

INTERIM OPERATIONAL DIRECTIVE ON

Procurement Instructions for Recipients

(June 2 , 2016)

Table of Contents

Section I	Introduction.....	5
1.	Introduction.....	5
1.1	Vision.....	5
1.2	Purpose; Application.....	5
1.3	Contents	5
2.	Definitions; Acronyms	6
Section II	Procurement of Goods, Works and Services by Public Entities	8
A:	General Considerations.....	8
3.	Core Procurement Principles.....	8
3.1	Core Procurement Principles.....	8
3.1.1	<i>Economy.....</i>	<i>8</i>
3.1.2	<i>Efficiency.....</i>	<i>8</i>
3.1.3	<i>Effectiveness.....</i>	<i>8</i>
3.1.4	<i>Fairness; Good Governance</i>	<i>8</i>
3.1.5	<i>Value-for-Money (“VfM”)</i>	<i>8</i>
3.1.6	<i>Fit-for-Purpose</i>	<i>8</i>
3.1.7	<i>Transparency.....</i>	<i>9</i>
4.	Governance.....	9
4.1	Roles and Responsibilities	9
4.1.1	<i>Recipient</i>	<i>9</i>
4.1.2	<i>Bank.....</i>	<i>9</i>
4.1.3	<i>Risk-Based Engagement.....</i>	<i>9</i>
4.2	Bank Review	10
4.2.1	<i>Prior Review.....</i>	<i>10</i>
4.2.2	<i>Post Review.....</i>	<i>10</i>
4.3	Accountability.....	10
4.4	Conflict of Interest.....	10
4.4.1	<i>Goods, Works and Non-Consulting Services.....</i>	<i>10</i>
4.4.2	<i>Consulting Services.....</i>	<i>11</i>
4.4.3	<i>Unfair Competitive Advantage.....</i>	<i>12</i>
4.5	Non Compliance Remedies	12
4.6	Complaint Monitoring.....	12
4.6.1	<i>Standstill Period.....</i>	<i>12</i>

4.7	De-briefing Unsuccessful Tenderers /Consultants by Recipients.....	13
4.8	De-briefing Unsuccessful Tenderers/Consultants by the Bank.....	13
4.9	Eligibility.....	13
4.9.1	Open Participation.....	13
4.9.2	UN Sanctions.....	13
4.10	Participation in a Tender or RFP.....	14
4.10.1	Participation of Affiliates of a Recipient.....	14
4.10.2	State-Owned Enterprises.....	14
5.	Language.....	14
5.1	International Competitive Procurements.....	14
5.2	Evaluation Reports; Contracts.....	14
5.3	National Competitive Tendering and Selection.....	15
5.4	Contracts.....	15
5.5	Bank’s Review.....	15
6.	Co-financing.....	15
6.1	Joint Co-financing.....	15
7.	Use of Country Procurement Systems.....	15
8.	Strategy and Planning.....	16
8.1	Project Delivery Strategy.....	16
8.2	Advance Procurement and Retroactive Financing.....	16
9.	General Procurement Notice (GPN).....	16
B:	Procurement of Goods, Works and Non-Consulting Services.....	17
10.	Procurement Methods.....	17
10.1	International Open Competitive Tender.....	17
10.1.1	Specific Procurement Notice (SPN).....	17
10.1.2	Prequalification.....	17
10.1.3	Multi-stage Tendering.....	18
10.2	Selective Tendering.....	18
10.3	Direct Contracting.....	18
10.4	National Competitive Tendering.....	19
10.5	Request for Quotations (RFQ).....	20
10.6	Electronic Procurement (E-procurement).....	20
10.7	Public Private Partnerships (PPPs) and Concessions.....	20
11.	Tender Documentation.....	20
11.1	General.....	20
11.2	Restricted Competition and Unfair Advantage.....	21
11.3	Standards and Specifications.....	21
11.4	Environmental and Social Provisions.....	21
11.5	Development of Domestic Industry.....	21
11.6	Evaluation Criteria.....	21
11.7	Submission Time Limits.....	22
11.8	Communications.....	22
11.9	Tender Prices.....	22
11.10	Currency.....	22
11.11	Payment.....	23
11.12	Tender Security.....	23
11.13	Contract Arrangements.....	23
11.14	Post-qualification.....	24
12.	Tender Evaluation and Contract Award.....	24

12.1	Tender Opening	24
12.2	Tender Evaluation	24
12.3	Confidentiality	24
12.4	Abnormally Low-Priced Tenders	25
12.5	Tender Evaluation Report	25
12.6	Notification of Intention to Award a Contract	25
12.7	Publication of Contract Award	25
12.8	Contract Management	25
C: Procurement of Consulting Services by Public Entities		26
13.	General Considerations	26
13.1	Key Steps in the Selection Process	26
13.2	Selection Methods for Firms	26
13.2.1	<i>International Open Competitive Selection</i>	27
13.2.2	<i>Limited Competition</i>	27
13.2.3	<i>National Competitive Selection</i>	27
13.2.4	<i>Direct Selection</i>	27
13.3	Particular Selection Methods for Firms	28
13.4	Shortlists	29
13.4.1	<i>SOEs</i>	29
13.5	Selection Procedures for Individuals	29
13.5.1	<i>Open Competitive Selection of Individual Consultants</i>	30
13.5.2	<i>Limited Competitive Selection of Individual Consultants</i>	30
13.5.3	<i>Direct Selection of Individual Consultants</i>	30
13.6	Request for Proposals	30
13.6.1	<i>Evaluation and Selection</i>	31
13.7	Contract Negotiations	31
13.8	Contract Administration	31
Section III Procurement by Private Entities		32
14.	Principles	32
14.1	Established Commercial Practices	32
14.2	Appropriate Procurement Methods; Fair Market Prices	32
14.3	Concessions	32
14.4	Financial Intermediaries	33
Section IV Prohibited Practices		34
15.	Prohibited Practices	34
Annex I		36
Value for Money (VfM)		36
1.	Purpose	36
2.	Defining VfM	36
3.	Achieving VfM	36
4.	Planning	36
5.	Supplier Market Strategy	37
6.	Contract Management	37
Annex II:		38
Project Delivery Strategy		38

1. Purpose.....	38
2. Requirements.....	38
3. Specific Elements of the PDS	38
3.1 Strategic Assessment	39
3.2 Operational Factors Impacting on Procurement.....	39
3.3 Market Research.....	39
4. Risk Management	39
5. Procurement Arrangements	39
6. Procurement Plan	40
7. PDS Template.....	41
Annex III:	43
Public Private Partnerships (PPPs) and Concessions.....	43
1 Purpose.....	43
2 Competitive Selection	43
8. Unsolicited Proposals.....	45
Annex IV	46
Complaint Monitoring.....	46
1. Purpose.....	46
2. Submission of Complaints.....	46
3. Responsibilities of the Recipient	46
4. Role of the Bank.....	46
5. Process for review of complaints	47
5.1 Complaint received prior to the deadline for tender or proposal submission.	47
5.2 Complaint received after the deadline for tender or proposal submission, and before the notification of intention to award.	47
5.3 Complaint received after notification of intention to award and within the standstill period.	47
6. Consultant Technical Proposals	48
7. Change of Award Recommendation	48
8. Complaints regarding procurement not subject to prior review	48
9. Communications relating to Contract Execution	48
Annex V.....	49
1. Purpose.....	49
2. Considerations.....	49

Section I Introduction

1. Introduction

1.1 Vision

Application of the Bank’s Procurement Policy aims to support Recipients to achieve the successful implementation of Bank-financed Projects through efficient, fair, ethical and transparent procurement processes that optimize both value-for-money and social and environmental sustainability.

1.2 Purpose; Application

1.2.1 The Bank is required by Article 13.8 of its Articles of Agreement 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). The Bank is also required to ensure that no restriction is placed “upon the procurement of goods and services from any country” (Article 13.9). In accordance with these requirements, the Bank has adopted the Procurement Policy which governs the procurement of goods, works, non-consulting services and consulting services for all Bank-financed Projects.

1.2.2 This Directive: Procurement Instructions for Recipients (“the Instructions”) elaborates on the principles contained in the Procurement Policy and sets forth the specific requirements applicable to the procurement of goods, works and services required for a Project and to be financed by the Bank.¹

1.3 Contents

These Instructions are intended to be read with the Procurement Policy. They are organized into four sections with Annexes:

Section I	Sets out the vision, purpose, application, contents and definitions for these Instructions.
Section II	Describes the requirements for the procurement by Public Entities of Bank-financed goods, works, non-consulting and consulting services.
Section III	Describes the requirements for procurement by Private Entities of Bank-financed contracts.
Section IV	Describes prohibited practices and their consequences under these Instructions.
Annex I:	Value for Money
Annex II:	Project Delivery Strategy

¹ This Directive does not apply to contracts financed under a loan guaranteed by the Bank [under a sovereign-backed guarantee]. For such contracts, the Bank satisfies itself that they (a) are procured in a manner so as to enable the Recipient to carry out the Project diligently and efficiently; (b) are of satisfactory quality and compatible with the other parts of the Project; (c) are delivered or completed in timely fashion; and (d) are priced so as not to affect adversely the economic and financial viability of the Project.

