

MEMORANDUM OF UNDERSTANDING

CO-OPERATION INITIATIVE

BETWEEN

THE COUNCIL OF MINISTERS OF BOSNIA AND HERZEGOVINA

AND

THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

TO PROMOTE THE DEVELOPMENT

OF THE PUBLIC PROCUREMENT SECTOR

IN BOSNIA AND HERZEGOVINA

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Objective

The purpose of this Memorandum of Understanding is to outline co-operation between the Council of Ministers of Bosnia and Herzegovina (the CoMBH) and the European Bank for Reconstruction and Development (the “Bank” or “EBRD”) hereinafter separately referred to as a “**Party**” and jointly referred to as the “**Parties**”, concerning opportunities for improvement of public procurement in Bosnia and Herzegovina.

Background

1. The Public Procurement Agency (PPA) of Bosnia Herzegovina and representatives of other entities, such as the Chamber of Commerce of Bosnia and Herzegovina, all members of the “New Procurement Law Working Group” (the “Working Group”) have been tasked by the Parliament of Bosnia and Herzegovina and the Council of Ministers of Bosnia and Herzegovina, to draft and propose a new Procurement Law for the consideration and approval of the Parliament of Bosnia and Herzegovina. The Working Group, spear-headed by PPA, being responsible to cover all aspects of sound procurement practice, including the legislation, the control over the public procurement in Bosnia and Herzegovina, is committed to analyse and propose the best international public procurement practices. The EBRD is committed to sound public procurement practices in discharge of its mandate under the Agreement Establishing the European Bank for Reconstruction and Development and as a regional investor, the EBRD seeks to promote such processes, specifically encouraging a good balance between competition and transparency safeguards, as well as, efficiency and economy aspects in the development of public procurement regulations.
2. Development of the public procurement sector, including natural monopolies and utilities, will depend on improving national practice and public procurement operational aspects. International standards on public procurement have been developed to promote transparency in government procurement and enhance competition. Taking into account the evolution of the public procurement system in Bosnia and Herzegovina and recent developments and revisions of the international public procurement legal instruments, the development of a stable and accountable public procurement legal framework that enables both efficiency and integrity of public spending has been determined a suitable objective for this Cooperation Initiative.

The Importance of Regulatory Reform

3. Major infrastructure projects are commissioned as public procurement contracts or public-private partnership (PPP) arrangements and for this reason good public procurement regulations are crucial. The effectiveness of public procurement is strictly related to the legislation in force and to the efficiency of the public procurement regulatory bodies.
4. In order to benefit from increased efficiency and transparency of public spending, the national public procurement framework should be developed further to enable improved competition, economy and transparency.

Understandings

5. In view of the consistency of their strategies for the reform in the public procurement sector, the CoMBH and the EBRD subscribe to the principles of promoting the establishment of a stable and competitive public procurement regulatory framework.

This means in particular that the EBRD and the CoMBH, will:

- i. develop and strengthen further cooperation in the sphere of public procurement policy, regulation of utilities and natural monopolies and monitoring of public procurement, as well as, PPP procurement framework;
 - ii. exchange information on a regular basis as appropriate, concerning technical assistance and public investment projects;
 - iii. render consultations with regard to the matters of mutual interest, wherever deemed necessary and upon initiative of either party;
 - iv. adopt forms of interaction in the field of public procurement policy and regulation, including (a) rendering methodological assistance, exchange of expert surveys and consultants' reports, (b) exchange of experience in the field of conducting reviews, concerning the infringement of competition legislation, and (c) providing mutual and joint training, including training of trainers for the public procurement specialists with the purpose to exchange experience from Bosnia and Herzegovina and the EBRD;
 - v. seek to find ways to develop and provide structured and comprehensive Capacity Building in Procurement Programmes for public entities and EBRD Clients in Bosnia and Herzegovina.
6. Where any of the regulatory requirements remain to be achieved, the CoMBH and the EBRD will make their best efforts to identify support and technical assistance to the CoMBH where it is both feasible and appropriate, provided such support and assistance do not conflict with the legislation of Bosnia and Herzegovina.
 7. Wherever it is feasible and justified, the CoMBH and the EBRD agree that to make reference to conformity with international public procurement standards and the best procurement practices is a desirable objective when implementing projects in the public sector.

Communications

Any notice or other communication to be given or made under this Memorandum will be addressed and sent to the following contact points or at such other address as either Party designates by notice to the other Party:

For the Council of Ministers of Bosnia and Herzegovina:

Address: Agencija za Javne Nabave BiH – La Benevolencija 8/I, 71000 Sarajevo, BiH

Attention of: Public Procurement Agency of Bosnia and Herzegovina

Fax: +387 33 251 595

E-mail: Djinita.Foco@javnenabavke.gov.ba

For the Bank:

Address: EBRD, One Exchange Square, EC2A 2JN, London, UK

Attention of: Jan Jackholt

Fax: +442073387472

E-mail: JackholJ@ebrd.com

Final Provisions

This Memorandum reflects the views and intentions of the Parties to co-operate on a non-exclusive basis, expressed in good faith but without the creation of any legal obligation or the incurrence of any liability on the part of any of them. Nor shall any third party obtain any legal benefit from this Memorandum.

It is understood and agreed that nothing in this Memorandum will constitute, or be construed as, an offer, promise or undertaking by either Party to finance all or part of any activity or project identified in or pursuant to this Memorandum.

In the event that opportunities are identified, specific arrangements for any such activity or project would need to be agreed upon between the Parties. Each of the Parties will incur its own expenditures arising as the result of the implementation of this Memorandum, unless otherwise specified in relevant separate agreements.

Nothing in this Memorandum will limit the right of, or prevent the Parties from entering into memoranda or arrangements with other parties with respect to any activity, project or area of co-operation covered by this Memorandum.

Nothing in this Memorandum will constitute nor be construed as a waiver, renunciation or other modification of any of the privileges, immunities and exemptions granted to the EBRD under the Agreement Establishing the European Bank for Reconstruction and Development, international conventions or any applicable laws.

Any dispute arising out of, or in connection with, the interpretation or application of any provision of this Memorandum of Understanding will be settled amicably through consultations.

This Memorandum will become effective on the date it is signed by the last of the two Parties and will remain in effect until either Party notifies the other Party in writing of its intention to terminate this Memorandum. In such case, this Memorandum will terminate 30 days after receipt of such notice by the corresponding Party.

This Memorandum may be amended by mutual written consent of the Parties.

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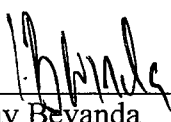
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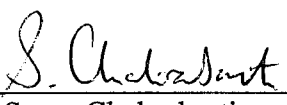
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IN WITNESS WHEREOF, the Council of Ministers of Bosnia and Herzegovina and the Bank, each acting through its duly authorized representative, have signed this Memorandum in the English and in one of the languages of Bosnia Hercegovina. In case of any inconsistency between the English and one of the languages of Bosnia and Herzegovina texts, the English text shall prevail.

FOR THE COUNCIL OF MINISTERS OF BOSNIA AND HERZEGOVINA

By: 
Name: Vjekoslav Bevanda
Title: Chairman of the Council of Ministers of Bosnia and Herzegovina
Date:

FOR THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT:

By: 
Name: Suma Chakrabarti
Title: President European Bank for Reconstruction and Development
Date:

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