

## D. Revision Matrix for Guidelines for the Procurement of Goods, Works, and Non-Consulting Services – Industry

| Section         | Sub-section                 | No. | Industry Comments  | Bank Response   |
|-----------------|-----------------------------|-----|--|---|
| I. Introduction | Purpose                     | 1.1 | n/a  |   |
|                 | General Considerations      | 1.2 | <p>(Europe) Notwithstanding the fact that the Bank is not a party to the contract resulting from the tender process – it would be pertinent if the Bank provides in the Procurement Guidelines for the general possibility of payments directly to the contractor in case of default of the Borrower or if it assigns certain rights of the Loan Agreement to the contractor. Whilst we acknowledge the general principle of Borrower ownership, it is an unfortunate fact of life that the current system of “non-interference” of the Bank has often the unwelcome effect of late or even lack of payment by the Borrower. The option proposed by EIC would demonstrate the Bank’s commitment to a fair and appropriate application of Bank funds and the Bank would put itself in a better position to control the execution of the project in its own interest if a major default should occur.</p>  | <p>While the Bank fully appreciates EIC’s concerns about late or lack of payment by Borrowers, unfortunately the actions proposed by EIC cannot be implemented due to the Bank’s role as a financial institution and third party in the procurement process executed by Borrowers for Bank-financed contracts. The Bank cannot disburse directly unless specifically instructed to do so by Borrowers. Nevertheless, the Bank has taken measures to closely follow up with Borrowers cases of delayed and non-payments as part of its regular supervision activity for any project, especially when complaints are received by the Bank from firms and individuals.</p>               |
|                 | Applicability of Guidelines | 1.5 | <p>(USA) In reference to footnote 10 on page 7 includes a reference to country systems. It states that in the case of UCS, the Loan Agreement between the Borrower and the Bank will describe the applicable procurement procedures of the Borrower and the full application of section I and any other parts of the Guidelines as may be deemed relevant by the Bank. Question: Since candidates for UCS will be chosen based upon their near equivalence to the Guidelines why would not all the Guidelines be relevant for their procurement? This is a loophole. Of course the first point is that the rules pertaining to a pilot project have no legitimate business in the permanent procurement guidelines of the Bank. One could conclude that if the Guidelines are approved with country systems but the pilot fails miserably, we will still have country systems because they are in the Guidelines. We need to wait for success with the pilot before taking this step.</p> <p>(Europe) We are surprised to find a reference to UCS. As this program has not moved out of the pilot stage, it seems premature to codify UCS within the Guidelines as if they were fully operational. EIC asks the Bank to postpone any reference to the UCS program until a group of candidate countries has been officially declared eligible by the Board of Directors of the World Bank for the use of its national procurement system.</p> | <p>Bank fully appreciates concerns expressed about the UCS. Its reference under the Guidelines as approved by the Bank Board is necessary to be able to implement the pilot program. The Bank takes the assessments made under the UCS piloting program very seriously. A special Operational Procurement Review Committee (OPRC) of the Bank reviews all cases for proper checks and balances, consistency on the application of the UCS and for quality assurance. Each project selected for the pilot will have all necessary approvals as required by the Bank Board. The Bank is committed to apply the required due diligence before permitting the use of country systems.</p> |

