



AFRICAN DEVELOPMENT BANK
AFRICAN DEVELOPMENT FUND

PROCUREMENT POLICY FOR BANK GROUP FUNDED OPERATIONS

August 2015

***Procurement & Fiduciary Services Department (ORPF)
African Development Bank (www.afdb.org)
Headquarters – Abidjan (Côte d'Ivoire)
5 Avenue Joseph Anoma
01 B.P. 1387, Abidjan 01
Côte d'Ivoire***

E-mail: procurementpolicy@afdb.org

TABLE OF CONTENTS

1. MANDATE, ROLES AND RESPONSIBILITIES	5
1.1 General	5
1.2 Bank Mandate	5
1.3 Fiduciary Assurance	5
1.4 Procurement Framework	5
1.5 Roles and Responsibilities	6
2. VISION AND OBJECTIVES	7
2.1 Vision	7
2.2 Objectives	7
2.3 Value for Money in Bank-Financed Projects	8
2.4 Fit for Purpose	8
3. PRINCIPLES AND CONSIDERATIONS	8
3.1 Dynamic Approach	8
3.2 Principles	8
3.3 Considerations	9
3.4 Risk-Based Engagement	9
3.5 Procurement Standards	9
3.6 Application	10
4. SCOPE AND APPLICABILITY	10
4.1 Procurement Process	10
4.2 Types of Procurement Interventions	10
4.3 Applicability	10
4.4 Non-Bank Financing	10
4.5 Policy Based Lending (PBL)	11
5. ELIGIBILITY	11
5.1 Eligible Bidders	11
5.2 Conditions of Participation	11
5.3 Exceptions	11
5.4 Conflict of Interest	13
5.5 Documentary Requirements	13
5.6 Unfair Competitive Advantage	13
5.7 Types of Associations	13
5.8 Mandatory Associations	13
5.9 Other Requirements	14
5.10 Changes in Associations	14

6. PROHIBITED PRACTICES AND SANCTIONS	14
6.1 Coverage	14
6.2 Remedies	14
6.3 Sanctions	15
6.4 Documentation Requirements	15
6.5 International Organizations	15
7. MISPROCUREMENT	16
7.1 Misprocurement	16
7.2 Other Remedies	16
8. APPLICATION OF THE POLICY	17
8.1 Objective	17
8.2 Assessments	17
8.3 Country Procurement Capacity Development	17
8.4 Broad-based Engagement	18
8.5 General Elements of a Public Procurement System for Goods and Works	18
8.6 General Elements of a Public Procurement System for Consulting Services	19
8.7 Language	20
8.8 Rejection of Bids	20
8.9 Rejection of Abnormally Low Bids	20
8.10 Development of Borrower's Industry	20
8.11 Transfer of Knowledge	21
8.12 Environmentally and Socially Responsive Procurement (ESRP)	21
8.13 E-Procurement	21
8.14 Secondhand Goods	22
9. Procurement under Private Sector Operations	22
9.1 Procurement under Private Sector Operations	22
9.2 Financing Public Private Partnerships (PPP)	23
9.3 Financial Intermediaries	24
10. CO-FINANCING	24
10.1 Types	24
10.2 Parallel Financing	25
10.3 Joint Financing	25
10.4 Mutual Reliance	25
11. PROCUREMENT PLANNING	25
11.1 Procurement Plan	25
11.2 Advance Contracting and Retroactive Financing	26

12. MONITORING AND EVALUATION-----	26
12.1 <i>Monitoring and Evaluation</i> -----	26
12.2 <i>Procurement Information</i> -----	26

ABBREVIATIONS AND ACRONYMS

ADB	African Development Bank
ADF	African Development Fund
BPAR	Bank Procurement Assessment Report
BETF	Bank-Executed Trust Fund
BOO	Build, Own, Operate
BOOT	Build, Own, Operate, Transfer
BOT	Build, Operate, Transfer
COI	Conflict of Interest
BPS	Borrower Procurement System
EA	Executing Agency
ESRP	Environmental and Socially Responsible Procurement
FA	Financing Agreement
GOE	Government Owned Enterprise
IFIs	International Financial Institutions
LCB	Limited Competitive Bidding
LIB	Limited International Bidding
MDBs	Multilateral Development Banks
OCB	Open Competitive Bidding
PAR	Project Appraisal Report
PBO	Policy-Based Operation
PDAP	Procurement Development Action Plan
PPP	Public Private Partnership
PP	Procurement Plan
RETF	Recipient-Executed Trust Fund
REOI	Request for Expressions of Interest
RFP	Request for Proposals
RFQ	Request for Quotations
SOE	State Owned Enterprises
SSS	Single Source Selection
TOR	Terms of Reference
UN	United Nations

1. MANDATE, ROLES AND RESPONSIBILITIES

- 1.1 General.** The establishment of sound procurement principles and practices is an important driver for good public financial management and effective economic governance in Regional Member Countries (RMCs) of the Bank¹. At the national level, good procurement leads to increased fiscal space and can facilitate, *inter alia*, realization of RMCs' socio-economic and environmental sustainability policy objectives. At the project level, procurement efficiency and effectiveness directly affects the costs and time required for implementation and ultimate performance of Bank financed projects.
- 1.2 Bank Mandate.** The Bank by its mandate is required to ensure that the proceeds of any financing² by it are used only for the purposes for which such financing was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences³. This is the fiduciary responsibility of the Bank.
- 1.3 Fiduciary Assurance.** To ensure that financing is applied in ways that adequately secure the Bank's mandate while maximizing development effectiveness, the Bank encourages and promotes sound, fair, transparent and well performing procurement systems in RMCs. The Bank believes that the existence of such systems in a country provides the best fiduciary assurance to the use of resources.
- 1.4 Procurement Framework.** This Policy sets out the principles that apply to Borrowers'⁴ procurement of goods⁵, works⁶ and acquisition of consulting services⁷ financed in whole or in part by the Bank. It is supplemented by three additional documents: (i) Methodology for Implementation of the Procurement Policy of the African Development Bank (Methodology); (ii) Operations Procurement Manual for the African Development Bank (OPM); and (iii) Procurement Toolkit for the African Development Bank (Toolkit). Collectively, the Policy, the Methodology, the OPM and

¹ 'Bank' refers to the African Development Bank, the African Development Fund (ADF), the Nigeria Trust Fund (NTF), as well as any other funds administered by the African Development Bank, and any or all of these entities, as the context may require.

² 'Financing' means any loan or grant provided by the ADB, the ADF, the NTF, or other funds administered by these entities.

³ See Agreement Establishing the African Development Bank, Article 17(1)(h); see also Agreement Establishing the African Development Fund, Article 15(5) and Agreement Establishing the Nigeria Trust Fund, Article 4.1.

⁴ 'Borrower', as used herein, refers to a borrower or a recipient of any type of financing from the Bank.

⁵ "Goods" are tangible items and include commodities, raw material, machinery, equipment, and industrial plant.

