**Combined Questions + Answers (in alphabetical order by topic)**

**Webinars on Enhancement of ESHS outcomes through Procurement**

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| **The following terms and acronyms are used:**  **BD** = Bidding Document  **ECOP** = Environmental Codes of Practice  **EMP** = Environmental Management Plan  **ESIA** = Environmental and Social Impact Assessment  **ESHS** = Environment, Social, Health and Safety  **ESMF** = Environmental and Social Management Framework  **ESMP** = Environmental and Social Management Plan  **EPC** = Engineering, Procurement, and Construction  **FIDIC** = International Federation of Consulting Engineers  **GCC** = General Conditions of contract  **IPF** = Investment Project Financing  **NCB** = National Competitive bidding  **OPCS** = Operations Policy and Country Services  **OPRC**= Output and Performance based Road Contracts  **P4R** = Program for Results  **PPE** = Pandemic Preparedness Plan  **PPSD** = Project Procurement Strategy for Development  **PQ** = Prequalification  **RFB** = Request for Bids  **RFP** = Request for Proposals  **SBDs** = Standard Bidding Documents  **SPDs** = Standard Procurement Documents  **TTL** = Task Team Leader |

This Questions + Answers has combined the questions and

responses from the Environment, Social, Health and Safety

(ESHS) webinars to staff and the private sector that were

held on the following dates:

* April 29, 2017
* April 30, 2017
* May 2, 2017
* May 4, 2017
* June 29, 2017

The Questions + Answers also includes additional written comments received on the subject.

