



**ASIAN INFRASTRUCTURE  
INVESTMENT BANK**

**DIRECTIVE**  
**on**  
**Procurement Instructions for Recipients**

**July 26, 2024**

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## ACRONYMS

<b>AIIB</b>	Asian Infrastructure Investment Bank
<b>ALPT</b>	Abnormally Low-priced Tender
<b>Bank</b>	Asian Infrastructure Investment Bank
<b>CBP</b>	Community Based Procurement
<b>CQS</b>	Consultant's Qualification Based Selection
<b>DSIC</b>	Direct Selection of Individual Consultants
<b>EoI</b>	Expressions of Interest
<b>FA</b>	Framework Agreement
<b>FBS</b>	Fixed Budget-based Selection
<b>FfP</b>	Fit-for-Purpose
<b>FI</b>	Financial Intermediary
<b>GPN</b>	General Procurement Notice
<b>IOCS</b>	International Open Competitive Selection
<b>IOCT</b>	International Open Competitive Tendering
<b>KPI</b>	Key Performance Indicator
<b>LCBS</b>	Least Cost Based Selection
<b>LCS</b>	Limited Competitive Selection
<b>LCSIC</b>	Limited Competitive Selection of Individual Consultants
<b>MDB</b>	Multilateral Development Bank
<b>NCS</b>	National Competitive Selection
<b>NCT</b>	National Competitive Tendering
<b>NGO</b>	Non-governmental Organization
<b>NSBF</b>	Non-sovereign-backed Financing
<b>OCSIC</b>	Open Competitive Selection of Individual Consultants
<b>PDS</b>	Project Delivery Strategy
<b>PP</b>	Procurement Plan
<b>PPP</b>	Public Private Partnership
<b>QCBS</b>	Quality and Cost Based Selection
<b>QBS</b>	Quality Based Selection
<b>RBF</b>	Results-based Financing
<b>RBP</b>	Results-based Project
<b>REoI</b>	Request for Expressions of Interest
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Quotations
<b>SBF</b>	Sovereign-backed Financing
<b>SEA</b>	Sexual Exploitation and Abuse
<b>SH</b>	Sexual Harassment
<b>SOE</b>	State-owned Enterprise
<b>SPD</b>	Standard Procurement Documents
<b>SPN</b>	Specific Procurement Notice
<b>SPV</b>	Special Purpose Vehicle
<b>ST</b>	Selective Tendering
<b>TOR</b>	Terms of Reference
<b>VfM</b>	Value for Money
<b>UN</b>	United Nations
<b>USP</b>	Unsolicited Proposal

## 1. Purpose, Contents and Definitions

### 1.1. Purpose.

**1.1.1. Purpose.** The purpose of this Directive on Procurement Instructions for Recipients (*Instructions*) is to:

- (a) elaborate on the provisions of the Articles of Agreement of the Asian Infrastructure Investment Bank (**AIIB** or **Bank**), which require the Bank, among others, to “take the necessary measures to ensure that the proceeds of any financing provided, guaranteed or participated in by the Bank are used only for the purposes for which the financing was granted and with **due attention to considerations of economy and efficiency**” (emphasis added);
- (b) elaborate on the provisions of the Procurement Policy (**Procurement Policy**) governing procurement under Projects financed or administered by the Bank where the procurement is carried out by the Recipient and the agreement establishing such funds stipulates the use of the Bank’s *Procurement Policy*; and
- (c) set forth the specific requirements applicable to the procurement of Goods, Works, and Non-consulting Services and Consulting Services required for a Project.

**1.1.2.** The interpretation and implementation of these *Instructions* shall seek to give effect to these purposes.

**1.1.3.** These *Instructions* are intended to be read with the Procurement Policy.

### 1.2. Contents and Definitions.

**1.2.1. Contents.** These *Instructions* are organized into seven Sections, complemented by nine Annexes, as follows:

- (a) This Section 1. Purpose, Contents and Definitions;
- (b) Section 2. Procurement by Public Entities;
- (c) Section 3. Procurement by Private Entities;
- (d) Section 4. Financial Intermediaries (FIs);
- (e) Section 5. Public Private Partnership (PPP);
- (f) Section 6. Procurement under Bank Guarantees;
- (g) Section 7. Prohibited Practices and Integrity;
- (h) Annex I. Value for Money (VfM);
- (i) Annex II. Project Delivery Strategy (PDS);
- (j) Annex III. Administration of Procurement Related Complaints;
- (k) Annex IV. Development of Domestic Industry;
- (l) Annex V. Evaluation Criteria;
- (m) Annex VI. Use of International Model Forms of Contract;

- (n) Annex VII. Procurement Oversight by the Bank;
- (o) Annex VIII. High Value Contracts under RBP; and
- (p) Annex IX. Public Private Partnerships (PPPs) and Concessions;

**1.2.2. Definitions.** As used in these *Instructions*, the following terms have the meanings set out below:

- (a) **Consulting Services** includes a variety of services that are of an advisory or professional nature and are provided by consultants. Project-related Consulting Services include the following non-exhaustive list: feasibility studies, Project management, engineering services, finance and accounting services, training and development. Consulting Services are to be distinguished from Non-consulting Services (see below).
- (b) **Core Procurement Principles** means the Core Procurement Principles set out in *Section 5.2* of the *Procurement Policy*.
- (c) **Goods, Works, and Non-consulting Services** includes the following non-exhaustive list: (i) Goods includes commodities, raw material, machinery, equipment, vehicles, and industrial plant; (ii) Works refers to construction and includes related services such as transportation, insurance, installation, commissioning, training and initial maintenance; and (iii) Non-consulting Services refers to activities: (A) which are tendered and contracted on the basis of performance of a measurable physical output; and (B) for which performance standards can be clearly identified and consistently applied, such as drilling, aerial photography, satellite imagery, mapping and similar activities.
- (d) **Legal Agreements** means the legal agreements providing for the Bank's financing of a Project.
- (e) **National Language** means national language of the Recipient or the language used nationwide in the Recipient's country for commercial transactions.
- (f) **Private Entity** means any natural or legal person, whether publicly or privately owned: (i) which is carrying out or is established for a business purpose and is operating on a commercial basis; (ii) which is financially and managerially autonomous from the government; and (iii) whose day-to-day management is not controlled by the government.
- (g) **Procurement Documents** includes the following documents issued by the Recipient: General and Specific Procurement Notices, Request for Expressions of Interest (REoI), prequalification documents, tender documents, Request for Proposals (RFP) documents, forms of contract and any addenda. The term does not include evaluation reports or the contracts themselves.
- (h) **Procurement Standards** means the Procurement Standards set out in *Section 5.4* of the *Procurement Policy*.
- (i) **Project** means the specific set of activities for which Bank financing is made available, regardless of the financing instrument or the source of such financing or whether the Project is financed in whole or in part by the Bank.

- (j) **Prohibited Practice** has the meaning ascribed to it under the Bank's *Policy on Prohibited Practices*.
- (k) **Public Entity** means any entity that is not a Private Entity.
- (l) **Recipient** means the beneficiary of the Bank financing for a Project, which is responsible for the procurement of the Goods, Works, Non-consulting Services and Consulting Services required for the Project.

## 2. Procurement by Public Entities

**2.1. Introduction.** The provisions of this *Section 2. Procurement by Public Entities*, apply to all Bank-financed contracts for Goods, Works, Non-consulting Services and Consulting Services procured by Public Entities. In addition, *Sections 4. Financial Intermediaries (FIs)*; *5. Public Private Partnership (PPP)*, *6. Procurement under Bank Guarantees*, and *7. Prohibited Practices and Integrity* include provisions that apply to contracts procured by Public Entities.

### A. General Considerations Applicable to Procurement by Public Entities

#### 2.2. Procurement Policy Requirements.

**2.2.1.** All contracts for Goods, Works, Non-consulting Services and Consulting Services procured by Public Entities and financed in whole or in part by the Bank are governed by the following *Sections* of the Procurement Policy: *Sections I. Purpose*; *II. Definitions*; *III. Scope of Application*; *IV. General Requirements*; *V. Requirements for Procurement by Public Entities*; and *VII. Prohibited Practices and Integrity*. All Public Entity Recipients are required to comply with the provisions of those *Sections*.

**2.2.2.** The following *Sections* of the *Procurement Policy* are of particular relevance:

- (a) Section 4.2. Roles and Responsibilities elaborates on the respective roles of the Recipient and the Bank in the procurement process.
- (b) Section 5.2. Core Procurement Principles sets out on the Bank's Core Procurement Principles that apply to all Bank-financed contracts procured by Public Entities. They comprise economy, efficiency, effectiveness, fairness and good governance, value-for-money (**VfM**), fit-for-purpose (**FfP**) and transparency (additional details regarding VfM and its relationship to FfP, are covered in **Annex I. Value for Money**);
- (c) Section 5.4. Procurement Standards sets out the Procurement Standards, which apply to the procurement arrangements for the Project;
- (d) Section 5.6. Procurement Strategy and Planning sets out requirements regarding the Project Delivery Strategy (**PDS**) to be developed for the Project and which are further elaborated in **Annex II. Project Delivery Strategy** of these *Instructions*;
- (e) Section 5.7. Procurement Methods describes the general approach for determining the appropriate procurement method; the various methods are elaborated in detail in these *Instructions*;
- (f) Section 5.9. Eligibility provides for eligibility of firms and individuals from all countries to offer goods, works and services, as well as certain limitations on eligibility.
- (g) Section 5.10. Conflicts of Interest requires that all those involved in the procurement process not have a conflict of interest with regard to the procurement concerned and elaborates on this requirement.
- (h) Section 5.11. Complaints addresses in general terms how complaints about the procurement process are to be made and addressed.



## 2.3. Governance.

### 2.3.1. General.

- (a) The governance of procurement is managed through clear and transparent lines of accountability and the careful definition of the roles of responsible parties as agreed in the Legal Agreements. The lines of accountability are defined during the Project's preparation to the satisfaction of the Bank, are reflected, if applicable, in an operational manual, and are reassessed during the life of the Project.
- (b) The Legal Agreements govern the legal relationship between the Recipient and the Bank. The rights and obligations of the Recipient and the providers of Goods, Works, Non-consulting Services and Consulting Services for the Project are governed by the respective tender/RFP documents and related contracts signed by the Recipient and these providers, and not by these *Instructions* or the Legal Agreements. No party, other than the parties to the Legal Agreements, derives any rights from the Legal Agreements or has any claim to the Bank's financing.

**2.3.2. Roles and Responsibilities of the Recipient and the Bank.** Further to Section 4.2 of the *Procurement Policy*, the following elaborates on certain aspects of the respective roles of the Recipient, which implements the Project, including all aspects of the procurement process, and of the Bank, which oversees the procurement process implemented by the Recipient.

- (a) **Recipient.** The Recipient is responsible for implementing the Project, including all aspects of the procurement process from the planning, design, and tendering stage through to contract award and supervision of contract implementation. The Recipient retains all procurement documentation and records of procurement contracts financed by the Bank as required in the Legal Agreements and the corresponding tender documents. Unless otherwise stated in the Project Delivery Strategy and Procurement Plan, the Recipient uses the Bank's electronic project procurement management system for exchanges of information with the Bank, including, inter alia, on procurement planning, procurement processing, contract management, and complaint monitoring.
- (b) **Bank.** Section 4.2 of the *Procurement Policy* provides that the Bank may advise and assist a Recipient during the procurement process for a specific Project but does not prepare designs or assist in negotiations or become a party to any resulting contracts. At the same time, the Bank has a fiduciary responsibility to oversee the procurement process. The nature and extent of the Bank's procurement assistance to the Recipient, including hands-on expanded implementation support for procurement, and the intensity of the Bank's fiduciary oversight depend on the quality and application of the methodology used for implementation of the Project. Such assistance and fiduciary oversight may be provided at the country, sector, or Project level. The Bank's assistance to the Recipient is risk-based and may include advisory work that is systemic in impact. Project-specific fiduciary oversight includes prior or post reviews of individual procurement processes, financing of procurement audits, third party services or a combination of these.

### 2.3.3 Bank Review.

- (a) **Prior Review.** The Bank carries out prior reviews of procurement decisions for contracts that are considered by the Bank to be high value and/or high risk in order to

determine whether the procurement process and decisions comply with the requirements of the Legal Agreements.

- (b) **Post Review.** The Bank carries out post reviews of procurement decisions by the Recipient that are not subject to prior review in order to determine whether the procurement process and decisions complied with the requirements of the Legal Agreements. The Bank may rely on a third party that is acceptable to the Bank to conduct post reviews.

**2.3.4. Bank Determination of Prior or Post Review.** The Bank determines whether a procurement decision is subject to Bank prior or post review, based on the Project and contract-specific procurement risks, which are assessed during Project preparation, and reassessed and updated during Project implementation. The requirement of Bank prior or post review is specified in the Recipient's Procurement Plan (see below, *Section 2.9.1. Project Delivery Strategy (PDS) and Procurement Plan (PP)*). During Project implementation, the Bank monitors and reassesses the risk and risk mitigation measures and may require the Recipient to revise the prior or post review requirements in the Procurement Plan.

**2.3.5. Conflict of Interest.** Section 5.10 of the *Procurement Policy* addresses issues of conflict of interest that may arise in the procurement process and the importance of professionalism, impartiality, and holding the Recipient's interest paramount in that process. The following paragraphs elaborate on circumstances when a conflict of interest arises and how it affects the procurement process.

- (a) **Goods, Works and Non-consulting Services.** A tenderer for a contract for Goods, Works or Non-consulting Services (including its personnel and subcontractors) is considered to have a conflict of interest and therefore may be ineligible to be awarded the contract by the Recipient in any of the following circumstances:
- (i) **Tender Resulting from Consulting Services Provided:** the tenderer proposes to provide Goods, Works or Non-consulting Services resulting from or directly related to Consulting Services provided by it (or by any affiliate that directly or indirectly controls, is controlled by or is under common control with it) under the Project. This provision does not apply to the various consultants, contractors, and/or suppliers, which together, are performing the contractor's obligations under a turnkey or design and build contract;
  - (ii) **Close Relationship between Tenderer and Recipient:** the tenderer has a close business or family relationship with a professional staff member of the Recipient (or any other beneficiary of the Bank's financing) or any other party representing or acting on behalf of the Recipient) that is or would be directly or indirectly involved in any of the following activities related to the contract for which the tender is made, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Bank: (A) preparation of the Procurement Documents, in particular, the technical specifications; (B) tender evaluation process; and/or (C) implementation or supervision; or
  - (iii) **Other:** the tenderer fails to resolve in a manner acceptable to the Bank any other conflict of interest specified in the tender or RFP documents relevant to the specific procurement process.
- (b) **Consulting Services.** A consultant is ineligible to be awarded a contract for Consulting Services that would be in conflict with its prior or current obligations to other

beneficiaries of Bank financing, or that may place the consultant in a position of being unable to carry out the assignment in the best interests of the Recipient. Without limitation on the generality of the foregoing, a consultant may not be hired by the Recipient under any of the following circumstances:

- (i) **Consulting Services Resulting from Goods, Works or Non-consulting Services Provided:** the consultant is proposed to be engaged by the Recipient to provide Consulting Services resulting from or directly related to Goods, Works or Non-consulting Services provided by it (or by any affiliate that directly or indirectly controls, is controlled by, or is under common control with the consultant) for the Project;
- (ii) **Conflict among Consulting Assignments:** the consultant (including its personnel and sub-consultants), or any affiliate that directly or indirectly controls, is controlled by, or is under common control with the consultant, is proposed to be engaged for an assignment that, by its nature, creates a conflict of interest with another assignment of the consultant;
- (iii) **Close Relationship between Consultant and Recipient:** the consultant (including its personnel and sub-consultants) has a close business or family relationship with a professional staff member of the Recipient (or any other beneficiary of the Bank's financing) or any other party representing or acting on behalf of the Recipient that is or would be directly or indirectly involved in any of the following activities related to the consultant's assignment, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Bank: (A) preparation of the Terms of Reference (TOR); (B) selection process; or (C) supervision; or
- (iv) **Other:** any other circumstance that is specified in the RFP document as being a conflict of interest.

**2.3.6. Information-sharing to Avoid Unfair Competitive Advantage.** Fairness and transparency in the selection process require that consultants (or their affiliates) competing for a consulting assignment not derive a competitive advantage from having provided other Consulting Services related to the assignment for which they are competing. To that end, the Recipient makes available to all the short-listed consultants, together with the RFPs, all information that if not shared with all would give a competitive advantage to the consultant who did have the information.