⁶ References to "goods" and "works" in this Procurement Framework include related services such as transportation, insurance, installation, commissioning, training, and initial maintenance. It also includes non-consulting services which are bid and contracted on the basis of performance of a measurable physical output, such as drilling, aerial photography, satellite imagery, mapping, and similar operations. "Works" includes the total work involvement in a construction contract, including the "Permanent" works or finished product as specified, and the "Temporary" works required by the contractor for the execution and completion of the contract.

⁷ "Consulting Services" comprise services of an intellectual and advisory nature.

the Toolkit⁸ are referred to as the “Procurement Framework”⁹. This Policy is the overarching document and in the event of a conflict between it and any other documents of the Procurement Framework, this Policy will prevail. In the event of any inconsistency between the remaining documents comprising the Procurement Framework, the following hierarchy shall be followed: the Methodology, the OPM, and the Toolkit.

1.5 Roles and Responsibilities. The roles and responsibilities of the Borrower and the Bank are detailed in the respective Financing Agreements¹⁰ entered into by the parties for a particular development intervention.

- (a) **Financing Agreement (FA).** The FA governs the legal relationship between the Borrower and the Bank. This Policy (and the Procurement Framework) shall apply for procurement of goods, works and consulting services as detailed in the FA. No party, other than the parties to the FA shall derive any rights therefrom or have any claims to the proceeds of the Financing. The rights and obligations of the Borrower vis-à-vis the providers of goods, works and consulting services for the project, are governed by the solicitation documents¹¹, and by the contracts signed by the Borrower and the respective supplier, contractor, and/or consultant.
- (b) **Borrower’s Role.** The Borrower is responsible for the implementation of Bank financed projects and ensuring the integrity of the procurement process, from commencement at the planning stage, through to the bidding, contract award and management until final closure.
- (c) **Bank’s Role.** The Bank will satisfy itself through reviews¹² and other modalities that the procurement process including procurement procedures, documents, bid¹³/proposals evaluations, award recommendations, and contracts is carried out in accordance with the provisions of the FA. The Procurement Plan¹⁴ cleared by the Bank shall specify which review

⁸ “Methodology” contains detailed approaches for conducting diagnostics at country, sector and project level, identification of capacity gaps and assessment of capacity building initiatives and action plans, and includes monitoring and evaluation approaches and benchmarks. “Operations Procurement Manual” includes the details of various procurement methods and modalities and guidance on their selection and use for a specific intervention. “Toolkit” contains directional guidance in the form of standardized documents and templates, case studies and guidance notes.

⁹ The Procurement Framework does not apply to the Bank’s internal or corporate procurement. While consistent with the core principles set out in this Policy, the Bank’s corporate procurement is subject to specific rules and regulations set out in the Bank’s relevant Presidential Directives.

¹⁰ ‘Financing Agreement’ shall mean an agreement with a Borrower by virtue of which the Bank undertakes to provide financing for any project and shall include grant and technical assistance or lines of credit agreements as well as any other financing provided by the Bank.

¹¹ Solicitation documents include, pre-qualification documents, bidding documents including contract forms, Request for Quotations for goods, works and non-consulting services as well as Request for Proposals for consultancy services.

¹² Reviews include prior and post review, procurement audits, independent procurement review, specialized audits, reports from third parties and other modalities as may be determined by the Bank.

¹³ “Bid” or “Bidder” shall have the same meaning as “Tender” or “Tenderer”.

¹⁴ See Section 11.1 of this policy

procedures shall apply in respect of the different categories of goods, works and consulting services to be financed, in whole or in part under the FA.

2. VISION AND OBJECTIVES

2.1 Vision. The Procurement Framework supports Bank financed operations and enhances procurement systems of the Regional Member Countries in order for them to obtain optimal value for money based on mutually supporting and reinforcing principles of economy, efficiency, effectiveness and equity. This is achieved using processes and procedures that are competitive, fair and transparent.

2.2 Objectives. The Bank's Procurement Framework aims to achieve the above vision through an approach calibrated to address specific contextual needs of RMCs. The policy, procedures and practices that comprise this Procurement Framework advance the Bank's overall development agenda, while ensuring compliance with its mandate and fiduciary obligations. The Procurement Framework positions the Bank to:

- (a) tailor application of procurement modalities and methods to reflect more effectively specific RMC needs and requirements;
- (b) customize transactional approaches by selecting appropriate procurement procedures, methods and solicitation documents to ensure that these are 'fit for purpose' and satisfy specific requirements of individual Bank operations with greater efficiency;
- (c) obtain optimal value for money throughout the procurement cycle;
- (d) incorporate new concepts, approaches, methods and procedures more readily as the Bank's business changes, innovations occur, and lessons emerge over time;
- (e) work more effectively and seamlessly with development partners on enhancing harmonization and use of Borrowers' procurement and other administrative and contract management systems;
- (f) develop synergies between such areas as public sector management and governance and anti-corruption;
- (g) achieve greater cost effectiveness, efficiency and value addition in the use of resources, thereby maximizing development effectiveness and minimizing exposures to fiduciary risks; and
- (h) increase downstream gains for RMCs and development of national or regional supplying, contracting and consulting industries.

Application of the Procurement Framework enables the Bank to more effectively promote good procurement in its RMCs that delivers optimal value for money and rewards innovation. Fair and equitable processes promote supplier development and strengthen public confidence in government.

2.3 Value for Money in Bank-Financed Projects. The procurement process should ensure that the Borrower obtains optimal benefits with the resources utilized. This may include not only the initial costs but also those over the economic life of the procured item, the quality of the output, fitness for purpose, timeliness, and the achievement of other development objectives of the Borrower. Value for Money (VfM) is driven by the four broad principles of economy, efficiency, effectiveness, and equity. In supporting VfM, the Bank discharges its broader mandate of maximizing development effectiveness while minimizing exposure to fiduciary risk through enabling its Borrowers to undertake cost-effective and efficient procurement.

2.4 Fit for Purpose. To realize VfM in procurement, the Bank seeks to ensure that the procurement methods and procedures applied by the Borrower in any given intervention, and the nature and extent of Bank oversight, are 'fit for purpose'. Under this approach, the procurement modalities should appropriately reflect the specific needs and circumstances of the situation. While standardized approaches may be used for low value, low risk or low complexity procurement, in other cases, where procurement complexity, risk and impact are high, a customized approach with transaction-specific documentation and method may be the most efficient and effective approach. In yet other cases, the circumstances of the Borrower may mandate exclusively diagnostic or advisory procurement interventions by the Bank to promote the optimal balance of development effectiveness and fiduciary compliance.

3. PRINCIPLES AND CONSIDERATIONS

3.1 Dynamic Approach. The achievement of optimal VfM throughout the procurement process requires a dynamic yet risk-based application of the core principles of economy, efficiency, effectiveness and equity with requisite clarity, proportionality and predictability through processes and outcomes that are fit for purpose.

