

## Procurement Principles and Rules

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### Procurement Principles and Rules for operations financed by the Black Sea Trade and Development Bank (BSTDB)

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## 1 INTRODUCTION

- 1.1 Further to the mandate of the Bank, as set forth in the Agreement Establishing the Black Sea Trade and Development Bank, the purpose of this policy document is to set out the principles and rules that apply to clients<sup>1</sup> when they contract to procure:
- a. goods, works and services (including associated services), and
  - b. consulting services.
- that are financed by the Black Sea Trade and Development Bank (hereinafter called the BSTDB or the Bank).
- 1.2 The *Procurement Principles and Rules* are based on the need to achieve economy and efficiency in both public and private sector operations, and transparency and accountability in public administration. Competition is the proven way to do this and a fundamental principle of good procurement practice.
- 1.3 Such procedures, fairly applied, in awarding public sector contracts for goods, works and services help to create dependable and stable markets for efficient private businesses. They also form the basis for establishing accountability and encourage the cost-effective use of public funds.
- 1.4 The efficiency of the procurement process directly affects the costs of 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. Encouraging sound procurement policies and competent organisations to administer them is an important part of development.
- 1.5 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 addresses procurement through Financial Intermediaries. Section 6 concerns the selection and hiring of consultants.

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1 For the purposes of the Procurement Principles and Rules, the term 'client' refers to any recipient of Bank financing or financing administered by the Bank and, as the context serves, includes any beneficiary of the financing.

## 2 PRINCIPLES AND CONSIDERATIONS

- 2.1 The World Trade Organization/Government Procurement Agreement (WTO/GPA) 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 member states that are consistent with the principles of the WTO/GPA and compatible with the *Agreement Establishing the Black Sea Trade and Development Bank*.
- 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. Only in special cases should contracts be awarded on the basis of other procedures.

### Applicability in Co-financed Operations

- 2.3 When projects are co-financed on a joint basis, the Bank and the co-financing party may agree that the Bank's *Procurement Principles and Rules* may be waived, in which event all procurement shall be subject to the requirements of the co-financing party. When projects are co-financed on a parallel basis, the co-financiers' procurement procedures would be applied for contracts financed by them.
- 2.4 When projects are co-financed on a parallel basis, the client shall promptly write to the Bank reporting any and all matters arising from such financing that may impact on the Bank's lending and/or the overall project. Such matters shall thereafter be reported monthly until such time as the issues are resolved or the Bank advises otherwise.
- 2.5 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 *Procurement Principles and Rules* as incorporated in the legal documents<sup>2</sup> applicable to that project.

### Eligibility

- 2.6 The Bank permits businesses, whether firms or individuals, from any country, to offer goods, works and services for Bank-financed projects regardless of whether the country is a member of the Bank and to tender or submit proposals independently or participate as subcontractors. Businesses from developing countries as well as from the Bank's member states are encouraged to participate on equal (or otherwise stated terms) and thereby assist their own country's development process.
- 2.7 Except where specifically stated in the *Procurement Principles and Rules* or the legal documentation, any conditions for participation shall be limited to those that are essential to ensure the capability of the business to fulfil the contract in question. Clients shall not exclude a business from open competition for a contract, or from prequalifying for a contract, for reasons unrelated to its capability to perform the contract in question unless, as a

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<sup>2</sup> In this document, the term 'legal documents' includes any loan, financing, associated or subsidiary agreement between the Bank and a client or any agency, affiliate or parent of that client related to the operation concerned.

matter of law or official regulation, the client's country prohibits commercial relations with the country of the business.

- 2.8 Consistent with international law, the proceeds of the Bank's operations 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, entities, suppliers or contractors offering goods, works or services covered by such prohibition shall therefore not be eligible for the award of Bank-financed contracts.

#### **Client responsibilities**

- 2.9 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, and require provisions as a condition of financing, but it 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 shall be governed by the tender documents issued by the client and neither by these *Procurement Principles and Rules*, nor any applicable legal documents related to the financing.

#### **Fraud and corruption**

- 2.10 It is the Bank's policy to require that clients, as well as tenderers, suppliers, contractors, concessionaires and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.
- 2.11 In pursuance of this policy, the Bank defines, for the purposes of this provision, the terms set forth below as follows<sup>3</sup>:
- a. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
  - b. "fraudulent practice" is 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.
  - c. "coercive practice" is 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.
  - d. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
  - e. "obstructive practice" is i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to

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<sup>3</sup> Terms amended with 11-022-82-BD2011-057

the investigation or from pursuing the investigation, and ii) acts intended to materially impede the exercise of the Bank's investigation and audit rights provided for under par. 2.12 (f) below.