| # | **Topic** | **Question** | **Answer** |
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| 1. | **Additional cost** | High costs of preparing bids (including ESHS schedules) may discourage bidders from participating. This may reduce competition and may increase the bid prices and overall project cost to Borrowers. | It should be noted:   * The changes to the SPDs do not introduce additional or new measures but highlight the ESHS specifications that should normally have been delivered under the previous approach. * Contract price increases may occur in markets that have failed to implement the existing ESHS controls. * There may be one-off additional bid costs for some contractors and consultants, for example, for the preparation of a Code of Conduct and its implementation method, although this is a one-off investment and many firms may already have a suitable ESHS Code of Conduct * The additional bid cost of preparing MSIPs will vary depending upon the Contractor’s current arrangements. It should be noted that there was a need to undertake the thinking and planning for ESHS controls during bid preparation anyway, although this will need to be consolidated and finalized. * The enhanced emphasis on ESHS requires behavioral changes on all sides. It may be expected, in some cases, for the market to price-in an adjustment. * There are some anecdotes that show that strengthened ESHS provisions do not necessarily result in higher prices, but we should monitor the operationalization for a period of time to establish what, if any, adjustments costs are being introduced. * Generally, given the serious implications of ESHS failures, cost considerations may be secondary. |
| 2. | **Code of Conduct** | For the Code of Conduct to work it should be imposed across the board: to contractors, consultants, Borrower staff. Has this been considered beyond the Contractor? | Yes. The enhanced SPDs require both the contractor and the consulting engineering firm to have appropriate ESHS Codes of Conduct that apply not only to their employees, but also to their sub-contractors.  The Code of Conduct relates to conduct on the ground i.e. at the site of the works. Borrowers’ staff may not necessarily be involved at this level. If involved, the Employer is normally contractually responsible to ensure that its personnel take actions like those which the contractor is required to take such as safety and protecting the environment. |
| 3. | **Code of Conduct** | Should there be a standardized code of conduct, rather than have a different one for each contract? | The Code of Conduct should reflect the circumstances of the Project, including any regional, country or community specific issues.  The Code should be developed with thought and with knowledge of the approach to the works: it should also reflect the organizational arrangements of the contractor/supervising engineer, especially in relation to the implementation arrangements.  Having a Code prepared by the party that is going to implement it helps to demonstrate the depth of its understanding and intention to comply.  The enhanced SPDs contain the minimum issues to be addressed by the Code of Conduct, and is provided to assist evaluation and tender discussions.  We expect that about 90% of the Code may be the same, and the remainder will be customized to the region, culture, communities and contract. |
| 4. | **Code of Conduct** | How do you know what the specific risks are that should be covered by the Code of Conduct for a particular contract? | Particular risks for the Project may be found within the ESIA/ESMP (or other safeguard documents), and should be made clear *within the ESHS Requirements/provisions in the Employer’s/Works Requirements of the procurement documents.*  Each proposed Code of Conduct should be assessed against:   1. the suggested minimum requirements for a Code of Conduct in the procurement documents; 2. the ESHS Requirements/provisions in the procurement documents; and 3. the specific risks identified in the ESIA/ESMP or Safeguard Documents. |
| 5. | **Code of Conduct** | The quality of contractor’s Codes of Conduct vary. How does this relate to the Borrower’s Code? | Bidders should now submit their Codes of Conduct for evaluation during the bidding process. Codes are to ensure compliance with the ESHS provisions that apply to the particular project, and are assessed against these.  The Borrower’s code of conduct applies to its employees. It is not imposed upon bidders/contractors. |
| 6. | **Code of Conduct** | Are Bank’s staff involved in assessing bidders’ Codes of Conduct? | Assessment of Codes of Conduct is part of the evaluation stage undertaken by the Borrower. Bank staff may be involved in reviewing the Code of Conduct requirements in the Request for Bid (RFB) document before it is issued and also in reviewing the Borrower’s bid evaluation reports to ensure that bids meet the required ESHS qualification and evaluation criteria including the one related to the Code of Conduct. |
| 7. | **Embedding change** | Task teams, including safeguards specialists, should be aware of the possible impacts of these ESHS changes including the stronger enforcement and contractual remedy provisions. This should also be included in the business outreach programs to familiarize contractors. | The roll-out of this initiative involves presentations to procurement, safeguards and TTLs. It is being presented to private sector organizations, as part of a series of outreach webinars. We are also addressing industry groups (most recently Chinese construction companies through an event held in Macau, and Contractors and Engineers operating in East Africa) |
| 8. | **EMP ESMF** | Do the EMP in the ESMF already address the requirements being introduced through the ESHS MSIP? | EMP/ ESMP/ ECOP prepared during project preparation contain specifications that the Bank requires the Borrower to meet during implementation. These requirements should be built into the ESHS Requirements/Provisions as an outcome-based technical specification (e.g. dust emissions during haulage shall not result in nuisance).  The Contractor’s MSIP set out the specific actions that they will take to deliver the specified outcomes (e.g. spraying haul roads with water as and when necessary).  Based on the ESHS Requirements/provisions the Borrower will identify the top 4 ESHS risks and request bidders to submit their MSIPs, as part of the bidding documents. MSIPs will then be assessed as part of the evaluation process.  As part of the bidding process, the contractor will need to demonstrate that they have identified suitable and specific actions to address and manage the ESHS risks. Once agreed, these will be implemented from the start of the works. |