3.2 Principles. 'The above requires a careful and considered balancing of the following mutually supporting and reinforcing principles in a procurement activity:

- (a) **Economy** is that measure of pricing of goods, works and/or services that expends the minimum quantum of resources to obtain an agreed level of output;
- (b) **Efficiency** is the appropriate management (including in relation to time and cost) of a given quantum of resources to obtain an agreed level of output;
- (c) **Effectiveness** is the ultimate achievement of specific results or outcomes taking into account Borrower socio-economic and other development objectives; and
- (d) **Equity** is achievement of a fair and credible outcome by being impartial and evenhanded through processes that are transparent.

3.3 Considerations. Proportionality in approach requires: (i) applying the above procurement principles in a balanced manner in any Bank-financed procurement intervention so that each principle is appropriately calibrated and optimized taking into consideration RMC and project contexts to ensure VfM; and (ii) framing of procurement-related risk mitigation and capacity building measures consistent with sound project performance and development effectiveness. **Predictability**¹⁵ in approach requires a rigorous application of these principles in consistent ways to promote uniformity of outcomes in substantially similar contexts. **Clarity**¹⁶ in approach requires express and reasoned articulation in commonly understood ways.

3.4 Risk-Based Engagement. The nature and extent of the Bank's procurement assistance to the Borrower and intensity of fiduciary oversight will depend on the quality and performance of the procurement system used for implementation of the project. Such assistance can be provided at country, sector or individual project levels. The Bank's engagement in the Borrower's procurement processes shall be risk-based and may include either advisory work that is systemic in impact or project-specific transactional oversight, including prior or post reviews of individual procurement transactions, procurement audits or a combination of these. For states in fragile situations, for example, where local institutional capacity is limited, the Bank may undertake a more active role in management and oversight of the procurement process, including providing technical assistance or the use of procurement agents (recruited by and reporting to the Borrower under the applicable Procurement Plan), until local capacity is sufficiently adequate to handle such transactions.

3.5 Procurement Standards. In applying the Procurement Framework to specific development interventions, the Bank shall require that the procurement arrangements of the Borrower comply to the Bank's satisfaction¹⁷ with, among others, the following requirements which are further elaborated in the Methodology, OPM and Toolkit:

- (a) strategic procurement planning;
- (b) transparent and, unless other approaches are adequately justified, open competitive processes;
- (c) optimized balance between price and quality to generate desired development results on a sustainable basis;
- (d) credible recourse and impartial and equitable dispute resolution;
- (e) integrity throughout the procurement process including during contract

¹⁵ **Predictability** refers to uniformity, certainty, expectedness and obviousness in the outcome of the procurement decisions under similar RMC and project conditions.

¹⁶ **Clarity** refers to precision, lucidity, consistency and transparency in setting out the Executing Agency's procurement requirements and in the procurement process.

¹⁷ In the context of application of Borrower Procurement Systems (BPS), in particular cases, local laws, rules and procedures, while broadly consistent, may nevertheless derogate in measurable ways from the core principles and considerations set out in the Policy and yet remain acceptable in terms of the Bank's fiduciary risk and assurance mandate, provided certain pre-conditions are satisfied. See Section 8.1, Footnote 35.

- management and closure;
- (f) quality assurance, compliance checks, audits, inspections, and, as appropriate, third party verification; and
- (g) credible mechanism to address complaints of bidders and providers of goods, works and consulting services.

3.6 Application. Application of these principles and considerations will require, as necessary, a review of Borrowers' regulatory laws, regulations and institutions, a focused market analysis (e.g. country, sector/industry), executing agency capacity assessments and risk-based categorization of the nature and complexity of the procurement involved.

4. SCOPE AND APPLICABILITY

4.1 Procurement Process. The Procurement Framework applies to all stages of the procurement cycle within a given Bank financed development intervention.

4.2 Procurement Interventions. At a transactional level, procurement interventions include:

- (a) at the pre-bidding stage - procurement planning and packaging in the context of project design, development of preliminary, and subsequently, detailed cost estimates;
- (b) at the bidding stage - issuance of solicitation documents, invitation, submission and evaluation of bids/proposals; and
- (c) at the post-bidding stage - contract award and execution, including contract management and administration.

Procurement interventions at the country or sector level include provision of diagnostic and other similar advisory services.

4.3 Applicability. The Procurement Framework applies to all contracts for goods, works, and consulting services financed in whole or in part by the Bank both for sovereign and non-sovereign guaranteed operations. The Procurement Framework also applies to trust funds administered by the Bank where the procurement is carried out by the Borrower (Recipient Executed Trust Funds (RETF)) and where the agreement establishing such funds stipulates the use of the Bank's procurement framework. For trust funds executed by the Bank (Bank Executed Trust Funds (BETF)), the Corporate Procurement Policy of the Bank shall apply.

4.4 Non-Bank Financing. For contracts not financed by the Bank, the Borrower may adopt other procedures. In such cases the Bank shall be satisfied that the procedures to be used will fulfill the Borrower's obligations to cause the project to be carried out diligently and efficiently and that the goods, works, and consulting

services to be procured: (i) are of satisfactory quality and are compatible with the rest of the project; (ii) will be delivered or completed in a timely manner; and (iii) are priced so as not to affect adversely the economic and financial viability of the project.

- 4.5 Program Based Operations (PBO).** The Procurement Framework does not apply to PBOs that provide general budget financing that is subject to the Borrower's implementation processes and systems, unless the Bank and the Borrower agree on specific purposes for which such financing proceeds may be used, in which case, the Procurement Framework shall apply.

5. ELIGIBILITY

- 5.1 Eligible Bidders¹⁸.** Firms and individuals offering goods, works and consulting services for contracts financed by the Bank will satisfy the country of origin requirements of the Bank¹⁹.

- 5.2 Conditions of Participation.** In connection with any contract to be financed in whole or in part by the Bank, the Bank does not permit a Borrower to deny participation in a procurement process or award to an eligible bidder or disqualify any such bidder for reasons unrelated to its capability and resources to successfully perform the contract.

- 5.3 Exceptions.** As exceptions to the foregoing paragraphs 5.1 and 5.2:

- (a) Firms of a country or goods manufactured in a country may be excluded if: (i) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods from, or payments to, a particular country, person, or entity.
- (b) Government or State-owned enterprises (GOEs/SOEs) and Parastatals in the Borrower's country are eligible to participate only if they can establish to the Bank's satisfaction that they: (i) are legally²⁰ and financially²¹ autonomous, (ii) operate under commercial law²², and (iii) are not dependent agencies of the

¹⁸ Bidders could be natural persons, or firms. Firms could be enterprises, joint ventures or partnerships.

¹⁹ Conditions of eligibility are detailed in the Operations Procurement Manual. The eligibility conditions will be explicitly mentioned in the solicitation documents.

²⁰ "Legally autonomous" means a legal entity separate from the state government and any public administration.

²¹ "Financially autonomous" means not receiving any significant subsidies or budget support from any public entity or government, and not being obliged to pass financial surplus to the same except through dividends to shareholders.