- 2.12 The Bank, in respect of the procurement of goods, works and services governed by the 'Procurement Rules for Public Sector Operations' and the 'Procurement of Consultant Services':
- a. requires that each party to a contract to be awarded by a Bank client shall certify and covenant that it, including any of its directors, managers, employees or any person acting on its behalf or with its knowledge or consent,
    - has never been found by a judicial process or other official enquiry to have engaged in corrupt, fraudulent, coercive, collusive, or obstructive<sup>4</sup> practices - or otherwise provide full details of all such findings for the Bank's consideration;
    - will not engage in any such practice in connection with the project concerned, and
    - will promptly inform the Bank should any such practice come to its attention;
  - b. will reject a proposal for award if it determines that the supplier, contractor, concessionaire or consultant recommended for award has engaged in corrupt, fraudulent, coercive, collusive, or obstructive<sup>5</sup> practices in competing for the contract in question;
  - c. will cancel the portion of the Bank financing allocated to a contract for goods, works, services or concessions if, at any time, it determines that corrupt, fraudulent, coercive, collusive, or obstructive<sup>6</sup> practices were engaged in by representatives of the client or of a beneficiary of the Bank financing during the procurement or the execution of that contract without the client having taken timely and appropriate action satisfactory to the Bank to remedy the situation;
  - d. will declare a business ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if, at any time, it determines that the business has engaged in corrupt, fraudulent, coercive, collusive, or obstructive<sup>7</sup> practices in competing for, or in executing, a Bank-financed contract;
  - e. reserves the right, where a client or a business has been found by a judicial process or other official enquiry to have engaged in corrupt, fraudulent, coercive, collusive, or obstructive<sup>8</sup> practices, to
    - cancel all or part of the Bank financing for such client; and
    - declare that such a business is ineligible, either indefinitely or for a stated period of time, to be awarded a Bank financed contract; and
  - f. will have the right to require that, in contracts financed by the Bank, a provision be included requiring suppliers, contractors, concessionaires

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<sup>4</sup> Inserted with 11-022-82-BD2011-057

<sup>5</sup> Inserted with 11-022-82-BD2011-057

<sup>6</sup> Inserted with 11-022-82-BD2011-057

<sup>7</sup> Inserted with 11-022-82-BD2011-057

<sup>8</sup> Inserted with 11-022-82-BD2011-057

and consultants to permit the Bank to investigate<sup>9</sup> their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank.

**Procurement documentation**

- 2.13 All the documents related to procurement activities shall be retained by the client for subsequent examination by independent auditors and Bank staff for a period of not less than five years following completion of the lending operation.

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<sup>9</sup> Amended with 11-022-82-BD2011-057

### 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 international competitive tendering procedures in accordance with the rules outlined in this section.
- 3.2 Other methods, see the sections commencing 3.32, 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.

#### Applicability

- 3.3 For the purpose of this section of the *Procurement Principles and Rules*, public sector operations are investments of the Bank:
- a. which are guaranteed by the government or a public agency or instrumentality of the country of operations; or
  - b. for national or local governments of the country of operations or agencies and businesses majority beneficially owned by any of them, other than such businesses that in the Bank's judgement are operating autonomously in a competitive market environment and are subject to bankruptcy or insolvency law.
- 3.4 These rules shall apply to goods, works and services contracts (except consultant services, for which the procedures are described in Section 6) financed in whole or in part by the Bank in public sector operations and include, inter alia, purchase, hire-purchase, rental and leasing.
- 3.5 Contracts shall be procured following International Competitive Tendering, see Section 3.20, if their value is estimated to equal or exceed EUR 250,000<sup>10</sup> for goods and services and EUR 6<sup>11</sup> million for works and supply and installation contracts<sup>12</sup>.
- 3.6 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 that would be specified in the reports and papers approved by its Board of Directors as incorporated in the legal documentation.
- 3.7 Prior to loan signing, all exceptions to international competitive tendering shall be clearly justified and agreed by the Bank.
- 3.8 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.