**2.3.7. Remedies for Non-Compliance under the Legal Agreements.** If the Bank determines that the procurement, award or administration of a contract has not been carried out in accordance with the agreed procurement procedures or contract terms, it promptly informs the Recipient and states the reasons for its determination. Upon such determination, and without prejudice to any other contractual remedy available to it, the Bank may, in its discretion, decide that the contract is no longer eligible for financing and take any of the following actions:

- (a) cancel the undisbursed amount, if any, of the Bank financing allocated to the contract; and/or
- (b) if all or a portion of the amount so allocated has been disbursed, require that the Recipient refund the amount so disbursed.

### 2.3.8. Administration of Procurement Related Complaints and Standstill Period.

- (a) **General.** Section 5.11 of the *Procurement Policy* addresses how to handle procurement-related complaints that may be brought to the attention of the Recipient or to the Bank during the Project's procurement process. **Annex III. Administration of Procurement Related Complaints** to these *Instructions* provides further details on the requirements for complaints monitoring. The following elaborates on the use of standstill periods during which complaints may be brought.
- (b) **Administration of Procurement Related Complaints during the Standstill Period.**
- (i) The Bank requires all contracts that are proposed to be awarded under International Open Competitive Tendering (IOCT), International Open Competitive Selection (IOCS), Selective Tendering (ST), or Limited Competitive Selection (LCS) to include a standstill period. The Bank may also require a standstill period for other contracts subject to prior review.
  - (ii) If a standstill period applies to a proposed contract, the Recipient includes in the Procurement Documents for the contract a standstill period of at least ten (10) business days from the date of the notification of intention to award the contract. The Recipient may not award the contract before or during the standstill period.
  - (iii) If the Recipient receives a written complaint during the standstill period, it is required immediately to acknowledge receipt of the complaint, and promptly take appropriate action, including preparation of a response in writing. Simultaneously, the Recipient informs the Bank and provides the Bank with all relevant information and documentation, including its proposed course of action, the justification for such approach, and a draft response to the complaint for the Bank's review. If as a result of the review of a complaint, the Recipient proposes to change its contract award recommendation, it also furnishes the Bank with a revised evaluation report; and in such case, the Recipient may not award the contract without receiving the Bank's no-objection to the Recipient's proposed course of action.
  - (iv) If the Recipient does not receive any complaint during the standstill period, it informs the Bank of the same and awards the contract in accordance with the recommendation for which the Bank previously provided its no-objection.

**2.3.9. De-briefing by the Recipient on Unsuccessful Tenderers and Consultants.** The Recipient debriefs each unsuccessful tenderer or consultant who furnishes a written request for debriefing to the Recipient during the standstill period, regarding the basis for its selection decision. The Recipient is not required to consider a request for debriefing received after the standstill period.

**2.3.10 De-briefing by the Bank.** If, after publication of the Contract Award Notice (see Section 2.1.7. in these *Instructions*), an unsuccessful tenderer or consultant has not received a satisfactory explanation from the Recipient, including through a debriefing with the Recipient, as to why its tender or proposal was not successful, the tenderer or consultant may seek a meeting with the Bank. The purpose of the meeting is limited to discussing the unsuccessful tenderer's or consultant's tender or proposal. It is not to reverse the Bank's decision conveyed to the Recipient or to discuss the tenders of other tenderers or proposals of other consultants.

## 2.4. Eligibility.

**2.4.1. Open Participation.** *Article 13 of the Articles of Agreement* and Section 5.9. Eligibility of the *Procurement Policy* require the Recipient to permit firms and individuals from all countries, regardless of whether the country is a Member of the Bank, to offer goods, works and services for Bank-financed Projects.

**2.4.2. Limitations on Participation.** Section 5.9. Eligibility of the *Procurement Policy* also provides that:

- (a) any conditions for participation are limited to those that are essential to ensure the eligible firm or individual's capability to fulfill the contract in question; and
- (b) the Recipient may not exclude a firm or individual from competition for a contract for reasons unrelated to its capability to perform the contract in question unless:
  - (i) the firm or individual has been declared, and remains, as at the relevant date, ineligible pursuant to the *Bank's Policy on Prohibited Practices*; or
  - (ii) as a matter of law or official regulation, the Recipient'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 required Goods, Works, Non-consulting Services or Consulting Services.

**2.4.3. UN Sanctions.** In addition, as provided in the *Operational Policy on International Relations*, the proceeds of AIIB's financing may not be used for a payment to a person or entity or for any import of goods, if the payment or import is prohibited by a measure decided by the United Nations (UN) Security Council under Chapter VII of the Charter of the United Nations (UN Security Council Measure). The UN Sanctions List is available on the [UN's website](#). This provision has two consequences:

- (a) **Exclusion from Procurement Process.** If, by an act of compliance with a UN Security Council Measure, the Member in whose territory the Project is located prohibits any import of, or payment for, goods from a particular country, or payments to a particular person or entity, such goods, person, and entities are excluded from the procurement process.
- (b) **Ineligibility for AIIB Financing.** If a payment for an expenditure would be prohibited by a UN Security Council Measure, the expenditure is not eligible for financing out of the proceeds of the Financing.<sup>1</sup>

### 2.4.4. Participation in More Than One Tender/Request for Proposals (RFP).

- (a) A tenderer or consultant may submit only one tender or proposal for a given contract and may participate as a joint venture partner or consortium member in only one tender or RFP for a given contract. Submission of, or participation by a tenderer or consultant in, more than one tender or RFP for the same contract will result in the rejection of all tenders or proposals submitted by the tenderer or consultant for that contract.

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<sup>1</sup> See also, *General Conditions for Sovereign-backed Loans*, which exclude from the definition of an "Eligible Expenditure" and thus from eligibility for financing under Sovereign-backed Loans, an expenditure the payment of which would be prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

However, this does not limit: (i) the inclusion of the same sub-contractor or sub-consultant in more than one tender or proposal for the same contract; or (ii) the ability of one tenderer or consultant to be a sub-contractor or sub-consultant in another tender or proposal for the same contract, if permitted in the tender documents or RFP.

- (b) **Affiliates of a Recipient.** No affiliate of the Recipient or of a procurement agent engaged by the Recipient, is eligible to participate in a tender or RFP in any capacity whatsoever, unless the Recipient demonstrates to the satisfaction of the Bank that there is no significant degree of common ownership, influence or control between the Recipient and/or the Recipient's procurement agent on one hand and the affiliate on the other.

#### **2.4.5. Eligibility of State-Owned Enterprises (SOEs).**

- (a) An SOE of the Recipient's country may be eligible to compete for and be awarded contracts in the Recipient's country only if it can establish in a manner acceptable to the Bank, that it qualifies as a Private Entity and is not under the supervision of the procuring agency.
- (b) Notwithstanding the above, when Goods, Works, Non-consulting Services or Consulting Services provided by SOEs or state-owned universities or research centers are of a unique and exceptional nature (i) because of the absence of suitable private sector alternatives, (ii) as a consequence of the regulatory framework, or (iii) because their participation is critical to Project implementation, the Bank may agree on an exceptional basis to the contracting of these entities even if they do not qualify as Private Entities.

#### **2.5. Language of Procurement Documentation.**

**2.5.1. International Open Competitive Tendering and Selection (IOCT/IOCS).** The following provisions apply to IOCT and IOCS.

- (a) All Procurement Documents must be in English.
- (b) In addition, the Recipient may provide translations of these documents into the National Language of the Recipient. The Recipient is responsible for the accuracy of these translations. In case of any discrepancies, the English text prevails.
- (c) If the Recipient provides translations of Procurement Documents into the National Language, tenderers and consultants may submit their prequalification information, expressions of interest, quotations, tenders or proposals, as applicable, either in English or in the National Language.
- (d) For IOCT and IOCS contracts subject to Bank prior review, the Recipient is responsible for furnishing to the Bank an accurate translation of the evaluation report, draft contract and conformed copy of the contract in English. An accurate translation is also furnished to the Bank of any subsequent modifications to such contracts.

**2.5.2. National Competitive Tendering and Selection (NCT/NCS).** For NCT and NCS, Procurement Documents, evaluation reports and contracts may be in the National Language. In such case, the Bank may require the Recipient to provide, for its review, an accurate translation into English of all such documentation.

**2.5.3. Contracts.** The contract signed with the winning tenderer or consultant is always written in the language in which the tender or proposal was submitted. This language is the one that governs the contractual relations between the Recipient and the winning tenderer or consultant. The contract may not be signed in more than one language.

**2.5.4. Documents for Bank's Review.** All Procurement Documents, evaluation reports and contracts required by the Bank for review purposes are furnished to the Bank in English. In the event of a procurement complaint, the Bank may require the Recipient to provide certified English translations of the relevant documents.

## **2.6. Electronic Procurement (E-procurement).**

- (a) Recipients are encouraged to optimize the use of electronic systems for distributing Procurement Documents, issuing amendments, receiving tenders or proposals and for other procurement actions, such as electronic reverse (E-reverse) auctions, provided the Bank is satisfied that:
- (i) the system is adequate for the purpose;
  - (ii) the procurement method to be used under the electronic system is appropriate;
  - (iii) the system's accessibility, security, integrity, confidentiality and audit trail features are adequate for the purpose; and
  - (iv) in the case of E-reverse auction, the Recipient's requirements are unambiguously specified and there is adequate competition among firms. E-reverse auction may only be used for simple off-the-shelf Goods or simple Works contracts.
- (b) The Recipient's intended use of E-procurement is specified in the PDS.

## **2.7. Co-financing.**

**2.7.1. Policy Considerations.** Section 5.12, Co-financing of the Procurement Policy defines joint and parallel co-financing of contracts and sets out the circumstances under which the Bank may agree to apply a co-financier's procurement policy to contracts under a co-financed Project. The following elaborates on these provisions of the *Procurement Policy*.

**2.7.2. Joint Co-financing.** When the Bank co-finances contracts under a Project on a joint basis with another multilateral development bank (MDB) and determines that the MDB's procurement policies are consistent with the Bank's Core Procurement Principles and Procurement Standards, the Bank may agree to the application of the MDB's procurement policies to these contracts. In such case, the MDB oversees the procurement process, and the Bank may rely on the MDB's determination as to whether the procurement has been conducted in accordance with its policy.

**2.7.3. Parallel Co-financing.** When contracts under the Project are co-financed with another co-financier on a parallel basis, the Bank normally applies the *Procurement Policy* to the contracts that it finances and satisfies itself that the scope and specifications of the Goods, Works and Non-consulting Services, and the TOR for Consulting Services financed by the other co-financier, are appropriate so that the contracts not being financed by the Bank deliver the benefits to the Project as intended. If some contracts under the Project are financed entirely by the Recipient using its own counterpart funding, the Bank conducts a similar review

of the appropriateness of the scope and specifications and TOR of the items to be financed under counterpart funding as part of its review of the PDS.

**2.7.4. Worldwide Eligibility.** In all cases when the Bank applies a co-financier's procurement policy, worldwide eligibility to participate in procurement must continue to be applied, so that firms and individuals from all countries have the opportunity to tender for the supply of Goods, Works, Non-consulting Services and Consulting Services.

**2.7.5.** When the Bank agrees to apply the co-financier's procurement policy, it may also agree, in accordance with the *Directive on Policy on Prohibited Practices*, to have the co-financier investigate allegations of Prohibited Practices with respect to the Project.

## **2.8. Use of Recipient Procurement Systems.**

**2.8.1. Policy Considerations.** Section 5.5. Use of Recipient Procurement Systems of the *Procurement Policy* sets out the circumstances under which the Bank may agree, based on an assessment of the Recipient's applicable procurement system, to the use by the Recipient of such system for certain Bank-financed contracts, including that the system is consistent with the Core Procurement Principles and the Procurement Standards.

**2.8.2.** The assessment also covers the Recipient's procurement arrangements, procurement performance and governance, the fiduciary risk associated with the use of this system, the availability of effective complaint mechanisms and clarity on how they are utilized and assurance that the Bank's financing will be used for the intended purpose(s).

**2.8.3.** The justification for the proposed use of the Recipient's procurement system is addressed in the PDS.

## **2.9. Strategy and Planning.**

**2.9.1. Project Delivery Strategy (PDS) and Procurement Plan (PP).** Prior to Project implementation, Section 5.6. Procurement Strategy and Planning of the *Procurement Policy* requires the Recipient to develop and furnish to the Bank for review a PDS that includes a Procurement Plan and covers other matters described in that *Section*. In addition to those requirements:

- (a) the PDS: (i) addresses how procurement activities support the Project's development objectives and will deliver the best VfM under a risk-managed approach; and (ii) provides adequate justification for the selection methods in the PP.
- (b) the level of detail and analysis in the PDS is proportional to the risk, value and complexity of the Project procurement.
- (c) the PDS and PP are prepared, as part of the Project preparation process, and are reviewed by the Bank and subject to the Bank's no-objection prior to completion of negotiations for the Bank financing.
- (d) the Recipient furnishes any updates of the PDS and PP to the Bank for its prior review and approval. The Bank arranges for the publication on its external website of the PP and its updates once it has provided its no-objection to the PP.
- (e) ***Annex II. Project Delivery Strategy (PDS)*** to these *Instructions* sets out the key steps required to develop a PDS.



### 2.9.2. Advance Procurement and Retroactive Financing.

- (a) **Advance Procurement.** In some cases, it may be advantageous for the Recipient to sign a contract to be financed under a Bank loan before the signing of the Legal Agreements with the Bank. This is referred to as advance contracting. The Recipient undertakes such advance contracting at its own risk, and the Bank's no-objection 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 *Procurement Policy* and these *Instructions* in order for contracts signed prior to signing of the Legal Agreements to be eligible for Bank financing.
- (b) **Retroactive Financing.** If the contract is signed under advance contracting, subsequent reimbursement by the Bank of any payments made by the Recipient under the contract prior to the signing of the Legal Agreements is referred to as retroactive financing and is only permitted within the limits specified in the Legal Agreements.

### 2.10. General Procurement Notice (GPN).

**2.10.1.** As early in the Project cycle as possible, after the PP has been prepared, the Recipient is required to prepare and furnish to the Bank a GPN informing the international market of contracts that are to be financed by the Bank and are expected to involve IOCT or IOCS. The GPN includes:

- (a) the amount and purpose of the financing; and
- (b) the scope of procurement reflecting the overall PP, including: (i) the Goods, Works, Non-consulting Services and Consulting Services to be procured; (ii) the expected timing of the procurement; and (iii) a name and address to contact to express interest and obtain additional information, and if available, the free-access website on which the subsequent Specific Procurement Notice (SPN) or REoI will be published.

**2.10.2.** This section sets out provisions for the publication of the GPN. The Recipient:

- (a) publishes the GPN: (i) on its free-access procurement website if available and official government procurement portal, where practical; or (ii) in at least one newspaper of national circulation in the country where the Project is located; or (iii) in official gazettes; and
- (b) furnishes the GPN to the Bank, which arranges for its publication: (i) on the Bank's website prior to the commencement of any procurement activity under the Project; and (ii) as appropriate, in the United Nations Development Business (UNDB) online.

## B. Specific Provisions for Procurement of Goods, Works and Non-Consulting Services by Public Entities

### 2.11. Procurement Methods.

**2.11.1.** This *Section* sets out the principal procurement methods that may be used for contracts for Goods, Works and Non-consulting Services financed by the Bank and the circumstances under which these methods may be used.

- (a) International Open Competitive Tendering (**IOCT**), described below, is the Bank's preferred method of procurement.
- (b) Other procurement methods described below may be used, provided that the Recipient demonstrates to the Bank's satisfaction that the procurement method proposed to be used for the Project adequately reflects the requirements of the Core Procurement Principles. The justification for applying any procurement method other than IOCT must be provided in the Recipient's PDS, and its use is subject to the Bank's prior approval.

**2.11.2. International Open Competitive Tendering (IOCT).** IOCT is a method under which all interested tenderers are given adequate notification of contract requirements and an equal opportunity to submit a tender. It provides the greatest opportunity for competition and satisfies the need for economy and efficiency. The Recipient affords sufficient advance public notification of IOCT opportunities, through the GPN and SPN, for potential tenderers to determine their interest and to prepare and submit their tenders.