Annex III:	Public Private Partnerships (PPPs) and Concessions
Annex IV:	Complaint Monitoring
Annex V:	Development of Domestic Industry

2. Definitions; Acronyms

As used in the Instructions, the following terms and acronyms have the meanings set out below:

- a) **ALPT** means abnormally low priced tender.
- b) **Bank** means the Asian Infrastructure Investment Bank.
- c) **Core Procurement Principles and CPP** has the meaning ascribed to it in the Procurement Policy.
- d) **CPS** means country procurement systems.
- e) **EoI** means expressions of interest.
- f) **FfP** means fit-for-purpose.
- g) **Goods, Works, and Non-Consulting Services** includes the following non-exhaustive list: “goods” includes commodities, raw material, machinery, equipment, vehicles, and industrial plant; “works” refers to construction, and includes related services such as transportation, insurance, installation, commissioning, training, and initial maintenance; and “non-consulting services” comprise activities for which the physical aspects of the activity predominate, which are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied, such as drilling, aerial photography, satellite imagery, mapping, and similar operations.
- h) **GPN** means general procurement notice.
- i) **Legal Agreements** means the legal agreements providing for the Bank’s financing of a Project.
- j) **MDB** means multi lateral development bank
- k) **National Language** means national language of the Recipient or the language used nation-wide in the Recipient’s country for commercial transactions.
- l) **PPP** means public private partnership.
- m) **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; and (iii) whose day-to-day management is not controlled by the government.
- n) **Procurement Documents** includes general and specific procurement notices, request for expressions of interest, prequalification documents, tender documents, request for proposals documents, evaluation reports and forms of contract issued by the Recipient.
- o) **Procurement Plan** and **PP** each means the procurement plan for the Project approved by the Bank.
- p) **Procurement Policy** means the Procurement Policy approved by the Board of Directors of the Bank (January 2016), as amended from time to time.
- q) **Procurement Standards** has the meaning ascribed to it in the Procurement Policy.

- r) **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.
- s) **Project Delivery Strategy** and **PDS** each means the delivery strategy for the Project approved by the Bank.
- t) **Public Entity** means any entity that is not a Private Entity.
- u) **Recipient** means the beneficiary of Bank financing for a Project, which is responsible for the procurement of the goods, works and services required for the Project.
- v) **REoI** means request for expressions of interest.
- w) **RFP** means request for proposals.
- x) **RFQ** means request for quotations.
- y) **STD** means standard tender documents
- z) **Sub-sovereign Entity** means a local or regional administration of a country.
- aa) **ToRs** means terms of reference.
- bb) **VfM** means value for money.

Section II Procurement of Goods, Works and Services by Public Entities

The provisions of this Section II apply to all Bank-financed contracts for goods, works and services procured by Public Entities. Part A sets out general considerations; Part B sets out the requirements for procurement of goods, works and non-consultant services; and Part C sets out the requirements for procurement of consultant services.

A: General Considerations

3. Core Procurement Principles

3.1 Core Procurement Principles

All contracts for goods, works and services procured by Public Entities and financed in whole or in part by the Bank are governed by the Bank's Core Procurement Principles, which are set forth in the Policy, and reproduced below.

3.1.1 Economy

The procurement process demonstrates that the total price outcome of contracts for goods, works and services, including economic life or Project cycle costs, does not have a negative impact on the Project.

3.1.2 Efficiency

Procurement implementation arrangements are proportional to the required outcome with regard to implementation capacity and time constraints, and are cost effective.

3.1.3 Effectiveness

The procurement process facilitates the achievement of the ultimate objectives of the Project, taking into account the Recipient's socio-economic and other development objectives.

3.1.4 Fairness; Good Governance

The procurement process is open and fair, non-discriminatory and provides equitable opportunity and treatment for tenderers and consultants in their submission of tenders and proposals. It also provides for clear rights and obligations as between Recipients on the one hand and suppliers, contractors and consultants on the other. The procurement process is aligned with principles of good governance.

3.1.5 Value-for-Money ("VfM")

The procurement process enables the Recipient to obtain optimal benefits with the resources utilized. This may include not only the initial costs, but also costs over the economic life of the procured item, the quality of the output, fitness-for-purpose (see paragraph 3.1.6 below), timeliness, and the achievement of other socio-economic and environmental development objectives of the Recipient².

3.1.6 Fit-for-Purpose

To realize VfM, the procurement process ensures that the procurement methods and procedures applied by the Recipient for the Project, and the nature and extent of Bank

² See Annex I for further details on the definition of VfM and how it may be achieved.

oversight, are fit-for-purpose (“FFP”). The procurement modalities applied appropriately reflect the strategic needs and circumstances of the Project. For example, standardized approaches may be used for low-value, low-risk or low-complexity procurement. On the other hand, where procurement complexity, risk and impact are high, a customized approach with transaction-specific documentation and method may be the most efficient and effective approach.

3.1.7 Transparency

Transparency is a key element to ensuring a good procurement outcome and the Bank is committed to ensuring that the highest level of transparency under a Project is achieved. To this end, sufficient and relevant information is made available in an open manner to interested parties and for appropriate scrutiny.

4. Governance

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 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.

4.1 Roles and Responsibilities

4.1.1 Recipient

The Recipient is responsible for implementing the Project, including all aspects of the procurement process from strategic planning through to the award and management of contracts. The Recipient retains all procurement documentation and records of procurement contracts financed by the Bank as required in the Legal Agreements.

4.1.2 Bank

The Bank satisfies itself through its own reviews, or other oversight modalities, that the procurement process, including procurement procedures, documents, evaluations, award recommendations and contracts, is carried out in accordance with the provisions of the Procurement Policy, these Instructions and the Legal Agreements.

4.1.3 Risk-Based Engagement

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 nor is it a party to any resulting contracts. The Bank also has a fiduciary responsibility in overseeing the procurement process. The nature and extent of the Bank’s procurement assistance to the Recipient 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 country, sector or individual Project level. The Bank’s assistance to the Recipient is risk-based and may include either advisory work that is systemic in impact or operation specific transactional oversight, including prior or post reviews of individual procurement transactions, or financing of procurement audits, third party services or a combination of these. The

Bank's fiduciary oversight may also involve procurement audits and third party services.

4.2 Bank Review

4.2.1 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 complies with the requirements of the Legal Agreements.

4.2.2 Post Review

The Bank may carry out post reviews of procurement decisions by the Recipient that are not subject to prior review in order to determine whether they comply 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.

The determination of whether a procurement process is subject to prior or post review is based on the Project and activity-specific procurement risks, which are assessed during Project preparation, and reassessed and updated during Project implementation. The requirement for a prior or post review is specified in the Recipient's Procurement Plan. 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.

4.3 Accountability

Accountability, as it applies to all parties involved in a Project, combines the requirements of transparency and responsibility. The lines of accountability are defined during Project appraisal to the satisfaction of the Bank and reflected, if applicable, in an operational manual, and reassessed during the life of the Project.

4.4 Conflict of Interest

As stated in the Procurement Policy, the Bank requires that all those who are involved in the procurement process for a Bank-financed contract not have a conflict of interest with regard to the procurement concerned. Providers of goods, works and services and consulting services are required to remain professional, objective, and impartial. They are required at all times to hold the Recipient's interests paramount, without any consideration of future work; and to avoid conflicts with other assignments and their own corporate and personal interests. Where a provider of goods, works or services for a Project has a conflict of interest, that provider is ineligible to participate in the procurement process in which it has the conflict of interest.

4.4.1 Goods, Works and Non-Consulting Services

A contractor or supplier of goods, works or non-consulting services (including its personnel and subcontractors) is considered to have a conflict of interest, and is therefore ineligible to be engaged by the Recipient, in any of the following circumstances:

a) the contractor or supplier 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 the firm) for the preparation or implementation of the Project. This provision does not apply to the various entities (consultants, contractors, or suppliers)

which together are performing the contractor's obligations under a turnkey or design and build contract; or

b) the contractor or supplier has a close business or family relationship with a professional staff of the Recipient (or any other beneficiary of the Bank's financing, or any other party representing or acting on behalf of the Recipient), who:

- (i) is directly or indirectly involved in the preparation of the procurement documents or specifications of the contract, and/or the tender evaluation process of such contract; or
- (ii) would be involved in the implementation or supervision of such contract;

unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank; or

c) the contractor or supplier fails to comply with any other conflict of interest situation as specified in the tender or RFP documents relevant to the specific procurement process.

4.4.2 Consulting Services

A consultant is ineligible to be hired to provide 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 circumstances set forth below:

a) Conflict between consulting activities and procurement of goods, works, or non-consulting services: 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; or

b) 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; or

c) Relationship with Recipient's staff: the consultant (including its personnel and sub-consultants) has a close business or family relationship with a professional staff of the Recipient (or any other beneficiary of the Bank's financing) or any other party representing or acting on behalf of the Recipient, who is directly or indirectly involved in any part of:

- (i) the preparation of the TOR for the assignment;
- (ii) the selection process for the contract; or
- (iii) the supervision of such contract;

unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Bank.

