



# Procurement in projects financed by the EIB

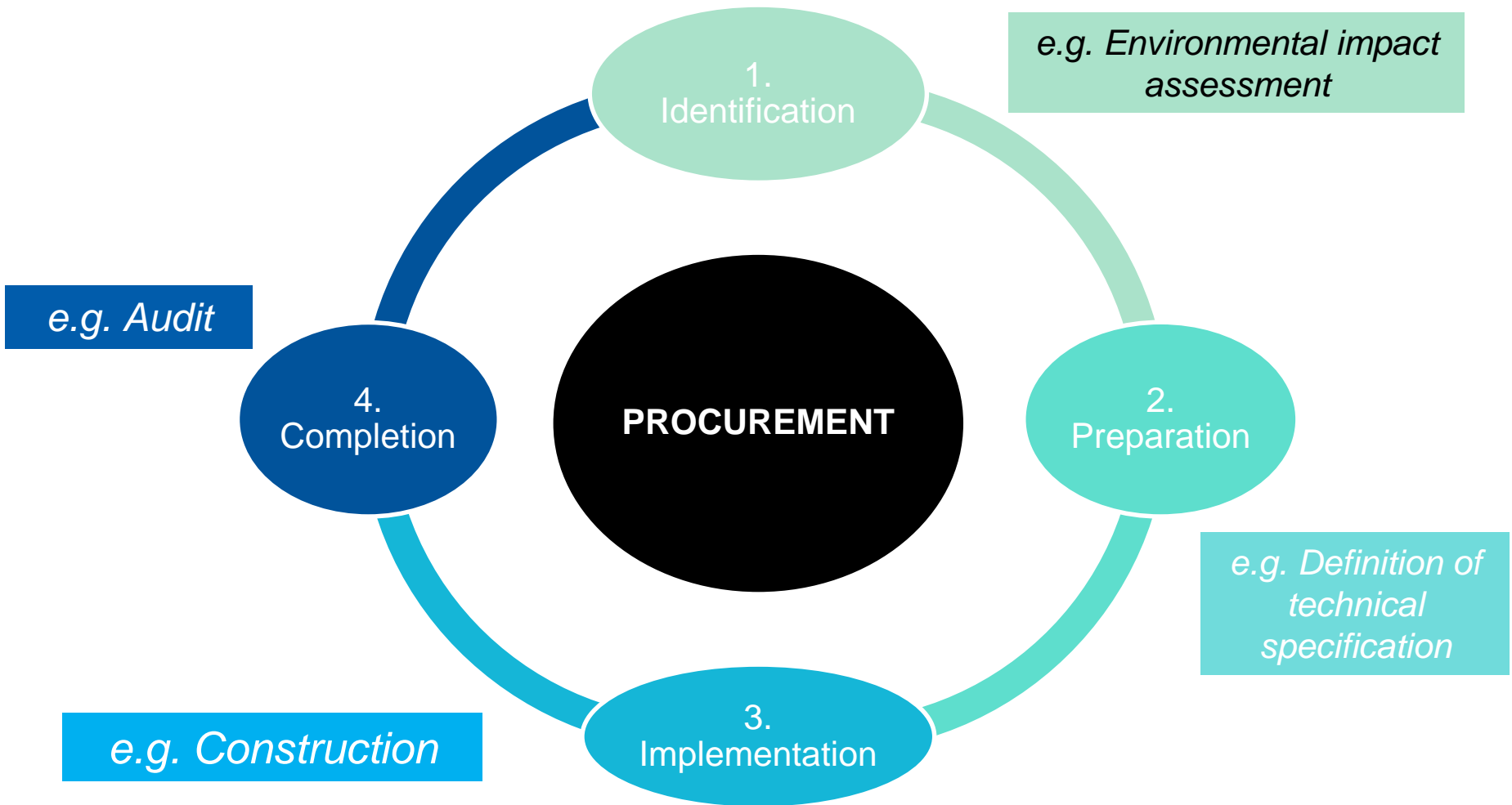
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# A. Procurement in an investment project



Most of funding of an investment project is used to procure goods, works & services needed for the completion of the project



## Why EIB has a Project procurement policy?



- ❖ The Bank will ensure that its funds are employed as rationally as possible in financing sound projects in the interest of the Union (EIB statute).
- ❖ Projects must have an adequate economic added value → principles of economy & efficiency.
- ❖ The promoter is using public money → process must be (in line with the principles of the EU Treaty):
  - ❖ Transparent
  - ❖ Fair and non-discriminatory
  - ❖ Traceable
- ❖ Open Access to firms with no discrimination based on nationality
- ❖ Procurement transactions are vulnerable to fraud & Corruption → reputational risk.

