Procurement of Textbooks under World Bank Operations



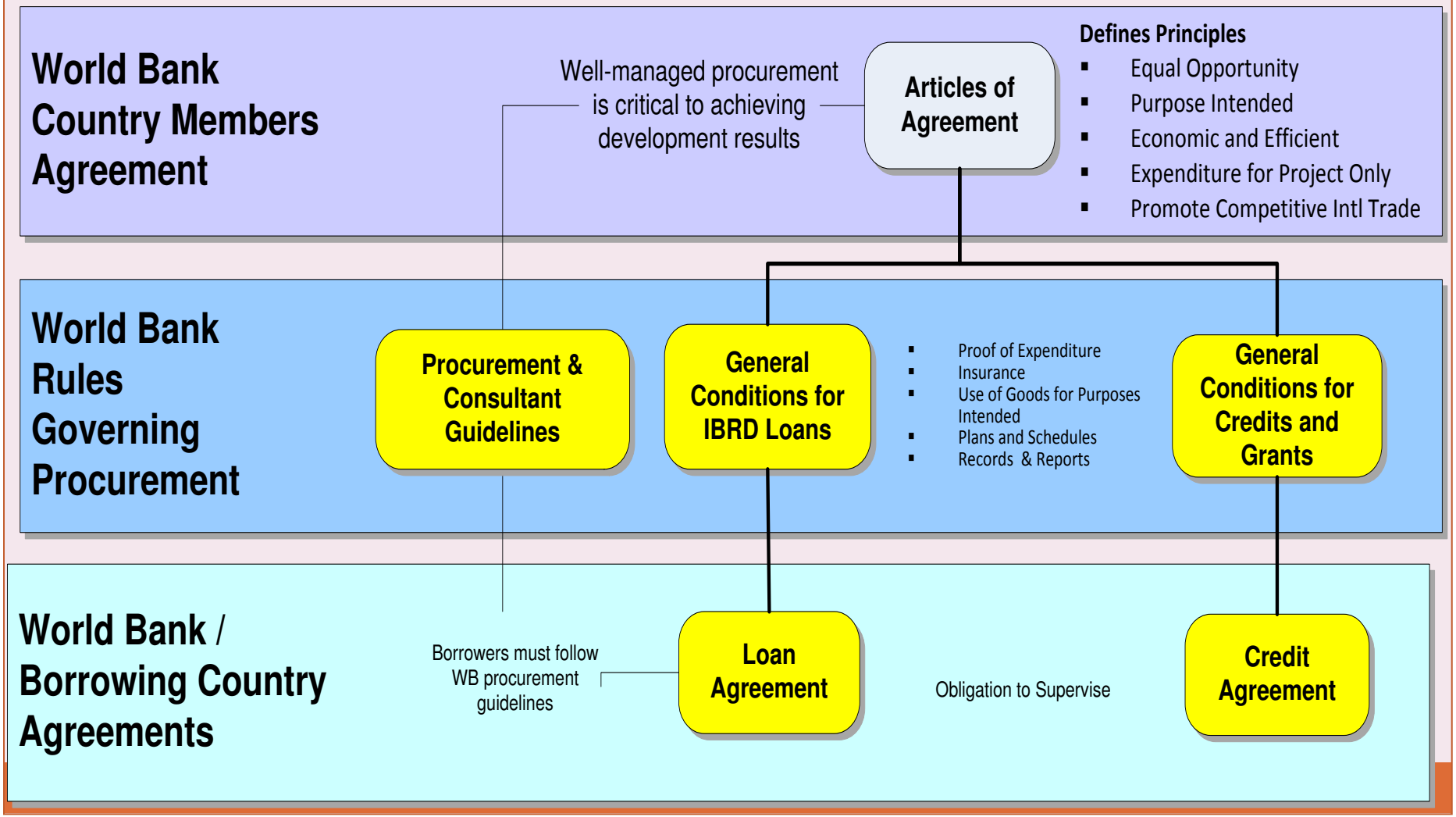
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Part One

BANK PROCUREMENT POLICIES AND PRINCIPLES APPLICABLE TO TEXTBOOKS

World Bank Procurement Policies - Rationale



Why Procurement is important to the Bank?

