

# **POLICY**

## **Procurement Policies and Rules**

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**European Bank**  
for Reconstruction and Development

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# PROCUREMENT POLICIES AND RULES

## SECTION I: PURPOSE

This Policy sets out the principles and rules governing the procurement of Goods, Works, Services and Consultancy Services contracted by the Client in projects financed by the Bank in both the public and the private sector. This Policy shall furthermore apply to contracts financed with donor funds administered by the Bank. Specific provisions may be agreed between donors and the Bank, which will be reflected in the relevant procurement documents.

This Policy supersedes the Procurement Policies and Rules dated 1 November 2017 (BDS17-057/F).

## SECTION II: DEFINITIONS

Terms used in this Policy have the meanings set out below:

<b>Access to Information Policy</b>	means the Bank's Access to Information Policy (BDS19-056/F) as amended from time to time.
<b>Affiliate</b>	means, in relation to an entity (the First Entity), any legal entity controlled, directly or indirectly, by the First Entity, any legal entity or natural person that controls, directly or indirectly, the First Entity or any legal entity directly or indirectly under common control with the First Entity.
<b>Bank</b>	means the European Bank for Reconstruction and Development.
<b>Bank-financed Contract</b>	means any contract that is financed in whole or in part from Bank Resources.
<b>Bank Operation</b>	means any activity or project which the Bank is considering to finance or has financed or committed to finance, directly or indirectly, in whole or in part, from Bank Resources.
<b>Bank Resources</b>	means the Bank's ordinary capital resources, Special Fund resources, and / or any other resources or grants administered by the Bank.
<b>Capital Expenditures (CAPEX)</b>	means any expenditures by the Client to acquire physical assets with a useful life over a period beyond one year (such as machines, equipment, facilities, services, works or technology) as well as intangible, non-physical assets (such as patents and licenses), and which expenditures are not fully subtracted (expensed) from the revenue for the profit and loss statements in the accounting year in which such expenditures are made.
<b>Capital Market</b>	means an organised market where buyers and sellers engage in the trade of financial securities, such as bonds and equities.
<b>Client</b>	means an entity that is seeking or has obtained funding, directly or indirectly, in relation to a Bank Operation.
<b>Commodities</b>	means standardised raw materials normally traded on an exchange or a spot market.
<b>Competitive Selection Procedure</b>	has the meaning given to it in Section III, Article 3.19.
<b>Concession</b>	means an undertaking involving a cooperative relationship between public and private parties that shall be: (a) long-term in nature and implemented pursuant to a Concession Agreement; and (b) related to the provision of public services or services of general interest, whereby the public party furnishes special or exclusive

	rights to the private party or other undertakings (such as a recognised monopoly) and the private party undertakes the design, development, construction, reconstruction, rehabilitation or the maintenance of new or existing public infrastructure with the aim of private operation.
<b>Concessionaire</b>	means the private party in a Concession Agreement.
<b>Concession Agreement</b>	means an agreement, between a public authority and a private partner selected by that public authority, outlining the terms of a Concession.
<b>Consultancy Services</b>	means advisory or similar services whereby individuals and/or an entity provides expertise or capability required to achieve the goals of a Bank Operation.
<b>Control (including, with correlative meanings the terms “controlled by” and “under common control with”)</b>	means, in relation to an entity, the ability to effectively determine the decisions and policies of such entity.
<b>Country of Operations</b>	means a recipient country or an economy of operations of the Bank.
<b>Direct Contracting</b>	means entering directly into a contract with a supplier, contractor or consultant without a requirement to follow competitive procedures.
<b>Enforcement Policy and Procedures</b>	means the Bank’s Enforcement Policy and Procedures (BDS17-142/F) as amended from time to time.
<b>Environmental and Social Action Plan</b>	means an action plan agreed between the Client and the Bank, which the Client undertakes to implement within a specified timeframe to achieve compliance with the Environmental and Social Policy’s Performance Requirements as detailed in the Environmental and Social Policy.
<b>Environmental and Social Policy</b>	means the Bank’s Environmental and Social Policy (BDS19-055/F) as amended from time to time.
<b>Framework Agreement</b>	means an agreement with a supplier, contractor or consultant to establish terms governing contracts that may be awarded during the life of the agreement following “call-offs”.
<b>GATT</b>	means the General Agreement on Tariffs and Trade.
<b>GPA</b>	means the current Agreement on Government Procurement of the WTO.
<b>Goods</b>	means tangible products capable of delivery.
<b>Incoterms</b>	means trade terms established by the International Chamber of Commerce.
<b>JVCA</b>	means a joint venture, consortium, or association.
<b>Nominated Sub-contracting</b>	means an arrangement, whereby the Client instructs the Participant or the supplier, contractor or consultant (as applicable) to engage a particular Sub-contractor under a Bank-financed Contract.
<b>Open Competitive Procedure</b>	means an Open Tendering Procedure or a Competitive Selection Procedure.
<b>Open Tendering Procedure</b>	has the meaning given to it in Section III, Article 3.15.
<b>Operational Expenditures (OPEX)</b>	means any expenditures incurred by the Client in order to run its ordinary business activities on a daily basis, and which are fully subtracted (expensed) in the profit and loss statement in the accounting year in which such expenditures are incurred.
<b>Participant</b>	means an entity, individual or JVCA that has submitted, or is in the process of submitting, a Proposal.
<b>Prequalification</b>	means the procedure used to identify Participants capable to successfully perform under the resulting Bank-financed Contract.
<b>Private Sector Operation</b>	means a Bank Operation that is not a Public Sector Operation.
<b>Prohibited Practice</b>	has the meaning given to it in the Enforcement Policy and Procedures.
<b>Proposal</b>	means a tender, a proposal, an offer or a quotation submitted by a Participant in a procurement process for a Bank Operation.
<b>Public Sector Operation</b>	has the meaning given to it in Section III, Article 3.2.

<b>Retroactive Financing</b>	means the reimbursement by the Bank of expenditures incurred by the Client under eligible contracts prior to the signing of the legal agreement with the Bank.
<b>Services</b>	means services, other than Consultancy Services.
<b>Social</b>	has the meaning given to it in the Environmental and Social Policy.
<b>Special Funds resources</b>	has the meaning given to it in Article 19 of the Agreement Establishing the European Bank for Reconstruction and Development.
<b>Sub-contractor</b>	means any sub-supplier, sub-contractor or sub-consultant of the Participant, as well as of the supplier, contractor or consultant under a Bank-financed Contract.
<b>Utility</b>	means an authority or undertaking which provides or operates fixed networks intended to supply a service to the public in water, waste water, electricity, gas, heat, telecommunications or rail transport.
<b>Works</b>	means building, civil engineering, or construction works.
<b>WTO</b>	means the World Trade Organization.