# Foundations of EIB's Project Procurement Policy



**Procurement  
policy of EIB**

**EIB**

Statute: Rational use of funds in  
the interest of the EU  
(Economy, Efficiency)

**EU:**

Freedom of movement and establishment,  
Non-discrimination based on nationality,  
Economy, Efficiency, Transparency, Mutual  
recognition, Proportionality



- ❖ The Guide to Procurement is the reference document about the procurement policy of the EIB.
- ❖ The purpose of the GtP is to inform the Promoters of projects financed by the EIB about EIB's procurement requirements.
- ❖ Referred to in the finance contract between the EIB and the Promoter.
- ❖ Available on the EIB web site.



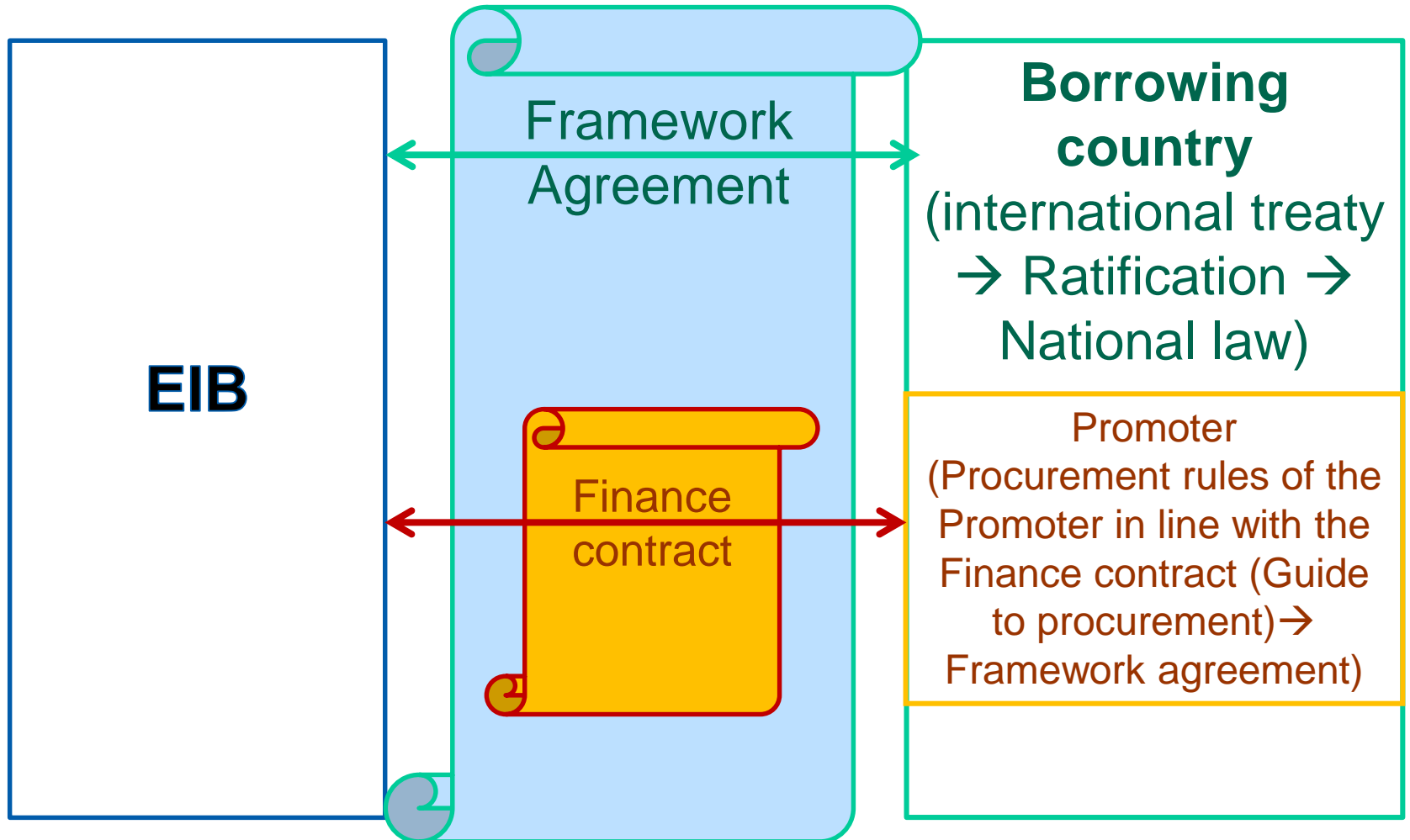
## Projects outside the EU

Treaty of the Functioning of EU (TFEU)

