EBRD Outreach Seminar
Public Procurement in EBRD Projects
Czech Republic

Ministry of Finance
Ministry of Foreign Affairs
Chamber of Commerce
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Outreach Seminar Modules

Part 1: Introduction & Objectives
Part 2: Business Opportunities
Part 3: Procurement & EBRD
Part 4: Design, planning, responsibilities
Part 5: PP&R and Tender Documents
Part 6: Tender opening and evaluation
Part 7: Consultant Services - Projects
Part 8: Contract management
Part 9: Contract implementation
Part 10: Strategy for Business

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Energy – Goods
What can go wrong in a Procurement Process

Case # 1
Veljko Sikirica
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EBRD Procurement Department

Principles, project cycle, procurement relations, inputs

PART 4: PROCUREMENT IN PROJECT DESIGN, PLANNING, RESPONSIBILITIES
Procurement in Project Design

What is Procurement?

A process that involves policies and procedures to acquire goods, works and consulting services

A key activity in the Project Cycle

It has a major impact on the successful implementation of Bank projects
Project cycle

Final repayment  
Initiation  
Concept clearance  
Concept/ structure review  
Final review  
Board approval  
Signing  
Disbursements  
Repayments  
[Sale of equity]  
Final maturity

EBRD Project cycle

Initiation  
EBRD Review  
Signing  
Disbursements  
Repayments  
Sale of equity  
Final maturity  
Completion

Procurement is all over the cycle

From the “Concept” to “Disbursement” stages and beyond
procurement main inputs per stage

- CPAR, OECD-DAC
- Drawings, design, BOQ
- Procurement plan
- Risk assessment
- Mitigation plan
- Institutional Capacity Assessment (ICA)
- Tender documents
- Information systems
- Supervision plan
- Manuals
- Project document
- Loan agreement
- Audits and inspection

evaluation reports and data

initiation preliminary procurement plan

concept review capacity assessment

final review procurement plan and tender packages

disbursement tendering and supervision

board approval tender documents

principles, project cycle, procurement relations, inputs

→ procurement planning
Importance of procurement planning

Key pre-requisite for successful project implementation

- Inadequate procurement plans will cause delays
- Inappropriate packaging will lead to cost increases
- Poor planning will lead to improvisation of actions, shortcuts and failure to comply with the agreed procedures
- On the other hand, adequate procurement planning

- Limits scope of non-compliance with agreed procedures and corruption.
- Improves transparency and predictability
- Provides a good basis for monitoring

Benefits of procurement planning

- Lower costs
- Better accountability
- More participation of tenderers
- Better advertisement
- Improved management
- Planning
Procurement planning

**Why**
- Determine quantities
- Check PIP

**How**
- Define procurement method
- Define packages
- Establish lead time, steps, deadlines
- Define specs
- Quality standards
- Cost estimate
- Budget

**When**
- Carry out and control unit
- Monitoring reports
- Source of funding and target industry

**Who**
- Bank, Client, Contractors/Suppliers and Consultants
- Responsibilities

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Responsibilities of the Bank

- Assists in procurement planning
- Reviews notifications and advertising
- Ensures that process is consistent with agreements
- Reviews procurement actions

Responsibilities of the Bank continued

- Reviews request for proposals and short lists of consultants
- Reviews prequalification and tender documents
- Reviews tender and proposal evaluation reports
- Reviews contracts
- Verifies withdrawal applications before disbursement
- Reviews contract modifications
### Responsibilities of Client Agency

<table>
<thead>
<tr>
<th>Appoints project unit</th>
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<tr>
<td>Performs planning activities</td>
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<td>Notifies prospective tenderers of tender opportunities</td>
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<td>Prepares prequalification and tender documents, and request for proposals</td>
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<td>Receives and evaluates tenders and proposals</td>
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<td>Awards contracts</td>
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<tr>
<td>Manages contracts</td>
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### Responsibilities of contractor, supplier or consultant

| Obtain tender documents or accept invitation to submit proposals for consultant services |
| Submit tenders or proposals in accordance with the requirements set forth in the tender documents or request for proposals |
| Supplies goods or deliver services in accordance to the terms and conditions of the contract |
Bank’s input at different stages of Project Implementation

- Procurement Plan
- Tender documentation
- Open tendering
- Tender evaluation and contract
- Procurement monitoring and Bank review
- Procurement queries and complaints

Energy – Goods
Disqualification of a tenderer in a Procurement Process
Case # 2

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Principles, Relationships, Critical aspects

PART 5: PP&R & Tender Documents

Public procurement principles

Defined in Section 2 of the Procurement Policies and Rules (PP&R)

Open procurement based on international tendering when appropriate

In line with WTO Government Procurement

Economy, efficiency, quality of results, contractual protection and timely completion
Procurement Principles

- Transparency
- Efficiency
- Economy
- Fairness (Equity)
- Competition
- Due Process Accountability

EBRD Procurement Policies and Rules

- Introduction
- Principles and Considerations
- Procurement Rules for Public Sector Operations
- Procurement in Private Sector Operations
- Procurement of Consultant Services
Specific objectives of PP&R

The specific objectives of the procurement policies and rules of the Bank contribute to:

