

Approved:  
Anti-Crisis Fund  
Eurasian Economic Community  
(Minutes # 11 of 10 July 2013)

**PROCUREMENT POLICY  
FOR PROJECTS FUNDED BY ANTI-CRISIS FUND  
OF EURASIAN ECONOMIC COMMUNITY**

## **Section I. GENERAL PROVISIONS**

- 1.1 This Procurement Policy for projects funded by the Anti-Crisis Fund of the Eurasian Economic Community, (hereinafter the “**Policy**”) hereby defines:
- Procurement principles and rules;
  - Procurement procedures, application policy and conditions;
  - Procurement control procedures, as well as responsibility of beneficiaries and vendors for non-compliance with the above procedures.
- 1.2 This Policy regulates procurement operations for projects financed, in whole or in part, by the Fund, including from the Fund resources committed through borrowers to ultimate beneficiaries.

Provisions and requirements contained herein, effective for borrowing project companies, shall also apply in respect of project companies, which are ultimate beneficiaries.

The Manager shall include into the relevant Agreement on Investment Funding an obligation of the Beneficiary to ensure compliance with provisions hereof in financing contracts by the Fund.

- 1.3 This Policy shall regulate procurement activities for projects supported by the Fund jointly with other lenders as follows:
- a) Contract procurement operations financed by the Fund without attracting resources of other lenders shall be undertaken in compliance with this Policy;
  - b) Contract procurement operations financed by the Fund jointly with other lenders, may be performed, if so decided by the Fund Council, in accordance with procurement rules and procedures as defined by said other lenders, provided the Beneficiary presents to the Manager sufficient proof that application of the above rules and procedures will ensure:
    - that the project implementation obligations of the Beneficiary will be fulfilled at a high level and with due efficiency;
    - that goods, services and works procured are of satisfactory quality and conform to the project objectives, that they will be supplied or provided in good time and their cost will have no adverse impact on the economic and financial viability of the project;
  - c) Contract procurement operations financed without engaging resources of the Fund, may be effected in compliance with the requirements of organizations providing financial resources for the said contracts. The Manager may undertake quality control inspection of goods, services and works procured under such contracts, as well as audit of overall project procurement efficiency.

Relevance of procurement rules and procedures for a specific project and policies for their application shall be defined by an appropriate Agreement on Investment Funding following approval by the Fund Council.

## **Section II. TERMINOLOGY AND DEFINITIONS**

- 2.1. Terms and definitions used in this Policy shall have the following meanings:

**Procurement** means a process of selection by the Beneficiary of a contractor and signing of a contract for implementation of a project financed by the Fund.

**Proscribed Practices** means any of the following actions in the process of procurement undertaken by the Beneficiary and/or any Vendor and/or by any Contractor and/or their staff in order to exert unlawful influence on the procurement outcome.

- *Corruption* means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value with a view to influencing procurement officials in their decision-making;
- *Fraud* means any action or omission, including misrepresentation of facts conducive to deliberate or unintentional misleading or attempted misleading of procurement officials in order to secure financial or other gains or to avoid procurement responsibilities;
- *Collusion* means an arrangement between two or more Vendors with a view to achieving wrongful objectives, including influencing the other party for the purpose of creating a semblance of competition and fixing prices at artificial, non-competitive levels or obtaining pricing information of other Vendors;
- *Coercion* means inflicting damage/harm or threat of damage/harm, directly or indirectly, to any party or property of such party participating in procurement in order to influence the said party in the process of procurement or contract performance;
- *Obstruction* means deliberate destruction, falsification, forgery or non-disclosure of data of substantive importance for inspections, or provision of false information to inspection officials in order to hamper the fact-finding process in revealing practices of corruption, fraud, coercion and collusion and/or threat thereof, persecution or intimidation of any party with a view to preventing access to information pertaining to the above, or creating obstacles for exercising the Manager's authority in conducting inspections and audit checks, as defined herein;
- *Non-compliance* with the requirements of this Policy and applicable law.