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<sup>10</sup> Amended with 11-022-82-BD2011-057

<sup>11</sup> Amended with 11-022-82-BD2011-057

<sup>12</sup> Amended with 11-022-82-BD2011-057

- 3.9 For goods, works and services contracts below these threshold values, clients are encouraged to follow International Competitive Tendering but may, subject to the Bank's 'no objection', use other procedures that are consistent with principles concerning competition, transparency, fair treatment, economy and efficiency that are acceptable to the Bank.

### **Procurement process**

- 3.10 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**

- 3.11 Sound planning of procurement is crucial. The client shall determine and present, in a procurement plan, what goods, works and services are required to carry out the project, by when they are to be delivered, what standards are needed, the need for co-financing and which procurement and contracting strategies and procedures are most suitable for each contract.
- 3.12 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 reports and papers approved by its Board of Directors and incorporated in the legal documentation. Subject to the Bank's 'no objection', adjustments and refinements to the plan shall continue as needed throughout the duration of the project. The Bank's review and 'no objection' to the procurement plan is one of the essential steps for establishing the use of the proceeds of its financing to be completed before any procurement begins, save as outlined in section 3.93 below.

### **Notification**

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

- 3.14 Prior to issuing the General Procurement Notice, the client shall submit the texts to the Bank for its 'no objection. The notice shall be published in a newspaper with wide circulation in each of the Member States and, as appropriate, in the official gazette of the client's country, international business publications and on the client's web site. The Bank will arrange for publication of the notice on the Bank's web site. Applications to prequalify, or tenders if there is no prequalification, shall not be invited until at least 60 days after the publication date of the last General Procurement Notice.
- 3.15 The General Procurement Notice shall be updated annually so long as any goods, works or services remain to be procured by International Competitive Tender.
- 3.16 The client shall maintain a log of all those businesses that responded to the General Procurement Notice with an expression of interest.
- 3.17 The publishing of notices, other than those published on the Bank's web site, shall be at the client's expense.
- 3.18 Prior to issuing a Prequalification Notice or a Tender Notice, its text shall be submitted to the Bank for its 'no objection. Prequalification and Tender notices, for individual contracts using International Competitive Tendering procedures shall be published in a quality newspaper with wide circulation in each of the Member States and, as appropriate, in the official gazette of the client's country and, as appropriate, in international business publications and on the client's web site. They shall also be transmitted, by email, to potential tenderers that have responded with an expression of interest to the General Procurement Notice as well as to local representatives of foreign countries that are potential suppliers of the goods and works required. The Bank will arrange for publication of the notice on the Bank's Web site.
- 3.19 In order to encourage and facilitate the participation of sub-contractors and sub-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.

### **International Competitive Tendering**

- 3.20 International Competitive 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 extensive opportunities for competition and satisfies the needs for economy and efficiency.
- 3.21 The client shall give sufficient advance public notification of International Competitive Tendering opportunities for potential tenderers to determine their interest and to prepare and submit their tenders.

#### ***Prequalification of tenderers***

- 3.22 Clients may require potential tenderers to apply to prequalify for large and complex contracts. Prequalification is not a form of selective tendering but a first stage in a competitive tendering process.
- 3.23 The notification for prequalification and the evaluation procedure shall be consistent with those for International Competitive Tendering in these rules.

- 3.24 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 relevant factors such 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.

- 3.25 All applicants that have demonstrated that they have met the prequalification criteria shall be invited to submit tenders to the exclusion of all others.

***Two-stage tendering***

- 3.26 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 may be used;
- a. In the first stage, unpriced technical proposals are invited on the basis of a conceptual design or performance specifications. Such proposals are subject to technical as well as commercial clarifications and adjustments, following which amended tender documents are issued.
  - b. The second stage is the submission of final technical proposals and priced tenders.
- 3.27 These procedures are also appropriate in the procurement of equipment that is subject to rapid technological advances, such as major computer and communication systems.

***Domestic and Regional Preference applicable to tenders offered from within the Member States***

- 3.28 Pursuant to Article 13 of the *Agreement Establishing the Black Sea Trade and Development Bank*, the Bank may agree to the application of domestic and/or regional<sup>13</sup> preference in awarding contracts through International Competitive Tendering, on a case by case basis.
- 3.29 Where the legal documents provide for margins of preference for goods manufactured in the Member States, the margin of preference shall be the actual import taxes and other import related duties that would apply to imported goods up to a maximum of fifteen per cent for domestic suppliers and for suppliers from other Member States when evaluated in comparison with tenders from outside the region.