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|  | Conflict of Interest                    | 1.6  | (Europe) Personal relationships and sub-contractors' involvement are sometimes issues which a bidder can hardly control or even be aware of. In addition, and bearing in mind that many bidders participating in World Bank tenders may actually be part of a larger group, a potential bidder may not even be informed of the participation of another company of the group during the design phase. Therefore, EIC would recommend restricting paragraph 1.7 to cases where a bidder directly controls through majority shares or voting rights or common management a company which has provided consulting services as well as allowing for a bidder's declaration that it did not benefit from any particular information. Last but not least, as written, the clause apparently relates only to privately organized companies and EIC queries if and how such conflicts of interest are regulated in the case of a government-owned enterprise or institution.   | The criteria for conflict of interest (COI) have been added to bring consistency with the Consultant's Guidelines. These paragraphs have been further modified to address some of the concerns expressed by EIC. The COI rules are equally applicable to both private and public sector entities.  |
|  | Eligibility                             | 1.8  | (Europe) EIC holds that in order to comply with sub-clause 1.2 lit. b), which requires the Borrowers to give "all eligible bidders from developed and developing countries [...] equal opportunity to compete in providing goods and works financed by the Bank", the Bank needs to prevent unfair competition between privately-owned government-owned enterprises or institutions, regardless of whether they have their legal seat inside or outside the Borrower's country. Therefore, EIC asks the Bank to delete in sub-clause 1.10 lit b) any reference to the Borrower's country as the distortion of competition is not arising from the location of the state-owned entity but from the risk of hidden state subsidies towards government-owned entities. The emphasis should be, therefore, on the criteria under which such competition can be acceptable. In order to verify the autonomy of the state-owned entity the following sentence should be added at the end of the sub-clause: "Borrowers are required to verify that government-owned enterprises or institutions have demonstrated their legal and financial autonomy by means of a balance sheet audit carried out by a reputable international accounting firm in accordance with internationally recognized accounting rules". | The eligibility policy of the Bank with respect to government-owned enterprises has not been changed by the proposed revision. Instead the policy, as applied under the current Guidelines, has been further clarified. When a government-owned entity of a country participates in a bid invited by another country, it is treated at par with privately-owned enterprises, provided it meets the criteria for such participation applicable to all government-owned entities. A footnote specifies which documentation is required to establish the eligibility of government-owned enterprises. |
|  | Advance Contracting and Retro Financing | 1.11 | n/a  |  |
|  | Joint Ventures                          | 1.12 | n/a  |  |
|  | Bank Review                             | 1.13 | (Europe) Fulfillment of the requirements of a fair, transparent and efficient tender process can only be achieved if the Bank maintains an increased influence on the evaluation process 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 related to the project financed wholly or partly by the Bank. Therefore, the Bank should not leave the entire responsibility of the tender procedure with the Borrower, but share this burden – considering its own four key principles mentioned above – by closely reviewing the essential steps of both the procurement decision and the project execution. Against this  | The role of the Bank, as a financial and development institution, is governed by its Articles and, as regards procurement, further stipulated in the Guidelines. The responsibility for the implementation of the project, and therefore the procurement award and administration of contracts, rests with the Borrower. Respecting, and without   |

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|  |                      |      | <p>background, we agree with the refinement of sub-clause 2d) in Appendix 1 [Review by the Bank of Procurement Decisions and Publication of Awards of Contracts] which states that "if after publication of the award, the Borrower receives protest or complaints from bidders, a copy of the complaint, the Borrower's comments on each issue raised in the complaint, and a copy of the Borrower's response shall be sent to the Bank for its review and comment." EIC would recommend incorporating a similar provision for complaints from the successful bidder during the project execution. EIC also welcomes the new wording introduced under lit. j) but would still recommend that the Bank stipulates the requirement to provide a copy of each original bid at the date for submission of the tender to be safely stored with the Bank in order to prevent any possibility for subsequent falsification.</p>   | <p>compromising these principles, the Bank has a role of supervision rather than implementation. Sanctions are provided when violations occur. As noted by EIC further modifications have been made to ensure better controls over possible wrong doing. However, it is not feasible to include requirements that will be administratively more burdensome, such as calling for a copy of original bid in every case as proposed. When, however, there are doubts or complaints, the Bank requires Borrowers to provide a copy of a bid or its relevant parts.</p>   |
|  | Misprocurement       | 1.14 | n/a   |  |
|  | References to Bank   | 1.15 | n/a   |  |
|  | Fraud and Corruption | 1.16 | <p>(Austria) There is concern about the level of due diligence that will be required from bidders with respect to their sub-contractors and about the obligation of the main contractor to guarantee access to all accounts and records of his sub-contractors, which might be difficult to enforce for the main contractor.</p> <p>(Europe) We continue to oppose any unilateral requirements which relate to bidders only. Instead, EIC proposes an undertaking that obliges all parties to sign a Joint Code of Ethics which expressly obliges the Borrower as well as consultants, suppliers, contractors and their agents to observe a "country's laws against fraud and corruption". Similarly, the Bank is strongly urged to apply sub-clause 1.16 lit d) also to Borrowers and to introduce similar sanctions against Borrowers which have violated the Bank's ethics policy rules.</p> <p>(USA) The concern here is to what level of due diligence must a bidder go to vet the members of its team? This is even more important now that cross-debarment is being established.</p> | <p>Fraud and Corruption provisions have been substantially modified based on the experience gained over the years and with the objective of harmonization among IFIs. The main contractor or the bidder should conduct appropriate due diligence before selecting his subcontractors and team members to ensure that they are not involved in fraud or corruption, and are willing to provide all documentation if and when required. In cases where Borrowers are involved in fraud or corruption, additional sanctions such as misprocurement, have been added. Obstructive practices have been added as a sanctionable activity. Moreover, the Bank's Anti-Corruption Guidelines, which form a part of every loan agreement, impose additional requirements upon the Borrowers to prevent fraud and corruption. Cases involving fraud and corruption by</p> |

