

# Procurement Policies and Rules



**European Bank**  
for Reconstruction and Development

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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 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 is 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. As part of its commitment to sustainable development, the Bank promotes the application of best practice regarding environmental and social matters as stipulated in the Bank’s Environmental and Social Policy and as further detailed in the legal documentation for specific projects. This will be reflected in the procurement practice in Bank operations to the extent appropriate.

1.5 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.<sup>1</sup> Section 2 describes general principles and considerations that are applicable for all operations. Section 3 contains rules for procurement in Bank-financed operations involving the public sector.<sup>2</sup> Section 4 describes procurement arrangements in Bank-financed operations in the private sector. Section 5 concerns the selection of consultants by clients

<sup>1</sup> In these rules, the terms Bank-financed operations, Bank-financed projects and Bank-financed contracts refer to operations, projects and contracts that are financed from the ordinary capital resources or Special Funds resources of the Bank or from any other resources administered by the Bank to the extent that the application of these rules has been agreed with the donors of such funds.

<sup>2</sup> See Section 3.2.

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.<sup>3</sup>”

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. Contracts may be awarded on the basis of procurement methods other than open tender only in specially justified cases or when contract values are expected to be below the prescribed thresholds for use of the open tender procedure. 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 may periodically review with its countries of operations their procurement laws, regulations and procedures and may provide advisory services, technical assistance and training to help them reach consistency with the principles of the WTO/GPA and harmonisation with the Bank’s policies and rules.

2.4 The Bank works in close cooperation with other multilateral financial institutions including the World Bank, the International Finance Corporation, the Multilateral Investment Guarantee Agency 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 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, provided the Bank is satisfied that those alternative procedures are fair and transparent, and that acceptable alternative monitoring procedures are in place. Such exceptions could also be envisaged in the case of projects jointly co-financed with the EC Cohesion and Structural Funds, subject to Board approval. When projects are co-financed on a parallel basis, the co-financiers’ procurement procedures will 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

<sup>3</sup> Replaced by WTO/GPA (Government Procurement Agreement), effective by 1 January 1996.

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 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 participation shall be limited to those that are essential to ensure the eligible firm or individual's capability to fulfil the contract in question. Clients of the Bank will not exclude a firm or individual from competition for a contract for reasons unrelated to its capability to perform the contract in question unless the firm or individual has been declared, and remains, as at the relevant date, ineligible pursuant to the Bank's Enforcement Policy and Procedures or , unless as a matter of law or official regulation, the client's country prohibits commercial relations with the firm or individual's country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or works required.

2.7 Consistent with international law, the proceeds of the Bank's loans, equity investments or guarantees 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 and services, covered by such prohibition shall 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. The tender documents will include, to the extent appropriate, provisions that are in conformity with the Bank's Environmental and Social Policy.

## Prohibited Practices

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

In pursuance of this policy, the Bank defines the terms set forth below as Prohibited Practices:

- (i) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (ii) **“collusive practice”** means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

<sup>4</sup> See also Paragraphs 3.26, 3.27 and 3.28.

- (iii) **“corrupt practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party; and
- (iv) **“fraudulent practice”** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

Any occurrence, or suspected occurrence, of a Prohibited Practice in the procurement, award or implementation of a Bank-financed contract in the context of a Bank Project<sup>5</sup> shall be dealt with in accordance with the provisions of the Bank’s Enforcement Policy and Procedures. Suppliers and contractors selected pursuant to Section 3, concessionaires selected pursuant to Paragraph 4.4 and consultants selected pursuant to Section 5 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 loan agreements with its clients (including concessionaires selected pursuant to Paragraph 4.4), and in any contracts selected pursuant to Section 3 or Section 5.

### 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 procurement methods other than 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<sup>6</sup> are operations:

- a) which are extended to or guaranteed by the national or local government, or a national, regional or local public entity or instrumentality of the country of operations; or
- b) for utilities<sup>7</sup> majority owned by national or local governments, or government agencies of the country of operations, other than such utilities operated by concessionaires who were awarded their concession following competitive tendering procedures acceptable to the Bank, and which in the Bank’s judgement are operating autonomously and are subject to bankruptcy and insolvency law; 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

<sup>5</sup> As defined in the Bank’s Enforcement Policy and Procedures.

