

Procurement Principles applicable to Private Sector Transactions

Guidance for MDBs

1 October 2012

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Introduction

1. The Heads of Procurement (HOP) of Multilateral Development Banks (MDBs) set up a Private Sector Procurement Working Group (WG)¹ to agree guidance on application of procurement principles for MDB engagements with private sector operations where financing is provided directly (or via financial intermediaries) to private sector clients, including those who are operators of public concessions².
2. The EBRD was requested to chair the WG by HOP in view of its focus on private sector operations and its existing policies in respect of concession finance.
3. This Guidance Note does not alter, amend or supersede the procurement policies and rules of each respective MDB, which take precedence in the event of any ambiguity. Figure 1 below illustrates the scope of this guidance note. Annex A provides a general comparison of MDB policies relating to private sector operations³.
4. When MDBs finance private sector operations, whether directly or via financial intermediaries, they require that their private sector clients conduct procurement using acceptable private sector procurement methods. Unlike the approach followed for public sector operations, MDBs do not conduct in-depth reviews or provide 'no-objections' or specific approvals for particular procurement contracts entered into by their private sector clients., The purpose of this Guidance Note is to set out the general principles to assist the MDBs in determining whether or not such private sector practices are acceptable to the MDBs.
5. In order to take account of the different principles that apply to the financing of a private sector operation involving public concessions (due to the linkage with the public sector), this Guidance Note is in two parts:

Part 1 covers MDB financing of private sector operations such as loans, equity or guarantees to private sector clients and operations involving financial intermediaries on-lending to private sector clients.

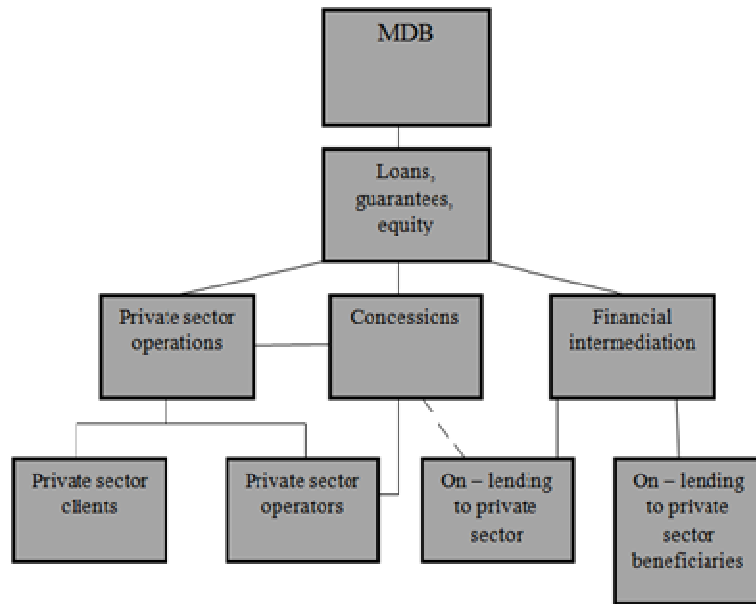
Part 2 covers MDB financing of *private sector operations* involving public concessions and should be read in conjunction with the *MDB Guidance Note on Procurement in PPP Transactions (Public Sector PPP Guidance Note)*, which covers MDB financing of *public sector sovereign and sub-sovereign operations* involving concessions.
6. Additional guidance on due-diligence considerations that may be applied by MDBs, depending on project-specific considerations, is provided in Annexes B C and D.

¹ Comprising EBRD, ADB, AfDB, BSTDB, EIB, IBRD/IDA, IDB, ISDB, IFC

² Where financing of public sector clients or public sector intermediaries, each MDB's applicable procurement rules will apply.

³ Annex A provides an outline only of MDB private sector policies as at April 2012

Figure 1: MDB Involvement in Private Sector Transactions



PART 1 – PROCUREMENT PRINCIPLES APPLICABLE TO PRIVATE SECTOR OPERATIONS

1.1 Guiding Principles

- 1.1.1 Each MDBs' policies or procedures should provide a clear definition of a private sector client or operation
- 1.1.2 The MDBs' concern for the appropriate use of funds and for economy and efficiency apply equally to its public sector operations and its private sector operations. However, the nature of incentives and risks in procurement undertaken by the public and private sectors is generally quite different and therefore private sector clients often follow established private sector procurement methods rather than formal competitive tendering for their procurement. Nevertheless, the MDB may encourage the use of international competitive tendering methods by its private sector clients, particularly for large or complex contracts.
- 1.1.3 Private sector clients often assess value for goods, works and services across multiple dimensions, including: price, quality, service, reliability, innovation, and other strategic considerations. In some cases they establish strategic partnerships with selected high quality suppliers/contractors as part of their overall supply chain and corporate strategy aimed at driving down enterprise level costs and increasing operating margins⁴. Accordingly, the MDB should satisfy itself that private sector clients use procurement methods appropriate for the project which ensure a sound selection of goods, works and services and are making their capital investments in a cost effective manner.
- 1.1.4 Where an MDB provides funds to a financial intermediary to finance sub-loans to private beneficiaries such as small and medium sized enterprises, the procurement under the sub-loan is undertaken by the respective beneficiaries in accordance with procurement practices for private sector operations acceptable to the MDB⁵.
- 1.1.5 Each MDB's policies on procurement (and other policies, such as those on fraud, corruption and other prohibited practices, and on social and environmental issues) shall apply to its projects, to the extent specified in the respective policies.