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13 In this context, the term 'region' applies only to the BSTDB Member States

- 3.30 Where the legal documents provide for margins of preference for works and/or services other than consulting services to be executed in the client's country, the margin of preference shall be up to a maximum of seven and one half per cent for domestic contractors and five per cent for other regional contractors, when evaluated in comparison with tenders from outside the region.
- 3.31 The procedures to be adopted will be set out in the tender documents.

### **Exceptions to International Competitive Tendering**

#### ***General***

- 3.32 Exceptions to International Competitive Tendering shall be identified in the legal documentation or by modification thereto.

#### ***Selective Tendering***

- 3.33 Selective Tendering procedures are similar to those for International Competitive Tendering except that the client preselects qualified businesses that are invited to submit tenders. It may be a suitable method for awarding contracts where:
- a. the required product or service is highly specialised and complex;
  - b. there is only a limited number of suppliers of the particular goods or services needed;
  - c. other conditions limit the number of businesses that are able to meet contract requirements; or
  - d. critical goods, works or services are urgently required.
- 3.34 With the Bank's 'no-objection' in the above cases, a client may invite international tenders from a list of qualified businesses, including at least one business from the Bank's Member States where this is practicable. The lists shall include foreign businesses wherever possible.
- 3.35 In no case shall the quality of the required goods, works or services or the project be compromised by the selection process.

#### ***Restricted Procedures related to Intra-regional Trade***

- 3.36 Pursuant to Articles 2 and 13 of the *Agreement Establishing the Black Sea Trade and Development Bank*, restricted procedures may be appropriate for operations assisting in the promotion of intra-regional trade between businesses in the Member States, and agreed in the legal documents, where:
- a. the contract value is estimated not to exceed EUR 6 <sup>14</sup>million,
  - b. the tenor of the financing operation is not more than seven years, and
  - c. the Bank is satisfied that the supply market for the required product to be contracted is adequately competitive and that competitive tendering procedures acceptable to the Bank are, or have been, applied, or that the products to be financed are procured at fair market prices.
- 3.37 Only businesses registered in a Member State are eligible to tender under these procedures.

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<sup>14</sup> Amended with 11-022-82-BD2011-057

### ***Single Tendering***

- 3.38 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 International Competitive Tendering or Selective Tendering or Restricted Procedures for Intra-regional Trade carried out in accordance with the Bank's *Procurement Principles and 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.
- 3.39 With the Bank's 'no-objection', in these cases a client may invite a single business to present its tender without prior public notification.

### ***Shopping***

- 3.40 Shopping procedures may be agreed to by the Bank for contracts of small value for:
- a. readily available off-the-shelf items; and
  - b. standard specification goods.
- 3.41 Shopping is a simplified form of selective tendering that only requires written price quotations from at least three suppliers, including foreign suppliers wherever possible.

### ***Local Competitive Tendering***

- 3.42 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. proposed works' sites are scattered geographically or works are to be constructed at different times;
  - 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.
- 3.43 The procedures under which local competitive tendering is carried out shall be acceptable to the Bank. They shall provide for adequate notification and competition in order to ensure reasonable prices, evaluation criteria shall be made known to all tenderers and shall be applied fairly, and the conditions of contract should be fair and appropriate to the project.
- 3.44 For local competitive tendering to be acceptable to the Bank:

- a. there shall be adequate notification (advertising in one or more business orientated newspapers in each of the Bank's member states);
  - b. the specifications shall be clearly stated and non-restrictive to attract reasonable prices;
  - c. evaluation criteria shall be made known to all tenderers and applied fairly, and
  - d. the conditions of contract shall be fair and appropriate to achieving a successful project.
- 3.45 Tendering shall be open to foreign businesses that wish to participate in accordance with such procedures.
- 3.46 If the Bank takes equity or guarantees the repayment of a loan made by another lender, the procurement of goods and works related to the equity or guarantee shall:
- a. have due regard for economy and efficiency,
  - b. be in accordance with applicable law, and
  - c. be acceptable to the Bank.