- Achieve economy and efficiency in both public and private sector operations
- Achieve transparency and accountability in public administration
- Ensure that public sector contracts should be normally awarded on the basis of open competitive tenders
- Apply laws and practices for procurement which not discriminate between foreign and local products, suppliers or contractors
- Apply procedures which are transparent and fair

Procurement method
Open tendering – by default

Key Principles

- Timely adequate notification and advertising
- Essential and fair conditions of contract
- Appropriate time for tender preparation and presentation

Equal treatment of tenderers

- Sound explicit evaluation criteria
- Non discriminatory requirements & specifications
Open tendering
Key principles continuation

Precise, transparent currency provisions

- Ensure minimization exchange rate risks
- Provide opportunity to use multiple currencies
- Permit fair and transparent price evaluation: for conversion into single currency, exchange rate specified in tender documents

Prequalification options

Single Specific Contract

Groups of Similar Contracts

- If to be awarded over period of time: Limit on number or total awards value is acceptable based on tenderers resources
- List must be periodically updated
Prequalification result

All meeting requirements must be prequalified

Notification of results to all who submitted application

Qualifications shall be verified at time of award

Award may be denied if requirements no longer met

Roads – Works
Assessment of Experience in Construction

Case # 3

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Eligible Tenderers

- Independent firm
- Voluntarily constituted joint venture
- Mandatory association is not acceptable

Exception to eligibility

Firms or goods from a country may be excluded if:

- Client’s law or official regulation prohibits commercial relations with that country
- Compliance with decision of UN Security Council prohibits imports from, or payments to, that country

Nuclear Safety – eligibility may be restricted to the Donors Funds member countries
Consulting firm that prepares / implement project is disqualified for:

- Supplying goods
- Constructing Works
- Supplying Services (does not apply to turn-key contracts)

Exception to eligibility
Conflict of interest

Prohibition on fraud and corruption

Corrupt practice
Fraudulent practice
Coercive practice
Collusive practice
Definitions on corruption

**Corruption**
- Offering, giving, receiving or soliciting anything of value to influence actions

**Fraud**
- Any act or omission, including misrepresentation, which misleads in order to obtain financial or other benefit or to avoid an obligation

Definitions on corruption
continuation

**Coercion**
- Impairing or harming or threatening any party to influence the actions

**Collusion**
- Arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly actions
Roads – Works
Alleged Non Performance

Case # 4

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Principles, Relationships, Critical aspects

Tender Documents
Tender document (TD)

Contents

• All necessary information for tender preparation

Clarity

Wording to encourage international competition

Complete, clear, precise description of following aspects:

• Tender/opening/evaluation/award procedures
• Scope of Goods/Works/Services
• Delivery/installation/completion schedules
• Performance, maintenance, warranty requirements

Tender Documents

Mandatory STDs for Bank-financed contracts

Minimum changes acceptable to Bank

Changes introduced only in appropriate sections (TDS, SCC)

No changes acceptable to invariant sections (ITT, GCC, Forms, etc.)

Other internationally recognized documents acceptable to Bank, when no Bank STD is available
Tender document continuation

Requirements

• Clear sound evaluation criteria
• Cost of TD
• Fee to reflect cost of printing and delivery
• Should not discourage participation

Typical structure of STD

Instructions to Tenderers
Tender Data Sheet
Evaluation criteria and Qualification Criteria
Tender forms
Schedule of requirement
General conditions of contract
Special conditions of contract
Contract forms
Invitation for Tenders (not part of the TD)
The Bank has entered into a licence agreement with the FIDIC. According to the terms of the license agreement, it gives entities involved in the development, tendering and implementation of EBRD-financed projects free access to the FIDIC MDB GCCC:

Although the Bank supports the use of the FIDIC-MDB Harmonised General Conditions of Contract for Construction, this form of contract is not mandatory for Bank financed projects – while Bank’s STD, are mandatory!

Wherever appropriate, standard forms of contract incorporating generally accepted international conditions should be used. The use of standard contract forms for building and civil works will ensure comprehensive cover, general acceptability of its provisions, savings in cost and time in tender preparation and review, and a solid background of legal case histories.

The following Conditions of Contract would be generally acceptable to the Bank though shall be subject to the Bank’s no objection as part of its review of the project procurement plan.
Other forms of contract

Any of the contract forms prepared by the International Federation of Consulting Engineers (FIDIC)

Any other internationally recognised form of contract e.g. the Conditions of Contract for Smaller Contracts in the World Bank’s Standard Bidding Documents

Procurement of Works, Smaller Contracts, January 1995; New Engineering Contract prepared by the Institute of Civil Engineers, UK

Relationship in the procurement process

Client

Tender documents, purchase order or contract

Loan agreement

RFP, proposal and contract

PQ or Tender documents, contract

Supplier

Consultant

Contractor
PART 6: TENDER OPENING AND EVALUATION

**Tender opening**

**Procurement process**

*Works and goods*

- **Preparation**
  - Identification of needs

- **Prequalification**
  - Advertisement

- **Tendering**
  - Invitation to tender

- **Execution**
  - Signing of contract

- **Warranty period**
  - Last day
**Contracting agency’s responsibilities**

- Issue clear and balanced tender documents
- Provide sufficient time for tenderers to prepare tenders
- Provide timely responses to tenderers’ questions
- Evaluate tenders based only on criteria established in tender documents
- Award the procurement contract
- Communicate results to all parties at the same time
- Address complaints promptly and fairly