| 9. | **EPC** | Shouldn’t the SPD for EPC be amended to include relevant ESHS enhancements? | If the Global Practices identify the need on procurement documents based on FIDIC Silver Book or other forms of contract, consideration can be given to how to build in appropriate ESHS measures that reflect Project circumstances. |
| 10. | **ESHS declaration** | This clause seems to conflict with Section III 2.3, History of Non- performance. We believe that 2.3 does not differentiate whether the historical nonperformance was due to ESHS or otherwise.  As such, a bidder would be disqualified in case of nonperformance under 2.3 (whether due to ESHS or otherwise) whereas 2.5 does not require disqualification and instead requires only due diligence in the case of nonperformance due to ESHS failures. Clause 2.5 should be revisited together with 2.3.  Our suggestion is that Non-performance (termination of contract) due to ESHS is already covered under 2.3. Therefore, 2.5 could only mention Suspension of Contract due to contractors’ failure to comply with ESHS requirements. In such cases, it will also be useful to mention suspension of contract for a certain period *(say a number of months cumulatively over the duration of the contract)* thatwill be considered as non-performance. | To declare that an applicant does not meet 2.1 requires a number of conditions i.e.:   1. information must be based on fully settled disputes or litigation 2. the previous non-performance was not challenged by the contractor through referral to dispute resolution mechanism of the contract 3. if challenged by the contractor, the dispute must have been fully settled against the contractor.   The ESHS declaration operates in a much simpler way and does not have these conditions to establish what non-performance, in ESHS circumstances, is.  Intentionally, the ESHS declaration makes simple reference to previous suspension/termination and/or forfeiture of performance security for ESHS reasons. This requires no condition to be met as in 2.1.  Again, this declaration is not for considering a contractor as a non-performer but rather for additional due diligence purposes (at the bidding stage, in case of PQ for example).  2.5 is not an assessment of past performance based on fully settled disputes and applies to specialized sub-contractors as well as the main contractor. The ESHS declaration and provision can apply independently of 2.1 and does not hinder 2.1 to be applied if the conditions of 2.1 are fulfilled. |
| 11. | **ESHS declaration** | Clause 2.3 does not have pass/fail criteria as documents do not require that the bidder must meet this requirement and instead the foot note mentions that *The Employer may use this information to seek further clarification in carrying out its due diligence.* We suggest the qualification criteria should be pass/fail as the current formulation may lead to potential disagreements within Governments as well as between the Bank and the clients in evaluation of bids. | This declaration is not for the purpose of pass/fail. Automatic disqualification of an applicant/bidder based on a previous contract that was suspended for ESHS failures would not be desired.  The information provided in the declaration is for the purpose of additional due diligence: the applicant/bidder may be required to provide further information or clarification regarding the cause and response to incidents, and regarding the actions it has taken to avoid recurrence. This will inform an appropriate course of action to manage the perceived level of risk. |
| 12. | **ESHS declaration** | In the previous PQ documents the bidder should declare contract disputes in the past. How effective was that in filtering out poor performing contractors?  How confident are we that the requirement for bidders to declare suspension or termination based on ESHS failures will be effective? | As mentioned, the ESHS declaration does not go into the detail of litigation or arbitration and is therefore a much simpler test. The new provision enables Borrowers to get clarifications on the declaration to understand the bidder’s ESHS past performance and therefore better manage risks.  The updates to the SPDs also introduce a specific ESHS Performance Security to further strengthen feedback on past performance. |
| 13. | **ESHS declaration form** | Does CON-2 form of PQ/BD document (which bidders are required to declare non-performance of the contract), also cover the new ESHS declaration? | No. There is a new form, CON-3, specifically for the ESHS declaration. |
| 14. | **ESHS policy** | What are our expectations in relation to the Borrower’s ESHS policy?  It is likely that the Borrower will simply provide all their Environmental Laws and say that contractors must meet these requirements, rather than a succinct policy statement?  Does the document have to be a ‘policy’, given that policies may require Ministerial/cabinet approval in some countries which may complicate the process? | The expectation is for a simple, brief and unambiguous statement of the minimum requirements for the project. It may be an existing policy of the implementing agency, or it may be prepared specifically for the project.  It should specify the intent of the relevant laws so that it is clear what that means in practice, rather than repeat them.  Whilst we have used the word ‘policy’, we mean this in the sense of specifying the minimum specification rather than a procedure. It can summarize the intent of the ESHS guidance, practice, standards etc. What is important is that it is a succinct statement of what the Borrower expects in relation to the works in question. It is about getting to the specifics of what the contractor and supervising engineer should deliver. |
