



Guidelines for procurement of goods, works and services for projects financed by the CEB

PROCUREMENT GUIDELINES

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INTRODUCTION

The “Guidelines for Procurement of Goods, Works and Services for projects financed by the CEB” (the Guidelines) of the Council of Europe Development Bank (the “CEB” or the “Bank”), are intended to inform those carrying out a project that is financed in whole or in part by the CEB, of the policies and procedures applicable to the procurement of goods, works and services required for the project.

1. **Chapter 1** describes general principles that are applicable to all of the CEB operations.
2. **Chapter 2** addresses the contract award procedures in those CEB member countries which are part of the European Union and the European Economic Area (hereafter “EU/EEA”).
3. **Chapter 3** sets out the contract award procedures in CEB-financed public sector operations in those CEB member countries which are not part of EU/EEA.
4. **Chapter 4** outlines the requirements for contract administration and procurement records for all CEB-financed contracts.
5. **Chapter 5** describes procurement arrangements in all the CEB-financed operations in the private sector and specific operations.
6. **Chapter 6** describes the review of procurement by the CEB.

These Guidelines will be updated as deemed necessary by the CEB.

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1. GENERAL PRINCIPLES

1.1. Bank's policy

The CEB's financing of projects must be consistent with the principles set out in its Articles of Agreement and the rules and regulations adopted pursuant to them, with due attention to considerations of eligibility as well as selection and financing. In addition, it is the CEB policy that its procurement rules and procedures should be based on the principles of the Treaty on the Functioning of the European Union (TFEU), as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

While in practice the specific procurement rules and procedures to be followed in the implementation of a project may vary according to the location and specific nature of goods, works and services to be procured, the objective of these Guidelines is to ensure that the following basic principles are respected:

- the proceeds of the CEB financing are used to buy only those goods, works and services needed to carry out the project, with due attention to considerations of economy and efficiency;
- the procurement process respects the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency;
- all eligible tenderers are treated equally and receive the same information when competing to provide goods, works and services for projects financed by the CEB;
- the design of a procurement procedure/process shall not be made with the intention of excluding it from the scope of the applicable procurement rules or of artificially narrowing competition;
- any party having or having had an interest in obtaining a particular contract and who has been, or risks being, harmed by an alleged infringement of the applicable *procurement rules has access to an effective review procedure*.

1.2. Borrower/Grant Beneficiary's responsibility

The Framework Loan Agreement (hereafter "FLA") / Grant Agreement (hereafter "GrA") governs the legal relationships between the Borrower/Grant Beneficiary and the CEB. No party other than the parties to the FLA/GrA shall derive any rights there from or have any claim to loan/grant proceeds.

The Borrower/Grant Beneficiary (clearly designated as reflected in the FLA/GrA between the Borrower or Grant Beneficiary and the CEB) are responsible for the implementation of the CEB financed projects, including all aspects of the procurement process from the planning stage to the award of the contract as well as the administration of contracts themselves. The CEB may advise the Borrower/Grant Beneficiary concerning the procurement process for specific projects but is not a party of the resulting contracts.

The CEB will not finance expenditures for goods, works and services which have not been procured in accordance with the provisions of these Guidelines as reflected in the FLA/GrA. In such cases, the CEB may declare the contract ineligible for financing with the proceeds of the loan/grant and may cancel that portion of the loan/grant allocated for the financing of the ineligible contract or exercise other remedies provided for under the FLA/GrA.

The rights and obligations between the Borrower/Grant Beneficiary and the providers of goods, works and services for the project are governed by national procurement legislation, the tender documents and by the contracts signed between the Borrower/Grant Beneficiary (or the relevant contracting authority) and the providers of goods, works and services.

1.3. Eligibility

1.3.1. Financing from own resources

In order to foster competition for projects financed from the Bank's own resources, it is the CEB policy to place no restriction upon the procurement of goods, works and services from any country, subject to the provisions of article 3.3.

1.3.2. Financing from resources of third parties

In projects where financing comes from resources of third parties, eligibility is governed by the rules applicable to the corresponding agreement between CEB and the third party (typically a donor agreement).

Such rules on eligibility must be expressly provided for in the procurement documents.

1.3.3. Co-financing

The CEB works in close cooperation with the European Union and European multilateral financial institutions. It may co-finance projects with other multilateral and bilateral development agencies.

1.3.3.1. Joint co-financing

When projects are co-financed on a joint basis, the CEB may agree that procurement for the award of jointly co-financed contracts be carried out in accordance with the procurement rules of a co-financing institution (the other co-financing institution), as long as they meet the basic principles set out in article 1.1, and provided this is approved by the CEB's Administrative Council.

Furthermore, the CEB's agreement to use a co-financier's procurement rules will be conditional on the other co-financing institution open its eligibility as much as possible, and at least to cover all of the CEB member countries.

In such cases, the CEB may decide that the monitoring of the procurement of jointly co-financed projects be entrusted to the other co-financing institution. Nevertheless, the CEB will continue to communicate and cooperate with the Borrower/Grant Beneficiary who may be requested by the CEB to share any procurement elements of co-financed projects on the implementation of co-financed project on a regular basis.

Should the other co-financing institution withdraw from the jointly co-financed project, the CEB and the Borrower/Grant Beneficiary will consider and decide on the modalities for continuing the project and, except otherwise agreed, the procurement procedures as outlined in these Guidelines would apply.

1.3.3.2. Parallel co-financing

When projects are co-financed on a parallel basis, the procedures of each co-financier apply to those components or contracts that each finances. In such a case the procurement procedures including eligibility rules as outlined in these Guidelines would apply to the contracts to be financed by the CEB. When duly justified, the CEB may also decide that the monitoring of the procurement of parallel co-financed projects be entrusted to another co-financing institution provided the latter's agreement in writing.

1.4. Ethical Conduct

It is the CEB policy to require that Borrowers/Grant Beneficiaries, as well as tenderers, contractors, suppliers and service providers under the CEB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. The CEB reserves the right, and intends, to take all appropriate action in order to enforce this policy in accordance with its Anti-Corruption Charter (see article 3.4.).

1.5. Environmental and Social Policies

The CEB is committed to promote sustainable development and social responsibility through the projects it supports and all projects must be in conformity with the requirements set forth in the CEB's Environmental and Social Safeguards Policy.

1.6. Project implementation by another international organisation

If and when appropriate the CEB may decide to entrust the implementation of a project to an International Organisation which may apply and procure with their own procedures provided that the CEB considers that those procedures respect, *mutatis mutandis*, the principles and requirements of the CEB Guidelines.

1.7. Complaints

Procurement complaints may be either (i) against the action of the contracting authority in charge of conducting procurement under a project; or (ii) against the action of the CEB in its review of procurement under a project outside of the EU/EEA. Allegations concerning ethical conduct (e.g. fraud, corruption) in the context of procurement will be handled by the Bank's Chief Compliance Officer in accordance with its Anti-corruption Charter.

1.7.1. Complaints against the contracting authority (within and outside EU/EEA)

The contracting authority is required to review, take the necessary actions and respond in a timely manner to complaints addressed to it related to the procurement process of a CEB-financed contract and originating from any person or entity having or having had an interest in obtaining the contract. Moreover, as indicated above, the CEB generally requires that effective review procedures are available to any person or entity having or having had an interest in obtaining the contract and (at risk of) being harmed by an alleged infringement from applicable procurement rules. In the case of public procurement, such review procedures must be provided through the competent national remedy mechanisms.

1.7.2. Complaints against the CEB's action (outside EU/EEA)

Any interested party may refer a complaint to the CEB in respect of an instance of non-compliance with the CEB's Procurement Guidelines concerning a CEB-financed contract outside of the EU/EEA¹. The CEB's Procurement Complaints Committee (PCC) will review the Bank's position relative to complaints arising from tendering of CEB-financed contracts for goods, works and consultant services in case a complaint against the CEB's action has been received.

Further details with regard to the process to be followed by interested parties for any such complaints are provided in Annex 4.

¹ For CEB-financed contracts in the EU, where the Bank requires that contracts are procured in accordance with EU Procurement Directives and national procurement legislation, complaints shall be addressed to the competent national remedy mechanisms.