**Tender opening**

- Public opening: rationale
- Minutes to be recorded and signed
- Single stage (one envelope)
  - TENDER FORM
  - TECHNICAL DATA
  - PRICE SCHEDULE
  - TENDER SECURITY
- Tender opening is not part of the evaluation
Energy – Goods
Planning and Packaging Tenders

Case # 5

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Large or complex works

If high tender-preparation cost may discourage tenderers

• Custom designed Equipment
• Industrial Plants
• Specialized Services
• Complex IT contracts
• Specialized Services

Turn-key, DB or Management contracts

Tender opening
Prequalification
Purpose
- Ensure that only qualified tenderers participate

Criteria: Based only on qualifications
- Historical contract non performance
- Financial Situation
- Experience
- Resources (key personnel, equipment, installations)

Energy – Goods
Conflict of Interest

Case # 6

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Tender opening
continued

TWO-STAGE TENDERING

Types of projects
• Industrial projects
• Complex equipment
• Projects with different technical solutions
• Computer and communications systems
• First stage
  • Invite technical proposals
  • Discuss and finalize technical specs and commercial conditions
• Second stage
  • Invited priced tenders on revised specifications

Tender opening
Provisions normally included in ITT of TD

Tender Validity

• Tenders must be valid for period specified in TD
• Must be sufficient for obtaining clarifications to Tenders
• Evaluate and compare Tenders
• Obtain all no objections and approvals
• Award contract
Transport – Works
Integrity of Tender Process

Case # 7

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Client option of Tender Securing

- Tender Security
- Amount and form specified in TD
- Remain valid for 4 weeks beyond tender validity period
- Released to unsuccessful tenderers after contract signing
- Tender Securing Declaration
**Tender pricing**

**Turnkey Contracts**
- Quoted for installed plant, equipment comprising:
  - Equipment, transportation, insurance, installation, commissioning
  - Associated works
  - All other services (design, maintenance, operation, etc.)
  - All duties, taxes and other levies

**Works**
- Quoted for unit or lump-sum prices, comprising all duties, taxes and other levies
- Tender allowed to obtain all inputs (except unskilled labor) from eligible sources

**Pricing options**

**Fixed Price**
- Simple Goods/Works contracts to be completed within 18 months

**Adjustable Price**
- Contracts extending beyond 18 months
- Adjustment reflects cost changes in major components (labor, equipment, materials, fuel)
Currency provision for goods and works

**Purpose**
- Clients to determine currency of tender
- Multiple currencies allowed but converted to single currency for tender comparison using exchanged rate specified in TD
- Client may require tenderers to quote local portion of tender price in local currency
- Payments will be made in currency or currencies of contract

Client may require that tenderers:
- Quote tender price entirely in local currency
- Foreign-currency payment requirements (in up to 3 foreign currencies) representing foreign inputs, expressed as % of tender price
- Exchange rates used in the calculations

Currency Conversion
- For price comparison only
- Procedures specified in Tender Document
- Tender prices quoted converted to a single currency
- Selected by Client (local currency or fully convertible foreign currency) specified in TD
Payment terms and conditions:
Works contracts

- Advance for mobilization, construction equipment and materials
- Regular progress payments
- Reasonable retention amount until completion

Alternative tenders

Alternative tenders
- TD should specify
- If alternatives allowed, how considered
- Submission procedure
- How prices offered
- Evaluation method

Clarification or alteration of tenders
- Client may ask tenderers to clarify their tender
- Tenderers shall not be asked/permitted to change tender substance or price
- Exception: Tenderer’s acceptance of Client’s correction of arithmetical errors in tender
**Clarifications**

- Always in writing
- Permissible and warranted
- Clarification meetings not permitted
- Cannot change substance of tender or price

**Confidentiality**

- Evaluation must stay confidential after public opening until publication of contract award
- Information on examination, clarification and evaluation of tenders and award recommendations shall not be disclosed to Tenderers or others not officially concerned
Tender examination
continued

Examination of tenders

- Is tender complete? And signed?
- If required, is tender security attached?
- Computational errors
- Major deviations from tender conditions
- Technical scrutiny and substantial responsiveness
- Detailed evaluation only for substantially responsive tenders

Client ascertains:

Compliance with eligibility requirements

- Properly signed
- Presence of required securities or signed declaration
- Tender is substantially responsive
- Generally in order

If tender is not substantially responsive tenderers not permitted to correct or withdraw material deviation or reservation and tender not considered further (rejected)
Tender examination
continued

Major deviations
• Scope, quality and performance affected
• Client’s rights or suppliers’ obligations limited in substantial way
• Rectification would unfairly affect ranking of other substantially responsive tenders

Tender examination
continued

Deviations from critical provisions
• Tender security
• Applicable law
• Taxes and duties
• Defect liability
• Functional guarantees
• Patent and indemnity
• Limitation of liability
Examples of major deviations

- Stipulating price adjustment when fixed price tenders were invited
- Non responsive to technical specifications offering different design or product without substantial equivalence to performance parameters
- Not conforming to critical dates, start up, delivery, installation or construction schedule
- Exceeding authorised limits of subcontracting

Tender examination continued

Examples of major deviations

Refusing important responsibilities and liabilities such as performance guarantee, insurance coverage