1.2 Due-Diligence – All private sector operations

- 1.2.1 Private sector procurement procedures and practices are not subject to the same oversight as those involving use of public funds – for instance they are not always covered by national public procurement laws. For private sector operations for which financing is provided for actual or proposed capital investment, the MDB should be satisfied that the goods, works and services to be financed are appropriate for the project and are or will be procured at fair market prices, and under contracting conditions that are reasonable in relation to prevailing market practice.

⁴ See Annex B for some examples.

⁵ Where financing public sector clients or public sector intermediaries, each MDB's rules for public sector operations will apply.

- 1.2.2 In most cases this will involve conducting a 'due diligence' review of critical risk parameters as determined by the MDB for the project circumstances. Suggested due-diligence considerations are outlined in Annex B.

1.3 Where the private sector client is also the contractor for the capital investment

- 1.3.1 Additional due-diligence is required in cases where a potential or actual conflict of interest situation arises, such as when the private sector client or their affiliates are also implementing the works, supplying the goods or providing their patented technology to the project. In such cases, the MDB should verify that procurement is/was carried out on an 'arm's length' basis taking into account the financial interest of the private sector client. An 'arm's length' transaction means that the parties to such transaction act as if they are independent of each other and negotiate on an equal footing. This means essentially a transaction between two related or affiliated parties that is conducted in a manner to neutralize any actual or potential conflict of interest. In short, pricing and other material terms of the transaction should be the same or similar to those that would apply had the client conducted a commercial transaction with an unrelated party and providing for similar rights and obligations on the parties, in particular in the event of default.

1.4 Where an operation provides funds to a financial intermediary for on-lending to private or public sector clients

- 1.4.1 Where the MDB's funds will be used to provide sub-loans to private beneficiaries, such as small and medium sized enterprises, the procurement under the sub-loan is undertaken by the respective beneficiaries in accordance with procurement practices for private sector operations acceptable to the MDB.
- 1.4.2 The MDB will not normally conduct reviews or due diligence on the project beneficiaries, this being delegated to the financial intermediary. In appropriate cases the financial intermediary should be tasked not only with assessing the sub-loans on sound banking criteria but also monitoring the procurement processes undertaken by the sub-borrowers in order to ensure cost-effective procurement of capital investments, including keeping records and reporting of the results of the sub-loans to the MDB⁶.

1.5 Guarantees

- 1.5.1 The procurement requirements for private sector projects or clients guaranteed by not yet harmonized. Some MDBs, such as AfDB and ADB have express provisions in their respective procurement guidelines requiring that the goods and works financed by the MDB-guaranteed loan must be procured with due attention to economy and efficiency, and have appropriate quality and pricing, and be delivered or completed in timely fashion. For EIB, procurement undertaken by a guaranteed borrower must be consistent, in specified circumstances, with principles of transparency and fairness, and result in selection of the 'most advantageous offer', in

⁶ For some projects, sub-loans could be made to a mix of private and public sector beneficiaries. Where financing public sector beneficiaries, each MDB's applicable procurement rules will apply.

addition to promoting economy and efficiency. Other MDBs, such as EBRD and BSTDB, do not have specific policies for procurement in relation to private sector guarantees.

- 1.5.2 In circumstances in which particular MDB procurement guidelines apply to private sector guarantee transactions, project preparation may include a review of the guaranteed borrower's proposed procurement arrangements to ensure that such arrangements are consistent with the applicable provisions of such guidelines. In some cases, it is possible that the guarantee may include covenanted provisions, among others, that require that any guaranteed borrower ensure compliance with particular procurement eligibility provisions set out in relevant MDB guarantor guidelines (such as country eligibility or fraud and corruption-related debarment).

PART 2 –PROCUREMENT PRINCIPLES APPLICABLE TO PRIVATE SECTOR OPERATIONS INVOLVING CONCESSIONS

2.1 Background

- 2.1.1 Concession in reference to this guidance note refers to a contract by which a public sector entity procures public services through a long term contract with a private sector entity, which undertakes efficient and value-for-money operation of such services through output or performance-based agreements. This also includes structures which can be referred to as Public Private Partnerships (PPPs). The public sector retains ultimate responsibility to the public for the service concerned and the risk in construction, finance, management or operation of the infrastructure is transferred to the private sector.
- 2.1.2 Where financing is provided by the MDB to the public sector entity (the granting authority) which is soliciting tenders for the concession, then this is considered as a public-sector operation and the principles as set out in the *MDB Guidance Note on Procurement in PPP Transactions* and the specific rules as set out in the respective MDB guidelines will apply. Where financing is provided by the MDB directly to a private sector client operating the concession, then the principles set out in this Guidance Note apply.
- 2.1.3 MDBs policies on the financing of private parties to concessions are based on the principle that a procurement process acceptable to the MDB should be used for the award of concessions.

