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GUIDELINES
FOR
PROCUREMENT
OF SUPPLIES, WORKS AND SERVICES

September 2011

COUNCIL OF EUROPE DEVELOPMENT BANK



GUIDELINES FOR PROCUREMENT OF SUPPLIES, WORKS AND SERVICES

INTRODUCTION

The “Guidelines for Procurement of Supplies, Works and Services” (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 a loan from CEB, of the policies and procedures applicable to the procurement of supplies, works and services (including consulting services) required for the project.

Section 1 describes general principles that are applicable to all of CEB operations.

Section 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”).

Section 3 sets out the rules for procurement in CEB-financed public sector operations in those CEB member countries which are not part of EU/EEA.

Section 4 outlines the requirements for contract administration and procurement records for all CEB-financed contracts.

Section 5 describes procurement arrangements in all CEB-financed operations in the private sector.

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

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1. GENERAL PRINCIPLES

1.1. Bank's policy

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 CEB policy that its procurement rules and procedures should be based on the principles of European Union Law, such as the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency.

While in practice the specific procurement rules and procedures to be followed in the implementation of a project depend on the particular case, the objective of these Guidelines is to ensure that the following basic principles are respected:

- the proceeds of CEB financing are used to buy only those supplies, 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 transparency and accountability;
- all eligible tenderers are treated equally and receive the same information when competing to provide supplies, works and services for projects financed by CEB;
- 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's responsibility

The Borrower is responsible for the implementation of 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. CEB may advise the Borrower in the procurement process for specific projects but is not a party of the resulting contracts.

When the loan provides funds to an intermediary institution to be on-lent for the partial financing of sub-projects, CEB requires such intermediary institution to take all the requisite measures to ensure that the procurement by the final beneficiaries of works, supplies and services relating to the sub-projects will be undertaken in accordance with the applicable legal framework.

CEB will not finance expenditures for supplies, works and services which have not been procured in accordance with the provisions of these Guidelines as reflected in the Framework Loan Agreement (hereafter "FLA") and as further elaborated in the Procurement Plan. In such cases, CEB will declare the contract ineligible for financing with the proceeds of the loan and may cancel that portion of the loan allocated for the financing of the ineligible contract or exercise other remedies provided for under the FLA and the "Policy for Loan and Project Financing".

The FLA governs the legal relationships between the Borrower and CEB and the Guidelines are made applicable to the procurement of supplies, works and services, as provided in the FLA. No party other than the parties to the FLA shall derive any rights there from or have any claim to loan proceeds.

The rights and obligations between the Borrower and the providers of supplies, works and services for the project are governed by national legislation, the tender documents and by the contracts signed between the Borrower and the providers of supplies, works and services.

1.3. Eligibility

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

1.4. Co-financing

CEB works in close cooperation with European and other multilateral institutions and may co-finance projects with multilateral and bilateral development agencies, including some instruments of the European Union (EU).

1.4.1. Joint co-financing

When projects are co-financed on a joint basis, CEB may agree that procurement of jointly-financed contracts be carried out in accordance with the rules of a co-financing institution, as long as they meet the basic principles set out in article 1.1. Furthermore, CEB's agreement will also be conditional upon having the other co-financing institution open its eligibility as much as possible, but at least to cover all of the CEB member countries.

In such cases, CEB may decide that the monitoring of the procurement of jointly co-financed contracts be entrusted to the other co-financing institution.

1.4.2. Parallel co-financing

When projects are co-financed on a parallel basis, the procedures of each co-financier applies to those components or contracts that it finances. In such a case, except as otherwise agreed, the procurement procedures as outlined in the Guidelines would apply to the contracts to be financed by CEB.

1.5. Ethical Conduct

It is CEB policy to require that Borrowers, as well as tenderers, contractors, suppliers and consultants under CEB financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. 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.).

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

1.1. 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 Directives¹ must be procured in accordance with such directives and national legislation implementing such Directives.