## SECTION III: SCOPE

### Article 1: General Aspects

1.1 The establishment of sound procurement policies and practices is an integral part of the transition process and the Bank's transition mandate. In its transition to market economies and in applying the principles of multiparty democracy, a Country of Operations needs to achieve economy, efficiency, transparency and accountability in operations in the public sector. A Country of Operations should furthermore provide a sustainable framework for an economic and efficient operation of the private sector.

1.2 Competition is the proven way to achieve economy and is the fundamental principle of good procurement practice. Transparent and fair procedures for awarding public sector contracts for Goods, Works, Services or Consultancy Services help to create dependable and stable markets for efficient private enterprises. They also form the basis for establishing accountability and encouraging cost-effective use of public funds, a matter that is of concern for both the Bank and any Country of Operations. Article 13 of the Agreement Establishing the European Bank for Reconstruction and Development requires that:

*“(xii) the Bank shall place no restriction upon the procurement of goods and services from any country from the proceeds of any loan, investment or other financing undertaken in the ordinary or special operations of the Bank, and shall, in all appropriate cases, make its loans and other operations conditional on international invitations to tender being arranged; and (xiii) the Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank, or any equity investment, are used only for the purposes for which the loan or equity investment was granted and with due attention to considerations of economy and efficiency.”*

1.3 At the level of a specific Bank Operation, the efficiency of the procurement process directly affects the costs and the time required for project execution and the ultimate performance of such operation. Sound project preparation and good procurement practices will lead to significant time and cost savings for the Client and will ensure successful project implementation and sustainable operations. The Bank encourages the use of e-procurement platforms as tools for efficiency and may require the Client to use platforms acceptable to the Bank for Bank-financed Contracts.

1.4 The Bank will support any Country of Operations to meet its objective of achieving economic development and transforming its public administration system by carefully selecting and assisting with the preparation and structuring of the projects it considers to finance. The Bank will further assist with the development of appropriate institutions that are consistent with the philosophy and needs of well-developed market economies. Fostering sound procurement regulations in line with international legal instruments (such as the GPA) and international best practices as well as capacity building is essential for this effort.

1.5 The Bank, as part of its commitment to sustainable economic development, requires the application of good international practices for environmental and Social matters as stipulated in the Environmental and Social Policy and as further detailed in the Environmental and Social Action Plan and the legal agreement applicable to a specific Bank Operation. These requirements and relevant aspects of the Environmental and Social Action Plan shall be reflected in the procurement documents used in a Bank Operation. Clients are encouraged to include additional green, inclusive and sustainable procurement requirements provided that these requirements are consistent with this Policy.

1.6 Supplementing the principles contained in the Agreement Establishing the European Bank for Reconstruction and Development, this Policy sets out the applicable procurement principles and rules to be followed in a Bank Operation. Section III, Articles 1 and 2 prescribe the general aspects and fundamental principles and considerations applicable for any Bank Operation. Section III, Article 3 stipulates rules for the procurement of Goods, Works, Services or Consultancy Services in a Bank

Operation involving a Public Sector Operation. Section III, Article 4 sets out procurement principles and requirements for a Private Sector Operation.

## **Article 2: Principles and Considerations**

### **General Principles and Considerations**

2.1 The “Chairman’s Report on the Agreement Establishing the European Bank for Reconstruction and Development”, Article 13, Paragraph 6, notes:

in relation to a Private Sector Operation

*“Private sector enterprises in which the Bank holds equity or debt might be encouraged, but not obliged, to use international tenders to obtain goods or services efficiently and economically.”*

and

in relation to a Public Sector Operation

*“Delegates agreed upon completely open procurement (and not procurement open only to members) based on international tendering, where appropriate, and believe that such tenders should be genuinely competitive, in line with the GATT Agreement on Government Procurement.”*

2.2 The GPA, which replaced the GATT Agreement on Government Procurement, establishes a framework of rights and obligations with respect to laws, regulations, procedures and practices regarding public procurement. The aim of the GPA is to achieve greater liberalisation of national government procurement markets and expansion of world trade among the WTO members that are parties to it by establishing transparent, fair and open procurement practices. The Bank supports the development of public procurement laws and practices within a Country of Operations that is consistent with the principles of the GPA.

2.3 The underlying principle of the GPA and the foundation for this Policy is that a Bank-financed Contract in a Public Sector Operation should normally be awarded on the basis of an Open Competitive Procedure. A Bank-financed Contract may also be awarded on the basis of other procurement procedure in justified cases, as provided for in this Policy.

2.4 The Bank may periodically review the procurement laws, regulations, procedures and practices in a Country of Operations and may provide advisory services, technical assistance and capacity building to assist in reaching consistency with the principles of the GPA and good international practices, such as those reflected in the UNCITRAL Model Law on Public Procurement.

2.5 The Bank’s concern for value for money through efficient, effective and economic use of resources covers an entire project even if Bank funds are only applied to a portion of such project. In relation to Bank-financed Contracts, Clients are required to apply the principles of sustainability and integrity and to pay due attention to the quality of results, contractual protection and timely completion. The Bank will finance only those contracts that form part of a Bank Operation and that have been awarded and executed in accordance with this Policy and that are reflected in the legal agreement applicable to such Bank Operation.

### **Exclusions from the Policy**

2.6 This Policy does not apply to the procurement of Goods, Works, Services or Consultancy Services when:

- (a) a contract is co-financed under an arrangement reached by the Bank with another multilateral or bilateral development institution and where such institution undertakes the leading role in monitoring

procurement activities in line with its own procurement procedures, which shall be acceptable to the Bank;

- (b) the Bank is a minority co-financier (less than 30%) of a contract financed under a development support initiative, such as the EU Cohesion and Structural Funds, and the proposed procurement procedures are acceptable to the Bank;
- (c) the procurement process is undertaken by a beneficiary of Bank financing that is provided through
  - (i) a financial intermediary (excluding national central banks or national development institutions) or
  - (ii) a Capital Market instrument.
- (d) the Bank is providing financing for Operational Expenditures (excluding Commodities) and/or debt restructuring.