2.2 Definition of a concession

- 2.2.1 Concessions most often involve provision of ‘hard’ infrastructure (e.g. power, roads, railways, ports, etc) which may be funded through end-user tariffs or availability payments from the public sector, with significant risk transfer of both capital and operational expenditure to the private sector. Concessions are also increasingly considered for “soft” infrastructure (e.g. healthcare, education, social housing, etc) which has been in the past, usually funded directly by the public sector.
- 2.2.2 MDBs, for the most part, list only Build–Own–Operate (BOO), Build–Own–Operate–Transfer (BOOT), Build–Own–Transfer (BOT), Design–Build–Finance–Maintain/Operate and similar types of arrangements as examples of concession contracts, which by implication will involve physical construction, repair or rehabilitation of public infrastructure and include special, exclusive or monopoly rights with a view to private operation of a public service.
- 2.2.3 Therefore, in general terms it is necessary to differentiate on the basis of whether (i) the MDB’s private sector client would have an obligation pursuant to the contract to maintain and operate a piece of infrastructure for the benefit of the public (in which case it is a concession), or (ii) whether the MDB’s private sector client would simply provide goods, works and services to a public sector entity which in turn will provide the infrastructure installation to the general public (in which case it is not considered a concession).
- 2.2.4 Where the MDB is financing a private entity who is investing in an existing public operator (i.e. the shares of the company are being sold to private investors) this is

considered as equity financing and would not normally be treated as a concession. However, in some cases, part privatisation mixed with long term service obligations may still be considered as a concession. Long term lease arrangements plus investment contracts with a private operator may also be considered as concession arrangements.

2.3 Objective

- 2.3.1 As the private sector client will be providing a public service and operating a long term contract with a public sector granting authority, the MDB is interested to ensure that the contract was awarded in an acceptable manner, consistent with prevailing laws and due process, to ensure value for money for the public sector (as well as the general public) and to minimise the opportunities for fraud, corruption and other prohibited practices in the selection process.
- 2.3.2 In principle, a well-structured, implemented and enforced concession contract should result in efficient procurement, both “upstream” (selection of the concessionaire) and “downstream” (purchase of inputs by the concessionaire), as a result of:
 - i. A transparent, competitive tender process which should yield the most economically advantageous tariff or remuneration, or the lowest level of public investment or subsidies, that provides a proper incentive for efficient procurement and operation of the facility or service through the lifecycle of the concession.
 - ii. A formula or regulatory mechanism within the concession contract for periodic and extraordinary adjustments of the tariff or remuneration, which precludes pass-through of inefficient or costly procurement or operations by the private sector operator.
 - iii. Regulatory and contract monitoring and enforcement by the contracting authority and the regulatory authority to ensure that payments are performance-based and as per the contract.
- 2.3.3 MDBs prefer in general to finance concessions awarded using international competitive tendering, as detailed in the *MDB Guidance Note on Procurement in PPP Transactions*. However, the laws in some countries may not require such procedures to be undertaken. In such cases or where the MDB is requested to provide financing after the tendering process has been undertaken and has no opportunity to influence the process adopted by the contracting authority, MDBs may nevertheless consider financing the concession awarded provided acceptable procurement principles have been applied.
- 2.3.4 The purpose of this Part 2 is to set out key principles to assist the MDBs in determining whether or not the specific procurement process undertaken for the award of the concession is or was generally acceptable.

2.4 Due Diligence on the selection and award process

- 2.4.1 The private sector client and/or the granting authority shall be requested to provide information and supporting documents on the tender, award and contract in order to allow the MDB to assess whether the procurement process complies with its requirements. Due to the public sector linkage with award of concessions, an

appropriate assessment needs to be made. A suggested checklist is provided to assist the MDB to determine the relevant data to be requested – see Annex C.

2.5 Acceptable procurement procedures for the selection process

2.5.1 At a minimum, the following three key principles should be met in an acceptable procurement procedure:

- (i) The process for selecting the concessionaire has demonstrated sufficient fairness, transparency and the opportunity for competition;
- (ii) The process was free of fraud, corruption and other prohibited practices (as defined by the MDBs and) in compliance with all applicable laws and regulations.
- (iii) The outcome in terms of the concession agreement itself is fair and reasonable under the specific circumstances of the project in terms of price, quality and risk sharing in relation to market practice, or can be re-negotiated or re-balanced as appropriate.

2.5.2 The review of the concession agreement should be undertaken by procurement specialists, lawyers and technical/industry experts, as appropriate and as determined by the respective MDB, to identify any issues and confirm that the contract is acceptable for financing. A suggested checklist is provided to assist the MDB in identifying whether the key principles have been met – see Annex D.

2.5.3 The checklist includes a review of the complaints made during the concession award process, as an indicator to confirm whether the process was indeed open, fair and transparent. The MDB will not, as a matter of course, undertake an in-depth review of each complaint, as these would in any case be subject to review under the remedies procedure of the relevant national law.

2.5.4 Each MDB shall satisfy itself that the three key principles have been met in an acceptable procurement procedure.

In the event that key principle (i) is not met, then any resulting concession would not normally be financed unless the added value of such project within the MDB relevant strategic and operational framework is sufficiently high to outweigh any deviations.