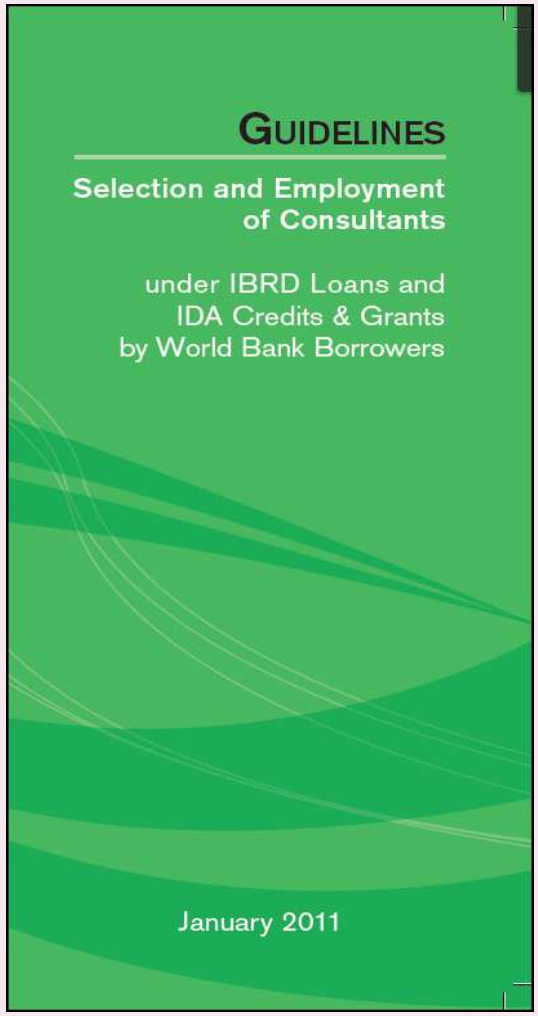
- **Procurement affects** the achievement of Project Development Objective (PDO) @ reasonable cost and on time
  - ➔ Which affects Country Development Objectives
    - ➔ which affect the **Millennium Development Goals (MDG)**

- **Risk Management**: The World Bank has a Fiduciary Responsibility

Bank's Lending Instruments

Investment Lending	• For goods, works, and services • Predefined specific project • Long-term focus (5 to 10 years) • Bank Procurement and Consultant Guidelines apply • Procurement & implementation schedule defined • Disbursement against actual payment for Goods, Works, Services funded by the Bank. • 75 - 85% of all Bank lending
Program for Results Lending	• Facilitates leveraging by financing a small part of a large government program • Use of country institutions to enhance partnerships • The Bank's Procurement and Consultant Guidelines do not apply • Disbursements linked to results or performance indicators • ***NEW*** - Approved January 24, 2012
Development Policy Lending	• Support countries' policy and institutional reforms in a sector or the economy as a whole • Short-term focus (1 to 3 years) • The Bank's Procurement and Consultant Guidelines do not apply • Provide quick-disbursing financing • 15 - 25% of all Bank lending

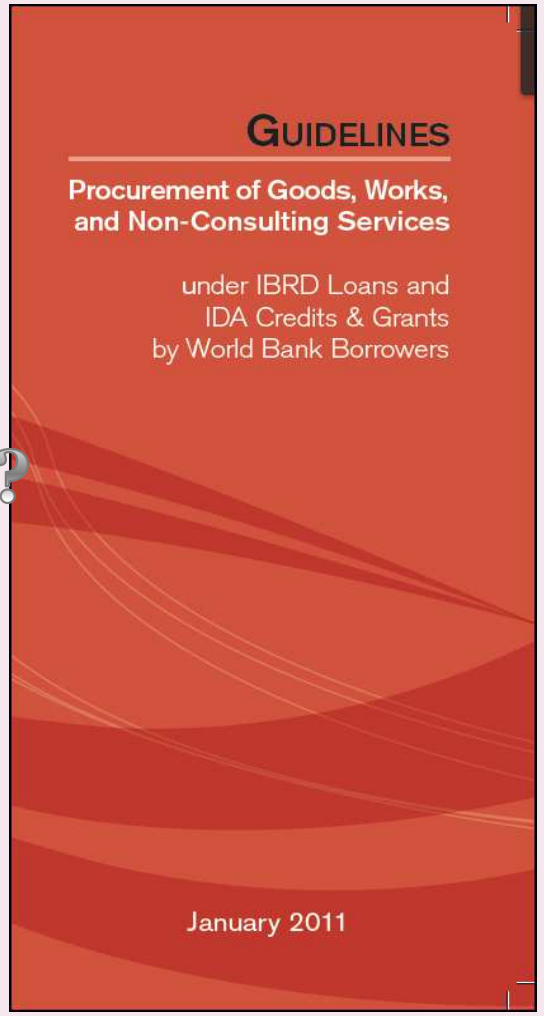
Procurement of Textbooks under Investment Lending (IL)