For such contracts, whether the Borrower is a public or a private institution, CEB will:

- require the Borrower to ensure at the project appraisal stage 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”);
- take further steps during project implementation, to the extent necessary, to ensure: compliance with the applicable procurement legislation; the rational use of the loan proceeds; the soundness of the project and the management of risks involved in the contracts.

1.2. Contracts to which the Procurement Directives do not apply

Contract award procedures for contracts below the thresholds provided for in the Procurement Directives² 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, which are not subject to the Procurement Directives, are addressed in Chapter 5.

3. PUBLIC SECTOR OPERATIONS OUTSIDE THE EU/EEA

3.1. General aspects

For public sector operations outside the EU/EEA, the Borrower and CEB will agree the thresholds above which the Borrower shall be required to obtain supplies, works and services through international procedures (requiring publication in the OJEU). Such threshold will be specified in the FLA.

Thus, contracts may be awarded on the basis of procurement methods other than international procedures only in 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.

CEB reviews the Borrower’s 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.

¹ In particular European Parliament and Council Directive 2004/17/EC; European Parliament and Council Directive 2004/18/EC; and European Parliament and Council Directive 2007/66/EC, amending Directives 89/665/EC and 92/13/EC, as modified from time to time.

² Thresholds set out in article 7 of European Parliament and Council Directive 2004/18/EC and article 16 of European Parliament and Council Directive 2004/17/EC, as modified from time to time.

These review procedures are described in Annex I. The FLA and the Procurement Plan approved by the Bank shall specify the extent to which these review procedures shall apply in respect of the different categories of supplies, works and services to be financed, in whole or in part, with the proceeds of the loan from CEB.

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.
- Operations carried out by utilities³ majority owned by public authorities (in case where utilities are operated by concessionaires, the applicable procurement rules are those set out in Chapter V (Private sector operations), subject to the provisions of article 5.2).

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

In connection with any contract to be financed in whole or in part from a CEB loan, CEB does not permit a Borrower to deny pre or post qualification to a contractor, supplier or consultant for reasons unrelated to its capability and resources to successfully perform the contract; nor does it permit a Borrower to disqualify any tenderer for such reasons.

As exceptions to the foregoing:

- a) Persons or entities offering supplies and services shall not be eligible for the award of CEB-financed contracts if payment to or import from such persons or entities is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.
- b) Firms may be excluded if, as a matter of law or official regulation, the Borrower's country prohibits commercial relations with the firm's country, provided that CEB is satisfied that such exclusion does not preclude effective competition for the supply of supplies, works or services required.
- c) Firms and individuals may be excluded if deemed by 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).

³ Undertakings providing services to the public, directly or indirectly, in the areas of gas, heat, water, electricity, exploration for or extraction of oil, gas, coal or other solid fuels, ports and airports, transport, telecommunications or postal services.

- d) 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 that the involvement in previous stages of the project does not constitute unfair competition.
- e) Government-owned enterprises in the Borrower's country 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 Borrower or Sub-Borrower.

3.4. Rules of ethics

In pursuance of CEB policy as set out in article 1.5, CEB:

- a) defines, for the purposes of this provision, the terms set forth below as follows:
 - i. "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - ii. "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - iii. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- b) will reject a proposal for award if it determines that the tenderer recommended for award, has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract in question;
- 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 or of a beneficiary of the loan are engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or the implementation of that contract, without the Borrower having taken timely and appropriate action satisfactory to CEB to address such practices when they occur;
- d) will, as a general rule, require that Borrowers insert in the tender documents (or in the contract in the case of a negotiated procedure) a clause that:
 - requires any tenderer for supplies, 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 2;
 - grants the Borrower, CEB and auditors appointed by any of them the right of inspection of the records of the contractor, supplier or consultant in connection with any CEB-financed contract.