### **Eligibility**

2.7 The Bank permits Participants from all countries to provide on equal terms Goods, Works, Services or Consultancy Services for a Bank Operation regardless of whether such country is a member of the Bank. Notwithstanding the exclusions in Section III, Articles 2.8 and 3.52, any conditions for contract award shall be limited to those that are essential to ensure the eligible Participant's capability to successfully perform under the contract in question.

2.8 The Client shall exclude a Participant from contract award if:

- (a) the Participant has been declared ineligible pursuant to the Enforcement Policy and Procedures; or
- (b) the Participant or any of the relevant Goods, Works, Services or Consultancy Services or any supplier thereof is the subject of, or otherwise prohibited by, any restrictive measures or sanctions issued by the United Nations Security Council under Chapter VII of the Charter of the United Nations.

### **Responsibilities**

2.9 The Client is fully responsible for implementing a Bank Operation, including all aspects of the procurement process from planning to contract award, as well as the contract administration and implementation and the resolution of claims and disputes. The Bank reviews the project delivery strategy and the relevant documents in the procurement process and may advise and assist the Client in the procurement process and institutional development for a specific project, but the Bank is not a party to the resulting contract. The rights and obligations of the Client vis-à-vis Participants shall be governed by the procurement documents issued by the Client and the terms and conditions in the resulting contracts. The Client shall use the e-procurement portal mandated by the Bank, unless otherwise agreed with the Bank.

### **Prohibited Practices**

2.10 The Bank requires that the Client (including beneficiaries of a Bank Operation), as well as any Participant, supplier, contractor, and consultant under a Bank-financed Contract including any Sub-contractor, observe the highest standard of ethical conduct, transparency and integrity and act in a manner that is fair, accountable and honest during the procurement, execution and implementation of such contract.

2.11 Any occurrence or suspected occurrence of a Prohibited Practice in the procurement, award, or implementation of a Bank-financed Contract shall be dealt with in accordance with the provisions of the Enforcement Policy and Procedures. Any supplier, contractor or consultant selected pursuant to Section III, Article 3, and any Sub-contractor thereof, as well as the Client, shall fully cooperate with the Bank in any investigation into alleged Prohibited Practices pursuant to the Enforcement Policy and Procedures and shall permit the Bank or its representative to have access to their assets, books, accounts, and records as may be relevant for such investigation and to have such assets, books, accounts, and records available for forensic review or audit. Provisions to this effect shall be included in the Bank's legal agreement with the Client, in the procurement documents and in the contract awarded pursuant to Section III, Article 3, as applicable.

### **Procurement-related reviews and complaints**

2.12 Participants in a procurement process (excluding other procurement arrangements agreed in accordance with Section III, Articles 3.58-3.62 or Article 4) are entitled to request the Bank to review potential irregularities in the ongoing procurement process or submit a procurement-related complaint in accordance with the Bank's review processes, as published on the Bank's web-site ([www.ebrd.com](http://www.ebrd.com)).

2.13 Provided that a request for procurement review or a procurement-related complaint are submitted to the Bank in compliance with the requirements set out in the Bank's review processes, the Bank will ensure that the issues raised are reviewed and respective measures, if appropriate, are taken to its satisfaction.

2.14 When a procurement-related complaint is addressed to the Client, the Client shall review and respond to the concerned Participant in a timely manner.

### **Misprocurement**

2.15 If at any time in a procurement process for a Bank-financed Contract, even after award of contract, the Bank determines that the procurement, selection, award, or administration of a contract, including any agreed modification or waiver of such contract, has not been carried out materially in accordance with the agreed procedures, it will promptly inform the Client and state the reasons for such determination. The Bank may determine that the contract is no longer eligible for Bank financing and the outstanding portion of the financing allocated to the contract may be cancelled. If the Client has proceeded to award such a contract after issuance of the Bank's no-objection, the Bank may declare the contract to be ineligible for financing if it determines that its no-objection was based on incomplete, inaccurate or misleading information about the procurement or contract administration process furnished by the Client, or if it determines that the Client or the successful Participant has engaged in a Prohibited Practice.

## **Article 3: Procurement Rules for a Public Sector Operation**

### **Applicability of Article 3**

3.1 Section III, Article 3 applies to a Public Sector Operation, which finances (a) any form of Capital Expenditures involving the acquisition of Goods (irrespective of the purchasing arrangement, including hire-purchase, rental or leasing), Works or Services, (b) Commodities, (c) Consultancy Services, or (d) any combination thereof.

3.2 For the purposes of this Policy, a Public Sector Operation is a Bank Operation in a Country of Operations, which is:

- (a) extended to or guaranteed by such Country of Operations or its local governments;
- (b) extended to or guaranteed by agencies or enterprises, majority owned or controlled by national or local governments in such Country of Operations; or
- (c) extended to a Utility, majority owned or controlled by national or local governments, or government agencies of such Country of Operations.

3.3 Notwithstanding Section III, Article 3.2(b) and (c), in agreement with the Bank, the procurement by Utilities, agencies or enterprises shall be subject to the procurement rules for a Private Sector Operation as set out in Section III, Article 4, if the Bank determines that such Utilities, agencies or enterprises:

- (a) are not required to apply national procurement laws;
- (b) follow sound procurement policies and practices; and
- (c) operate competitively, meaning they (i) operate autonomously in a competitive market environment and (ii) are subject to bankruptcy and insolvency laws.

### **Project Delivery Strategy**

3.4 Sound project preparation and procurement planning is crucial. The Client shall determine (a) the objectives of a Bank Operation, (b) the Goods, Works, Services or Consultancy Services required, (c) their cost estimates and sources of funding, (d) when they must be delivered, (e) the required standards, (f) the appropriate contract types, (g) the procurement procedures required, and (h) the resources and capacities needed to procure and implement the contracts.

3.5 The Client shall undertake market analysis and, when required by the Bank, conduct market consultations to develop a project delivery strategy in line with the principles set out in Section III, Articles 1 and 2. Following such market analysis and consultations, the Client shall prepare the overall project delivery strategy, including the procurement plan and shall obtain a no-objection from the Bank prior to commencing any procurement process. Review and no-objection by the Bank of the project delivery strategy, including the procurement plan, is one of the essential steps for establishing the eligibility of proposed contracts for Bank financing. Throughout the duration of the project, further adjustments to the project delivery strategy and the procurement plan may be needed, which shall be subject to the Bank's no-objection.

