



# EIB Procurement Policy

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## 1.1 Procurement: what is it for?

- ❖ The Bank will ensure that its funds are employed as rationally as possible in the interest of the Union (EIB statute).
- ❖ The objective of procurement: procure in the economically most advantageous way works, goods and services to implement a project.
- ❖ Why are there strict and formal rules for public procurement?
  - ❖ The promoter is using public money. Therefore, the process must be:
    - ❖ Transparent
    - ❖ Fair and non-discriminatory
    - ❖ Traceable
- ❖ Full access of EU firms to procurement under EIB financed projects.



## 1.1 Guide to Procurement: what is it?



- ❖ The Guide to Procurement is the main reference document regarding EIB Procurement Policy.
- ❖ Sets the requirements for the procurement of the project to be acceptable to the Bank.
- ❖ Produced mainly by PJ in collaboration and consultation with the services, EC, MDBs and other stakeholders.
- ❖ Approved by the CD and sent for information to the CA.
- ❖ Available electronically on EIB website and physical copies through the Infodesk.
- ❖ Referenced in the Finance Contract.



## 1.1 EIB Guide to Procurement: recent history

- ❖ 2004
  - ❖ Main reference document for most existing contracts.
  - ❖ Available through Infodesk.
  
- ❖ 2007
  - ❖ Version approved by the CD on 20 March 2007, subject to a revision of Paragraph 3.5 on "Prohibited Practice"; never finalised and published, and therefore not officially applicable.
  
- ❖ 2011 (CD of 7th June 2011)
  - ❖ Official and published version, available on the EIB website:  
<http://www.eib.org/projects/cycle/procurement/index.htm>
  - ❖ Subject of this presentation.



## 1.2 Structure of the Guide to Procurement

- ❖ 1. General aspects
  - ❖ Horizontal issues and key principles
- ❖ 2. Operations within the EU
  - ❖ EU directives
- ❖ 3. Operations outside the EU
  - ❖ Procurement procedures, concessions, co-financing, specific operations, etc.
- ❖ 4. Consultancy services



## 1.3 Bank and Promoter respective roles (GP 1.3)

- ❖ Promoters are fully responsible for all aspects of the procurement process.
- ❖ The Bank's involvement is confined solely to verifying whether or not the the conditions attached to its financing are met.
- ❖ The Bank may advise or assist promoters, but is not a party to the resulting contracts.
- ❖ The Guide to Procurement is NOT a legal framework, and therefore the national legislation is the framework governing procurement procedures.



## 1.3 Inside the EU (GP 2.1) (I)

- ❖ Within the EU and in those candidate countries that have already incorporated the relevant EU legislation, procurement is covered by national legislation implementing EU Law, in particular EU Public Procurement Directives.
- ❖ In case a tenderer considers that it has not been treated fairly, the Remedies Directives have instituted an independent legal recourse system.
- ❖ The Bank considers these rules satisfactory and comprehensive and does not impose additional requirements.



## 1.3 Inside the EU (GP 2.1) (II)

- ❖ It is the role of the relevant national and EU authorities to ensure that procurement is carried out in compliance with this legal framework.
- ❖ The Bank requires the promoter to ensure that the applicable procurement directives are complied with under the project.
- ❖ The Bank will take further steps during implementation, to the extent necessary to control compliance in order to reduce risks.



## 1.3 New public procurement directives proposals

- ❖ In December 2011 the Commission adopted its proposals on public procurement.
- ❖ These proposals modify current directives 2004/17/EC 2004/18/EC and also includes a new directive on concessions.
- ❖ Discussions are being held in the Council and Parliament, aiming at approval by end of 2012.
- ❖ The Guide to Procurement might need to be updated to reflect changes.



## 1.3 Outside the EU (GP 3.1)

- ❖ In all other countries outside the EU, the Bank requires that the main mechanisms of the EU Procurement Directives be complied with, with the necessary procedural adaptations.
- ❖ Procurement of works, goods and services financed by the Bank must be carried out in accordance with the EIB Guide to Procurement.
- ❖ The Bank monitors the procurement process to ensure that it is compliant with the Guide to Procurement.