3.5. Advance contracting

In exceptional cases, the Borrower may wish to proceed with the initial steps of procurement before signing the related FLA with CEB, or may have already entered into agreements with contractors or suppliers, as the case may be. In such cases, the procurement procedures, including advertising, shall be in accordance with the Guidelines in order for the eventual contracts to be eligible for CEB financing, and CEB shall review the process used by the Borrower.

3.6. Procurement Plan

As part of the preparation of the project, the Borrower shall prepare a preliminary procurement plan for the entire scope of the project and furnish to CEB for its approval a detailed and comprehensive Procurement Plan, including:

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

The Procurement Plan shall be furnished to CEB before the signature of the FLA.

However, in case of multi-project operations and when details are not fully known at the time of signature of the FLA, the Borrower shall nonetheless provide the Bank with detailed information about the procurement procedures applicable in unitary manner to all the sub-projects. Based on an agenda established with CEB, a Procurement Plan, in line with the requirements stipulated above, will be elaborated by the Borrower and presented to CEB as soon as the technical conditions for its elaboration are fulfilled, sub-project by sub-project.

After receiving the Procurement Plan, CEB will inform the Borrower on the related Bank review requirements and procedures.

The Borrower 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 CEB's approval. The Borrower shall implement the Procurement Plan according to the way in which it has been approved by CEB.

3.7. International procurement procedures

The threshold at and above which international procedures shall be used will vary according to the nature of the project, the scope and values of the contracts, the experience of the Borrower and local conditions, and will be based on the relevant thresholds for the application of the EU Procurement Directives⁴.

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. This calculation shall take account of the estimated total amount, including any form of option. Where a proposed work or purchase of services 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 thresholds specified in the FLA and to evade compliance with the rules set out in these Guidelines.

⁴ As published in the OJEU from time to time

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

3.7.1. Open procedures

Allow all interested parties (contractors 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.

3.7.2. Restricted procedures

Provide that only those candidates invited by the Borrower who satisfy the required selection criteria may submit tenders. They are similar to open procedures regarding the tendering stage (involving clear and comprehensive tender documents, and fair and transparent tendering, evaluation and award procedures). The selection of candidates follows an international notification (including publication in the OJEU) and the list of candidates is prepared through a formal pre-qualification exercise. Outside of the EU/EEA, these procedures are also referred to as ICB (including a pre-qualification phase).

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.

Pre-qualification shall be based entirely upon the capability and resources of prospective tenderers 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 provisions applicable to an open procedure apply by analogy to the restricted procedure.

3.7.3. Competitive dialogue

A competitive dialogue procedure may be used in the case of particularly complex contracts when the Borrower is not objectively able to prepare complete technical specifications in advance. A contract notice is first published in the OJEU, indicating inter alia the criteria for selecting tenderers who will take part in the procedure. The Borrower then selects qualified tenderers and opens a dialogue with them with the aim of identifying and defining the means best suited to satisfying its needs and requirements. Once the dialogue is satisfactorily concluded and the participants have been informed of this, the Borrower shall invite them to submit their final tenders which it will assess on the basis of the award criteria laid down in the contract notice or the descriptive document.

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

The number of candidates invited to the dialogue shall not be less than three, provided that a sufficient number of suitable candidates are available. In any event, the Borrower shall ensure in all cases that the number of candidates invited to tender is sufficient to ensure genuine competition.

3.7.4. Negotiated procedures (with publication)

Allow Borrowers to consult candidates of their choice and negotiate the terms of the contract with three or more of them. The selection of candidates follows an international publication in the OJEU (international and national press may also be used).

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

Borrowers may award public contracts by negotiated procedure, after publication of a contract notice, in the following cases:

- (a) in exceptional cases, when the nature of the supplies, works or services, or the risks involved do not permit prior overall pricing;
- (b) in the case where specifications of intellectual services, such as services involving the design of works, cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;
- (c) in the case of a particularly complex contract which does not allow a full definition of the technical specifications and standards.