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|         |                            |      |  | <b>Borrower's staff are followed upon by the Bank with the relevant authorities of the country.</b>   |
|         | Procurement Plan           | 1.18 | (USA) Waiting until after approval of the Loan to publish the procurement plan denies timely access to interested firms. If advance contracting is not to be seen as a commitment by the Bank to approve a loan (see 1.11), then issuance of a procurement plan should be equally benign.  | Since sometimes changes are agreed in the initial procurement plans and they become binding when the project is effective, the Bank publishes them only when the loan is signed. This does not mean that the concerned procurement (initiated as advance procurement) during project preparation will not be advertised for timely access to the interested firms. Bidders will have adequate time to respond to such procurement notices. However, the Bank cannot commit the loan simply because an advance procurement action or contracting has occurred to expedite the procurement process in anticipation of a loan. When a Borrower signs a contract without having signed a loan, it takes the responsibility to arrange financing of the implementation of the contract in case the loan is not signed. |
| II. ICB | General                    | A    | n/a  |   |
|         | Introduction               | 2.1  | n/a  |   |
|         | Type and Size of Contracts | 2.2  | n/a  |   |
|         | Two-Stage Bidding          | 2.6  | <b>(Europe) It appears that two-stage bidding is being restricted to complex works of a special nature, such as industrial plants and facilities, or involving complex information and communication technology and cannot apply to "ordinary" construction projects even if they are of a sizeable value. EIC holds, by contrast, that the two-stage bidding procedure may be applicable in all cases of sizeable project value and/or where the Borrower does not wish or is not capable to prepare a detailed design. EIC agrees again with the Bank that the second stage of the bidding be based on a completely transparent, revised technical and pricing policy.</b> | <b>The provisions do not preclude the use of a two stage bidding process on the basis of the estimated contract value. Two-stage bidding remains, however, more relevant to complex contracts.</b>  |

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|  | Notification and Advertising      | 2.7  | (Austria) It was noted as extremely positive that General Procurement Notices and Specific Procurement Notices will now also be posted on the Bank's external website in addition to UNDB online. In this context it was requested that the General Procurement Notices also provide the link to the borrower's website where information on subsequent national competitive bidding tenders will be published.  | The suggestion to provide a link to the borrower's website where NCB tenders are published can be addressed in the relevant SBDs.   |
|  | Prequalification of Bidders       | 2.9  | (Europe) In line with our earlier public statements EIC recalls that the prequalification process should be considered as an opportunity to raise the standard of the competition by setting out the minimum requirements to be met in terms of the tenderers' technical ability, financial position, capacity and experience. By introducing an intense and comprehensive screening of the candidates' general performance capacities, the Borrower can establish a limited number of experienced and qualified bidders that have the intention on submitting competitive tenders, thereby focusing, not limiting, the competition. The pre-qualification process should be based entirely upon the capability and resources of prospective bidders; (i) experience and past performance (ii) capabilities and (iii) financial position. Again, it appears that the Bank would like to restrict pre-qualification to complex works of a special nature, such as industrial plants and facilities, or involving complex information and communication technology and cannot apply to "ordinary" construction projects even if they are of a sizeable value. EIC holds, by contrast, that prequalification may be applicable in all cases of a sizeable project value where the high costs of preparing detailed bids could discourage competition. | Some further changes have been made in the text. Contracts for which prequalification is usually necessary have been described. Cases justifying prequalification are considered on a case by case basis to avoid undue prescriptive policy. However, as additional time is required for the completion of the procurement process involving prequalification, it is not advisable to rely on such in every case, in particular for routine and simple contracts. |
|  | Bidding Docs                      | B    | n/a  |   |
|  | General                           | 2.11 | (Germany) This paragraph should contain a more specific provision for the evaluation of the bid. Amongst others, it is important that the invitation to bid already describes concretely the assessment criteria (such as Price, Life Cycle Costs, Quality, etc.) as well as to what percentage the criteria will be used for evaluation (see also Appendix 3).  | Defining details of bid evaluation criteria in the Guidelines other than key principles is not appropriate and details are provided in the applicable Standard Bidding Documents developed by the Bank for their mandatory use by Borrowers.  |
|  | Validity of Bids and Bid Security | 2.13 | (Austria) It is our understanding that there is an express distinction between bid securities in the form of bank guarantees (issued by banks) and in the form of bid bonds (issued by financial institutions such as insurance, bonding or surety companies). Bidders are allowed to submit bank guarantees directly issued by the bank of their choice located in any eligible country. Bid securities in the form of bid bonds which are issued by a financial institution located outside the country of the Borrower are possible only if the financial institution has a correspondent financial institution located in the country of the Borrower to make it enforceable.  | The understanding is correct.   |