- (a) **Specific Procurement Notice (SPN) and other Notifications.** Under IOCT:
  - (i) The Recipient advertises the individual contract (including prequalification where required) in a SPN on: (A) its free-access website, if available, and official government procurement portals, where practical; (B) in a newspaper with national circulation in the country where the Project is located; or (C) in official gazettes.
  - (ii) The Recipient may also send tender and prequalification notices to potential tenderers that have responded with an expression of interest to the GPN.
  - (iii) In order to facilitate the participation of sub-contractors and suppliers in contracts or the creation of joint ventures and consortia, the Recipient may make available to interested parties the list of potential tenderers that have purchased tender documents and, where pre-qualification is followed, the list of pre-qualified entities.
  - (iv) The Bank arranges for publication of the SPN: (A) on the Bank's website; and (B) as appropriate, in the United Nations Development Business online.
- (b) **Prequalification.** Recipients, where appropriate, may require potential tenderers to prequalify for large and complex contracts. In such case:
  - (i) Only those tenderers that meet the prequalification criteria are invited to submit tenders.
  - (ii) The Bank and the Recipient may advertise the list of prequalified and conditionally prequalified tenderers on their websites.
  - (iii) The prequalification criteria, which are specified in the prequalification documents, relate exclusively to the capability and resources of the prospective tenderer to perform the particular contract satisfactorily and take into account such factors as its: (A) experience with and past performance on similar contracts; (B) capabilities with respect to personnel, equipment, and construction or manufacturing facilities; and (C) financial position.

- (c) **Multi-stage Tendering.** Detailed design and engineering of the Goods, Works and Non-consulting Services 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 specialized nature, it may be undesirable or impractical to prepare complete technical specifications in advance. In such case, a multi-stage tendering procedure may be used.
- (i) A two-stage tendering is used where the first stage requires proposals to be invited on the basis of a conceptual design, performance or functional specifications. The Recipient: (A) then evaluates the proposal and may conduct confidential clarification meetings with the tenderer to learn about the technical and commercial aspects of the proposal; and (B) following the evaluation and clarification of the technical proposals, with the Bank's prior approval, issues an invitation together with any amendments to the issued tender documents, to those tenderers that are substantially compliant with the technical requirements, to submit a second-stage revised technical proposal as needed and financial proposal for their technical proposal.
  - (ii) Other forms of multi-stage tendering may be used under IOCT including, among others, competitive dialogue, negotiated procedures and best and final offer procedures.
  - (iii) Any proposed use of multi-stage tendering must meet the requirements of FfP and VfM and must be covered in the PDS.

### 2.11.3. Selective Tendering (ST).

- (a) ST is similar to IOCT, except that the Recipient pre-selects qualified firms, who are then invited to submit tenders. This method may be used on an exceptional basis with the Bank's prior approval, for Goods, Works and Non-consulting Services, under one or more of the following circumstances:
- (i) the required Goods, Works or Non-consulting Services are highly specialized and complex;
  - (ii) there are only a limited number of contractors or suppliers of the particular required Goods, Works or Non-consulting Services operating in the market; or
  - (iii) other conditions limit the number of firms that are able to meet contract requirements.
- (b) Under ST, the Recipient may, with the Bank's prior approval, invite tenders from a list of qualified firms, which have been selected in a non-discriminatory manner. The list includes international firms whenever possible.
- (c) Multi-stage tendering described above in *Section 2.11.2(c) Multi-stage Tendering* may be applied under ST.

**2.11.4. Direct Contracting.** Under Direct Contracting, the Recipient invites a single firm to present its tender without prior public notification. This method may only be used with the Bank's prior approval, in the following exceptional cases:

- (a) The Recipient needs to extend an existing contract awarded in accordance with procedures acceptable to the Bank for additional Goods, Works or Non-consulting Services of a similar nature;
- (b) There has been an unsatisfactory response to an IOCT, ST or NCT for the contract, carried out in accordance with the *Procurement Policy* and these *Instructions*;
- (c) The Goods, Works or Non-consulting Services can only be provided by a single contractor or supplier because of exclusive capabilities or rights;
- (d) Standardization with existing equipment is essential and justified, the number of new items to be procured is generally lower than the number of the existing items and compatible Goods cannot be provided by other suppliers;
- (e) The circumstance is one of extreme urgency brought about by unforeseeable events not attributable to the procuring entity; or
- (f) The procurement is of low value and low risk, as agreed in the PDS and PP.

#### **2.11.5. National Competitive Tendering (NCT).**

- (a) NCT involves competitive tendering in accordance with national procedures. This may be the most economical and efficient method of procuring Goods, Works or Non-consulting Services when:
  - (i) the contract value is small (the ceiling for what can be considered a small-value contract is specified in the PDS);
  - (ii) the Works are scattered geographically or spread over time;
  - (iii) the Goods, Works or Non-consulting Services are available locally at the same quality but at lower prices than are available in the international market; or
  - (iv) by its nature or scope, the contract is unlikely to attract foreign competition.
- (b) In the above circumstances, the Recipient may, with the Bank's prior approval, use NCT in accordance with procedures and under terms and conditions acceptable to the Bank, including that the procedures:
  - (i) comply with the Core Procurement Principles and Procurement Standards; and
  - (ii) meet all of the following requirements:
    - (A) the procedures provide for adequate notification and competition at the national level to generate reasonable prices. The Bank may separately publish the SPN on the Bank's website;
    - (B) the evaluation criteria are made known to all tenderers and applied fairly;
    - (C) the conditions of contract are fair and appropriate to the Project;
    - (D) if foreign firms wish to participate in the tendering, they are allowed to do so on the same terms and conditions that apply to national firms; and

- (E) the tender documents and signed contracts confirm the applicability of the Bank's Policy on Prohibited Practices and the Bank's right to inspect and audit the tenderer/contractor/supplier and its subcontractors/suppliers.

**2.11.6. Request for Quotations (RFQ).** A RFQ is a simplified competitive procurement method that is based on comparing price quotations obtained from at least three qualified and eligible firms. This method may be appropriate for procuring limited quantities of readily available, off-the-shelf Goods or Non-consulting Services, standard specification commodities, or small value simple civil Works (the ceiling for what can be considered a small-value contract is specified in the PDS), or in situations of extreme urgency due to unforeseeable events not attributable to the Recipient. In these circumstances, the Recipient may, with the Bank's prior approval, use RFQ.

**2.11.7. Community Based Procurement (CBP).**

- (a) Procurement arrangements, specifications and contract packaging may be suitably adapted in a manner acceptable to the Bank when, in the interest of Project sustainability or to achieve certain specific social objectives of the Project, it is desirable (under selected Project components) to:
  - (i) call for the participation of local communities and/or non-governmental organizations (NGOs) in the delivery of civil Works and of Non-consulting Services;
  - (ii) increase the use of local know-how, Goods or materials; or
  - (iii) employ labor intensive and other appropriate technologies.
- (b) The Recipient's intended use of CBP arrangements is elaborated in the PDS.

**2.11.8. Framework Agreements (FAs) for Goods, Works or Non-consulting Services.**

- (a) An FA for Goods, Works or Non-consulting Services is an agreement with one or more firms that establishes the terms and conditions that will govern any contract awarded during the term of the FA (including a call-off contract). It is used for anticipated procurement of Goods, Works, or Non-consulting Services, as and when required, over a specified period of time. The FA does not commit either party to procure or supply but provides a fast and efficient way to procure Goods, Works or Non-consulting Services. A multi-supplier FA allows the Recipient to select from a number of firms, to enable each procurement to reflect best VfM. The terms and conditions normally include the fees, charge rate or pricing mechanism for the call-off contracts.
- (b) In order to establish the FA, the Recipient uses open competitive tendering (i.e., IOCT, ST or NCT, as appropriate) with an appropriate invitation for tender. Once the FA is established, the Recipient does not need to openly advertise individual contract opportunities to be awarded as call-off contracts.
- (c) FAs may be appropriate for the procurement of Goods, Works, or Non-consulting Services under the following circumstances:
  - (i) frequent reordering is based on the same or similar requirements or set of specifications;

- (ii) where different entities of the Recipient procure the same Goods, Works, or Non-consulting Services, and aggregating the demand could lead to volume discounts;
- (iii) planning for emergency situations; or
- (iv) no single firm is considered to have sufficient capacity.

**2.11.9. Public Private Partnerships (PPPs) and Concessions.** Procurement by Public Entities of contracts under PPP arrangements is covered below in *Section 5. Public Private Partnership (PPP)*.

**2.11.10. Force Account.** Force Account refers to Works such as construction and installation of equipment and Non-consulting Services carried out by a government department of the Recipient's country using its own personnel and equipment. Under specific circumstances, this may be the only practical method of procurement. For example, a government-owned construction unit that is not managerially, legally, or financially autonomous is considered a Force Account unit. The use of Force Account requires that the Recipient apply the same rigorous quality checks and inspection as for contracts awarded to third parties.

## **2.12. Tender Documentation.**

### **2.12.1. General.**

- (a) Tender documents are the basis for informing potential tenderers of the requirements to provide specific Goods, Works and Non-consulting Services. They furnish all information necessary to permit tenderers to submit responsive tenders.
- (b) Tender documents must be FfP and provide for the award of contract in accordance with the VfM requirements of the Project.
- (c) Tender documents are drafted so as to permit and encourage international competition. They clearly define:
  - (i) the scope of Goods, Works or Non-consulting Services to be provided;
  - (ii) the conditions to be met in order for a tender to be declared responsive, including fair and non-discriminatory criteria for selecting the winning tender; and
  - (iii) the respective rights and obligations of the Recipient and of the supplier, contractor

### **2.12.2. Contents of Tender Documents.**

- (a) The detail and complexity of the tender documents will vary according to the size and nature of the contract, but generally they include:
  - (i) an invitation to tender;
  - (ii) instructions to tenderers;
  - (iii) qualification and evaluation criteria;

- (iv) the form of tender;
  - (v) tender security requirements;
  - (vi) environmental and social requirements;
  - (vii) the form of contract, including the conditions of contract, advance payment guarantee requirements and performance security requirements;
  - (viii) technical specifications and drawings; and
  - (ix) a schedule of requirements for the Goods, Works or Non-consulting Services.
- (b) For IOCT, Recipients are required to use the Bank's Standard Procurement Documents (**SPD**) appropriate for the type of procurement involved. When a suitable Bank SPD is not available, the Recipient may, subject to agreement with the Bank, choose to use suitable standard procurement documents of other MDBs.

### **2.12.3. Restricted Competition and Unfair Advantage.**

- (a) Nothing in the tender documents may be designed to restrict competition or offer an unfair advantage to a particular tenderer.
- (b) Recipients may not provide to any potential supplier or contractor or service provider any information regarding a specific procurement, which would have the effect of reducing or precluding fair competition.

### **2.12.4. Standards and Specifications.**

- (a) Specifications are based on relevant quality characteristics or performance requirements (or both).
- (b) Recipients use international standards and specifications wherever these are available and appropriate. If particular national or other standards are used, the tender documents state that other standards that provide for equivalent or higher quality or performance than the specified standard would also be accepted.
- (c) The use of brand names or other designations that would discriminate among suppliers is to be avoided. If they are necessary to clarify the nature of the product requirements, the tender documents state that products of equal or higher quality would be acceptable.

**2.12.5. Environmental and Social Provisions.** The tender documents include as required, provisions designed so that the contract is implemented in compliance with the provisions of the Bank's *Environmental and Social Policy* applicable to the Project.

### **2.12.6. Development of Domestic Industry.**

- (a) The Bank may, under special circumstances and conditions, accept the application of provisions of the relevant Bank Member's legislation that promote or encourage the development of domestic industry through (i) preference margins, (ii) set asides, (iii) offsets, (iv) preference schemes or (v) other similar approaches, provided that the Bank is satisfied that such provisions satisfy the Core Procurement Principles.
- (b) The agreed approaches are reflected in the PDS and/or Legal Agreements.

- (c) Further details on considerations the Bank takes into account in determining whether to accept the application of provisions referred to above in (a) are set forth in **Annex IV. Development of Domestic Industry.**

**2.12.7. Evaluation Criteria.** The tender documents specify the evaluation criteria and methodology in detail. The evaluation criteria and methodology are designed to be appropriate to the type, nature, market conditions and complexity of what is being procured. For IOCT, the Bank's requirements for the submission of tender prices (format, structure and details), and method of comparison and evaluation of tender prices (including treatment of taxes levied in the Recipient's country for procurement of Goods, Works and Non-consulting Services), are detailed in the appropriate SPDs. **Annex V. Evaluation Criteria** of these *Instructions* elaborates on the evaluation criteria.

**2.12.8. Submission Time Limits.**

- (a) Prescribed time limits for preparation and submission of tenders must be sufficient for all tenderers to prepare and submit tenders.
- (b) The Recipient establishes tender validity periods and delivery dates that are consistent with its reasonable requirements but may not use these periods or dates to discriminate against any potential tenderer.
- (c) In exceptional cases it may be necessary to request tenderers to extend the validity of their tenders. In such cases:
- (i) tenderers are not allowed to change their tender and are free not to agree to such extension; and
  - (ii) where the tender is for a fixed price contract, provision may be made in the tender documents for the tender price of the successful tenderer to be adjusted for inflation up to the date of contract award, so as to mitigate the risk accruing to tenderers agreeing to such an extension.

**2.12.9. Communications Relating to Tender Documents.** The Recipient: (a) communicates all amendments to tender documents in writing to each registered recipient of the original tender documents; and (b) keeps records of all communications issued and received for a period of one (1) year after the Bank has received the final audit report for the Project.

**2.12.10. Tender Prices.**

- (a) **Goods.**
- (i) Tender prices for the supply of Goods are requested on the basis of the then current edition of the Incoterms published by the International Chamber of Commerce.
  - (ii) Evaluations of tenders for the supply of Goods are made on the basis of the tender price, exclusive of import duties and taxes payable on imported Goods. However, in the case of contracts procured by a sub-sovereign Public Entity, import duties and taxes may be taken into account in the evaluation of tenders, in which case this is specified in the tender documents.



- (iii) All costs associated with the supply, delivery, handling and insurance of the Goods to the final destination may be included in the price for evaluation purposes.
- (b) **Works and Non-consulting Services.** Tender prices for Works and Non-consulting Services to be substantially executed in the Recipient's country may be requested inclusive of all duties, taxes and other levies. In such cases, the evaluation and comparison of tenders are made on this basis, and the selected contractor is then responsible for all duties, taxes and levies in the performance of the contract.

#### **2.12.11. Currency.**

- (a) In agreement with the Bank, the Recipient shall specify in the Procurement Documents the currency or currencies in which the tender prices shall be quoted.
- (b) For the purpose of tender evaluation and comparison in situations where multiple currencies are permitted, tender prices are converted to a single currency, selected by the Recipient, 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.
- (c) Payment of the contract price is made in the currency or currencies in which payment has been requested by the tenderer as specified in the tender.

#### **2.12.12. Payment.**

- (a) Payment terms and procedures are set in accordance with international commercial practices applicable to the Goods, Works or Non-consulting Services and the market in question.
- (b) Contracts for the supply of Goods normally 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 under the contract.

#### **2.12.13. Tender Security.**

- (a) For the procurement of Goods, Works or Non-consulting Services, the Recipient may require a tender security. When used:
  - (i) The tender security is in the amount and form specified in the tender documents and remains valid and enforceable for a period sufficient to permit the Recipient to act within a reasonable time if the security is to be called.
  - (ii) The tender securities are released to the unsuccessful tenderers once the contract has been signed with the winning tenderer, and the performance guarantee is provided.
  - (iii) In the case of multi-stage tendering or two-envelope tendering, the tender security may be released after the evaluation of the first stage/envelope tender for the tenderer who is not qualified to proceed to the next stage/envelope.
  - (iv) Tenderers may submit a tender security directly issued by a reputable bank or financial institution of their choice.

- (b) In place of a tender security, the Recipient may require each tenderer to sign a declaration accepting that the tenderer will be suspended for the period of time specified in the tender documents from being eligible to tender for any contract with the entity that invited the tenders, if it: (i) withdraws or modifies its tender during the period of validity; (ii) fails to submit a performance security before the deadline defined in the tender documents; or (iii) is awarded the contract but fails to sign the contract.

#### **2.12.14. Contract Arrangements.**

- (a) The form of contract to be used must be appropriate and FfP for the objectives and circumstances of the Project. Contract conditions should allocate the risks associated with the contract fairly with the primary aim of achieving the most economical price and efficient performance of the contract.
- (b) The contract:
  - (i) clearly defines the scope of Goods, Works or Non-consulting Services to be supplied or performed, the rights and obligations of the purchaser and of the supplier, contractor or service provider; and
  - (ii) includes, 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, dispute resolution and governing law.
- (c) In addition to the forms of contract contained in the SPD, the Recipient may use appropriate alternative international standard model forms of contract incorporating internationally recognized terms and conditions. The justification for use of alternative model forms of contract must be submitted in the PDS.
- (d) ***Annex VI. Use of International Model Forms of Contract*** provides more information on acceptable international standard model forms of contract and the circumstances in which they may be used.