Intellectual Services: Hard to "measure" Output

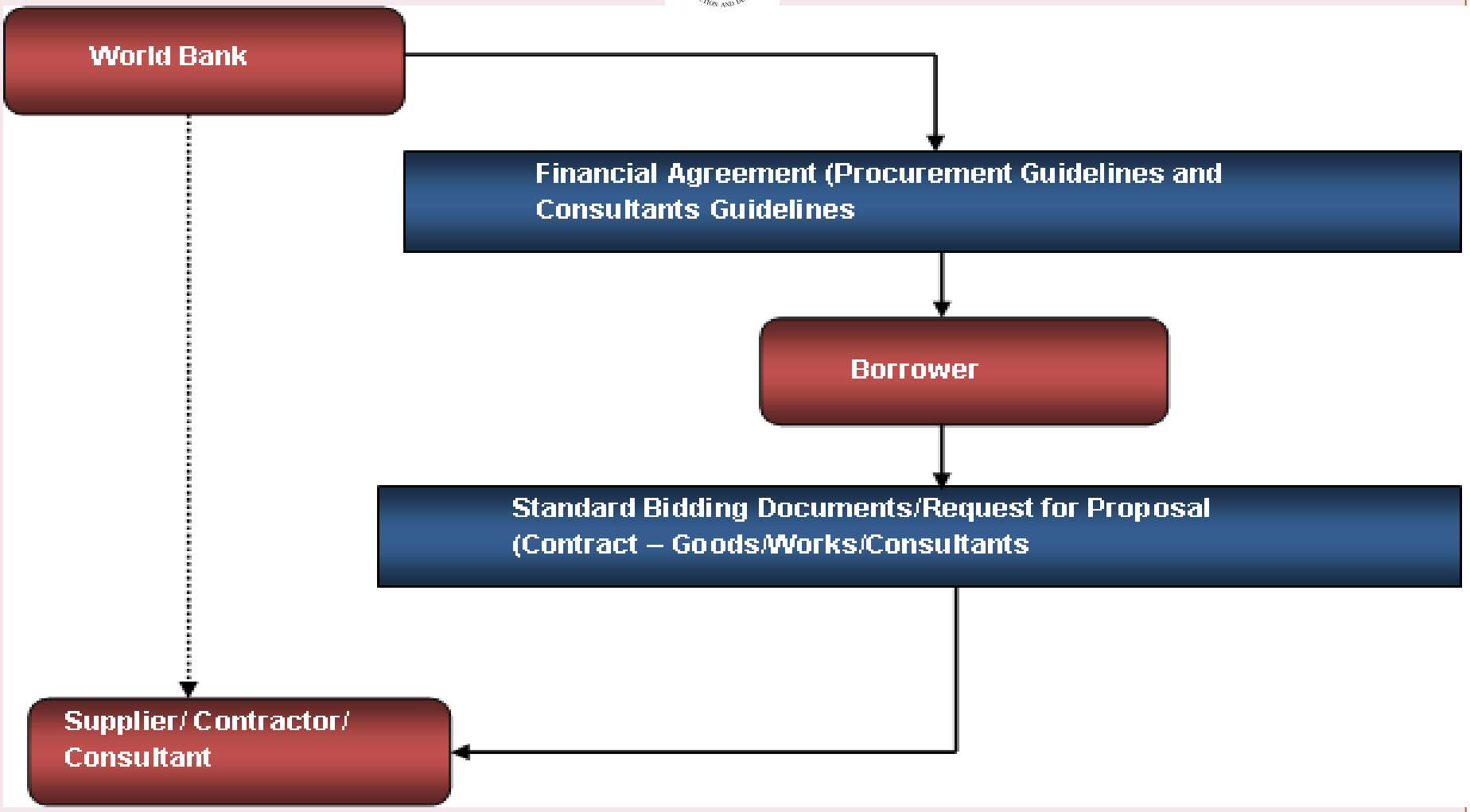
Textbooks?