**Contract** means any agreement signed by the Beneficiary on supply of goods, performance of works and/or provision of services, paid for, in whole or in part, by the Fund.

**Conflict of Interest** means conflict between interests of the Beneficiary and those of the Vendor, arising in the following cases:

- a) The Vendor offers goods, works and non-consultancy services associated with results of consultancy services provided to the Beneficiary:
  - by the same Vendor; or
  - by its affiliated entities, directly or indirectly controlled, controlling or having one common control agency with the said Vendor.

This provision shall not apply to Vendors providing design planning, supplies and 'turn-key' installation under one contract, as well as in other cases defined in the Agreement on Investment Funding.

- b) The Vendor (including its staff) has close business relations with the Beneficiary's staff, directly or indirectly involved:

- in the preparation of procurement documentation; or
  - in the evaluation of the Vendors' bids; or
  - in monitoring performance under a specific contract.
- c) The Vendor 's staff has close family relations with the Beneficiary's staff, directly or indirectly involved:
- in the preparation of procurement documentation; or
  - in the evaluation of the Vendors' bids; or
  - in monitoring performance under a specific contract.
- d) The Vendor is a subsidiary or a parent company of the Beneficiary.
- In this case no conflict of interest may arise, provided the Beneficiary, acting in compliance with this Policy, follows market-driven practices, which rule out participation of Vendors other than subsidiaries or parent companies of the Beneficiary.
- e) The Vendor submits more than one bid (on its own or in a consortium tendering a different bid). In this case all bids involving the said Vendor shall be disqualified.
- This provision shall not apply to subcontractors and in cases where procurement documentation admits submitting alternative bids.
- f) The Vendors fall under the definition of 'conflict of interest' provided in the Agreement on Investment Funding or in the procurement documentation issued by the Beneficiary.

**Contractor** means a Vendor with whom a procurement contract has been signed for supply of goods, works and/or services.

**Authority** means the right of participation in procurement process, organized by the Beneficiary, to be granted to a person/entity meeting the requirements of this Policy.

**Country of Beneficiary** means the state-recipient of the Fund resources, where the Beneficiary is a project company, registered as a legal entity.

**Manager** means the Eurasian Development Bank acting in its capacity of the Resources Manager of the Fund on the basis of the Treaty on the Establishment of the Fund and the Agreement on Management of Fund Resources.

**Vendor** means a person/entity participating in procurement process as a potential Contractor or Subcontractor.

- 2.2. Other terms and definitions used herein shall have the same meanings, as in the the Regulation on the Use of ACF Resources for Providing Investment Loans, approved by the Fund Council (Minutes # 3 of 25 February, 2010), as modified and supplemented by the Fund Council.

### **Section III. OBJECTIVES AND PRINCIPLES**

- 3.1. The objective of this Policy consists in improving implementation efficiency of projects, financed by the Fund by means of effective management of procurement activities with a view to:

- ensuring proper use of the Fund resources;
  - maximizing cost efficiency of utilization of the Fund resources.
- 3.2. The Manager shall manage procurement operations in full compliance herewith and on the basis of the following principles:
- Openness, i.e. availability of public access to regulatory documents describing the rules and procedures for procurement, acquisition plans, procurement notices, information on results of procurement;
  - Ensuring competitiveness as top priority of competitive procurement procedures enabling participation of any parties compliant with reasonable qualification and technical requirements, as well as enabling participation of a maximum number of producers;
  - Ensuring transparency of procurement procedures, i.e. clear definition of requirements in the procurement documentation, compliance with the preannounced procurement conditions, conformity of the evaluation procedures to those defined in the procurement documentation, availability of timely responses to complaints against unfair conduct of procurement;
  - Ensuring monitoring of procurement progress, i.e. accurate documentation of all steps in the process of procurement, coordination of the key components of procurement in due process, as defined herein and in the Agreement on Investment Funding.
- 3.3. To enable exercise of its Fund resources management responsibilities the Manager may contract consultants, e.g. organizations and/or physical persons with expertise in procurement, including IFIs. Consultants may be contracted both for individual jobs, and for managing procurement for specific projects in whole during preparation and/or implementation, including evaluation of conformity of the proposed rules, procedures and methods of procurement to the requirements hereof, as well as control of compliance with the approved rules and procedures, and for performing other functions.