<sup>6</sup> “Operations” refer to loans, equity investments or guarantees of the Bank.

<sup>7</sup> “Utilities” are authorities or undertakings which directly provide or operate fixed networks intended to provide a service to the public in water, wastewater, electricity, gas, heat, telecommunications or rail transport.



autonomously<sup>8</sup> in a competitive market environment and are subject to bankruptcy or insolvency law.

3.3 These rules shall apply to goods, works, supply and installation 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, or by investment grants made available from the Bank's Special Funds resources, whether in public sector or private sector operations. These rules shall also be followed in the case of investment grants which are financed with other funds administered by the Bank, whether in public sector or private sector operations, to the extent that they do not conflict with agreements reached with the donors for the use of such funds. Except as otherwise provided for in Paragraphs 3.10, 3.11, 3.12, 3.13 and 3.14, contracts shall be procured following open tendering<sup>9</sup> 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. 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 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, supply and installation and services contracts below these threshold values, clients are encouraged to follow open tendering but may use other procedures<sup>10</sup> 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 shall 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-financing<sup>11</sup> and which procurement and contracting procedure is most suitable for each contract. The client shall complete the overall 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 plan with the Bank's no objection shall continue as needed throughout the duration of the project.

<sup>8</sup> Meaning that the enterprise in question follows, to the Bank's satisfaction, sound procurement practices comparable to those described in Section 4 of these rules.

<sup>9</sup> See Paragraph 3.9.

<sup>10</sup> See Paragraphs 3.10, 3.11, 3.12, 3.13 and 3.14.

<sup>11</sup> See Paragraph 3.17.

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.

## Notification

3.7 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 loan and/or investment grant and the overall procurement plan, including:

- a) the goods, works and services to be procured;
- b) the expected timing; and
- c) a name and address to contact to express interest and obtain additional information.

This notice shall be published on the Client's own procurement web site and official government procurement portal, where practical, 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 arrange for publication of the notice. The notice shall be published not later than 45 days before invitations to tender are issued in the procurement section of the Bank's web site ([www.ebrd.com](http://www.ebrd.com)). The Bank shall also arrange for publication in the United Nations Development Business and in the Official Journal of the European Union. The General Procurement Notice shall be updated annually so long as any goods, works or services remain to be procured.

3.8 Open tendering, including prequalification where required, for individual contracts shall be advertised on the Client's own procurement web site and official government procurement portal, where practical, or in a newspaper with large

circulation in the client's country or in official gazettes or international trade publications, as appropriate. The Bank will arrange for publication of the notice in the Procurement opportunities section of the Bank's web site. Tender and prequalification notices shall also be sent to potential tenderers that have responded with an expression of interest to the General Procurement Notice. The Bank shall also arrange for publication in the United Nations Development Business and in the Official Journal of the European Union. In order to facilitate the participation of sub-contractors and suppliers in contracts or the creation of joint ventures and consortia, the client shall 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 entities.

## Open Tendering

3.9 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 tenders.<sup>12</sup>

## Prequalification of Tenderers

Clients shall when appropriate require potential tenderers to prequalify for large and complex contracts and all tenderers that meet the prequalification criteria shall be allowed to submit tenders. The notification for prequalification and the evaluation procedure shall be consistent with those for open tendering

<sup>12</sup> See Paragraph 3.23.

in these rules. The list of prequalified and conditionally prequalified companies shall be advertised on the Bank's web site before issuing tender documents. 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.

### Two-stage 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. However, in the case of turnkey contracts or contracts for large complex plants or works of a special nature, it may be undesirable or impractical to prepare complete technical specifications in advance. In such a case, a two-stage tendering procedure shall when appropriate be used, under which 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, to be followed by amended tendering documents and the submission of final technical proposals and priced tenders in the second stage. These procedures are also appropriate in the procurement of equipment which is subject to rapid technological advances, such as major computer and communication systems.

## Other Procurement Methods

3.10 **Selective Tendering** procedures are similar to those for open tenders except that the client pre-selects qualified firms, who will be invited to submit tenders. It may be used for awarding contracts only where:

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

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 shall include foreign firms wherever possible.