#### **International Competitive Tendering documentation**

- 3.47 Tender documents are the basis for informing potential tenderers of the requirements to supply specific goods and services or to construct works. They should furnish all information necessary to
- a. permit all eligible tenderers to submit responsive tenders,
  - b. permit and encourage international competition,
  - c. specify clearly the scope of works, goods or services to be supplied, and
  - d. set out the rights and obligations of the purchaser and of suppliers and contractors, the conditions to be met in order for a tender to be declared responsive, and fair and non-discriminatory criteria - except only in so far as domestic or regional preference has been agreed to in the legal documentation - for selecting the winning tender.
- 3.48 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 and or performance specifications, drawings, a schedule or requirements for the goods, works or services, and the form of contract.
- 3.49 Clients should use the Bank's standard tender documents appropriate for each type of procurement or, where no suitable documents exists, other documents containing provisions as may be acceptable to the Bank.

#### ***Language***

- 3.50 Tender documentation, including all published procurement notices, shall be prepared by the client in English.
- 3.51 In order to assist local businesses in tendering, the client may choose to prepare the tender documentation in English and the local language, jointly or separately. While tenders from local businesses shall be in English, a

version on the local language may also be submitted but the English language version shall govern.

- 3.52 Except as set out below, the language of the contract shall be English, which shall be the governing language.
- 3.53 Contracts entered into with local tenderers (excluding joint ventures between local and foreign businesses) may, at the client's option, be in the national language of the client, which shall be the governing language for such contracts provided that the conformed copies of the contract and all related documents submitted to the Bank shall also include full, certified, English translations.

***Tender Prices, Currencies and Evaluation Criteria.***

- 3.54 A tenderer may express the tender price in any currency or currencies. In addition, clients may require tenderers to state the local cost portion of a tender in the local currency.
- 3.55 Tender prices for the supply of goods from foreign sources shall be requested on the basis of Incoterms CIP, DAF or similar, border entry point or DDU, DDP named place of destination. For locally supplied goods, tenders may be priced ex-factory with, as appropriate, additions for handling insurance and transportation etc.
- 3.56 Evaluation of tenders for supply of goods shall be comparably based and exclude import duties and taxes payable on imported goods and on directly imported components to be incorporated in locally supplied goods, but shall include all costs associated with the supply, delivery, handling and insurance of the goods as required by the purchaser at the final place of destination.
- 3.57 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 made responsible for all duties, taxes and levies in the performance of the contract.
- 3.58 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.
- 3.59 Factors other than the tender price that may be taken into consideration include, inter alia, post Incoterms 'delivery' costs such as the costs associated with handling and 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 price should be expressed in monetary terms. Exceptionally, where that is not practicable, the Bank may give its 'no-objection' to merit points being given a judicious relative weight to be set out in the evaluation factors in the tender documents.
- 3.60 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. This date shall be specified in the tender documents as being on

or after the date 30 days prior to the date originally specified for the tender opening and that opening date nor later than the original date prescribed in the tender documents for the expiry of the period of tender validity.

***Standards and specifications.***

- 3.61 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.
- 3.62 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.

***Payments***

- 3.63 Payment under the contract shall be made in the currency or currencies in which the tender price is stated in the tender of the successful tenderer.
- 3.64 For civil works and other similar contracts that involve performance in the client's country, the client may require that the tender price(s) are converted into that currency provided that the client's currency is fully convertible. In such cases payment of the tender price(s) in equivalent amounts shall be made in the client's currency without loss or risk to the contractor.
- 3.65 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.

***Time limits***

- 3.66 Prescribed time limits for preparation and submission of tenders shall be adequate for all tenderers to prepare and submit tenders taking into account commonly observed public holidays. 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.
- 3.67 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.
- 3.68 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 tenders and shall be free not to give such extension.
- 3.69 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 inflation<sup>15</sup> up to the date of contract award, so as to mitigate the risk accruing to tenderers offering such an extension.

***Tender documents and conditions of contract.***

- 3.70 Nothing in the tender documents shall be designed to restrict competition or offer an unfair advantage to a tenderer other than preferences as agreed in the legal documentation. Clients shall not provide to any potential supplier or contractor information regarding a specific procurement that would have the effect of reducing or precluding competition.
- 3.71 All amendments to tender documents shall be sent at the same time and by comparable means to be received quickly by each recipient of the original tender documents.
- 3.72 The contract shall:
  - a. 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.
  - b. 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.
- 3.73 The form of contract to be used should be appropriate to the objectives and circumstances of the project. Wherever appropriate, standard forms of contract incorporating generally accepted international conditions shall be used.