3.6 With the objective of facilitating efficient implementation of a Bank Operation, to the extent possible and feasible, the project delivery strategy shall be developed with the aim of keeping the number of procurement procedures and resulting contracts to the minimum.

3.7 The procurement arrangements shall be appropriately reflected in the legal agreement between the Bank and the Client.

### ***General Procurement Notice***

3.8 As soon as possible upon the Bank's no-objection of the procurement plan, the Client shall issue a general procurement notice that advises the business community about the nature of the Bank Operation and the forthcoming business opportunities. This notice shall include the following information:

- (a) a description and the total amount of the Bank Operation;
- (b) a description or a list of contracts for Goods, Works, Services or Consultancy Services to be procured;
- (c) the applicable procurement rules and procedures;
- (d) the expected start of the procurement; and
- (e) the Client's name and contact details to enable potential Participants to obtain additional information and to express interest.

3.9 The general procurement notice shall be published on the Client's own website and/or official government procurement portal, where available, or in a newspaper with wide circulation in the Client's country or in official gazettes or international trade publications, as appropriate. In addition, to notify potential Participants at the earliest possible stage of upcoming opportunities, this notice shall be submitted to the Bank for publication on the Bank's website ([www.ebrd.com](http://www.ebrd.com)) and/or the Bank's e-procurement portal and, wherever possible, in the Official Journal of the European Union and the official publication of the UN. The general procurement notice shall be updated each time the procurement plan has been materially modified. The procurement process shall not commence prior to the publication of the general procurement notice.

### **Confidentiality**

3.10 Financial, commercial or proprietary information as well as personal data created or received by the Client in the course of a procurement process under a Bank Operation shall be confidential, unless:

- (a) this Policy or the procurement documents expressly provide for public disclosure thereof;
- (b) permission is given by the concerned Participant to release such information; or
- (c) the information is requested by a competent court or enforcement authority.

### **Applicable Procurement Procedures**

3.11 Competition is the foundation of a good procurement practice. In addition to economy and efficiency, a Public Sector Operation requires transparency and accountability for the use of public funds, and this affects the choice of the procurement method as well as the procurement documents and procedures to be used. An Open Competitive Procedure provides the greatest opportunity for international competition and satisfies the need for economy and efficiency. These procedures shall be open for all eligible Participants. Therefore, the Bank requires that its Client, in all appropriate cases, procures Goods, Works, Services or Consultancy Services through an Open Competitive Procedure in accordance with the rules outlined in this Section III, Article 3.

3.12 The application of other procurement procedures may be more appropriate, depending on the market conditions as well as the nature and value of the Goods, Works, Services or Consultancy Services. All such procedures shall be justified by the Client and agreed by the Bank.

3.13 The applicable procurement procedures shall be stipulated in legal agreements between the Bank and the Client.

3.14 The details of the procurement procedure shall be described in the respective procurement documents. Nothing in the procurement procedures, excluding Direct Contracting (as set out in Section III, Article 3.24), the respective procurement documents or information provided to Participants shall restrict competition or offer an unfair competitive advantage to a Participant.

## ***Open Competitive Procedures***

### Open Tendering Procedure

3.15 An Open Tendering Procedure is a competitive procedure that applies to the procurement of Goods, Works or Services under which all potential Participants are given adequate notification of contract requirements and an equal opportunity to submit a Proposal.

#### *Single-stage*

3.16 A contract for Works designed by the Client or a contract for the supply of standard Goods will normally be procured using a single-stage Open Tendering Procedure, where technical and priced Proposals are submitted simultaneously.

#### *Multi-stage*

3.17 Unless based on a well-justified rationale and subject to a prior no-objection by the Bank, a multi-stage Open Tendering Procedure shall be used in case of: (a) a turnkey contract, where the contractor is responsible for the design, (b) a contract for large complex Works or Services, (c) a contract for Works of a special nature, (d) a contract for innovative or bespoke Goods, (e) a contract for Goods that are subject to rapid technological advances or which may be produced with many technical variables, or (f) a contract which by its nature or complexity requires comprehensive dialogue with Participants.

3.18 At the first stage, the Client shall invite Participants to submit unpriced Proposals on the basis of a conceptual design or performance specifications, subject to technical and commercial clarifications and adjustments as well as an amendment of the procurement documents (if necessary) on an iterative basis. Subsequently, the Client shall invite the submission of final priced Proposals.

### Competitive Selection Procedure

3.19 A Competitive Selection Procedure is a competitive procedure that applies to the procurement of Consultancy Services with the prime focus of the procedure being on the quality of such services.

#### *Single-stage*

3.20 Consultancy Services for a contract of a standard nature and low value will normally be procured using a single-stage Competitive Selection Procedure, where technical and priced Proposals are submitted simultaneously.

#### *Multi-stage*

3.21 A multi-stage stage Competitive Selection Procedure shall be used, unless based on a well-justified rationale and subject to a prior no-objection by the Bank, for Consultancy Services of a complex or special nature (including conceptual design, complex information technology services and Framework Agreements), where the objectives of the Consultancy Services can be established but the scope and methodology to achieve these objectives may vary.

3.22 At the first stage, the Client shall invite Participants to submit unpriced Proposals, which shall be followed by clarifications and adjustments on an iterative basis. Subsequently, the Client shall invite the submission of final priced Proposals.

3.23 Normally, a Competitive Selection Procedure shall provide for contract negotiations between the Client and the selected Participant.

### ***Direct Contracting***

3.24 Direct Contracting may be used (i) where the Client has demonstrated to the Bank's satisfaction that the application of a competitive method of procurement is neither practical, economic nor efficient and (ii) in case one or more of the following circumstances apply:

- (a) the extension of an existing contract awarded in accordance with a procedure acceptable to the Bank for additional Goods, Works, Services or Consultancy Services of a similar nature would clearly be economic and efficient and no advantage would be obtained by further competition;
- (b) there has been an unsatisfactory response to an Open Competitive Procedure carried out in accordance with this Policy;
- (c) Goods, Works, Services or Consultancy Services can only be provided by a single Participant because of exclusive capabilities, rights or availability of required products or unique expertise or experience;
- (d) standardisation with existing equipment is determined to be important and justified, the number of new items are generally less than the existing number and compatible Goods cannot be provided by other suppliers or where a consultant has been or is involved in the early phases of a project, such as feasibility or design stages, and it has been determined that continuity is necessary and no advantage would be gained from following competitive procedures;
- (e) it is a case brought about by unforeseeable events or circumstances not attributable to the procuring entity; or
- (f) the estimated contract value for Consultancy Services (including any foreseeable follow-on services) is below €75,000 (excluding VAT).