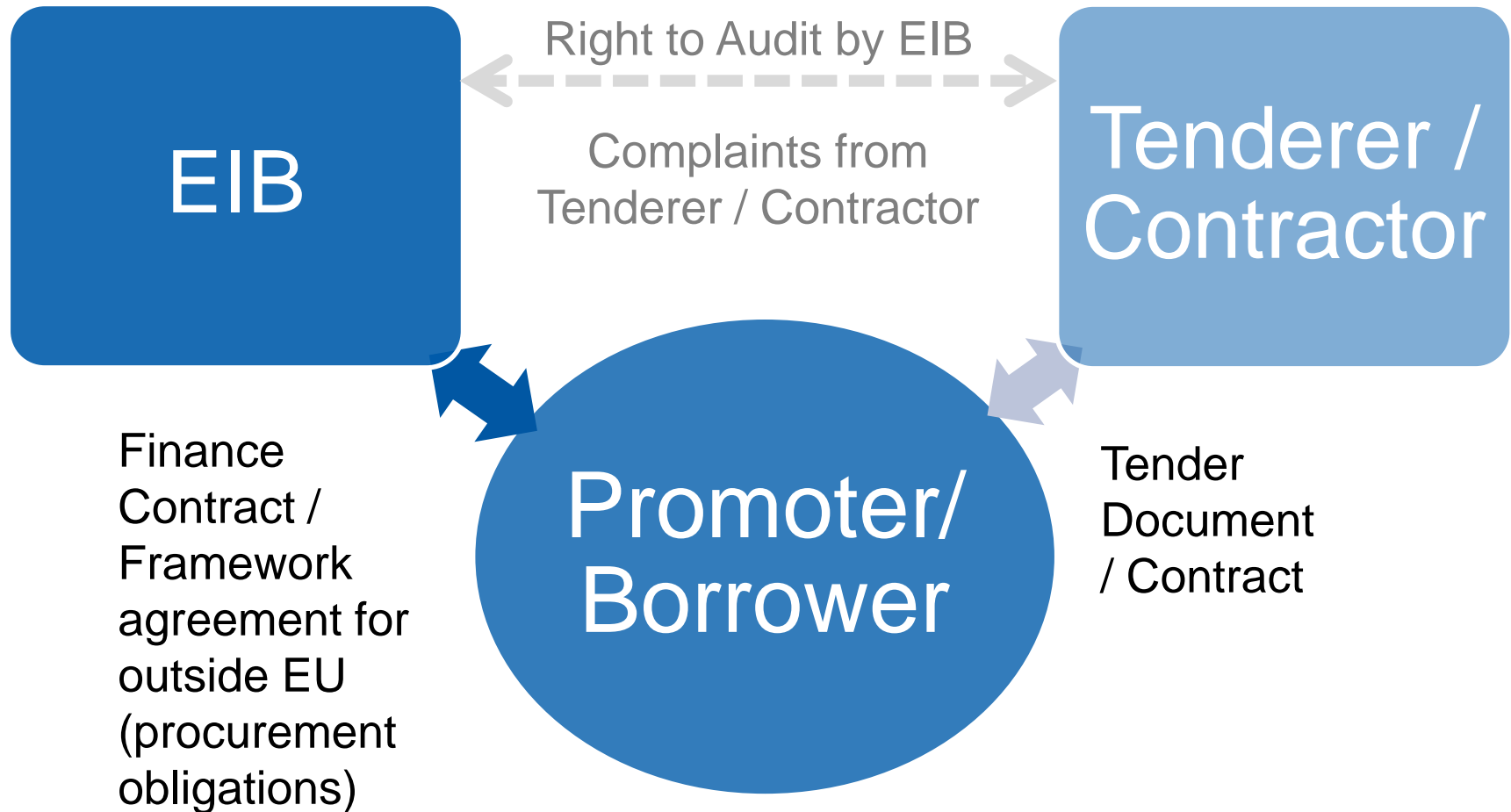
Guide to Procurement

National Legislation & systems

# Legal Framework for project financing outside the EU



# Legal Relationship between parties





## Bank and Promoter respective roles



- ❖ Promoters are fully responsible for all aspects of the procurement process.
- ❖ The Bank's involvement confined solely to verifying whether or not the conditions attached to its financing are met.
- ❖ The Bank may advise or assist promoters, but is not a party to the resulting contracts.
- ❖ Rights & obligations between promoter and tenderers are governed by the national legislation & tender documents.