2. OPERATIONS IN THE EUROPEAN UNION (EU) AND EUROPEAN ECONOMIC AREA (EEA)

2.1. *Contracts which are subject to the provisions of the Procurement Directives*

Within the EU and the EEA, contracts falling within the scope of the EU Procurement Directives² must be awarded in accordance with such directives, other EU law applicable to procurement (such as EU Regulation 2022/1031 on the access of third-country economic operators, goods and services to the Union's public procurement and concession markets or EU Regulation 2022/2560 on foreign subsidies distorting the internal market) and national legislation implementing such Directives.

For such contracts the CEB will:

- at the project appraisal stage, require that the Borrower/Grant Beneficiary ensures that the applicable procurement Directives are complied with, including publication of the required Procurement Notice(s) in the Official Journal of the EU, (hereinafter "OJEU");
- at the negotiation stage, make sure that the Borrower/Grant Beneficiary's commitment is explicitly reported in the FLA/GrA;
- at the monitoring stage, take further steps during project implementation, to the extent necessary, to ensure ascertain compliance with the applicable procurement legislation.

2.2. *Contracts to which the Procurement Directives do not apply*

Contract award procedures for contracts below the thresholds provided for in the Procurement Directives³ should be consistent with the Commission "Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Procurement Directives" (2006/C179/02), as modified from time to time.

Contract award procedures of private sector Borrowers/Grant Beneficiaries, which are not subject to the Procurement Directives, are addressed in Chapter 5.

2.3. *Procurement plan and review by the CEB*

During the project appraisal and loan/grant negotiation, the CEB will discuss with the Borrower/Grant Beneficiary the procurement methods which will be applied under the various components financed by the CEB.

Such procurement methods will be outlined in a Procurement Plan (as further described under the relevant provisions of Section 3.7 and Annex 3) and may be revised during project implementation. The Borrower/Grant beneficiary shall provide to the CEB the Procurement Plan for information only.

The CEB may carry out reviews of the Borrower/Grant Beneficiary's procurement procedures, tender documents, tender evaluations, award recommendations, and contracts to ascertain that the procurement process is carried out in accordance with the agreed procedures.

Based on risk assessment carried out by the CEB, the CEB will inform the Borrower/Grant Beneficiary about the extent of the review that it may carry out. Review procedures are described in Chapter 6.

² In particular Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors, Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts; European Parliament and Council Directive 2007/66/EC of 11 December 2007 regarding Remedies, amending Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts; and European Parliament and Council Directive 2009/81/EC of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

³ Thresholds set out in article 4 of European Parliament and Council Directive 2014/24/EU and article 15 of European Parliament and Council Directive 2014/25/EU and article 8 of European Parliament and Council Directive 2014/23/EU, as modified from time to time.

3. PUBLIC SECTOR OPERATIONS OUTSIDE THE EU/EEA

3.1. General aspects

This Chapter sets out the main procurement principles, mechanisms and practices based on EU Procurement Directives to be followed for the award of contracts in the public sector operations outside the EU/EEA.

The CEB requires that contracts in the public sector operations outside the EU/EEA are awarded in accordance with the relevant national procurement legislation of the Borrower/Grant Beneficiary.

The review procedures established under the Borrower/Grant Beneficiary country's national legislation shall apply.

In those cases in which the CEB deems that the procurement arrangements under the project are not fully consistent with the main procurement principles, mechanisms and practices set out in this Chapter, the applicable national procurement legislation shall still apply with the necessary procedural and operational adaptations at the level of an individual procurement procedure, to be agreed by the Borrower/Grant Beneficiary and the CEB, in order for the relevant contract to be eligible for the CEB's financing.

Contracts whose estimated values are equal to or exceed the thresholds⁴ agreed between the Borrower/Grant Beneficiary and the CEB will be awarded through international procedures (requiring publication in the OJEU).

Contracts may be awarded on the basis of procurement methods other than international procedures only in exceptionally specially justified cases or for contracts whose estimated values are below the agreed thresholds.

In all cases, the procurement must not discriminate between foreign and local products, suppliers or contractors. The CEB may exceptionally accept domestic preference when this is established by the procurement legislation of the Borrower/Grant Beneficiary.

The CEB may carry out reviews of the Borrower/Grant Beneficiary procurement procedures, tender documents, tender evaluations, award recommendations, and contracts to ensure that the procurement process is carried out in accordance with the agreed procedures.

Based on risk assessment carried out by the CEB, the CEB will inform the Borrower/Grant Beneficiary about the extent of the review that it may carry out.

Review procedures are described in Chapter 6.

3.2. Definition of public sector operations outside the EU/EEA

For the purpose of this Chapter, public sector operations are:

- Operations carried out by "public authorities", defined as follows:
"Public authorities" mean State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law.
A "body governed by public law" shall be understood to mean any body which:
 - is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
 - has legal personality; and
 - is financed in most part by public authorities, or is subject to management supervision by public authorities, or has an administrative, managerial or supervisory board in which more than half of the members are appointed by public authorities.

⁴ Based on thresholds set out in article 4 of European Parliament and Council Directive 2014/24/EU and article 15 of European Parliament and Council Directive 2014/25/EU and article 8 of European Parliament and Council Directive 2014/23/EU, as modified from time to time.

- Operations carried out by utilities majority owned by public authorities (in case where utilities are operated by concessionaires, the applicable procurement rules are those set out in Chapter 5 (Private sector operations), subject to the provisions of article 5.3).

3.3. Eligibility to participate in tenders and provide goods, works and services

In connection with any contract to be financed in whole or in part from a CEB loan/grant, the CEB does not permit a Borrower/Grant Beneficiary to deny qualification to a contractor or to disqualify any tenderer, supplier or service provider for reasons unrelated to its capability and resources to successfully perform the contract.

As exceptions to the foregoing:

- Individuals or entities offering goods, works and services shall not be eligible for the award of CEB-financed contracts if they are directly or indirectly subject to financial sanctions imposed by the EU⁵ either autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the Charter of the United Nations.
- Firms may be excluded if, as a matter of law or official regulation, the Borrower/Grant Beneficiary's country prohibits commercial relations with the firm's country, provided that the CEB is satisfied that such exclusion does not preclude effective competition for the supply of goods, works or services required.
- Firms and individuals may be excluded if deemed by the CEB to be in breach of its rules of ethics (e.g. in accordance with the Bank's Anti-Corruption Charter and with article 3.4. below) or if excluded by any of the EU Institutions or any major Multilateral Development Bank (including World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, or Inter-American Development Bank) from participation in tendering procedures on the grounds of a Prohibited Practice (as defined below under Section 3.4).
- Any firm or expert participating in the preparation of a project must be excluded from participating in tenders based on this preparatory work, unless they can prove to the Borrower/Grant Beneficiary that the involvement in previous stages of the project does not constitute unfair competition and/or conflict of interest.
- Government-owned enterprises may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the government.
- Firms may be excluded based on grounds for exclusion specified in the Borrower/Grant Beneficiary's national procurement legislation in compliance with EU law provided that the CEB is satisfied that such exclusion does not preclude effective competition for the supply of goods, works or services required.

3.4. Rules of ethics

In pursuance of the CEB policy and the CEB Anti Corruption Charter as set out in article 1.4, the CEB:

- defines, for the purposes of this provision, the Prohibited Practice as follows:
 - "corrupt practice" means any offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - "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;
 - "coercive practice" means any act of 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;

⁵ Pursuant to Chapter 2 of Title V of the Treaty on European Union and the objectives of the Common Foreign and Security Policy set out in Article 21 of the Treaty on European Union and Article 215 of the Treaty on the Functioning of the European Union.