In the event that key principle (ii) or (iii) is not met the concession will not be financed.

2.6 Unsolicited proposals

2.6.1 In the case of so-called “unsolicited proposals” (e.g. a proposal for a new or innovative idea that is submitted to a client on the initiative of the private sector entity for the purpose of obtaining a contract, and that is not in response to any formal tender), where a private sector entity bears the entire cost of preparing a project for a PPP or concession contract which is then put to tender by the granting authority, the MDB may accept that this private sector entity benefit from limited compensation incentives in the tender procedure (such as the reimbursement of the

reasonable development costs of the unsolicited proposal if that entity is not successful in the tender), as determined by the MDB on a case-by-case basis, provided that these incentives do not affect the transparency, fairness and competitiveness of the tender process.

2.7 Where an operation provides funds to a financial intermediary for on-lending to private sector clients for financing of concession contracts

- 2.7.1 Where an operation provides funds to a financial intermediary for on-lending to private sector clients for financing of concession contracts, the MDB itself will not normally conduct formal reviews or due diligence on the project beneficiaries, this being delegated to the financial intermediary. The MDB may appoint an independent consultant who will be responsible for verifying that acceptable procurement procedures incorporating at a minimum the key principles as set out in Paragraphs 2.4 and 2.5 above were used during the selection process.

2.8 Downstream procurement

- 2.8.1 MDBs' procedures for 'downstream' procurement by the selected private sector operator vary and in many cases are determined by the selection procedure that was undertaken (see Annex A). MDBs shall decide what procedures will apply for 'downstream' procurement in accordance with their respective policies, but where no specific procedures are mandated by MDB policy then acceptable private sector or commercial practices shall be allowable. In the case of award of contract as a result of an unsolicited proposal for which key principle (i) is not met, then the preferred MDB approach, consistent to application of direct procurement in public sector transactions, is to require competitive procurement by the selected private sector operator where feasible.

Annex A – MDB Private Sector Policies Comparison Table (as at June 2012)

MDB	Private Sector Definition	Private Sector policy	Financial Intermediaries	Concessions	Arms length transactions	Separate Review for Private Sector procurement
ADB	Not specified. [At least 50% owned and controlled by non-government market entities]	3.13 where financing a private operation, ADB does not insist on ICB procedures, but must satisfy ADB that procurement procedures have been applied in a transparent manner, preferably through competitive bidding procedures, and that the goods and works procured are from eligible member countries and are suitable for the project.	3.12 - established private sector or commercial practises which are acceptable to ADB.	3.13 - The project sponsor for a BOO/BOT/BOOT or similar type of project shall be selected in a transparent manner, preferably through competitive bidding procedures acceptable to ADB which may include several stages in order to arrive at the optimal combination of criteria for the purpose of establishing the most economic and efficient proposal, such as the performance specifications of the facility offered, the cost charged to the user or purchaser, and the period of the facility depreciation. . The project sponsor selected in this manner shall then be free to procure the goods and works required for the facility from eligible member countries, using suitable procedures. Or, If the project sponsor has not been selected in the manner above, the goods and works required for the facility and to be financed by ADB, shall be procured from eligible member countries in a transparent manner, through competitive bidding procedures acceptable to ADB.	Not specified	Not specified
AFDB	Appendix 6.2. Privately owned and managed. At least 50% voting shares in private hands or where majority government then provided autonomous and run commercially. Subject to exceptions.	Appendix 6.3 Private sector Borrowers shall utilize procurement procedures in accordance with established private sector or commercial practices that are acceptable to the Bank. The Bank ensures that such procedures result in competitive market prices for the goods and works and that these meet the needs of the project.	3.12 - established private sector or commercial practises which are acceptable to the Bank.	3.13 - The concessionaire or entrepreneur under the BOO/BOT/ BOOT or similar type of contract shall be selected under ICB procedures acceptable to the Bank which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for the Borrower or purchaser by the facility, and the period of the facility's depreciation. . The said entrepreneur selected in this manner shall then be free to procure the goods, works, and services required for the facility from eligible sources, using its own procedures. If the said concessionaire or entrepreneur has not been selected in the manner set forth above, the goods, works, or services required for the facility and to be financed by the Bank shall be procured in accordance with ICB procedures defined in the Guidelines	Appendix 6.4. Need to demonstrate equivalence to budget and market prices and contract conditions equitable and reasonable.	Not specified

