bank
for Reconstruction and Development

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**Procurement Policies and Rules
for projects financed by the
European Bank
for Reconstruction and Development**

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Revisions

A number of revisions to the EBRD's Procurement Policies and Rules were approved by the Bank's Board of Directors on 23 August 1994, 16 May 1995 and 20 March 1996. The revisions affect the following paragraphs of the original Procurement Policies and Rules dated January 1992.

paragraph numbers		
old	new	
—	2.7	<i>new</i>
2.7	2.8	
3.3	4.4	
3.4	—	<i>deleted</i>
3.5	3.3	
3.3	3.4	
3.7	3.5	
3.8	3.6	
3.9	3.7	
3.10	3.8	
3.11	3.9	
3.12	3.10	
3.13	3.11	
3.14	3.12	
3.15	3.13	
—	3.14	<i>new</i>
3.16	3.15	
3.17	3.16	
—	3.17	<i>new</i>
3.18	3.25	
3.19	3.18	
3.20	3.19	
3.21	3.20	
3.22	3.21	
3.23	3.22	
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old	new	
3.24	3.23	
3.25	3.24	
3.26	3.26	
3.27	3.27	
3.28	3.28	
3.29	3.29	
3.30	3.30	
3.31	3.31	
3.32	3.32	
3.33	3.33	
3.34	3.34	
—	3.35	<i>new</i>
—	3.36	<i>new</i>
—	4.4	<i>new</i>
—	4.5	<i>new</i>
—	5.4	<i>new</i>
—	5.5	<i>new</i>
—	5.6	<i>new</i>
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1. Introduction

1.1 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 (the Bank) need to achieve economy and efficiency in both public and private sector operations, and transparency and accountability in public administration. The establishment of sound procurement policies and practices must be an integral part of the transition process. Competition is the proven way to do this, 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 operation.

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 policies and competent organisations to administer them will be an important target in this effort.

1.5 Supplementing the principles contained in the Agreement Establishing the Bank, this paper sets out the procurement policies and rules to be followed in Bank-financed operations. Section 2 describes general principles and considerations that are applicable for all operations. Section 3 contains rules for procurement in operations involving the public sector. Section 4 describes procurement arrangements in Bank-financed operations in the private sector. Section 5 concerns the selection of consultants by clients in Bank-assisted public sector operations and by the Bank when administering Technical Cooperation Funds or when engaging consultants directly.

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".

The GATT Agreement on Government Procurement establishes a framework of rights and obligations with respect to laws, regulations, procedures and practices regarding public procurement. The aim of the GATT Agreement 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 GATT Agreement.

2.2 The underlying principle of the GATT Agreement and the underpinning for the Bank's policies is that public sector contracts should normally be awarded on the basis of open competitive tenders. Only in special cases should contracts be awarded on the basis of selective or single tendering. The laws and practices for carrying out procurement should not discriminate between foreign and local products, suppliers or contractors and the procedures should be transparent and fairly applied.

2.3 The Bank will periodically review with its countries of operations their procurement laws, regulations and procedures and

will provide advisory services, technical assistance and training to help them reach consistency with the principles of the GATT Agreement and harmonisation with the Bank's policies and rules.

2.4 The Bank works in close cooperation with other multilateral institutions including the World Bank, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the European Union and the European Investment Bank, and seeks to increase the flow of investments to its countries of operations by co-financing projects with multilateral and bilateral development agencies, export credit agencies, and commercial entities. When projects are co-financed on a joint basis, the Bank's procurement policies and rules would normally be applied for co-financed contracts. When projects are co-financed on a parallel basis, the co-financiers' procurement procedures would be applied for contracts financed by them but the Bank will assure itself that quality goods and services are received at economic prices, that contracts are fair and provide adequate protection to the project and that contracts are completed in a timely manner.

2.5 The Bank's concerns for economy and efficiency, 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 Bank's rules as agreed to be applied to that project.