²² "Operating under commercial law" means being vested with legal rights and liabilities similar to any commercial enterprise, including, being incorporated or established by statutory charter under local law; having the right: (i) to enter into legally

Borrower or Sub-Borrower²³ unless the Bank is satisfied that the resulting conflict-of-interest situations have been satisfactorily resolved. The Bank may, however, agree on the hiring of government universities, institutions or research centers if the services are deemed to be of a unique and exceptional nature, in particular because of the absence of a suitable private sector alternative or because their participation is critical to project implementation.

- (c) A firm sanctioned by the Bank in accordance with paragraph 6.3 of this Policy or the Sanctions Procedures of the African Development Bank Group²⁴ shall be ineligible during the period determined by the Bank, to be awarded a Bank-financed contract, or to benefit from a Bank-financed contract, financially or in any other manner.
- (d) Government officials and civil servants of the Borrower's country may only be hired in the Borrower's country under goods, works and consulting services contracts, either as individuals or as members of a team of experts provided that such hiring does not conflict with any employment or other laws or regulations or policies of the Borrower's country and if they: (i) are on leave of absence without pay; and (ii) are not being hired by the agency they were working for, unless a reasonable period has elapsed between such former agency employment and any proposed engagement²⁵; and (iii) their hiring would not create a Conflict of Interest (COI) in accordance with this Policy. The Bank may agree that professors, experts or scientists in specialized fields from universities, educational institutions, and research institutes be contracted individually on a part-time basis provided this is permitted under employment or other laws, regulations or policies of the Borrower's country and that there is no conflict of interest.
- e) Where international organizations, such as those of the United Nations (UN)²⁶ execute Bank financed contracts under an agreement signed with the Borrower, the Bank may accept the procurement procedures and eligibility criteria of such international organizations²⁷ to apply and firms and individuals from all countries may be permitted to offer goods, works and consulting services.

binding contracts; (ii) to sue; (iii) to be sued; and (iv) to borrow money being liable for the repayment of debts and being able to be declared bankrupt.

²³ "No dependent agency of the Borrower or Sub-Borrower ...shall be permitted to bid" means not bidding for contracts to be awarded by the department or agency of the State, Government or public administration which, under the applicable law of the State, is the reporting or supervisory authority of the GoE/ SoE, or has the ability to exercise influence or control over the enterprise or institution other than under a Force Account procedure.

²⁴ Integrity and Anti-Corruption Framework of the African Development Bank.

²⁵ Such period shall be as set down by the Bank from time to time but shall not be less than 12 calendar months from the date of the termination of such former agency employment.

²⁶ The United Nations Organizations refers to the United Nations departments, specialized agencies and their regional offices, funds and programmes.

²⁷ The Bank will be satisfied that the procedures of such international organizations provide satisfactory fiduciary assurance.

- 5.4 Conflict of Interest.** A situation of COI is one in which a consultant/contractor/supplier may be perceived to provide biased services so that its own or its affiliates interests prevail over the interests of the client. Consultants recruited by Borrowers are required to provide professional, objective and impartial advice, and at all times hold the Client's interests paramount, without any consideration for future work, and to strictly avoid conflicts with other assignments or their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out their assignment in the best interest of the Borrower.
- 5.5 Documentary Requirements.** The risk of a COI must be identified in the solicitation documents. The related provisions for the avoidance or mitigation of COIs (such as disqualification, cooling-off periods, and corporate separations) must be clearly stipulated in the solicitation documents.
- 5.6 Unfair Competitive Advantage.** Fairness and transparency in the procurement process require that bidders, or their affiliates, competing for a particular contract do not derive a competitive advantage from any specific information or knowledge that they may possess and that directly relates to the contract in question. Unfair competitive advantage is also possible if the specifications or the Terms of Reference in a solicitation document are not sufficiently broad and puts specific firms at an unfair advantage compared to their competitors. For goods and works, Borrowers shall avoid brand names²⁸ and adopt generic specifications based on relevant characteristics and/or performance requirements, unless use of brand names is necessary for the purposes of standardization, or if the requirements may be met only with a unique product or technology. For consulting services assignments, Borrowers will make available at the time of requesting proposals to the short-listed consultants all information that may give any consultant a competitive advantage.
- 5.7 Types of Associations.** Associations shall be specifically defined to comprise joint ventures, sub-contracting or sub-consulting arrangements. Any firm may bid or prepare a proposal independently or in association either with domestic and/or foreign firms to complement their respective areas of experience, capability, and expertise, strengthen the technical responsiveness of their bids or proposals and make available bigger pools of resources and expertise or provide better approaches and methodologies. Associations may be for the long term (independent of any particular assignment) or for a specific assignment. The solicitation documents will specify the maximum percentage that may be sub-contracted or sub-consulted as well as the minimum share for joint venture partners.
- 5.8 Mandatory Associations.** The Bank does not normally accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association

²⁸ References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference.

between firms but encourages associations with qualified national and/or regional firms. The Bank may after careful assessment, and for the purpose of the development of local capacity or other considerations of equity, agree with Borrowers that, under special circumstances and conditions: (i) a degree of preference be granted to associations that include a national firm holding a share in the association above a predetermined level; or (ii) specialized nominated national sub-contractors be used in works contracts; or (iii) a minimum number of national key experts be proposed by consulting firms. In addition, the Borrower may require transfer of knowledge or transfer of technology as a key component of an assignment or of the scope of works or services according to procedures acceptable to the Bank. In all such cases, the Bank will have to be satisfied that such provisions do not adversely affect the key requirements of efficiency, economy and competitiveness, and that these provisions are consistent with the national laws of the Borrower country.

5.9 Other Requirements. If the Borrower employs an association in the form of a joint venture, the association shall appoint one of its members to represent it. All members of the joint venture shall be jointly and severally liable for the entire contract, and they, or their representative with a power of attorney, shall sign the contract. However, minor partners with less than a predetermined share may not be jointly and severally liable for the entire value of the assignment.

5.10 Changes in Associations. Once a short list of consultants or list of prequalified bidders is approved, and solicitation documents issued, any changes in associations shall be permissible only with the approval of the Borrower.

6. PROHIBITED PRACTICES AND SANCTIONS

6.1 Coverage. Borrowers and all beneficiaries of Bank financed operations, including suppliers, contractors, service providers, consultants, concessionaires and their agents (whether declared or not), as well as sub-contractors, sub-consultants, and any personnel thereof, shall observe the highest standards of transparency, ethics and integrity during the procurement, execution and implementation of Bank-financed contracts and shall fully adhere to the Bank's Integrity Framework²⁹.

6.2 Remedies. The Bank will not provide its no objection to a proposal for award if it determines that the bidder recommended for award, has, directly or indirectly, engaged in prohibited or sanctionable practices³⁰ in competing for the contract in

²⁹ The Bank's Integrity Framework comprises the Sanctions Procedures of the African Development Bank Group, the Bank's Whistleblowing and Complaints Policy, this Procurement Policy and any other applicable policies and procedures including their updates.