BSDTB	4.1. majority privately owned and controlled, or b. while publicly owned are, in the Bank's judgement, operating autonomously in a competitive market environment and are subject to bankruptcy or insolvency law.	4.2 The Bank will encourage use of procurement methods that lead to sound selection of goods, works and services at fair market prices to make their capital investments in a cost effective manner	as per Section 4 or sound commercial practices and on an arm's length basis.	Not specified	4.3 contract costs are in line with fair market prices and the original cost estimates and that the contract conditions are fair and reasonable	Not specified
EBRD	3.2 Enterprises that in the Bank's judgement are operating autonomously in a competitive market environment and are subject to bankruptcy or insolvency law and where operations do not have sovereign or city guarantees; or utilities operated by concessionaires who were awarded their concession following competitive tendering procedures acceptable to the Bank, and which in the Bank's judgement are operating autonomously and are subject to bankruptcy and insolvency law or utilities which are moving towards majority private ownership or control and already have a significant degree of private ownership and control, and where such utilities are operating autonomously and are subject to or have adopted sound procurement procedures.	4.2 The Bank will satisfy itself that private sector clients use appropriate procurement methods which ensure a sound selection of goods and services at fair market prices and that they are making their capital investments in a cost effective manner.	4.5 in accordance with normal procurement practices for private sector operations acceptable to the Bank.	Section 4.4 and separate Concession Policy. In this paper, the word "Concessionaire" is used to refer generally to refer to an entity that carries out public infrastructure projects under a concession issued by the public authorities of the host country. By extension, it is also intended to refer to private sector operators involved in build-operate –transfer ("BOT") operations or other similar undertakings, which enjoy special or exclusive rights as referred to in para 4.4 of the PPR. The expression "concession agreement" means an agreement between a public authority and the entity or entities selected by that public authority to carry out an infrastructure project that involves obligations on the part of the private sector party to undertake physical construction, repair or expansion works in the infrastructure concerned with a view to subsequent private operation. Any other operations are treated as private deals. The Policy as a rule a formal competitive tendering procedure should be used for the award of concessions based on best practice and all elements of best practice as set out in policy Annex 1.	4.3. the Bank will satisfy itself that the costs are in line with current market prices and the original cost estimates, and that the contract conditions are fair and reasonable. Must not exceed market levels.	Not specified (except concessions)
EBRD				Section 3 of the policy paper allows for exceptions of the policy sets out the minimum criteria that must be met where best practice is not met ('core-criteria') - (i) The process for selecting the Concessionaire has demonstrated sufficient fairness, transparency and competition; (ii) The process was free of corruption and in compliance with all applicable laws and regulations, and (iii) The outcome in terms of the Concession Agreement itself is fair and reasonable in terms of price, quality and risk sharing in relation to market practice. Exceptions can only be granted by prior Board approval. Detailed guidance on interpretation is provided. The concessionaire is then covered by Section 4 of the PPR in respect of the procurement practices which they must apply (i.e. private sector)		

EIB	<p>2.1 Depends whether operation is inside EU (in which case Procurement Directive applies) or outside EU (a detailed definition of public sector given in Appendix 5). Outside the EU, the Bank defines operations in the public sector as those carried out by: (a) in all cases: public authorities; (b)• in addition, in the case of gas, heat, electricity, water, transport, exploration for or extraction of oil, gas, coal or other solid fuels, ports and airports, telecommunications, and postal services: o public undertakings operating in markets which are not liberalised, and (c) privately-owned entities that have been granted special or exclusive rights without a competitive process and operate in markets which are not liberalised. All other operations are considered to belong to the private sector.</p>	<p>2.2 For contracts other than public contracts, promoters (most frequently private) operating in sectors where EU Directives do not apply can satisfy the criteria of economy and efficiency in their procurement by recourse to commercial practices other than open or restricted procedures. The Bank satisfies itself that promoters follow suitable procurement procedures, ensuring an appropriate selection of works, goods and services offered at competitive prices and in a timely manner.</p>	<p>3.4.4 intermediary to take measures to ensure that procurement by the final beneficiaries of works, goods and services relating to the sub-projects which the Bank finances is the most economically advantageous option, following appropriate procedures in view of the circumstances and the local legislation. When open or restricted procedures are involved, these must be undertaken in line with the provisions of the Guide</p>	<p>3.4.3 Where project developed under a BOT (Build, Operate, Transfer) or similar concession scheme which enjoys special or exclusive rights, or other state concession such as a recognized monopoly. If the concessionaire has been selected following a formal international tender procedure acceptable to the Bank (which may include several stages but has been the subject of an adequate international publicity) and has explicit responsibility for carrying out the works and providing the services under his concession, the works, goods and services covered by the Bank's financing are considered by the Bank as operations in the private sector. If the concessionaire not selected through formal international tender procedure, but Concession Agreement is considered by the Bank to be economically reasonable in terms of price, quality and risk-sharing, the Bank will review the selection process to check that the concession was awarded through a transparent process in line with the principles of the EU Treaty, implying that the three following criteria are met :i) There was adequate international publicity to allow for international competition;</p>	<p>3.4.2 the Bank verifies that contract costs are in line with the initial estimates and with current market prices, and that the contractual conditions are fair and reasonable. The Bank will not finance works, goods or services for which the costs are considered to exceed market levels</p>	Section 3.5
EIB				<p>ii) The process was fair and non-discriminatory and iii) the process followed can be traced. When the Bank finances a project developed under a concession or a public-private partnership (PPP) scheme, it requires that the concession/PPP award process by the relevant public contracting authority complies with the applicable legal framework.</p>		