Eligibility

2.6 The Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects regardless of whether the country is a member of the Bank. Firms 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 participation shall be limited to those that are essential to ensure the firm's capability to fulfil the contract in question.¹ Clients will not exclude a firm from open competition for a contract for reasons unrelated to its capability to perform the contract in question unless, as a matter of law or official regulation, the client's country prohibits commercial relations with the firm's country.

2.7 Consistent with international law, the proceeds of the Bank's loans, equity investments or guarantees should 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 and services, covered by such prohibition should therefore not be eligible for the award of Bank-financed contracts.

Client Responsibilities

2.8 Clients are 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 of the contracts themselves. The Bank 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 and services to be furnished for the project will be governed by the tender documents issued by the client and not by these Policies and Rules.

¹ See also paras 3.26, 3.27 and 3.28.

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 procedures in accordance with the rules outlined in this section. 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 exceptions to open tendering should be clearly justified and agreed by the Bank, and specified in the operation report and the legal documentation.

Applicability of the Rules

3.2. For the purpose of these rules, public sector operations² are operations:

- a) which are guaranteed by the government or a public agency or instrumentality of the country of operations; or
- b) for public utilities³ majority owned or controlled⁴ by national or local governments, or government agencies of the country of operations; or

c) for national or local governments of the country of operations or agencies and enterprises majority beneficially owned by any of them, other than such enterprises that in the Bank's judgement are operating autonomously in a competitive market environment and are subject to bankruptcy or insolvency law.

3.3 These rules shall apply to goods, works and services contracts (except consultant services, for which the procedures are described in Section 5) financed in whole or in part by the Bank in public sector operations. Contracts shall be procured following open tendering⁵ if their value is estimated to equal or exceed ECU 200,000 for goods and services and ECU 5 million for works. If the Bank determines that the above thresholds may have the effect of limiting competition or are not likely to ensure the most economic and efficient outcome, more appropriate thresholds would be required for such specific circumstances and would be specified in the Bank's operation report and the legal documentation. No procurement requirement 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 and services contracts below these threshold values, clients are encouraged to follow open tendering but may use other procedures⁶

that are consistent with principles concerning competition, transparency, economy and efficiency and which are acceptable to the Bank.

3.4 The rules apply to all forms of acquisition of goods, works and services (except consulting services for which the procedures are described in Section 5), including, *inter alia*, purchase, hire-purchase, rental and leasing.

Procurement Process

3.5 The normal process for public sector procurement involves the following steps:

- a) Notification of opportunities for tendering;
- b) Prequalification where appropriate;
- c) Invitation to tender and issuance of tender documents;
- d) Receipt of tenders, evaluation of tenders and contract award; and
- e) Contract 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

3.6 Sound planning of procurement is crucial. The client must determine what goods, works and services are required to carry out the project, when they must be delivered, what standards are needed, the need for co-financing⁷ and which procurement and contracting procedure is most suitable for each contract. The client

should complete the overall procurement plan and the Bank should clear the proposals 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 Bank's operation report and the legal documentation. Adjustments and refinements to the plan with the Bank's concurrence should continue as needed throughout the duration of the project. 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.

Notification

3.7 After the procurement plan has been prepared and as early in the project cycle as possible, the client must issue a General Procurement Notice that advises the business community about the nature of the project. This notice should include the amount and purpose of the loan and the overall procurement plan, including: (a) the goods, works and services to be purchased; (b) the expected timing; and (c) a name and address to contact to express interest and obtain additional information. This notice shall be published in a newspaper with wide circulation in the client's country and in official gazettes and international trade publications, as appropriate. In addition, the notice shall be submitted to the Bank not later than 60 days before invitations to tender are issued. The Bank will arrange for publication of the notice in the Bank's *Procurement Opportunities* and in the United Nations' *Development Business*. The General Procurement Notice shall be

² 'Operations' refers to loans, equity investments or guarantees of the Bank.

³ Utilities are authorities or undertakings exercising one of the following activities: the provision or operation of, or supply to, fixed networks providing a service to the public in water, electricity, gas, heat, telecommunications or rail transport.