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|  |                              |      | <p>(Austria) In the past we noticed that Borrowers themselves often are not aware of this distinction and its consequences. We therefore highly appreciate the new wording and would like to suggest a further clarification of the Guidelines and the Standard Bidding Documents in this regard.</p> <p>(Austria) The rules about the validity of bid securities now state that the period considered sufficient for the borrower to act is considered to generally be 4 weeks. The addition of the word “generally” could create a loophole for borrowers to ask for unreasonably long validity of bid securities.</p> <p>(Europe) would expect that bidders are specifically informed by the Contracting Authority, in case the award is based also on additional criteria to price, such as quality, technical merit, environmental and functional characteristics, running costs, cost-effectiveness, technical assistance, delivery date or period of completion, about the relevance of such additional criteria and their relative weighting.</p> <p>(Germany) Bidders are allowed (without being disqualified) to set a final date in their guarantees (assumed the set time limit is sufficient). This rule applies for all other needed guarantees as well. We recommend the Bank use Standard Guarantee documents or at least samples for Standard Guarantee documents.</p> | <p>Any further modifications to the SBDs will be considered.</p> <p>Bank’s SBDs will be modified to address this issue, if and when the proposed revisions are approved by the Bank’s Board.</p> <p>The relevant SBD specify all criteria for bid evaluation and award.</p> <p>Bank’s SBDs include standard forms of bid security and other guarantees that are of mandatory use. Commercial Banks have no difficulty, except in the case of a few countries where their cost is high, to provide guarantees in accordance with these standard formats.</p> |
|  | Language                     | 2.15 | n/a   |   |
|  | Clarity of Bidding Documents | 2.16 | <p>(Europe) The Bank should ensure that the Borrower has carefully prepared the tender to such detail that there are no “white spots” in the information issued to all bidders, thus resulting in price quotations that contain a minimum of guess work, which is often caused by insufficient data in the tender documents, and which generally tends to either inflate the price or put considerable strain on the execution of the contract where the contingencies built into the price prove to be insufficient during the execution of the project.</p>   | <p>The Bank’s SBDs provide clear and unambiguous instructions to bidders. Whenever information provided is insufficient, the Bank intervenes and requires Borrowers to provide additional relevant information. However, if bidders believe after receiving the bidding documents that they need more details they should be asking Borrowers to provide the same and the Bank can also be informed when Borrowers fail to respond satisfactorily to follow up the matter with Borrowers.</p>   |