### ***Procurement of Commodities***

3.25 For the procurement of Commodities, which requires greater flexibility than provided by an Open Competitive Procedure, the Bank may agree to the use by the Client of special competitive procedures if:

- (a) the Bank Operation involves multiple contract awards for partial quantities of Commodities;
- (b) this is the most economic and efficient approach to benefit from favourable conditions in the spot market; and
- (c) this is necessary to secure a timely supply of Commodities.

### ***Procurement under National Laws***

3.26 The Bank may agree to the use by the Client of procurement procedures in accordance with national laws when: (a) a contract value is estimated below the threshold value of €140,000 (excluding VAT) for Goods or Services and €5.35 million (excluding VAT) for Works; and (b) international competition may not be the most appropriate approach (such as, when a contract by its nature or scope, is unlikely to attract foreign participation). Procurement requirements shall not be developed in such manner as to artificially reduce the value of the resulting contract(s) below these thresholds.

### ***Procurement by Utilities***

3.27 In addition to the procurement procedures set out in Section III, Article 3 of this Policy, the Bank may agree that a Utility, as described in Section III, Article 3.2(c) and which is subject to the national procurement laws, may use its established procurement procedures provided that it follows sound procurement policies and practices, as determined by the Bank. The procurement procedures applied shall be subject to the conditions set out in Section III, Articles 3.61 and 3.62.

### **Description of Procurement Procedures**

3.28 The extent and details of the process to be followed will depend on the procurement procedure used and shall be described in the relevant procurement documents, as appropriate.

### ***Open Competitive Procedure***

3.29 The procurement process under an Open Competitive Procedure normally involves the following steps:

- (a) the notification of procurement opportunities;
- (b) Prequalification (where appropriate);
- (c) the issuance of procurement documents;
- (d) the submission of Proposals
- (e) evaluation of Proposals; and
- (f) contract negotiations or contract finalisation meetings (where provided for under the procurement procedure), and the signing of the contract with the successful Participant.

### **Notification**

3.30 The Client must give sufficient advance public notification of opportunities for Participants to determine their interest and to prepare and submit their Proposals. Each Open Competitive Procedure shall be advertised in the same media as the general procurement notice and in any other appropriate media with the aim of maximising competition.

### **Prequalification of Participants**

3.31 The Client shall, unless based on a well-justified rationale and subject to a prior no-objection by the Bank, require potential Participants to prequalify for large and complex contracts. The Prequalification criteria shall be based entirely upon the capability and resources of Participants to perform the particular contract satisfactorily, taking into account factors, such as (a) relevant experience and past performance, (b) capabilities with respect to personnel, equipment or manufacturing facilities (as appropriate), and (c) financial position. All Participants meeting the Prequalification criteria shall be allowed to submit a Proposal. Prequalification shall be aimed at ensuring broad competition amongst Participants capable of performing the contract and shall not be used to limit participation on unreasonable or non-material grounds.

3.32 To facilitate the participation of small and medium enterprises in the procurement of a Bank-financed Contract as a Sub-contractor, the Client shall publish or make publicly available the list of Pre-qualified Participants.

3.33 For Consultancy Services, Prequalification may provide for a shortlist of Participants. Unless based on a well-justified rationale and subject to a no-objection by the Bank, such shortlist shall include no less than three and no more than six qualified Participants. The criteria for the inclusion on the shortlist shall be clearly defined. Only shortlisted Participants shall subsequently be invited to submit Proposals.

3.34 In the case of a Framework Agreement, the process of Prequalification may be modified in agreement with the Bank.

### **Procurement Documents**

3.35 The Client shall use those Bank's standard procurement documents appropriate for the contract to be procured. These documents are published on the Bank's website ([www.ebrd.com](http://www.ebrd.com)) and/or the Bank's e-procurement portal. The content of the procurement documents will vary according to the magnitude, nature, complexity and type of the contract. Procurement documents issued to Participants shall include:

- (a) a description of the procurement process;
- (b) appropriate eligibility and qualification criteria;
- (c) a fair and non-discriminatory evaluation methodology;
- (d) a description of the Goods, Works, Services or Consultancy Services and their respective requirements;

- (e) the contractual terms and conditions (except in the case of Prequalification); and
- (f) appropriate forms and other essential information required for the preparation and submission of responsive Proposals or Prequalification applications.

### Language

3.36 All procurement documents as well as any notices shall be prepared and issued by the Client in one of the Bank's working languages, which shall be the governing language. In the interest of broad competition as well as economy and efficiency, and in order to encourage the participation of local Participants, the Client may in addition prepare further sets, or parts, of the procurement documents in the local language. Subject to the Bank's prior no-objection, the Client may require Participants to provide a local language translation of all, or parts, of their Proposals.

3.37 Any procurement documents or parts thereof, notices and reports required by the Bank for review purposes shall be submitted to the Bank in the English language. In the event of a procurement complaint, the Bank may also require a certified English translation of the relevant documents pertaining to the complaint. The Bank will determine on the basis of such English language documents whether procurement has been carried out in accordance with the agreed procedures.

### Evaluation Criteria

3.38 The procurement documents shall specify, in addition to the submitted Proposal price, other relevant factors to be considered during the Proposal evaluation and the manner in which these factors will be applied for the purpose of determining the most economically advantageous Proposal.

3.39 For Goods, Works or Services, the additional factors which may be taken into consideration include, inter alia, the payment schedule, the time of completion of the construction or the delivery, the operating and maintenance costs, the efficiency and compatibility of the Goods, performance and quality, environmental and sustainability considerations, Social requirements, the availability of service and spare parts, and minor deviations or omissions, if any. These additional factors, shall be quantified in monetary terms or, where that is not possible for demonstrable reasons, given a relative weight in the evaluation methodology. Where appropriate, a lifecycle cost-based approach shall be used to encourage sustainable procurement. The Proposal which is determined to be the most economically advantageous, but not necessarily with the lowest submitted Proposal price, shall be recommended for contract award provided that it was submitted by an eligible and qualified Participant.