3.7.5. Negotiated procedures (without publication)

Allow Borrowers 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 selects only one candidate, this is often 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 may award public contracts by a negotiated procedure without prior publication of a contract notice in the following cases:

- (a) where there has been an unsatisfactory response to open or restricted tenders carried out in accordance with these Guidelines, and in such case only those candidates who submitted tenders can be invited to participate in the negotiated procedure;
- (b) where the extension of an existing contract, awarded in accordance with these Guidelines, for additional supplies, works or services of a similar nature would clearly be economic and efficient and no advantage would be obtained by further competition, or for additional supplies, works or services which cannot be technically or economically separated from the original contract without major inconvenience or cost to the Borrower. Such extension should not exceed 50% of the value of the original contract;
- (c) a product or service can only be provided by a limited number of suppliers because of exclusive capabilities or rights;
- (d) standardisation with existing equipment is determined to be important and justified, or
- (e) in a case of extreme urgency brought about by unforeseeable events.

3.8. National procurement procedures

For contracts whose estimated value is below the thresholds specified in the FLA, national procedures may be the most appropriate way of procuring supplies, 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, and
- (d) allow eligible foreign candidates to participate.

3.8.1. National competitive tendering

National competitive tendering may be the most appropriate way of procuring supplies, 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.

3.8.2. Other methods of procurement

Other methods of procurement, including direct contracting, can be used, subject to 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's own resources: the Borrower 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).

3.9. Procurement of supplies, works and services following international procedures

3.9.1. Notification and advertising

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

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 application or tender. The CN shall, in particular, specify the minimum time-limits for the receipt of tenders, as described in article 3.9.11 below.

The CN shall be published in the OJEU and advertised in at least one newspaper of wide circulation in the Borrower's country (and in the national official gazette, if any).

The CN which is published locally by the Borrower must be identical to 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 shall refer to CEB using the following wording:

"(Name of Borrower) has received (or in appropriate cases 'has applied for') a loan 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 to eligible payments under this contract."

3.9.2. Tender documents

The tender documents shall furnish all information necessary for a prospective tenderer to prepare a tender for the supplies, services and works to be provided. The basis for tender evaluation and selection of the lowest evaluated 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 sent to each recipient of 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 shall use, when possible, 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.

3.9.3. Language

Pre-qualification and tender documents for international procedures shall be prepared by the Borrower in either English or French. Contracts entered into with local tenderers may, at the Borrower's option, be 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 may be requested to provide CEB with a translation of the contract in one of those two languages.

3.9.4. Standards and specifications

As far as possible the Borrower shall specify international accepted standards such as those issued by the International Standards Organisation, with which the equipment or materials or workmanship shall comply.

Where such international standards are unavailable or are inappropriate, national standards may be specified. In all cases, the tender documents shall state that equipment, material, or workmanship meeting other standards, which promise at least substantial equivalence, will also be accepted.

3.9.5. Tender price

All supplies may be quoted DAP (delivered at place) or DDP (delivered duty paid) and tender documents must clearly specify on which basis prices should be submitted.

In either case, tenderers should also be required to state separately, i) for supplies of foreign origin, the import duties payable on the imported supplies, and ii) for supplies manufactured or assembled in the Borrower's country, the duties and taxes paid or payable on directly imported materials, components and services incorporated in the supplies.

Evaluation and comparison of tenders should be done on the basis of either DDU prices or DDP prices, as the case may be.

Unless otherwise specified in the tender documents, the tender price for a turnkey contract shall include all duties, taxes, and other levies.

For works contracts, tenderers shall be required to quote unit prices or lump sum prices for the performance of the works, and such prices shall include all duties, taxes and other levies.

Tender documents shall state either that (a) tender prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel.