4.4.3 Unfair Competitive Advantage

Fairness and transparency in the selection process requires that consultants or their affiliates competing for a consulting assignment do not derive a competitive advantage from having provided consulting services related to it. 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.

4.5 Non Compliance Remedies

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 such determination. The Bank may, upon such determination, in its discretion decide that the contract is no longer eligible for financing and may cancel the undisbursed amount of the Bank financing allocated to the contract, and if all or a portion of the amount so allocated has been disbursed, it may require that the Recipient refund the amount so disbursed. The Bank may cancel the undisbursed amount and require a refund of the disbursed amount without prejudice to any other contractual remedy available to it.

4.6 Complaint Monitoring

Procurement-related complaints may be brought to the attention of the Recipient (copied to the Bank) or to the Bank at any stage of the procurement process, and the Recipient makes every effort to address them objectively and in a timely manner, with transparency and fairness. See Annex IV of these Instructions for detailed requirements on complaints monitoring.

4.6.1 Standstill Period

For each contract subject to the Bank's prior review, the Recipient includes in the procurement documentation a standstill period³ between the date of the notification of intention to award the contract⁴ and contract signature (which period may be extended as described below). If the Recipient receives a written complaint within the standstill period, the Recipient 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 (together with the reasons for it) 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 to the Bank. The Recipient may not award the contract without receiving from the Bank no-objection to the Recipient's proposed course of action. If the Bank's no-objection is not received by the Recipient during the standstill period, the standstill period is automatically extended until the Bank's no-objection is received.

³ Minimum of 10 days for all contracts.

⁴ See paragraph 12.6.

If the Recipient does not receive any complaint during the standstill period, the Recipient informs the Bank of the same, and awards the contract in accordance with the recommendation for which the Bank previously provided its no-objection to the notice of intention to award a contract.

4.7 De-briefing Unsuccessful Tenderers /Consultants by Recipients

The Recipient debriefs and provides the basis for its selection decision to each unsuccessful tenderer or consultant who furnishes a written request for debriefing to the Recipient during the standstill period. The Recipient is not required to consider a request for debriefing received after the standstill period.

4.8 De-briefing Unsuccessful Tenderers/Consultants by the Bank

If, after notification of contract award, a tenderer or consultant has not received 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 such meeting is limited to discussing the tenderer's or consultant's tender or proposal, and not to reversing the Bank's decision conveyed to the Recipient or to discussing the tender or proposals of other tenderers or consultants.

4.9 Eligibility

4.9.1 Open Participation

As stated in the Articles of Agreement and the Procurement Policy, the Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects regardless of whether the country is a member of the Bank. 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. Recipients 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:

- a) 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;
- b) unless 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 goods or works required.

4.9.2 UN Sanctions

The proceeds of the Bank's financing may not be used for payment to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. Thus, firms of a country or goods manufactured in a country may be excluded from the procurement process if, by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Recipient's country prohibits any import of goods from, or payments to, a particular country, person, or entity. Where the Recipient's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.

4.10 Participation in a Tender or RFP

A tenderer or consultant may submit only one tender or proposal for each contract and may participate as a joint venture partner or consortium member in only one tender or RFP for each contract. Submission 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. However, this does not limit: a) the inclusion of the same sub-contractor or sub-consultant in more than one tender or proposal for the same contract; or b) the ability of one tenderer or consultant to be a sub-contractor or sub-consultant in another tender or proposal for the same contract.

4.10.1 Participation of 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 on the one hand, and the Recipient's agent and the affiliate on the other.

4.10.2 State-Owned Enterprises

A state-owned enterprise (SOE) of the Recipient's country may be eligible to compete 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.

Notwithstanding the above, when goods, works, non-consulting services and consultant services provided by state-owned enterprises, universities or research centers are of a unique and exceptional nature because of the absence of suitable private sector alternatives, or as a consequence of the regulatory framework, or 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.

5. Language

5.1 International Competitive Procurements

For international competitive procurements all Procurement Documents must be issued in English. In addition, the Recipient may issue translated versions of these documents into the National Language of the Recipient. The Recipient takes full responsibility for the accuracy of the translation of the documents into the National Language. In case of any discrepancies, the text in English prevails. If the Recipient translates and issues Procurement Documents in 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.

5.2 Evaluation Reports; Contracts

For international open competitive tendering and international open competitive selection, subject to 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.

5.3 National Competitive Tendering and Selection

For national competitive tendering and national competitive selection, Procurement Documents may be in the National Language. In cases when the Procurement Documents are in the National Language, the Bank may require the Recipient to provide, for its review, an accurate translation into English of all such documentation.

5.4 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.

5.5 Bank's Review

All documents 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.

6. Co-financing

6.1 Joint Co-financing⁵

As stated in the Procurement Policy, where Bank financing is provided on a joint basis with one or more co-financiers, it normally requires as a condition of its financing that the Procurement Policy apply to all contracts so jointly co-financed. However, in exceptional circumstances, if the Bank determines that the co-financiers' procurement policies are consistent with the Articles of Agreement and the Bank's Core Procurement Principles, the Bank may agree on a common procurement procedure framework and/or project-specific arrangement with the other co-financiers. The procurement procedures and the roles and responsibilities of the co-financiers are defined in the common procurement procedure framework and/or project-specific arrangement; normally the lead co-financier is responsible for overseeing the procurement process, applying its own procurement rules, internal review and clearance procedures, and determining whether the procurement has been conducted in accordance with its own procurement policy. In connection with such joint co-financing, the Bank and the co-financier may also agree that the co-financier may investigate allegations of Prohibited Practices with respect to such jointly co-financed projects. In all cases, worldwide eligibility to participate in procurement must be applied, so that firms and individuals from all countries may have the opportunity to offer the supply of goods, works and services.

7. Use of Country Procurement Systems

As provided in the Procurement Policy, the Bank may agree to the use by the Recipient of its applicable procurement system for certain Bank-financed contracts, if the Bank determines that the procurement system for these contracts is consistent with the Core Procurement Principles and Procurement Standards. The Bank's determination is based

⁵ For contracts financed on a parallel basis by co-financiers and procured by Public Entities, see paragraph 5.11.1 of the Procurement Policy.

on its assessment of the Recipient's procurement system and the fiduciary risk associated with the use of this system. The Bank may rely on an assessment of the Recipient's procurement system made by another development partner, provided the Bank is satisfied with the quality of such assessment. Proposed use of the Recipient's country procurement system (CPS) is addressed in the PDS (see paragraph 8.1 below).

8. Strategy and Planning

8.1 Project Delivery Strategy

The Recipient develops a Project delivery strategy (PDS) for each Project. The PDS addresses how procurement activities support the Project's development objectives and will deliver the best VfM under a risk-managed approach. The PDS includes the Project's Procurement Plan (PP) and provides adequate justification for the selection methods in the PP. The level of detail and analysis in the PDS is proportional to the risk, value and complexity of the Project procurement. The PDS and PP are prepared, as part of the Project preparation process, and are reviewed and approved by the Bank prior to completion of negotiations for the Bank financing. The Recipient furnishes any updates of the PP to the Bank for its prior review and approval. See Annex II of these Instructions for the key steps required in developing a PDS.

8.2 Advance Procurement and Retroactive Financing

In some cases, it may be advantageous for the Recipient to sign a contract for a Project financed by a loan, before the signing of the Legal Agreements for the loan. 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. If the contract is signed, 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.

9. General Procurement Notice (GPN)

After the PP has been prepared and as early in the Project cycle as possible, the Recipient issues a GPN that advises the business community about the nature of the Project. This notice includes the amount and purpose of the Bank loan and the overall PP, including:

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

The GPN is published on the Recipient's own procurement website and official government procurement portal, where practical, or in a newspaper with wide

circulation in the Recipient's country or in official gazettes or international trade publications, as appropriate. In addition, the notice is furnished to the Bank, which arranges for publication of the notice. The notice is published on the Bank's website (www.aiib.org) prior to the commencement of any procurement activity under the Project. The Bank also arranges for publication of the GPN in the United Nations Development Business.

B: Procurement of Goods, Works and Non-Consulting Services.

10. Procurement Methods

The following are the principal procurement methods, which may be used for contracts financed by the Bank under the circumstances described. An international open competitive tender is the Bank's preferred method of procurement. Other procurement methods may be applied, provided the Recipient demonstrates to the Bank's satisfaction that the proposed procurement method adequately reflects the requirements of the Core Procurement Principles, as described in paragraph 3.1 above. The justification for applying any procurement method other than international open competitive tendering must be stated in the Recipient's PDS and its use is subject to the Bank's prior approval.

10.1 International Open Competitive Tender

International open competitive tender is a method under which all interested suppliers, contractors or non-consulting service providers are given adequate notification of contract requirements and all such tenderers are given an equal opportunity to submit a tender. It provides the greatest opportunity for competition and satisfies the needs for economy and efficiency. The Recipient gives sufficient advance public notification of open tendering opportunities for potential tenderers to determine their interest and to prepare and submit their tenders.