3.40 For Consultancy Services, the evaluation of Proposals shall principally be based on quality aspects, such as past relevant experience, qualifications of key personnel, the methodology and work plan proposed for the assignment. The price of these services may be a consideration. Relative weight factors and merit points may be used in the evaluation methodology to establish the ranking of Participants. The Participant that submits the highest-ranked Proposal shall be considered as having submitted the most economically advantageous Proposal and shall be recommended for contract award.

### Technical Requirements

3.41 Technical requirements, including specifications shall be developed to promote broad competition and shall be, to the extent possible, based on relevant quality characteristics and/or performance requirements. The Client shall use international standards wherever available and appropriate. If particular national or other standards are used, the procurement documents shall state that other standards that ensure equivalent or higher quality or performance than the specified standard shall be acceptable. The use of brand names, trademarks, patents, copyrights, designs or other designations that would discriminate among potential Participants shall be avoided. If these are necessary to clarify the nature of technical requirements, the procurement documents shall state that other Goods of equivalent or higher quality shall be acceptable.

### Proposal Prices

3.42 Proposal prices for the supply of Goods shall be requested on the basis of relevant Incoterms, as agreed with the Bank, provided that the evaluation ensures a fair and equal comparison between locally and foreign supplied Goods. Proposal prices for Works, Services or Consultancy Services contracts may be requested inclusive of all duties, taxes and other levies. The evaluation of Proposals shall be conducted on an equal basis.

### Currency

3.43 In agreement with the Bank, the Client shall specify in the procurement documents the currency or currencies in which the Proposal prices shall be quoted. Where multiple currencies are permitted, for the purpose of Proposal evaluation and comparison, unless otherwise specified in the procurement documents, the Proposal Price shall be converted to a single currency, using the selling (exchange) rate established by the appropriate central or national bank on the date of Proposal opening.

### Time Limits

3.44 Prescribed time limits for the preparation and submission of Proposals shall be adequate for all Participants to prepare and submit Proposals depending on the nature and complexity of the contract. For the procurement of standard and non-complex Goods, Works, Services or Consultancy Services normally no less than 40 days from the publication of the respective procurement notice or the availability of procurement documents, whichever is later, should be allowed for the preparation and submission of Proposals. For the procurement of large or complex Goods, Works, Services or Consultancy Services, this period shall be extended in agreement with the Bank to provide for sufficient time to prepare responsive Proposals. For procurement processes conducted on an e-procurement portal, the period may be reduced with the agreement of the Bank.

3.45 Proposal validity periods and contractual time limits shall be consistent with the Client's reasonable requirements, but shall not be used to discriminate against Participants. In exceptional cases it may be necessary to request Participants to extend the validity of their Proposals. In such cases Participants shall not be allowed or required to change their Proposal and shall be free to decline any such extension request without forfeiting the tender security. For a contract, which is not subject to a price adjustment, the respective procurement documents shall contain a provision for an adjustment of the Proposal price upon the Client's request to extend the validity of Proposals. The adjustment mechanism shall be based on appropriate statistical indices and shall be applied at the time of contract award.

### Participation

3.46 A Participant is permitted to submit only one Proposal or participate as a JVCA partner in only one Proposal for the same Bank-financed Contract. Submission or participation by a Participant or JVCA partner in more than one Proposal for a contract will result in the rejection of all Proposals in which the Participant is involved. For the purpose of this Article, a Sub-contractor is not deemed to be a Participant.

3.47 No Participant affiliated with the Client shall be eligible for contract award, unless it can be demonstrated to the Bank's satisfaction that such Participant is (a) legally and financially autonomous from, and is not under control, directly or indirectly, by the Client and (b) has no unfair competitive advantage or conflict of interest.

### Opening

3.48 Proposals shall be received and opened in a transparent manner in accordance with the procedures set out in the procurement documents. The Client shall maintain a complete record of the Proposal opening, which shall be provided to the Bank and Participants directly after the opening.

### Proposal Evaluation and Contract Award

3.49 The Client shall evaluate and compare Proposals only on the basis of the evaluation criteria set out in the procurement documents. The evaluation process shall be confidential, but the result of the evaluation and a summary of the evaluation, once completed, shall be made available to all Participants in accordance with the provisions set out in the procurement documents. The Client shall award the contract to the Participant (a) whose Proposal has been determined as being substantially responsive and the most economically advantageous, and (b) who has been determined to be eligible, qualified and capable of undertaking the contract. A contract should be awarded within the period of the Proposal validity.

3.50 Participants shall not be allowed or asked to change their Proposal or required to accept new conditions during evaluation or as a condition of award, unless otherwise agreed with the Bank. The terms and conditions of the contract shall not, without the Bank's no-objection, materially differ from those on which Proposals were invited.

3.51 If during the evaluation process, the price of a Proposal for the provision of Works is considered to be abnormally low and the Participant subsequently is unable to, through a clarification process, demonstrate to the Client its capability to perform the contract for the offered price, the Proposal may be rejected, subject to prior no-objection by the Bank.

3.52 Subject to the Bank's no-objection, the Client shall exclude a Participant from contract award, provided that the Bank has determined that such exclusion is not contrary to the principles set out in Section III, Article 1, if:

- (a) in relation to the procurement process, the Participant has been determined to have a conflict of interest, an unfair competitive advantage, or has engaged in anti-competitive conduct;
- (b) the Participant or its Affiliate has been convicted of an offence involving a Prohibited Practice or equivalent act during the ten years preceding the eligibility assessment, provided that such criminal conviction is final in the relevant national jurisdiction and was rendered in judicial proceedings providing for adequate due process acceptable to the Bank;
- (c) it is or it will become unlawful under applicable law for the Client to enter into the relevant contract with the Participant or to perform its obligations under the contract; or
- (d) a circumstance or event exists, outside the Client's control (including but not limited to the imposition of any law), which has or might reasonably be expected to have the effect of prohibiting, impairing or delaying in any material respect the performance by either the Participant or the Client under the contract.

3.53 The Client shall only reject all Proposals if (a) requested by the Bank in the event of a determination of misprocurement in accordance with Section III, Article 2.15, or (b) there has been unsatisfactory competition, which includes the circumstance that: (i) none of the submitted Proposals are determined to be substantially responsive, (ii) the submitted Proposals substantially exceed the cost estimates or funds available, or (iii) one Participant remains in the procurement process prior to the invitation to submit a priced Proposal under a multi-stage Open Tendering Procedure. In the event that the Client proposes to reject all Proposals, the Client shall obtain agreement from the Bank on the subsequent procedures to be followed.