#### **Section IV. RULES OF PROCUREMENT**

- 4.1. As defined herein, any persons may qualify for Vendors or Subcontractors, engaged by Vendors for project implementation, except for the following:
- a) persons/entities, registered in a country or offering goods produced in a country, if:
    - the legislation of the country of Beneficiary forbids trading with the said country; or
    - in accordance with the relevant resolution of the UN Security Council the country of Beneficiary has enacted a ban on imports from or payments to the said country and persons/entities registered in it.
  - b) persons/entities having conflict of interest with the Beneficiary;
  - c) persons/entities with a record of sanctions imposed on them in compliance herewith. The list of such persons/entities shall be posted on the website of the Manager.
  - d) persons/entities sanctioned by the Manager and other IFIs on the basis of their

procurement policies.

4.2. Persons/entities may participate in procurement process on their own or in associations established for a long term or for submitting one specific bid in the following formats:

- a) *Consortium*. All members of the consortium shall be parties to the contract and carry joint liability for performance thereunder. Consortium members shall authorize one of them to represent interests of the consortium.
- b) *Subcontract*. Only one contractor shall be party to the contract, and shall be responsible for due performance thereunder, including by subcontractors engaged for the purpose.

The Manager and the Beneficiary shall not require establishing associations for participating in procurement process.

4.3. During the preparation and conduct of procurement operations, as well as in the process of contract performance the Beneficiary, Vendors, their staff and Contractors:

- may not resort to proscribed practices; and
- shall adhere to the generally accepted business ethics standards.

4.4. In order to ensure compliance herewith the Beneficiary shall:

- a) conduct procurement actions in full compliance herewith and with the Agreement on Investment Funding;
- b) during project development prepare, obtain concurrence of the Manager and approval of the Fund Council for the acquisition plan of the project (hereinafter "**Acquisition Plan**"), complete with the following information on every item of goods, works and services (each purchase and subsequent contract):
  - Brief description of the goods/work/service to be procured;
  - Procurement procedures and methods used;
  - Estimated budgets (cost) of contracts;
  - Monitoring procedures of the Manager for procurement and contract performance;
  - Calendar schedule of procurement and contract performance.

The Acquisition Plan may be updated, as required, upon approval by the Manager.

The Beneficiary shall ensure access to the Acquisition Plan for Vendors by posting its latest version on its official website in Russian and in the language of the Beneficiary's country;

- c) ensure conduct of procurement in strict compliance with the Acquisition Plan as approved by the Beneficiary and the Manager;
- d) prepare a General Procurement Notice with at least the following information:
  - Information on the Beneficiary;
  - Investment funding requirement and objectives of the Project;

- Reference link to the Acquisition Plan posted as per item 4.4 (b) (see above);
  - Name and contact details of the authorized person of the Beneficiary;
  - Website address for posting updates of the Acquisition Plan and Special Procurement Notices;
- e) prepare a Special Procurement Notice on each purchase containing at least the following information:
- Information on the Beneficiary;
  - Description of the Contract and a brief summary of the supplied goods/works/services;
  - Deadline for issuing procurement documentation by the Beneficiary;
  - Other information as required by the applicable procurement procedures
- f) prepare as the contracts are awarded, but no later than twenty (20) calendar days after the award date, evaluation notices with at least the following information:
- Description of purchased goods, works, services;
  - Name and asked price of the successful bidder (cost of contract);
  - Names of the other bidders and their asked prices;
  - Evaluation results;
- g) dispatch in good time to the Manager for posting on the website and publish on its own within reasonable time the General and Special Procurement Notices as well as Evaluation Notices:
- on the Beneficiary's official website;
  - in at least one national newspaper or on the official national web portal of the Beneficiary's country;
  - in international publications or on web portals for any purchases exceeding a certain amount, as defined by the Agreement on Investment Funding.
- General and Special Procurement Notices and Evaluation Notices shall be published in Russian and in the language of the country/countries of the Beneficiary, as well as in English if posted in international media;
- h) dispatch to the Manager one copy of the signed contract and of the evaluation report;
- i) afford preferences to the Vendors registered in the Fund member states, similar to those granted to persons/entities registered in the Beneficiary's country, as required by the procurement legislation of the country of the Beneficiary, if not otherwise provided in the Agreement on Investment Funding;
- j) use procurement documentation compiled on the basis of generally accepted principles as described in Section VIII hereof. This provision shall not apply to procurement without competitive bidding;