Those deviations specified in the instructions to tenderers as requiring rejection of the tender: contractor participating, as other than a subcontractor, in other tenders
Examples of material deviations

- Tender Security not valid at tender opening
- Tender is not properly signed
- Non conformance with specifications
- Delivery period beyond limit specified
- Change of Law governing the contract

Tender examination

continued

Tenders with deviations

• If otherwise acceptable deviations can be assigned a monetary value, to be added as penalty for evaluation purposes, such a tender may be considered substantially responsive
Construction – Works
Evaluation of Specific Experience

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Tender evaluation

OBJECTIVE
• Secure goods or works or services at most economical cost
• Price only one (important) factor

OTHER FACTORS
• Time of delivery or completion
• Terms of payment
• Terms of guarantee
• Technical merits, capacity, productivity
• Operating costs
• Efficiency
• Resale or depreciated value
Evaluation and comparison of tenders

Purpose

- Determine tender cost to Client using specified procedure/method
- Allow comparison of tenders
- Determine lowest evaluated tender (not necessarily lowest submitted price) and selected for award

Price Evaluation

- Correction of arithmetical errors (modifies tender price)
- Adjustments for nonmaterial deviations & reservations (for evaluation purpose only: do not modify tender price)
- Price adjustment provisions not taken into account

Tender evaluation continued

Evaluation criteria

- Shall be stated in tender documents
- Ideally all factors quantified in monetary terms

Technical features

Commercial features
Tender evaluation continued

Technical features

- Operating costs
- Fuel
- Training
- Maintenance cost
- Standardization
- Resale value / depreciation
- Ownership cost
- Capacity
- Productivity

Tender evaluation continued

Commercial features

- Price
  - Covert and adjust read out price to make tender prices comparable
  - Ignore price adjustment over contract period
  - Add local transportation to delivery point
  - Evaluate loss caused by late delivery
  - If acceptable, evaluate variation in warranty
  - Evaluate variations at specified interest or rate of discount (IRR)
Tender evaluation
continued

Comparison of tender prices

• National or foreign tenderers offering Goods from within Client’s country):
  • Price quoted
  • Include all duties and taxes already paid on components, raw materials or previously imported foreign goods

Tender evaluation
continued

Comparison of tender prices

• Foreign or national tenderers offering goods from abroad
  • Prices quoted CIF or CIP
  • Tenderers may be asked to additionally quote tender FOB, FCA, CFR or CPT
Post qualification of tenderers

Applicable if no Prequalification was undertaken

Qualification criteria specified in TD

Client determines whether Tenderer whose tender was lowest-evaluated, has capability and resources to effectively carry out the contract

If Tenderer meets qualification criteria contract is awarded

If tenderer does not meet criteria, tender is rejected and similar determination conducted for Tenderer whose tender was the next lowest-evaluated tender
Who is awarded the contract

**Goods and Works**

- The Tenderer whose tender has been determined to be the lowest evaluated tender and is substantially responsive to the tender documents

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**Roads – Works**

**Clarification of Tenders during Evaluation**

**Case # 10**

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EBRD Procurement Department
### Selection and Contracting of Consultants by the Client

**PART 7: Consultant Services in Projects**

<table>
<thead>
<tr>
<th>Selection Process – Project Related Consulting Services</th>
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<tr>
<td><strong>Procurement Plan</strong></td>
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</table>
Who is Awarded the Contract

Consulting Services

The Participant with the **best evaluated proposal** in accordance with the selection method used.

Six selection methods:

- Quality and Cost Based Selection (QCBS)
- Quality Based Selection (QBS)
- Least Cost Based Selection (LCBS)
- Fixed Budget Selection (FBS)
- Consultants Qualifications Selection (QCS)
- Single Source Selection (SSS)

Who is Awarded the Contract

**Independent Firm**

**Voluntarily constituted JVCA**

**Mandatory Association is not acceptable**
Eligibility - Conflict of Interest

Consulting firm that prepares / implement project is disqualified for:

- Supplying Goods
- Constructing Works
- Supplying Services (does not apply to turn-key contracts)

The importance and necessity of the Consultancy Services

Assist the Bank's client with:

- Project Preparation e.g. feasibility studies, design, environmental impact assessment

Project Implementation:

- capacity building, institutional development, eg. project implementation units – role of a partner
- project supervision: Independent Engineer – very clearly defined contractual role
The importance and necessity of the Consultancy Services

Assist the Bank with:
- due diligence
- project monitoring, lenders technical supervisor

Overview of Procedures for Consultant Selection

<table>
<thead>
<tr>
<th>Direct Selection</th>
<th>Selection from Shortlist</th>
<th>Proposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>(below EUR 75,000)</td>
<td>(EUR 75,000 – EUR 300,000)</td>
<td>(EUR 300,000 and over)</td>
</tr>
<tr>
<td>Select consultant</td>
<td>Calls for expressions of interest (not obligatory)</td>
<td>Calls for expressions of interest</td>
</tr>
<tr>
<td>Negotiations</td>
<td>Long list</td>
<td>Long list</td>
</tr>
<tr>
<td>Contract</td>
<td>Shortlist</td>
<td>Shortlist</td>
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<tr>
<td></td>
<td>Select consultant</td>
<td>Proposal</td>
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<td></td>
<td>Negotiations</td>
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<tr>
<td></td>
<td>Contract</td>
<td>Select consultant</td>
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<td>Negotiations</td>
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<tr>
<td></td>
<td></td>
<td>Contract</td>
</tr>
</tbody>
</table>
Consultant Selection Methods