10.1.1 Specific Procurement Notice (SPN)

International open competitive tendering, including prequalification where required, for individual contracts is advertised on the Recipient's own procurement website and official government procurement portals, where practical, or in a newspaper with large circulation in the Recipient's country or in official gazettes or international trade publications, as appropriate. The Bank arranges for publication of the specific procurement notice (SPN) for the individual contract on the Bank's website. Tender and prequalification notices are also sent to potential tenderers that have responded with an expression of interest to the GPN. The Bank also arranges for publication of the SPN in the United Nations Development Business online. In order to facilitate the participation of sub-contractors and suppliers in contracts or the creation of joint ventures and consortia, the Recipient makes 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.

10.1.2 Prequalification

Recipients, where appropriate, may require potential tenderers to prequalify for large and complex contracts. In such case, only those tenderers that meet the prequalification criteria are invited to submit tenders. The list of prequalified and conditionally prequalified companies is advertised on the Bank's website before the Recipient may issue the tender documents. 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.

10.1.3 Multi-stage Tendering

Detailed design and engineering of the goods, non-consulting services and works to be provided, including the preparation of technical specifications and other tendering documents, normally precede the invitation to tender for major contracts. However, in the case of turnkey contracts or contracts for large complex plants or works of a specialized nature, it may be undesirable or impractical to prepare complete technical specifications in advance. In such a case, a multi-stage tendering procedure may be used, under which first, un-priced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to both technical and commercial clarifications and adjustments, to be followed by amended tendering documents and the submission of final technical proposals and priced tenders in subsequent stages. Other forms of multi-stage tendering include, *inter alia* competitive dialogue, negotiated procedures and best and final offer (BAFO), may be used under open international competitive tendering. The proposed use of multi-stage tendering must meet the requirements of FfP and VfM and must be addressed in the PDS.⁶

10.2 Selective Tendering

Selective tendering is similar to international open competitive tendering, except that the Recipient pre-selects qualified firms, who are then invited to submit tenders.

This method may be used for goods and non-consulting services, on an exceptional basis, under one or more of the following circumstances:

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

Under these circumstances, 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.

Multi-stage tendering described in paragraph 10.1.3 may be applied under selective tendering.

10.3 Direct Contracting

Direct Contracting may be used in exceptional cases only where:

⁶ Non mandatory guidance for Recipients on these types of multi-stage tendering and their requirements is available at (currently under development link to be provided).

- 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 international open competitive tender or selective tender for the contract, carried out in accordance with the Procurement Policy and these Instructions;
- c) the goods can only be provided by a single 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; or
- e) the circumstance is one of extreme urgency brought about by unforeseeable events not attributable to the procuring entity.

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

10.4 National Competitive Tendering

Competitive tendering in accordance with national procedures may be the most economic and efficient method of procuring goods, works or non-consulting services when:

- (a) the contract value is small;⁷
- (b) works are scattered geographically or spread over time;
- (c) 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
- (d) by its nature or scope, the contract is unlikely to attract foreign competition.

The procedures under which national competitive tendering is carried out must be acceptable to the Bank, comply with the Core Procurement Principles and meet all of the following requirements:

- (a) They provide for adequate notification and competition in order to ensure reasonable prices.
- (b) 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.

In these circumstances, the Recipient may, with the Bank's prior approval, use national competitive tendering under terms and conditions acceptable to the Bank.

⁷ The ceiling for "small value" determined in the PDS.

10.5 Request for Quotations (RFQ)

A request for quotations (RFQ) is a simplified competitive selection method that is based on comparing price quotations obtained from 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 simple civil works, of low value.⁸

In these circumstances, the Recipient may, with the Bank's prior approval, use RFQs.

10.6 Electronic Procurement (E-procurement)

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, provided the Bank is satisfied with the adequacy of the system, applied procurement method, the system's accessibility, security and integrity, and confidentiality as well as audit trail features. The Recipient's intended use of e-procurement is specified in the PDS.

10.7 Public Private Partnerships (PPPs) and Concessions

The Bank may finance a contract procured under a PPP arrangement, such as build, own and operate (BOO), build, operate and transfer (BOT), and build, own, operate and transfer (BOOT), concession or similar type of arrangement, if the procurement method is consistent with the Bank's Core Procurement Principles. See Annex III of these Instructions for further detailed requirements on procurement under a PPP or concession arrangement.

11. Tender Documentation

11.1 General

Tender documents are the basis for informing potential tenderers of the requirements to supply specific goods and non-consulting services or to construct works. They furnish all information necessary to permit tenderers to submit responsive tenders. Tender documents must be FfP and provide for the award of contract in accordance with the VfM requirements of the Project. Tender documents are drafted so as to permit and encourage international competition. They clearly define the scope of works, goods or services to be supplied, the rights and obligations of the purchaser and of the supplier, contractor or service provider. The conditions to be met in order for a tender to be declared responsive are also be clearly defined, along with fair and non-discriminatory criteria for selecting the winning tender.

The detail and complexity of the documentation vary according to the size and nature of the contract, but generally they include an invitation to tender, instructions to tenderers, the form of tender, tender security requirements, the conditions of contract, advance payment guarantees, performance security requirements, technical specifications and drawings, a schedule or requirements for the goods, works or services, and the form of contract. Recipients, where applicable, use standard tender

⁸ The ceiling for " low value" is determined in the PDS.

documents appropriate for each type of procurement based on the Multilateral Development Bank Harmonized Standard Tender Documents (STDs)⁹.

11.2 Restricted Competition and Unfair Advantage

Nothing in the tender documents may be designed to restrict competition or offer an unfair advantage to a tenderer. 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 competition.

11.3 Standards and Specifications

Specifications are based on relevant quality characteristics or performance requirements (or both). 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 ensure equivalent or higher quality or performance than the specified standard would also be accepted. The use of brand names or other designations that would discriminate among suppliers are 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.

11.4 Environmental and Social Provisions

The tender documents include, to the extent required, provisions designed to ensure compliance with the Bank's Environmental and Social Policy.

11.5 Development of Domestic Industry

The Bank may, under special circumstances and conditions, accept the application of provisions of the relevant Bank member country's legislation that promote or encourage the development of domestic industry through preference margins, 'set asides', 'offsets', preference schemes or similar innovative approaches, provided that the Bank is satisfied that such provisions satisfy the Core Procurement Principles.¹⁰ The agreed approaches are reflected in the PDS and Legal Agreements.

11.6 Evaluation Criteria

The tender evaluation aims to identify the tender with the most economically advantageous VfM offer. Tender documents specify the relevant factors, in addition to the submitted tender price, to be considered in tender evaluation and the manner in which they will be applied for the purpose of determining which tender demonstrates the most economically advantageous VfM offer.

Factors which may be typically taken into consideration include:

- the costs of inland transport to the Project site;
- the payment schedule;
- the time of completion of construction or delivery;
- the operating and maintenance costs;
- the efficiency and compatibility of the equipment;
- performance and quality, environmental benefits;

⁹ Until such time as the Bank has developed its own standard tendering documents, Recipients may, where appropriate, choose to use STDs provided by other MDBs to draft their own tender documents. STDs can be found on www.worldbank.org, www.ebrd.com, and www.adb.org. The choice of STD is addressed in the PDS.

¹⁰ See Annex V for further details on how provisions for Development of Domestic Industry will be considered by the Bank.

- the availability of service and spare parts; and
- minor deviations, as relevant.

The factors other than price to be used for evaluating a tender are expressed in monetary terms or, where that is not possible for demonstrable reasons, given a relative merit weight in the evaluation provisions of the tender documents.

11.7 Submission Time Limits

Prescribed time limits for preparation and submission of tenders must be adequate for all tenderers to prepare and submit tenders. The Recipient ensures that tender validity periods and delivery dates are consistent with the Recipient's reasonable requirements but are not used to discriminate against any potential tenderer. In exceptional cases, it may be necessary to request tenderers to extend the validity of their tenders. In such cases tenderers are not allowed to change their tender and are free not to give such extension. Where the tender is for a fixed price contract, provision must be made in the tender documents for the tender price of the successful tenderer to be adjusted for inflation¹¹ up to the date of contract award, so as to mitigate the risk accruing to tenderers agreeing to such an extension.

11.8 Communications

All amendments to tender documents are communicated in writing to each registered recipient of the original tender documents, and the Recipient ensures that records are kept of all communications issued and received for a period of one year after the Bank has received the final audit report for the Financing.

11.9 Tender Prices

Tender prices for the supply of goods are requested on the basis of the then current edition of Incoterms.¹² Evaluations of tenders for supply of goods are made on the basis of the tender price, exclusive of import duties and taxes payable on imported goods, and of taxes payable on directly imported components to be incorporated in locally supplied goods; 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. However, in the case of contracts procured by a sub-sovereign Public Entity, such import duties and taxes may be taken into account in the evaluation of tenders, in which case this is specified in the tender documents. 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.