⁴ Control is measured by the ability to effectively determine the decisions and policies of the utility, and not merely by the ability to set utility tariffs.

⁵ See para 3.9.

⁶ See paras 3.12 and 3.13.

⁷ See para 3.17.

updated annually so long as any goods, works or services remain to be procured by open tender.

3.8 Open tendering, including prequalification where required, for individual contracts shall be advertised in a newspaper with large circulation in the client's country and in official gazettes and international trade publications, as appropriate. The Bank will arrange for publication of the notice in the Bank's *Procurement Opportunities*. Tender and prequalification notices shall also be sent to potential tenderers that have responded with an expression of interest to the General Procurement Notice and to local representatives of foreign countries that are potential suppliers of the goods and works required. Publication of tender notices in international publications such as the United Nations' *Development Business* and the *Official Journal of the European Communities* is also encouraged. In order to encourage and facilitate the participation of sub-contractors and suppliers in contracts, the client should make available to interested parties the list of potential tenderers that have purchased tender documents and, where prequalification is being followed, the list of prequalified tenderers.

Open Tendering

3.9 Open Tendering procedures are those procedures under which all interested suppliers or contractors are given adequate notification of purchase 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 tenders.⁸ Clients may require potential tenderers to prequalify for large and complex contracts and all tenderers that meet the prequalification criteria should be allowed to submit tenders. The notification for prequalification and the evaluation procedure shall be consistent with those for open tendering in these rules. Prequalification is not a form of selective tendering. 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.

Exceptions to Open Tendering

3.10 **Selective Tendering** procedures are similar to those for open tenders except that the client preselects qualified firms, which will be invited to submit tenders. It may be a suitable method for awarding contracts:

- a) where the required product is highly specialised and complex;
- b) where there are only a limited number of suppliers of the particular goods or services needed;
- c) where other conditions limit the number of firms that are able to meet contract requirements; or

- d) where in cases of urgently required critical goods, works or services.

In these cases a client may, with the Bank's approval, invite tenders from a list of qualified firms, selected in a non-discriminatory manner. The list should include foreign firms wherever possible.

3.11 **Single Tendering** may be used in exceptional cases 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 or selective tenders carried out in accordance with the Bank's procurement rules;
- c) a product can only be provided by a single supplier because of exclusive capabilities or rights;
- d) standardisation with existing equipment is determined to be important and justified, the number of new items is generally less than the existing number, and compatible goods cannot be provided by other suppliers; or
- e) it is a case of extreme urgency.

In these cases a client may, with the Bank's approval, invite a single firm to present its tender without prior public notification.

3.12 **Shopping** procedures may be agreed to by the Bank for contracts of a small

value for (a) readily available off-the-shelf items; and (b) standard specification goods. Shopping is a simplified form of competitive purchasing that only requires written price quotations from at least three suppliers, including foreign suppliers wherever possible.

3.13 **Local Competitive Tendering** in accordance with national procedures 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 contracts are unlikely to attract foreign competition. The procedures under which local competitive tendering is carried out must be acceptable to the Bank. They should provide for adequate notification and competition in order to ensure reasonable prices, evaluation criteria should be made known to all tenderers and should be applied fairly, and the conditions of contract should be fair and appropriate to the project. Foreign firms should be allowed to participate in accordance with national procedures.

3.14 In operations with **public utilities**⁹ which are moving towards majority private ownership or control¹⁰ by implementing programmes in this respect, and already have a significant degree of private ownership and control, such utilities should normally be expected to follow open tendering. However, where such utilities are operating autonomously and are subject to or have adopted sound procurement

⁹ See para 3.2 (b).

¹⁰ See footnote 4 in para 3.2.

⁸ See para 3.23.

procedures, the Bank may agree that such utilities follow competitive tendering procedures in accordance with their own procedures, subject to such procedures being acceptable to the Bank. To be acceptable for use in Bank-financed procurement, the procedures of the utility should provide for adequate international notification,¹¹ non-discriminatory competition, transparent and fair evaluation procedures, monitorable compliance, as well as fair and balanced contracts.