3.9.6. Currency

Tender documents shall state:

- i) the currency or currencies in which tenderers are allowed to state their prices. Tenderers may be required to state the portion of the tender price representing local costs incurred in the currency of the country of the Borrower.
- ii) the procedure, for the purpose of comparing tenders, for conversion of prices expressed in different currencies into a single currency (specified in the tender document), using selling (exchange) rates quoted on an internationally recognized currency exchange (e.g. published in the Financial Times) for a date selected in advance and specified in the tender documents, provided that such date shall not be earlier than 30 days prior to the date specified for the opening of tenders.

Payment of the contract price shall be made in the currency or currencies in which the tender price is expressed in the tender of the successful tenderer.

3.9.7. Payment terms and procedures

Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and works:

- contracts for supplies normally provide for full payment on the delivery and inspection, if so required, of the contracted supplies. In major contracts for equipment and plant, provision shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly;

- contracts for works normally provide in appropriate cases for mobilization advances, advances on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under the contract.

The tender documents shall specify the arrangements for any security required for advance payments.

3.9.8. Contract award criteria

The criteria on which the Borrowers shall base the award of contracts shall be either: (a) the most economically advantageous; (b) the lowest price of the compliant and technical responsive tender. When the award is made to the most economically advantageous tender, the various criteria linked to the subject-matter of the contract in question shall be specified in the contract notice or in the tender documents as well as the relative weighting of each of the criteria that will be used to determine the most economically advantageous tender.

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

3.9.9. Conditions of contract

The contract shall clearly define the scope of work to be performed, the supplies, works or services to be supplied, the rights and obligations of the Borrower and of the supplier 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 people experiencing particular difficulty in achieving 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.

3.9.10. Tender security

The Borrower has the option of requiring a tender security. When used, the tender security shall be specified in the tender documents and shall be a fixed amount or a percentage of the estimated cost of the contract

3.9.11. Time limits and opening of tenders

When fixing the time limits for the receipt of requests to participate, or pre-qualification submissions, or tenders, Borrowers shall take account the complexity of the contract and the time required for preparing such submissions and tenders.

In the case of open procedures, the minimum time limit for the receipt of tenders shall be 52 days from the date on which the Contract Notice was published.

In the case of restricted procedures, negotiated procedures with publication and in the competitive dialogue, the minimum time-limit for receipt of requests to participate shall be 37 days from the date on which the Contract Notice was sent.

The date and place for tender opening shall be announced in the contract notice (or in the invitation to tender for Restricted Procedures). The time for tender opening shall be the same

as the deadline for receipt of tenders, or promptly thereafter. All tenders shall be stamped and dated as soon as they are received. Tenders shall be opened in the presence of the tenderers or their representatives. 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 read aloud and recorded in the minutes of tender opening. Tenders received after the deadline for receipt shall not be opened.

3.9.12. 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.

The Borrower 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;
- have all pages of tenders sequentially numbered and signed;
- are accompanied by the required securities;
- are substantially responsive to the tender documents.

The Borrower may ask tenderers for clarification needed to evaluate their tenders but shall not ask or permit tenderers to alter their tenders after the tender opening. Requests for clarification and the responses to the tenderers shall be made in writing.

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

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

- whose tender has been determined as being substantially responsive;
- who meets the necessary qualifying criteria specified in the tender documents;
- whose tender, in terms of the specific evaluation criteria set forth in the tender documents, is determined as the lowest evaluated, and who has been determined, on the basis of the tender submitted, to be fully capable of undertaking the contract.⁵

Borrowers 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 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 shall obtain agreement from the Bank on the procedures to follow.

⁵ 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.

3.9.13. 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 all relevant information about the rejection of their application. The standstill period should give the tenderers concerned sufficient time to examine the contract award decision taken by the Borrower, 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 CEB to the extent that those infringements have affected the chances of other tenderers applying for review to obtain the contract.

3.9.14. Complaints

Tenderers believing that they have been harmed by an error or irregularity during the award process may complain directly to the Borrower. The Borrower must reply within 15 days of receipt of the complaint.