- k) maintain archives of all documents relating to the Project procurement (hereinafter "**Archives**"), and ensure integrity of the said archives for two (2) years following termination of funding. The Archives shall comprise inter alia:
    - signed originals of each contract and subsequent modifications and supplements thereto;
    - originals of the bids, of all documents and correspondence relating to procurement and contract execution, including documents on evaluation of bids and awarding of contracts;
    - invoices and acceptance certificates on goods/services/works supplied under contracts;
  - l) submit to the Manager or any other duly authorized organization upon request sent during the Archives storage period for review a complete set of all documents prepared and used by the Beneficiary for procurement;
  - m) inform the Manager about all complaints against the Beneficiary's procurement actions, which:
    - have been received by the Beneficiary;
    - according to the information of the Beneficiary have been received by authorized organizations of the Beneficiary's country;
  - n) exercise special care in supervising and monitoring performance under any current contract by Contractors in respect of which the Manager has enforced sanctions after the contract was signed;
  - o) not sign without prior consultation with the Manager any new contracts and any modifications/supplements to the current contracts (including modifications to extend the term of contracts or change the nature or scope of work, etc.) with Contractors sanctioned after the relevant decision of the Manager came into force.
- 4.5. The Manager shall post Acquisition Plans, General and Special Procurement Notices, Evaluation Notices on its official website.
- 4.6. In cases of non-compliance herewith the Manager may apply the following sanctions:
- a) Reject the proposed award of contract;
  - b) Terminate unilaterally a portion of funding committed for payment of contract procurement invoices, if:
    - the said contract has been awarded in breach of the provisions hereof, of the Agreement on Investment Funding and/or the Acquisition Plan approved by the Manager;
    - the contract has not been awarded to the Vendor due to deliberate delaying actions of the Beneficiary in the process of procurement and any other behavior leading to unreasonable delays, suspending of the Vendor's participation or unwarranted rejection of one or more bids;
    - the contract requires representatives of the Beneficiary to engage in proscribed practices and the Beneficiary has not taken any timely and adequate steps, in a manner acceptable to the Manager, to discourage



involvement in such practices, including by notifying the Manager in due course of such known facts;

- c) Disqualify the Vendor/Contractor from participation in procurement for all projects financed by the Fund indefinitely, or suspend for a limited period;
  - d) Require incorporation into the procurement documentation and contracts of a provision committing the Vendors, Contractors and their subcontractors, staff and consultants to allow the Manager to conduct audit checks of their accounts, financial statements and other documentation relating to bidding and contract performance, as well as to have those documents reviewed by authorized representatives of the Manager;
  - e) Refuse payment for the contract of the disqualified Vendor:
    - on the date of signing; or
    - after the execution of the Contract, if the Contract expenses have been incurred in the extended period which was not approved by the Manager.
  - f) Apply other sanctions as provided by the Agreement on Investment Funding;
- 4.7. The Contracts signed by the Beneficiary prior to the Agreement on Investment Funding, may be financed by the Fund (retroactive funding), provided compliance has been ensured with procurement procedures and controls defined in the Agreement on Investment Funding.
- The risk of prior contracts shall be borne by the Beneficiary, and the consent of the Manager to use relevant procedures shall not constitute an obligation to provide funding for a specific project and contract.
- 4.8. The Manager shall monitor compliance with provisions hereof and of the Agreement on Investment Funding in respect of procurement as required by the procedures defined in Section IX hereof.
- 4.9. The responsibility for implementation of the project, for procurement and for proper use of investment funds shall rest with the Beneficiary.
- 4.10. Investment funds shall be provided only upon request of the Beneficiary. The Beneficiary submits to the Manager requests for funding with support documentation on expenses in accordance herewith, with the Agreement on Investment Funding and the Acquisition Plan.
- 4.11. For contracts financed by the Fund, the following procurement procedures shall be deemed acceptable:
- a) IFI procurement procedures in due compliance with Section VI hereof;
  - b) Procurement procedures established by the project company, (hereinafter "**Business Practice**") in compliance with Section VII hereof;