11.10 Currency

The Recipient, with the prior agreement of the Bank, determines the currency or currencies in which the tender prices are quoted. The Recipient may also require tenderers to state the local cost portion of a tender in the local currency. Where multiple currencies are permitted, for the purpose of tender evaluation and comparison, tender

¹¹ An appropriate index, such as the official cost of living index in a country which is expressed in the currency of the tender may be used.

¹² See International Chamber of Commerce. www.iccwbo.org .

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.

11.11 Payment

Payment terms and procedures are set in accordance with the international commercial practices applicable to the goods, works or non-consulting services and the market in question. Contracts for the supply of goods 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.

11.12 Tender Security

For the procurement of goods, works or non-consulting services, the Recipient may require a tender security. When used, 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. Tender securities are released to the unsuccessful tenderers once the contract has been signed with the winning tenderer. Tenderers may submit a tender security directly issued by a reputable bank or financial institution of their choice.

In place of a tender security, the Recipient may require each tenderer to sign a declaration accepting that if it withdraws or modifies its tender during the period of validity, or it fails to submit a performance security before the deadline defined in the tender documents, or it is awarded the contract but fails to sign the contract, 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.

11.13 Contract Arrangements

The form of contract to be used must be appropriate and FfP for the objectives and circumstances of the project. Contract conditions are drafted so as to allocate the risks associated with the contract fairly, with the primary aim of achieving the most economic price and efficient performance of the contract. The contract clearly defines the scope of goods, works or services to be supplied or performed, the rights and obligations of the purchaser and of the supplier, contractor or service provider and include, inter alia, appropriate provisions for guarantees of performance and warranties, liability and insurance, acceptance, payment terms and procedures, price adjustment, liquidated damages and bonuses, handling of changes and claims, force majeure, termination, dispute resolution and governing law. In addition to the forms of contract contained in the MDB Harmonized STDs the Recipient may use appropriate alternative international standard model forms of contract incorporating internationally recognized terms and conditions.¹³ The justification for use of alternative model forms of contract must be submitted in the PDS.

¹³ Non mandatory guidance for Recipients on international standard model forms of contract is available at [add a link here to “Guidance on Model Forms of Contract to be used for Infrastructure Projects” under development].

11.14 Post-qualification

If tenderers have not been prequalified, the Recipient specifies appropriate qualification requirements in the tender documents to ensure that a tenderer who would be recommended for contract award has the capability and resources to carry out the contract effectively. The 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 document), or any other entity different from the entity that submitted the tender.

12. Tender Evaluation and Contract Award

12.1 Tender Opening

The Recipient receives and opens tenders solicited under international open competitive tendering, national competitive tendering and under selective tendering methods, in accordance with procedures and on conditions guaranteeing the regularity of the opening. The time specified for tender opening is the same as the latest time stipulated for delivery of tenders or promptly thereafter. On the date and at the time and place described in the tender documents, the Recipient opens all tenders that have been received before the latest time stipulated for the delivery of tenders. Tenders must be opened in the presence of tenderers, or their representatives, who wish to attend. The name of the tenderer and the total amount of each tender, including alternative tenders, if permitted, are recorded when opened, and the information is provided to all tender participants. 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 is copied to the Bank directly after tender opening.

12.2 Tender Evaluation

The Recipient evaluates all tenders referred to above in paragraph 12.1 and compares them only on the basis of the evaluation criteria set out in the tender documents. Contracts are awarded within the period of tender validity to the tenderer whose tender is evaluated as the most economically advantageous VfM tender. In making this determination, the Recipient takes into account whether the tender has been substantially responsive to a) the tender submission requirements and b) the specific evaluation criteria in the tender documentation; 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. 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. The Recipient may only reject all tenders if there has been unsatisfactory competition, including receiving tender prices that substantially exceed the cost estimates or funds available. Before rejecting all tenders, the Recipient obtains the written no-objection of the Bank on the procedures to follow.

12.3 Confidentiality

After the opening of tenders and until the publication of contract award, 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 selection 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.

12.4 Abnormally Low-Priced Tenders

An abnormally low-priced tender (ALPT) is one where 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 seeks written clarifications from the tenderer, including detailed price analysis for its tender prices in relation to the scope, proposed methodology, schedule, and allocation of risks and responsibilities.

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):

- a) accept the tender;
- b) 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
- c) reject the tender.

12.5 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 establishing the eligibility of the contract for Bank financing.

12.6 Notification of Intention to Award a Contract

Where a standstill period applies, the Recipient promptly notifies in writing each participating tenderer of its intention to award a contract to the successful tenderer. This is done at the beginning of the standstill period. The notification contains details of the successful tenderer's name and address, the evaluated price and contract price for all of the tenderers who submitted tenders. The notification provides individually a brief statement to each of the unsuccessful tenderers of the reasons why its tender was unsuccessful. In no case may any information provided by a tenderer in its tender on a confidential basis be disclosed to any of the other tenderers. The standstill period duration, as provided for in the tender, is clearly indicated in the intention to award a contract letter, along with the transmission date.

12.7 Publication of Contract Award

The Bank publishes on a regular basis a description of Bank-financed contracts awarded, the name and nationality of the entity to which the contract was awarded and the contract price.

12.8 Contract Management

Contract management is an integral part of the procurement process. The Recipient administers contracts with due diligence and monitors, and reports to the Bank on, the performance of contracts. Before agreeing to any modification or waiver of the terms and conditions of a contract or granting an extension of the stipulated time for performance (except in cases of extreme urgency brought about by unforeseeable

events not attributable to the Recipient), the Recipient obtains the Bank's written no-objection to the proposed modification, waiver or extension. Change or variation orders made in accordance with the terms and conditions of the contract are subject to the Bank's review before it agrees to disburse the amount of financing allocated to that contract.

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

C: Procurement of Consulting Services by Public Entities

13. General Considerations

The main concern when selecting consultants is the quality of the services that are provided. The Recipient ensures that the procedures for selecting consultants and contracting for their services are flexible and transparent to ensure that assignments can be efficiently executed with high standards of performance, while providing the necessary accountability. These considerations inform the procedures outlined below.

13.1 Key Steps in the Selection Process

Except as noted below, the selection process for consultants involves the following steps:

- a) defining the scope, objectives and estimated budget of the consultant's assignment, including any anticipated follow-on services and extensions of the proposed assignment; and determining the selection method to be followed;
- b) identifying consultants that are qualified to perform the assignment and preparing a short list of qualified firms;
- c) inviting proposals from the short-listed firms;
- d) evaluating and comparing capabilities and proposals and selecting the preferred consultant;
- e) negotiating a contract with the selected consultant; and
- f) administering the contract.

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

13.2 Selection Methods for Firms

An international open competitive selection method is the Bank's preferred method of selection. Other selection methods may be applied, provided the Recipient demonstrates to the Bank's satisfaction that the proposed procurement method adequately reflects the requirements of the Core Procurement Principles. The justification for applying any selection method other than international open

competitive selection must be stated in the Recipient's PDS and is subject to the Bank's prior approval before being incorporated in the PP.

13.2.1 International Open Competitive Selection

Open international competitive selection is the Bank's preferred method for selection of consultants. This method requires mandatory international advertisement for expressions of interest (EoI) and is used when the participation of foreign firms is most likely to meet the best FfP and VfM considerations.

13.2.2 Limited Competition

Limited competition is a competitive selection method in which the Recipient prepares a shortlist without advertisement. It may be appropriate: a) if there are only a limited number of qualified consultants that can carry out a particular assignment; or b) there are other justifiable exceptional reasons. The Recipient seeks EoI from a list of potential consultants broad enough to ensure adequate competition.

13.2.3 National Competitive Selection

National competitive selection through advertisement 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 national competitive selection, they are allowed to do so.

13.2.4 Direct Selection

FfP and VfM considerations may require a direct selection (single-source or sole-source selection) approach: that is, approaching and negotiating with only one firm. This selection method may be appropriate under circumstances where there is only one suitable firm or there is a suitable justification to use a preferred firm. Direct selection may be used on an exceptional basis under the following circumstances:

a) Single-source:

- i. An existing contract for consultant services, not originally financed by the Bank but awarded in accordance with procedures acceptable to the Bank, may be extended for additional consulting services of a similar nature, if it is properly justified, no advantage may be obtained by competition, and the prices are reasonable; or
- ii. for tasks that represent a natural continuation of previous work carried out by a consultant where 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, subject to satisfactory performance in the initial assignment; or
- iii. there is a justifiable 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 the previous contract was satisfactorily performed by the firm, that no advantage will be obtained by competition, and that the price is reasonable; or

iv. the procurement is both very low-value and low-risk as specified in the Procurement Plan; or

v. in exceptional cases, for example, in response to natural disasters and emergency situations.

b) Sole-source:

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 a SOE, university or research center of the Recipient's country, and the services are of a unique and exceptional nature due to the absence of suitable private sector alternatives, or as a consequence of the regulatory framework, or because the consultant's participation is critical to project implementation.