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|  | Standards                              | 2.19 | n/a   |   |
|  | Use of Brand Names                     | 2.20 | (USA) If a Borrower needs to use a brand name, before doing so he must submit to the Bank for review and no objection a comprehensive justification including grounds of compatibility with existing systems and previous investments in the branded item.  | This paragraph as modified requires Borrowers to provide justification and obtain the Bank's no-objection before using brand names.   |
|  | Pricing                                | 2.21 | (Austria) in connection with 2.51 fn 52: 2.21 allows only invitations on the basis of CIP whereas Art 2.51 footnote 52 gives the Borrower the alternative between CIF and CIP. We take the liberty to comment that this is a contradiction. We believe that both Incoterms CIF and CIP should be permitted.   | There is no contradiction as CIP is the default term to be used and circumstances under which CIF could also be used is explained in the foot note.   |
|  | Price Adjustment                       | 2.24 | n/a   |   |
|  | Transportation and Insurance           | 2.26 | n/a   |   |
|  | Currency Provisions                    | 2.28 | n/a   |   |
|  | Currency of Bid                        | 2.29 | n/a   |   |
|  | Currency Conversion for Bid Comparison | 2.31 | (USA) This section requires additional clarification regarding the source of the exchange rate and the date of its publication. Some sources publish the previous day's exchange rate leaving it open to interpretation as to which day the source should be consulted. Suggested language: It shall be specified the date upon which the exchange rate is to be based, and that the date of the exchange rate supersedes the date of publication (or posting if using an electronic source).   | The text is clear that the preselected date included in the bidding documents is the basis to determine the exchange rate (not the date of publication of the exchange rate). The Bank's SBDs are also clear in this regard.  |
|  | Currency of Payment                    | 2.32 | n/a   |   |
|  | Terms and Methods of Payment           | 2.34 | (Austria) It was noted as extremely positive that the Bank now requires the use of letters of credit.<br><br>(Europe) It would be pertinent if the Bank provides in this chapter for the general possibility of payments directly to the contractor in case of default of the Borrower or if it assigns certain rights of the Loan Agreement to the contractor. In the light of frequent complaints about late or even lack of payment by the Borrower the option proposed by EIC would demonstrate the Bank's commitment to a fair and appropriate application of Bank funds and the Bank would put itself in a better position to control the execution of the project in its own interest if a major default should occur. | The additional text under this paragraph emphasizes that the Bank normally requires the use of letters of credit to assure prompt payment. Generally only one letter of credit is issued for payment under a contract. If multiple L/Cs were issued in a specific case, this can be reviewed on a case by case basis, but, the Bank's Guidelines and SBDs are clear on the method of payment. |

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|  | Alternative Bids                          | 2.37 | (Europe) EIC holds that alternative bids should be more encouraged in the Procurement Guidelines because that would lead to an increased quality-based competition rather than focusing exclusively on the lowest price of bids. The idea matches with the concept of the “Economically Most Advantageous Tender” (EMAT) as laid down for instance in the EU Procurement Directives.  | The Bank’s SBDs provide the option to permit alternative bids, when justified.  |
|  | Conditions of Contract                    | 2.38 | (Europe) Procurement Guidelines obligate the Borrower, not to deviate from the General Conditions (Part I), as they provide a baseline for the fair balance of risks in crucial items such as amount and duration of guarantees, the terms of payments and the procedure for certification. Regrettably, it is often the practice, even under MDB-financed projects, that a Borrower changes the balance of such risk allocation through home-made specific conditions to be more to its favour. Bearing in mind the 2nd sentence of the clause, which allows the insertion of “any special conditions particular to the specific goods or works to be procured and the location of the project”, EIC suggests that the Bank draw up – after consultation of the business community – a conclusive list of permissible Particular Conditions. | When Borrowers tend to tilt the balance of risk unrelated to the nature or particular circumstances of a contract, and cannot justify the change through special conditions of contract, the Bank objects to such changes.  |
|  | Performance Security                      | 2.39 | (Austria) In reference to fn 46 concerning performance securities the distinction between securities in the form of bank guarantees (issued by banks) and in the form of bid bonds (issued by financial institutions such as insurance, bonding or surety companies) is not clear. This article could be interpreted in the way that an indirect bank guarantee is required. We propose the revision of this regulation according to Art 2.14 fn 38 for bid securities.<br><br>(Europe) The Bank should provide for the possibility to replace the retention money already from the outset of the project (and not only after provisional acceptance).  | The text of the relevant footnotes has been reviewed.<br><br>Retention money should not be replaced from the outset as it defeats the purpose of retention money.   |
|  | Liquidated Damages and Bonus Clauses      | 2.41 | n/a   |   |
|  | Force Majeure                             | 2.42 | n/a   |   |
|  | Applicable Law and Settlement of Disputes | 2.43 | (Europe) We are concerned that the general rule becomes over time (or even from the beginning) an exception as the clause provides for a possibility that “the Bank [can] specifically agree to waive this requirement for justified reasons such as equivalent national laws and regulations for arbitration procedures”.<br><br>(USA) The Bank has replaced the word "recommends " with "requires" that Borrowers use international commercial arbitration in a neutral venue . This is good, however, it goes on to say "unless the Bank has specifically agreed to waive this requirement for justified   | The revised text requiring the use of international commercial arbitration in a neutral venue is a major step forward. The provision for allowing national arbitration as an exception is not for the purpose of using country systems in general but, instead, to facilitate arbitration proceedings at venues where there are many emerging |