#### **2.12.15. Post-qualification.**

- (a) If prequalification of tenderers is not required, the Recipient specifies appropriate qualification requirements in the tender documents designed such that the tenderer to which the contract is awarded has the capability and resources to carry out the contract effectively.
- (b) Unless otherwise specified in the tender documents, the Recipient's assessment of a tenderer's qualifications may not take into consideration the qualifications of other entities such as its subsidiaries, parent entities, affiliates, subcontractors (other than specialized sub-contractors if permitted in the tender documents) or any other entity different from the entity that submitted the tender.

## **2.13. Tender Evaluation and Contract Award**

### **2.13.1. Tender Opening.**

- (a) The Recipient receives and opens tenders solicited under IOCT, NCT and ST methods in accordance with procedures and on conditions guaranteeing the regularity of the opening.
- (b) In the case of a single-stage one-envelope procedure (which is used for the majority of contracts for Goods, Works, and Non-consulting Services), the time specified for tender opening is the same as the latest time stipulated for delivery of tenders or promptly thereafter.
- (c) The Recipient opens all tenders that have been received on the date and at the time and place described in the tender documents.
- (d) Tenders must be opened in the presence of tenderers who wish to attend (or their representatives).
- (e) The name of each tenderer and the total amount (and the score when rated criteria are used) of each tender, including alternative tenders if permitted, are recorded when opened, and the information is provided to all tender participants.
- (f) The Recipient is required to make a complete record of the tender opening, including the minutes of the meeting and any information arising from the opening, which, for contracts subject to the Bank's prior review, is copied to the Bank directly after tender opening.

### **2.13.2. Tender Evaluation.**

- (a) The Recipient evaluates all tenders referred to above in *Section 2.13.1, Tender Opening* and compares them only on the basis of the evaluation criteria set out in the tender documents.
- (b) Contracts are awarded within the period of tender validity to the tenderer whose tender is evaluated as the most advantageous tender. In making this determination, the Recipient takes into account whether the tender has been substantially responsive to: (i) the tender submission requirements; and (ii) the specific evaluation criteria in the tender documents.
- (c) Tenderers are not allowed (and may not be requested) to change their tender or to accept new conditions during evaluation or as a condition of contract award.
- (d) The terms and conditions of the contract may not, without the Bank's prior written no-objection, materially differ from those on which tenders were invited.
- (e) Rejection of all tenders is justified when: (i) effective competition is lacking; (ii) all tenders are substantially non-responsive to the tender documents; and/or (iii) all tender prices are substantially higher than the most up-to-date cost estimate and/or the available budget. Lack of effective competition is not determined solely based on the number of tenders received. Even when only one tender is received, the process may be considered valid if the tender was satisfactorily advertised, the requirements in the tender documents were not restrictive, and the prices are reasonable in comparison to

market values. The Bank's review and no-objection is required for rejection of all tenders in cases where the tender is subject to prior review.

- (f) Where all tender prices substantially exceed the cost estimates, the Recipient may, instead of calling for new tenders, negotiate with the lowest evaluated responsive tenderer for a reduction of the tender price under the following conditions. The Recipient: (i) reviews the cost estimates and the sufficiency of the original budget; (ii) analyzes the reasons which might cause all the tender prices to substantially exceed the cost estimates; (iii) consults with the Bank on the negotiation process; (iv) confirms that to the best of its knowledge, there has been no collusion among the tenderers; and (v) obtains the Bank's no-objection to the negotiated price in the case where the contract is subject to the Bank's prior review. If no satisfactory contract can be concluded and a retendering is undertaken, modification of the scope of the contract is considered.

**2.13.3. Confidentiality.** After the opening of tenders and until the publication of contract award, or notification of intention to award when a standstill period applies, the Recipient treats information relating to the examination, clarification and evaluation of tenders in such a manner as to avoid disclosure of their contents to any other participant in the procurement process or any other party not authorized to have access to this type of information. The Recipient may not disclose information provided by tenderers that has been submitted on a confidential basis.

**2.13.4. Abnormally Low-Priced Tender (ALPT).** An ALPT is a tender in which the price in relation to the scope, methodology, technical solution and schedule, appears so unreasonably low that it raises concerns on the part of the Recipient regarding the tenderer's capability to perform the contract successfully. If and when an ALPT is identified, the Recipient takes the following actions:

- (a) The Recipient seeks written clarifications from the tenderer, including a detailed price analysis for its tender prices in relation to the tender's scope, proposed methodology, schedule, and allocation of risks and responsibilities.
- (b) After the evaluation of the information and detailed price analyses presented by the tenderer, the Recipient may (with the Bank's prior no-objection in the case of contracts subject to prior review):
- (i) accept the tender;
  - (ii) if appropriate, require that the amount of the performance security be increased at the expense of the tenderer to a level sufficient to protect the Recipient against financial loss in the event of default of the successful tenderer under the contract; or
  - (iii) reject the tender.

**2.13.5. Tender Evaluation Report.** If the decision to award a contract is subject to the Bank's prior review, the Recipient furnishes to the Bank a report containing the results of the tender evaluation and its recommendation for the award of the contract. The Bank reviews the findings and recommendations as the final step in determining the eligibility of the contract for Bank financing.

### 2.13.6. Notification of Intention to Award a Contract.

- (a) Following the decision to award a contract the Recipient promptly and simultaneously provides, by the quickest means available, and as further specified in the issued tender documents, written notification of the Recipient's intention to award the contract to the successful tenderer and each other tenderer that submitted a tender (unless the tenderer has previously received notification of exclusion from the process at an interim stage of the procurement process).
- (b) For contracts subject to prior review by the Bank, the Recipient transmits the notification of intention to award the contract only after receiving the Bank's no-objection to the evaluation report.
- (c) The Recipient's notification of intention to award a contract provides to each tenderer, at a minimum, the following information as applicable to the procurement method, and as further specified in the relevant issued tender documents:
  - (i) the name and address of the tenderer submitting the successful tender;
  - (ii) the contract price, or where the successful tender was determined on the basis of rated criteria (where price and technical factors are rated), the contract price and the respective technical score, price score and total combined score of the successful tender;
  - (iii) the names of all tenderers that submitted tenders and their tender prices as read out and as evaluated; as well as technical score, price score and total combined score of each tender when rated criteria are applied;
  - (iv) a statement of the reason(s) why the unsuccessful tenderer was unsuccessful unless the price and score information referred to above in sub-paragraph (iii) already reveal the reason. The Recipient may not divulge any tenderer's confidential or proprietary information such as cost breakdown, trade secrets, manufacturing processes and techniques, or other confidential business or financial information; and
  - (v) the date the standstill period is due to end (see above, *Section 2.3.8. Administration of Procurement Related Complaints during the Standstill Period*).

### 2.13.7. Publication of Contract Award.

- (a) For each contract awarded, the Recipient publishes a notice of award of contract (Contract Award Notice) on its website or in media of national circulation within 10 business days following the Recipient's notification of contract award to the successful tenderer.
- (b) The Bank publishes on its website the following information on each of the contracts awarded by the Recipient and financed by the Bank: (i) a description of contract awarded; (ii) the name and nationality of the entity to which the contract was awarded; and (iii) the contract price.

**2.14. Contract Management.** Contract management is an integral part of the procurement process. The Recipient's and the Bank's respective roles in relation to contract management are described below.

### 2.14.1. Recipient Responsibilities.

- (a) The Recipient administers contracts financed by the Bank with due diligence and monitors and reports to the Bank on the performance under these contracts.
- (b) For each contract subject to the Bank's prior review, before agreeing to any material 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 Recipient), the Recipient obtains the Bank's written no-objection to the proposed modification, waiver or extension. Further details are set forth in ***Annex VII. Procurement Oversight by the Bank.***

### 2.14.2. Bank Responsibilities.

- (a) The Bank monitors contractual performance for evidence of issues which may have a significant negative impact on the outcome of the Project, such as undue time and cost overruns, poor performance, disputes and poor contract quality.
- (b) When contract implementation difficulties are experienced under the Project and contract management risk mitigation measures have been identified as part of the approved PDS and put in place, the Bank may also facilitate additional contract oversight through its normal supervision, guidance and direction to the Recipient.

## C. Specific Provisions for Selection of Consulting Services by Public Entities

### 2.15. General Considerations.

**2.15.1. Key Considerations.** The Recipient's primary consideration when selecting consultants is the quality of the services that are provided. The Recipient establishes procedures for selecting consultants and contracting for their services that are flexible and transparent so that assignments can be efficiently executed with high standards of performance, while providing the necessary accountability. These considerations inform the procedures outlined below.

**2.15.2. Key Steps in the Selection Process.** The selection process for consultants generally involves the steps outlined out below in this *Section*. Some of these steps may be simplified or omitted, depending on the value of the contract to be performed.

- (a) The Recipient: (i) defines the scope, objectives and estimated budget of the consultant's assignment, including any anticipated follow-on services and extensions of the proposed assignment; and (ii) determines the selection method to be followed.
- (b) The Recipient then: (i) identifies consultants that are qualified to perform the assignment; and (ii) prepares a short list of qualified firms.
- (c) The Recipient invites proposals from the short-listed firms.
- (d) Once proposals are received, the Recipient: (i) evaluates and compares the capabilities of the consultants who submitted the proposals; and (ii) selects the preferred consultant.

- (e) The Recipient negotiates a contract with the selected consultant.
- (f) The Recipient administers the implementation of the selected consultant's contract.

## **2.16. Selection of Consulting Firms.**

**2.16.1.** This *Section* sets out the principal selection methods that may be used for contracts for Consulting Services financed by the Bank and the circumstances under which these methods may be used. More detailed methods are elaborated below in *Section 2.17. Detailed Selection Methods under IOCS, LCS, NCS and Direct Selection.*

- (a) An international open competitive selection (**IOCS**) method is the Bank's preferred method for selection of consulting firms.
- (b) Selection methods other than IOCS may be applied, provided the Recipient demonstrates to the Bank's satisfaction that the proposed selection method adequately reflects the requirements of the Core Procurement Principles. The justification for applying any selection method other than IOCS must be stated in the Recipient's PDS and is subject to the Bank's prior approval before being incorporated in the PP.

**2.16.2. International Open Competitive Selection (IOCS).** IOCS requires mandatory international advertisement of requests for expressions of interest (**REoI**) and is used when the participation of foreign firms is most likely to best meet FfP and VfM considerations.

### **2.16.3. Limited Competitive Selection (LCS).**

- (a) LCS is a competitive selection method in which the Recipient prepares a shortlist without advertisement. It may be appropriate:
  - (i) if there are only a limited number of qualified consultants that can carry out a particular assignment; or
  - (ii) there are other justified exceptional reasons.
- (b) Under LCS, the Recipient issues RFP and seeks technical and financial proposals from a list of potential consultants broad enough to generate adequate competition.

**2.16.4. National Competitive Selection (NCS).** NCS through advertisement of REoI in the national media may be used when the nature, scope or value of the Consulting Services (or a combination of these) is unlikely to attract foreign competition and there are sufficient numbers of qualified national consultants to carry out the assignment. If foreign consultants wish to participate in NCS, they are allowed to do so, but they follow the national rules and procedures agreed with the Bank.

**2.16.5. Direct Selection.** FfP and VfM considerations may require a direct selection (single-source or sole-source selection) method (**Direct Selection**) that involves approaching and negotiating with only one firm. This method may be used on an exceptional basis under circumstances where there is only one suitable firm or there is a suitable justification to use a preferred firm. These circumstances are described in more detail below in *Section 2.17.6. Direct Selection.*

**2.17. Detailed Selection Methods under IOCS, LCS, NCS and Direct Selection.** The following are more detailed selection methods for firms that may be utilized under IOCS, LCS, NCS and Direct Selection. The specific methods to be used are specified in the Project's PDS:

**2.17.1. Quality and Cost Based Selection (QCBS).**

- (a) QCBS involves a competitive process among short-listed firms that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm.
- (b) The relative weight to be given to the quality and cost is determined for each assignment and depends on the nature of the assignment.

**2.17.2. Fixed Budget-based Selection (FBS).**

- (a) FBS involves a competitive process among short-listed firms in which the RFP indicates the available budget and requests the firms to provide their technical and financial proposals in separate envelopes.
- (b) Technical proposals are opened and evaluated first, financial proposals are opened second, and the firm (i) with the highest ranked technical proposal and (ii) whose financial proposal is within the indicated budget, is selected.
- (c) FBS is appropriate for simple assignments that can be precisely defined; for which the time and personnel inputs can be accurately assessed; and for which the budget is fixed and cannot be exceeded.

**2.17.3. Least Cost Based Selection (LCBS).**

- (a) LCBS involves a competitive process among short-listed firms, in which the RFP specifies a minimum qualifying mark for quality and requests the firms to submit their technical and financial proposals in separate envelopes.
- (b) Technical proposals are opened first and evaluated. Only the financial proposals of those firms with at least the minimum qualifying mark are evaluated, and the final evaluation is based exclusively on cost.
- (c) LCBS is appropriate for small assignments of a standard or routine nature for which well-established practices and standards exist.

**2.17.4. Quality Based Selection (QBS).**

- (a) QBS involves a competitive process among short-listed firms, in which only the technical proposal is evaluated.
- (b) The firm with the best technical proposal is invited to negotiate the financial terms.
- (c) QBS is appropriate for assignments that are complex or highly specialized, making it difficult to define precise TOR and the required input from the consultants; where the downstream impact of the assignment is so large that the quality of the services is of overriding importance for the outcome of the Project; and where assignments can be carried out in such substantially different ways that financial proposals may be difficult to compare.



**2.17.5. Consultant's Qualifications Based Selection (CQS).** CQS involves an LCS process in which the Recipient sends REoI to at least three (3) firms and selects the best qualified and experienced firm to submit a combined technical and financial proposal. It is appropriate for short term small assignments or emergency situations in which preparing and evaluating competitive proposals is not justified.

**2.17.6. Direct Selection.** The two circumstances when Direct Selection may be used are Single-source selection and Sole-source selection, described below.

- (a) **Single-source** selection may be appropriate:
- (i) to extend an existing contract for consultant services not originally financed by the Bank but awarded in accordance with procedures acceptable to the Bank, for additional Consulting Services of a similar nature, provided: (A) this is properly justified; (B) no advantage will be obtained by competition; and (C) the prices are reasonable;
  - (ii) for tasks that represent a natural continuation of previous work carried out by a consultant where: (A) continuity in the technical approach, experience acquired and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition; and (B) performance of the initial assignment was satisfactory;
  - (iii) if there is a justified reason to re-engage a firm that has previously completed a contract with the Recipient to perform a similar type of Consulting Services. The Recipient must demonstrate that: (A) the previous contract was satisfactorily performed by the firm; (B) no advantage will be obtained by competition; and (C) the price is reasonable;
  - (iv) if the contract is both very low value and low risk as specified in the PP; or
  - (v) in exceptional cases, for example, in response to natural disasters and emergency situations.
- (b) **Sole-source** selection may be appropriate:
- (i) when only one firm is qualified or has experience of exceptional worth for the assignment; or
  - (ii) when the Consulting Services are to be provided in the Recipient's country by an SOE, university or research center of the Recipient's country, and the services are of a unique and exceptional nature: (A) due to the absence of suitable private sector alternatives; (B) as a consequence of the regulatory framework; or (C) because the consultant's participation is critical to Project implementation.
- (c) In all instances of Direct Selection, the Recipient is required to make its selection on the basis of fairness and equity and to have in place procedures designed such that:
- (i) the prices are reasonable and consistent with the market rates for similar services; and
  - (ii) the required Consulting Services are not split into smaller size contracts in order to avoid competitive processes.

## **2.18. Shortlists.**

**2.18.1.** The preparation of a shortlist of firms to provide Consulting Services is required for all selection methods except CQS and Direct Selection.

**2.18.2.** The Recipient is responsible for preparing the shortlist. The shortlist comprises firms that have expressed interest and have the relevant experience, managerial and organizational capabilities for the assignment.

**2.18.3.** A shortlist of consultants normally includes no less than three (3) and no more than six (6) qualified and experienced consultants. The shortlist may not include any affiliate of the Recipient unless it can be demonstrated to the Bank's satisfaction that: (i) there is not a significant degree of common ownership, influence or control between the Recipient and the affiliate; and (ii) the affiliate would not be placed in a conflict-of-interest position or other position in which its judgment in the execution of the assignment could be biased.

**2.18.4.** SOEs, not-for-profit entities (such as non-governmental organizations and public universities), and UN agencies are normally not included in the same shortlist with Private Entity firms, unless they meet the eligibility requirements of *Section 2.4.5, Eligibility of State-Owned Enterprises (SOEs)*, above. If they are included in the same shortlist with Private Entity firms, the selection may be made by using QBS or CQS, in accordance with the requirements set forth in the PP approved by the Bank.

**2.18.5.** The shortlist may not include individual consultants. The shortlist may comprise entirely national consultants if the assignment is below the threshold established in the PP approved by the Bank.