3.11 **Direct Contracting** may be used in exceptional cases only 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 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 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; (b) standard specification goods; and (c) routine and other minor works. Shopping is a simplified form of competitive purchasing that only requires written price quotations from at least three suppliers or contractors, including foreign suppliers or contractors 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 **utilities**<sup>13</sup> which are moving towards majority private ownership or control<sup>14</sup> 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 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 the procurement of Bank-financed contracts, the procedures of the utility should provide for adequate international notification,<sup>15</sup> non-discriminatory competition, transparent and fair evaluation procedures, monitorable compliance, as well as fair and balanced contracts.

## 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 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, 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 where available.

<sup>13</sup> See Paragraph 3.2 (b).

<sup>14</sup> 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.

<sup>15</sup> See Paragraph 3.7.

**3.16 Evaluation Criteria.** The tender evaluation aims at identifying the most economically advantageous tender. 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 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 and maintenance costs, the efficiency and compatibility of the equipment, performance and quality,<sup>16</sup> environmental benefits, 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 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 with the lowest evaluated cost, but not necessarily the lowest submitted tender price, shall be selected for award.

**3.17 Co-financing.**<sup>17</sup> 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.

<sup>16</sup> See Paragraph 3.19.

<sup>17</sup> See Paragraph 2.4.

<sup>18</sup> "Sovereign operations" are Bank-financed public sector operations which are extended to, or guaranteed by, a recipient member country of the Bank.

<sup>19</sup> "Sub-Sovereign operations" are Bank-financed public sector operations other than those extended to, or guaranteed by, a recipient member country of the Bank.

**3.18 Language.** For Sovereign operations,<sup>18</sup> tender documentation, including all published procurement notices, shall be prepared by the client in one of the Bank's working languages. In the interest of open competition as well as economy and efficiency, the Bank may require that tender documentation also be provided in another working language of the Bank which shall be specified in the tender documents as the governing language. In addition, the client may prepare further sets of the tender documentation in the local language, in order to assist local firms in tendering.

In the case of sub-Sovereign operations,<sup>19</sup> the client may prepare the tender documentation and all procedural documentation in the local language or other commercially accepted language in order to assist local firms in tendering, and the tenders may be submitted in the chosen language. All procurement and contract documentation, including published procurement notices, shall also be prepared and issued by the client in English. The Bank will determine on the basis of such English language documentation whether procurement has been carried out in accordance with the agreed procedures.

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 require certified translations of the relevant documents.

**3.19 Standards and Specifications.**

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 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, DDU or similar, for foreign goods and ex-factory for local goods. In the case of Sovereign operations, evaluation of tenders for supply of goods must exclude import duties and taxes payable on imported goods and on directly imported components to be incorporated in locally supplied goods, but may include all costs associated with the supply, delivery, handling and insurance of the goods to the final destination. In the case of sub-Sovereign operations, such import duties and taxes may be taken into account in the evaluation of tenders. 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.** Clients shall, with the agreement of the Bank, determine the currency or currencies in which the tender prices must be quoted. Clients may also require tenderers to state the local cost portion of a tender in the local currency. 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 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 or later than the original date prescribed in the tender documents for the expiry of the period of tender validity. Payment under the contract will be made in the currency or currencies of the contract.

**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 or contractor 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 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 extension. 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 inflation<sup>20</sup> up to the date of contract award, so as to mitigate the risk accruing to tenderers offering such an extension.

<sup>20</sup> An appropriate index, such as the official cost of living index in a country which is expressed in the currency of the tender, must be used.

**3.24 Conditions of Contract.** 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, 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 must be used.

3.25 Nothing in the tender documents shall be designed to restrict competition or offer an unfair 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 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 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 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<sup>21</sup> of the client, or of a procurement agent engaged by the client, 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 amongst the client or the client's agent 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 only exceptions would be 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 must 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 must 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

<sup>21</sup> **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.



if permitted, shall be read aloud and recorded when opened. The client shall maintain a complete record of the tender opening, which shall be copied to the Bank directly after Tender Opening. Tenders received after the stipulated deadline for the submission of tenders shall be returned unopened to the tenderer.

## **Tender Evaluation and Contract Award**

3.30 When competitive procedures are used, the client shall 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 must be confidential. Contracts must 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 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. Before rejecting all tenders, the client shall obtain agreement from the Bank on the procedures to follow.

3.31 The client shall 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.<sup>22</sup>

## **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 financing (including donor funded investment grants). 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 the Bank's policies and rules in order for contracts signed in advance of loan approval to be eligible for Bank financing.