Procurement procedures acceptable for a specific project shall be defined in the relevant Agreement on Investment Funding as decided by the Fund Council.

## **Section V. ACCEPTABLE PROCUREMENT PROCEDURES**

- 5.1. In its application for investment funding (hereinafter "**Application**") the potential Beneficiary shall indicate the preferred procurement procedures and provide rationale for their use with reference to the project concept note, including:

- a) If IFI procedures are proposed, the Application shall contain indication of:
    - the IFI whose procurement procedures will be used;
    - a list of proposed methods of procurement in accordance with the procedures of the chosen IFI;
    - the portion of the project or contracts considered for signing with the said IFI's procurement procedures, if it is contemplated that the said procurement procedures will be used only for one portion of the project.
  - b) If Business Practice is proposed to be used, the Application shall provide the following information:
    - Current procurement regulations of the project company (with support documentation attached);
    - Description of procurement practices of the project company;
    - All contracts of the project company involving procurement procedures for at least the last three (3) years with description of the purchased items, methods of procurement, information on bidding competition, terms of the contracts, names of contractors, cost of the contracts.
- 5.2. The Manager shall review the details of procedures, provided in the Application, for compliance with the project objectives, requirements of the Fund, contents and complexity of the project components, total cost of the project and its components, availability of cofinancing arrangements and cofinancing organizations.
- 5.3. In order to verify the proposed Business Practice for compliance with the requirements hereof, the Manager may request additional information and supporting documents, as well as conduct a selective audit check of procurement operations performed under contracts signed by the project company as per proposed Business Practice in the last three (3) years.
- 5.4. Following review of the Application in respect of the proposed procurement components, the Manager shall include into the Appraisal Report, to be approved by the Fund Council, a section containing evaluation of compliance of the proposed procedures with this Policy, and shall provide recommendations and conditions for application of specific procurement procedures.
- If, based on the review of the procedures of the proposed Business Practice, such procedures are, in general, approved for use under the current project, but require revision of individual provisions, the Manager shall provide appropriate recommendations in the Appraisal Report on revision of and supplements to the Business Practice procedures in question. These recommendations following approval by the Fund Council shall be incorporated into the Agreement on Investment Funding and shall be deemed to constitute a mandatory conditionality for funding. Prior to approval of the first purchase order based on the Business Practice procedures, the Manager must make sure that all the recommendations have been duly fulfilled. Until the Manager has ascertained and received all assurances of due fulfillment of the said recommendations, as provided by the Agreement on Investment Funding, the Project shall be implemented on the basis of IFI procurement procedures as specified in the relevant Agreement on Investment Funding.
- 5.5. Any exception to the procurement rules, as provided herein, shall be decided upon prior to execution of the Agreement on Investment Funding based on a motivated

request from a potential Beneficiary, if such exception benefits and maximizes Project implementation efficiency.

## **Section VI. APPLICATION OF IFI PROCUREMENT PROCEDURES**

- 6.1. For financing contracts by the Fund, procurement procedures of the following IFIs may be used: International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, Asian Development Bank, Nordic Investment Bank, Black Sea Trade and Development Bank, and other IFIs.
- 6.2. IFI procurement procedures shall be applied for implementing projects financed by the Fund, insofar as they are not at variance herewith.
- 6.3. The Agreement on Investment Funding shall provide the following information:
  - Current versions of the applicable IFI procurement procedures;
  - Procurement methods of the said procedures to be used in project implementation with reference to the relevant provisions of the applicable procurement procedures;
  - Limit cost values of one contract and/or total amounts of several contracts where procurement may be performed using any specific method. However, such limits may differ from those provided for similar applications in the relevant IFI procedures;
  - Other data, as required.