In all instances of direct selection, the Recipient is required to ensure fairness and equity, and to have in place procedures designed to ensure that:

a) the prices are reasonable and consistent with the market rates of a similar nature; and

b) the required consulting services are not split into smaller size procurement in order to avoid competitive processes.

13.3 Particular Selection Methods for Firms

The following are specific selection methods for firms that may be utilized under 13.2.1-13.2.3. The specific methods to be used are specified in the Project's PDS¹⁴:

a) Quality Cost Based Selection (QCBS): this 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. The relative weight to be given to the quality and cost is determined for each assignment and depends on the nature of the assignment.

b) Fixed Budget Based Selection (FBS): this 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. Technical proposals are opened and evaluated first; financial proposals are opened second, and the firm with the highest ranked technical proposal and whose financial proposal is within the indicated budget is selected.

c) Least Cost Based Selection (LCS): this 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. Technical proposals are opened first and evaluated; only

¹⁴ Details of these different methods, the circumstances under which they may be used, and their requirements, are set out in "Guidance on Selection of Consultant Firms" available at [add a link here to "Guidance on Selection of Consultant Firms" - under development].

the financial proposals of those firms with at least the minimum qualifying mark are evaluated, and the evaluation is based exclusively on cost.

d) Quality Based Selection (QBS): this involves a competitive process among short-listed firms, in which only the technical proposal is evaluated; the firm with the best technical proposal is invited to negotiate the financial terms.

e) Consultant's Qualifications Based Selection (CQS): this involves a limited competition process, in which the Recipient obtains EoI from at least three firms and selects the best qualified and experienced firm to submit a combined technical and financial proposal.

13.4 Shortlists

The preparation of a short list of firms to provide consulting services is required for all selection methods except CQS and Direct Selection. 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.

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

Short-lists may not include:

a) 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 (b) 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; or

b) firms who have submitted more than one EoI for the same contract, or have participated or intend to participate as a joint venture partner or consortium member in more than one EoI or proposal for the same contract.

13.4.1 SOEs

SOEs and not-for-profit entities (such as NGOs and public universities) and UN Agencies, are not normally included in the same short list with Private Entity firms, unless they meet the eligibility requirements of paragraph 4.10.2 above. If they are included in the same short list with Private Entity firms, the selection should normally be made using the QBS method or, if the assignment is below a threshold set forth in the PP approved by the Bank, using the CQS method. The short-list may not include individual consultants. The short-list may comprise entirely national consultants if the assignment is below the threshold established in the PP approved by the Bank.

13.5 Selection Procedures for Individuals

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. When coordination, administration, or collective responsibility may be difficult because of the number of individuals, the Recipient employs a firm rather than several individuals. 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.

13.5.1 Open Competitive Selection of Individual Consultants

Advertisement for REoI is encouraged, particularly when the Recipient does not have knowledge of experienced and qualified individuals or of their availability, the services are complex, there is potential benefit from wider advertising, or if advertising is mandatory under national law.

Individual consultants are selected from those who expressed interest in response to an REoI. REoIs include complete TOR. The evaluation is based on the relevant qualifications and experience of the individual consultant.

13.5.2 Limited Competitive Selection of Individual Consultants

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. The complete TOR is sent with the invitation. Individual consultants are selected from among those who expressed interest in response to the invitation. The evaluation is based on the relevant qualifications and experience of the individual consultant.

13.5.3 Direct Selection of Individual Consultants

Individual consultants may be selected on a single-source or sole-source basis in the following circumstances, subject to the Bank's prior agreement.

- a) Single-source (a preferred individual consultant among several)
 - i. tasks that are a continuation of previous work that the individual consultant has carried out and the individual consultant was selected competitively under paragraph 13.5.1 or 13.5.2;
 - ii. assignments with a total expected duration of less than six months;
and
 - iii. urgent situations;
- b) Sole-source: when the individual is the only consultant qualified for the assignment.

13.6 Request for Proposals

The Recipient prepares the request for proposals (RFP) in accordance with the format and requirements of the MDB Harmonized Standard Request For Proposal Document.¹⁵

¹⁵ Until such time as the Bank has developed its own standard request for proposal (SRFP) document, Recipients may, where appropriate, choose to use SRFPs provided by other MDBs to draft their own RFP documents. SRFPs can be found on www.worldbank.org, www.ebrd.com, and www.adb.org. The choice of SRFP is addressed in the PDS.

13.6.1 Evaluation and Selection

The RFP clearly states the criteria for evaluating the proposals. The evaluation of proposals is normally based only on technical considerations, including, but not limited to, experience of the firm in similar assignments, local experience and presence, qualifications of key personnel proposed for the assignment, and suitability and quality of the work plan. For some assignments of a straightforward technical nature, the price of the services may be a secondary consideration, but quality remains the principal factor in selection. The firm that submits the highest rated proposal is invited to negotiate a contract with the Recipient.

13.7 Contract Negotiations

During contract negotiations, the selected consultant's proposal may be modified by mutual agreement between the Recipient and the consultant. The Recipient indicates any changes that may be desirable in the scope of services and in the staffing proposed by the consultant, and appropriate adjustments in the price of services may then be agreed. Where so required in the PP the Recipient furnishes the draft final contract to the Bank for review and approval before signing. For QBS and CQS selection, in addition to contract negotiations on scope of services and the staffing proposed, negotiations are permitted on consultant fee rates and contract implementation costs.

13.8 Contract Administration

The Recipient is responsible for managing and administering the consultant's work to ensure high performance standards, authorizing payments, making contract changes as may be needed, resolving claims and disputes, ensuring timely and satisfactory completion of the assignment and evaluating the performance of consultants. Before agreeing to any modification or waiver of the terms and conditions of a contract or granting an extension of the stipulated time for performance (except in cases of extreme urgency brought about by unforeseeable events not attributable to the Recipient), the Recipient obtains the Bank's prior written no-objection to the proposed modification, waiver or extension.

Section III Procurement by Private Entities

14. Principles

14.1 Established Commercial Practices

As stated in the Procurement Policy, the Bank's concerns for the appropriate use of funds and for economy and efficiency apply equally to Bank-financed contracts procured by Public Entities and to Bank-financed contracts procured by Private Entities (see paragraphs 3.1.1 and 3.1.2 for descriptions of economy and efficiency). Private Entity Recipients often meet these concerns by following established private sector or commercial practices other than formal open competitive tendering for their procurement. Nevertheless, whenever the Bank deems appropriate, it may require the use of competitive tendering methods by Private Entities, particularly for large contracts.

14.2 Appropriate Procurement Methods; Fair Market Prices

In accordance with the Procurement Policy, the Bank satisfies itself that the Private Entity Recipient uses appropriate procurement methods that ensure a sound selection of goods and services at fair market prices and that its capital investments are made in a cost effective manner. Careful procurement planning that takes into account the particular needs of the Recipient is essential for the Bank's evaluation and agreement.

The Bank requires that contracts awarded by a Private Entity Recipient be negotiated on an arm's length basis and be in the best financial interest of the Private Entity Recipient as distinct from the interests of any other sponsor(s) of the Project. 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 operation report, and that the contract conditions are fair and reasonable. The Bank does not finance costs that it determines exceed market prices.

14.3 Concessions

Concessions of public assets or services and PPPs are subjected to special scrutiny by the Bank. The Bank will only finance a concession agreement with a Private Entity concessionaire if the Recipient demonstrates to the satisfaction of the Bank, that the following criteria have been met:

- (i) the process for selecting the concessionaire has been conducted with fairness, transparency and in a competitive manner;
- (ii) the process was free of corruption and in compliance with all applicable laws and regulations; and
- (iii) the terms of the concession agreement (price, quality, risk-sharing) are fair and reasonable in relation to market practice.

14.4 Financial Intermediaries

If the Bank provides financing to a financial intermediary to finance sub-loans to Private Entity beneficiaries such as small- and medium-sized enterprises, the procurement of goods, works and services financed under the sub-loan is undertaken by the respective beneficiary in accordance with the normal procurement practices of Private Entities, provided they are acceptable to the Bank. If the Bank provides financing to a financial intermediary to finance sub-loans to Public Entities, the procurement of goods, works and services financed under the sub-loan must meet the requirements of Section II of these Instructions.

Section IV Prohibited Practices

15. Prohibited Practices

15.1 The Bank requires that the Recipient (and all other beneficiaries of the Bank financing), as well as tenderers, suppliers, contractors, concessionaires and consultants under Bank-financed contracts for the Project, observe the highest standard of transparency and integrity during the procurement, execution and implementation of such contracts.

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

- (i) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (ii) “**collusive practice**” means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iii) “**corrupt practice**” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (iv) “**fraudulent practice**” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- (v) a **misuse of the Bank’s resources** which means improper use of the Bank’s resources, carried out either intentionally or through reckless disregard;
- (vi) an **obstructive practice** which means (i) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank’s investigation; (ii) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (iii) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (iv) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (v) materially impeding the exercise of the Bank’s contractual rights of audit or inspection or access to information; and
- (vii) “**theft**” means the misappropriation of property belonging to another party.