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|  |                                   |      | reasons such as equivalent national laws and regulations and arbitration procedures". This appears to be in preparation for country systems but it is not specifically identified as such. So the bidder has additional protection unless it is a country systems country and we have to hope that the Bank is not as generous with the concept of equivalence as it has been so far.   | <b>national regulations and arbitration procedures similar to the standard international regulations and procedures. The Bank will apply due diligence before permitting such arbitration procedures.</b>  |
|  | Bid Open, Eval, & Award of Ctr    | C    | n/a   |  |
|  | Time for Preparation of Bids      | 2.44 | (Austria) The express permission for submission of bids in hard copy has been deleted. We therefore assume that the Borrower may use electronic systems permitting the bidder to submit bids only by electronic means. We have strong reservations against the submission of bids via electronic means as the confidentiality of electronic bids cannot be ensured in the same way as for bids in hard copy. We suggest the retention of the express permission to submit bids in hard copy.<br><br>(USA) Why has simultaneous authorization as well as the option to submit a hard copy been eliminated? | When the Bank allows electronic procurement, it assesses the adequacy of the Borrower's system, including security. The hard copy option has been deleted for e-procurement as the latter shall be allowed only when the Borrower has proper system and connectivity in place.   |
|  | Bid Opening Procedures            | 2.45 | n/a   |  |
|  | Clarifications of Alts of Bids    | 2.46 | n/a   |  |
|  | Confidentiality                   | 2.47 | n/a   |  |
|  | Examination of Bids               | 2.48 | n/a   |  |
|  | Evaluation and Comparison of Bids | 2.49 | n/a   |  |
|  | Domestic Preferences              | 2.55 | n/a   |  |
|  | Extension of Validity of Bids     | 2.57 | (Germany) In the tender documents the Borrower defines a period for evaluation until such time as a result (acceptance of bid) will be presented. An extension of that period by the Borrower creates costs and risks for the bidder (for instance a change in prices of materials), although it is unrelated to the bidder. We think that this is unbalanced and that it should be guaranteed that in such a case the Borrower compensates the bidder.   | The revised text imposes for fixed price contracts a requirement to adjust the price of the winning bidder for the elapsed time after the expiry of the original bid validity period as a deterrent to delaying the evaluation and award of contracts. For contracts having a price adjustment clause, the bidder gets compensated anyway any delay in award under such clause. However, when a bidder is unable to extend |

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|  |                                      |      |  | its bid (e.g. due to an increase in the prices of materials), the bidder has the option not to extend the bid validity without its bid security being forfeited. But if it chooses to extend its bid, the price and terms and conditions remain as per its original bid. One of the basic principles under the Guidelines is that no bidder be allowed to change the substance or price of its bid after the bid submission, and the Bank does not accept it be compromised. |
|  | Postqual of Bidrs                    | 2.58 | n/a  |  |
|  | Award of Contract                    | 2.59 | (Europe) Award criteria beyond lowest price, such as quality, technical merit, environmental and functional characteristics, running costs, cost-effectiveness, technical assistance, delivery date or period of completion, etc., can contribute effectively to the goals pursued by the Bank in reducing the strain on the Borrower's budget in later years through e.g. reduced maintenance costs, and thus leaving more money available to the Borrower for other investment necessities. Therefore, EIC would encourage the Bank to also stipulate the option of awarding a contract on the basis of the "economically most advantageous tender". | The text "economically most advantageous tender" could be open to abuse. Bank's policy requires that bid evaluation criteria should not be subjective (such as point system of evaluation) and various factors besides price as mentioned by EIC used for evaluation purposes should be quantifiable in monetary terms and award of the contract should be made to the bidder offering the lowest evaluated substantially responsive bid.                                    |
|  | Publication of the Award of Contract | 2.60 | (USA) There is a problem with this paragraph as it makes no sense as printed.  | Procedures for the publication of award for different types of contracts has been consolidated and described under paragraph 7 of Appendix 1.  |
|  | Rejection of All Bids                | 2.61 | (Germany) In reference to 2.62 ("...of the lowest evaluated winning bid is substantially higher than the Borrower's updated estimated or available budget..."): Since Bidders do not have any information regarding the budget of the project (and this is not intended, as stated explicitly in the Procurement Guidelines), we think that this paragraph goes too far. If such a case arises we suggest that the Borrower must adequately compensate all participating bidders.  | The provisions under paragraph 2.61 to 2.64 concerning the rejection of all bids have been modified to bring more clarity. Reference to available budget is already included in the present Guidelines. If the Borrower does not have the budget to procure because the quoted prices are much higher than the available budget, this could be a reasonable ground for the rejection of all bids. Bidders always bear the cost of  |