Open Tender Documentation

3.15 Tender documents are the basis for informing potential tenderers of the requirements to supply specific goods and services or to construct works, so they should 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 and 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, the conditions of contract, advance payment guarantees, performance security requirements, technical specifications and drawings, a schedule or requirements for the goods,

works or services, and the form of contract. Clients should use the Bank's standard tender documents appropriate for each type of procurement.

3.16 **Evaluation Criteria.** Tender documents shall specify the relevant factors in addition to price to be considered in tender evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated tender. Factors which may be taken into consideration include, *inter alia*, the costs of inland transport to the project site, the payment schedule, the time of completion of construction or delivery, the operating costs, the efficiency and compatibility of the equipment, the availability of service and spare parts, and minor deviations, if any. The factors other than price to be used for determining the lowest evaluated tender should be expressed in monetary terms or, where that is not practicable, given a relative weight in the evaluation provisions of the tender documents.

3.17 **Co-financing.**¹² Where co-financing is required to complete the financing package for an operation and joint co-financing of specific contracts is appropriate, tender invitations may require that tenderers include in their tender specific co-financing offers for the contract. This requirement shall only be used where, in the Bank's judgement, significant competition will be maintained. The agreed level and general terms of the co-financing required shall be specified in the tender documents. These should normally be consistent with the OECD consensus terms when ECA financing is envisaged.

Evaluation of tenders should be based on the evaluated tender price, which could include any finance costs above the specified terms.

3.18 **Language.** Tender documentation, including all published procurement notices, shall be prepared in one of the Bank's working languages, which shall be specified in the tender documents as the governing language. In the interest of open competition as well as economy and efficiency, the Bank may request that tender documentation also be provided in another working language of the Bank. In addition, at the client's option further sets of the tender documentation may be prepared in the local language.

3.19 **Standards and Specifications.** Clients should 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 should be avoided. If they are necessary to clarify the nature of the product requirements, the tender documents shall state that products of equal or higher quality would be acceptable.

3.20 **Tender Prices.** Tender prices for the supply of goods shall be requested on the basis of Incoterms CIP, DAF or similar, border entry point, for foreign goods and ex-factory for local goods. Evaluation of tenders for supply of goods should exclude import duties and taxes payable on

imported goods and on directly imported components to be incorporated in locally supplied goods, but should include all costs associated with the supply, delivery, handling and insurance of the goods to the final destination. Tender prices for works and services contracts to be substantially executed in the purchaser's country 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.

3.21 **Currency.** A tenderer may express the tender price in any currency or in ECU or a combination of these. Purchasers may require tenderers to state the local cost portion of a tender in the local currency. For the purpose of tender evaluation and comparison, tender prices shall be converted to a single currency, selected by the purchaser, 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 a date selected in advance and specified in the tender documents, provided that such date should not be earlier than 30 days prior to the date specified for the opening of tenders nor later than the original date prescribed in the tender documents for the expiry of the period of bid validity. Payment under the contract will be made in the currency or currencies in which the tender price is stated in the tender of the successful tenderer. For civil works and other similar contracts that involve performance in the client's country, and provided the client's currency is fully convertible, the tender price may be

¹¹ See para 3.7.

¹² See para 2.4.

converted into that currency and payment of equivalent amounts will be made in the client's currency without loss or risk to the contractor.

3.22 Payment. Payment terms and procedures shall be in accordance with the international commercial practices applicable to the goods, works or services and the market in question. Contracts for supply of goods shall provide for full payment on delivery and inspection, if so required, of the contracted goods, except for contracts involving installation and commissioning, in which case a portion of the payment may be retained until the supplier has complied with all its obligations.