³⁰ Sanctionable or prohibited practices are defined in Sanctions Procedures of the African Development Bank Group. August 2013.

question. The Bank may also apply its remedies if a contractor, supplier or consultant has, directly or indirectly, engaged in prohibited or sanctionable practices during contract implementation. The Bank may apply remedies³¹ if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of Bank financing engaged in prohibited practices during the procurement or the implementation of a Bank financed contract.

6.3 Sanctions. The Bank will sanction a firm or an individual, at any time, in accordance with the Bank's prevailing sanctions procedures³², including by publicly declaring such firm or individual ineligible either indefinitely or for a stated period of time to: (i) be awarded a Bank-financed contract; and (ii) be a nominated³³ sub-contractor, consultant or sub-consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract.

6.4 Documentation Requirements. For contracts financed by the Bank, it may require Borrowers to include in solicitation documents, an undertaking by firms or individuals, to observe, in competing for and once awarded, in executing a contract, the above provisions and those in the Bank integrity framework. Failure by firms to abide by the terms of such representation shall result in sanctions in line with the Bank's Integrity Framework. The Bank may, in addition, at the request of the Borrower, agree that a clause be included in the solicitation documents, requiring firms to observe the country's laws against fraud and corruption. The Bank may also require that the solicitation documents, include a clause to permit it to inspect all accounts, records and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by the Bank. In applying this provision, the Bank may audit firms, whether as bidders or when awarded a Bank financed contract, as well as their personnel, agents, sub-consultants, sub-contractors, service providers, suppliers and/or their employees. Such provisions may be waived when a contract is being procured under the Borrower's procurement system when the Bank is satisfied that the Anti-Fraud and Corruption provisions in the Borrower's system provide adequate safeguards.

6.5 International Organizations. Where international organizations, such as those of the UN execute Bank financed contracts under an agreement signed with the Borrower, in accordance with paragraph 5.3(e), the Bank may agree for specific provisions to apply regarding: (i) their employees; and (ii) contracts between them and their suppliers and service providers. In such cases, the Bank may agree that

³¹ See Section 7.

³² A firm or an individual may be declared ineligible to be awarded a Bank-financed contract (i) upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, or otherwise decided by the Bank; and ((ii) as a result of temporary suspension or early temporary suspension in connection with an on-going sanctions proceeding.

³³ A nominated sub-contractor, consultant, sub-consultant, manufacturer, supplier, or service provider is one which has been either: (i) included by the bidder in its prequalification application, bid or proposal because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements or are accounted for in the technical evaluation of the consultant's proposal, or (ii) appointed by the Borrower.

such organizations apply their own rules and regulations for investigating allegations of fraud or corruption, subject to terms and conditions agreed with the Bank, including an obligation to periodically inform the Bank of the decisions and actions taken. The Bank, however retains the right to invoke suitable remedies.

7. MISPROCUREMENT

- 7.1 *Misprocurement.*** The Bank does not finance expenditures under a contract for goods, works and consulting services if the Bank concludes that such contract: (i) has not been awarded in accordance with the provisions in the FA and as further elaborated in the Procurement Plan, to which the Bank provided no objection; (ii) could not be awarded to the bidder or consultant otherwise determined successful due to willful dilatory conduct or other actions of the Borrower resulting in unjustifiable delays, the successful bid or proposal being no longer available, (iii) the wrongful rejection of any bids or proposals; or (iv) involves the engagement of a representative of the Borrower, or a recipient of any part of the proceeds of the financing, in violation of the Bank's Integrity Framework. When there are legitimate differences in judgment between the Bank and the Borrower, or a misunderstanding as to the requirements of the FA, the Bank may agree not to cancel the portion of the proceeds of the financing allocated to the misprocured contract, but instead to reallocate it to other components of the project.
- 7.2 *Misprocurement under Contracts awarded using the Borrower Procurement System:*** For contracts procured under the Borrower Procurement System, the Bank will, normally, accept the judgment of the Borrower provided; (i) the procedures and processes of review by the Borrower have been correctly followed consistent with the provisions of the law and regulations in the Borrower's system; and (ii) there has not been, in the opinion of the Bank, an obvious and intolerable misapplication of the Borrower's policy.
- 7.3 *Other Remedies.*** The Bank may, in addition, exercise other remedies provided for under the FA. Even in circumstances where a contract is awarded after obtaining a no objection from the Bank, the Bank may still declare misprocurement and apply in full, its policies and remedies regardless of whether the loan has closed or not, if it concludes that such no objection or endorsement was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower or in circumstances where the terms and conditions of the contract have been substantially modified without the Bank's no objection.

8. APPLICATION OF THE POLICY

- 8.1 Objective.** The Bank's objective is to increase reliance on the Borrower Procurement System, essential to sustained and effective development and consistent with its fiduciary and development effectiveness mandate. The Bank will agree to the use, by the Borrower, of its national (or applicable³⁴) procurement system for specific Bank financed transactions if the Bank determines that, for these transactions, the principles of this Policy are substantially met³⁵. This will be done based on a comprehensive assessment of the Borrower's procurement systems conducted by the Bank (often with other donors and stakeholders). For those transactions where the Bank determines that the fiduciary risks in the use of Borrower's systems are high, the provisions of this Policy will apply. In such cases, a roadmap may be agreed with the Borrower for strengthening its procurement systems to ensure their acceptability in future.
- 8.2 Assessments.** In order to determine compliance and performance of Borrowers' Procurement Systems, the Bank shall conduct country, sector, project and Executing Agency (EA) level assessments against this policy's objectives and principles. The approach for conducting such assessments is given in the Methodology and other documents constituting the Procurement Framework. The major attributes of an acceptable system are outlined in the Methodology.
- 8.3 Country Procurement Capacity Development.** The Bank shall address country procurement capacity development in a holistic way: (i) by supporting public procurement systems to deliver credible outputs; (ii) by assisting the private sector to enable them to bid effectively; (iii) by enabling civil society to play a more effective oversight role; and (iv) by relying on national systems whenever possible to better align with RMCs governments' commitments to the strategic use of public procurement. The Bank's support to strengthening procurement in RMCs will aim to promote sound and internationally recognized procurement principles and practices. The Bank's support for procurement capacity development will be country-focused and be based on a Procurement Capacity Development Action Plan (PDAP) which will be incorporated into the Country Strategy for each RMC. Development of the action plan being country-based shall involve participation from all stakeholders concerned, and include national and sector-based capacity development initiatives. It shall be supported, as necessary, at the project level. The Bank's commitment to this end will support use of local procurement systems through a progressive and

³⁴ Can be the applicable framework at the national, sub-national or executing agency level.

³⁵ Any Borrower Procurement System (BPS) must be broadly consistent with the core principles and considerations set out in this Policy. However, in practice, application of a BPS may result in derogations from the Policy. In such cases, such derogations are only permissible in any Bank financed intervention provided (i) the assessed fiduciary risk impact of such derogation is considered marginal or *de minimus* in the applicable Bank Procurement Assessment Report (BPAR); and (ii) the Borrower has agreed to provide adequate fiduciary assurances in terms of time-bound commitments to undertake acceptable intermediate and longer-term remedial actions as part of its applicable Procurement Capacity Development Action Plan (PDAP).

measured approach to enhance national (and sectorial) institutional capacity while minimizing fiduciary risks.