## **Section VII. APPLICATION OF BUSINESS PRACTICE**

- 7.1. Business Practice shall be applied for implementing projects financed by the Fund, insofar as it is not at variance herewith.
- 7.2. Business Practice shall be used for contracts, whose cost, including taxes, duties and charges, does not exceed the cost limit fixed for such procurement by the Agreement on Investment Funding. In all other cases IFI procurement procedures, defined in the Agreement on Investment Funding, shall be used to maximize international competition.
- 7.3. The Agreement on Investment Funding shall provide the following information:
  - Limit values of the cost of one contract and/or total amounts of several contracts where procurement may be performed using the proposed Business Practice;
  - List of mandatory provisions of the procurement procedures, that will be accepted by the project company in order to enable project procurement on the basis of the Business Practice procedures;
  - Requirement to comply with the mandatory provisions of the procurement procedures throughout the term of the contract.
  - Other data, as required.
- 7.4. Procurement without competitive bidding as a method of procurement in using Business Practice shall be allowed provided only that such method of procurement is expressly specified in the Agreement on Investment Funding and approved by the Manager. In order to obtain the above approval the project company must

provide to the Manager proof of low efficiency and poor cost-effectiveness of competitive procurement methods.

### **Section VIII. GENERAL GUIDELINES FOR PREPARATION OF PROCUREMENT DOCUMENTATION**

- 8.1. All procurement documentation shall be prepared by the project company in accordance with the basic guidelines defined herein.  
Model bidding documents shall be accessible for examination by potential Vendors.
- 8.2. In case of application of IFI procurement procedures, in the process of preparation of the procurement documentation the project company must use standard documentation of the relevant IFI.
- 8.3. In case Business Practice is used for the preparation of procurement documentation, the Beneficiary shall develop such documents on the basis of the available regulations of the project company, provided they are acceptable for the Manager.
- 8.4. All procurement documentation shall be prepared in Russian and in the language of the Beneficiary's country. If under one project funding is provided to more than one Beneficiary, the relevant documentation shall be prepared in the languages of all beneficiary countries.

### **Section IX. PROCUREMENT MONITORING**

- 9.1. The Manager shall review and approve Acquisition Plans and their updated versions, and shall request Beneficiaries to harmonize the Acquisition Plans with the requirements hereof and the agreements on investment funding.
- 9.2. The Manager may undertake audit check of all contracts, financed by the Fund, to verify for compliance with procurement procedures in the form of preliminary or follow-up review selectively or on a regular basis.

The need and procedures for such inspections shall be defined in the Agreement on Investment Funding. The frequency of such reviews shall be determined by the Agreement on Investment Funding and depends on the term of the project, its complexity and distinctive features.

- 9.3. The procedure of **Preliminary Review** shall be used for all contracts with cost parameters exceeding thresholds defined by the Agreement on Investment Funding, as well as for all contracts based on procurement without competitive bidding.

If in respect of a project, or a portion thereof, IFI procurement procedures are used, and such procurement is subject to Preliminary Review by the Manager, as expressly set forth by the Agreement on Investment Funding, the Manager shall review documentation on contracts with exceeded cost thresholds, established by the Agreement on Investment Funding, in compliance with the applicable IFI procedures.