## **Contract Administration**

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

3.34 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.

## **Procurement Monitoring and Bank Review**

3.35 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 for the purpose of the Bank's review. The Bank's ongoing review of the procurement and contract administration processes will focus on critical steps that are

<sup>22</sup> See Paragraph 3.35.



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.

3.36 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 changed without the Bank's no objection.

3.37 All contracts to be procured following open or selective tendering shall normally be subject to the Bank's prior review. The agreed procedures for the project will determine the contracts subject to review. The Bank may periodically conduct post procurement reviews of contracts and projects.

3.38 For all contracts which are subject to the Bank's prior review process:

- 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 conformed copy of the contract shall be furnished to the Bank immediately upon signature of such contract.

3.39 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 no objection.

3.40 When a complaint regarding any aspect of a tender procedure is received by the Bank (see Annex 1), 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.

3.41 If the Bank finds that the procurement, 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 shall promptly inform the client and state the reasons for such determination. The contract shall no longer be eligible for financing and the outstanding portion of the financing allocated to the contract shall be cancelled.

3.42 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:

"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 Paragraph 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 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 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 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 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 shall also be followed to the extent that they do not conflict with agreements reached with the donors for 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, including any anticipated follow-on services and/or extensions, 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 €75,000 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 €75,000 or more with individuals, selection shall be made on the basis of an evaluation of short-listed, qualified candidates and the rationale for the choice must be recorded.
- c) For contracts with firms that are estimated to cost €75,000 or more and less than €300,000, a short list of qualified firms shall be prepared. The selection must 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 €300,000 or more shall normally follow a competitive procedure based on invited proposals from a short list of qualified firms.

## Short Lists

5.4 Short lists of consultants shall normally include no less than three and no more than six qualified and experienced consultants (individuals or firms, as the case may be). The list shall 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.

5.5 Short lists may not include:

- a) 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.
- b) firms or individuals who have submitted more than one expression of interest or have participated or intend to participate as a joint venture partner or consortium member in more than one expression of interest/proposal for each contract. Submission or participation by a consultant in more than one proposal for a contract will result in the rejection of all proposals for that contract in which the consultant is involved. However, this does not limit the inclusion of the same sub-contracted consultant in more than one proposal submitted by a firm.

5.6 For large assignments with firms estimated to cost €300,000 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 should be published in the procurement section of the Bank's web site ([www.ebrd.com](http://www.ebrd.com)). The short list shall normally be prepared on the basis of the responses to the solicitation.

5.7 For Sovereign operations, requests for proposals, including all published procurement notices, shall be prepared by the client in one of the Bank's working languages. The Bank may require that requests for proposals also be prepared in another working language of the Bank which shall be specified in the request for proposals as the governing language.

In the case of sub-Sovereign operations, the client may prepare requests for proposals, including all published procurement notices, in the local language or other commercially accepted language in order to assist local firms in participating, and the proposals may be submitted in the chosen language. All procurement and contract documentation, including published procurement notices, shall also be prepared and issued by the client in English. The Bank will determine on the basis of such English language documentation whether procurement has been carried out in accordance with the agreed procedures.

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 require certified translations of the relevant documents.

## Evaluation and Selection

5.8 When formal proposals are requested from a short list of firms, the invitation for proposals must 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.

5.9 Competition through a short list is preferred; however, in some circumstances it may be necessary or advantageous to engage or continue 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.

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

5.10 During contract negotiations the selected consultant's proposal may be modified by mutual agreement between the client and the consultant. 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 review before signing.

## Contract Administration

5.11 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.

5.12 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

5.13 Where consultants are being engaged by a client, the qualifications, experience and terms and conditions of employment 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.

5.14 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.

5.15 Consultancy contracts estimated to cost €300,000 or more shall normally be subject to the Bank's prior review. The agreed procedures will determine the contracts subject to review. The Bank may periodically conduct post procurement review of contracts and projects and may also require an evaluation by the client of the consultant's performance.

5.16 For all contracts which are subject to the Bank's prior review process:

- 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 no objection;
- 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 no objection; and
- c) one conformed copy of the contract shall be furnished to the Bank immediately upon signature of such contract.

5.17 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 no objection.