- ❖ Financed from the Bank's own resources: Open to nationals of all countries
  
- ❖ Financed partially or completely from resources from third parties:
  - ❖ Cotonou Agreement: Open to nationals of all countries
  - ❖ Other instruments (NIF, FEMIP, etc.): Depends on the rules of the instrument. At least EU and parties to or beneficiaries of such agreement.

## Eligibility (2)



The following types of schemes, alone or in combination, are targeted as eligible provided they meet the eligibility and appraisal standards defined in the Programme Procedures Manual (PPM):

Category ID	Description
1	Purchase of new rolling stock (trolleybuses, trams, metro and buses)
2	Capital rehabilitation of rolling stock
3	Infrastructure rehabilitation – tracks, catenary, depots, stations
4	Infrastructure development – new tram tracks, catenary, depots, stations, supply and installation of information and ticket collection systems
5	Services for planning, design, supervision and monitoring of above activities
6	Services for technical assistance to city authorities



- ❖ Definition of public sector operations based on the main mechanisms of EU directives:
  - ❖ Public authorities, incl. bodies governed by public law
  - ❖ In specific case of gas, heat, electricity, water, transport, exploration/exploitation of oil, gas, coal or other solid fuels, ports and airports, telecommunications, and postal services, public sector operations are those carried out by:
    - ❖ Public undertakings operating in markets which are not liberalized;
    - ❖ Privately-owned entities that have granted special or exclusive rights and operate in markets which are not liberalized.

# Operations in Public Sector: International Procurement Procedures



- In accordance with GtP, §3.7 if contracts > GtP thresholds
- Procurement & award notices to be published in Official Journal of EU (OJEU)

Nature of the Contract	GtP Threshold (€)
Works	> 1 million
Goods and Services except Consultancy services: In General Electricity, Gas, Water and Transport Telecommunications	> 200,000 > 400,000 > 600,000
Consultancy services	> 200,000



- ❖ Promoters develop a procurement plan informing:
  - ❖ Scope of the contract
  - ❖ Procurement procedure
  - ❖ Implementation schedule
  - ❖ Publication arrangements, etc.
  - ❖ Review by the Bank
- ❖ The Bank must agree to the procurement plan (& its updates) before procurement process is launched



## Public Sector Operations: Prior / Post Review

- ❖ International procurement procedures subject to **Prior review**
  - ❖ The promoter must send to the Bank, for its “non-objection”, the pre-qualification report, proposed list of candidates and evaluation reports, minutes of negotiations (if any), contract award decision, contract modification the cumulative effect of which increases the original price by >15%.
  
- ❖ National procurement procedures subject to **Ex-post review**
  - ❖ The promoter provides the Bank with an updated procurement plan w. information about contract award, signature, level of competition.
  - ❖ The promoter retains full documentation and makes it available to the Bank upon request for ex-post review.
  - ❖ The Bank conduct regular ex-post reviews.



## Tender documents

- ❖ Must reflect the provisions of the Guide:
  - ❖ Chapter 1 (e.g. universal eligibility, integrity, conflict of interest, available remedy mechanism, etc.),
  - ❖ Section 3.7 (e.g. publication, language, standstill period, etc.),
  - ❖ Covenant of integrity template,
  - ❖ Environmental and social covenant template
  - ❖ No local content requirements
  - ❖ Local preference limited to margin of preference on price of goods only up to 15%





## General Aspects outside of EU

- ICB/OT or Restricted ICB/OT
- Publication of a Procurement Note in OJEU
- Decision on the list of pre-qualification
- Dispatch of tender documents
- Receipt, public opening and evaluation
- Award of contract – after standstill -, notification to all Bidders and publication of Award Notice in OJEU
- Implementation of contract



## Tenrder Documents III

The conditions of contracts:

- Use internationally-recognised standard procurement documentation such as
  1. The Multilateral Development Bank MDB (WB, EBRD, ADB)
  2. The FIDIC (Fédération Internationale des Ingénieurs-Conseils)  
{website [www.fidic.org](http://www.fidic.org)}

provided that these are compatible with the provisions of this GtP.  
(Modification, Site visit, briefing – within a week to reply, time: at least 6 weeks, applicable law, settlement of dispute – International Commercial Arbitration, equal treatment)

The tender documents should **include a statement** to the effect that tenderers should alert the promoter in writing, with a copy to the Bank, in case they should consider that certain clauses or technical specifications of the tender documents might limit international competition or introduce an unfair advantage to some tenderers.