8.4 Broad-based Engagement. Achieving success in strengthening Borrower Procurement Systems requires, at a broader level, addressing complementary areas such as competition, anti-trust, industrial and trade policy, to ensure policy coherence and sustainable results. The Bank's overall strategy shall be to support RMCs in designing and implementing all-encompassing public procurement operational performance initiatives and also continue to strengthen institutional and legal frameworks. This strategy will aim at longer-term engagement based on dialogue, coordinated actions of all stakeholders, and mechanisms that support follow-up activities and provide for sustainability.

8.5 General Elements of a Public Procurement System for Goods and Works.

General Principles. For procurement of goods and works, the Bank requires that, the imperatives of VfM are met and the processes used are fair, competitive and transparent. An "Open Competitive Bidding (OCB)" process with wide and free bidding notification, and no restriction on participation of eligible bidders should normally be used. However, depending on the specific situations when reasonably priced offers are optimally obtained through a restricted bidding exercise, the Bank may agree to the use of a "Limited Competitive Bidding (LCB)" process. In exceptional cases where it presents a distinct advantage over other competitive methods, the Bank may agree to the use of a "Direct Procurement (DP)" process. The attributes of the above processes are given below and are further outlined in Annex 2 and the OPM.

- (a) **Open Competitive Bidding Methods.** Under OCB methods, advertising is free, wide and public and there is an equal opportunity for all eligible bidders to participate (unless, for specific reasons, the Bank has agreed to the participation of only specific categories of bidders). The bidding is carried out by means of widely used and internationally accepted solicitation and contract documents with fair, transparent and equitable qualification and evaluation criteria and provisions for protest and their redress. The specifications shall be generic and no unfair competitive advantage shall be available to any bidder. OCB methods may be with or without pre-qualification.
- (b) **Limited Competitive Bidding Methods.** Under LCB methods, various procedures may be used, including priced quotations from a limited number of bidders. Depending on the circumstances (value and complexity of procurement), the imperatives of VfM shall be met and the procedures used shall be fair, competitive and transparent. LCB shall normally be used for the procurement of simple goods and works where the estimated amount of contracts is small (monetary thresholds for such contracts will be established by the Bank). The Bank may also agree to the use of LCB methods for contract amounts higher than the monetary thresholds if it is satisfied that the

goods and works being procured are of a complex or specialized nature, that there are only limited suppliers, contractors or service-providers who can submit acceptable offers and that the solicitation document is being issued to all potential bidders.

- (c) ***Evaluation and Contract Award Procedures.*** Bid evaluation aims at identifying the best-evaluated bid. The solicitation documents shall clearly specify the relevant bid evaluation criteria, in addition and separately from qualification requirements, as well as the format for submitting bid prices, and the procedure through which the evaluation will be conducted. It shall also indicate the manner in which these criteria will be applied for the purpose of determining the best-evaluated bid. Such a bid may be defined on the basis of different procedures and criteria, including inter alia the lowest-evaluated bid (qualified and responsive bid with the lowest price) or the most economically advantageous bid. The winning bidder may be invited for technical negotiations, however, price negotiations shall not be conducted except in exceptional circumstances to be outlined in the OPM.

8.6 General Elements of a Public Procurement System for Consulting Services.

General Principles. The Bank requires acquisition of consulting services to be conducted through competition among qualified short-listed firms in which the selection is based on the quality of the proposal and, where appropriate, on the cost of the services to be provided. The shortlist shall be prepared based on wide and free publication of Requests for Expressions of Interest (REOIs) with no restriction on the participation of consultants except for eligibility conditions. In addition, there shall be equal opportunity for all eligible consultants to participate (unless, for specific reasons, the Bank has agreed for the participation of only specific category of consultants). When consulting services may be optimally obtained through a pre-qualification exercise, the Bank may agree to use of such process in appropriate circumstances. In exceptional cases, the Bank may agree to a less or non-competitive process to be used. Single-Source Selection (SSS) of consultants may be appropriate only if it presents a clear advantage over competition. Details of the attributes and the methodology to be followed are outlined in the Methodology and the OPM.

- (a) ***Determining the Highest-Ranked Proposal.*** During the evaluation of proposals, the highest-ranked proposal is defined on the basis of technical and quality considerations that have been clearly stipulated in the Request for Proposals. Evaluation criteria shall include but not be limited to, experience in similar assignments, local experience and presence, qualifications of key personnel proposed for the assignment, and suitability and quality of the proposed methodology. Quality of the services is normally the principal factor and price a secondary consideration. For assignments of a straightforward technical nature and limited scope and duration, price may

be given more weight in the evaluation. The firm that submitted the highest-ranked proposal is normally invited to negotiate the contract.

8.7 Language. The solicitation documents (and the ensuing contract) shall normally be prepared in one of the Bank's official languages, selected by the Borrower: English or French. In addition, for procurement below thresholds established by the Bank, the solicitation document may, at the Borrower's option, and with the approval of the Bank, in addition be prepared in the national language of the Borrower's country (or the language used nation-wide in the Borrower's country for commercial transactions). If the solicitation documents are prepared in two languages, bidders shall be free to submit their bids and proposals in either of these two languages. In such a case, the contract signed with the winning bidder awarded the contract shall be written in the language in which its proposal was submitted and this language shall be the one that governs the contractual relations between the Borrower and the winning bidder. If the procurement is under prior-review, the Borrower shall provide the Bank with a translation of the contract in the Bank's official language in which the solicitation document was prepared. For procurement processes under Borrower Procurement Systems (BPS), the national language may be used. In such cases, the procurement audits should be submitted to the Bank in English or French.

8.8 Rejection of Bids. Rejection of all bids is justified when there is lack of effective competition, or no bid is substantially responsive to the solicitation documents or when bid prices are substantially higher than existing budget. Lack of competition shall not be determined solely on the basis of the number of bidders. A Borrower may, after the Bank's prior "no objection", reject all bids. If all bids are rejected, the Borrower shall review the causes justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids. Rejection of all bids should not be done solely for the purpose of obtaining lower prices. The process to be followed in such cases is outlined in the OPM.

8.9 Rejection of Abnormally Low Bids³⁶. Under exceptional circumstances, the Bank may agree with a Borrower to reject a bid if it is satisfied that the price offered is so low as to give rise to concerns to the ability of the supplier or contractor or consultant concerned to perform the contract. Such rejection will normally be done after giving the concerned bidder an opportunity to explain the reasons for the price submitted and after due analysis of such explanations. The process to be followed in such cases is outlined in the OPM.