3.54 The Client shall submit to the Bank, in the required format, a report containing the results of the Proposal evaluation and its recommendation for the award of the contract. The Bank will review the findings and recommendations as the final step in establishing the eligibility of the contract for Bank financing.

3.55 Where provided for by the procurement procedure, during contract negotiations or contract finalisation meetings, subject to the Bank's no-objection, the Client and the Participant may agree on

modifications to the resulting contract provided that such modifications would not impact the original relative ranking of Participants.

#### ***Procedure for Direct Contracting***

3.56 Subject to the conditions set out in Section III, Article 3.24, the Client may invite a Participant to submit its Proposal without prior public notification. Prior to signing of the contract, the Client shall submit to the Bank for no-objection, the draft of the negotiated contract together with an appropriate justification demonstrating the basis upon which the contract represents value for money. Section III, Article 3.52 shall also apply.

#### ***Procedures for Procurement of Commodities***

3.57 Subject to the conditions set out in Section III, Article 3.25, the competitive procurement procedures applied by the Client shall be similar to an Open Competitive Procedure. Such procedures may be modified to reflect internationally established market practices for such Commodities and shall be acceptable to the Bank. Section III, Article 3.52 shall also apply.

#### ***Procedures for Procurement under National Laws***

3.58 Subject to the conditions set out in Section III, Article 3.26, the procedure applied shall (a) be competitive, (b) provide for the most economic and efficient method of procuring Goods, Works or Services, and (c) be substantially aligned with the principles set out in Section III, Articles 1 and 2. Whilst using such procedures, the evaluation methodology, eligibility requirements and contract conditions shall be made known to all Participants and applied fairly. The Bank will encourage Clients to use national e-procurement portals when available and acceptable to the Bank.

3.59 In respect of the procurement procedures provided for under Section III, Articles 3.58, the national procurement complaints review system shall apply.

3.60 Unless otherwise agreed with the Bank, the procurement documents and any resulting contract shall include provisions requiring the application of and compliance with (a) Section III, Article 3.52, (b) the Enforcement Policy and Procedures, (c) the Environmental and Social Policy as well as the Environmental and Social Action Plan, and (d) the Bank's inspection and audit rights with respect to the two aforementioned policies, similar to rights required under Section III, Article 2.11. The Client shall ensure that any resulting contracts require that such provisions must be included in any sub-contracts.

#### ***Procedures for Procurement by Utilities***

3.61 Subject to the conditions set out in Section III, Article 3.27, the Client may use its established competitive procurement procedures, if as determined by the Bank such procedures provide for adequate notification (where appropriate), non-discriminatory competition, transparent and fair evaluation procedures, verifiable compliance and independent complaint mechanisms, as well as fair and balanced contracts. The Bank may request adjustments to such procedures to ensure compliance with the principles set out in Section III, Articles 1 and 2 as well as with Section III, Article 3.52. The Bank will encourage the Client to use an e-procurement portal, when available and acceptable to the Bank.

3.62 The complaint review system as established in the Client's established procurement policies and rules or the national procurement complaints review system shall apply. Section III, Article 3.60 shall also apply.Contractual Arrangements

#### ***Contract Conditions***

3.63 The form of contract to be used must be appropriate to the objectives and circumstances of the project. Contract conditions shall be drafted so as to allocate the risks associated with the contract fairly, with the primary aim of achieving the most economic price and efficient performance of the contract. As

a general rule, the responsibility for risk should be allocated to the party best able to manage and control the risk. The contract shall clearly define the scope of Goods, Works, Services or Consultancy Services to be provided, the rights and obligations of the Client and of the suppliers, contractors and consultants and should include, inter alia, appropriate provisions for guarantees of performance and warranties, time limits, sub-contracting, liabilities and insurances, acceptance procedures, payment terms and procedures, price adjustment (where appropriate), liquidated damages and bonuses, handling of changes and claims, force majeure, termination, settlement of disputes and governing law. Wherever required by the Bank, standard forms of contract incorporating internationally accepted conditions shall be used.

### ***Payment***

3.64 The Client is responsible for payments under a contract. Payment terms and procedures shall be in accordance with internationally acceptable commercial practices applicable to the Goods, Works, Services or Consultancy Services in question and shall be acceptable to the Bank. Payment under the contract will be made in the currency or currencies of the contract, unless otherwise agreed with the Bank.

### ***Sub-contracting and Nominated Sub-contracting***

3.65 The supplier, contractor or consultant shall not sub-contract the whole of the contract. If Nominated Sub-contracting is required to achieve the objectives of a Bank Operation, such arrangement shall be subject to the Bank's prior no-objection. Goods, Works, Services or Consultancy Services provided by a nominated Sub-contractor shall only be eligible for Bank-financing provided that these are procured pursuant to this Policy.

### ***Contract Administration***

3.66 The Client shall (a) submit to the Bank a copy of the signed contract and any modifications thereof immediately upon signature, (b) diligently manage and administer contracts in accordance with their terms and conditions, (c) periodically report to the Bank on the performance of the contract, including cash flow forecasts, and (d) submit to the Bank a completion report in the format requested by the Bank once a contract is completed.

### **Procurement Monitoring and Bank Review**

3.67 As an integral part of their implementation responsibilities under a Bank Operation, the Client is required to prepare and maintain documents and records pertaining to the procurement process and contract administration and implementation to enable review by the Bank. The Bank's ongoing review of the procurement and contract implementation processes will focus on critical steps that are necessary to ensure eligibility of the contract for Bank financing.

3.68 The Client shall make such modifications in the procurement documents or reports as the Bank may request. Approved documents or reports shall not be amended without the Bank's no-objection.

3.69 Any contract to be procured following an Open Competitive Procedure or Direct Contracting shall be subject to the Bank's prior review unless otherwise agreed by the Bank. A Contract procured under any other procurement procedures will normally be subject to post review. The procurement arrangements for the Bank Operation will determine if the contract is subject to prior review or post review. The Bank or its representatives may also conduct ad hoc procurement reviews of a Bank-financed Contract or a Bank Operation and the Client shall fully cooperate with such reviews and make available any documents or data as requested by the Bank.