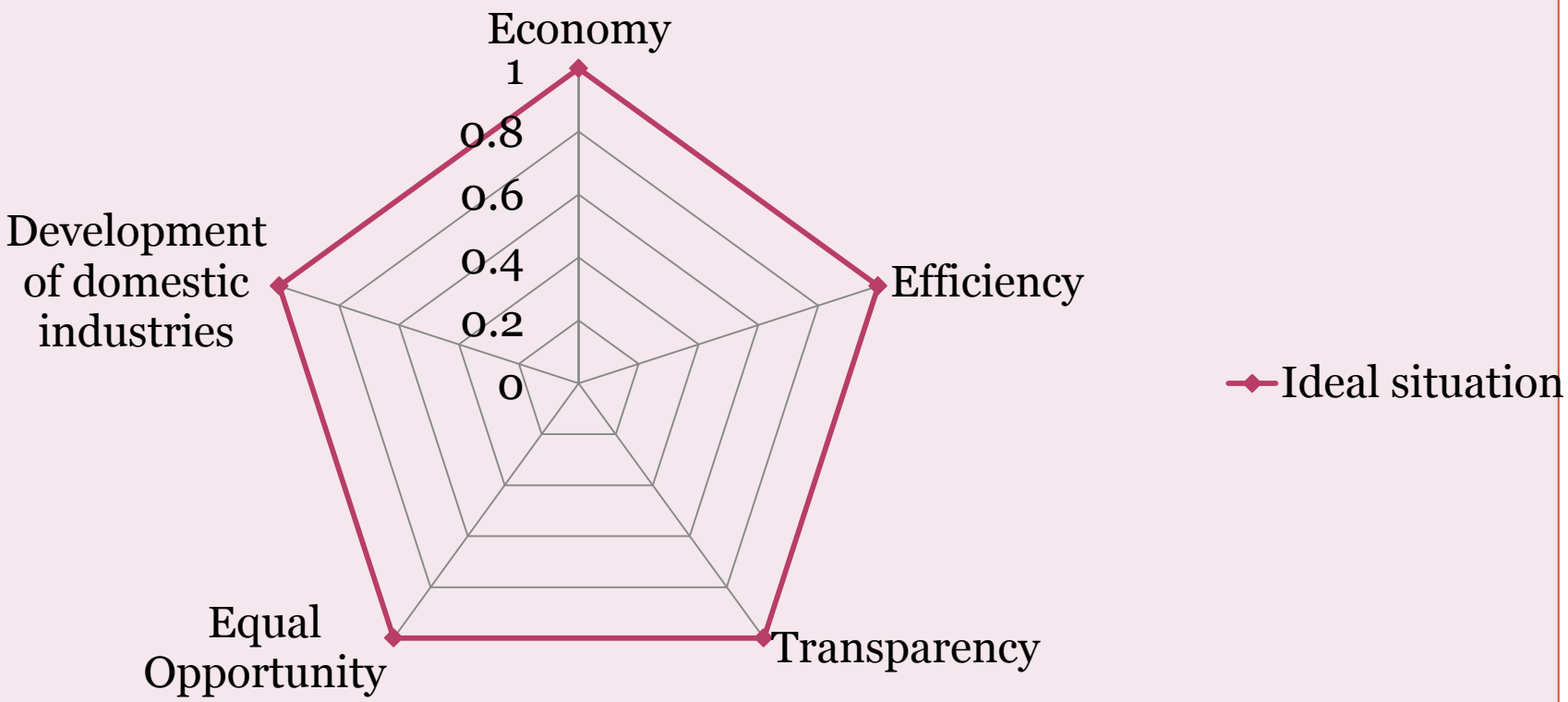


Non Consulting services: Measurable Physical Output

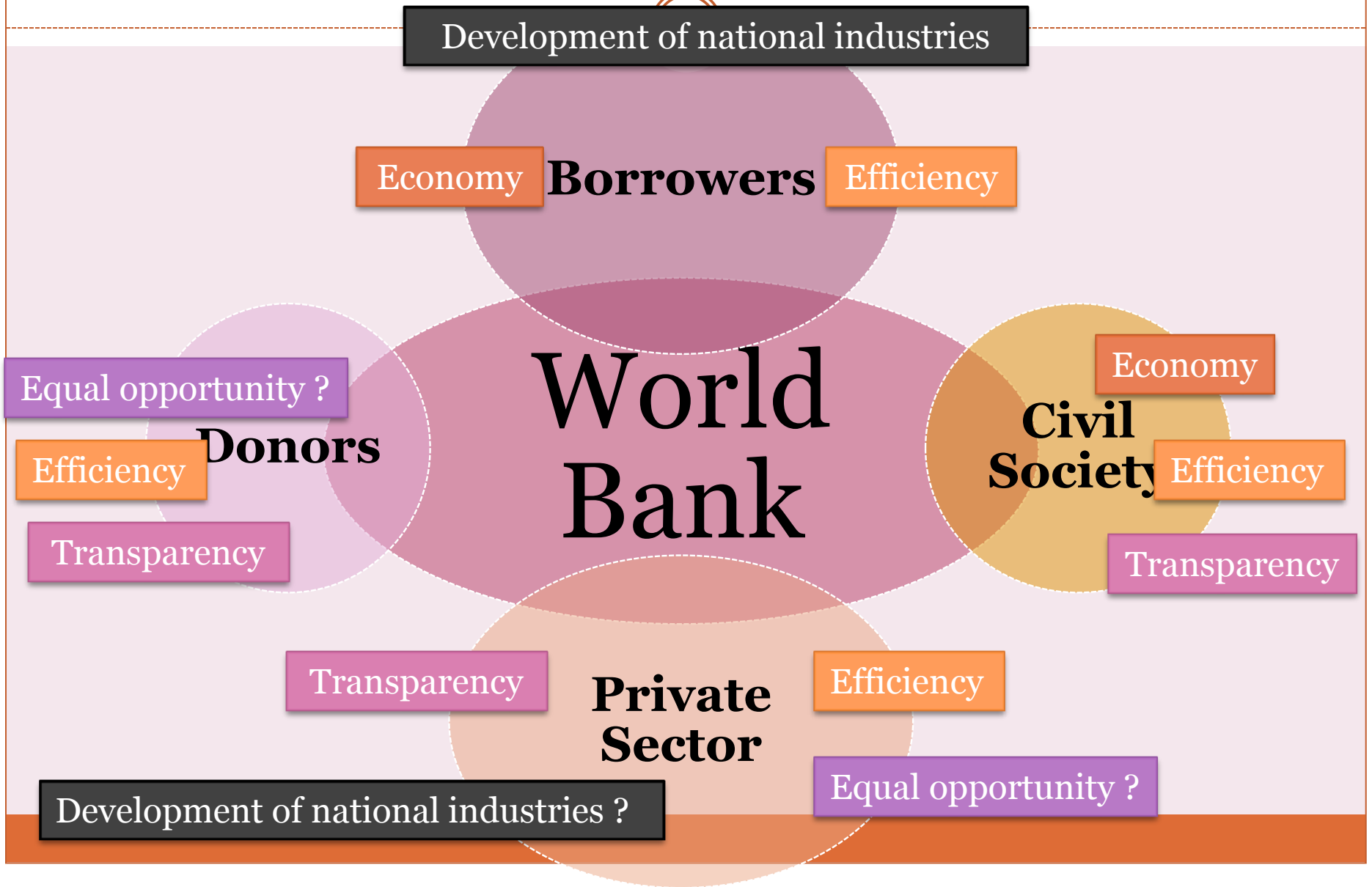
Legal Relationship Bank – Borrower - Contractor



Procurement of Textbooks according to Red Guidelines



The 3 most important principles to main groups of World Bank stakeholders



Conflict of Interest

- A Firm found to have a conflict of interest shall be ineligible for award of a contract:
  a. **Conflicting assignments**

     e.g. Firm A, a subsidiary of Firm AA who is an international publisher, has prepared the technical specifications for procurement of textbooks. Firm AA is now participating in the bidding process.
  b. **More than one bid from the same bidder or a member of the JV**

     e.g. The local Publisher A submits a bids and is also a member of the JV between proposed by the International Publisher B (JV A&B)
  b. **Business / Family relationship** with professional staff of the Borrower involved in the procurement process or she supervision /implementation of the contract.

     e.g. the bidding firm belongs to the wife of the Minister of Education.
  d. **Other in the BD:** It does not comply with conflict of interest situations specified in the BD.

Eligibility

- Firms & individuals from **all** countries having the essential capabilities required to fulfill contract & not being in a situation of conflict of interest are eligible.
- Exceptions:
  - **Prohibition of commercial relations** between the borrowing country and the firm's country, as a matter of law or official regulation, if exclusion does not preclude effective competition
  - Compliance with a decision of the **UN's Security Council** under Chapter VII of Charter of the UN to prohibit import from or payment to a particular country, person or entity
  - **Government owned enterprises** of the Borrowing country unless: (i) legally & financially autonomous, (ii) operate under commercial law, (iii) independent of borrower

    e.g. The Government owned printer cannot bid unless satisfies above conditions.
  - Firms sanctioned by the Bank for in **corrupt, fraudulent, collusive, coercive or obstructive** practices or under cross-debarment agreement with other MDBs

    e.g. Oxford University Press Tanzania & Oxford University Press East Africa (until Jul 2012)

Procurement Plan

- Defines the procurement strategy of the project
  What will be procured, when and how?
- Legal document referred to in the Financing Agreement
  Agreed with Bank prior to or at negotiations
- It is a time schedule for each procurement process / contract
  Timing & sequence of each contract
- It informs the public about the project
  Published on Bank's external web site (www.worldbank.org)
- It is a reporting tool
  Used in Interim Financial Reports & updated annually or as required