5.18 If the Bank finds that the procurement, 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 shall promptly inform the client and state the reasons for such determination. The contract shall no longer be eligible for financing and the outstanding portion of the financing allocated to the contract shall be cancelled.

5.19 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 short listed consultants who participated in the selection process leading to such contract award.

## Annex 1: Guidance to Tenderers

### Purpose

1. This annex provides guidance to potential tenderers wishing to compete for Bank-financed contracts for goods, works and services to be procured in accordance with Section 3 and for consultant services in accordance with Section 5.

### Responsibility for Procurement

2. The client is responsible for all aspects of the procurement of contracts in accordance with Section 3. It invites, receives and evaluates tenders and awards the contract, which in all cases is concluded between the client and the supplier, contractor or concessionaire. The client is also responsible for all aspects of the procurement of contracts with consultants engaged by the client in accordance with Section 5. The Bank is responsible for the procurement of consultants in accordance with Section 5 engaged by the Bank itself.

### The Role of the Bank in Procurement

3. The Bank reviews the procurement procedures, documents, tender evaluation reports, award recommendations and final contracts to ensure that the tendering process is carried out in accordance with agreed procedures. In the case of major contracts (defined usually as those exceeding a particular euro threshold established in each Loan Agreement), the documents are to be reviewed by the Bank prior to their release. If at any time in the procurement process (even after award of contract), the Bank concludes that the agreed tendering or contract administration procedures were not substantially followed in any material respect,<sup>23</sup> the Bank may also declare that the contract is no longer eligible for financing, consistent with Paragraphs 3.41 and 5.18.

However, if the client has proceeded to award such a contract after issuance of the Bank's no objection, the Bank will 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 process furnished by the client, or if it determines that the client or the successful tenderer has engaged in corrupt, fraudulent, coercive or collusive practices. The Bank may also declare a contract or a portion of it to be ineligible for Bank financing if, during the administration of the contract, it appears that it has not been carried out in accordance with the agreed procedures, consistent with Paragraphs 3.33, 3.34, 5.11 and 5.12, or if it determines that either the client or the successful tenderer has engaged in corrupt, fraudulent, coercive or collusive practices. Such a declaration of ineligibility shall be without prejudice to the enforcement action available to the Bank under the Enforcement Policy and Procedures.

4. The Bank has published several Standard Tender Documents (STDs) for various types of procurement. As stated in Paragraphs 3.15 and 3.24, clients should use these documents when they prepare specific tender documents for each type of procurement, with minimum changes and additions to address country, project and contract-specific issues and requirements.

### Information on Tendering

5. Information about tendering opportunities being procured through open tendering procedures in accordance with Paragraph 3.9 may be obtained from General Procurement Notices and Specific Invitations to prequalify or tender, as described in Paragraphs 3.7 and 3.8. General guidance on how to participate, as well as advance information on business opportunities in upcoming projects, may be obtained in the procurement section of the

<sup>23</sup> The determination as to whether a procedural or other deviation is considered "material" will be made exclusively by the Bank based on a reasonable assessment of all the facts in each case.

Bank's web site ([www.ebrd.com](http://www.ebrd.com)), which also contains invitations for expressions of interest for large consultant contracts, in accordance with Paragraphs 5.6 and 5.7.

## Guidance for Tenderers

6. Once a tenderer receives a prequalification or tender document, the tenderer should first study the documents carefully to decide if it can meet the key technical, commercial and contractual requirements and conditions. Failing that, the effort and cost of preparing and submitting a tender would not be justified. The tenderer should next critically review the documents to see if there is any ambiguity, omission or internal contradiction, or any feature in the technical specifications or elsewhere which are unclear or appear discriminatory or restrictive. If so, it should seek clarification from the client, in writing, within the time period specified in the tender documents for seeking clarifications.

7. The criteria and methodology for selecting the successful tenderer are defined in the tender documents, usually in the Instructions to Tenderers (ITT). If these are not clear, or if there are apparent ambiguities or inconsistencies between the criteria and methodology set forth in the ITT and other sections of the tender documents, e.g. the technical specifications, clarification should be similarly sought from the client. It should be emphasised that the specific tender documents issued by the client govern each tender process, as stated in Paragraph 3.30. If a tenderer feels that certain tender document provisions are inconsistent with the Bank's Procurement Policies and Rules, it should raise this directly with the client, copying the Bank on the query.