## **2.19. Framework Agreements (FA) for Consulting Services.**

**2.19.1.** An FA for Consulting Services is an agreement established with firms or individual Consultants, as required over a specific period of time. The FA sets out the terms and conditions under which specific Consulting Services (**call off contracts**) can be provided directly or competitively throughout the term of the FA.

**2.19.2.** FAs may be appropriate for the recurring selection of Consulting Services or to consolidate requirements when different entities of the Recipient procure the same types of Consulting Services.

## **2.20. Selection of Individual Consultants.**

### **2.20.1. General.**

- (a) Individual consultants are selected for an assignment for which: (i) a team of experts is not required; (ii) no additional home office professional support is required; and (iii) the experience and qualifications of the individual are of paramount importance.
- (b) When coordination, administration, or collective responsibility may be difficult because of the number of individuals, the Recipient employs a firm rather than several individuals.
- (c) When qualified individual consultants are unavailable or cannot sign a contract directly with a Recipient because of a prior agreement with a firm, the Recipient may invite firms to provide qualified individual consultants for the assignment.

- (d) The following methods may be used for the selection of individual consultants, as appropriate.

#### **2.20.2. Open Competitive Selection of Individual Consultants (OCSIC).**

- (a) Advertisement of REoI is required for the selection of individual consultants, particularly if: (i) the Recipient does not have knowledge of experienced and qualified individuals or of their availability; (ii) the services are complex; (iii) there is potential benefit from wider advertising; or (iv) advertising is mandatory under national law.
- (b) In such case: (i) the REoI includes complete TOR; (ii) the individual consultant is selected from among those who expressed interest in response to the REoI; and (iii) the evaluation is based on the relevant qualifications and experience of the individual consultant.

#### **2.20.3. Limited Competitive Selection of Individual Consultants (LCSIC).**

- (a) When the Recipient has knowledge of experienced and qualified individuals and their availability, it may, instead of issuing an REoI, invite those individual consultants whom it deems are qualified to provide the Consulting Services required.
- (b) In such case: (i) the complete TOR are sent with the invitation; (ii) the individual consultant is selected from among those who expressed interest in response to the invitation; and (iii) the evaluation is based on the relevant qualifications and experience of the individual consultant.

**2.20.4. Direct Selection of Individual Consultants (DSIC).** Individual consultants may be selected on a single-source or sole-source basis in the following circumstances, subject to the Bank's prior approval.

- (a) **Single source** may be appropriate if there is a preferred individual consultant among several qualified individual consultants for:
- (i) tasks that are a continuation of previous work that the individual consultant has carried out and the individual consultant was selected competitively under *Section 2.20.2, Open Competitive Selection of Individual Consultants*, or *Section 2.20.3, LCS of Individual Consultants*, above;
  - (ii) assignments with a total expected duration of less than six (6) months; or
  - (iii) urgent situations.
- (b) **Sole source** may be appropriate when the individual is the only consultant qualified for the assignment.

**2.20.5. Shortlists for Individual Consultants.** The preparation of a shortlist of individuals to provide Consulting Services is required for all selection methods except Direct Selection and follows the same approach as outlined above in *Section 2.18. Shortlists*.

#### **2.21. Request for Proposals (RFP).**

**2.21.1.** The Recipient prepares the RFP in accordance with the format and requirements of the Standard Procurement Document - Request for Proposals when IOCS is the method used for selecting the consultant.

### **2.21.2. Evaluation and Selection.**

- (a) The RFP clearly states the criteria for evaluating the proposals.
- (b) The evaluation of proposals is normally based on technical considerations, including, but not limited to: (i) experience of the firm in similar assignments; (ii) local experience and presence; (iii) qualifications of key personnel proposed for the assignment; and (iv) suitability and quality of the work plan and methodology.
- (c) For some assignments, of a straightforward technical nature, the price of the services may be a secondary consideration, but quality remains the principal factor in selection.
- (d) The firm that submits the highest rated proposal is invited to negotiate a contract with the Recipient.
- (e) Rejection of all proposals is justified when: (i) all proposals fail to respond to important aspects of the TOR, or present major deficiencies in complying with the TOR; (ii) all proposals fail to achieve the required minimum technical score; or (iii) the offered price of the successful proposal is substantially higher than the available budget or the most up-to-date cost estimate. The Bank's review and no-objection is required for the rejection of all proposals in cases where the contract is subject to the Bank's prior review.

### **2.22. Contract Negotiations.**

**2.22.1.** During contract negotiations, the Recipient and the consultant finalize the draft contract without substantially altering the consultant's proposal, including the conditions of the contract attached to the RFP.

**2.22.2.** Where so required in the PP, the Recipient furnishes the draft final contract to the Bank for review and approval before its signing.

**2.22.3.** For contracts awarded on the basis of QBS and CQS, in addition to contract negotiations on scope of services and the staffing proposed, negotiations are permitted on consultant fee rates and contract implementation costs.

### **2.23. Contract Administration.**

**2.23.1.** The Recipient is responsible for: (i) managing and administering the consultant's work to high performance standards; (ii) authorizing payments; (iii) agreeing to contract changes as may be needed; (iv) resolving claims and disputes; (v) monitoring timely and satisfactory completion of the assignment; and (vi) evaluating the performance of the consultant.

**2.23.2.** Before agreeing to any material 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 Recipient), the Recipient obtains the Bank's prior written no-objection to the proposed modification, waiver or extension. Further details are set forth in ***Annex VII. Procurement Oversight by the Bank.***

## D. Specific Provisions for Procurement under Results-based Projects (RBPs)

### 2.24. Procurement Policy Requirements.

**2.24.1.** All contracts for Goods, Works, Non-consulting Services and Consulting Services for a Results-based Project (RBP) supported by the Bank's Results-based Financing (RBF) are governed by Section 5.16 of the *Procurement Policy*. Under that *Section*, each Recipient of an RBF is required to comply with the following provisions of the *Procurement Policy*: *Section I. Purpose*; *Section II. Definitions*; *Section III. Scope of Application*; *Section IV. General Requirements*; *Section 5.1*; *Section 5.2. Core Procurement Principles*; and *Section VII. Prohibited Practices and Integrity*. Some of these key provisions are reproduced and elaborated on below.

### 2.25. Procurement Systems Assessment.

**2.25.1.** As provided in *Section 5.16* of the *Procurement Policy*, for an RBP "[t]he Bank conducts a due diligence assessment of the procurement systems proposed to govern the RBP, based on upstream work by the Recipient. The assessment considers the degree to which the planning, tendering, evaluation, contract award, and contract administration arrangements and practices provide reasonable assurance that the RBP will achieve the intended results through its procurement processes and procedures, consistent with the Core Procurement Principles." The Bank's assessment is conducted during the Project preparation stage and comprises part of the Project's fiduciary systems assessment.

**2.25.2.** To facilitate the Bank's assessment, the Recipient provides the Bank with detailed information regarding the procurement systems the Recipient proposes to use in procuring the Goods, Works, Non-consulting Services and Consulting Services under the RBP. This information should adequately cover, among other matters, the following:

- (a) the arrangements for planning and budgeting of the RBP;
- (b) procurement rules to be applied to the RBP and their accessibility to the public;
- (c) the Recipient's capacity for contract management and administration;
- (d) availability of effective complaint mechanisms, including clarity on how they are utilized;
- (e) systems for RBP oversight and control; and
- (f) arrangements to manage the risks of Prohibited Practices.

**2.25.3.** Firms and individuals proposing to offer Goods, Works, Non-consulting Services and Consulting Services for the RBP must meet the eligibility requirements set forth in *Section 2.4* of these *Instructions*.

**2.25.4. High Value Contracts.** The Bank's *Procurement Policy* provides that the procurement of Goods, Works, Non-consulting Services or Consulting Services under High Value Contracts "are normally not eligible for financing under the RBF and are excluded from the RBP. However, such contracts may be included in the RBP and financed under the RBF if they are important to the integrity of the RBP and their monetary value in relation to the overall RBP is modest."

- (a) High Value Contracts are defined in the Bank's *Directive on the Procurement Policy*. To this end, the Directive sets forth thresholds for determining whether a contract is a High Value Contract under an RBP. Any contract whose value is estimated to equal or exceed the equivalent of these thresholds is considered a High Value Contract. These thresholds vary depending on the type of procurement and the Project's procurement risk. These thresholds may be modified from time to time in the manner provided in the *Directive on the Operational Policy on Financing*. The current thresholds are set forth in **Annex VIII. High Value Contracts under RBP** of these *Instructions*.
- (b) The *Directive on the Procurement Policy* provides that for any exception proposed regarding the exclusion of High Value Contracts under the RBP, the exception is to be "made on a case-specific basis in accordance with the criteria set forth in the Policy (i.e., the contracts are important to the integrity of the RBP, and their monetary value in relation to the overall RBP is modest)."

**2.25.5. Procurement Actions.** As provided in the *Procurement Policy*, "[b]ased on the results of its assessment, the Bank may require the Recipient to implement an action plan to address identified weaknesses and risks in the proposed procurement systems and to strengthen institutional capacity." These actions are included in the RBP Action Plan, which is to be implemented and monitored throughout the RBP's implementation.

**2.25.6. Reliance on Development Partners' RBP Assessments.** The *Procurement Policy* provides that "[t]he Bank may conduct [its procurement systems] assessment alone or with development partners. It may rely on assessments prepared by other development partners if it is satisfied with the quality and relevance of the assessments."

**2.25.7. Co-Financing.** More particularly in the context of co-financing, the *Procurement Policy* provides that "[w]hen co-financing an RBP with another MDB, the Bank may, on a case-by-case basis, ... apply the co-financier's procurement policies and procedures applicable to the co-financier's results-based financing modality, provided that the Bank is satisfied that these policies and procedures are consistent with the Bank's Articles of Agreement and materially consistent with the *Procurement Policy* provisions applicable to RBPs and that appropriate arrangements and monitoring procedures for the procurement aspects of the RBP are in place. The Bank may rely on the co-financier's determination as to whether compliance with these policies and procedures has been achieved under this approach. At the same time, the Bank works with the co-financier in order to support the co-financier's due diligence and monitoring of the Project."

### 3. Procurement by Private Entities

**3.1. Introduction.** The provisions of this *Section 3. Procurement by Private Entities*, apply to all Bank-financed contracts for Goods, Works, Non-consulting Services and Consulting Services procured by Private Entities. In addition, the following Sections of these Instructions also include provisions applicable to procurement by Private Entities: *Section 4. Financial Intermediaries (FIs)*; *Section 5. Public Private Partnership (PPP)*; *Section 6. Procurement under Bank Guarantees*; *Section 7. Prohibited Practices and Integrity*.

#### 3.2. Procurement Policy Requirements.

**3.2.1.** All contracts for Goods, Works, Non-consulting Services and Consulting Services procured by Private Entities and financed in whole or in part by the Bank are governed by the following *Sections* of the *Procurement Policy*: *Sections I. Purpose, II. Definitions, III. Scope of Application, IV. General Requirements, VI. Requirements for Procurement by Private Entities* and *VII. Prohibited Practices and Integrity*.

**3.2.2.** The following *Sections* of the *Procurement Policy* are of particular relevance.

- (a) Section 6.2. (*Established Commercial Practices*) addresses the Bank's concern for appropriate use of funds with due consideration for economy and efficiency. This Section provides that these concerns are often met by Private Entities by following established private sector or commercial practices. It also provides that whenever the Bank deems appropriate, it may require the use of competitive tendering methods by Private Entities, particularly for large contracts.
- (b) Section 6.3. (*Appropriate Procurement Methods*) provides for the Bank to satisfy itself that the Private Entity Recipient uses appropriate procurement methods in order for it to make a sound selection of works, goods and services at fair market prices and make its capital investments in a cost-effective manner.
- (c) Section 6.4. *Market Price* elaborates on the requirement that contracts awarded be in the best financial interest of the Private Entity Recipient (as distinct from the interest of the Project's Sponsor(s)). Thus, this Section provides that where a shareholder of the Recipient 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 satisfies itself that the costs are in line with current market prices and the original cost estimates in the Project report, and that the contract conditions are fair and reasonable. Finally, this Section cautions that the Bank does not finance costs that it determines exceed market prices.

## 4. Financial Intermediaries (FIs)

**4.1. Private Entity Beneficiaries.** If the Bank provides financing to an FI to finance sub-loans to or equity investments in Private Entity beneficiaries such as small- and medium-sized enterprises and/or infrastructure special purpose vehicles (SPVs), the procurement of Goods, Works, Non-consulting Services and Consulting Services financed under the sub-financings may be undertaken by the respective beneficiary in accordance with the established commercial practices of the beneficiary. If the sub-financings involve the procurement of large contracts, the Bank may require the use of competitive tendering methods by the Private Entities.

**4.2. Public Entity Beneficiaries.** If the Bank provides financing to an FI to finance sub-loans to or equity investments in Public Entities, the procurement of Goods, Works, Non-consulting Services and Consulting Services financed under the sub-financings out of the proceeds of the Bank financing is subject to the requirements of *Section 2.8 Use of Recipient Procurement Systems*, unless the Bank requires otherwise.

## 5. Public Private Partnership (PPP)

### 5.1. General.

**5.1.1.** Special procurement considerations may apply to the involvement of the private sector in the provision of public infrastructure through public-private partnership (PPP) arrangements, often referred to as concessions, whereby a public authority entrusts a Private Entity to implement an infrastructure project over the long term. These PPP arrangements frequently involve large scale and complex construction and operation and may take various forms, including build, own and operate (BOO), build, operate and transfer (BOT), and build, own, operate and transfer (BOOT) arrangements. They require consideration of both the process by which the PPP arrangements are to be or have been agreed as well as the fairness and reasonableness of the terms and conditions of the arrangements.

### 5.2. Public Entity Financing.

**5.2.1.** The Bank may be asked to provide financing to a Public Entity Recipient in connection with PPP arrangements proposed to be agreed by the Public Entity with a Private Entity. The *Procurement Policy* requires tendering procedures acceptable to the Bank in the selection of the Private Entity and contracts procured under the PPP arrangements. In such case, **Annex IX. Public Private Partnerships (PPPs) and Concessions** of these *Instructions* sets out detailed procurement requirements for these arrangements.

### 5.3. Private Entity Financing.

**5.3.1.** More frequently, however, the Bank is asked to provide financing to a Private Entity Recipient that has already entered into PPP arrangements with a Public Entity, and the Bank has no control over the process by which the arrangements were agreed. Bank financing of such PPP arrangements is subject to special scrutiny by the Bank.

**5.3.2.** If the PPP arrangements were not made in a manner materially consistent with the requirements set out in **Annex IX. Public Private Partnerships (PPPs) and Concessions** of these *Instructions*, the Bank will only finance the PPP arrangements if the Recipient demonstrates to the satisfaction of the Bank, that the following criteria have been met:



- (a) the process for selecting the Private Entity has been conducted: (i) with fairness and transparency, preferably based on a competitive process; and (ii) in accordance with all applicable national laws and regulations;
- (b) the process did not involve any Prohibited Practice;
- (c) the terms and conditions of the contract relating to price, quality and risk-sharing are fair and reasonable in relation to market practice; and
- (d) if the PPP arrangements were based on an unsolicited proposal (**USP**) by the Private Entity, the process followed in awarding the contract was transparent, subject to public scrutiny, adhered to appropriate public administrative procedures, and had an outcome that meets the requirement set forth above in paragraph (c). For purposes of this paragraph:
  - (i) a USP is a written proposal for a PPP that is submitted by a Private Entity for the purpose of entering into an agreement with a government agency, but that is not in response to a formal solicitation or request issued by the agency; and
  - (ii) in considering whether the process was subject to public scrutiny, the Bank determines through due diligence: (A) whether the Project was announced to local administrative authorities; (B) whether the government agency or the contracting authority had the opportunity to review and, possibly, approve the PPP arrangements; and (C) to what extent the Project and contracting process were the subject of public information and (if appropriate) consultation.

## 6. Procurement under Bank Guarantees

**6.1. General.** If the Bank guarantees a loan made for a Project, the *Articles of Agreement* and the *Procurement Policy* require that the proceeds of the financing so guaranteed “are used only for the purposes for which the financing was granted and with due attention to considerations of economy and efficiency.”

**6.2. Sovereign-backed Financing.** For contracts whose financing is guaranteed by the Bank and is accompanied by a Member indemnity and counter-guarantee, the Bank satisfies itself that the contracts financed under the guaranteed proceeds are procured in line with Bank’s Core Procurement Principles.

**6.3. Non-sovereign-backed Financing.** For contracts whose financing is guaranteed by the Bank and is not accompanied by a Member indemnity and counter-guarantee, the procurement may be undertaken by the beneficiary in accordance with the established private sector or commercial practices of the beneficiary.