3.23 Time Limits. Prescribed time limits for preparation and submission of tenders shall be adequate for all tenderers to prepare and submit tenders. Generally not less than 45 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 large or complex works or items of equipment, this period should be extended to 90 days or more. Tender validity periods and delivery dates shall be consistent with the purchaser'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 should not be allowed or required to change their tender and should be free not to give such extension. Where the tender is for a fixed price contract, provision should be made in the tender

documents for the tender price of the successful tenderer to be adjusted for inflation¹³ up to the date of contract award, so as to mitigate the risk accruing to tenderers offering such extension.

3.24 Conditions of Contract. The form of contract to be used should 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 purchaser and of suppliers and contractors, and should include, *inter alia*, appropriate provisions for guarantees of performance and warranties, liability and insurance, acceptance, payment terms and procedures, price adjustment, liquidated damages and bonuses, handling of changes and claims, force majeure, termination, settlement of disputes, and governing law. Wherever appropriate, standard forms of contract incorporating generally accepted international conditions should be used.

3.25 Nothing in the tender documents shall be designed to restrict competition or offer an unfair advantage to a tenderer. Purchasers shall not provide to any potential supplier or contractor information regarding a specific procurement that would have the effect of reducing or precluding competition. All amendments to tender documents must be sent to each recipient of the original tender documents.

Eligibility to Submit Tenders

3.26 A tenderer may submit or participate in any capacity whatsoever in only one tender for each contract. Submission or participation by a tenderer 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. However, this does not limit the inclusion of the same subcontractor in more than one tender.

3.27 No affiliate of a purchasing entity shall be eligible to tender or participate in a tender in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the purchasing entity and the affiliate.

3.28 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 normally cannot be a supplier of goods or works on a project for which it provides consulting services, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control. The exceptions are turnkey, single responsibility, public works concessions or similar undertakings where design, supply and construction activities are an integral part of the contract or where certain proprietary and critical items of equipment and materials are an essential part of the process design.

Tender Opening

3.29 Tenders solicited under open and selective 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 specified for tender opening should be the same as for the latest delivery of tenders or promptly thereafter. On the date and at the time and place described in the tender documents, the client will open all tenders that have been received before the latest time stipulated for the delivery of tenders. Tenders should be opened in the presence of tenderers or their representatives who wish to attend. The name of the tenderer and the total amount of each tender, including alternative tenders if permitted, shall be read aloud and recorded when opened. The client shall maintain a complete record of the tender opening, which should be copied to the Bank. Tenders received after the stipulated deadline for the submission of tenders shall be returned unopened to the tenderer.

Tender Evaluation and Contract Award

3.30 When competitive procedures are used, the client must evaluate all tenders and compare them only on the basis of the evaluation criteria set out in the tender documents. The tender evaluation process up to the award of the contract should be confidential. 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 lowest evaluated and who has been determined to be fully capable of undertaking the contract. Tenderers should not be allowed or asked to change their tender nor required to

¹³ Using an appropriate index such as the official cost of living index of the country of the currency of the tender.

accept new conditions during evaluation or as a condition of award. The terms and conditions of the contract shall not, without the Bank's concurrence, materially differ from those on which tenders were invited. The client should only reject all tenders if there is evidence of collusion or if there has been unsatisfactory competition, including receiving tender prices that substantially exceed the cost estimates or funds available. Before rejecting all tenders, the client must obtain agreement from the Bank on the procedures to follow.

3.31 The client should submit to the Bank 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.¹⁴

Advance Contracting

3.32 In some cases it may be advantageous for the client to sign a contract before the signing of the related Bank loan. Clients undertake such advance contracting at their own risk and the Bank's concurrence with the procedures, documents or the proposal for award does not commit the Bank to make a loan for the project. All procurement procedures must be consistent with the Bank's policies and rules in order for advance contracts to be eligible for Bank financing.

Contract Administration

3.33 The purchaser shall administer contracts with due diligence and shall monitor and report to the Bank on the

performance of contracts. The client shall seek the Bank's concurrence before agreeing to any material modification to the terms and conditions of a contract including, but not limited to: (a) granting a material extension of the stipulated time for performance of a contract; or (b) issuing a change order or orders which in aggregate would increase the cost of a contract by more than 15 per cent of the original price.