## Language

PN, Pre-Q, Tender Documents, Tender Evaluation Report – English  
If Tender in Ukrainian – English is prevailing

## Tender Prices

### Outside of Ukraine – CIP

- Includes: all costs of supply, delivery, handling and insurance
- Excludes: costume duties, TAX on import and VAT

### In Ukraine - Ex-works (excluding VAT)

## Currency

As in the FC – EUR or as the Bidder requires in the bid, price escalation according to TD



- ❖ Either the lowest price of the compliant and technically responsive tenders; or
- ❖ The most economically advantageous tender, applying a number of criteria adapted to the contract in question: e.g. price, payment terms, construction or delivery period, technical merit (proposed staff, equipment, construction method and planning, technical characteristics, etc.), environmental characteristics, technical compatibility with other equipment, availability of service and spare parts, operating costs, maintenance costs, etc.



## Tender evaluation

- ❖ Tender evaluation following criteria indicated in the tender document
- ❖ Verification of substantial responsiveness
- ❖ Verification of eligibility and qualification of tenderers
- ❖ Submission of the signed Covenant of Integrity
- ❖ Submission of the signed Environmental & social Covenant
- ❖ Correction of arithmetical errors
- ❖ Conversion into a single currency
- ❖ Clarifications, if needed, in writing without modification of the substance of the tender
- ❖ Adjustments for omissions or minor deviations
- ❖ Verification of technical specifications
- ❖ Justification of rejected tenders and of the prequalification decision / award decision



- ❖ Available for equipment/goods/supply contracts outside EU, except in candidate countries.
- ❖ NOT accepted: local preference on works or services contracts.
- ❖ Up to 15% margin of preference on price.
- ❖ NOT accepted: mandatory local component.
- ❖ In line with other MDBs (except EBRD).



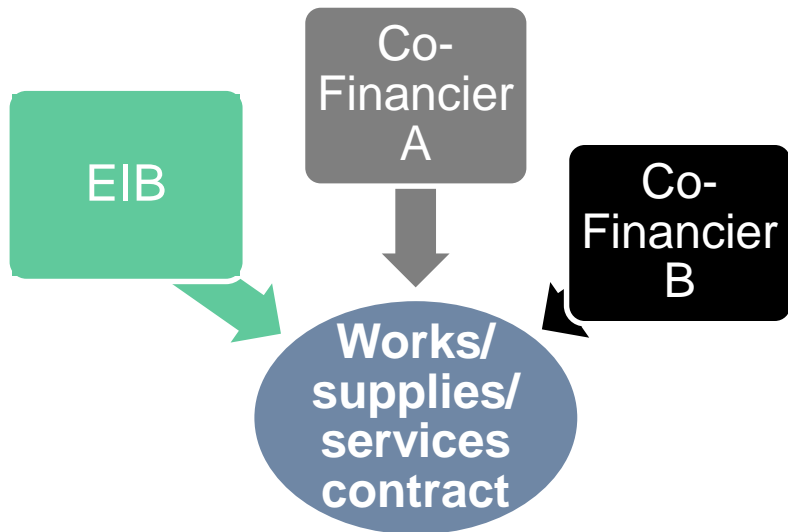
## Standstill period and remedies (GP §3.7.13; Annex 8)



- ❖ **Standstill period:** to allow tenderers to access the remedies mechanism before all decision and contract is signed
- ❖ Bank remedies requirement originates from EU “remedies Directives 89/665/EEC and 92/13/EEC
- ❖ **Remedies procedure:** EIB requires to ensure the review procedures for effective remedies are available to any party having or having had an interest in obtaining a particular contract and who has been or risk being harmed by an alleged infringement.
- ❖ National remedies mechanism