## 7. Prohibited Practices and Integrity

**7.1. Policy Considerations.** The Bank’s *Policy on Prohibited Practices* and the *Procurement Policy* both address matters relating to Prohibited Practices.

**7.1.1. Policy on Prohibited Practices.** As stated in the *Policy on Prohibited Practices*, the purpose of that policy “is to ensure that the Bank’s financial support is used only for the purpose for which it was granted. It is, therefore, essential that the Bank does business with

*trustworthy parties who adhere to the highest integrity standards.*” The *Policy on Prohibited Practices* therefore establishes a regime for the sanctioning of firms and individuals that are found to have engaged in a Prohibited Practice.

- (a) Sections 3.1 and 3.2 of the *Policy on Prohibited Practices* define what constitutes a Prohibited Practice and provide that: (i) the Bank requires all Parties (as defined in that *Policy*<sup>2</sup>) to adhere to the highest ethical standards; and (ii) no Party may engage in any Prohibited Practice in any Project.
- (b) The *Policy on Prohibited Practices* also includes provisions for reporting and investigating suspected cases of Prohibited Practices.

#### **7.1.2. Procurement Policy.**

- (a) Section VII of the *Procurement Policy* requires the Recipient (and other beneficiaries of the Bank financing), as well as suppliers, contractors, service providers, consultants, concessionaires and their agents (whether declared or not), sub-contractors, sub-consultants and their personnel under Bank-financed contracts for the Project, to observe the highest standard of transparency, ethics and integrity during the procurement, administration and implementation of Bank-financed contracts.
- (b) If the Bank determines that there has been a failure to do so and any of these entities or individuals has engaged in a Prohibited Practice, it may, independently of any investigations or sanctions conducted under the *Policy on Prohibited Practices*, exercise its available contractual remedies.
- (c) The following Section 7.2. *Prohibited Practices and Integrity Aspects of the Procurement Process* elaborates on certain measures that the Bank requires (or that it may take) in connection with Prohibited Practices in the procurement process.

#### **7.2. Prohibited Practices and Integrity Aspects of the Procurement Process.**

**7.2.1.** The Bank requires the Recipient, as well as suppliers, contractors, service providers and consultants selected by a Public Entity Recipient under *Section 2, Procurement by Public Entities* above, and by a Private Entity under *Section 3, Procurement by Private Entities* and *Section 5, Public Private Partnership (PPP)* above, to:

- (a) fully cooperate with the Bank (and any co-financier undertaking an investigation pursuant to *Section 2.6, Co-financing* above) in any investigation under the *Policy on Prohibited Practices* into an alleged Prohibited Practice;

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<sup>2</sup> The *Policy on Prohibited Practices* defines Party as follows: In the case of contracts financed by the Bank under SBF or NSBF, the term “Party” includes: any party (and its respective officers, employees and agents), who: (a) in the case of an SBF, is involved in the Project, including, inter alia, recipients of the Financing, beneficiaries of technical cooperation, bidders [NB: *referred to in the Procurement Policy and these Instructions as tenderers*], suppliers, contractors, sub-contractors, consultants, sub-consultants, service providers, applicants, concessionaires and financial intermediaries; or (b) in the case of an NSBF, is involved in the Project, including, inter alia, borrowers, sponsors, recipients of the financing, beneficiaries of technical cooperation, bidders, suppliers, contractors, sub-contractors, consultants, sub-consultants, service providers, applicants, concessionaires, financial intermediaries, guaranteed parties, and investee companies.

- (b) permit the Bank or its representative (including such co-financier) to inspect their accounts and records relating to the submission of tenders and contract performance; and
- (c) have such records and accounts audited by auditors appointed by the Bank.

**7.2.2.** If the Project is financed by a Sovereign-backed Loan (as defined in the *Operational Policy on Financing*), the Bank may take any of the following procurement-related actions in connection with a Prohibited Practice under the Project:

- (a) The Bank may reject a proposal for award if it determines that the tenderer recommended for award, or any of its personnel, agents, sub-consultants, sub-contractors, service providers, suppliers or their employees has directly or indirectly engaged in a Prohibited Practice in competing for the contract in question; and
- (b) The Bank may cancel the undisbursed portion of the loan allocated to a contract (and require reimbursement of the disbursed portion of the loan allocated to the contract) if it determines at any time that representatives of the Recipient or of a recipient of any part of the proceeds of the loan engaged in a Prohibited Practice during the procurement, administration or the implementation of the contract in question.

**7.2.3.** Provisions are included in the Legal Agreements and the Procurement Documents enabling the Bank (and any co-financier that may undertake an investigation pursuant to *Section 2.6, Co-financing* above) to take the measures described above in *Sections 7.2.1. and 7.2.2.* (See also, *Section H, Project and Financing Documents*, of the *Directive on Policy on Prohibited Practices* for additional requirements for the Legal Agreements).

## Procurement Instructions for Recipients

### Annex I

#### Value for Money (VfM)

1. **Purpose.** The purpose of this *Annex* is to define VfM and describe how it may be achieved in the procurement process.
2. **Defining VfM.** VfM does not simply mean achieving the lowest tendered price; it involves evaluating the extent to which a proposed solution will realize the desired procurement outcome while taking into account the optimum combination of whole life costs and quality. Additional factors that are also typically taken into account that are FfP in determining VfM include consideration of risk, environmental and sustainability issues.
3. **Achieving VfM.** VfM is best achieved through the following measures:
  - (a) Inclusion of a clear statement of needs and the required procurement outcome in the PDS and in the accompanying PP;
  - (b) Adoption of a procurement approach that is proportional to the risk, value, context and strategic importance of the procurement, i.e., the process is FfP;
  - (c) Specification in the Procurement Documents of the requirements and of the cost and non-cost elements that will be evaluated, including on a life cycle basis where appropriate;
  - (d) Selection of a form of contract that is appropriate for the outcome;
  - (e) Inclusion in the Procurement Documents of clear evaluation criteria that are: (i) aligned with the needs and required outcome of the Project and the selection of the firm that best meets these needs and outcome; (ii) designed to enable the Recipient to achieve best VfM during contract implementation; (iii) determined by the PDS; and (iv) specified in the tender documents or RFP;
  - (f) Effective contract management.
4. **Planning.** Appropriate design of the procurement process so that the funds allocated to the contract in question yield maximum value is the critical first step to achieving VfM. To this end:
  - (a) The use of life cycle costing in addition to the initial capital cost normally contributes significantly to achieving VfM, particularly when the operational costs are significant.
  - (b) The PDS (with its associated PP) states the needs and desired outcome and identifies how VfM will be achieved through the procurement process.
5. **Market Strategy.**
  - (a) Achieving VfM requires a clear and focused strategy for sourcing the procurement requirement from the appropriate market, so as to attract firms that have the required quality and capability to satisfactorily deliver the required procurement outcome. Development of the market strategy requires careful consideration of the following:

- (i) **Selection Methods.** Which selection methods and arrangements will be most likely to attract an adequate response from the market?
  - (ii) **Specifications.** Should the requirements be based on detailed technical specifications or on performance- or functional-based requirements that may allow firms to submit innovative solutions for the procurement outcome?
  - (iii) **Standards.** See above, *Section 2.11.4. Standards and Specifications* of the main text of these *Instructions*.
  - (iv) **Contract Type.** Do the type of contract and contract terms take into account the nature, risk and complexity of the activity, FfP considerations, optimal allocation of risk, liabilities, roles and responsibilities of the contracting parties?
- (b) The Recipient's recommended market strategy is justified in terms of proportionality, value, complexity and risk of the procurement. For further details, see ***Annex II, Project Delivery Strategy***.

**6. Contract Management.** Effective contract management requires a contract management plan, which identifies the key performance indicators and milestone events. The Recipient monitors the performance and progress of contracts, in accordance with the contract management plan, and provides timely reports to the Bank. The Bank may use the information gathered to benchmark the contract performance.

## Procurement Instructions for Recipients

### Annex II

#### Project Delivery Strategy (PDS)

1. **Purpose.** This *Annex* sets out the detailed requirements for developing the PDS. The PDS provides the basis and justification for procurement decisions, including the approach to the market and selection methods.
2. **General Requirements.** As required under *Section 5.6. Procurement Strategy and Planning* of the *Procurement Policy* and *Section 2.9.1. Project Delivery Strategy (PDS) and Procurement Plan (PP)* of the main text of these *Instructions*, the Recipient prepares for each Project, a PDS, including a PP.
3. **Process.**
  - (a) The PDS (including the PP) is prepared by the Recipient as part of the Project preparation process and is reviewed by the Bank and agreed to before completion of negotiations of the Legal Agreements.
  - (b) A summary of the PDS is included in the Project Document.
  - (c) Any updates of the PP are submitted to the Bank for its prior review and approval.
4. **Scope and Coverage.**
  - (a) The level of detail and analysis required for the PDS is proportional to the risk, value and complexity of the Project's procurement.
  - (b) The PDS covers the following areas:
    - (i) Identification of the Project's specific procurement needs;
    - (ii) Assessment of the adequacy, behavior and capability of the market to respond to the procurement;
    - (iii) Assessment of the implementing agency's resources and previous experience in procuring these types of contracts;
    - (iv) Justification of procurement decisions including an analysis of the strengths and weaknesses of the approach to market and selection methods for the achievement of the Project's development objectives; and
    - (v) Justification of the proposed selection methods in terms of market analysis, risk and country context and demonstration of how the methods are FfP and will deliver VfM for the particular circumstances of the Project.
5. **Specific Elements of the PDS.** The PDS includes the following: (a) strategic assessment; (b) operational context; (b) market research; (c) risk management; (d) procurement arrangements; and (e) contract management. The PDS provides the basis for the Recipient to prepare the PP, which is also included in the PDS (See, **PDS Template** at the end of this *Annex*). These elements are described in more detail below:

- (a) Strategic Assessment.** The strategic assessment covers the following elements:
- (i) Objectives of the Project;
  - (ii) Required Project outcomes;
  - (iii) Performance measures for the procurement process;
  - (iv) Implementing agency capacity and resources; and
  - (v) Project risks.
- (b) Operational Context.** This involves an assessment of the procurement-related factors that may affect the achievement of the Project's objectives, such as the following:
- (i) Governance aspects such as fragile or conflict-affected Project area, state involvement in the economy, legislative processes and legal framework;
  - (ii) Economic aspects, such as size of the economy, inflation, development of domestic industry and exchange rate volatility;
  - (iii) Sustainability aspects, such as disaster or emergency situation, and related sustainability requirements; and
  - (iv) Technological aspects, such as availability of information technology, information transfer and security; internet access and restrictions; cell phone access and coverage.
- (c) Market Research.**
- (i) The purpose of market research is to develop a thorough understanding of: (A) the relevant sectors and potential tenderers and consultants; (B) how the market works; and (C) how this may impact the approach to the market and methods used to procure.
  - (ii) The market research analysis assesses issues that affect the risks and VfM of the Project and is consolidated in a list of conclusions and implications for the Project's proposed approach to market.
- (d) Risk Management.**
- (i) The Recipient prepares a risk management plan, informed by the analysis of each of the elements of the PDS, and covering all major risks related to: (A) the operating environment, (B) market conditions, (C) implementing agency capability and (D) provider capability.
  - (ii) The Recipient conducts risk assessments that are relevant to the specific Project.
  - (iii) The probability and criticality of each risk are assessed, and a risk mitigation plan developed and maintained during the life of the Project.
  - (iii) Procurement risks and opportunities identified are managed through the procurement process including through procurement design, technical

specifications, contractual terms and conditions, evaluation criteria and contract management.

**(e) Procurement Arrangements.** The Project's procurement arrangements include the following elements:

- (i) The selection methods (including use of E-procurement) and contracting strategy (contract packaging, types of contracts, key contractual provisions, key delivery and payment milestones), including justification for these methods and strategy;
- (ii) Outline of the key specifications, which may be detailed or performance oriented (functional); and
- (iii) Quality requirements, including standards, quality assurance requirements, sustainable procurement<sup>3</sup> requirements, as appropriate.

**(f) Procurement Plan (PP).**

- (i) The PP is developed based on the findings and recommendations of the PDS.
- (ii) It provides an estimated timeline for each contract to be financed by the Bank under the Project showing: (A) the type of contract; (B) the selection method; and (C) the key milestones in the procurement process (including issuance of the specific invitation to tender/REoI/RFP, tender/proposal submission, award of contract and contract completion).

**6. PDS Template.** The following is a suggested template designed to help the Recipient draft its proposed PDS for the Bank's review:

<b>Project Delivery Strategy [Suggested Template]</b>
<b>Strategic Assessment</b>
1. This PDS covers the procurement of: <i>[insert description of the Procurement Activities and their estimated value and risk]</i> .
2. The key objective of this procurement is: <i>[insert]</i> .
3. The proposed outcomes are: <i>[insert]</i> .
4. A detailed statement of requirements is contained: <i>[insert]</i> .
5. Details of the current procurement arrangement are: <i>[insert]</i> .
6. The capacity of the agency to implement the procurements needed for the Project is <i>[detail what resource is available and what additional resource may be required]</i> .
7. Overall the Project procurement risk is <i>[insert]</i> .
<b>Timelines</b>
8. Procurement process timelines <i>[insert weeks/months]</i> .
<b>Assessment of Operational Factors Affecting Procurement</b>
9. Operational factors affecting procurement are as follows: <i>[describe]</i> : (a) governance aspects <i>[fragile or conflict affected Project area, state involvement in the economy, legislative processes and legal framework]</i> ; (b) economic aspects

<sup>3</sup> Sustainable procurement refers to the use of procurement to achieve benefits that fall within three sustainable development categories: economic, environmental, and social. In *Annex V: Evaluation Criteria* of these *Instructions, Section 2.3. (d) Sustainability* provides the relevant factors which may be taken into account in the evaluation criteria of tender or proposal.



<i>[small economy, inflation, domestic preference, exchange rate volatility]; (c) sustainability aspects [disaster or emergency situation, sustainability requirements]; and (d) technological aspects [availability of information technology, information transfer and security, internet access and restrictions, cell phone access and coverage.]</i>
10. In summary, the key operational contextual constraints are <i>[outline constraints such as fragile and conflict affected situations, disaster/emergency and small states]</i> . The strategies to address the operational contextual constraints include <i>[insert]</i> .
<b>Market Analysis</b> <i>[The level of detail included in this section is proportional to the risk, value and complexity of the procurement covered in the PDS.]</i>
11. The relevant market for the procurement activities is: <i>[insert]</i> .
12. The level of competition is: <i>[insert]</i> .
13. The capability of the market to deliver the Recipient's requirements is <i>[insert]</i> . Based on the market analysis undertaken the implications for the procurement arrangements are <i>[insert]</i> .
<b>Key Stakeholders</b>
14. The key stakeholders and their key expectations are: <i>[insert]</i> .
15. The Recipient will communicate with key stakeholders by: <i>[insert method and timing]</i> .
<b>Risk Management</b>
16. <i>[Set out the risk management plan, which includes key procurement risks and their mitigation measures]</i> .
<b>Recommended Procurement Approach</b> <i>[At a minimum, describe the target market, the chosen procurement arrangements with justification and the risk and value of the activities/contracts.]</i>
17. <i>The following elements are to be included:</i> <i>(a) Approach to the market, selection methods (including use of e-procurement), estimated contract value limits for each method or type of contract subject to each method, and contracting strategy (contract packaging, types of contracts, key contractual provisions, key delivery and payment milestones) including the justification for each decision; (b) Outline of the key specifications (either detailed or performance oriented (functional)); (c) Quality requirements, including standards, quality assurance requirements, sustainable procurement requirements as appropriate.</i>
<b>Appendix - Procurement Plan (PP)</b>
1. Based on all the above factors, set out the initial PP for the Project, which should include all the elements required by the <i>Procurement Policy</i> and these <i>Instructions</i> to be included in the PP.
2. The PP should refer specifically to the agreed PDS including title and date of the PDS.

## Procurement Instructions for Recipients

### Annex III

#### Administration of Procurement Related Complaints

**1. Purpose.** This *Annex* sets forth the detailed requirements for the administration and handling of procurement-related complaints by the Recipient that arise in connection with contracts procured under Projects and to be financed by the Bank. These requirements apply unless otherwise agreed with the Bank.

#### **2. General Considerations**

2.1. As provided in the *Procurement Policy*, complaints may be furnished at any time to the Recipient or the Bank (or both) regarding any part of the procurement process from the design planning stage through to contract completion.

2.2. Complaints may be made by interested parties. An interested party includes the tenderer/consultant, any potential tenderer/consultant, and a potential tenderer/consultant.