- iv. “collusive practice” means any arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - v. “obstructive practice” means in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practices, (a) any act of deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; (b) any act of threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; and/or (c) any act intending to materially impede the exercise of the contractual rights of audit or access to information.
- b) will withhold its “No Objection” to proposal for contract award or, if a “No Objection” was already given, declare the contract ineligible for financing, if it determines that:
- i. the tenderer recommended for award, has, directly or through an agent, engaged in any Prohibited Practice in competing for the contract in question unless the Prohibited Practice has been dealt with to the satisfaction of the CEB;
 - ii. representatives of the Borrower/Grant Beneficiary are engaged in any Prohibited Practice during the procurement or the implementation of that contract, without the Borrower/Grant Beneficiary having taken timely and appropriate action satisfactory to the CEB to address such practices when they occur;
- c) will cancel the portion of the loan allocated to a contract or exercise other remedies as provided for under the FLA and the “Policy for Loan and Project Financing”, if it determines at any time that representatives of the Borrower//Grant Beneficiary or of a beneficiary of the loan are engage in corrupt, fraudulent, collusive or coercive practices during the procurement or the implementation of that contract, without the Borrower/Grant Beneficiary having taken timely and appropriate action satisfactory to the CEB to address such practices when they occur;
- d) will, as a general rule, require that Borrowers/Grant Beneficiaries insert in the tender documents (or in the contract in the case of a negotiated procedure) a clause that:
- requires any tenderer for goods, works or services, as a condition of admission to eligibility, to execute and attach to its tender a Covenant of Integrity in the form indicated in Annex 1;
 - grants the Borrower/Grant Beneficiary, the CEB and auditors appointed by any of them the right of inspection of the records of the contractor, supplier or service provider in connection with any CEB-financed contract.

3.5. Environmental and Social measures

The Borrower/Grant Beneficiary shall take appropriate measures to ensure that, in the performance of CEB-financed contracts, contractors, suppliers and service providers comply with national legislation and regulations, particularly labour and environmental laws and regulations, as well as good industry practice and any obligation stemming from the relevant international conventions and multilateral agreements applicable in the country of implementation of the contract.

The CEB will require that Borrowers/Grant Beneficiaries insert in the tender documents (or in the contract in the case of a negotiated procedures) a clause that requires any tenderer for works to execute and attach to its tender an Environmental and Social Covenant in the form indicated in Annex 2.

The CEB will aim to promote sustainable public procurement practices together with the Borrower/Grant Beneficiary, and in the context of national legislation.

The CEB reserves the right not to finance any contract in which tenderers have not issued to the Borrower/Grant Beneficiary the Environmental and Social Covenant signed by a duly authorised person.

3.6. Advance contracting

In exceptional cases, the Borrower/Grant Beneficiary may have to proceed with the initial steps of procurement before signature of the related FLA/GrA with the CEB, or may have already entered into agreements with contractors or suppliers, as the case may be. In such cases, in order for the eventual contracts to be eligible for

CEB financing, the procurement procedures, including advertising, shall be in accordance with the Guidelines, and the CEB shall review the process used by the Borrower/Grant Beneficiary.

3.7. Procurement Plan

As part of the preparation of the project insofar as the purpose and the nature of the respective financial means of action (as defined in the Handbook for the Preparation and Implementation of Projects⁶) so allows, the Borrower/Grant Beneficiary shall prepare a preliminary procurement plan for the entire scope of the project and provide to the CEB for its approval a detailed and comprehensive Procurement Plan, including:

- all contracts for goods, works, and/or services for which procurement action is to take place in the first 12 months of project implementation;
- brief description of goods, works and/or services required for the project;
- market analysis;
- estimated cost of each contract;
- thresholds for international procurement procedures;
- proposed methods of procurement;
- time schedule for key procurement activities.

A template for Procurement Plan is included in Annex 3. The Procurement Plan shall, as a rule, be submitted to the CEB before the signature of the FLA.

However, in case of multi-project operations and other types of operations under which details on future investment are not fully known at the time of signature of the FLA, the Borrower/Grant Beneficiary shall nonetheless provide the Bank with detailed information about the procurement procedures applicable. Based on an agenda established in agreement with the CEB, a Procurement Plan, in line with the requirements stipulated above, will be elaborated by the Borrower/Grant Beneficiary and presented to the CEB as soon as the technical conditions for its elaboration are fulfilled, no later than prior to (the request for/ CEB release of) first disbursement.

For certain Public sector Financing Facilities where the planned use of proceeds is not known at the appraisal stage, it may be sufficient to provide the CEB with list of concluded contracts in lieu of a Procurement Plan. This possibility will be decided during project appraisal.

After receiving the Procurement Plan, the CEB will inform the Borrower/Grant Beneficiary about the related Bank review requirements and procedures.

The Borrower/Grant Beneficiary shall update the Procurement Plan throughout the duration of the project and at least annually, by including contracts previously awarded and to be procured in the next 12 months. All Procurement Plans, their updates or modifications shall be subject to the CEB's approval. The Borrower/Grant Beneficiary shall implement the Procurement Plan according to the way in which it has been approved by the CEB.

3.8. International procurement procedures

The thresholds at and above which international procedures shall be used will be based on the relevant thresholds for the application of the EU Procurement Directives⁷ but may nevertheless vary according to the nature of the project, the scope and values of the contracts, the experience of the Borrower/Grant Beneficiary as well as local conditions.

⁶ Handbook for the Preparation and Implementation of Projects updated periodically is available [here](#).

⁷ Thresholds set out in article 4 of European Parliament and Council Directive 2014/24/EU and article 15 of European Parliament and Council Directive 2014/25/EU and article 8 of European Parliament and Council Directive 2014/23/EU, as modified from time to time.

Such threshold will be agreed between the Borrower/Grant Beneficiary and the CEB and specified in the Procurement Plan.

The calculation of the estimated value of a public contract shall be based on the total amount payable, net of VAT, as estimated by the Borrower/Grant Beneficiary. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contracts as explicitly set out in the tender documents. Where a proposed work, purchase of services or acquisition of goods may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots. Where the aggregate value of the lots is equal to or exceeds the threshold for international procedures, each lot shall be awarded following the applicable international procedure.

No contract may be split in order simply to circumvent the agreed thresholds and to evade compliance with the rules set out in these Guidelines or the national procurement legislation.

When the estimated contract amount is equal to or exceeds the agreed thresholds, one of the following procedures, which are based on the EU Procurement Directives, shall be applied for the procurement of goods, works and services required for the project:

3.8.1. Open procedures

Open procedures allow all interested parties (contractors, service providers or suppliers as the case may be) to submit tenders. They involve strict requirements for international notification (including publication in the OJEU); clear and comprehensive tender documents; and fair and transparent tendering, evaluation and award procedures. No pre-qualification of candidates or negotiations with tenderers are allowed. Outside of the EU/EEA, they are often referred to as International Competitive Bidding (ICB) or Open Tendering.

3.8.2. Restricted procedures

Restricted procedures provide that only those candidates who satisfy the required qualitative selection criteria may be invited by the Borrower/Grant Beneficiary to submit tenders. They are similar to open procedures as regards the tendering stage (involving clear and comprehensive tender documents, and fair and transparent tendering, evaluation and award procedures). Outside of the EU/EEA, these procedures are also referred to as ICB (including a pre-qualification phase).

A contract notice is first published in the OJEU, indicating inter alia the criteria for qualitative selection of candidates who will take part in the procedure by submitting a request to participate. The Borrower/Grant Beneficiary then selects qualified candidates and invites them to submit a tender. No negotiations with tenderers are allowed.

A restricted procedure is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialized services, and contracts to be let under turnkey, design and build, or management contracting.

Selection of candidates shall be based entirely upon their capability and resources to perform the particular contract satisfactorily, taking into account: (i) experience and past performance on similar contracts, (ii) capabilities with respect to personnel, equipment, and construction or manufacturing facilities, (iii) financial position.

The Borrower/Grant Beneficiary may limit the number of candidates meeting the selection criteria to be invited to submit tender. The number of candidates invited shall not be less than three provided that a sufficient number of suitable candidates are available. In any event, the Borrower/Grant Beneficiary shall ensure in all cases that the number of candidates invited is sufficient to ensure genuine competition.

The provisions applicable to an open procedure apply by analogy to the restricted procedure.

3.8.3. Competitive dialogue

A competitive dialogue procedure may be used in the following situations:

- (i) the needs of the Borrower/Grant Beneficiary cannot be met without adaptation of readily available solutions;
- (ii) works, goods or services include design or innovative solutions;
- (iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;
- (iv) the technical specifications cannot be established with sufficient precision by the Borrower/Grant Beneficiary.

The Borrower/Grant Beneficiary shall set out their needs and requirements, and shall base the award of public contracts on the most economically advantageous tender in the contract notice or the descriptive document.