Quality Based Selection (QBS)
• Most important criteria: technical qualification / relevant experience

Price as a factor:

Quality Cost Based Selection (QCBS)
• 2 Envelope System. The norms are:
  • Technical proposals: weight of 80% and only when technical thresholds are met
  • Financial proposal: weight 20% (similar to the EU)

Quality-and-Cost Based Selection (QCBS)

Main Features
• Competition among short-listed firms only
• Combined quality and cost evaluation
• Relative weights of quality and cost depend on nature of assignment
• Cost as evaluation factor used judiciously
**QCBS**

**Steps**

- Preparation of TOR
- Preparation of cost estimate and budget
- Advertising
- Preparation of short list
- Preparation-Issuing RFP
- Receipt of Proposals
- Technical Proposal evaluation
- Price Proposal public opening
- Price Proposal evaluation
- Combined Quality-Cost evaluation
- Contract Negotiation and award

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**QCBS**

**TOR**

- Responsibility: Client
- Preparation: Specialist in area of assignment
- Contents: not too detailed
- Specify Objectives
- Compatible with budget
- List of surveys and services
- List and chronogram of Outputs
- Specify Training and Knowledge Transfer
**Cost Estimate and Budget**

- Client’s reliable assessment is essential
- Staff time
- Logistical support
- Physical inputs
- Categories:
  - Fees (remuneration)
  - Reimbursable expenses
- Components
  - local - foreign

**Advertising**

- General Procurement Notice (GPN)
  - Lists expected procurements and EA’s contact information
  - Client prepares and sends to Bank

**Bank arranges publication**

- Bank’s Internet website ([www.ebrd.com](http://www.ebrd.com)) Specific Procurement Notice (SPN)
Request for Proposals (RFP)

Contents

• All necessary information for proposal preparation

Clarity

• Complete, clear, precise description
• preparation/opening/evaluation/award procedures
• Scope of Consulting Services
• Completion schedules
• Clear sound evaluation criteria

RFP Typical structure

Letter of Invitation
Instructions to Consultants
Data Sheet
Technical Proposal-Standard Forms
Price Proposal-Standard Forms
Terms of Reference

Standard Contract
General Conditions of Contract
Special Conditions of Contract
Eligible Countries
Appendices
Proposal Procedures

Only One Proposal

- Short-listed Consultants may submit only one Proposal
- A Sub-consultant or individual expert may participate in more than one Proposal

Proposal Validity

- Specified in RFP
- Sufficient to
  - Evaluate Proposals
  - Negotiate Contract
  - Obtain all no objections and approvals
  - Award contract

Pricing

- Remuneration Adjustment

Provision needed if contract duration exceeds 18 months

Provision may be included for contract duration shorter than 18 months, if local or foreign inflation expected to exceed 5% per annum
Proposal Procedures

Currency Provisions

• Currency of Price Proposal

Consultants may express price in

• Any single, fully convertible currency, or
• No more than three freely convertible foreign currencies

Client may require

• Consultants to quote local portion of price in local currency

Proposal Procedures

Proposal Preparation

• Time allowed depends on assignment circumstances and complexity

Generally, at least 4 weeks

For large complex assignments:

• no more than 3 months
Proposal Procedures

Proposal Submission

• Place/deadline clearly specified in RFP
• By mail, by hand or electronically if Bank satisfied that system is secure
• Technical & Price proposals
  • in separate envelopes
  • submitted at same time (except in case of QBS where there is an option to request a Price Proposal only from the firm who submitted the best Technical Proposal).

Proposal Procedures

Proposal Opening

• Technical Proposal envelopes opened immediately by ad-hoc committee
• Evaluation of Quality takes place
• Price Proposal envelopes remain sealed
  • under custody of reputable Public Auditor / Authority
  • until publicly opened on completion of Evaluation of Quality
• Late proposals returned unopened
Proposal Procedures

Price Proposal Opening
CONTINUATION

- Client reads aloud and records
- Name of Consultant
- Technical score
- Proposal price
- Copy of record promptly sent to Bank and all who submitted proposals
- Client prepares minutes of public opening and sends it to all who submitted proposals and to the Bank

Confidentiality

- From proposals opening, until publication of contract award:

Information on examination, clarification and evaluation of proposals and award recommendations shall not to be disclosed to consultants who submitted proposals or to any person not officially concerned, except as specified in RFP
Proposal Procedures

Proposal Evaluation CONTINUATION

• Evaluation Committee evaluates Technical Proposal
• Rejects Proposals Not responsive to TOR
• Determines Technical score using evaluation criteria, subcriteria and weight specified in RFP
• Rejects proposal if
  • Fails to achieve minimum Technical Score specified in RFP
  • Prepares Technical Evaluation Report
• Obtains Bank’s no objection

Proposal Procedures

Evaluation of Quality CONTINUATION

• Client
  • Informs those who submitted proposals the Technical score obtained
  • Notifies those whose Proposals did not meet minimum marks or were found nonresponsive that their Price Proposals are being returned unopened
  • Notifies those whose proposals met minimum qualifying marks the date, time and place of public opening of Price Proposal
Proposal Procedures