IBRD/IDA	Not specified. [At least 50% owned and controlled by non-government market entities]	Not specified	3.13 the procurement is usually undertaken by the respective beneficiaries in accordance with established private sector or commercial practices, which are acceptable to the Bank	3.13 (a) The concessionaire or entrepreneur under the BOO/BOT/BOOT or similar type of contract shall be selected under open competitive procedures acceptable to the Bank which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facility offered, the cost charged to the end user, other income generated for the concessionaire or entrepreneur by the facility, and the period of the facility's depreciation, shall then be free to procure the goods, works, and services required for the facility from eligible sources, using its own procedures. If the concessionaire has not been selected as above, the goods, works, or services required for the facility and to be financed by the Bank shall be procured in accordance with LIB or ICB procedures for large value procurement as defined in Guide and other appropriate procurement methods determined acceptable by the Bank for smaller value contracts, and for consulting services in accordance with the Consultant Guidelines.	- partly mentioned in 3.14b in exceptions.	Not specified - post review for concession exceptions 3.14b
IBRD/IDA				Notwithstanding the above, the Bank may accept, in exceptional cases such as small scale expansions of existing systems operated by an incumbent concessionaire that is either a privately-owned or a government-owned company, and when an open competitive method may not be warranted, the use of the procurement procedures of such company provided that the Bank determines to be acceptable the procurement capacity and practices and procedures, the entity does not grant any preference or award contracts to their parents or affiliates or controlling shareholders; and (iv) procurement procedures ensure fair competition, economy, efficiency, quality, and transparency.		

IDB	Appendix 4.1 private sector enterprises are those in which there is no Government participation in the capital of the enterprise or those in which Government participation represents less than fifty percent (50%) of the total capital of the enterprise	Appendix 4.2 Private sector borrowers shall utilize procurement procedures in accordance with established private sector or commercial practices that are acceptable to the Bank. The Bank ensures that such procedures result in competitive market prices for the goods and services and that these meet the needs of the project.	3.12 the procurement is usually undertaken by the respective beneficiaries in accordance with established private sector or commercial practices, which are acceptable to the Bank.	3.13 (a) The concessionaire or entrepreneur under the BOO/BOT/BOOT or similar type of contract shall be selected under ICB procedures acceptable to the Bank, shall then be free to procure the goods, works, and services required for the facility from eligible sources, using its own procedures. If the concessionaire has not been selected by ICB the goods, works, or services required for the facility and to be financed by the Bank shall be procured in accordance with ICB procedures as per the Guidelines. IDB reviews the concession (and key contracts in a typical transaction) as part of its overall assessment of credit, development and reputational risks in the transaction.	Appendix 4.3 It should be demonstrated to the Bank that the costs of the acquisition are approximately equivalent to budget estimates and market prices, and that the conditions of the contract are equitable and reasonable. The Bank will not finance acquisitions that exceed market prices.	Not specified
IFC	Not specified. [wholly- or partially privately owned or sponsored businesses]	The investment must be technically sound, have good prospects of being profitable, benefit the local economy, and, satisfy IFC's Policy and Performance Standards on Social and Environmental Sustainability, as well as those of the host country. IFC satisfies itself that costs are broadly in line with market prices, and that contract conditions are fair and reasonable.	the procurement is usually undertaken by the respective beneficiaries in accordance with established private sector or commercial practices	IFC reviews the Concession Agreement (and key contracts in a typical transaction) as part of its overall assessment of credit, development and reputational risks in the transaction, rather than as part of a self-standing procurement exercise	Arms length contracting generally required.	not specified

ISDB	Not specified. [At least 50% owned and controlled by non-government market entities]	Not specified	4.3 the procurement is usually undertaken by the respective beneficiaries in accordance with established private sector or commercial practices, which are acceptable to the Bank	3.13 (a) The concessionaire or entrepreneur under the BOO/BOT/BOOT or similar type of contract shall be selected under ICB procedures acceptable to the Bank which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for the Beneficiary or purchaser by the facility, and the period of the facility's depreciation, shall then be free to procure the goods, works, and services required for the facility from eligible sources, using its own procedures. If the concessionaire has not been selected by ICB the goods, works, or services required for the facility and to be financed by the Bank shall be procured in accordance with LIB or ICB procedures as per the Guidelines.	Not specified	Not specified
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Annex B – Suggested Private Sector Due-Diligence

Key Parameters	Due Diligence Considerations
Project cost.	A review of the project cost to determine that the estimated or actual capital investments are consistent with current market prices and/or that the private sector client is making capital investments in a cost effective manner. This should be based where possible on a review of project life-cycle costs. This may be verified by an independent consultant engaged by the MDB.
Client's procurement organisation.	A review of the structure, capacity, policies and practices of the private sector client's procurement organisation and their experience in efficiently and effectively managing similar projects or contracts.
Client's procurement planning.	A review of the procurement plan and/or implementation plan for the project. Careful procurement planning for the full duration of the project helps to identify the most cost-effective approach and reduces the risk of the entity entering into uneconomic direct contracting arrangements.
The contract.	A review of the actual or proposed contractual basis for the capital investment to ensure that it incorporates properly balanced contract conditions and acceptable levels of risk management. The use of internationally recognised forms of contract, such as FIDIC, may be encouraged for larger contracts, to increase the possibility of international competition.
Performance and completion guarantees.	A review of the incentives provided to encourage timely completion of the project. Performance, completion, parent company and other guarantees may be required for larger and more complex contracts or where commercially unproven technology or second-hand equipment is being financed. These may be provided by the private sector client or other guarantor.
Integrity Checks.	The MDB may conduct integrity checks on the private sector client and its key shareholders in line with good banking practice and MDB's prohibited practices policy. These may also highlight any potential for conflict of interest in the award process.
Eligibility Checks.	The MDB may conduct eligibility checks in accordance with its standard eligibility policy.
Monitoring and reporting.	As the MDB does not directly review the procurement undertaken under private sector projects, monitoring and/or reporting arrangements should be in place to ensure that the private sector client undertakes the procurement and implements the capital investment as agreed with the MDB. Additional independent monitoring and reporting arrangements may be required in specific cases, for instance, where the private sector client is also the contractor for the capital investment or for projects implemented through financial intermediaries or for larger or longer-term projects.
'Arms-Length Transactions'. Where the private	The MDB should ensure that the remuneration or pricing formula provides no incentive to the private sector client to incur non-justified capital expenditure. In such cases, a review of the construction contract should take place to ensure that the price of