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|                                   |   |      |   | preparation of their bids, regardless of the result of the bidding process. It would be inappropriate to require Borrowers to compensate all bidders for the rejection of all bids, and it is not an international practice.   |
|                                   | Debriefing                                | 2.65 | n/a   |  |
|                                   | Modified ICB                              | D    | n/a   |  |
|                                   | Operations Involving a Program of Imports | 2.66 | n/a   |  |
|                                   | Procurement of Commodities                | 2.68 | n/a   |  |
| III. Other Methods of Procurement | General                                   | 3.1  | (USA) UCS should not be in the Bank's guidelines until it has been proven successful.   | Comments as in paragraph 1.5   |
|                                   | Limited International Bidding             | 3.2  | n/a   |  |
|                                   | National Competitive Bidding              | 3.3  | (Germany) [National] Procurement Guidelines should at a minimum adhere to the same standards as the Bank's guidelines. (Thus, it would be appropriate that the Bank clearly commits itself to strengthen Capacity Building in borrowing countries when NCB has to be used.) | This section has been further modified for clarity to ensure the application of basic guiding principles of procurement as described in section 1. The Bank fully agrees with the comments made on capacity building of the Borrower countries. The Bank ensures that the implanting agencies have the required capacity for procurement under NCB and other procedures. This is done as part of the capacity assessment task conducted for every project at the preparation stage. If the Bank determines that the capacity of a Borrower agency is lacking, appropriate measures are proposed to build the capacity as necessary, including hiring consultants to assist the implementing agency in conducting |

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|  |  |      | (USA) typo? in the second sentence the word "broad" before consistency has been omitted and not noted in the track changes.   | procurement.<br>The typo has been corrected.  |
|  | Shopping   | 3.5  | n/a   |   |
|  | Framework Agreements   | 3.6  | n/a   |   |
|  | Direct Contracting   | 3.7  | n/a   |   |
|  | Force Account  | 3.9  | (USA) Some concern over 3.9 (e) Rather than funding this type of thing with donor funds, it would be appropriate to require countries to use their own funds for any work that is so sensitive it cannot be bid under ICB. Otherwise countries may decide it is in their own interests to contrive circumstances that qualify for force account.  | The Bank reviews circumstances when force account procedures may be appropriate and allows them under the loan only when fully justified.   |
|  | Procurement from UN Agencies   | 3.10 | (USA) Why should the Bank use its scarce resources to fund another agency? Not going to be popular when replenishment is discussed.   | The reliance on UN agencies is not a new provision. There are circumstances, as explained in the Guidelines, when a contract with a UN Agency is justified.   |
|  | Procurement Agents   | 3.11 | n/a   |   |
|  | Inspection Agents  | 3.12 | n/a   |   |
|  | Proc in Loans to Fin Int Inst  | 3.13 | n/a   |   |
|  | Procurement under BOO/BOT/BOO T, Concessions and Similar Private Sector Arrangements | 3.14 | (USA) Certainly it includes ICB but what else does it include? Are there thresholds over and under which different types of open competition qualify? What are those thresholds and what are the other types of open competition? After spending pages describing what constituted ICB it seems a little cavalier to dismiss it with something that is not even described in a sentence or two. This appears to be a gift with no strings attached. | The text and footnotes have been further modified for clarity. Procurement under PPP does not have to follow the provisions regarding ICB procedures listed in Section II. The open procedures mentioned in the text have been clarified in the footnote. |
|  | Performance-based Proc   | 3.16 | n/a   |   |
|  | Proc under Loans Guaranteed by the Bank  | 3.18 | n/a   |   |