Evaluation of Cost

• Price Evaluation
• Correction of arithmetical errors
• For Evaluation, cost excludes
  • Local indirect taxes
  • Income tax payable in Client’s country on remuneration for services by non resident staff in Client’s country
• For Evaluation, cost includes
  • Remuneration
  • Reimbursable expenses e.g. travel, communications

CONTINUATION

Proposal Procedures

Evaluation of Cost

• Cost score
  • Lowest-cost proposal gets score of 100 points
  • Other proposals get score inversely proportional to their cost
• Other methodology may be used (describe in RFP)
Proposal Procedures

- Evaluation of Cost CONTINUATION
  - Example
  
<table>
<thead>
<tr>
<th>Proposal Score</th>
<th>Evaluated Cost</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>4500</td>
<td>100</td>
</tr>
<tr>
<td>B</td>
<td>5000</td>
<td>90</td>
</tr>
<tr>
<td>C</td>
<td>6000</td>
<td>75</td>
</tr>
</tbody>
</table>

Proposal Procedures

Project Consulting Proposal Evaluation

Combined Quality and Cost Evaluation - Example

<table>
<thead>
<tr>
<th>Proposal</th>
<th>Quality (Technical) score</th>
<th>weight</th>
<th>QWS</th>
<th>Price score</th>
<th>weight</th>
<th>PWS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>84</td>
<td>80</td>
<td>67.2</td>
<td>100</td>
<td>20</td>
<td>20</td>
<td>87.2</td>
</tr>
<tr>
<td>B</td>
<td>87</td>
<td>80</td>
<td>69.6</td>
<td>90</td>
<td>20</td>
<td>18</td>
<td>87.6</td>
</tr>
<tr>
<td>C</td>
<td>90</td>
<td>80</td>
<td>72.0</td>
<td>75</td>
<td>20</td>
<td>15</td>
<td>87.0</td>
</tr>
</tbody>
</table>

Proposal B gets highest score and is invited to negotiate contract

* Average of scores of Evaluators or similar procedure
Proposal Procedures

Rejection of all Proposals
- By the Client w/Bank prior approval
- No substantially-responsive proposals
- Prices substantially higher than original estimate
  - After investigating in consultation with the Bank feasibility of increasing budget or reducing scope
- Reinvitation
- To obtain lower prices
- Before inviting, Client to review and consider revising
  - Short list
  - RFP Document/Conditions of Contract
  - Design/specification/scope of assignment

Type of contracts

Main types
- Lump-sum
- Time-based
- Retainer and / or Success Fee
- Percentage of construction or goods cost
- Indefinite Delivery (Price agreement)
Contract management, Monitoring, Documentation, Roles, Delays, Changes

PART 8: CONTRACT MANAGEMENT

Relationships

- COMPLAINTS
- OUTREACH
- CONTRACTOR
- SUPPLIER
- CONSULTANT
- LOAN AGREEMENT AND BANK POLICY
- TENDER DOCUMENT
- SUPPLY CONTRACT
- WORKS CONTRACT
- CONSULTING CONTRACT
- CLIENT

www.ebrd.com
Loan Contract governs Client/Bank legal relationship

- Policies applicable through incorporation in Loan Contract
- Rights and obligations of Clients/Providers governed by TD, (not policies or loan contract) and signed supply/construction/consulting contracts
- Only parties to Loan Contract derive rights thereon / claims on loan proceeds

### Governance

#### Client
- Project implementation
- Procurement
- Payment of project goods, works, and services

#### Bank
- Loan Proceeds can be used only for purposes the loan was granted with due attention to Economy and Efficiency
- Loan disbursements only at Client’s request
- Bank not a party to procurement contracts

---

### Procurement responsibility

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Economic

- Project implementation
- Procurement
- Payment of project goods, works, and services

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Contract management

Main objective is ensuring fulfillment of contractual obligations by all parties in the contract

Effective contract management is essential for effective project management

Contract administration functions

- Analyse contractual obligations
- Establish communications
- Monitor performance
- Document performance
- Correct performance variances
- Manage contract changes
Contract modification

- In writing, signed by both parties
- Clearly identify specifications revised
- Establish new delivery schedule
- Establish revised price schedule

EBRD role in Contract management

This section explains what the role of the Bank is in contract management.

- Contracts are signed by the client and contractor – the EBRD is not a party to the contract.
- Even though the tender documents use international contracts such as FIDIC, the contract is signed under national law (except NSD = English Law).
- Contract management is the responsibility of the client.
- The Bank generally requires a copy of the signed contract for its records and in order to release disbursement.
- EBRD may be requested to provide advice to the client or assistance in resolving issues and disputes which arise.
- Contract management is essential for good project implementation.
EBRD Contract Management Functions

EBRD do not provide a separate no-objection for the signature of the contract (except for consultancy contracts).

- On Goods and works contracts, the No objection is issued to the tender documents (which incorporate the draft contract) and the Evaluation Report (which selects the winner).

No changes are permitted to the contract without EBRD approval.

Ensure we have a copy of the signed contract and register contract in Contract Review and Administration (CRA) system – this is linked to IAM and disbursement cannot be made on this contract unless it is in the system.

Contract variations

Contract variations are very common especially on works contracts.