8.10 Development of Borrower's Industry. The Bank may consider, under special circumstances and conditions, accepting provisions of RMCs' national procurement regulations that promote or encourage the development of local industries through the application of domestic (and regional) preference margins, 'set asides', 'offsets',

³⁶ A bid which price in combination with other constituent elements of the submission is so abnormally low in relation to the subject matter of the procurement that it raises concerns with the procuring entity as to the ability of the supplier or contractor that presented it to perform the procurement contract.

preference schemes or similar innovative approaches under Bank financed operations. The Bank shall review such provisions and schemes to determine if they meet the key policy principles and do not unduly undermine the core considerations of economy, efficiency, effectiveness and equity.

8.11 *Transfer of Knowledge.* Transfer of knowledge is a critical element of development and the Bank encourages its consideration as a principle in all procurement processes. Works and Supply and Install solicitation documents may include provisions mandating and remunerating contractors for transfer of knowledge to their local partners and/or sub-contractors and service providers in technical as well as managerial matters. Goods solicitation documents may include provisions mandating suppliers to provide training to their local counterparts when providing technical assistance services. When the assignment for non-consulting and consulting services includes an important component for the training of Borrower staff or national consultants, the Bank may require that the scope of works/services and/or TORs indicate the objectives, nature, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the consultant's contract and in the budget for the assignment.

8.12 *Environmentally and Socially³⁷ Responsive Procurement (ESRP).* The Bank recognizes the need for Borrowers to develop and sustain demand for particular types of goods or production processes with characteristics that are considered necessary or desirable as part of their environmental and/or social policies. This includes in particular the encouragement of the use of “green” or energy efficient products through national procurement policies that promote sustainable end-use as well as encourage industry innovation or mandate more equitable production standards. The Bank may agree, after assessment of the Borrowers’ environmental and social provisions in their procurement policies, bid qualification requirements and/or evaluation criteria that take into consideration requirements for ‘green’ or sustainable goods, works and consulting services and gender sensitivity. However, such qualification requirements and/or qualitative evaluation criteria shall be objectively framed in internationally recognized and industry-accepted methodologies and procedures to ensure a fair and equitable qualification and/or bid evaluation process. In assessing the acceptability of ESRP criteria in bid qualification requirements and/or evaluation criteria, the Bank will carefully consider price differentials, the number of manufacturers or suppliers located in a particular country or the Africa region, and the impact on markets of excluding particular products or suppliers or limiting eligibility to a selected group of qualified “green” products or categories of bidders.

8.13 *E-Procurement.* The Bank encourages Borrowers to continually modernize their procurement systems including incorporating e-procurement elements because it ensures efficiency, economy and transparency in the procurement process.

³⁷ Social responsiveness includes gender sensitivity and equality.

Borrowers may use e-procurement systems for communications with bidders, for advertisements, notices and amendments, distribution of procurement documents, submission of bids or proposals, provided the Bank is satisfied with their adequacy and efficiency including specifically the security of information and of any signatures.

8.14 Secondhand Goods. Under some circumstances, the procurement of secondhand goods or refurbishment of expensive equipment may be more economic and efficient than the procurement of new supplies. The Bank may agree under exceptional circumstances to the procurement of secondhand goods. Secondhand goods shall not be procured through a competitive process that also allows bids with new goods. The process to be followed in such cases is outlined in the OPM.

8.15 Leasing and Renting. There may be certain situations under which, leasing and renting of equipment or facilities may be the most economic and efficient means to achieve VfM. The Bank may agree under exceptional circumstances to the leasing and renting of such equipment or facilities. The process to be followed in such cases is outlined in the OPM.

9. PROCUREMENT UNDER PRIVATE SECTOR OPERATIONS

9.1 Procurement under Private Sector Operations, financed by the Bank, is guided by the following principles:

- (a) **Established Commercial Practices.** The Bank's concerns for the appropriate use of funds and for economy and efficiency apply equally to its private sector operations. Private sector enterprises³⁸ often meet these concerns by following established private sector or commercial practices other than formal open competitive bidding for their procurement. Nevertheless, wherever appropriate, the Bank will encourage the use of competitive bidding methods by its private sector Borrowers or non-borrowing clients, particularly for large contracts.
- (b) **Appropriate Procurement Methods.** The Bank will satisfy itself that private sector borrowers' clients use appropriate procurement methods which ensure a sound selection of goods and services at fair market prices and that they are making their capital investments in a cost effective manner. Careful procurement planning that takes into account the particular needs of the enterprise is essential for the Bank's evaluation and agreement.

³⁸ To be eligible for the Bank's private sector financing, an enterprise must be privately owned and managed, i.e. more than 50 percent of its voting shares must be held by private individuals or firms. Entities with more than 50 percent of their shares held by the government and/or government entities or agencies ("government owned entities") shall be ineligible for the Bank's private sector financing. In such situations, however, while the Bank's Procurement Framework for public sector procurement will apply, the Bank may consider private sector financing on an exceptional basis in those circumstances in which the Bank's involvement is consistent with the basic objectives of private sector development and direct foreign investment.

- (c) **Market Price.** Contracts awarded by private sector Borrowers shall be in the best financial interest of the client company as distinct from the sponsor(s). Where a shareholder of the client company or one of its affiliates, including parent companies and affiliates of such parent companies, is also a contractor or supplier to the project, the Bank will satisfy itself that the costs are in line with current market prices and the original cost estimates in the operation report, and that the contract conditions are fair and reasonable. The Bank will not finance costs that exceed market prices.

9.2 Financing Public Private Partnerships (PPP)³⁹

The Bank may provide financing either to the public sector entity or to the Private Sector concessionaire under a PPP arrangement. The following principles apply for PPP operations:

- (a) Where the Bank is participating in financing a project or a contract procured under PPP arrangements, and the financing is provided either to the public sector entity or directly to a private sector entity implementing the PPP contract, procurement procedures acceptable to the Bank shall be used for the award of the contract.
- (b) If the private concessionaire or entrepreneur under a BOO/BOT/BOOT⁴⁰, concession or similar type of contract was selected or will be selected under OCB procedures⁴¹ acceptable to the Bank (which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facility offered, the cost charged to the end user, other income generated for the concessionaire or entrepreneur by the facility, and the period of the facility's depreciation), the said concessionaire or entrepreneur shall be free to procure the goods, works, and consulting and non-consulting services required for the facility from eligible sources, using its own procedures. In this case, the Project Appraisal Report (PAR), and the FA shall specify the types of expenditures to be incurred by the said concessionaire or entrepreneur towards which Bank financing will apply.
- (c) However, if the said concessionaire was not selected under OCB procedures in accordance with paragraph 9.2 (b) above, the

³⁹ A Public Private Partnership (PPP) is an exercise by the public sector to obtain execution (or operation) of public services over a prescribed period through a private provider, which undertakes efficient and Vfm operation of such services through output or performance-based agreements. The public sector retains ultimate responsibility to the public for the service concerned.

⁴⁰ BOO: Build, Own, Operate; BOT: build, Operate, Transfer; BOOT: Build, Own, Operate and Transfer.