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

If an amicable solution between the plaintiff (tenderer) and the Borrower fails, the tenderer may have recourse to procedures established under the Borrower country's national legislation.

3.9.15. Contract award Publication

After the signature of the contract, the Borrower shall send a contract award notice (CAN) to the OJEU.

3.10. Procurement of consultancy contracts

The provisions set out below are for CEB financed consultancy services contracts in the public sector.

Consistent with the general objectives of these Guidelines, the selection of consultants shall be governed by the following principles:

- high level of qualification and quality of services,
- consultant independence,
- efficiency and economic use of resources,
- effective and fair competition between consultants,
- transparency of the selection process.

3.10.1. Description of procedures

- **Open procedures** include an international call for proposals (at least via the OJEU, and additionally the press and other media), allowing any consultant interested to submit a proposal for the services required.
- **Restricted procedures** include a call for proposals on the basis of a list that allows only consultants invited by the Borrower to submit a tender. The list of pre-qualified candidates must be drawn up by means of an international call for expression of interest open to all consultants and advertised at least in the OJEU.

- **Negotiated procedure** without publication in the OJEU includes enquiries amongst consultants selected by the Borrower and direct negotiation of conditions with one or several of these. Borrowers can establish a list of potential candidates by using their experience, professional contacts, as well as consultants' registers.

3.10.2. Selection of procedures

For an estimated amount equal to or above the threshold for services specified in the FLA (the estimated contract value taken into account is the supplier's total remuneration), the procedures applicable are:

- either open procedures with publication in the OJEU; or
- restricted procedures including an international call for expression of interest in the OJEU.

For an estimated amount below the threshold for services specified in the FLA, negotiated procedures with a list of a maximum of six candidates drawn up on the basis of registers / research / recommendation with the participation of:

- for an estimated amount of euro 100 000 and above, at least five candidates; and
- for an estimated amount below euro 100 000, at least three candidates.

3.10.3. Derogations

Borrowers may find it necessary to contact fewer or only one candidate for the following reasons:

- the expertise sought is such that there are only a very few specialists in this field;
- the degree of urgency, duly justified, is such that there is no time for broader research;
- continuity is required;
- another procedure has already been conducted without producing any useful results;
or
- when a consultant has been or is involved in the early phases of the project, such as feasibility or design studies, and it has been established that continuity is necessary and no additional advantage would be gained from pursuing competitive procedures; this is one of the most common cases and provisions for such an extension should be envisaged in advance and included in the original terms of reference and contract, which preferably should have been awarded following a competitive procedure.

A single reason or a combination of reasons are possible but must always be clearly justified by the Borrower and approved by the Bank in advance.

In the case of a contract estimated to be below euro 50 000, the Bank may accept a contract negotiated with only one company or individual in order to speed up project preparation or implementation.

3.10.4. Short-listing of candidates

The selection procedure for short listing consultants involves:

- establishing a long list of candidates based on the responses to a procurement notice inviting Expressions of Interest,
- eliminating candidates who are ineligible,
- applying the published selection criteria without modification.

After examination of the responses to the procurement notice, the candidates offering the best guarantees for the satisfactory performance of the contract will be short-listed.

The shortlist shall contain between three and six candidates. If the number of eligible candidates meeting the selection criteria is greater than six, the additional criteria published in the procurement notice shall be applied in order to reduce the number of eligible candidates to six. If the number of eligible candidates meeting the selection criteria is less than the minimum of three, the Borrower may invite only those candidates who satisfy the criteria to submit a tender.

3.10.5. Drafting and contents of the tender documents

These documents must contain all the provisions and information that candidates invited to tender need to present their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria and their weightings, stipulations regarding subcontracting, approval of experts, etc.

3.10.6. Submission of tenders

Tenders must be submitted in accordance with the double envelope system, i.e., in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words "Envelope A - technical offer" and the other "Envelope B - financial offer". All parts of the tender other than the financial offer must be submitted in Envelope A.