If in respect of a project, or a portion thereof, or individual contracts, Business Practice procurement procedures are used, such procurement operations shall be subject to Preliminary Review by the Manager only if their cost exceeds the threshold, determined by the Agreement on Investment Funding. In such cases the following documents shall be provided to the Manager for review:

- Draft procurement documents prepared on the basis of the pre-approved model documentation, including description of criteria for evaluation of bids and contract awards, terms and conditions of contracts and specifications and/or technical requirements for supplies of goods, works and services, as well as the text of a Special Procurement Notice;
  - Bid evaluation report and recommendations on contract award;
  - Draft contract;
  - Draft modifications/supplements to the contract, if applicable.
- 9.4. Contracts, for which the Agreement on Investment Funding makes no provision for preliminary review, shall be subject to **Follow-up Review** in the course of inspection of procurement documentation and executed contracts in the past period and during procurement audit checks.

For Follow-up Reviews the Manager may consider engaging specialized consultancy companies or individual consultants. Services of specialized consultancy firms or individual consultants shall not rule out selective audit checks by the Manager (including in respect of procurement operations, already inspected by a specialized consultancy company or by an individual consultant).

- 9.5. In the process of bid evaluation prior to publication of the evaluation notice, representatives of the Beneficiary and the Manager shall maintain confidentiality to prevent unauthorized direct or indirect interference in the process of procurement. If at this point a Vendor deems it necessary to provide additional data to the Beneficiary and/or to the Manager, such information shall be made available in writing.
- 9.6. If following issuance of the contract award notice a Vendor wishes to find out why his bid was not selected, he may address a request for clarification to the Beneficiary.

In response to the said request the Beneficiary must provide a written explanation to the Vendor with a description of reasons why the above bid was not successful. If the Vendor is not satisfied with the explanation, and wishes to discuss the matter with a representative of the Beneficiary in person, the Beneficiary must organize such a meeting at an adequate level and provide to the Vendor all the documents pertaining to the evaluation of the bids. During such a meeting only the said Vendor's bid shall be discussed, but not other bids.

In the event the explanations provided by the Beneficiary are not accepted by the Vendor as satisfactory, the Beneficiary must organize a meeting with representatives of the Manager.

- 9.7. Vendors may send to the Beneficiary requests for clarifications on various issues, relating to conduct of procurement operations, or address complaints to the Manager against actions of the Beneficiary in the course of procurement. The complaints must be based on reliable evidence and should pursue the objective of preventing proscribed practices in procurement. Complaints shall not be used to delay or disrupt the process of procurement or to provide advantages to any contractor. A Vendor sending such complaints may be subjected to penalties, as herein provided.
- 9.8. Complaints received by the Manager from potential Vendors before the bidding deadline, may be examined by the Manager or forwarded to the Beneficiary with

comments and recommendations for action and response.

- 9.9. Complaints received by the Manager after opening of bids shall be examined according to the following procedure. In case the contracts are not subject to preliminary review, the information shall be forwarded to the Beneficiary for careful examination and taking appropriate action. All the relevant documentation, including response to the complaint, must be forwarded by the Beneficiary to the Manager. In case the contract is subject to preliminary review, the complaint shall be examined by the Manager in consultation with the Beneficiary with due consideration of additional data and explanations coming from the Beneficiary and/or Vendor. As the case may be, the Manager may request the Beneficiary to provide comments on the clarification received from the Vendor or to include relevant information into the evaluation report. The process of control by the Manager shall be deemed incomplete, and the above contract may not be signed until information contained in the complaint has been examined in full and the Vendor has been provided appropriate response.
- 9.10. Save as required to acknowledge receipt of the said complaint, the Manager shall not participate in any discussions in the process of selection and examination, shall not correspond on the matter with any of the Vendors up until the date of publication of the contract award notice.

#### **Section X. FINAL PROVISIONS**

- 10.1. The provisions contained herein are not and shall not be construed as a waiver, disclaimer or change in immunities, privileges, benefits and exemptions from liability as defined in international agreements on establishment and performance of the office of the Manager, and in other instruments and international law.

Legal action and proceedings may be initiated against the Manager only provided the Manager waives immunity, privileges and/or benefits to an extent and on such conditions, as to his knowledge, should serve the best interests of the Manager. Such waiver of immunity, privilege or benefit (or any portion thereof) must be sought in compliance with the relevant procedures defined by the Agreement on the Establishment of the Eurasian Development Bank of 12 January 2006.