Procurement Monitoring and Bank Review

3.34 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 of contracts following their award. The Bank's review of the procurement and contract administration 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 material changes and claims during execution of the contract. These review procedures are described in the Annex. All contracts to be procured following open or selective tendering should normally be subject to the Bank's prior review. The Loan Agreement will specify the contracts subject to review.

3.35 When a complaint regarding any aspect of a tender procedure is received by the Bank, the Bank will ensure that the complaint is fully reviewed to its satisfaction and that, pending the outcome of such review, no decisions are made or

approvals given which could prejudice the outcome of the review.

3.36 If the Bank finds that the procurement or administration of a contract has not been carried out in accordance with the agreed procedures, the contract would no longer be eligible for financing with the proceeds of the loan and the outstanding portion of the loan allocated to the contract would be cancelled.

¹⁴ See para 3.34.

4. Procurement in Private Sector Operations

4.1 The Chairman's Report, in Article 13, paragraph 6, notes that:

"Delegates agreed upon completely open procurement ... based on international tendering, where appropriate, and ... such tenders should be genuinely competitive ... Private sector enterprises in which the Bank held 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 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. Nevertheless, 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 involved in advising or assisting a government or public entity in contracting with private operators for a public works concession, build-operate-transfer (BOT) operation or other similar undertaking which enjoys special or exclusive rights, or other state concession such as a recognised monopoly, with the objective of the Bank ultimately financing the successful candidate, competitive tendering procedures acceptable to the Bank should be followed for the selection of the concessionaire. Such competitive selection procedures would be considered as meeting the objectives of a competitive market environment for the purpose of para 3.2.

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 is 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 must be in accordance with the Bank's procurement rules for public sector operations outlined in Section 3.

5. Procurement of Consultant Services

General

5.1 The Bank and its clients employ individuals and consulting firms 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 provided. The procedures for selecting consultants and contracting for their services should 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 with the proceeds of Bank loans under public sector operations and for contracts with consultants engaged directly by the Bank. For consultant contracts financed with Technical Cooperation Funds, these procedures must also be followed to the extent that they do not conflict with the conditions governing the use of such funds.

Consultant Selection Procedures

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

- a) Defining the scope, objectives and estimated budget of the proposed assignment and determining the selection procedure to be followed;
- b) Identifying consultants that are qualified to perform the required services and preparing a short list of qualified firms;
- c) Inviting proposals from the short-listed firms;

- d) Evaluating and comparing capabilities and proposals and selecting the preferred consultant;
- e) Negotiating a contract with the selected consultant; and
- f) Contract administration.

5.3 Some of these steps may be simplified or omitted, depending on the value of the contract for services to be performed:

- a) For contracts estimated to cost less than ECU 50,000 with individuals or firms, a qualified consultant may be selected directly, without the requirement to prepare a short list, and a contract negotiated with the selected consultant.
- b) For contracts estimated to cost ECU 50,000 or more with individuals, selection should be made on the basis of an evaluation of short-listed, qualified candidates and the rationale for the choice should be recorded.
- c) For contracts with firms that are estimated to cost ECU 50,000 or more and less than ECU 200,000, a short list of qualified firms should be prepared. The selection should be based on an evaluation of the short-listed firms' proven experience and current expertise related to the assignment, without a requirement that the firms submit specific proposals for carrying out the assignment.
- d) Major contracts with firms estimated to cost ECU 200,000 or more should follow a competitive procedure based on invited proposals from a short list of qualified firms.

Short Lists

5.4 Short lists of consultants should normally include no less than three and no more than six qualified and experienced consultants (candidates or firms, as the case may be). The list should normally 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 normally no more than two from any one country. To assist clients and Bank staff in the preparation of short lists the Bank maintains a register of consultants.

5.5 No affiliate of the client shall be included on a short list unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst 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.