|  |   |      |   |   |
|--|---|------|---|---|
|  | Community Participation in Procurement  | 3.19 | n/a   |   |
|  | Use of Country Systems                  | 3.20 | <p>(Austria) Austrian private sector representatives are greatly concerned about the references to the "Use of Country Systems" (UCS) in the revised Procurement Guidelines. While they are aware that a Pilot Program is underway by the Bank in this regard, there is great concern that a codification of UCS within the Bank's Procurement Guidelines is premature as the Pilot Program has barely started and is still in the stage of identification of eligible pilot countries.</p> <p>(Europe) We are surprised to find a reference to UCS. As this program has not moved out of the pilot stage, it seems premature to codify UCS within the Guidelines as if they were fully operational. EIC asks the Bank to postpone any reference to the UCS program until a group of candidate countries has been officially declared eligible by the Board of Directors of the World Bank for the use of its national procurement system.</p> <p>(Germany) German Industry is deeply concerned that the guidelines already refer to the "Use of Country Systems in Procurement." Since the pilot program is still at a very initial stage and no single pilot country has been chosen, German Industry believes that this reference is premature. German Industry would like to reaffirm the view that UCS should only be used for projects of the piloting program. The projects of the piloting program should be "approved by the Board of the Bank" (para 3.20).</p> | <p>As previously noted in the Bank's response to comments made on Para 1.5 (Applicability of Guidelines), the Bank fully appreciates concerns expressed about the UCS. Its reference under the Guidelines as approved by the Bank Board is necessary to be able to implement the pilot program. The Bank takes the assessments made under the UCS piloting program very seriously. A special Operational Procurement Review Committee (OPRC) of the Bank reviews all cases for proper checks and balances, consistency on the application of the UCS and for quality assurance. Each project selected for the pilot will have all necessary approvals as required by the Bank Board. The Bank is committed to apply the required due diligence before permitting the use of country systems</p> |
| App 1: Rvw by Bnk of Proc Decsns & Pub of Awrds of Ctr | Scheduling of Procurement               | 1    | n/a   |   |
|  | Prior Review                            | 2    | n/a   |   |
|  | Post Review                             | 5    | n/a   |   |
|  | Change from Post Review to Prior Review | 6    | n/a   |   |
|  | Publication of Awards of Contracts      | 7    | <p>(Austria) The term "bid prices as read out at bid opening" has been substituted with the term "financial offers of the bids as read out at bid opening". This could be interpreted in the way that it is intended to publish details of the financial conditions of the bids instead of only the bid price. We ask you to clarify what is meant with the term "financial offers of the bids as read out at bid opening".</p>   | Necessary correction has been made.   |
|  | Due Diligence Concerning                | 8    | n/a   |   |

|                                  |  |    |   |  |
|----------------------------------|--|----|---|--|
|                                  | Bank's Sanctions Policies and Procedures       |    |   |  |
| Appendix 2: Domestic Preferences | Preference for Domestically Manufactured Goods | 1  | n/a   |  |
|                                  | Preference for Domestic Contractors            | 8  | n/a   |  |
| Appendix 3: Guidance to Bidders  | Purpose  | 1  | n/a   |  |
|                                  | Responsibility for Procurement                 | 2  | (USA) Footnote 85: There should be no mention of country systems in the Bank's guidelines until the pilot has proved successful. Para. 9 which states "Unless the bidding document clearly identified mandatory and non-mandatory technical and commercial requirements, the bidder assumes full responsibility that any deviations or conditions in its bid may be deemed material and result in the rejection of its bid." This is a new sentence and seems to open up the possibility that any Borrower can reject a bid for the smallest of deviations. Before the addition of that sentence the paragraph already included "Noncompliance with critical (technical and commercial) requirements will result in rejection of the bid." Why add a sentence that could create problems? | When mandatory and non-mandatory requirements in the bidding documents are not specified, and a bidder specifies in its bid deviations from the required conditions or specifications, the bidder takes the responsibility for the possible rejection of its bid by the Borrower based on the latter's determination that the stated deviations are major although the bidder may think they are minor. This provision alerts bidders to this risk. However, the Bank applies its own due diligence and judgment before accepting the Borrower's proposals to reject a bid on the grounds of deviations. |
|                                  | Bank's Role                                    | 3  | n/a   |  |
|                                  | Info on Bidding                                | 5  | n/a   |  |
|                                  | Bidder's Role                                  | 6  | n/a   |  |
|                                  | Confidentiality                                | 10 | n/a   |  |
|                                  | Action by Bank                                 | 11 | n/a   |  |
|                                  | Debriefing                                     | 15 | n/a   |  |

Comments received by the Bank for the matrix above originated from the following constituencies:

**Austria:** Commercial Attache/IFI Liaison Officer.

**Europe:** EIC, European International Contractors.

**Germany:** Office of the Representative of German Industry and Trade.

**USA:** ACEC, American Council of Engineering Companies.