Any contract variation must be reviewed and no-obj ected by the Bank and entered in CRA.

BPS closely reviews variation orders, change orders and considers whether the changes are justified, whether the contract amendment is suitably worded, whether there are any cost implications.

Where the project has a Lender’s Monitor or project engineer these should be required to sign off on any variations.

Where substantial changes in a contract have an impact on the scope or cost of the project, this may need to be reported to Board.
Monitor performance

The client is required to provide regular project progress reports to the Bank. The BPS or OL may also receive reports from project engineers or Lender’s Monitor.

Reports must be reviewed to identify any actual or potential problems as these are reported in the Bank’s PMR reports.

In particular, any problems affecting project costs; delays in commencement; project completion deadlines; loss, death or injury; disputes or arbitration.

PART 9: CONTRACT IMPLEMENTATION

FIDIC roles, risks, claims, disputes, arbitration
FIDIC Contract issues

- Provisional sums
- Day work
  - Rates for labour, materials and use of equipment
- Price adjustment indexes
- Work program
- Insurance policies and certificates
- Tender deviations and or alternatives
- Subcontractors proposed by contractor
- Appointment of adjudicator or arbitration

FIDIC Order of precedence

- Agreement
- Letter of acceptance
- Tender
- Contract data
- Conditions of contract
- Specifications
- Drawings
- Bill of quantities or schedule of activities
- Other documents listed in the contract data as forming part of the contract
**FIDIC: Role of Contractor**

- **4.1** Construct and install the works in accordance with specifications and drawings
- **17.1** Carry certain risks (if not carried by the employer)
- **18** Insure against contractor’s risks
- **8.1** Commence and carry out the works in accordance with approved work program
- **4.8** Be responsible for safety of all activities on site
- **3.3** Carry out all engineer’s instructions
- **11.1** Correct defects as per engineer’s instructions
- **4.21** Submit monthly statements estimated value of work executed
- **20.4** Refer disputed decisions to the adjudicator
- **6.12** Warn engineer of circumstances adversely affecting the execution of the works

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**FIDIC: Role of Employer**

- **13.1** Appoint engineer and notify the contractor of appointment (contract data)
- **17.3** Carry certain risks
- **2.1** Give possession of site to the contractor
- **14.7** Pay in timely fashion to the contractor the amounts certified by engineer
- **14.2** Make advance payments to the contractor in accordance with provisions in contract data
- **10.1** Take over the site and works when engineer has issued certificate of completion
- **2.4** Notify the contractor of suspension of loan
<table>
<thead>
<tr>
<th>Clause</th>
<th>Role description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Clarify queries about conditions of contract and contract data.</td>
</tr>
<tr>
<td>3.1</td>
<td>Decide certain contractual matters representing the employer (also 3.3).</td>
</tr>
<tr>
<td>6.9</td>
<td>Approve contractor's key personnel.</td>
</tr>
<tr>
<td>18</td>
<td>Approve insurance arrangements.</td>
</tr>
<tr>
<td>8.3</td>
<td>Approve contractor's work program.</td>
</tr>
<tr>
<td>8.4</td>
<td>Decide on completion time extensions.</td>
</tr>
<tr>
<td>12</td>
<td>Check contractor's work and give notice of defects.</td>
</tr>
<tr>
<td>13.1</td>
<td>Issue variation orders.</td>
</tr>
<tr>
<td>12.1</td>
<td>Check and certify monthly certificates and determine value of work (also 14.6).</td>
</tr>
<tr>
<td>13</td>
<td>Decide on contract price increases and time extensions for compensation of events.</td>
</tr>
<tr>
<td>10.1</td>
<td>Certify that works are complete.</td>
</tr>
<tr>
<td>13.6</td>
<td>Issue instructions for dayworks.</td>
</tr>
<tr>
<td>14.13</td>
<td>Issue defects liability, certificate and certify final payment.</td>
</tr>
</tbody>
</table>
**FIDIC: The importance of the Engineer**

- The roles of the Employer, Contractor and Engineer are specified in FIDIC
- Role of Engineer crucial
- The Engineer acts for the Employer in managing the activities of the contractor.
- The Engineer issues all contractual notices to the contractor
- The Engineer determines any cost variations
- The Engineer issues the Interim Payment Certificates
- The Engineer under FIDIC is NOT independent – he acts for and on behalf of the Employer.

For this reason care must be taken when reviewing the TOR’s of the project engineers if they are provided as part of the project – they must be suitably experienced in FIDIC and must have an adequate budget.

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**FIDIC: risks in construction**

**Injury and damage risks**
- Employer’s risk
- Contractor’s risks
- Contractor’s obligation to insure

**Financial risk**
- Employer, Engineer or Contractor failure to meet contractual obligations
- Inflation if there is no price adjustment
- Technical risks
- Cost increases
- Design errors
- Unforeseen conditions especially soil
Contract Delays

Delays can occur frequently and both parties tend to blame each other. Bank may be requested to intervene but we cannot make contractual decisions on behalf of the Client (or contractor) or act as arbiter in the case of disputes.