International Competitive Bidding

- Compliance with Section II of Procurement Guidelines:
  - Usage of Standard Bidding Document required
  - Language
  - International Advertisement
  - Currency
  - Price for goods according to Incoterms
  - Transportation & Insurance from any eligible source
  - Domestic preference (under conditions agreed in Financing Agreement)
  - International Commercial arbitration in a neutral venue required

National Competitive Bidding

- Compliance with 3.3 & 3.4 of Procurement Guidelines:
  - Competitive bidding procedure of the Borrowing country as reviewed & modified to assure:
    - Compliance with basic principles of procurement:
    - Broad consistency with Section I (Eligibility, CoI, JV, Advance contracting, Procurement Plan, F&C, etc.)
  - Appropriate when foreign bidders not expected to be interested:
    - Contract value & size
    - Works scattered geographically or spread over time
    - Labor intensive works
    - Items to be procured available locally at prices < international market
  - National advertisement
  - National Language
  - National currency
  - Prices may be: total cost at destination, incl. all taxes & duties
  - Foreign bidders shall be allowed on terms that apply to national bidders
  - Effective & independent protest mechanism

Direct Contracting

- Compliance with 3.7 & 3.8 of GLs:
  - No competition
  - Appropriate when:
    - Existing items: **extension of additional of similar nature** + no advantage through further competition + awarded initially through acceptable procedures

      e.g. Ordering additional textbooks provided that there is no advantage through further competition!
    - **Compatibility** with existing equipment
    - **Proprietary**: only one source
    - Goods from a particular source **essential to achieve the required performance / functional guarantee** of an equipment / facility
    - Exceptions: **natural disasters, emergency declared by the Borrower & recognized by the Bank**
    - Procurement from a specific **UN Agency**
  - Advertisement of the contract award information

Shopping

- Compliance with 3.5 of GLs:
  - Comparison of price quotations obtained from 3 or more suppliers / contractors / service providers
  - Appropriate for:
    - limited quantities of readily available off-the-shelf Goods
      - E.g. readily available books
  - Risk of F&C high

Framework Agreements

- New (Jan. 2011)!
- Long-term agreement with a contractor / supplier which sets terms & conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. 2 options:
  - Pre-agreed prices
  - Prices determined at call-off stage thru competition or revision
- Alternative to Shopping /NCB
- Appropriate for:
  - Goods procured off-the-shelf or of common use w. stn spec.
  - Simple non-consulting services
- Circumstance, justification for usage and approach & model & procedures, terms of contracts must be acceptable to the Bank
- No restriction on foreign competition
- Max duration: 3 years
- In accordance to NCB guiding principles (basic principles, Section I, etc.)

Evaluation of bids

- Award to the bid with "Lowest Evaluated Cost" but not necessarily the lowest submitted price
- Evaluation of bids for textbooks based on
  - Price:
    - For imported textbooks: CIP – Carriage Insurance Paid (place of destination) + cost of inland transportation & insurance to the place of destination
    - For textbooks manufactured in the Borrowing country: EXW – Ex-works + cost of inland transportation & insurance to the place of destination
  - Other factors as included in the Bidding Document:
    - Factors that can be expressed in monetary terms

      e.g. alternative delivery schedule, availability of service & training
    - Factors that cannot be expressed in monetary terms (e.g. case of development of textbooks) → Relative weight

      e.g. Pedagogical quality, readability, level of language, presentation & design, illustration

Material / Non-Material Deviations

- Bids frequently deviate to some degrees from the requirements of the Bidding Document.
- Reduce to the extent possible non-functional / administrative requirements that do not inform the quality or performance or the qualifications of the bidders or constitute barriers to entry to otherwise qualified bidders
- Distinguish between material / non material deviations:
  - Material deviation:
    - Affects in a substantial way the scope, quality and performance;
    - Limits in a substantial way, inconsistent with the Bidding Document, the rights of Purchaser or obligations of Bidder, or
    - If rectified, would unfairly affect the competitive position of other bidders.
  - Non-Material deviations may be:
    - Quantified in monetary terms
    - Purchaser may decide to waive non-material non-conformities / omissions
    - Purchaser may request additional information to rectify non-material non conformities/ omissions (not on price!) or arithmetical errors

Qualification of bidders

- Prequalification:
  - When preparing detailed bids is highly costly and could discourage competition
  - Could facilitate collusion if used improperly

- Postqualification 
  - In all other cases
  - Verification of the capabilities of the bidder proposed for award

Domestic Preference – Development of local Publishing Industry

- Development of domestic manufacturing: Basic principle of Bank Procurement
  - However, exclusion based on the country of origin of firms not allowed
  - Mandatory association with other firms not allowed
- Domestic preference under ICB only:
  - Under conditions mentioned in Financing Agreement (Procurement Plan) & in the Bidding Document
  - Margin of preference up to 15% to bids offering domestically **manufactured** goods vs. to bids offering goods manufactured elsewhere
- Slice & Package:
  - to allow small and large firms to bid: A bidder may bid for one or more lots.
- Development of local publishing industry through other means than public procurement:
  - Tax exemptions, reduce barriers to entry by lowering requirements to establish a new firm, etc. ➔ Verify Bank's Strategy on Private Sector Development!