⁴¹ For projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems, open competitive bidding means: 1) international competitive bidding, or 2) national competitive bidding for contracts of an estimated value below thresholds set by the Bank. In addition, direct invitation such as LIC procedures may be considered. All such procedures shall be subject to Bank review before acceptance.

concessionaire shall nonetheless be allowed to procure the goods, works, and services required for the project and to be financed by the Bank, using its own procedures if it is established that the following three key principles are met:

- (i) the process for selecting the concessionaire has demonstrated sufficient fairness, transparency and the opportunity for competition;
 - (ii) the process for selecting the concessionaire is free of fraudulent, corrupt, collusive, coercive and obstructive practices, and in compliance with all applicable laws and regulations in the concerned country; and
 - (iii) the outcome of the concession contract is fair and reasonable under the specific circumstances of the project in terms of price, quality and risk allocation in relation to prevailing market practices.
- (d) In cases where the Bank is providing financing to both the Public Sector entity as well as the private sector concessionaire in the same PPP project, it will take adequate care that both transactions are handled independently of each other and follow strict due-diligence procedures, including the requirement that the members of the Bank's team handling these two transactions are different.

9.3 Financial Intermediaries. When the Bank provides funds to an intermediary financial institution, such as an agricultural credit institution, a development finance company, or other financial intermediary, to finance sub-loans either to public sector beneficiaries (such as autonomous commercial enterprises in the public sector for the partial financing of sub-projects), or to private beneficiaries (such as small and medium sized enterprises), the procurement under the sub-loan will be undertaken by the respective beneficiary in accordance with established commercial practices acceptable to the Bank. However, even in these situations, open competition may be the most appropriate procurement method for the purchase of large single items or in cases where large quantities of like goods can be grouped together for bulk purchasing.

10. CO-FINANCING

10.1 Types. The Bank may co-finance projects or programs with other International Financial Institutions (IFIs) including Multilateral Development Banks (MDBs), as well as bilateral aid agencies, or with other donors (including those in the private sector) with different procurement and integrity policies and eligibility rules in regard to the origin of works, goods and non-consulting and consulting services. The Bank

may do such co-financing on a parallel⁴² or joint⁴³ basis.

10.2 Parallel Financing. Where Bank financing is provided on a parallel basis with other financiers⁴⁴, the Bank's Procurement Framework shall apply to the contracts financed solely by the Bank. The respective procurement and integrity policies and eligibility rules of each co-financier apply to the contracts that it finances. The Bank shall satisfy itself with the scope and specifications for the relevant goods, works and non-consulting services, and the terms of reference for consulting services, to ensure that the contracts not being financed by the Bank will deliver the benefits to the project as intended.

10.3 Joint Financing. Where Bank financing is provided on a joint basis with other financiers, it will require as a condition for its financing that the Bank's Procurement Framework applies unless the Board of Directors authorizes a waiver allowing for the application of the procurement policy, rules and guidelines of one of the other co-financiers.

10.4 Mutual Reliance. In particular circumstances, the Bank may enter into co-financing arrangements through the signing of "Agreements for Mutual Reliance of Procurement Decisions (Mutual Reliance Agreements)"⁴⁵. Such agreements shall recognize essential equivalence of the underlined principles of each other's procurement policies, and acceptability of the procedures and permit reliance by co-financiers on those of the designated lead co-financier. The roles and responsibilities of the co-financiers in such cases will be as indicated in the Mutual Reliance Agreements, but in general, the lead co-financier will be responsible for carrying out of the procurement process, applying its own procurement policy and internal review and clearance procedures, and making final decisions and applying remedies on behalf of the co-financiers.

11. PROCUREMENT PLANNING

11.1 Procurement Plan. The preparation of a realistic procurement plan (PP) for a project is critical for its successful monitoring and implementation. The PP should

⁴² "Parallel-financing" means an arrangement whereby the Bank and one or more parties other than the Borrower individually finance separate categories of expenditures, project components or sub-components, contracts or packages of the same project, or of the same part of a project.

⁴³ "Joint-financing" means an arrangement whereby the Bank and one or more parties other than the Borrower collectively finance common categories of expenditures, project components or sub-components, contracts or packages of the same project, or of the same part of a project.

⁴⁴ "Financiers" in this document exclude the Borrower.

⁴⁵ Such agreements can, for example, be with other MDBs that follow broadly harmonized procurement policy and procedures. The circumstances in which mutual reliance applies require binding legal agreements, including embedded waivers in respect of such policy provisions as eligibility (i.e. unrestricted universal procurement), conflict of interest, integrity and fraud and corruption, and may require full or partial waivers from the Bank's Board of Executive Directors with regard to other Bank policies.

be elaborated in coordination with the overall project implementation plan and manual during the early stages of project preparation, and be linked to the Borrower's overall procurement strategy. It accounts for the internal Borrower and Bank project review processes, in particular in regard to capacity and risk assessments, and refers to project implementation arrangements (appropriate organizational structure and responsibilities, procurement schedule and related disbursement plan, review thresholds, nature and extent of Bank supervision and audits, and more generally Monitoring and Evaluation (M&E) and reporting).

Accordingly, as part of the preparation of the project, the Bank requires that the Borrower prepare and, furnish to the Bank for the Bank's approval, a detailed PP, however tentative, for the entire scope of the project. The Borrower shall implement the approved PP and any updates and modifications subsequently approved by the Bank. After financing negotiations, the Bank shall arrange the publication on its external website of the approved initial PP and all subsequent updates. The Bank may also agree to a simplified PP for small Grants and Trust Funds depending on their scope, complexity and size.

11.2 Advance Contracting and Retroactive Financing. The Borrower may consider, for the timely implementation of a project and in certain circumstances, to proceed with the initial steps of the procurement of goods, works, non-consulting and consulting services before signing the related FA. The procurement which is referred to as advance contracting procedures and methods to be used shall be in accordance with the Bank's Procurement Framework for the eventual contracts to be eligible for Bank financing, and the Bank shall review the process used by the Borrower. A Borrower undertakes such advance contracting at its own risk, and any "no objection" given by the Bank prior to the approval of the financing by the Board does not commit the Bank to provide financing for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to signing of the FA is referred to as Retroactive Financing and is only permitted within the limits specified in the FA.

12. MONITORING AND EVALUATION

12.1 Monitoring and Evaluation. Borrowers are required to prepare and maintain clear documents and records relating to the procurement process, from planning to contract management, for the purpose of effective monitoring and evaluation of the procurement cycle by the Borrower and to facilitate review thereof by the Bank. To this end, the Borrower shall, in agreement with the Bank, frame critical procurement performance indicators for such purpose and ensure ongoing measurement and monitoring thereof in Bank financed projects and programs.

12.2 Procurement Information. The Bank encourages wide publication by the Borrower of relevant and credible bidding and contract information. The use of e-procurement

platforms are encouraged as the data generated is reliable and available online. Information disclosure, in particular regarding advertising, procurement processes, and disclosure of contracts information is considered critical to good procurement practice⁴⁶.

⁴⁶ “Disclosure and Access to Information: Developing Africa Openly and Transparently: The Policy”. African Development Bank. General Secretariat. May 2012.