A contract notice is first published in the OJEU, indicating inter alia the criteria for qualitative selection of candidates who will take part in the procedure by submitting a request to participate. The Borrower/Grant Beneficiary then selects qualified candidates and opens a dialogue with them with the aim of identifying and defining the means best suited to satisfying its needs and requirements. The dialogue may take several stages. Once the dialogue is satisfactorily concluded and the participants have been informed of this, the Borrower/Grant Beneficiary shall invite them to submit their final tenders on the basis of solution or solutions presented and specified during the dialogue. The Borrower/Grant Beneficiary will assess the tenders on the basis of the award criteria laid down in the contract notice or the descriptive document and award the contract.

During the dialogue, the Borrower/Grant Beneficiary shall ensure equality of treatment among all participants. In particular the Borrower/Grant Beneficiary shall not provide information in a discriminatory manner which could give any participant an unfair advantage over the others. The Borrower/Grant Beneficiary shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or tenderer participating in the dialogue without its agreement.

The Borrower/Grant Beneficiary may limit the number of candidates meeting the selection criteria to be invited to conduct the dialogue. The number of candidates invited shall not be less than three, provided that a sufficient number of suitable candidates are available. In any event, the Borrower/Grant Beneficiary shall ensure in all cases that the number of candidates invited is sufficient to ensure genuine competition.

3.8.4. Competitive procedures with negotiation and negotiated procedures with publication

A competitive procedure with negotiation may be used in the following situations:

- (i) the needs of the Borrower/Grant Beneficiary cannot be met without adaptation of readily available solutions;
- (ii) works, goods or services include design or innovative solutions;
- (iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;
- (iv) the technical specifications cannot be established with sufficient precision by the Borrower/Grant Beneficiary.

The Borrowers/Grant Beneficiaries in the utility sector may use this procedure, also known as negotiated procedure with publication, without the need for the conditions referred to in paragraph (i) of this Article to be met.

The Borrower/Grant Beneficiary must identify the subject-matter of the procurement by providing a description of its needs and the characteristics required of the goods, works or services and specify the contract award criteria. They shall also indicate which elements of the description define the minimum requirements to be met by all tenders.

A competitive procedure with negotiation (or negotiated procedure with publication) follows a similar sequence of steps as in the competitive dialogue.

A contract notice is first published in the OJEU, indicating inter alia the criteria for qualitative selection of candidates who will take part in the procedure by submitting a request to participate. The Borrower/Grant Beneficiary then selects qualified candidates and negotiates with them the initial and all subsequent tenders submitted, except for the final tenders, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.

The negotiations may take place in several stages. Where the Borrower/Grant Beneficiary intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders.

The Borrower/Grant Beneficiary shall verify that the final tenders are in conformity with the minimum requirements, assess the final tenders on the basis of the award criteria, and award the contract.

During the negotiations, the Borrower/Grant Beneficiary shall ensure equality of treatment among all tenderers. In particular the Borrower/Grant Beneficiary shall not provide information in a discriminatory manner which could give any tenderer or tenderers an unfair advantage over the others.

The Borrower/Grant Beneficiary may limit the number of candidates meeting the selection criteria to be invited to tender. The number of candidates invited shall not be less than three, provided that a sufficient number of suitable candidates are available. In any event, the Borrower/Grant Beneficiary shall ensure in all cases that the number of candidates invited is sufficient to ensure genuine competition.

3.8.5. Innovation partnership

This procurement procedure may be used when the Borrower/Grant Beneficiary needs innovative products, services or works that cannot be met by purchasing goods, services or works already available on the market.

The innovation partnership shall aim at the development of an innovative goods, service or works and the subsequent purchase of the resulting goods, services or works, provided that they correspond to the performance levels and maximum costs agreed between the Borrower/Grant Beneficiary and the partners.

The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the goods, the provision of the services or the completion of the works.

The Borrower/Grant Beneficiary may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities. If the latter is the case, the Borrower/Grant Beneficiary shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement.

The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments. Based on those targets, the Borrower/Grant Beneficiary may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts.

The Borrower/Grant Beneficiary must describe in the procurement documents the subject-matter of the procurement and indicate which elements of this description define the minimum requirements to be met by all tenders. The Borrower/Grant Beneficiary shall define in the procurement documents the arrangements applicable to intellectual property rights.

The innovation partnership follows a similar sequence of steps as in the competitive procedure with negotiation.

A contract notice is first published in the OJEU, indicating inter alia the criteria for qualitative selection of candidates who will take part in the procedure by submitting a request to participate.

In selecting candidates, the Borrower/Grant Beneficiary shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

The Borrower/Grant Beneficiary may limit the number of candidates meeting the selection criteria to be invited to tender. The number of candidates invited shall not be less than three, provided that a sufficient number of suitable candidates are available. In any event, the Borrower/Grant Beneficiary shall ensure in all cases that the number of candidates invited is sufficient to ensure genuine competition.

Only qualified candidates following the assessment by the Borrower/Grant Beneficiary may be invited to submit research and innovation projects aimed at meeting the needs identified by the Borrower/Grant Beneficiary that cannot be met by existing solutions.

The Borrower/Grant Beneficiary shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.

During the negotiations, the Borrower/Grant Beneficiary shall ensure equality of treatment among all tenderers. In particular the Borrower/Grant Beneficiary shall not provide information in a discriminatory manner which could give any tenderer or tenderers an unfair advantage over the others.

The negotiations during innovation partnership procedure may take place in several stages. Where the Borrower/Grant Beneficiary intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders.

The Borrower/Grant Beneficiary shall verify that the final tenders are in conformity with the minimum requirements, assess the final tenders on the basis of the award criteria and award the contract.

The contracts shall be awarded on the sole basis of the award criterion of the tender presenting the most advantageous tender.

3.8.6. Negotiated procedures without publication

The procedures allow Borrowers/Grant Beneficiaries to consult a candidate or candidates of their choice and negotiate the terms of the contract with one or more of them. Where the Borrower/Grant Beneficiary selects only one candidate, this is generally referred to as direct contracting. Outside of the EU/EEA, negotiated procedures without notification are often referred to as Limited International Bidding (LIB) or Selective Tendering.

Borrowers /Grant Beneficiaries/may award public contracts via a negotiated procedure without prior publication of a contract notice in the following cases:

- a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered;
- b) where the works, goods or services can be supplied only by a particular supplier when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement for any of the following reasons:
 - i) competition is absent for technical reasons; or
 - ii) the protection of exclusive rights, including intellectual property rights;
- c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by Borrower/Grant Beneficiary, the time limits for the competitive procedures cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the Borrower/Grant Beneficiary;
- d) for additional deliveries by the original supplier which are intended either as a partial replacement of goods or installations or as the extension of existing goods or installations where a change of supplier would oblige the Borrower/Grant Beneficiary to acquire goods having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

- e) for new works or services consisting in the repetition of similar works or services entrusted to the original contractor, provided that all of the following conditions are met:
 - i) new works or services are in conformity with a basic project for which the original contract was awarded,
 - ii) the original contract was awarded pursuant to a competitive procedure in which a contract notice was published,
 - iii) the basic project indicated the extent of possible additional works or services and the conditions under which they will be awarded,
 - iv) the possible use of this procedure was disclosed in the contract notice and tender documents when the original contract was put up for tender, and
 - v) when calculating the estimated value of procurement for the original contract, the total estimated value of new works or services to be repeated was taken into consideration by the Borrower/Grant Beneficiary and included in the original calculation.

3.9. National procurement procedures

For contracts whose estimated value is below the agreed thresholds, national procedures may be the most appropriate way of procuring goods, works or services.

To be acceptable to the CEB, national procurement procedures must:

- (a) ensure economy, efficiency, transparency and accountability;
- (b) provide for adequate local notification and competition;
- (c) be broadly consistent with the principles underlying these Guidelines, in particular the principles of transparency, equal treatment and non-discrimination, and
- (d) allow eligible foreign candidates to participate.

3.9.1. National competitive tendering

National competitive tendering may be the most appropriate way of procuring goods, works or services which, by their nature, scope or value, are unlikely to attract foreign competition. This may be the case in particular when:

- (a) contract values are small;
- (b) works are scattered geographically or spread over time;
- (c) the advantages of open or restricted international procedures are clearly outweighed by the administrative burden involved.

3.9.2. Other methods of procurement

Other methods of procurement, including direct contracting, can be used, subject to the CEB's approval, where national competitive tendering would not be the most economic and efficient method of procurement.