## 2. Operations outside the EU



## 2.1 Eligibility (GP 3.2)

- ❖ Financed from the Bank's own resources: Open to nationals of all countries. (GP 3.2.1)
- ❖ Financed partially or completely from resources from third parties (GP 3.2.2):
  - ❖ Cotonou Agreement: Open to nationals of all countries
  - ❖ Other instruments (NIF, FEMIP, etc.): Depends on the rules of the instrument. At least EU and parties to or beneficiaries of such agreement.
- ❖ Co-financed from own resources (GP 3.2.3):
  - ❖ Joint co-financing: Open as much as possible, at least EU and beneficiary country.
  - ❖ Parallel co-financing: Normal EIB eligibility rules



## 2.2 Public sector operations (GP Annex 5)

- ❖ Definition of Public Sector Operations (based on Utilities Directive):
  - ❖ Public Authorities (bodies governed by public law)
  - ❖ In the specific sectors of gas, heat, electricity, water, transport, exploration for, or extraction of oil, gas, coal or other solid fuels, ports and airports, telecommunications, and postal services carried out by:
    - ❖ Public undertakings operating in markets which are not liberalised;
    - ❖ Private entities that have been granted special or exclusive rights without an acceptable competitive process and operate in markets which are not liberalised (See concessions decision tree)
- ❖ Other operations are considered to be in the private sector.



## 2.2 Thresholds (GP 3.4.1)

- There are thresholds over which it is mandatory to use international procurement procedures:

<b>Nature of the Contract</b>	<b>Threshold in Euro</b>
Works	5 million
Goods and Services except Consultancy services:	
In General	200,000
Electricity, Gas, Water and Transport	400,000
Telecommunications	600,000



## 2.2 Procurement procedures for public sector operations (GP 3.3)

- ❖ International procurement procedures (GP 3.3.2)
  - ❖ Open procedure
  - ❖ Restricted procedure (with pre-qualification)
  - ❖ Other procedures (subject to Bank's approval, in specific cases)
    - ❖ Competitive dialogue
    - ❖ Negotiated procedure with publication
    - ❖ Negotiated procedure without publication
  
- ❖ National procurement procedures (below GP thresholds) (GP 3.3.3)
  - ❖ National competitive bidding
  - ❖ Shopping and direct contracting
  - ❖ Force account

## 2.2 Consultancy Services (GP 4.2.2)



- ❖ Section 4 of the GP sets the requirements for consultancy services contracts.
- ❖ There are specific procedures and thresholds for consultancy services:

Contract Amount in Euro	Number of Shortlisted Candidates	Number of Nationalities
Above 200,000	Open or Restricted Procedure	
50,000 - 200,000	3 to 7	At least 2
Below 50,000	1	Not applicable

- ❖ The cases where a direct negotiated procedure is allowed are listed in GP 4.2.2



## 2.2 Local Preference (GP 3.7.9)

- ❖ Available for equipment/goods/supply contracts outside EU, except in candidate countries.
- ❖ NOT accepted: local preference on works or services contracts.
- ❖ 15% margin of preference on price.
- ❖ NOT accepted: mandatory local component.
- ❖ Only if requested by promoter.
- ❖ In line with other MDBs (except EBRD).



## 2.3 Private sector operations (GP 3.4.2)

- ❖ Economy and efficiency are usually satisfied by following established commercial practices.
- ❖ Nevertheless, the Bank should encourage such promoters to publish a tender notice in the OJEU.
- ❖ Fair, transparent and non-discriminatory.
- ❖ If possible, at least three qualified companies from at least two different countries.
- ❖ A cost benchmarking exercise should be carried out to verify that costs are in line with current market prices.