5.6 For large assignments with firms estimated to cost ECU 200,000 or more, complex or specialised assignments, or operations involving a significant number of similar assignments, a formal notice soliciting expressions of interest from qualified firms shall be published in the Bank's *Procurement Opportunities*. The short list shall be prepared on the basis of the responses to the solicitation and information from the register of consultants.

Evaluation and Selection

5.7 When formal proposals are requested from a short list of firms, the invitation for proposals should clearly state the criteria for evaluating them. The evaluation of

consultants should normally be based only on technical considerations including, but not limited to, experience in similar assignments, local experience and presence, qualifications of key personnel proposed for the assignment, and suitability and quality of the work plan. For some assignments of a straightforward technical nature, the price of the services can be a secondary consideration but quality should remain the principal factor in selection. When formal proposals have been requested, the consultant that submits the highest rated proposal should be invited to negotiate a contract with the client.

5.8 Competition through a short list is preferred; however, in some circumstances it may be necessary or advantageous to engage or continue with a specific firm, where:

- a) the firm has unique expertise or experience; or
- b) the firm 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. Provision for such an extension, if considered in advance, should be included in the original terms of reference and contract, which preferably should have been awarded after a competitive selection.

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

Contract Negotiations

5.9 During contract negotiations the selected consultant's proposal may be modified by mutual agreement between the client and the consultant. The client should 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 should then be agreed. The draft final contract should be presented to the Bank for review before signing.

Contract Administration

5.10 As in the case of other contracts 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.

Bank Review

5.11 Where consultants are being engaged by a client, the qualifications, experience and terms and conditions of employment of consultants shall be satisfactory to the Bank. The Bank will review the proposed scope of services and terms of reference, the proposed short list of firms, the recommendation for consultant selection and the final contract to ensure that the assignment is eligible for Bank financing. The review procedures are described in the Annex. Consultancy contracts estimated to cost ECU 200,000 or more should normally be subject to the Bank's prior review.

The Loan Agreement will specify the contracts subject to review. The Bank will also require an evaluation by the client of the consultant's performance.

5.12 If the Bank finds that the procurement or administration of a contract has not been carried out in accordance with the agreed procedures, the contract would no longer be eligible for financing with the proceeds of the loan and the outstanding portion of the loan allocated to the contract would be cancelled.

Annex – Bank Review of Procurement Decisions

Contracts for Goods, Works and Services

1. For all contracts which, in accordance with the legal documents, are subject to the Bank's prior review:

- 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 concurrence;
- 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 concurrence; and
- c) one conformed copy of the contract shall be furnished to the Bank prior to the submission of a withdrawal application in respect of such contract.

2. 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 conformed copy of such contract, together with a tender evaluation report for its review and concurrence.

Contracts for Consultant Services

3. For all contracts which, in accordance with the Loan Agreement, are subject to the Bank's prior review:

- a) prior to an invitation to submit proposals, the client shall submit the proposed short list of firms, the scope of

services and terms of reference and the evaluation criteria for the assignment, to the Bank for its review and concurrence;

- b) 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, to the Bank for its review and concurrence; and
- c) one conformed copy of the contract shall be furnished to the Bank prior to the submission of a withdrawal application in respect of such contract.

4. 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 conformed copy of the contract, together with an evaluation report for its review and concurrence.

All Contracts

5. 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 concurrence.

6. Before agreeing to any material modifications or waiver of the terms and conditions of a contract or granting a material extension of the stipulated time for performance or issuing any change order or orders (except in cases of extreme urgency) which in aggregate would increase

the cost of a contract by more than 15 per cent of the original price, the client shall get the Bank's concurrence to the proposed modification, waiver, extension or change order.

7. If the Bank determines that the award of a contract, the contract itself or any modification or waiver of such contract is not consistent with the Loan Agreement, it shall promptly inform the client and state the reasons for such determination.

8. Upon the award of any contract to be financed by the Bank, the Bank may publish a description of such contract, the name and nationality of the party to which the contract was awarded and the contract price.