Such other methods include also:

- Shopping: procurement method based on comparing price quotations obtained from at least three suppliers or contractors. This method is appropriate for procuring readily available off-the-shelf goods or standard specification commodities or simple civil works of a small value.
- Borrower/Grant Beneficiary's own resources: the Borrower/Grant Beneficiary may use his own personnel and equipment to carry out works or services for which this would represent the only practical method of procurement (this may be the case, for instance, where quantities of work cannot be defined in advance, where small works are scattered or in remote locations, or where services involve the intellectual property of the Borrower/Grant Beneficiary).

3.10. Procurement of goods, works and services following international procedures

3.10.1. Notification and advertising

A **Contract Notice** (CN) shall be published for every contract to be awarded following an open procedure, a restricted procedure, a competitive procedure with negotiation, negotiated procedure with publication, a competitive dialogue procedure or an innovation partnership.

The CN must provide would-be tenderers with the information they need to determine their capacity to fulfil the contract in question and to prepare and submit a fully conforming request to participate or tender. The CN shall, in particular, specify the minimum time-limits for the receipt of requests to participate or tenders, as described in article 3.10.7 below.

The CN shall be published in the OJEU and national public procurement platform and/or the national official gazette. CEB also encourages advertising CN in other international or local media and publications of wide circulation.

The CN which is published locally or in other media and publications by the Borrower/Grant Beneficiary shall not contain information other than that contained in the CN published in the OJEU and shall not be published, before the date on which it is published in the OJEU.

In all notices the Borrower/Grant Beneficiary shall refer to CEB using the following wording:

“(Name of Borrower/Grant Beneficiary) has received (or in appropriate cases ‘has applied for’) a loan/grant from the Council of Europe Development Bank (CEB) in an amount in equivalent to EURO (xxx) toward the cost of (name of project), and intends to apply a portion of the proceeds of this loan/grant to eligible payments under this contract.”

3.10.2. Tender documents

The tender documents shall furnish all information necessary for a prospective tenderer to prepare a tender for the goods, services and works to be provided. The basis for tender evaluation and selection of the most economically advantageous tender shall be clearly outlined in the instructions to tenderers and/or the specifications.

Tender documents shall be so worded as to permit and encourage international competition. All prospective tenderers shall be provided with the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. Any modification shall be made available to all prospective tenderers in the same manner as the original tender documents in sufficient time before the deadline for receipt of tenders, to enable tenderers to take appropriate actions.

If a fee is charged for the tender documents, it shall be reasonable and reflect only the cost of their printing and delivery to prospective tenderers.

The Borrower/Grant Beneficiary shall use tender documents and standard conditions of contract and contract forms originating from its national legislation provided they are in accordance with these Guidelines. When possible, the Borrower/Grant Beneficiary may consider to use internationally recognized standard tender documents and standard conditions of contract and contract forms, such as those prepared by the FIDIC, EC-PRAG Standard Tender Documents as well as those issued by other multilateral development banks, provided they are revised to be compatible with the provisions of these Guidelines.

3.10.3. Language

In addition to the relevant national language, contract notice, qualification and tender documents for international procedures shall be prepared by the Borrower/Grant Beneficiary and made available to prospective tenderers in either English or French. Contracts entered into with local tenderers may, at the choice of the Borrower/Grant Beneficiary, be written in the national language, which shall be the governing language for such contracts. If the contract is signed in a language other than English or French, the Borrower/Grant Beneficiary may be requested to provide the CEB with a translation of the contract in one of those two languages.

3.10.4. Technical specifications

Technical specifications shall be specified by the Borrower/Grant Beneficiary in tender documents.

Technical specifications shall afford equal access of prospective tenderers to the procurement procedure and shall not have the effect of creating unjustified obstacles to competition in public procurement.

Technical specifications shall be formulated in terms of performance or functional requirements, including environmental characteristics, or by reference to technical specifications and national standards transposing the European Union standards or international standards or combination thereof. Where such standards are unavailable or are inappropriate, national standards may be referred to. Each reference to standard shall be accompanied by the words “or equivalent”. In all cases, the tender documents shall state that equipment, material, or workmanship satisfying in equivalent manner the requirements laid down by performance or functional requirements or defined by the standard which is at least substantially equivalent, will also be accepted.

Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific tenderer, or to trademarks, patents, types or a specific origin or production that would have the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to this article is not possible. Such reference shall be accompanied by the words ‘or equivalent’.

3.10.5. Contract award criteria

The tender evaluation may be based on:

- Either the lowest price of the compliant and technically responsive tenders; or
- The most economically advantageous tender, applying a number of criteria adapted to the contract in question.

The most economically advantageous tender from the point of view of the Borrower/Grant Beneficiary shall be identified to the extent possible on the basis of best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the contract in question and price or cost, using a cost-effectiveness approach, such as life-cycle costing. Such criteria may comprise, for instance:

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- (b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- (c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

The cost element may also take the form of a fixed price or cost on the basis of which tenderers will compete on quality criteria only.

The Borrower/Grant Beneficiary shall specify, in the contract notice or in the tender documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the Borrower/Grant Beneficiary, weighting is not possible for demonstrable reasons, the Borrower/Grant Beneficiary shall indicate in the contract notice or tender documents the criteria in descending order of importance.

3.10.6. Conditions of contract

The contract shall clearly define the scope of work to be performed, the goods to be supplied or services to be provided, the rights and obligations of the Borrower/Grant Beneficiary and of the supplier, service provider or contractor, and should include, inter alia, appropriate provisions on liabilities, damages, claims, termination, settlement of disputes and governing law.

Contract performance conditions may, in particular, be intended to favour on-site vocational training, the employment of disabled or disadvantaged persons experiencing particular difficulty in achieving social and professional integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements - applicable during performance of the contract - to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organization (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more disable persons than are required under national legislation.

3.10.7. Time limits and opening of tenders

When fixing the time limits for the receipt of requests to participate, or tenders, Borrowers/Grant Beneficiaries shall take account the complexity of the contract and the time required for preparing such requests and tenders.

Unless longer minimum time limits are prescribed by the national legislation, the minimum time limits provided in this article shall be respected.

In the case of open procedures, the minimum time limit for the receipt of tenders shall be 35 days from the date on which the Contract Notice was sent.

In the case of restricted procedures, competitive procedures with negotiations, negotiated procedures with publication, competitive dialogue and innovation partnership the minimum time-limit for receipt of requests to participate shall be 30 days from the date on which the Contract Notice was sent.

In the case of restricted procedures, competitive procedures with negotiation, negotiated procedures with publication, competitive dialogue and in innovation partnership, the minimum time-limit for the receipt of (initial) tenders shall be 30 days from the date on which the invitation was sent.

The conditions for tender opening shall be announced in the contract notice (or in the invitation to tender when restricted procedures, competitive procedures with negotiation, negotiated procedures with publication and competitive dialogue are used).

The time for tender opening shall be the same as the deadline for receipt of tenders, or promptly thereafter.

Tenderers shall be given a confirmation of the exact date and time of the submission of their tenders.

Tenders shall be opened in the physical or remote presence of at least the tenderers or their representatives at the time and place indicated in advance. The information about the name of the tenderer and total amount of each tender together with any discount offered and of any alternative tenders if they have been requested or permitted, shall be communicated at tender opening.

It must be ensured that any occurrence during the tender opening session is duly recorded in written minutes.

Tenders received after the deadline for receipt shall not be opened.

3.10.8. Evaluation of tenders and contract award

Tenders and all information relating to the evaluation of tenders and the recommendation concerning the award shall not be disclosed to tenderers or any other persons not officially concerned with such process.

Unsolicited financing offers should not be considered in the evaluation of tenders.

The Borrower/Grant Beneficiary shall carry out due diligence on the technical and financial qualifications of tenderers, to be assured of their capabilities in relation to the specific contract, and shall ascertain whether the tenders:

- meet the eligibility requirements specified in the tender documents;
- meet formal requirements of the procurement procedure;
- are accompanied by the required securities;
- are substantially responsive to the tender documents.

Unless otherwise provided in the national legislation, the Borrower/Grant Beneficiary may ask tenderers to submit, supplement, clarify or complete the relevant information or documentation submitted by them which is or appears to be incomplete or erroneous or where specific documents are missing, but shall not ask or permit tenderers to alter their tenders after the tender opening. Requests and the responses of the tenderers shall be made in writing and in full compliance with the principle of equal treatment and transparency.