Any infringement of these rules (e.g., unsealed envelopes or references to price in the technical offer) is to be considered a breach of the rules, and will lead to rejection of the tender.

This system enables the technical offer and the financial offer to be evaluated successively and separately: it ensures that the technical quality of a tender is considered independently of the price.

3.10.7. Evaluation of consultants' proposals

The evaluation of proposals is based on a series of factors that must be specified, with their respective weights, in the request for proposals issued to consultants.

Indicative factors are:

- international, regional and local experience;
- consultant's specific experience;
- qualifications and experience of key personnel included to render the services;
- methodology proposed for the services;
- proposed work programme;
- the financial proposal.

Depending on the characteristics of the task to be performed, price may be considered as a factor, but it should have a lower weight than the other factors as a whole. In certain circumstances, the most efficient way of integrating the price factor in the tender is to indicate the available budget for the services in the request for consultant's proposals, and require that this budget should not be exceeded if the consultant's offer is to be considered.

3.10.8. Management of the contract

In common with other contracts awarded within the context of projects financed by CEB, the Borrower is fully responsible for supervising and managing the consultant's services.

4. CONTRACT ADMINISTRATION AND RECORDS

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

The documentation and information which has to be submitted to CEB for prior review, post review, including for the purposes of CEB “no objections” and for monitoring and loan administration, are specified in Annex 1.

4.1. Modifications to contracts

Before agreeing to any modification or waiver in the terms and conditions or scope of a contract or granting an extension of the stipulated time for performance (except in the case of extreme urgency brought about by unforeseeable events not attributable to the Borrower), the Borrower shall notify to CEB the proposed modification, waiver or extension.

4.2. Record keeping

Subject to the Borrower’s policy on access to documents, written records of the entire tender procedure must be kept confidential and retained by the Borrower 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 for at least 5 years after the contract is completed.

5. PRIVATE SECTOR OPERATIONS

CEB 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 enterprises often meet these concerns by following established commercial practices other than formal open tendering, for their procurement. Nevertheless, wherever appropriate, CEB will encourage the use of competitive tendering by its private sector borrowers, particularly for large contracts.

CEB will satisfy itself that private sector borrowers use appropriate procurement methods which ensure a sound acquisition of supplies, works and services at fair market prices and that they are making their capital investments in a cost effective manner.

5.1. Financial intermediaries

When CEB makes a loan to a financial intermediary to finance sub-loans to private beneficiaries such as small and medium sized enterprises, the procurement under the sub-loan is undertaken by the respective beneficiaries in accordance with normal procurement practices for private sector operations.

5.2. 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), 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 process⁶ or, if this is not the case, whether the procurement of supplies, works and services covered by CEB's financing shall be considered as public sector operations (in such case they shall fall under Chapter III).

⁶ 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.

ANNEX 1 - MONITORING AND REVIEW OF PROCUREMENT BY CEB

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

Operations within the EU/EEA

For projects located in EU/EEA countries, the Borrower shall submit to CEB, a Procurement Plan and for each contract to be financed by the CEB, data and information which is necessary for CEB project monitoring and loan administration. This data and information shall be submitted in the form specified in Attachment 1 to this Annex. In case of post-review, article 3.7 will apply.

Operations outside the EU/EEA

During the project appraisal and loan negotiation, CEB will discuss and agree with the Borrower: the thresholds for international procedures and national procedures; the procurement methods which will be applied under the various components financed by CEB, and the extent of the review that CEB will carry out. Such procurement methods and review procedures will be outlined in the Procurement Plan and in the FLA, and may be revised during project implementation.