**Eligibility to submit tenders**

- 3.74 Businesses, including any affiliate or parent of the business, that did not purchase the prequalification or tender documents according to a general, published, requirement of the client shall be ineligible to tender.
- 3.75 Businesses may participate individually or in voluntary joint venture. The Bank will not accept conditions of tendering that require mandatory joint ventures or other forms of mandatory association between domestic and foreign firms.
- 3.76 Except for alternatives, where these are permitted, a business, including any affiliate or parent of the business or party to a joint venture, 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 shall 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.
- 3.77 No publicly owned business or affiliate of the Bank's client, nor of a procurement agent engaged by the client, shall be eligible to tender or participate in a tender in any capacity whatsoever unless they can establish

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<sup>15</sup> Using an appropriate index such as the official cost of living index in the country(ies) of the currency or currencies in which the tender was expressed.

that they are legally and financially autonomous and are subject to bankruptcy or insolvency law. No hierarchically inter-dependent agency of the client under a Bank-financed project shall be permitted to tender or submit an offer for the procurement of goods or works under the project.

- 3.78 Where, in addition to consulting, a business has the capability to manufacture or supply goods or to construct works that business, including any affiliate or parent of the business, 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**

- 3.79 Tenders solicited under competitive procedures other than shopping 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.
- 3.80 The time specified for tender opening shall be the same as for the latest delivery of tenders or promptly thereafter.
- 3.81 On the date and at the time and place described in the tender documents, the client shall open all tenders that have been received before the latest time stipulated for the delivery of tenders.
- 3.82 Tenders shall be opened in the presence of tenderers or their representatives who wish to attend.
- 3.83 The name of the tenderer, the total amount of each tender (including alternative tenders if permitted) and the name of the signatory to the tender and the date 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.
- 3.84 Tenders received after the stipulated deadline for the submission of tenders shall be returned unopened to the tenderer.

#### **Tender evaluation and contract award**

- 3.85 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.
- 3.86 A tender that is not signed and dated by a duly authorized representative of the tenderer shall be rejected.
- 3.87 The tender evaluation process up to the award of the contract should be confidential.
- 3.88 Contracts should be awarded within the period of tender validity to the eligible tenderer whose tender has been determined:
- a. as being substantially responsive and,
  - b. in terms of the specific evaluation criteria set forth in the tender documentation, is determined as having the lowest evaluated price and

who has been determined to be fully capable of undertaking the contract.

- 3.89 Tenderers shall not be allowed or asked to change their tenders, nor required to accept new conditions during evaluation or as a condition of award.
- 3.90 The terms and conditions of the contract shall not, without the Bank's 'no objection', materially differ from those on which tenders were invited.
- 3.91 The client shall 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 shall obtain the Bank's views on, and 'no objection' to, the procedures to follow.
- 3.92 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.

#### **Advance contracting**

- 3.93 In special circumstances relating to the nature of the project, or the client, or other factors peculiar to the context of the project, it may be advantageous for the client to sign a contract before the signing of the related Bank legal documents. Clients undertake such advance contracting at their own risk and any 'no objection' by the Bank with the procedures, documents or the proposal for award does not commit the Bank to provide funds for the project. Procurement procedures shall be consistent with the Bank's *Procurement Principles and Rules*, or otherwise acceptable to the Bank, to be eligible for Bank financing.

#### **Contract administration**

- 3.94 The client shall administer contracts with due diligence and shall monitor and report to the Bank on the performance of contracts.
- 3.95 The client shall seek the Bank's no-objection 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 that, in aggregate, would increase the contract price by more than 15 per cent of the tender price, net of any change order or orders that reduce the tender or contract price, or that would exceed the allocated funding.
- 3.96 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.

#### **Procurement monitoring and Bank review**

- 3.97 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 Annex 1.

- 3.98 All contracts other than local competitive tendering and shopping will normally be subject to the Bank's prior review. The legal documents will specify the contracts subject to review.
- 3.99 When a complaint regarding any aspect of a tender procedure is received by the Bank, the Bank will require that the complaint is fully reviewed to its satisfaction and that, pending the outcome of such review, no decisions are made or no-objections given which could prejudice the outcome of the review.
- 3.100 In the event that the Bank finds that the procurement or administration of a contract has not been carried out in accordance with the procedures agreed in the legal documentation, the contract will no longer be eligible for financing by the Bank and the outstanding portion of that financing allocated to the contract will be cancelled.