Contractual Provisions

- Payment Schedule: Usage of letter of credit
- Copyright
- Joint and several liability among members of a JV
- Incoterms
- Governing law
- Settlement of disputes
- Packing requirements to preserve quality & facilitate distribution
- Inspections & Tests
- Warranty
- Patent Indemnity
- Reprints / price adjustment
- Minimum Technical Specifications / Dummy

Review by the Bank of Procurement Decisions

- World Bank NOT party to the contract!
- Bank's role in procurement: ensure compliance w. Financing Agreement & support project implementation
- Prior Review: Review by the Bank before the Borrower takes a decision
- Procurement Plan: contracts subject to prior review
- What is subject to Bank's no objection:
  - Procurement Plan
  - With regards to contracts subject to prior review:
    - Prequalification document (if any) / Bidding document & amendments
    - Evaluation report
    - Long or repeated extensions of bid validity periods
    - Any change in award decision or in contract terms & conditions
    - Substantial contract modification
    - Draft Contract & specification in case of Direct Contracting
- Any contract that is not prior reviewed is subject to post review
- Documentation to be kept with the Borrower up to 2 years after closing date but to be provided to the Bank upon request.

Part Two

FRAUD & CORRUPTION SCHEMES IN PROCUREMENT OF TEXTBOOKS

Fraud & Corruption - Definitions

- Corrupt Practice

  Offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.
  e.g. bribes, kickbacks, excessive gifts, travel, "loans", sexual favors

- Fraudulent Practice

  Any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
  e.g. False invoice, Forgery, product substitution, false statement in CV, failure to disclose the debarment status

- Collusive Practice

  An arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party
  e.g. Bid rotation, price alignment, agreement to pay bribes, agreement to withdraw

Fraud & Corruption - Definitions

- Coercive Practice

  Impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party

  e.g. Rejecting renewal of employee contract who raised questions, threatening the person or family members to change award decision.

- Obstructive practice

  (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

  (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under par. 1.16 (e) below.

  e.g. Destroying original bids, invoices, modifying evaluation reports, etc.

Fraud & Corruption – Actions by the Bank

- F&C provisions applicable to a wide range of parties around the Project:

  from bidders/contractors (incl. personnel, agents and subcontractors) to Borrowers (incl. personnel and beneficiaries of Bank loans)
- The Bank will:
  - **reject** a proposal to award if the bidder engaged in F&C
  - **declare misprocurement**
  - Will **sanction** the firm or individual:
    - Indefinite or temporary Debarment

      See: http://www.worldbank.org/debarr
- Bank's Policy**:**
  - **cancel** the portion of the grant allocated to the contract if Borrower's representative or beneficiary engaged in F&C without Borrower taking appropriate & timely action
- Temporary Suspension and Cross-debarment

Misprocurement

- 3 cases which could lead to misprocurement:
  a. Award not in accordance with Financing Agreement and Procurement Plan
  b. Willful dilatory conduct of Borrower to delay / reject any bid wrongfully in order to prevent award to the bidder otherwise determined as successful;
  c. F&C engaged by a Borrower's representative or recipient of a part of loan
    - ➔ The Bank will declare "**misprocurement**"
    - ➔ The Bank does not finance the expenditure for such Goods/Works/Services
    - ➔ Policy: cancel that portion of the Loan allocated to misprocured Goods/Works/Services
    - ➔ The Bank may exercise other remedies in Financing Agreement
- If No objection provided based on incomplete, inaccurate or misleading information, or
- If contract modified without Bank's no objection

➔ The Bank may still declare "misprocurement"

Procurement of Textbooks vulnerable to F&C Risk

- A sector vulnerable to F&C risks in procurement:
  - Textbooks can be culture and language specific
  - Huge and repetitive market
  - End users (students / parents /teachers) are not very price sensitive: either do not pay or are ready to pay premium prices for the education of children
  - Copyrights
    - ➔ Collusion, Monopolistic / oligopolistic situation
  - Need for interaction between public and private partners
    - ➔ High risk of conflict of interest ➔ Collusion, corruption, coercion
  - Evaluation of bids relies heavily on professional judgment and on subjective criteria
    - ➔ High risk of biased evaluation ➔ Collusion, corruption, coercion
  - Publishers may rely heavily on textbooks (cash cow of the publishing industry) to survive
    - ➔ Corruption, Coercion, Fraud, Collusion
  - Challenge of distributing quality textbooks across the country on time
    - ➔ Multiple logistic challenges / transactions between arrival of textbooks at Port ➔ delivery to students ➔ Opportunities for corruption, misuse, fraud

➔ Conclusion: Provision of textbooks requires a particular attention!