8. The tenderer must raise any issue of ambiguity, contradiction, omission or any other issues of this nature prior to the deadline for submission of requests for clarifications, if any,

specified in the ITT, to assure submission of a fully responsive and compliant tender, supported by all the necessary documents. Non-compliance with critical technical and/or commercial requirements will result in rejection of the tender.<sup>24</sup> Therefore, if a tenderer wishes to deviate from a non-critical requirement or propose an alternative solution, and no specific guidance is provided in the ITT in this regard, in order to be considered responsive it must submit a tender that is fully compliant with the tender documents in every respect, and separately indicate the adjustment in price associated with acceptance of the deviation or alternative solution. Once tenders are received and publicly opened, a tenderer will not be required or permitted to change the price or substance of its tender.

## Confidentiality

9. As stated earlier, the process of tender evaluation shall be confidential until the notification of award is made. This is essential to enable the reviewers of the client and Bank to carry out their work without improper interference, and in recognition of the negative impact that release of certain tender information might have in the market. If at this stage a tenderer wishes to bring additional information to the notice of the client, of the Bank, or both, it must do so in writing. However, no assurance can be given that such additional information will be considered in the evaluation.

## Procurement Queries and Complaints (procurement by client)

10. As recommended above, tenderers are invited to send to the Bank copies of correspondence with the client on issues and questions relating to the tendering process, or to write to the Bank directly when the client does not respond promptly or when tenderers

<sup>24</sup> In its review of client evaluation reports, the Bank will, among other things, before giving its no objection, examine the grounds for any rejection related to "substantial non-compliance" or "material" or "critical" deviations.



wish to complain about the client's or the Bank's handling of the procurement process. All such communications must be addressed to the Director of the Banking Department Team responsible for the project and copied to the Director of the Procurement Department as described on the Bank's web site (www.ebrd.com). Correspondence received by the Bank prior to the closing date for submission of tenders will normally be referred to the client for action or response, along with comments as appropriate. Complaints will be considered by the committee established by the Bank to review complaints.

11. Communications received after the opening of tenders will be handled as follows. In the case of contracts not subject to prior review by the Bank, the communication will be sent to the client for due consideration and appropriate action, if any. These will be reviewed during subsequent monitoring of the project by Bank staff. In the case of contracts subject to prior review, the Bank will examine the issue in consultation with the client before the evaluation is completed. If additional information is required, it will be obtained from the client. If information or clarifications are required from the tenderer, the Bank will ask the client to obtain it and take it into account, as appropriate, in the evaluation report. The Bank will not complete its review until the issues raised in the communication are fully examined and considered.

12. Except for acknowledgement of receipt, the Bank will not enter into discussions or correspondence with any tenderer relating to the details of an ongoing evaluation during the actual evaluation and review process of the tender, until notification of award has been made.

## **Procurement Queries and Complaints (consultants to be engaged by the Bank)**

13. Requests for clarification concerning documents issued by the Bank in connection with consultants engaged by the Bank in accordance with Section 5 must be addressed to the staff member named in the procurement section of the Bank's web site. Complaints about the procurement process for such contracts must be addressed in writing to the Director of the Procurement Department.

### **Debriefings**

14. If, after notification of award or where a formal decision to reject tenderers has been made in advance of award in accordance with a permitted procedure, a tenderer wishes to ascertain the grounds on which its tender was not selected, it should address its request to the client which shall provide such debriefing, with a copy to the Bank. If the tenderer is not satisfied with the explanation given and wishes to discuss the matter with the Bank, it may ask the Director of the Procurement Department to arrange a formal debriefing, copying the request to the Operation Leader responsible for the project and the client. In the case of consultant contracts procured by the Bank, the request must be addressed to the Operation Leader for the contract, with copies to the Director of the Consultancy and Corporate Procurement Department and the Director of the Procurement Department. The Bank will arrange a meeting at the appropriate level and with the relevant staff and the client, as appropriate. In this discussion, the relative strengths and weaknesses of the tender submitted and any other appropriate information necessary for the tenderer to better understand how it can improve its future chances of success will be discussed.





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The EBRD uses the tools of investment to help build market economies and democracies and promote entrepreneurship in 30 countries from central Europe to central Asia.

## Abbreviations

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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