If a tender is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions and specifications in the tender documents, it shall not be considered any further.

The Borrower/Grant Beneficiary shall prepare a detailed report on the evaluation and comparison of tenders, setting forth the reasons on which the recommendation for the award of the contract is based.

The Borrower/Grant Beneficiary shall award the contract, within the period of the validity of tenders, to the tenderer:

- whose tender has been determined as being substantially responsive;
- which meets the necessary criteria for qualitative selection specified in the tender documents;
- whose tender, in terms of the specific contract award criteria set forth in the tender documents, is determined as the most economically advantageous, and which has been determined, on the basis of the tender submitted, to be fully capable of undertaking the contract.⁸

Borrowers/Grant Beneficiaries shall complete evaluation of tenders and award of contract within the initial period of tender validity so that extensions are not necessary. An extension of tender validity, if justified by exceptional circumstances, shall be requested in writing from all tenderers before the expiration date.

The Borrower/Grant Beneficiary shall only reject all tenders if there has been unsatisfactory competition, including receiving tender prices that substantially exceed the cost estimates or funds available. Before rejecting all tenders, the Borrower/Grant Beneficiary shall obtain agreement from the Bank on the procedures to follow.

3.10.9. Standstill period

A contract shall not be concluded following the decision to award a contract before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned.

The communication of the award decision to each tenderer and candidate concerned shall provide a summary of the relevant reasons for that decision. The standstill period should give the tenderers concerned sufficient time to examine the contract award decision taken by the Borrower/Grant Beneficiary, to assess whether it is appropriate to initiate a complaint procedure, and if necessary to file an application for interim relief.

Contracts that are concluded in breach of the standstill period will not be financed by the CEB to the extent that those infringements have affected the chances of other tenderers applying for review to obtain the contract.

⁸ Such a determination would focus on issues such as: an abnormally low tender price; front loaded tender prices and/or payment schedules; work implementation methods and plan, etc.

3.10.10. Complaints

Tenderers believing that they have been harmed by an error or irregularity during the award process shall have recourse to review procedures established under the Borrower/Grant Beneficiary country's national legislation.

The Borrower/Grant Beneficiary shall promptly inform the CEB of all the complaints received.

3.10.11. Contract award Publication

Not later than 30 days after the signature of the contract, the Borrower/Grant Beneficiary shall send a contract award notice to the OJEU.

4. CONTRACT ADMINISTRATION AND RECORDS

The Borrower/Grant Beneficiary shall administer all contracts covered in Chapters 2 and 3 above with due diligence and shall monitor and report to the CEB on performance of the contracts.

The documentation and information which has to be submitted to the CEB for prior review, post review, including for the purposes of the CEB "No Objections" and for monitoring and loan/grant administration, are specified in Chapter 6.

4.1. Modifications to contracts

Borrowers/Grant Beneficiaries may modify contracts during their term without having obligation to conduct a new procurement procedure when the modifications are not substantial, in the following cases:

- a) where the modifications, irrespective of their value, have been provided for in the initial tender documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options;
- b) for additional works, services or goods by the original contractor that have become necessary and that were not included in the initial procurement where a change of contractor cannot be made for economic or technical reasons and would cause significant inconvenience or substantial increase of costs for the Borrower/Grant Beneficiary. Unless a lower limit is provided in the national legislation, any increase in price shall not exceed 50% of the value of the original contract;
- c) where the need for modification has been brought about by circumstances which a diligent Borrower/Grant Beneficiary could not foresee and such modification does not alter the overall nature of the contract. Unless lower limit is provided in the national legislation any increase in price shall not exceed 50% of the value of the original contract;
- d) where a new contractor replaces the one to which the Borrower/Grant Beneficiary had initially awarded the contract as a consequence of universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency. The new contractor shall fulfil the criteria for qualitative selection initially established;
- e) where the value of the modification is below both the value of threshold for international procedures and below 10% of the initial contract value for service and supply contracts or 15% of the initial contract value for works contracts unless a lower limit is provided in the national legislation;
- f) in other cases where the modifications, irrespective of their value, are not substantial or in case of time-only extension.

4.2. Record keeping

Subject to the Borrower/Grant Beneficiary applicable policy on access to documents, written records of the entire tender procedure must be kept confidential and retained by the Borrower/Grant Beneficiary in accordance with the adopted policy on archiving.

All original documents of the procurement process for CEB financed contracts shall be conserved by the Borrower/Grant Beneficiary for at least 6 (six) years after the contract is completed.

5. PRIVATE SECTOR OPERATIONS AND SPECIFIC OPERATIONS

5.1. *Private sector operations (within and outside EU/EEA)*

The CEB's concern for the appropriate use of funds and for economy and efficiency apply equally to its public sector operations and its private sector operations.

Private sector companies or other entities which are normally not subject to the national procurement legislation of the Borrower/Grant Beneficiary often meet these concerns by following established commercial procurement practices other than formal open tendering. The CEB thus does not require private sector Borrowers/Grant Beneficiaries to follow the public procurement procedures.

The CEB will satisfy itself that private sector Borrowers/Grant Beneficiaries follow fair and transparent procurement methods ensuring a sound acquisition of works, goods and services with an appropriate quality, at fair market prices and in a cost-effective manner. The offer selected must be economically the most advantageous. Contracts must be negotiated impartially and accord with the project's best interests.

Wherever appropriate and in particular for large contracts, the CEB will encourage private sector Borrowers/Grant Beneficiaries to publish a contract notice in the OJEU and adopt open or restricted procedures and may request to do so as deemed necessary. In such cases it may be necessary to introduce appropriate safeguards to ensure that the legitimate confidentiality interests of the private sector Borrowers/Grant Beneficiaries and other commercial contracting parties are fully respected in the procurement process.

5.2. *Financial intermediaries (within and outside EU/EEA)*

When the CEB provides funds to a financial intermediary to be on-lent for the partial financing of sub-projects of public sector beneficiaries, the CEB requires such intermediary to take all the requisite measures to ensure that the procurement by the final public sector beneficiaries of works, goods and services relating to the sub-projects is undertaken in accordance with national procurement legislation as referred to in Chapters 2 and 3.

When the CEB makes a loan/grant to a financial intermediary to finance sub-loans to private beneficiaries such as small and medium sized enterprises, the CEB requires such intermediary to take all the requisite measures to ensure that the procurement under the sub-loan is undertaken by the respective beneficiaries in accordance with established commercial procurement practices for private sector operations referred to in article 5.1.

5.3. *Entities operating under a concession agreement (outside the EU/EEA)*

In case where operations are carried out under a concession agreement (e.g. in the case of utilities), the CEB will determine, on a case by case basis, whether the special or exclusive rights under which the concessionaire operates have been awarded following a transparent and competitive process⁹ or, if this is not the case, whether the procurement of goods, works and services covered by the CEB's financing shall be considered as public sector operations (in such case they shall fall under Chapter 3).

6. REVIEW OF PROCUREMENT BY THE CEB

The Borrower/Grant Beneficiary is entirely responsible for the procurement process. The CEB limits its interventions to ensuring that its funds are used in the most economic, efficient and transparent manner. The CEB reviews of the procurement process will focus on critical steps that are necessary to ensure eligibility of the contract for the CEB financing.

During the project appraisal and loan/grant negotiation, the CEB will discuss and agree with the Borrower/Grant Beneficiary the thresholds for international procedures and national procedures and the procurement methods which will be applied under the various components financed by the CEB. Such procurement methods will be outlined in the Procurement Plan, and may be revised during project implementation. Based on the risk assessment carried out by the CEB at project appraisal, the CEB will inform the Borrower/Grant Beneficiary about the extent of the review that it will carry out. CEB may carry out pre-reviews or post-reviews in countries

⁹ The CEB will assess in particular if (i) there was adequate international publicity to allow for international competition; (ii) the process was fair and non-discriminatory; and (iii) the process followed can be traced.

outside the EU. Inside the EU, CEB may carry out post-review only. In case of procurement activities subject to emergency procurement procedures monitoring arrangements may be adapted to each specific context based on the emergency at hand.

For EU Co-financing Facilities the CEB will rely on the EU monitoring of procurement arrangements under the Facility and shall therefore not carry out any due diligence.