2.3. The manner in which the Recipient handles a complaint depends on the nature of the complaint and when the complaint is brought.

#### **3. Roles and Responsibilities.**

3.1. The Recipient's role and responsibilities with respect to complaints covered by this Annex include:

- (a) Acknowledging receipt of the complaint and undertaking a prompt review of the complaint;
- (b) Preserving the confidentiality of commercial and financial information and trade secrets;
- (c) Handling the complaint in an independent and impartial manner;
- (d) Maintaining complete records of all complaints and their resolution in the appropriate monitoring system, as agreed between the Recipient and the Bank;
- (e) For contracts subject to the Bank's prior review, providing to the Bank timely information on any complaint submitted, including all relevant information as requested by the Bank, and the Recipient's draft response to the complaint for the Bank's review and no-objection; and
- (f) Resolving complaints in a timely and fair manner. The Recipient provides sufficient information in its response to the complainant, including at a minimum the following: matters raised by the complainant; the facts and evidence relevant to the complaint; the decision (which may include resolution of the complaint) and the basis for such decision; and next steps.

3.2. The Bank's roles and responsibilities with respect to complaints covered by this Annex include:

- (a) Promptly forwarding any complaint addressed to the Bank to the Recipient for its review and action;
- (b) In the case of contracts subject to the Bank's prior review, reviewing and considering any decision proposed by the Recipient in a timely manner; and
- (c) Except for acknowledging the receipt of the complaint, not entering into discussion or communication with any tenderer or consultant.

3.3. The roles and responsibilities of the complainant submitting complaints covered by this Annex include:

- (a) Being familiar with the procurement documents at issue and the Bank's procurement policy and processes; and
- (b) Furnishing the complaint in writing and within the permitted timeframe. The complaint includes at a minimum the following information: identity of the complainant; identification of the complainant's interest in the procurement process; the specific Project and contract information; previous communications with the Recipient; and the nature of the complaint, including any integrity-related issues, and the impact on the complainant.

**4. Contracts subject to Bank's Prior Review.** The following process applies to complaints involving contracts subject to the Bank's prior review:

- (a) **Complaint Received prior to the Deadline for Tender or Proposal Submission.**
  - (i) If the Recipient receives a complaint prior to the deadline for the submission of the tender or proposal, it: (A) acknowledges the receipt of the complaint to the complainant in writing within three (3) business days; and (B) notifies the Bank of the complaint in a timely manner, informing the Bank of its proposed action and providing the Bank with all relevant information and documentation, including a draft response to the complaint, for the Bank's prior review and no-objection.
  - (ii) The Bank reviews the proposed action and provides its comments or no-objection; and the Recipient takes all action regarding the complaint that it considers appropriate following review of the complaint by the Bank and its no-objection to the proposed action.
  - (iii) The Recipient responds to the complaint within the period specified in the tender documents.
  - (iv) If the complaint results in a modification of the tender documents, the Recipient issues an addendum, and if necessary, extends the tender or proposal submission deadline, in either case, subject to the Bank's no-objection.
  - (v) Notwithstanding the above, the Recipient is not required to entertain a complaint which has been received less than the number of days specified in the tender documents prior to the deadline for tender or proposal submission.
- (b) **Complaint Received after the Deadline for Tender or Proposal Submission, but prior to (A) the Notification of Intention to Award the Contract (NIAC), or (B) the Notification of Award of the Contract when NIAC does not apply.**

- (i) If the Recipient receives a complaint after the deadline for submission of the tender or proposal, but prior to (A) the NIAC, or (B) the Notification of Award of the Contract (when NIAC does not apply), the Recipient examines the complaint in consultation with the Bank.
  - (ii) Subject to the Bank's no-objection, the Recipient responds to the substance of the complaint within seven (7) business days after (A) the NIAC, or (B) the Notification of Award of the Contract (when NIAC does not apply), has been issued.
  - (iii) The Bank's prior review of the tender/proposal evaluation will not be completed until the complaint is fully examined and considered by the Bank.
- (c) **Complaint Received after NIAC, but within the Standstill Period.** If the Recipient receives a complaint after the NIAC has been issued, but before the end of the standstill period, and the complaint relates to the grounds on which a tender/proposal was not selected, the Recipient is required:
- (i) to take prompt and appropriate action including reviewing the complaint and preparing a response in writing;
  - (ii) simultaneously, to inform the Bank and provide it with all relevant information and documentation, including a draft response to the complaint, for the Bank's review; and
  - (iii) subject to the Bank's no-objection, to respond to the complaint within the period specified in the tender documents.
- (d) **Complaint Received after the Standstill Period, or after the Notification of Award of a Contract when NIAC does not Apply.**
- (i) The complaint must be submitted as soon as possible, and the Recipient drafts a response and submits it to the Bank for review within seven (7) business days following receipt of the complaint;
  - (ii) If the complaint is determined to have merit, remedies would be those provided under the applicable national laws and/or regulations depending on the nature of the complaint; and
  - (iii) If the complaint relates to allegations of violations of the Bank's *Policy on Prohibited Practices*, it is promptly forwarded by the Bank to the responsible department(s) for necessary action.

## 5. Particular Scenarios for Review of Complaints.

- (a) If the Recipient receives a complaint from a tenderer/consultant that did not achieve the minimum technical score or whose technical proposal was determined to be substantially non-responsive, the Recipient is required to review the complaint promptly and take appropriate action.
- (b) If the Recipient receives a complaint relating to the technical proposal before the financial proposals are opened, it may not open the financial proposals until it has received the Bank's no-objection to proceeding with the opening of the financial proposals.

- (c) If the Recipient's review of a complaint results in any change to the technical evaluation report, it furnishes the reasons for such decision and a revised technical evaluation report to the Bank for its no-objection.
- (d) If the Recipient receives a complaint relating to a contract award recommendation prior to end of the standstill period, and if, as a result of the review of the complaint, the Recipient decides to change its contract award recommendation, it:
  - (i) furnishes the reasons for such decision and a revised evaluation report to the Bank for its no-objection; and
  - (ii) may not award the contract without receiving the Bank's no-objection to the revised recommendation.

**6. Complaints regarding Procurement Decisions not Subject to Bank's Prior Review.**

- (a) If the complaint involves procurement activities not subject to prior review by the Bank, the Recipient handles the complaint, as appropriate.
- (b) The Recipient: (i) informs the Bank about the actions taken regarding the complaint; and (ii) provides the Bank with all relevant documentation for its information.

## Procurement Instructions for Recipients

### Annex IV

#### Development of Domestic Industry

1. **Purpose.** This *Annex* sets forth considerations taken into account by the Bank in determining whether and how to apply provisions of the relevant Bank's Member's procurement rules on development of domestic industry under Bank-financed contracts.
2. **Considerations.** Section 5.8. *Development of Domestic Industry* of the *Procurement Policy* allows the Bank under special circumstances to accept the application of provisions of the relevant Bank Member's procurement rules that promote or encourage the development of domestic industry. In furtherance of the *Procurement Policy*, the Bank takes into account the following considerations in determining the acceptability of the application of these provisions:
  - (a) The provisions of the procurement rules applied by the Recipient must be consistent with the Recipient's country's legislation.
  - (b) The Bank reviews the relevant provisions of the Member's procurement rules to determine if they are consistent with the Core Procurement Principles.
  - (c) Application of these provisions is limited to IOCT for Goods and Works.
  - (d) Where domestic preference margins are permitted by another MDB in the Member's territory, the Bank may permit the application of the same preference margins in accordance with the requirements of the other MDB's procurement policies.

## Procurement Instructions for Recipients

### Annex V

#### Evaluation Criteria

**1. Purpose.** This *Annex* describes the principles of tender/proposal evaluation criteria and methodology, and their application to procurement financed by the Bank.

**2. General Requirements.**

**2.1.** The tender documents/RFP inform the evaluation criteria. The criteria are required to be appropriate to the nature and complexity of the procurement to enable the Recipient to achieve VfM.

**2.2.** The following requirements govern the tender evaluation criteria:

- (a) The evaluation criteria are proportionate and appropriate to the type, nature, market conditions, complexity, risk, value and objective of what is being procured;
- (b) To the extent practicable, evaluation criteria are quantifiable (such as convertible to monetary terms);
- (c) The tender documents include the complete evaluation criteria and the specific manner in which they are to be applied;
- (d) All the evaluation criteria indicated in the tender documents are applied; and only these criteria are applied;
- (e) Once the tender documents have been issued, any change to the evaluation criteria are made only through addenda; and
- (f) The evaluation criteria are applied consistently to all tenders submitted.

**2.3.** To achieve VfM, the evaluation criteria may take into account such factors as the following:

- (a) **Cost:** evaluation of cost using a methodology that is appropriate to the nature of the procurement, including:
  - (i) adjusted tender price; or
  - (ii) adjusted tender price plus the running/recurrent cost over the useful lifetime of the asset on net present cost basis (life-cycle costs);
- (b) **Quality:** evaluation of quality using a methodology to determine the degree to which the Goods, Works, Non-consulting Services or Consulting Services meet or exceed the quality requirements;
- (c) **Risk:** criteria that mitigate the relevant assessed risk;
- (d) **Sustainability:** criteria that take into account stated economic, environmental and social benefits in support of the Project objectives, and may include the flexibility of the tender/proposal to adapt to possible changes over the asset's life cycle; and/or

- (e) **Innovation:** criteria that allow assessment of innovation in the design and/or delivery of the Goods, Works, Non-consulting Services or Consulting Services and that give the tenderer/consultant the opportunity to include, when appropriate, in its tender/proposal, solutions that exceed the requirements or alternative solutions that could deliver better VfM.

### **3. Goods, Works, and Non-consulting Services.**

**3.1. Qualifying criteria.** Qualifying criteria are the minimum requirements in the tender documents and are normally evaluated on a pass/fail basis.

#### **3.2. Rated Criteria.**

3.2.1 Rated-criteria, that is, non-price attributes assessed with merit points, are used when benefits may not be quantifiable (or the evaluation criteria cannot be expressed in monetary terms), and the benefits associated with these rated criteria are expected to vary among different tenders.

3.2.2. The rated-criteria and sub-criteria, as appropriate, are prioritized, assigned merit points and weighted according to their relative importance in meeting the desired outcome. The number of sub-criteria should be kept to the minimum.

3.2.3. Rated criteria may include, but are not limited to, the following features as relevant:

- (a) quality of methodology and work plan;
- (b) performance, capacity or functionality features; and
- (c) environmental and social matters/sustainable procurement.

#### **3.3. Evaluation of Costs.**

3.3.1. As specified in the tender documents, costs are evaluated on the basis of:

- (a) adjusted **tender** price; or
- (b) adjusted **tender** price plus the running/recurrent cost over the useful lifetime of the asset on a net present cost basis (life-cycle costs).

3.3.2. Adjustments of the tender price include arithmetic corrections, any discounts, and other adjustments specified in the tender documents for evaluation purposes, including adjustments for deviation in the delivery/implementation schedule and/or payment terms, and corrections for minor deviations or omissions.

3.3.3. Life-cycle costing should be used whenever possible, particularly when the costs of operation and/or maintenance over the specified life of the Goods or Works are estimated to be considerable in comparison with the initial cost and may vary among different tenders. It is evaluated on a net present cost basis.

3.3.4. When using life-cycle costing, the Recipient specifies the following information in the tender documents:

- (a) number of years used in the life-cycle cost determination;



- (b) the discount rate, expressed as a percentage, to be used to calculate the net present cost of future costs over the life-cycle period specified above in paragraph (a); and
- (c) the factors and methodology to be used for calculating the operation, maintenance, and residual value costs, including the information to be provided by the tenderer in the tender documents.

**3.4. Combined Rated Criteria and Cost.** Tender documents are given a financial score that is inversely proportional to their prices. The weighting to be used to combine the rated and financial scores to determine the most advantageous tender is specified in the tender documents.

#### **4. Consulting Services.**

##### **4.1. Technical Evaluation.**

4.1.1. Technical proposals for Consulting Services are evaluated on the basis of a scoring system that uses the following criteria:

- (a) adequacy of methodology and work plan;
- (b) relevant experience and qualifications of key staff; and
- (c) relevant experience of the firm.

4.1.2. In addition, transfer of knowledge and participation of nationals among key staff may be included as criteria, depending on the nature and needs of the assignment.

4.1.3. The criteria are assigned scores with justified reasons and subject to the Bank's prior review and approval. For example, when transfer of knowledge is the main objective of an assignment, it may be given a higher weight to reflect its importance. The score to be assigned to a criterion depends on the nature and complexity of the assignment.

4.1.4. The Recipient normally divides these criteria into sub-criteria. Each criterion is then assigned a score on the basis of the total points assigned to its sub-criteria. The number of sub-criteria should be kept to the minimum essential.

4.1.5. The RFP specifies the overall minimum technical score. The minimum technical score is normally in the range of seventy to eighty-five percent (70-85%) depending on the nature and complexity of the assignment.

##### **4.2. Financial Evaluation.**

4.2.1. The offered total price includes the consultant's total remuneration, including professional fees, and reimbursable and miscellaneous expenses. For the purpose of evaluation, the offered prices exclude local identifiable indirect taxes (such as sales, value-added, and excise taxes and similar taxes and levies) on the contract and income tax payable to the country of the Recipient on the remuneration for services rendered in the country of the Recipient by nonresident experts and other personnel of the consulting firm. In exceptional circumstances, when the Recipient cannot fully identify indirect taxes when evaluating the financial offers, the Bank may agree that, for the purpose of evaluation only, prices may include all taxes payable to the country of the Recipient.

4.2.2. For a time-based contract, any arithmetical errors are corrected, and prices are adjusted if they fail to reflect all inputs that are included in the technical proposal. For a lump-

sum contract, the consultant is deemed to have included all prices in its financial proposal, so neither arithmetical corrections nor price adjustments are made; the total price, net of taxes as per *Section 4.2.1* of this Annex, included in the financial proposal is considered the offered price.

4.2.3. For QCBS, the proposal with the lowest offered total price is given a financial score of 100% (one hundred percent); other proposals are given financial scores that are inversely proportional to their prices. The methodology to be used is specified in the RFP.

### 4.3. Combined Quality and Cost Scores.

4.3.1. When using QCBS, the quality scores and the cost scores are weighted appropriately and added to determine the most advantageous proposal.

4.3.2. The weighting of quality and cost scores depends on the nature and complexity of the consulting assignment. The range of quality and cost score weighting is normally as shown below in Table 1, except for justified reasons and subject to the Bank's prior review and approval.

**Table 1. Combined Quality / Cost Score Weighting for Consulting Services selected on the basis of QCBS**

Description	Quality/Cost score weighting (%)
High complex / downstream consequences / specialized assignments (or may use QBS method)	90/10
Moderate complexity	70-80 / 30-20
Assignments of a standard or routine nature (or may use LCBS method)	60-50 / 40-50

## Procurement Instructions for Recipients

### Annex VI

#### Use of International Model Forms of Contract

**1. Introduction.** Model forms of contract are agreements that employ standardized, non-negotiated provisions, usually in pre-printed forms. In accordance with these *Instructions* the Recipient may, in addition to the form of contract contained in the SPDs, use appropriate alternative model forms of contract incorporating internationally recognized terms and conditions. The use of alternative model forms of contract must be FfP. The justification for their use must be presented in the PDS.

**2. Purpose.** The purpose of this *Annex* is to set out model forms that may be used by the Recipient and considerations to be taken into account when using them.

**3. Goods.** The following international model forms of contract are acceptable to the Bank for use by the Recipient:

- (a) Any form, based on the UN Convention of Contracts for International Sale of Goods, 1980;
- (b) World Bank, Supply of Goods.

**4. Construction Works.** The following international model forms of contract are acceptable to the Bank for use by the Recipient:

- (a) FIDIC, Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer, (Red Book) First Edition 1999;
- (b) FIDIC, Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer, (Red Book) Second Edition 2017;
- (c) FIDIC Conditions of Contract for Short Form of Contract, (Green Book) First Edition 1999;
- (d) FIDIC Conditions of Contract for Plant and Design Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor, (Yellow Book) First Edition 1999;
- (e) FIDIC Conditions of Contract for Plant and Design Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor, (Yellow Book) Second Edition 2017;
- (f) FIDIC Conditions of Contract for Construction of EPC Turnkey Projects (Silver Book) First Edition 1999;
- (g) FIDIC Conditions of Contract for Design, Build and Operate Projects (Gold Book) First Edition 2008;
- (h) FIDIC Contract for Dredging and Reclamation Works, 2nd Edition 2016;
- (i) FIDIC Conditions of Contract for Underground Works (Emerald Book) 2019;

- (j) World Bank, Small Works Contract Conditions;
- (k) World Bank, Supply and Installation of Plant and Equipment;
- (l) ICE Conditions of Contract Measurement, 2004;
- (m) ICE Conditions of Contract Minor Works, 2004;
- (n) ICE Conditions of Contract Ground Investigation, July 2004;
- (o) NEC3 (UK) Engineering and Construction Contract (ECC);
- (p) IChemE (UK) Minor Works;
- (q) JCT Construction Excellence 2007.