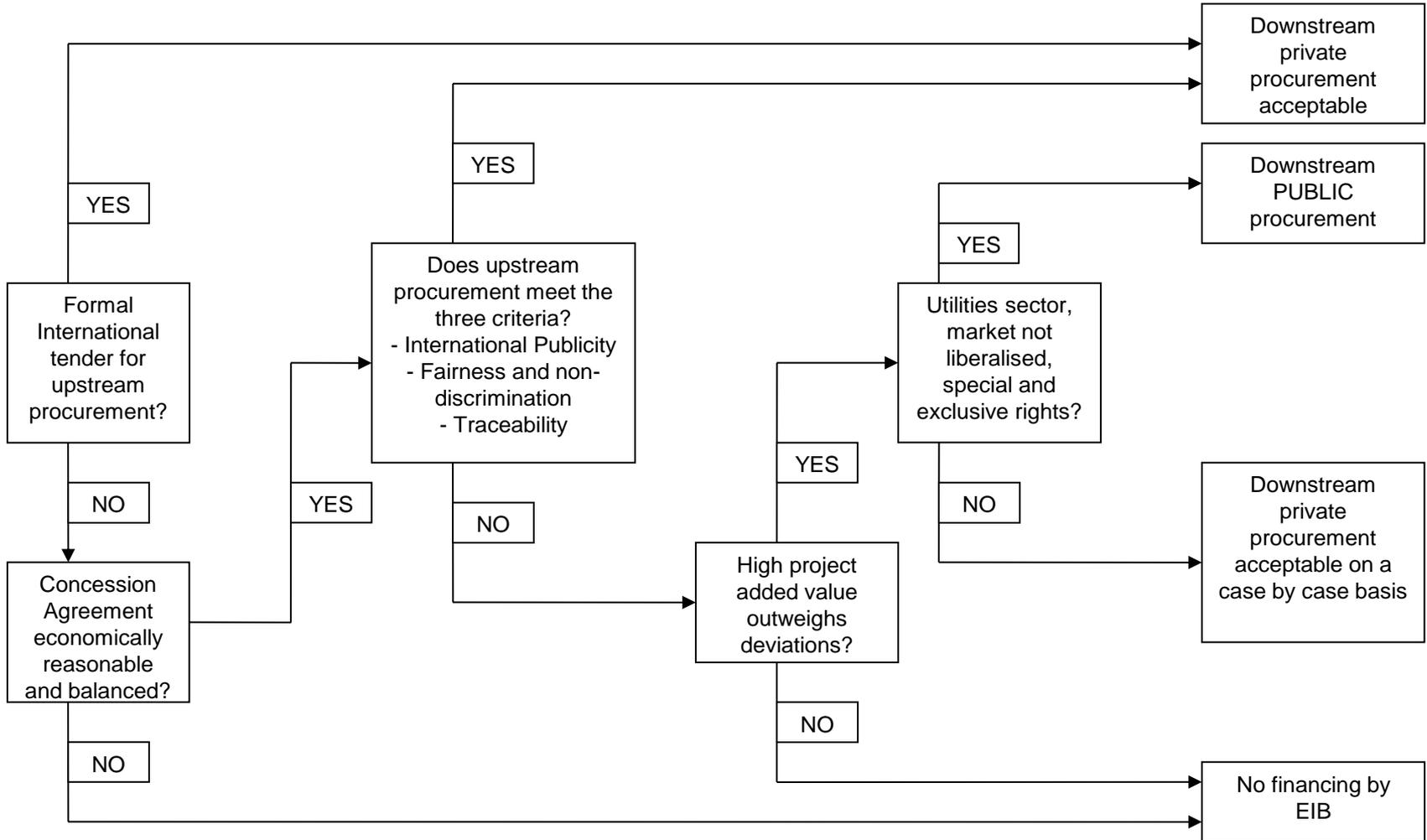


## 2.4 Concessions (outside the EU): upstream/downstream procurement (GP 3.4.3) (I)

- ❖ For concession projects there are two sides to procurement:
  - ❖ Upstream: Selection of concessionaire. Preferred procedure is formal international competitive tender. If not, aligned as much as possible with basic EU public procurement principles.
  - ❖ Downstream: procurement by the concessionaire. Required procedures depend on how upstream procurement was carried out.
- ❖ Prerequisite for financing concessions: the Concession Agreement must be economically reasonable and balanced.