For Cross-Sectorial Loans, Programme Loans and Public Sector Financing Facilities the procurement monitoring modalities shall be discussed at the appraisal phase. When the investments are well defined and their nature allows so, the procurement monitoring will follow what is established in this section of the Guidelines. When the investments are not defined prior to FLA signature, or there are a high number of sub-projects of small size which do not justify a detailed monitoring, the procurement monitoring may be limited to post-reviews whose scope shall be defined by the CEB based on a list of contracts submitted by the borrower as part of its monitoring reports.

Employment or service contracts related to staffing needs of the Project Implementation Unit for the project can be done by the Borrower/Grant Beneficiary in line with special procedures, other than the public procurement law and are not subject to the CEB's "No Objection". Such activities are therefore not to be included in the Procurement Plan.

The CEB reserves the right to publish names and origin of suppliers or contractors of contracts financed with CEB loan or grant resources to its Member States.

6.1. Prior approval

The CEB's prior approval is required for projects located outside of the EU/EEA for:

- the Procurement Plan and all subsequent updates;
- a procurement procedure for a contract which is different from the procedure stated in the Procurement Plan;
- the use of: negotiated procedures; shopping; Borrower/Grant Beneficiary's own resources.

6.2. Pre-review

In all contracts outside of the EU/EEA subject to the CEB's pre-review, the CEB reviews the main administrative clauses of documents indicated below and will provide its "No Objection" or appropriate comments. However, this does not constitute an approval of the full content of these documents (e.g. not the designs, technical specifications).

Before the launch of the procurement procedure, the following documents must be sent to the CEB at least 21 calendar days before being published or given to potential tenderers:

- Contract Notice;
- documents related to the pre-qualification procedure (if applicable);
- tender documents.

In the case of a restricted procedure, competitive procedure with negotiation, negotiated procedure with publication, competitive dialogue and innovation partnership, the following documents must be sent to CEB, as soon as the requests to participate have been evaluated and before informing the candidates:

- the qualification report and
- the signed proposed list of qualified candidates.

In the case of a negotiated procedure without publication, the Borrower/Grant Beneficiary must send to the CEB the list of candidates to be invited to submit a tender, including a note of justification.

After the tender evaluation, and at least 14 calendar days before informing the tenderers of the outcome of the tender, the following signed documents must be sent to the CEB:

- minutes of tender opening;
- evaluation report;
- award decision.

After signature of the contract, the following documents must be sent to CEB as soon as they are issued or published:

- a copy of the signed Contract;
- a copy of the published Contract Award Notice.

During contract execution, the Borrower/Grant Beneficiary shall notify the CEB:

- of any proposed modification of the contract prior to its conclusion, as well as the reasons for such modifications, if such modification extends the stipulated time for performance or increases the initial contract value by 10% or more for service and supply contracts and by 15% for works contract or more;
- in case of early contract termination, of its intention to terminate the contract and the reasons for such termination.

After the contract is awarded and signed following a the CEB “No Objection”, the CEB may still determine that the contract is ineligible for financing from the proceeds of the loan/grant, if it concludes that:

- the “No Objection” was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower/Grant Beneficiary;
- the contract has been modified without the CEB “No Objection”;
- the contract award is cancelled by the competent review or judicial national authorities.

6.3. Post-review

For contract awards subject to post-review, either within or outside EU/EEA, including awards eligible for CEB financing under article 3.6 of the Guidelines (Advance Contracting), the Borrower/Grant Beneficiary shall submit to the CEB, no later than three months after the contract signature, a copy of the following documents:

- Initial Procurement Decision;
- Contract Notice and evidence of its publication;
- documents related to the pre-qualification procedure (if applicable);
- tender documents;
- qualification report (if applicable);
- signed minutes of tender opening;
- signed evaluation report;
- signed award decision;
- communication to the unsuccessful tenderers;
- signed contract and all addenda (when applicable);
- Contract Award Notice and evidence of its publication.

The CEB reserves the right to withdraw its financing of contracts whose post-review reveals a breach of any stipulations under these Guidelines.

6.4. Complaints

The CEB shall promptly be informed of all complaints received by the Borrower/Grant Beneficiary during the procurement procedure and after the contract is awarded.

For all complaints received, copies of the following shall be sent to the CEB:

- complaint(s) received;
- actions taken by the Borrower/Grant Beneficiary; and
- result of the complaint in the form of a decision to dismiss the complaint or a decision to uphold the complaint and the consequences (cancellation of the procedure, re-evaluation, modification of the award decision, etc).

If so requested by the CEB, the Borrower/Grant Beneficiary shall supply additional documentation.

If as result of the review of a complaint, the Borrower/Grant Beneficiary changes its Contract Award Recommendation, the following document shall be submitted to the CEB:

- the reasons for such decision;
- the revised evaluation report.

If so requested by the, CEB the Borrower/Grant Beneficiary shall supply additional documentation.

6.5. Non-compliance with the FLA

If the CEB determines that the goods, works or services were not procured in accordance with the agreed procedures (as reflected in the Procurement Plan approved by the CEB) or that the contract itself is not consistent with national procurement legislation or the principles/requirements included in the present Guidelines, it may determine that the contract is ineligible for financing from the proceeds of the loan/grant, as established in article 1.2 of the Guidelines and may exercise other remedies as provided for under the FLA and the “Policy for Loan and Project Financing”. The CEB shall promptly inform the Borrower/Grant Beneficiary of the reasons for such decision.

ANNEX 1: COVENANT OF INTEGRITY

to the Borrower/Grant Beneficiary from a Contractor, Supplier or Service Provider to be attached to its Tender (or to the Contract in the case of a negotiated procedure)

Note to the Borrower/Grant Beneficiary:

- *It is the Borrower/Grant Beneficiary's responsibility to report to the CEB any comments the supplier being proposed for award of the contract would have included in this form.*
- *This Covenant of Integrity must be kept by the Borrower/ Grant Beneficiary and made available, upon request, to the CEB.*

We declare and covenant that neither we nor anyone, including any of our directors, employees or agents, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Practice (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for *[specify the contract or tender invitation]* (the "Contract") and covenant to so inform you if any instance of any such Prohibited Practice shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

If (i) we have been, or any such director, employee or agent acting as aforesaid has been, convicted in any court of any offence involving a Prohibited Practice in connection with any tendering process or provision of works, goods or services during the five years immediately preceding the date of this Covenant, or (ii) any such director, employee or agent has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Practice, or (iii) we have been, or any of our directors, employees, agents, where these exist, acting as aforesaid has been excluded by any of the EU Institutions or any major Multilateral Development Bank (including World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, or Inter-American Development Bank) from participation in a tendering procedure on the grounds of a Prohibited Practice, we give details of that conviction, dismissal, resignation or exclusion below, together with details of the measures that we have taken, or shall take, to ensure that neither this company nor any of our directors, employees or agents commits any Prohibited Practice in connection with the Contract *[give details if necessary]*.

In the event that we are awarded the Contract, we grant the Borrower/Grant Beneficiary, the Council of Europe Development Bank (CEB) and auditors appointed by either of them, the right of inspection of our records. We accept to preserve these records generally in accordance with applicable law but in any case for at least 6 (six) years from the date of substantial performance of the Contract.

In the event that our proposal is recommended for the award, we acknowledge that the CEB has the authority to withhold its "No Objection" to proposal for contract award or otherwise to declare the contract awarded ineligible for CEB's financing if it determines that we have, directly or through an agent, engaged in any Prohibited Practice in competing for the contract in question.

Furthermore, we acknowledge that the CEB has the authority to cancel the portion of the financing allocated to a contract in question and to take all appropriate action in accordance with its Anti-Corruption Charter, if it determines at any time that representatives of the Borrower/Grant Beneficiary or of a beneficiary of the CEB's financing are engaged in any Prohibited Practice during the procurement or the implementation of that contract, without the Borrower/Grant Beneficiary having taken timely and appropriate action satisfactory to the CEB to address such practices when they occur.

For the purpose of this Covenant, Prohibited Practice shall have the following meaning:

- “Corrupt Practice” means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- “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;
- “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;
- “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;
- “Obstructive Practice” means in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practice, (a) any act of deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; (b) any act of threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; and/or (c) any act intending to materially impede the exercise of the contractual rights of audit or access to information.