**5. Consulting Services.** The following international model forms of contract are acceptable to the Bank for use by the Recipient:

- (a) FIDIC Client/Consultant Model Services Agreement (White Book) Fifth Edition 2017.

**6. Copyright.** Special attention must be paid to the copyright of the contract forms, particularly for FIDIC contracts. Appropriate licenses will need to be obtained and fees paid before using the standard terms and conditions for the contract.

**7. Modifications for Coherence.** The particular conditions of contract, the contract forms, as well as other parts of the tender documents, especially the text of the tender form and the appendix to tender, if any, and the price schedules are amended, as necessary, to provide for consistency and coherence of the entire tender documents.

**8. Risk Allocation Principles.** The contract conditions are drafted to provide for a fair and balanced risk allocation between the parties in accordance with the following key principles:

- (a) The duties, rights, obligations, roles and responsibilities of the parties must be generally as implied in the contract conditions, and appropriate to the requirements of the Project.
- (b) The particular conditions must be drafted clearly and unambiguously.
- (c) All time periods specified in the contract for the parties to perform their obligations must be of reasonable duration.
- (d) The contract must provide an adequate dispute resolution mechanism.

**9. Legal Counsel.** Recipients are advised to seek their own legal counsel for drafting conditions of contract, which would reflect the specifics of the particular Project.

## Procurement Instructions for Recipients

### Annex VII

#### Procurement Oversight by the Bank

1. **Purpose.** This Annex describes the Bank's procurement oversight function and the documents to be furnished to the Bank and/or to be retained by the Recipient for the contracts subject to the Bank's review.

2. **Risk-based Approach.** The Bank exercises its procurement oversight through a risk-based approach comprising prior and post reviews and independent procurement reviews, as appropriate.

3. **Project Delivery Strategy (PDS) and Procurement Plan (PP).** The Recipient prepares the draft PDS and PP during Project preparation, and the Bank reviews these documents and agrees to the Procurement Plan before the completion of the financing negotiations. The Recipient submits to the Bank, for its review and approval, any updates to the PDS and PP.

#### 4. Procurement Prior Review.

##### 4.1. General Considerations.

4.1.1. The Bank sets mandatory thresholds for prior review of procurement decisions based on the type of procurement and contract value involved and the Project's procurement risk. An activity/contract below the applicable mandatory thresholds is nevertheless subject to prior review if the Bank determines that the activity/contract presents risks such as: (i) procurement arrangements that are inherently risky; or (ii) procurement that includes the use of negotiations in a competitive procurement process for Goods, Works and Non-consulting Services, and the application of sustainable procurement.

4.1.2. If the assessed procurement risk is low or moderate, the Bank may determine that procurement above the applicable thresholds shall be subject to post review and be included in the Procurement Plan.

4.1.3. For contracts proposed to be awarded on the basis of Direct Selection that are subject to prior review, the Recipient submits to the Bank, for its review and no-objection, a sufficiently detailed justification for its proposal. The justification includes the rationale for the use of Direct Selection instead of a competitive procurement process and the basis for recommending a particular firm. After negotiations are completed, the Recipient submits to the Bank the draft negotiated contract and minutes of negotiations, for its prior review and no-objection.

4.1.4. Unless otherwise agreed with the Bank, prior review is undertaken for all procurement of Works using SPDs under Projects that are classified as high risk for sexual exploitation and abuse (**SEA**) or sexual harassment (**SH**).

##### 4.2. Documents for Prior Review.

4.2.1. For contracts subject to prior review by the Bank, the Recipient furnishes the following documents to the Bank for the Bank's prior review and no-objection, or for the Bank's records, depending on the procedure provided for in these *Instructions*. The list below is non-exhaustive:

- (a) The GPN and SPN;
- (b) If prequalification is used: the invitation to prequalify, the prequalification document, (including any amendment to these documents) and the prequalification evaluation report. For Consulting Services, the REoI, including the complete TOR, detailed breakdown of the cost estimate, and the shortlisting report;
- (c) The tender/RFP documents, including any amendment to them;
- (d) The first request by the Recipient to tenderers/consultants to extend the tender/proposal validity period by more than four (4) weeks, and all subsequent requests for extension, irrespective of the period;
- (e) The tender evaluation report and recommendations for contract award, including documents demonstrating that any procurement complaints have been addressed to the satisfaction of the Bank. In two-envelope or multi-stage selection processes, the Recipient furnishes the tender evaluation report for each envelope/stage to the Bank for the Bank's prior review and no-objection before proceeding to the next stage of the procurement process;
- (f) For Consulting Services, the technical evaluation report for the Bank's prior review and no-objection; and a copy of the minutes of the financial opening, final combined technical and financial evaluation report along with the name of the consultant recommended for award for the Bank's records;
- (g) All requests for cancellation of a procurement process and/or re-tendering of/re-invitation for proposals;
- (h) Any revision to the Recipient's evaluation report and the reasons for the Recipient's proposed decision to change a contract award recommendation on the basis of its analysis of a complaint. The revised evaluation report and the reasons for its decision are subject to the Bank's review and no-objection. The Recipient does not proceed to the next stage of the procurement process, including awarding a contract, without receiving from the Bank confirmation of satisfactory resolution by the Recipient of the complaint;
- (i) If the procurement process involves negotiations between the Recipient and tenderer/consultant, the minutes of negotiations and the draft contract initialed by both parties. Any substantial changes to the draft contract reviewed by the Bank are furnished to the Bank for the Bank's prior review and no-objection;
- (j) One signed copy of the contract, and of the advance payment security and the performance security if applicable, promptly after the contract's signing and prior to the making of the first payment under the contract, for the Bank's records;
- (k) Any material differences between the terms and conditions of contract on the basis of which tenders/proposals were requested and the final terms and conditions of contract. These differences are subject to the Bank's prior review and no-objection;
- (l) If requested by the Bank: (i) the contract management plan, including the key performance indicators (KPIs); and (ii) ongoing reports of progress based on the agreed KPIs;

- (m) After the contract has been signed, the Recipient furnishes to the Bank for its prior review and no-objection:
- (i) any extension of the stipulated time for execution of the contract that would have an impact on the planned completion of the Project;
  - (ii) any material modification of the scope of the Goods, Works, Non-consulting services or Consulting services, or other significant changes to the terms and conditions of the contract;
  - (iii) any variation order or contract amendment (except in cases of extreme urgency), including due to extension of time, that singly or combined with all previous variation orders or amendments, increases the original contract price by more than 15% (fifteen percent); or
  - (iv) a proposed termination of the contract.

If the Bank determines that the Recipient's request for any modification to the contract would be inconsistent with the provisions of the Legal Agreement (including the PP), it informs the Recipient and states the reasons for its determination. The Recipient is then required to adjust such modification to be consistent with the provisions of the Legal Agreement and/or PP (as applicable). The Recipient provides a copy of all amendments to the contract to the Bank for its records.

#### **4.3. Retention of Documents for Contracts subject to Prior Review.**

4.3.1. The Recipient retains all documentation with respect to each procurement in accordance with the provisions of the Legal Agreement. Upon the request of the Bank, the Recipient makes available this documentation to the Bank (and/or the Bank's representatives). This documentation includes, but is not limited to:

- (a) original tenders/proposals; all documents and correspondence related to the procurement and execution of the contract, including supporting documents for the evaluation of tenders/proposals; and the recommendation for contract award;
- (b) the signed original of each contract and all subsequent amendments and/or addenda; the payment invoices or certificates, as well as the certificates for the inspection, delivery, completion, and acceptance of Goods, Works, and Non-consulting Services; and
- (c) for any contracts awarded on the basis of Direct Contracting or Direct Selection, the documentation includes the justification for using this method, the technical and financial capacity of the firm, and the signed original of the contract.

### **5. Procurement Post Review.**

#### **5.1. General Considerations.**

5.1.1. The Bank carries out post reviews of procurement decisions made by the Recipient. The Bank may use a third party, acceptable to the Bank, to carry out these post reviews. Any such third party carries out the reviews in accordance with the TOR provided to it by the Bank.

5.1.2. The purposes of the Bank's post review include the following:

- (a) verifying that the procurement procedures followed by the Recipient comply with the Legal Agreement;
- (b) confirming that the Recipient continues to be in compliance with the agreed procurement arrangements, including timely and effective implementation of the agreed procurement risk mitigation/management plan;
- (c) verifying continued adherence to the terms and conditions of the contract, including technical compliance;
- (d) noting issues and reporting any evidence relating to non-compliance with the Bank's *Policy of Prohibited Practices*;
- (e) identifying mitigation measures or actions to correct procurement deficiencies and recommending them to the Recipient; and
- (f) providing the basis for updating the Project procurement risk and risk mitigation measures, if applicable.

## **5.2. Retention of Documents for Contracts Subject to Post Review.**

5.2.1. The Recipient retains all documents with respect to each Bank-financed contract that is not subject to prior review, as required by the Legal Agreement and makes these documents available to the Bank (and/or its representatives) upon the Bank's request. This documentation includes, but is not limited to:

- (a) SPN, and REoI;
- (b) tender/RFP documents as issued, the documents for procurement related complaints, and the subsequent amendments or addenda of such documents;
- (c) the tender/proposal evaluation reports, and the recommendation for contract award;
- (d) the signed original of the contract and all subsequent amendments and addenda to the contract, advance payment security and performance guarantees; and
- (e) invoices or certificates of payment, as well as the certificates of inspection, delivery, completion, and acceptance of Goods, Works, and Non-consulting Services.

**6. Independent Procurement Reviews.** Independent procurement reviews, performed by independent third parties appointed by the Bank, are carried out when the Bank determines that such a review is warranted on the basis of its assessment of the Project's procurement risk. These reviews apply to contracts subject to prior review as well as post review by the Bank.



## Procurement Instructions for Recipients

### Annex VIII

#### High Value Contracts under RBP

The following table sets forth thresholds for determining whether a contract is a High Value Contract under an RBP. Any contract whose value is estimated to equal or exceed the equivalent of these thresholds is considered a High Value Contract. As noted in the table, these thresholds vary depending on the type of procurement and the Project's procurement risk as reflected in the Project Document.

Type of Procurement	Project Procurement Risk in Project Document	Estimated Contract Value in USD (Millions)
Works, Turnkey, Supply and Installation of Plant and Equipment, Public Private Partnerships and Concessions	Low	≥200
	Medium	≥115
	High	≥50
Goods, Information Technology and Non-consulting Services	Low	≥125
	Medium	≥75
	High	≥30
Consulting Services	Low	≥40
	Medium	≥30
	High	≥15

## Procurement Instructions for Recipients

### Annex IX

#### Public Private Partnerships (PPPs) and Concessions

1. **Purpose.** This *Annex* sets forth detailed requirements for procurement of a contract by a Public Entity under a PPP or concession arrangement in accordance with *Section 5. Public Private Partnership (PPP)*, of these *Instructions*.
2. **Competitive Selection Consistent with Core Procurement Principles.** Procurement by a Public Entity of a contract under a PPP or concession arrangement must be consistent with the Bank's Core Procurement Principles. To that end, the Public Entity is required to undertake the following measures:
  - (a) Appointment of qualified and experienced advisers covering the technical, legal and financial issues likely to arise in what will often be a complex evaluation, so that the selection process and communication with tenderers are handled to the highest professional standards.
  - (b) A public invitation to pre-selection proceedings:
    - (i) made in a manner that reaches as wide as possible an audience of potential tenderers; and
    - (ii) which contains sufficient information to stimulate potential tenderers' interest and to allow them to judge whether they are likely to be qualified.
  - (c) Publication of clear pre-qualification criteria.
    - (i) These are designed to narrow the range of tenderers to those qualified for what may be highly complex and sophisticated performance undertakings.
    - (ii) The number of tenderers pre-qualified should strike a balance between the objective of strong competition through a reasonable number of tenderers and the objective of giving well-qualified tenderers a reasonable chance of success.
    - (iii) Since tender costs typically substantially exceed those required for standard procurement by Public Entities, pre-qualifying too many tenderers may affect tender quality.
  - (d) Issuance of a clear RFP, with a clear statement of:
    - (i) what is required of tenderers in substance;
    - (ii) procedures for submitting proposals; and
    - (iii) the evaluation criteria.
  - (e) A structured approach to evaluation of the proposals and subsequent negotiation with the tenderer submitting the best proposal.
  - (f) Public disclosure of the key terms of the contract that has been negotiated and of any other important elements of the proposal (subject to reasonable confidentiality

concerns in respect of information that is proprietary to the tenderer or has been provided in commercial confidence).

3. Beyond these key basic elements, a significant number of further details are normally required for the competitive selection process to be considered acceptable. These include: (a) details on communication with potential tenderers; (b) evaluation of proposals; (c) handling of negotiations; and (d) publicity in relation to process and outcome.<sup>4</sup>

#### 4. Evaluation Criteria and Weights.

(a) While an acceptable structured approach to evaluation of proposals and subsequent negotiation referred to above in *paragraph (e) of Section 2, Competitive Selection* may take various forms, for transparency purposes, the Bank requires that in all cases the final RFP include: (i) the criteria for evaluating the proposals; (ii) the relative weight to be accorded to each criterion; and (iii) the manner in which these criteria and weights are to be applied in the evaluation of proposals.

(b) Specifically, matters to be addressed in the RFP include the following:

- (i) The number of rounds of preliminary, subsequent and final proposals from tenderers and what is required at each stage;
- (ii) The content of clarification of proposals in discussion with tenderers between rounds;
- (iii) The definition of what is negotiable and what is non-negotiable at different rounds;
- (iv) The stage at which the Recipient will announce a preferred tenderer with which the Recipient intends to undertake final negotiations, reverting to other tenderers only if there is an unexpected impasse in those negotiations; and
- (v) The way in which the different evaluation criteria are applied in making a final decision (e.g., whether formal weighting or another approach).

(c) How these matters are addressed is determined on a case-by-case basis, with the benefit of advice from experienced advisers, who can adapt experience from elsewhere to the circumstances of the particular contracting authority, Project and tenderers.

5. The Bank avoids rigid prescriptions in this area because there are cases in which it may not be feasible for the contracting authority to formulate its requirements in sufficiently detailed and precise Project specifications or performance indicators to permit proposals to be formulated, evaluated and compared uniformly on the basis of such specifications and indicators. In such cases:

(a) The Recipient may wish to divide the selection proceedings into two or more stages and allow a certain degree of flexibility for discussions with tenderers, enabling the

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<sup>4</sup> A useful compendium of many of these elements is contained in the consolidated legislative recommendations in the legislative guide on privately financed infrastructure projects produced by the United Nations Commission on International Trade Law (UNCITRAL).

tenderers to offer their own innovative solutions for meeting the particular infrastructure needs of the Recipient in accordance with defined standards of service.

- (b) Following examination of the proposals received, the Recipient may revise the initial specifications and contractual terms prior to issuing a final RFP.

**6. Final Negotiations.** The above implies that there is nearly always some element of negotiation before a competitive tender can lead to a binding contract between the Recipient and the concessionaire. However, changes in essential elements of the proposal are not permitted, as they may distort the assumptions on the basis of which the proposals were submitted and rated. Accordingly, an important required element in these competitive tendering procedures is that final negotiations be limited to fixing the final details of the contract and satisfying the reasonable requirements of the selected tenderer's lenders. Final negotiations may not cover those terms of the contract that were stated as non-negotiable in the final RFP.

**7. Unsolicited Proposals.** Unsolicited proposals arise when a firm approaches the Public Entity Recipient with a new Project proposal. Contracts arising from these proposals may be financed under certain circumstances, elaborated below.

- (a) The process for assessing and determining the best FfP and VfM approach to awarding a contract initiated by an unsolicited proposal must in all cases be clearly defined by the Recipient.
- (b) When an unsolicited proposal is accepted for a competitive selection process, the Recipient may use one of the two following approaches in allowing the firm that submitted the unsolicited proposal to participate in the process:
  - (i) The Recipient grants no advantage to the firm in the process. The Recipient may, using its own resources separately compensate the firm a reasonable amount for the proposal if permitted under the Recipient's applicable regulatory framework.
  - (ii) The firm is granted an advantage in the process, such as a point bonus in the evaluation, or a guaranteed access to the second stage of a two-stage process. This advantage is disclosed in the tender documents and defined in such a way that it does not prevent effective competition by other tenderers.