15.3. Any occurrence, or suspected occurrence, of a Prohibited Practice in the procurement, award, or implementation of a Bank-financed contract is dealt with in accordance with the provisions of the Bank’s Policy on Prohibited Practices. Suppliers, contractors, service providers and Consultants selected pursuant to the provisions of Section II and concessionaires selected pursuant to paragraph 14.3 of these Instructions, as well as the Recipient shall fully cooperate with the Bank (or a co-financier undertaking an investigation pursuant to paragraph 6.1) in any investigation into an alleged Prohibited Practice to be carried out pursuant to the Policy on Prohibited Practices, and permit the Bank or its representative (including such co-financier) to inspect such of their accounts and records as may be relevant for such investigation and to have such records and accounts audited by the auditors appointed by the Bank.

Provisions to this effect are included in the Legal Agreements and the procurement contracts with such entities.

15.4 If the Project is financed by a sovereign-backed loan, the Bank (or, where relevant, a co-financier having undertaken an investigation pursuant to paragraph 6.1):

- a) may take any of the following additional actions in connection with a Prohibited Practice under the Project:
 - (i) reject a proposal for award if it determines that the tenderer recommended for award, or any of its personnel, or its agents, or its 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
 - (ii) 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; and
- b) requires that a clause be included in tender documents and in contracts financed by the Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank (and a co-financier undertaking an investigation pursuant to paragraph 6.1) to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.

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 a procurement process.

2. Defining VfM

VfM is not simply about achieving the lowest tendered price: it is about evaluating the extent to which a proposed solution will realize the desired procurement outcome whilst taking into account the optimum combination of whole life costs and quality. Typical additional factors that can also be taken into account in determining VfM include a fit for purpose approach to the procurement process, risk, environmental and sustainability issues.

3. Achieving VfM

VfM can be achieved through the application of:

- a) a clear statement of needs and the required procurement outcome in the Project Delivery Strategy (PDS) and in the accompanying Procurement Plan;
- b) a procurement approach that is proportional to the risk, value, context and strategic importance of the procurement, i.e., the process is fit-for-purpose;
- c) the specification of the requirements and of the cost and non-cost elements that will be evaluated, including on a life cycle basis where appropriate.
- d) the selection of a contractual form that is appropriate for the outcome;
- e) clear evaluation criteria that are aligned with the needs and required outcome of the project and the selection of the firm that best meets these needs and outcome.;
- f) the application of effective contract management

4. Planning

Appropriate design of the Procurement Process is the critical first step to obtaining VfM through deciding how to spend the allocated funding to yield the most value. It should be noted that:

- a) The use of life cycle costing in addition to the initial capital cost will likely contribute significantly to achieving VfM, particularly when the operational costs are significant.

- b) The PDS with its associated Procurement Plan will be used to state the needs and outcome and identify how VfM will be achieved through the Procurement Process.

5. Supplier Market Strategy

To achieve VfM a clear and focused strategy must be developed for sourcing the procurement requirement from the appropriate supplier market. This is required in order to attract firms that have both the required quality and capability to satisfactorily deliver the required procurement outcome. The following elements require careful consideration:

- a) Selection Methods - Selection methods and arrangements that are more likely to attract adequate response from the market;
- b) Specifications - requirements can based on detailed technical specifications or performance/functional based requirements that may also permit firms to submit innovative solutions for the procurement outcome.
- c) Standards – as per paragraph 11.3 of this PIR.
- d) Contract Type – The Recipient determines the appropriate contract type and contract terms taking into account the nature, risk and complexity of the activity, fit-for-purpose considerations, optimal allocation of risk, liabilities, roles and responsibilities of the contracting parties.

The Recipient's recommended supplier market strategy is to be justified in terms of proportionality, value, complexity and risk of the procurement. For further details, see Annex II, Project Delivery Strategy.

The evaluation criteria shall be designed to enable the Recipient to achieve best VfM in operations and shall be determined by the PDS and specified in the tender/request for proposals document.

6. Contract Management

To effectively manage a contract, the Recipient shall develop 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 performance.

Annex II:

Project Delivery Strategy

1. Purpose

This Annex to the Directive: Procurement Instructions to Recipients (Directive) sets out the detailed requirements for developing the PDS as required by the Directive. The PDS provides the basis and justification for procurement decisions including the approach to market and selection methods.

2. Requirements

The Recipient prepares for each project, a PDS, including a PP. The Recipient also prepares an activity procurement strategy for activities and contracts under a project that are considered high risk for one or more of the following reasons: (a) complexity, (b) criticality for the project, (c) lack of adequate market information.

The PDS (including the PP) is required to be prepared by the Recipient, as part of the project preparation process, to be reviewed and agreed to before completion of loan negotiations with the Bank. A summary of the PDS is included in the project's appraisal document. Any updates of the PP are submitted to the Bank for its prior review and approval.

The level of detail and analysis in the PDS is proportional to the risk, value and complexity of the project's procurement.

The PDS covers the following areas:

- a) Identification of the specific project needs;
- b) Assessment of the adequacy, behavior and capabilities of the market to respond to the procurement;
- c) Assessment of the implementing agency's resources and previous experience in procuring these types of activities;
- d) 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 development objectives; and
- e) 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.

3. Specific Elements of the PDS

The PDS includes the following: strategic assessment, operational context, market research, risk management, procurement arrangements, and 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)

3.1 Strategic Assessment

The strategic assessment covers the following elements:

- a) development objectives for the project;
- b) required outcomes;
- c) performance measures;
- d) implementing agency capacity and resources; and
- e) project risks.

3.2 Operational Factors Impacting on Procurement

The operational context of the procurement involves an assessment of the factors that may affect the achievement of the procurement objectives, such as the following:

- a) governance aspects: fragile or conflict affected situation, state involvement in the economy, legislative processes and legal framework;
- b) economic aspects: small economy, inflation, development of domestic industry and exchange rate volatility;
- c) sustainability aspects: disaster or emergency situation, sustainability requirements; and
- d) technological aspects: availability of informational technology, information transfer and security; internet access and restrictions; cell phone access and coverage.

3.3 Market Research

The purpose of market research is to develop a thorough understanding of the relevant sectors and potential tenderers and consultants; how the market works and how this may impact the approach to the market and methods used to procure.

The market research analysis assesses issues that affect the risks and VfM of the project. The supplier market research analysis is consolidated into a list of conclusions and implications for the project's proposed approach to market.

4. Risk Management

The Recipient prepares a risk management plan, informed by the analysis in each of the steps of the PDS, and covering all major risks related to the operating environment, market conditions, implementing agency capability and provider capability.

The Recipient ensures that risk assessments are relevant to the specific project. The probability and criticality of each risk are assessed, and a risk mitigation plan developed and maintained during the life of the project. 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.

5. Procurement Arrangements

The Recipient covers the following elements in the project's procurement arrangements:

- a) 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 the decisions made.
- b) Outline of the key specifications (specifications may be detailed or performance oriented (functional));
- c) Quality requirements – Standards, quality assurance requirements, sustainable procurement requirements as appropriate;

6. Procurement Plan

The PP is developed based on the findings and recommendations of the PDS. The plan should provide an estimated timeline against each contract to be financed under the loan showing the type of contract, the tender/RFP selection method, and the key milestones in the procurement process (to include issue of the specific invitation to tender/request for EOIs, tender/proposal submission, award of contract, contract completion).

7. PDS Template

The following is a template designed to help the Recipient facilitate the drafting of their proposed PDS for the Bank's review during project appraisal.

Strategic Assessment
1. This PDS relates to 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> .
Timelines
8. Procurement process timelines <i>[insert weeks/months]</i>
Assessment of Operational Factors Affecting Procurement
9. Operational factors affecting procurement are as follows: <i>[describe] a) governance aspects: fragile or conflict affected situation, state involvement in the economy, legislative processes and legal framework; b) economic aspects: small economy, inflation, domestic preference; and exchange rate volatility; c) sustainability aspects: disaster or emergency situation, sustainability requirements; and d) technological aspects: availability of informational 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> .
Supply Market Analysis <i>[The level of detail included in this section is proportional to the risk, value and complexity of the project.]</i>
11. The relevant market for the procurement activities are <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> .
Key Stakeholders
14. The key stakeholders and their key expectations are <i>[insert]</i> .
15. The agency will communicate with key stakeholders by <i>[insert method and timing]</i> .
Risk Management
16. <i>[Set out the risk management plan which includes key procurement risks and their mitigation measures]</i>
Recommended Procurement Approach <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. The following elements are to be included:

a) Approach to supply 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 – Standards, quality assurance requirements, sustainable procurement requirements as appropriate.

Procurement Plan

18. Based on all the above factors, set out the initial procurement plan for the project, which should include all the elements indicated in the Directive as to be included in the PP.

Annex III:

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 II of these Instructions.