#### **4 PROCUREMENT IN PRIVATE SECTOR OPERATIONS**

- 4.1 This section applies to lending to and equity investments in businesses that:
- a. are majority privately owned and controlled, or
  - b. while publicly owned are, in the Bank's judgement, operating autonomously in a competitive market environment and are subject to bankruptcy or insolvency law.
- 4.2 The Bank will encourage such clients to use procurement methods that lead to sound selection of goods, works and services at fair market prices and to make their capital investments in a cost effective manner. Careful procurement planning that takes into account the particular needs of the project is essential for the Bank's evaluation and agreement. Businesses often achieve these aims by following established commercial practices other than formal international competitive tendering for their procurement. Nevertheless, wherever appropriate, the Bank will encourage the use of international competitive tendering methods by such clients, particularly for large contracts.
- 4.3 Contracts shall be negotiated on a demonstrably 'arm's length' basis and be in the best financial interest of the project 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 contract costs are in line with fair market prices and the original cost estimates in the reports and papers approved by its Board of Directors, and that the contract conditions are fair and reasonable. Clients shall normally be responsible for all expenses incurred by the Bank in satisfying itself in this regard.

## **5 PROCUREMENT IN OPERATIONS THROUGH FINANCIAL INTERMEDIARIES**

Where Bank funds are used through financial intermediaries for the procurement of goods, works or services, these *Procurement Principles and Rules* apply as applicable to the ownership and status of the beneficiary. However, where the tenor of the financing is not more than four years, these *Procurement Principles and Rules* are relaxed to the extent that procurement shall be carried out according to sound commercial practices and on an arm's length basis.

## **6 PROCUREMENT OF CONSULTANT SERVICES.**

### **General**

- 6.1 The Bank's clients employ businesses, whether firms or individuals, to provide a wide range of expert advice and consulting services in connection with their operations and management responsibilities.
- 6.2 The main concern when choosing consultants shall be the quality of the services that are provided.
- 6.3 The procedures for selecting consultants and contracting for their services shall be flexible and transparent to ensure that assignments can be efficiently executed with high standards of performance, while providing the necessary accountability.
- 6.4 The procedures described below shall be followed by clients for hiring consultants using the proceeds of Bank financing under public sector operations and also where consultants are hired by clients using contracts financed from Technical Cooperation Funds to the extent that they do not conflict with agreements reached with the donors of such funds.

### **Consultant selection procedures**

- 6.5 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 accordingly;
  - c. inviting proposals from the short-listed consultants;
  - d. evaluating and comparing capabilities and proposals and selecting the preferred consultant;
  - e. negotiating a contract with the selected consultant; and
  - f. contract administration.
- 6.6 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 EUR 75,000 with individuals or firms<sup>16</sup>, 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 EUR 75,000<sup>17</sup> 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 shall be recorded.
  - c. For contracts with firms that are estimated to cost EUR 75,000<sup>18</sup> or more and less than EUR 150,000<sup>19</sup>, a short list of qualified firms shall

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<sup>16</sup> Amended with 11-022-82-BD2011-057

<sup>17</sup> Amended with 11-022-82-BD2011-057

<sup>18</sup> Amended with 11-022-82-BD2011-057

<sup>19</sup> Amended with 11-022-82-BD2011-057

be prepared. The selection shall 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 EUR 150,000<sup>20</sup> or more shall follow a competitive procedure based on invited proposals from a short list of qualified firms.

### **Short lists**

- 6.7 Short lists of consultants should 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 should normally comprise a wide geographic spread of consultants, including wherever possible at least one qualified consultant from one of the Bank's member states and normally no more than two from any one country.
- 6.8 In the absence of the Bank's no-objection:
  - a. 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.
  - b. no consultant, nor any of its affiliates, shall be hired for any assignment where there may be a conflict with another assignment past, present or to be carried out by the consultant.
  - c. a short-list shall not include two or more parties that are associated or affiliated.
- 6.9 For large assignments with firms estimated to cost EUR 250,000<sup>21</sup> or more, complex or specialised assignments, or operations involving a significant number of similar assignments, a formal notice shall be published in a quality newspaper with wide circulation in each of the Member States and, as appropriate, in the official gazette of the client's country, in international business publications on the client's web site. They shall also be transmitted by email to potential participants that have responded with an expression of interest to the General Procurement Notice as well as to known local and foreign firms that are potential suppliers of the services required. The Bank will arrange for publication of the notice on the Bank's web site. The short list shall be prepared on the basis of the responses to the solicitation.
- 6.10 In order to encourage and facilitate the participation of sub-consultants in contracts, the client should make available to interested parties the list of short-listed consultants.