<p>sector client is also the contractor for the capital investment</p>	<p>the contract is reasonable, that the construction company affiliate of the private sector client has proper contractual incentives to complete the contract in the most cost-effective manner, such as a performance guarantee set at a sufficient level to encourage completion. The MDB may seek independent professional opinion in such cases.</p> <p>In addition, an adequate completion guarantee given by the private sector client (or project sponsor or other guarantor) is recommended to ensure, at a minimum, that its obligations in the following areas are covered: (i) funding of cost overruns; (ii) performance (responsibility for execution of the works in the event of a default by the contractor); and (iii) repayment of the loan (or a put for the MDB's equity investment, as the case may be) if construction etc. is not completed by an agreed date or is abandoned.</p> <p>Where commercially unproven technology is being proposed and in other high-risk cases, the normal guarantee may be extended, e.g. to ensure that the private sector client (or project sponsor or other guarantor as appropriate to project circumstances) assumes responsibility for the project debt service (or accepts a put for the MDB's equity investment, as the case may be), and is judged creditworthy for these contingent liabilities.</p> <p>Note: Depending upon the value and complexity of the investment and the financing arrangements, the MDB may retain one or several advisers (technical, legal, financial, market etc). For instance, to provide advice to the MDB in respect of the contract; to monitor the implementation of the project and/or to verify disbursement requests to the MDB.</p>
<p>Procurement Multi-dimensional parameters</p>	<p>In the private sector, strategic sourcing and operational procurement is a key enabler for achieving the supply chain strategy and corporate strategy. Supplier selection focuses on companies that can be strategic long-term partners for the organization rather than one-off providers of goods or services.</p> <p>Active tracking of seasonal or other industry trends and relevant changes in the supplier base help identify the best timing to source a category, anticipate future price volatility and structure supplier negotiations, contracts, and relationships to create competitive advantage.</p> <p>Leading firms maintain an optimal number and mix of suppliers for each category and region and use global supply chains to leverage low-cost sourcing opportunities.</p> <p>Selection criteria are expanded from lowest unit cost to include total cost of ownership, quality, supplier reliability, and value of additional services. Such networks enable more advanced forms of collaboration in product development, increased levels of integration, efficiency, and higher levels of service. They provide value-added services such as enhanced technology, new product</p>

	<p>development insights and other services (such as planning / logistics / managed inventory / engineering) that contribute to supply chain optimization.</p> <p>Supplier performance reviews and contingency planning are an integral part of negotiations and contract award decisions. A mix of short and long term contracts and discretionary purchases are used to create optimum supply relationships.</p> <p>Payment processes are designed to achieve advantageous payment terms with suppliers, and negotiations attempt to capture the maximum value from each qualified supplier and bid.</p>
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Annex C – Suggested Private Sector Concession Award Due-Diligence Data Request Checklist⁷

KEY CRITERIA	Actions
1. Legal basis for the award of the concession.	<i>Law(s) under which the concession was tendered.</i>
2. Professional Advisers and budget estimates	<p><i>Did the contracting authority engage Advisers for technical, legal, and financial issues on the concession?</i></p> <p><i>Name and address of Advisers</i> <i>Role of Advisers in the tender and contracting process.</i></p> <p><i>What was the original budget?</i></p> <p><i>Were any public sector comparators prepared to see what it would cost for the public sector to provide the service itself?</i></p>
3. Public notification of the tender	<p><i>Provide the advertisement (if available)..</i></p> <p><i>Where and when advertised?</i></p> <p><i>What were the qualification requirements?</i></p> <p><i>Any restrictions on participation?</i></p>
4. Prequalification	<p><i>Was Prequalification used? Yes/No</i></p> <p><i>Provide the prequalification documents if available</i></p> <p><i>What criteria were used for prequalification?</i></p> <p><i>What was the result of the prequalification exercise?</i></p> <p><i>List name and address of firms prequalified.</i></p> <p><i>List name and address of firms not considered qualified and reasons for non-qualification.</i></p> <p><i>Were any complaints received or legal action taken by applicants during the prequalification process and the current status of such legal action/complaints?</i></p>
5. The Request for Proposals.	<p><i>Provide the Request for Proposals (including the draft contract if part of the documents).</i></p> <p><i>When issued, when closed?</i></p>

⁷ Due to the complex nature of many concessions, the MDB may, wherever appropriate, utilise legal, technical, integrity or other advisers as required, in addition to its internal review of the procurement process.