Prior approval

CEB prior approval is required for:

- the procurement plan and all subsequent updates;
- a procurement procedure for a contract which is different to the procedure stated in the procurement plan;
- the use of: negotiated procedures; shopping; Borrower's own resources;

Prior review and no-objection

For all contracts which are subject to CEB prior review, the following documents must be sent to CEB at least 21 calendar days before being published or given to potential tenderers:

- Documents related to the pre-qualification procedure (if it takes place) ;
- Contract Notice (CN);
- Tender documents

Although CEB reviews the main administrative clauses of these documents and may make some comments, this does not constitute an approval of the full content of these documents. In the case of pre-qualification, the Borrower must send to the CEB, for its "non-objection", the pre-qualification report and the signed proposed list of pre-qualified candidates, as soon as the prequalification applications have been evaluated and before informing the candidates.

After the tender evaluation, and at least 14 calendar days before informing the tenderers of the outcome of the tender, the Borrower must send to CEB for its review the following signed documents:

- Minutes of tender opening;
- Evaluation report;
- Award decision.

CEB will provide its "non-objection" or appropriate comments.

After the contract is signed, the Borrower shall furnish to CEB:
As soon as the contract is signed:

- copy of the communication to the unsuccessful tenderers;
- one conformed copy of the signed Contract.

As soon as the award notice is published:

- a copy of the published Contract Award Notice (CAN).

After the contract is awarded following a CEB “non-objection”, CEB may still determine that the contract is ineligible for financing from the proceeds of the loan, if it concludes that:

- the “non-objection” was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower;
- the terms and conditions of the contract had been modified without CEB approval;
- the contract award is cancelled by the competent review or judicial national authorities.

Post review

For contract awards subject to post review, including awards eligible for CEB financing under article 3.5 of the Guidelines (Advance Contracting), the Borrower shall furnish to CEB, no later than three months after the contract signature, a copy of:

- Initial Procurement Decision;
- Contract Notice (CN) and evidence of its publication;
- the tender documents;
- 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 (CAN) and evidence of its publication.

Complaints and appeals

CEB shall promptly be informed of all complaints received by the Borrower, during the tender procedure and after publication of the results of evaluation.

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

- complaint(s) received;
- actions taken by the Borrower and result of the complaint.

If necessary, CEB may request additional documentation.

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

- the reasons for such decision;
- the revised Evaluation Report.

If necessary, CEB may request additional documentation.

Non-compliance with the FLA

If CEB determines that the supplies, works or services were not procured in accordance with the agreed procedures (as reflected in the FLA) or that the contract itself is not consistent with such procedures, it may determine that the contract is ineligible for financing from the proceeds of the loan, 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”. CEB shall promptly inform the Borrower of the reasons for such decision.

ANNEX 1 - Attachment 1

Projects located in EU/EEA countries

CONTRACT MONITORING DATA AND INFORMATION

CEB Project Reference Number

Name of Project

Borrower

Country

Contract reference

Contract Title

Name of supplier/contractor

Country of supplier/contractor

Object of contract: *(supplies, works, services)*

Contract Value

Date of Contract signing

Contract Duration

Contract Provisions:

- Currency of contract
- Fixed price/adjustable price
- Lump sum/unit prices/cost reimbursable
- Terms of payment

Procurement Procedure followed: *(specific procedures in EU Directives)*

Date of CN

Date on which the tenders are received

Date of award decision

Number of tenders received

Complaints/appeals received

Short listing or pre-qualification (if applicable)

- Number of candidates applying
- Number of candidates pre-qualified/short-listed

PROCUREMENT DOCUMENTATION

Procurement Plan

Copies of all Procurement Notices

Copies of signed contracts

All contract modifications

ANNEX 2: COVENANT OF INTEGRITY

to the Borrower from a Contractor, Supplier or Consultant to be attached to its Tender (or to the Contract in the case of a negotiated procedure)

“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, supplies 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, supplies 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, 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 five years from the date of substantial performance of the Contract.”

For the purpose of this Covenant,

- “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;
- “Prohibited Practice” means an act that is a Corrupt Practice, a Fraudulent Practice, a Collusive Practice or a Coercive Practice.