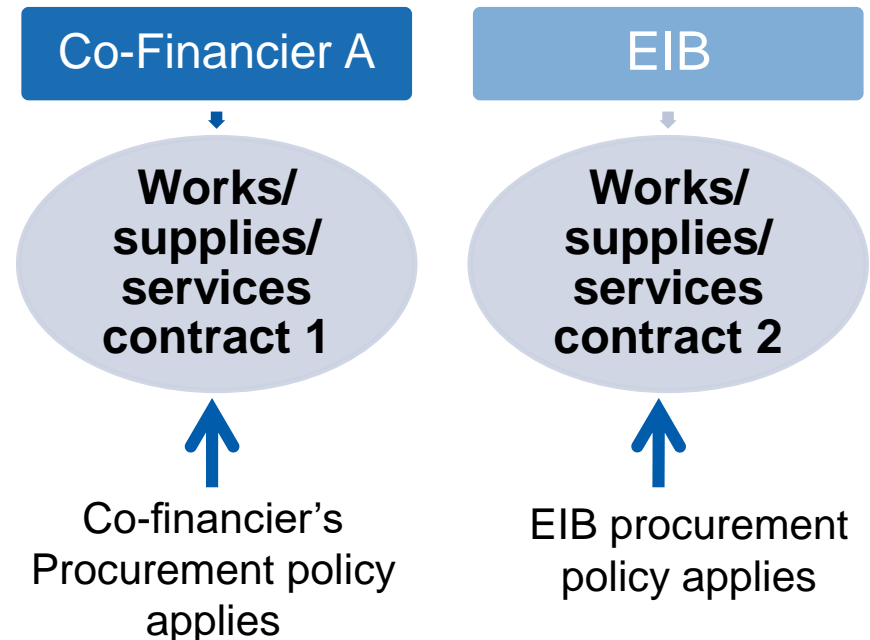


## Joint Financing



The co-financiers have to agree on the procurement that applies

## Parallel Financing



EIB accepts to rely on a co-financier's procurement policy provided that:

- A. Universal Eligibility
- B. Adequate publicity
- C. Internationally accepted practices (+ Covenants)





EIB will not tolerate Prohibited Conduct in its activities or operations (EIB Anti-Fraud Policy)

- ❖ Corruption
- ❖ Fraud
- ❖ Coercion
- ❖ Collusion
- ❖ Obstruction
- ❖ Money laundering
- ❖ Terrorism financing



- ❖ Applicable to all contracts outside the EU
- ❖ Undertaking not to engage in Prohibited Practice (extended to the tenderers' sub-contractors)
- ❖ Obligation for tenderers to declare if they have been excluded by the European Institutions or the main MDBs
- ❖ Obligation for tenderers to declare if they have been sanctioned by the EU or UN
- ❖ Obligation of keeping records & preserving EIB's right to audit (extended to the tenderers' sub-contractors)

# Environmental and Social Covenant



- Aim: Reflect E&S Handbook requirements to facilitate the Promoter's E&S tasks
- Key features:
  - **Labour Standards:** Core ILO Standards, wages & conditions of work, records of employment (ref. FIDIC pink book)
  - **Workers relations:** HR Policy + commitment to monitor & report to Promoter.
  - **Health & Safety:** comply w. law + H&S management plans as per the ESMP & ILO Guidelines; access to safe & hygienic facilities; security management consistent w. international human rights (if applicable)
  - **Protection of Environment:** Protect environment + Comply w. emissions, surface discharges, ... limits as defined & legislations
  - **Environmental & social performance:** E&S monitoring reports, comply with measures assigned to contractor, ... E&S Management system commensurate to the size & complexity of contract
  - **Price includes costs related to E&S** performance obligations
  - **E&S staff:** E&S management Team appointed as focal point for Promoter
  - **Right to audit** to EIB.
  - Refers to contractors obligations as indicated in **other documents, e.g. ESMP, environmental permits**



# Thank you for your kind attention



- ❖ More information at: [www.eib.org](http://www.eib.org)
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## **When Local Preference can be applied:**

Market assessment has been undertaken to ensure that giving preference to domestic contractors or locally made

The local suppliers and locally made goods adhere to the required technical, environmental, and labour standards.

## **Not advisable if:**

A poorly designed domestic preference scheme may result in lower quality of goods provided by the eligible local contractor.

The borrower will have to pay more for the same or similar goods

## **In the long term:**

The local preferences can reduce competition and remove competitive pressure on domestic industry to match

the efficiencies of global best-in-class suppliers or contractors. The consumer bears these higher costs.



## A. Rationale

### A1.

- Balance disadvantage given that there may be an asymmetry of information regarding the access to technology, finance, and infrastructure to increase productivity.
- foreign firms may benefit from economies of scale.

### A1.2

- Awarding contracts to local preference is deemed to give greater social and economic benefit to local communities, in the form of increased employment, incomes, and tax revenues
- Outweigh the potential for higher financial costs.



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