Common Red flags during Procurement Process

- Procurement strategy inconsistent with market conditions

  e.g. Usage of NCB when the local publishing market is highly monopolistic and lacks capacity to respond to the call for bid.

  e.g. Launch of the bidding process during summer vacation, or launch of all bidding processes in parallel @ the same time

  e.g. Packaging in lots to favor certain bidders

  e.g. Inadequate prequalification process & criteria

- Inadequate technical specifications

  e.g. Vague indication of quality of paper or of printing, allowing for low quality paper, requiring too high quality cover

  e.g. Rejection of a bid based on requirements that do not affect functionality

Common Red flags during Procurement Process

- Inadequate copyright arrangements
  e.g. Copyright to non-authors who facilitated award decision to certain bidder
  e.g. Modification of copyright arrangements after bid submission /contract signature
- Inadequate transportation / distribution requirements
  e.g. Requiring availability of storage facilities across the country as a condition to bid
  e.g. Lack of clarity about roles and responsibilities of transportation / distribution
  e.g. Absence of (requirements for) adequate storage / transportation
- Absence of clear quality control and inspection procedures at delivery or absence of documented inspection
  e.g. To facilitate acceptance of low quality textbooks or to divert from intended usage, incl. resale

Common Red flags during Procurement Process

- Loose or too stringent qualification criteria

  to allow certain bidders to win or to reject otherwise qualified bidders
- Complaints

  The best source of information on F&C!
- Multiple change orders or amendments

  e.g. low value change orders under radar screen to pay kickbacks

  e.g. Undue modification of contractual terms

  e.g. Substantial extension of contract scope and time
- Unusual Bid patterns

  Collusive schemes: prices aligned or same bidders bidding in an irrational way in similar processes, bidders omitting obvious documents to be disqualified

Common Red flags during Procurement Process

- Suspicious bidders

  e.g. Suspicious phone numbers or address (incomplete, only PO Box, in residential areas, etc.),

  e.g. Bidders lacking qualifications and offering a wide variety of goods (brokers)
- Inflated agent fees

  e.g. Middlemen or broker imposed to bidders or recruited by bidders to facilitate bribery and kickbacks
- Subcontracting of almost 100% of the contract to another firm

  e.g. local publisher did not qualify, international publisher subcontracts the whole amount to local publisher and charges high prices for low quality or delayed delivery
- Textbooks of poor quality

  e.g. all of the above!

Procurement & Education Networks working together for sustainable Textbooks: Progress so far …

- Revision of the Operational Guidance Note on Textbooks & Reading Materials (submitted to Education Sector Board for review):
  - Annex B. Procurement Note (Submitted to Education Anchor Unit for review)
    A. Early collaboration between Procurement & Education specialists crucial with a focus on solutions!
    B. Understanding Country context around Textbooks & Procurement
    C. Project's Textbooks Procurement capacity & Risk assessment
       i. Understanding the Textbooks supply & demand market
       ii. Political Economy of Textbooks
       iii. Assessing Procurement Risk & Capacity
    D. Developing a Procurement & Contracting Strategy
    E. Procurement and Contract Implementation
    F. Managing Risks of F&C
    G. Assessing Performance & Achievement of Results

What next? Proposals for Action

- Finalization & Dissemination of the Guidance Note
- Raise awareness about the importance of sound procurement for achievement of Education Development Goals
- Tools for operations under Investment Lending:
  - Engage into update / development of procurement solutions for:
    - Textbooks (update of the Standard Bidding Document)
    - Open Access / E-Readers / electronic books / Online learning tools
- Tools for operations under Program for Results (PforR) Lending:
  - Develop guidance to staff on supporting PforR operations including Textbooks provision: An effective way to focus country's textbooks systems
- **Bank's Procurement Policy is about to change – most important revision in 60 years –**

➔ **Express your ideas on the Procurement Policy Review!**
Procurement Policy Review

THANK YOU FOR YOUR ATTENTION!

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