2 Competitive Selection

In the procurement of a contract under a PPP or concession arrangement the key elements, required to ensure that the procurement method selected is consistent with the Bank's Core Procurement Principles, include the following:

(i) Appointment of qualified and experienced advisers covering the technical, legal, and financial issues likely to arise in what will often be a complex evaluation, in order to ensure that the selection process and communication with tenderers are handled to the highest professional standards.

(ii) A public invitation to pre-selection proceedings made in a manner that reaches as wide as possible an audience of potential tenderers and which contains sufficient information to stimulate potential tenderers' interest and to allow them to judge whether they are likely to be qualified.

(iii) Publication of clear pre-qualification criteria. These are designed to narrow the range of tenderers to those qualified for what may be highly complex and sophisticated performance undertakings. The number of tenderers pre-qualified should balance the objective of ensuring strong competition through a reasonable number of tenderers with that of giving well-qualified tenderers a reasonable chance of success (given that tender costs typically substantially exceed those required for standard procurement by Public Entities, pre-qualifying too many tenderers may affect tender quality).

(iv) Issuance of a clear RFP, with a clear statement of: (A) what is required of tenderers in substance; (B) procedures for submitting proposals; and (C) the evaluation criteria.

(v) A structured approach to evaluation of the proposals and subsequent negotiation with the tenderer submitting the best proposal

(vi) Public disclosure of the key terms of the contract which 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).

Beyond these key basic elements, a significant number of further details would normally be required for the competitive selection process to be considered acceptable; these include details on communication with potential tenderers, evaluation of

proposals, handling of negotiations, and publicity in relation to process and outcome.
16

The Bank recognizes that an acceptable structured approach to evaluation of proposals and subsequent negotiation in step (v) above may take various forms. However, as a critical element of transparency in the process, the Bank requires that the final RFP include the criteria for evaluating the proposals, the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of proposals. The issues involved here concern:

- (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 a preferred tenderer is announced and with whom 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 (whether formal weighting or another approach).

These issues are best determined case by case, 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.

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 those specifications and indicators. In such cases, 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. This process allows the tenderers to offer their own innovative solutions for meeting the particular infrastructure need of the Recipient in accordance with defined standards of service. Following examination of the proposals received, the Recipient may revise the initial specifications and contractual terms prior to issuing a final RFP.

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 should not be

¹⁶ 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)

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.

8. Unsolicited Proposals

Unsolicited proposals arise when a firm approaches the Recipient with a new Project proposal. Contracts arising from these proposals may be financed under certain circumstances. In all instances of unsolicited proposals, the process to assess and determine the best FfP and VfM approach to awarding a contract initiated by an unsolicited proposal must be clearly defined by the Recipient.

When an unsolicited proposal is accepted for a competitive selection process, the Recipient may use one of the following approaches in allowing the firm that submitted the unsolicited proposal to participate in the process:

- a) 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.
- b) 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.

Annex IV

Complaint Monitoring

1. Purpose

This Annex to the Directive: Procurement Instructions for Recipients (Directive) sets forth the detailed requirements on the administration and handling of procurement related complaints by the Recipient under the Directive. To promote an open, fair, and transparent procurement process, the Recipient is required to seek to resolve complaints in a timely and objective manner and in accordance with the requirements set forth in the Directive and this Annex.

2. Submission of Complaints

Complaints may be submitted to the Recipient and or the Bank at any time and about any aspect of the selection process. Complaints are to be distinguished from communications relating to clarifications regarding the tender or RFP documents and contract administration. Contract related communications are governed by the contract entered into between the Recipient and the supplier or contractor or consultant, to which the Bank is not a party.

Complaints must be submitted in writing. The Recipient considers each complaint so submitted. The Recipient acknowledges in writing the receipt of the complaint within three days following its receipt. In addition, the Recipient informs the Bank about the receipt of the complaint without delay, regardless of whether the complaint is related to a procurement activity subject to prior or to post review. Anonymous complaints will be considered and handled on their own merit.

3. Responsibilities of the Recipient

The Recipient's responsibilities with respect to complaints include:

- a) Acknowledging the receipt of the complaints, and undertaking a prompt review of complaints;
- b) Treating complaints fairly by providing timely information to prevent and resolve issues;
- c) Preserving the confidentiality of commercial and financial information and trade secrets;
- d) Ensuring that complaints are handled in an independent and impartial manner;
- e) Maintaining complete records of all complaints and their resolution; and
- f) Providing timely information to the Bank of any complaint submitted, and furnishing all relevant information as requested by the Bank.

4. Role of the Bank

The Bank requires Recipients to promptly and adequately address the complaints received during the selection process, and to promptly notify the Bank of the same. Failure by a Recipient to comply with the requirements of paragraph 3 above may result in the Bank taking action in accordance with the terms and conditions of the relevant Legal Agreements.

Whenever a complaint is addressed to the Bank, the Bank promptly forwards it to the Recipient for review and action.

Except for acknowledging the receipt of the complaint, the Bank does not enter into discussion or communication with any tenderer or consultant.

5. Process for review of complaints

The manner in which a Recipient handles a complaint depends on the nature of the complaint and the stage of the selection process at which the complaint is brought. For contracts subject to prior Bank review, the following process applies:

5.1 Complaint received prior to the deadline for tender or proposal submission.

If the Recipient receives a complaint prior to the deadline for the submission of the tender or proposal, in addition to acknowledging the receipt of the complaint, the Recipient takes all action regarding complaint that it determines appropriate following review of the complaint, such as amending the tender or RFP document. Simultaneously, the Recipient informs the Bank of its action and provides all the relevant information and documentation, including a draft response to the complaint, for the Bank's review. If the complaint results in a modification of the tender or RFP document, the Recipient issues an addendum, and if necessary, extends the tender or proposal submission deadline, in either case, subject to prior Bank no-objection. However, the Recipient is not required to entertain a complaint which has been received later than ten days before the tender or proposal submission deadline.

5.2 Complaint received after the deadline for tender or proposal submission, and before the notification of intention to award.

If the Recipient receives a complaint after the deadline for submission of the tender or proposal, but before the notification of intention to award a contract has been issued, the Recipient examines the complaint in consultation with the Bank. However, the Recipient only responds to the substance of the complaint within three days after the commencement of the standstill period. 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.

5.3 Complaint received after notification of intention to award and within the standstill period.

If the Recipient receives a complaint, after the notification of intention to award the contract has been issued, but before the end of the standstill period, regarding the grounds on which a tender/proposal was not selected, the Recipient is required to take prompt and appropriate action including reviewing the complaint, and preparing a response in writing. Simultaneously, the Recipient informs the Bank and provides all the relevant information and documentation, including a draft response to the complaint, for the Bank's review.

6. Consultant Technical Proposals

If the Recipient receives a complaint from a consultant who did not achieve the minimum technical score or whose technical proposal was determined non-responsive, the Recipient is required to promptly review the complaint and take appropriate action.

If the technical proposals have been submitted with a sealed financial proposal, the financial proposals may only be opened at the earliest ten days following the day after the notification of the technical evaluation results has been provided to all participating consultants. However, if the Recipient receives a complaint during this period relating to the technical proposal, 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.

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.

7. Change of Award Recommendation

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 changes its contract award recommendation, it furnishes the reasons for such decision and a revised evaluation report to the Bank for no-objection, and may not award the contract without receiving the Bank's no-objection to the revised recommendation.

8. Complaints regarding procurement not subject to prior review

In the case of procurement activities not subject to prior review by the Bank, the Recipient handles the complaint, as appropriate. The Recipient informs the Bank about the actions taken regarding the complaint. In addition, the Recipient provides to the Bank all relevant documentation, as requested.

9. Communications relating to Contract Execution

The Bank is not a party to the contract signed between the winning tenderer or consultant and the Recipient. Any dispute under the contract between the tenderer or consultant and the Recipient is addressed by the parties to the contract in accordance with the provisions of that contract. The Recipient promptly informs the Bank of any controversy arising between the parties to that contract during contract execution, which could trigger the use of a dispute resolution mechanism established under the contract, regardless of whether the procurement activity was subject to the Bank's prior or post review. The Recipient is required to communicate to the Bank its proposed actions on how to resolve any pending contractual dispute in a timely manner.

Annex V

Development of Domestic Industry

1. Purpose

This Annex to the Directive sets forth how Development of Domestic Industry provisions are to be considered by the Bank in its review of their proposed application in Bank financed contracts.

2. Considerations

In accordance with the Policy the Bank may, under special circumstances, accept the application of provisions of the relevant Bank member country's procurement rules that promote or encourage the development of domestic industry. The following considerations will be taken into account by the Bank in determining the acceptability of the application of these provisions:

- (a) The provisions of the procurement rules being applied by the Recipient are consistent with the Recipient's country's legislation.
- (b) The Bank shall review such provisions and schemes to determine if they meet the key policy principles and do not unduly undermine the Core Principle considerations of economy, efficiency, effectiveness and equity.
- (c) Application is limited to open international competitive tendering of goods and works.
- (d) Where domestic preference margins are permitted by other MDB's in Bank Member countries the Bank may permit the application of the same preference margins in accordance with the requirements of other MDB's procurement policies.