## 2.4 Concessions (outside the EU): upstream/downstream procurement (GP 3.4.3) (II)





## 2.5 Specific Operations (GP 3.4.4)



- ❖ **Framework Loans:** The Bank requires the promoter to ensure compliance with the GP. There are [specific procurement monitoring procedures](#), for operations within and outside the EU.
- ❖ **Intermediated Loans:** The Bank requires the intermediary to take all the necessary measures to ensure that procurement by the final beneficiaries is the most economically advantageous option, following appropriate procedures in view of the circumstances and the local legislation.



## 2.6 Procurement monitoring procedures (GP 3.5)

- ❖ International procurement procedures (GP 3.7, Annex 2)
  - ❖ **Ex-ante** monitoring
  - ❖ The Bank requires promoters to seek its concurrence for all major procurement decisions and monitors the procurement process
  - ❖ The Covenant of Integrity must be sent to the Bank together with the contract
  
- ❖ Other procurement procedures (GP Annex 2)
  - ❖ **Ex-post** monitoring
  - ❖ The promoter must obtain the non-objection from the Bank for the procurement procedure chosen and the final selection of the tenderer on the basis of adequate justifications
  - ❖ The Covenant of Integrity is kept by the promoter and available upon request



## 2.6 Non-objections (international procedures)

- ❖ Given to pre-qualification reports and/or tender evaluation reports which should include a clear recommendation for prequalification or contract award.
- ❖ Not given to tender documents (only commented on).
- ❖ Standard template including disclaimer should be used.
- ❖ Signatures: Co-signed PJ/Ops. Two signatures of categories II (e.g., at least C function) and III (authorised signature featuring in the official Bank's list), at least one of which must be of category II.
- ❖ Formal communication (letter or fax). No email.
- ❖ A signed and scanned pdf version must be archived.

## 2.7 Joint Co-financing (GP 3.4.5) (I)



- ❖ Minimum requirements and standards:
  - ❖ Eligibility open as much as possible (in line with GP 3.2, at least EU Member States and the beneficiary country).
  - ❖ Adequate publicity to ensure wide international competition.
  - ❖ Basic EU principles are respected:
    - ❖ Non discrimination of tenderers.
    - ❖ Fairness and transparency of the process.
    - ❖ Contract award to most economically advantageous offer.

## 2.7 Joint Co-financing (GP 3.4.5) (II)



- Various degrees of reliance possible:
  - Use the procurement procedures of the co-financing institution
  - Entrust the co-financing institution with the supervision of procurement
  - Entrust the co-financing institution to appraise and/or monitor the project on its behalf: “Mutual Reliance”



## 2.7 “Mutual Reliance” (GP 3.4.5) (III)



- ❖ The Lead Institution is fully in charge of procurement and applies its own rules and procedures, as long as they meet the Bank’s minimum requirements and standards as described in previous slides.
- ❖ *Mutual Reliance Initiative* with AFD and KfW: Operational Guidelines, describing more precisely how to handle, among other, procurement matters have been produced. They were approved by the CD in the last week of March 2012.



### 3. Covenant of Integrity (GP Annex 3)

- ❖ Applicable to all contracts outside the EU
  - ❖ No threshold
  - ❖ Public & private sector operations
  
- ❖ Undertaking not to engage in Prohibited Practice extended to the tenderers' sub-contractors
  
- ❖ Obligation for tenderers to declare if they have been excluded by the European Institutions or the main MDBs
  
- ❖ Obligation of keeping records for possible auditing extended to the tenderers' sub-contractors



Thank you for your attention.