3.70 For all contracts which are subject to the Bank's prior review process, the Client shall submit to the Bank for its review and no-objection:

- (a) for each stage of the procurement process, prior to their finalisation and subsequent publication (where appropriate), the relevant procurement notices, procurement documents and any material modifications thereof, evaluation reports and associated recommendations (if any);
- (b) a draft version of the contract to be awarded; and
- (c) any other relevant documents that the Bank may request.

3.71 For contracts subject to post review, the Client shall furnish to the Bank immediately upon signing of the contract a copy of such contract, an evaluation report, and any other relevant documents that the Bank may request for its review and no-objection.

- 3.72 For all contracts, the Client shall obtain the Bank's no-objection before agreeing to:
- (a) any material modification or waiver of the terms and conditions of a contract;
  - (b) an extension of the stipulated time for performance and/or an increase of total contract amount, including contingencies (except in cases of extreme urgency brought about by unforeseeable events not attributable to the Client); or
  - (c) a termination of a contract.

3.73 Contract modifications shall be treated under the scope of the Direct Contracting arrangements in accordance with Section III, Article 3.24(a) if they result in an aggregate increase of the total contract amount by more than 50% of the original contract price.

3.74 The Bank may determine not to finance part of a contract, if the cause for a payment is attributable to the Client's failure to diligently manage and administer the contract in accordance with its terms and conditions or the costs of a modification of a contract are not justified to the satisfaction of the Bank.

3.75 The Bank will publish on a periodical basis information on all awarded contracts, including, as a minimum, the contract title and price, the name and nationality of the supplier, contractor or consultant, to whom the contract was awarded.

### **Advance Procurement**

3.76 Subject to Section III, Article 3.4 and provided that the preparation of the project is sufficiently advanced, it may be advantageous for the Client to proceed with the procurement process before the signing of the legal agreement with the Bank. The Client undertakes such advance procurement at its own risk. The Bank's no-objection given to the procedures, documents or the proposal for award does not commit the Bank to make financing available for the project. All procurement procedures must be consistent with this Policy in order for a contract awarded in advance of the signing of the legal agreement between the Bank and the Client to be eligible for Bank financing.

### **Retroactive Financing**

3.77 The Bank may provide Retroactive Financing if the following conditions are met:

- (a) the eligible contract is procured in accordance with the procedures as described in this Policy;
- (b) the expenditures do not exceed 20% of the Bank's financing; and
- (c) the expenditures were incurred after the date of:
  - (i) concept approval of a Bank Operation by a management committee of the Bank;
  - (ii) approval of a Bank Operation by designated approvers of the Bank in case of other internal approval procedures; or
  - (iii) other formal commencement of the preparation of a Bank Operation.

## **Article 4: Procurement Rules for a Private Sector Operation**

### **Applicability of Article 4**

4.1 Section III, Article 4 applies to a Private Sector Operation, which finances (a) any form of Capital Expenditures involving the acquisition of Goods, Works, Services, (b) Commodities, (c) Consultancy Services, or (d) any combination thereof.

### **Applicable Procurement Procedure**

4.2 The Bank's concerns for the appropriate use of funds and for economy and efficiency apply equally to any Private Sector Operation. Private sector enterprises often meet these concerns by following established commercial practices other than formal open tendering for their procurement. Wherever appropriate, the Bank will encourage the use of competitive procurement arrangements by its private sector Clients.

4.3 The Bank will satisfy itself that a private sector Client uses appropriate procurement arrangements which ensure a sound selection of Goods, Works or Services at fair market prices and achieve value for money. The Bank will not finance costs that exceed market levels. Where a shareholder of the Client or its Affiliates is also a supplier, contractor or consultant to the project, contracts shall be negotiated on an arm's length basis and shall be in the best financial interest of the Client. The contract terms and conditions shall be fair and reasonable.

### **Concessions**

4.4 The Bank may provide financing in respect of a Concession Agreement if, following a due diligence process, the Bank has determined, on the basis of the information analysed, that the following conditions have been met:

- (a) the process for selecting the Concessionaire:
  - (i) has demonstrated sufficient fairness, transparency and competition; and
  - (ii) was in compliance with all applicable laws and regulations;
- (b) the terms of the Concession Agreement reflect market practice and are fair and reasonable in terms of price, quality and risk allocation; and
- (c) no Prohibited Practices were identified in relation to the Concessionaire selection process or the implementation of the Concession Agreement.

4.5 The conditions in Section III, Article 4.4 (a)(i) shall not apply to a Concession Agreement signed more than 10 years prior to the Client's written request for Bank financing or where the value of the Concession is below €5.35 million (excluding VAT).

## **SECTION IV: WAIVERS, EXCEPTIONS AND DISCLOSURE**

### **Waivers**

The Board of Directors may grant a deviation from a requirement of this Policy that is not explicitly permitted by the terms of this Policy.

### **Exceptions**

Not applicable.

### **Disclosure**

This Policy will be disclosed on the Bank's website in accordance with the Access to Information Policy.

## **SECTION V: TRANSITIONAL PROVISIONS**

This Policy shall apply to a Bank Operation, which, after the date referred to in Section VI, has received concept approval by a management committee of the Bank or, in case of other internal approval procedures, by designated approvers of the Bank.

In respect of a Bank Operation, which, before the date referred to in Section VI, has received concept approval by a management committee of the Bank or, in case of other internal approval procedures, by designated approvers of the Bank, the Procurement Policies and Rules dated 1 November 2017 (BDS17-057/F) shall continue to apply, unless the Client and the Bank have expressly agreed to follow this Policy.

## **SECTION VI: EFFECTIVE DATE**

This Policy is effective from 15 May 2022.

## **SECTION VII: DECISION MAKING FRAMEWORK**

### **Accountable**

The VP Risk and Compliance is the ExCom member accountable for this Policy.

### **Responsible**

The Director of the Procurement Policy and Advisory Department is responsible for this Policy.

## **SECTION VIII: REVIEW AND REPORTING**

### **Review**

This Policy will be reviewed in 2027.

### **Reporting**

The Bank shall prepare an annual report on the procurement activities carried out under this Policy.

## **SECTION IX: RELATED DOCUMENTS**

The Agreement Establishing the European Bank for Reconstruction and Development Enforcement Policy and Procedures [BDS17-142/F]  
Environmental and Social Policy [BDS19-055/F]  
Access to Information Policy [BDS19-056/F]