	<p><i>What were the qualification (where no prequalification) criteria?</i></p> <p><i>What are the criteria for evaluating the proposals, the relative weight to be accorded to each such criterion and the manner in which they are to be applied in the evaluation of proposals?</i></p> <p><i>Was a draft contract included in the request for proposals? If so, what were the key terms?</i></p>
5. Evaluation and Recommendation of award of concession.	<p><i>Provide the Tender opening record and evaluation report (if available).</i></p> <p><i>What was the result of the evaluation process, which firm was recommended and on what basis?</i></p> <p><i>List the names and addresses of firms considered qualified.</i></p> <p><i>List the names and addresses of firms not considered qualified and reasons for non-qualification</i></p> <p><i>Were any complaints received or legal action taken by applicants during the evaluation process and the current status of such legal action/complaints?</i></p>
6. Negotiation of contract.	<p><i>Provide the final concession contract.</i></p> <p><i>What negotiations were held (how many rounds, only with winning tenderer or several)?</i></p> <p><i>What changes have been made in the contract from that included in the request for proposals document?</i></p> <p><i>What are the key details of the agreement including cost; duration; penalties and performance indicators; termination provisions?</i></p>
7. Public disclosure of the award and key terms of the contract.	<p><i>What information was published?</i></p> <p><i>Was the result confirmed by public authorities?</i></p>
8. Where Goods or works for the capital investment are intended to be procured from the private sector operator itself or affiliates or subsidiaries of a shareholder of the private sector operator.	<p><i>Will an affiliated company be providing goods or works for the capital investment? If so, provide documents and a description of the goods or works to be provided.</i></p> <p><i>What performance or completion guarantees have been or will be provided?</i></p>

Annex D – Private Sector Concession Award Key Principles Checklist

Key Principles	Compliance
<p>1. The process for selecting the Concessionaire has demonstrated sufficient fairness, transparency and an opportunity for competition.</p> <p><i>Guide:</i></p> <p><i>The Contracting Authority has defined the opportunity and made it known broadly enough to attract the attention of potentially interested and qualified firms. Furthermore, it must not have discriminated or limited the scope of potential participants on the basis of irrelevant and non-market criteria or provided any undue or unfair competitive advantage to any prospective concessionaire.</i></p> <p><i>The process has been open in terms of public scrutiny and adherence to appropriate public administrative procedures.</i></p> <p><i>The contracting authority has published a public notice of the Concession award and disclosed the key terms of the contract.</i></p> <p><i>The various offers received have been evaluated consistently against reasonable and pre-determined criteria.</i></p>	
<p>2. The process was free of fraud, corruption and other prohibited practices and in compliance with all applicable laws and regulations.</p> <p><i>Guide:</i></p> <p><i>It shall be established that applicable local and national laws and regulations have been followed and that the documents provide adequate protection against any fraud, corruption or other prohibited practices of both the Contracting Authority and the Concessionaire.</i></p> <p><i>Due diligence has been undertaken to ensure that no fraud, corruption and other prohibited practices have been reported in respect of the participants and the award process.</i></p> <p><i>Any complaints have been reviewed and resolved in accordance with the relevant laws and regulations.</i></p>	
<p>3. The outcome in terms of the Concession Agreement itself is fair and reasonable under the specific circumstances of the project in terms of price, quality and risk sharing in relation to market practice, or can be re-negotiated or re-balanced.</p> <p><i>Guide:</i></p>	

Key Principles	Compliance
<p><i>In respect of the contract:</i></p> <p><i>Standard of Contract</i></p> <ul style="list-style-type: none"> <i>(i) Properly defined contract setting out the rights and obligations of both parties including risk allocation in a fair and balanced manner reflecting project considerations.</i> <i>(ii) The risk allocation is generally consistent with good international practice and adequately reflects project considerations..</i> <i>(iii) A transparent and objective price setting mechanisms is included (either within the contract or by regulation).</i> <i>(iv) Appropriate dispute resolution and termination clauses are included.</i> <i>(v) Works, goods or service necessary for the project shall be procured on an arm's length basis.</i> <i>(vi) Performance criteria or performance standards (including guarantees).</i> <i>(vii) Environmental and social obligations are defined and acceptable under the MDB's Environmental and Social Policy.</i> <p><i>Fairness of Contract (taking into account project considerations).</i></p> <ul style="list-style-type: none"> <i>(i) The price of the service is in line with independently estimated costs or consistent with international benchmarks (in relation to those elements which can be benchmarked).</i> <i>(ii) The concessionaire has appropriate incentives for efficient and optimal investment.</i> <i>(iii) There is an efficient sharing of risk and is the risk-reward profile of the contract is fair.</i> <i>(iv) The contract transfers to the private sector the commercial risks relating to design, construction, financing and operation of the facility to the extent appropriate to the specific sector and project.</i> <i>(v) The duration is of reasonable length in the industry.</i> 	