Date

Name In the capacity of

Signed

ANNEX 2: ENVIRONMENTAL AND SOCIAL COVENANT

to the Borrower/Grant Beneficiary from a Contractor, Supplier or Service Provider to be attached to its Tender for Works (or to the Contract in the case of a negotiated procedure)

Note to the Borrower/ Grant Beneficiary:

This Covenant of Integrity must be kept by the Borrower/ Grant Beneficiary and made available, upon request, to the CEB.

We, the undersigned, commit to comply with — and to ensure that all our sub-contractors comply with — all national legislation and regulations applicable in the country of implementation of the contract, particularly labour and environmental laws and regulations, as well as good industry practice and any obligation stemming from the relevant international conventions and multilateral agreements applicable in the country of implementation of the contract.

Human rights. We commit to respect the principles of the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (the “ECHR”) and the European Social Charter (the “ESC”).

Labour standards. We commit in particular to respect the principles of the ECHR and the ESC pertaining to: child labour, forced labour, non-discrimination and freedom of association and the right to collective bargaining.

Concerning specifically child labour, we commit to ensure that children under the age of 18 are not employed for work under the project, *except if* the laws or regulations of the country of the contract provide for this possibility for children of at least 15 years of age and only in conformity with national laws and regulations and with the conditions of Article 7 of the ESC, ensuring that children of at least 15 years of age may be employed for light work on condition that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant sector of activity.

Occupational and Public Health, Safety and Security. We commit to (i) comply with all applicable health and safety at work provisions of the applicable legislation in the country of implementation of the contract; (ii) develop and implement the necessary health and safety management plans and systems, in accordance with the measures defined in the Environmental and Social Safeguards Management Framework or Plan¹⁰ where applicable, the ILO Guidelines on occupational safety and management systems¹¹ and the OSH Framework Directive¹²; (iii) use security management arrangements that are consistent with international human rights standards and principles and international good practice related to rules of conduct, if such arrangements are required for the project.

Protection of the Environment. We commit to take all reasonable steps to protect the environment within the project-affected area and to limit the nuisance to people and property resulting from pollution, noise, traffic and other outcomes of the operations. To this end, emissions, surface discharges and effluents from our activities will be minimized and shall comply with the limits, specifications or stipulations as defined in *[insert name of the relevant document]*¹³.

Environmental and social performance. To this end, we commit to (i) submit *[insert periodicity as indicated in the tender documents]* environmental and social monitoring reports to *[insert name of the Contracting Authority]*; and (ii) comply with the measures assigned to us as set forth in the environmental permits *[insert name of the relevant document if applicable]*¹⁴ and any corrective or preventative actions set forth in the annual environmental and social monitoring report. To this end, we will develop and implement an Environmental and Social Management System commensurate to the size and complexity of the Contract and provide *[insert name of the Contracting Authority]* with the details of the (i) plans and procedures, (ii) roles and responsibilities and (iii) relevant monitoring and review reports.

¹⁰ ESSMF or ESSMP.

¹¹ Available [here](#).

¹² Directive 89/391/EEC (“OSH “Framework Directive”), available [here](#).

¹³ For instance: EIA (Environmental Impact Assessment) and ESSMP (Environmental and Social Safeguards Management Plans).

¹⁴ For instance: EIA (Environmental Impact Assessment) and ESSMP (Environmental and Social Safeguards Management Plans).

We commit to put in place a project level mechanism to address and report on inquiries and complaints related to this project.

We hereby declare that our tender price as offered for this contract includes all costs related to complying with our environmental and social safeguards obligations as part of this contract. We commit to (i) reassess, in consultation with *[insert name of the Contracting Authority]*, any changes to the project design that may potentially cause negative environmental or social impacts; (ii) provide to the *[insert name of the Contracting Authority]* in a timely manner a detailed report of any unanticipated environmental or social risks or impacts that may arise during the execution of the contract and the implementation that may not have been previously taken into account and (iii) in consultation with *[insert name of the Contracting Authority]*, adjust environmental and social monitoring and mitigation measures as necessary to assure compliance with our environmental and social obligations.

Environmental and social staff. We shall facilitate the Contracting Authority's ongoing monitoring and supervision of our compliance with the environmental and social obligations described above. For this purpose, we shall appoint and maintain in office until the completion of the contract an Environmental and Social Management Team (appropriately scaled to the size and complexity of the contract) that shall be deemed reasonably satisfactory by the Contracting Authority and to whom the Contracting Authority shall have full and immediate access. The Team will have the duty and the necessary powers to ensure compliance with this Environmental and Social Covenant.

We accord the Contracting Authority and the CEB and any auditors appointed by either of them, the right of inspection of all our accounts, records, electronic data and documents, and the project sites related to the environmental and social aspects of the current contract, as well as all those of our sub-contractors.

Date

Name In the capacity of

Signed

Duly authorised to sign the contract for and on behalf of

ANNEX 3: PROCUREMENT PLAN TEMPLATE

PROCUREMENT PLAN												
Country:						Date:						
Borrower:												
Project reference:												
1	2	3	4	5	6	7	8	9	10	11	12	13
Ref. No.	Contract Description	Estimated Cost Currency	Estimated Cost EURO	Financed by	Number of Lots	Procurement Method	Domestic Preference (yes/no)	Review by the Bank	Expected date of Bid launching	Expected date of Bid opening	Expected date of Bid evaluation	Expected date of Contract Signature
1												
2												
3												
4												
5												

ANNEX 4: COMPLAINTS

1. Procurement Complaint Committee

The Procurement Complaints Committee (PCC) shall be chaired by the Chief Compliance Officer and be composed of an odd number (3 or 5) of persons appointed by the Chief Compliance Officer based on their experience, relevance and expertise. Representatives of the Procurement Division and the Office of the General Counsel shall be part to the PCC with an observer status.

2. Complainants

Any party having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement from the present Procurement Guidelines may submit a procurement complaint to the PCC. This normally includes any tenderer or potential tenderer of a project financed by the CEB.

3. Object of complaints

Complainants may challenge the Bank's decision with regard to the compliance of the procurement process with the Procurement Guidelines. Complaints that have as their object infringements of national procurement legislation will be declared inadmissible. Allegations of fraud or corruption in relation with a procurement process financed by the CEB will be handled by the Bank's Chief Compliance Officer, in accordance with the Bank's Anti-Corruption Charter.

4. Timeframe for complaints

Complainants are encouraged to submit complaints prior to the expiry of the standstill period. The attention of tenderers is drawn to the fact that submission of a complaint after the standstill period has expired may result in a situation where it is more difficult to have the procurement process to be redressed beyond exercising any contractual remedies available to the CEB.

5. Review process for complaints

Once the Bank has received a complaint, the Bank will acknowledge the receipt of the complaint and inform the Borrower/Grant Beneficiary, but will not enter into discussions or correspondence with any tenderer about the details of a complaint during the review process.

- a. Complaints submitted before the Bank has issued its "No Objection" to the contract award will be treated by the Bank's services through the Bank's standard due diligence, without involving the PCC. The substance of the complaint will be considered when the Bank decides whether or not to provide its "No Objection" to the contract award;
- b. Complaints submitted after the Bank has provided its "No Objection" to the contract award and during the standstill period will be reviewed by the PCC, which will decide on the admissibility of the complaints and examine the case to issue a recommendation for the Bank to decide whether to confirm or withdraw the "No Objection" previously issued. The Bank will suspend its "No Objection" until the PCC has completed its review. The Bank's decision will be taken in less than 30 calendar days from the submission of the complaint. In complex cases this deadline may be extended up to 60 calendar days;
- c. For complaints received after the standstill period has expired, the procurement process can no longer be redressed. However, the PCC will still examine the case to issue a recommendation for the Bank to decide whether to confirm or withdraw its financing of the contract.

Once a final decision is taken, the Bank will inform the Borrower/Grant Beneficiary. In parallel, the Bank will also send a substantiated response to the complainant.

It is worth noting that ultimate responsibility for the procurement process lies with the Borrower/Grant Beneficiary or their respective contracting authority – the Bank's role is limited at all times to the rights it may have under its contract with the Borrower/Grant Beneficiary; any enforcement action with respect to procurement against the relevant contracting authority needs to be taken in accordance with applicable legislation and competent administrative/judicial bodies in the jurisdiction at stake.