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To the European World Bank Executive Directors:

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- Mr. Jens Haarlov
- Mr. Piero Cipollone
- Mr. Nuno Mota Pinto
- Mr. Michel Mordasini

Berlin, 24 November 2010

World Bank Revised Procurement Guidelines 2010

Dear Executive Director,

I am writing you today as President of European International Contractors (EIC), a European business federation whose members are construction industry associations from fifteen European countries. EIC represents the interests of the European construction industry in all questions related to the international construction business outside of the European Union.

Since many years EIC is closely following the development of the Procurement Guidelines and earlier this year we have been one of the few industry federations that participated in the Bank's public consultation. Please allow me to attach for your information our respective Position Paper dated 15 May 2010 as well as "Matrix D" of the Bank's Summary which documents both the EIC comments under "*Europe*" as well as the Bank's response to our remarks (cf. Enclosure).

We have learned that the Board of Executive Directors shall meet on 7 December 2010 for consideration of the revision of the World Bank's Procurement and Consultant Guidelines and, bearing in mind the overriding importance of the Procurement Guidelines for the "market place" in many parts of the globe in particular for infrastructure projects, we deem it important to submit to you the respective views and concerns of the European construction industry.

I would like to express initially our big relief that the Revised Procurement Guidelines generally require in § 2.43 "*international commercial arbitration in a neutral venue*" as the final stage of dispute settlement. This will reassure foreign bidders and is considered as a positive and trust-building amendment. Whilst we are certainly not expecting that all of our other comments are taken up into the revision of the guidelines, we would like to bring to your attention before the meeting on 7 December 2010 four key policy issues which as a matter of fact deter our member companies from participating to a greater extent in World Bank financed tenders for major works:

1. Eligibility of Government-owned enterprises (§ 1.8)

EIC would like to draw your attention to the fact that the participation of state-owned or state-controlled entities in World Bank tenders (for major works) leads to a severe distortion of competition with privately-owned companies, as government-owned entities are not subject to the same commercial constraints. As a consequence, many of the leading European contractors have decided to withdraw from major works tenders financed by the World Bank thus contributing unintentionally to a reduction of international competition. Recently, the U.S. Millennium Challenge Corporation (MCC) has acknowledged that a “level playing-field” is not provided in such circumstances and MCC has revised its procurement guidelines accordingly. Whilst we would agree that such solution is not feasible for the World Bank, we would suggest, however, that the criteria listed in footnote 13 apply to any Government-owned enterprise and not only to those of the Borrower’s country.

2. Bank Review (§ 1.13); Fraud and Corruption (§ 1.16)

EIC takes the view that the fairness and transparency of the tender process for major works would be significantly improved if the World Bank maintained an increased influence during the project cycle, ideally in form of a full-scale project control mechanism which begins at the pre-qualification stage and ends only after the final settlement of all disputes. Whilst we acknowledge that the responsibility for the implementation of the project rests primarily with the Borrower, we believe that the Bank should use its financial leverage to tighten its supervision, at least insofar as large contract values are concerned. In this context, EIC has put forward a very practical proposal to strengthen the Bank’s oversight, namely through stipulating a requirement that bidders provide a copy of each *original* bid at the date for submission of the tender to be safely stored with the (INT Department in the) Bank in order to prevent any possibility for subsequent falsification. We believe that the Bank’s response, that this is administratively not feasible, is an excuse for a lack of political will, as the requirement could be restricted for instance to major works tenders with a contract value above 25 million US\$.

3. Award of contract (§ 2.59)

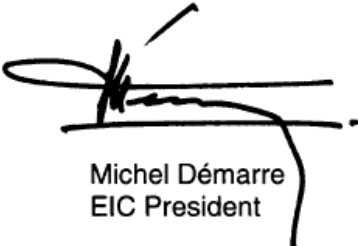
As mentioned earlier, European international contractors are currently deterred from participating in World Bank tenders for major works due to the eligibility of Government-controlled entities from outside the Borrower’s country. This policy inevitably creates a drive towards abnormally low bids and this trend is furthered by the Bank’s strict rule to award the contract on the basis of the “lowest evaluated cost”. Such policy, however, compromises the quality and the sustainability of infrastructure projects and studies have revealed such concerns. Therefore, EIC would like to invite the Bank to consider introducing, at least in the case of major works tenders with a contract value above 25 million US\$, an award on the basis of the “economically most advantageous tender”. Again, we disagree with the Bank’s simplistic reply that this award procedure could be open to abuse. Otherwise the Bank would not prescribe in its *Procurement Guidelines for the Selection and Employment of Consultants* the consideration of both quality and cost aspects (cf. § 2.15 *et seq.*). We believe that appropriate precautions can be taken and we would recommend that some elements of the selection process applicable to Consultants, e.g. the use of a two-envelope procedure or the observation of “soft” development policy considerations, such as the transfer of knowledge and the participation of nationals among key experts in the performance, should also be applied in the tender process for major works financed by the World Bank.

4. Use of Country Systems (§ 3.20)

For more than two years, EIC is constructively collaborating with the World Bank on its UCS Pilot Programme and during the past year the function of the ITAG spokesperson has been entrusted with the EIC representative. However, after more than two years into operation the first pilot project under the UCS Pilot Programme has yet to be identified, executed and evaluated. Against this background, we query the rationale for incorporating

the option to use country procurement system already in the Bank's Procurement Guidelines. We would advise the Bank to await the first tangible results and experience made in the framework of the UCS Pilot Programme and to make a proper evaluation of the respective advantages and disadvantages.

We trust that our observations can still play in the further discussion on the Revised Procurement Guidelines and we remain available for any questions that you or your staff might have on this important issue.



Michel Démarre
EIC President

Enclosures