Common delays:

- Client gives late possession of site
- Client has not obtained required permits
- Contractor, client or local authorities has not provided/approved designs
- Local construction law or practice differs from contractual basis
- Extreme weather (must be ‘unforeseen’)
- Rise in cost of materials/labour (contracts over 18 months should have a price adjustment clause).
- Lack of instructions from FIDIC engineer
- Delay in receipt of payment (could be due to EBRD Disbursement)
- Failure of sub-contractors
- Failure to issue acceptance certificate
- Disputes

Common claims

- Delayed access to site
- Climatic and environmental differences
- Personnel and labour risks
- Payment delays
- Subsoil conditions
- Availability of materials
- Variations
- Acceleration of works/extension of time
Resolve performance issues

- Engineer can issue contract notice or ‘notice to correct’
- Amend the contract to mitigate the performance issue
  - (i.e. by extending the time for completion) – Any contract change requires EBRD no-objection.
- Impose Liquidated damages where specified in the contract
- Threaten Suspension or termination of contract
- Go to Adjudication or arbitration
- Appoint Dispute Arbitration Board under FIDIC
- File with Local courts

Disputes

How to avoid

- Amicable settlement/Direct negotiations

If no resolution

- Engineer’s decision referred to adjudicator
- Adjudicator’s decision binding if any parties refers decision to arbitration within 28 days
Arbitration

Smaller contracts refer to local institution

Larger contracts or international contractors refer to an international institution

- **UNCITRAL** (UN Commission on International Trade Law)
- **ICSID** (International Centre for Settlement of Investment Disputes)
- **ICC** (International Chamber of Commerce)

Tips, What to do, What not to do

**PART 10: STRATEGY FOR BUSINESS**

**HOW TO WIN CONTRACTS**
Construction – Works
Deviations: Substantial or Minor

Case # 11

Veljko Sikirica
Senior Procurement Specialist
EBRD Procurement Department

Strategy for business!

Project Opportunities
Tips for winning contracts
Things to do
Project Opportunities

Power Projects and Energy Efficiency

Generation Plants: New and Rehabilitation
Transmission: Lines and Substations,
Distribution Systems (metering modern)
Control systems
Management information systems

Nuclear Safety

Project Opportunities

Transport
Rail track maintenance equipment, locomotives, signal systems, trams, buses, air traffic control and navigation equipment, motorway construction, management information systems

Municipal Infrastructure
Waste water treatment plants, pipes, meters, pumping stations, sewage plants, process plants, incinerators
Sub sovereign public sector projects

- Example, Municipals and state owned enterprises cannot disregard national law. In Sovereign projects the provision of the Loan Agreement supersedes Local Law.
- PP&R now reflects experience from sub-sovereign projects
- 2009 issue includes adjustment to Incoterms, tender prices, Currency and Language provisions

Tips for winning contracts

- Be focused and selective
- Concentrate on your comparative advantage
- Explore sub-contracting or joint venture opportunities
- Read “Annex 1 - Guidance to Tenderers” of the Procurement Policies and Rules
- Respond to the GPN and build your knowledge
Tips for winning contracts

- Don’t be too clever when preparing your tender (comply with the requirements) !!!
- Does your company meet the qualification criteria? Form JV
- Make sure to provide answers to all questions and submit all required documentation
- Review documents early and submit questions or issues in writing, if necessary copy the Bank

Tenderers recourse

Before tender opening, raise issues regarding the tender documents with the client and copy the Bank

If unsuccessful ask the Client for a debriefing

Complaints should be sent to the client with a copy to the Director of the Banking Department Team and Director of the Procurement Department
**Procurement process right to complain**

- Tenderers/Consulting Firms may submit a complaint in writing at any stage of the procurement process.
- Procurement process is not suspended when complaint is submitted.
- Contracting Agency resolves the complaint.
- If Bank determines that its procurement policies have not been adhered to, Bank declares mis-procurement.

**Misprocurement**

**Bank declaration of misprocurement**

- If procurement is not in accordance with Loan Contract and Procurement Plan.
- After no objection, if based on incomplete, inaccurate or misleading information.

**Consequences**

- Bank does not finance contract, may exercise other resources such as cancelation of loan portion assigned to contract.
- Entities debarred by one MDB may be sanctioned for the same misconduct by the other participating development banks, in effect closing a loophole that had previously allowed a firm that had been debarred by one MDB to continue obtaining contracts financed by other MDBs.
Strategy - post tender opening

- Do not attempt to influence tender evaluation process
- Process is confidential
- If successful, proceed to contract finalisation
- No negotiation of contract price permitted
- Contract finalisation discussions only

Things to do

- Where to find information on opportunities:
  - Explore proficiently www.ebrd.com
  - Real Simple Syndication (RSS) Alerts on web
  - International and national press
  - UN Development Business
  - Make virtual partnerships with local companies
  - Know your market i.e. client
Where to find the opportunities?

- Where to find information on opportunities:
  - check www.ebrd.com
  - check national press
  - Know your market i.e. client

- What to look for on ebrd.com:
  - Project Pipeline
  - General Procurement Notices (GPN)
  - Invitation for Prequalification or for Tender

www.ebrd.com/procurement/opportunities

EBRD’s new projects
Project Pipeline and executing agencies
Lists the latest public and private sector projects approved by the EBRD
Procurement notices
Consultancy contract awards
Major contracts that were awarded in operations financed by the EBRD

These pages are regularly updated.
- 10’
- Questions and answers
DĚKUJEME!

14 November 2012

Veljko Sikirica
Senior Procurement Specialist
EBRD Procurement Department