### **Requests for Proposals**

- 6.11 Consultants not on the short list shall be ineligible, without the Bank's 'no objection', to submit a proposal.
- 6.12 Requests for proposals, including all notices, shall be prepared by the client in English. If the client so chooses, and at its expense, a certified

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<sup>20</sup> Amended with 11-022-82-BD2011-057

<sup>21</sup> Amended with 11-022-82-BD2011-057

translation of the same text may be published elsewhere translated into any language or languages of the Bank's Member States on dates that are no later than the date of publication on the Bank's website.

- 6.13 In order to assist local businesses in participating, the client may choose to prepare the documentation in English and the local language, jointly or separately. While submissions by local consultants shall be in English, a version on the local language may also be submitted but the English language version shall govern.
- 6.14 Except as set out below, the language of the contract shall be English.
- 6.15 Contracts entered into with local consultants (excluding joint ventures between local and foreign consultants) may, at the client's option, be in the national language of the client, which shall be the governing language for such contracts provided that the contract and all related documents submitted to the Bank include full certified English translations.

#### **Evaluation and selection**

- 6.16 When formal proposals are requested from a short list of consultants, the invitation for proposals shall clearly state the criteria for evaluating them. The evaluation of consultants shall 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 shall be invited to negotiate a contract with the client.
- 6.17 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. Provision for such an extension, if considered in advance, shall be included in the original terms of reference and contract, which preferably should have been awarded after a competitive selection.
- 6.18 In such cases a client may, with the Bank's prior no-objection, invite the consultant in question to submit a proposal and negotiate a contract.

#### **Professional Standards**

- 6.19 Consultants shall be contractually required to observe the highest standard of ethics during the selection and execution of Bank and trust fund financed contracts and provide professional, objective, and impartial advice and at all times hold the Bank's interests paramount, without any regard for their future work, and strictly avoid conflicts with other assignment or their own corporate interests.

- 6.20 No consultant, nor any of its affiliates, shall be hired for any assignment where there may be a conflict with another assignment past, present or to be carried out by the consultant in the absence of the Bank's no-objection.

#### **Contract negotiations**

- 6.21 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. Where price is taken into account in the evaluation, no negotiations on fee rates or other prices that were used for evaluation shall be permitted. The draft final contract shall be presented to the Bank for review before signing where required by the legal documentation.

#### **Contract administration**

- 6.22 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**

- 6.23 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 consultants, the recommendation for consultant selection and the final contract to ensure that the assignment is eligible for Bank financing.
- 6.24 The review procedures are described in Annex 1. Consultancy contracts estimated to cost EUR 150,000<sup>22</sup> or more will normally be subject to the Bank's prior review. The legal documents will specify the contracts subject to review. The Bank will also require an evaluation by the client of the consultant's performance.
- 6.25 If the Bank finds that the procurement or administration of a contract has not been carried out in accordance with the procedures agreed in the legal or other applicable documentation, the contract would no longer be eligible for financing with the proceeds of the Bank's financing and the outstanding portion of the financing allocated to the contract would be cancelled.

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<sup>22</sup> Amended with 11-022-82-BD2011-057

## **ANNEX 1 – BANK REVIEW OF PROCUREMENT DECISIONS FOR PUBLIC SECTOR OPERATIONS**

### **Contracts for goods, works and services**

- A.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 '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 businesses 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 prior to the submission of a withdrawal application in respect of such contract.
- A.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 'no objection'.

### **Contracts for consultant services**

- A.3. For all contracts which, in accordance with the legal documents, 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 consultants, 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 consultant for negotiations, the client shall submit a detailed evaluation report setting forth the specific reasons on which the recommendation to select the successful consultant 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 prior to the submission of a withdrawal application in respect of such contract.
- A.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**

- A.5. The client shall make such modifications in procurement documents or reports as the Bank shall reasonably request. The documents or reports for which the Bank has issued its 'no objection' shall not be materially changed without the its further 'no objection'.
- A.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) that, in aggregate, would increase the contract price by more than 15 per cent of the tender or proposal price, net of any

change order or orders that reduce the tender/proposal or contract price, or that would exceed the allocated funding, the client shall obtain the Bank's 'no objection' to the proposed modification, waiver, extension or change order.

- A.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 legal documents, it shall promptly inform the client and state the reasons for such determination.
- A.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.

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