| 15. | **ESHS policy** | What if the Borrower does not have an ESHS policy? How do I make them develop one? | The SPDs now contain guidance on the types of issues that we expect an ESHS ‘policy’ to cover. If there is no existing policy, this guidance can be used to assist the Borrower to develop one that is appropriate to their expectations for the project. This needs to reflect and align with the relevant laws, but not repeat them in full.  The policy should be a brief (one-page) statement which sets out the basic ESHS requirements that the contractor and supervisor should meet on the Project. |
| 16. | **ESHS specialist** | Is it the Bank’s environmental person who needs to approve the contractor’s choice of ESHS specialist? | The emphasis on strengthened ESHS performance creates a new paradigm of working which is anchored in multi-disciplinary team work, right from the start.  The Bank specialists need to work together effectively in a cross-functional team, with the Borrower’s team. It is the TTL who should ensure that the appropriate specialist support is available, and that the skills, experience and expertise are suitable to discuss and agree on the choices of specialists and other such decisions. |
| 17. | **Evaluation** | Section-II, clause 11.1 (h) requires the bidder to submit with the bid initial MSIPs and ESHS Code of Conduct. These are then finalized during pre-contract discussions with the successful bidder and then form part of the contract.  As the bidding provisions require these documents to be submitted with the bid and finalized during pre-award contract discussions, the Borrower may not be in a position to declare the bid non-responsive even if the evaluation of technical proposal reveals major shortcomings relating to the ESHS documents.  We think that the bidding documents should be explicit whether the bid can be declared non-responsive when the evaluation of technical proposals reveals major shortcomings relating to ESHS documents submitted. | ESHS submissions, like other aspects of the Work’s requirements, are assessed when evaluating the technical part of the bid.  The substantial responsiveness test applies to determine each bid’s conformity to the Works Requirements.  The same approach is to be followed for evaluating ESHS requirements when using a RFB selection method. For procurements using a RFP selection method, the Borrower may use rated evaluation criteria when assessing ESHS submissions.  If the ESHS submission is not considered adequate to fulfil the Borrower’s requirements, and the deficit/s is not of a nature that can be fixed through clarifications/and or pre- contract discussions without affecting the substantial responsiveness of the bid, or having a material impact on the competitive process or the performance of the contract, then it would be expected that the bid will be assessed as substantially non-responsive.  A simple pass or fail approach is not normally considered appropriate for ESHS requirements. |
| 18. | **Evaluation** | Further guidance from OPCS on evaluation of bids on ESHS methodology, specifications and standards would be helpful to the clients and teams.  We also suggest standard BER format should also be revised to include the matrix to capture key elements of ESHS considerations in evaluation of technical proposals with some examples/case studies. | A user guide on ESHS that will provide more clarity on these aspects is currently under development. |
| 19. | **Financing** | Where the Borrower seeks retroactive financing, if ESHS requirements are missing from the bidding document will this affect the Bank’s acceptance of the contract? | The ESHS enhanced SBDs and SPDs were issued in January 2017. So, the application of these enhanced ESHS requirements will normally be effective from this date onwards.  Advance procurement (retroactive financing) is governed by para. 5.1 and 5.2 of the Procurement Regulations for IPF Borrowers, 2016. This requires consistency with relevant provisions including the core procurement principles. As part of this assessment, on ESHS, one would expect an appropriate measure based on the degree of ESHS risks. |
| 20. | **Financing agreement** | The financing agreement includes a section saying that the client implements ESHS requirements.  How do the bidding documents relate to the financing agreement? | The financing agreement governs the relationship between the Bank and the Borrower, and usually requires the Borrower to implement the agreed safeguards documents.  The ESHS obligations of the SPDs govern the relationship between the Borrower and the Contractor delivering the works: as such many of the requirements of the finance agreement will be imposed through the SPDs. This is done during the preparation of the procurement documents, when the relevant risks identified in safeguards documents are considered and taken into account when preparing the ESHS requirements. |
| 21. | **General Conditions of Contract (GCC)** | We think Clause 4.1 Part-B is not consistent with GCC Sub-Clause 8.1 [Commencement of Works].  GC 8.1 specifies that the Commencement Date shall be the date at which the precedent conditions (i.e. the conditions specified in GC 8.1) have all been fulfilled and the engineer’s notification recording the agreement of both parties on such fulfilment and instructing to commence the Work is received by the Contractor.  This clause also states that if the engineer’s instruction is not received by the contractor within 180 days of the Letter of Acceptance, the contractor shall be entitled to terminate the contract under Sub-Clause 16.2 [Termination by Contractor].  As such, the engineer won’t be able to issue the Instructions under GCC 8.1 unless ESHS measures are appropriate (as required under GC 4.1). However, even in such a situation, the contractor will be entitled to terminate the contract after 180 days of the Letter of Acceptance under GC 8.1. Therefore, we suggest GCC sub clause 8.1 and Particular Condition of Contract, clause 4.1, should be revisited together to ensure consistency. | The precedent actions in GCC 8.1 to determine the Commencement Date are:   1. all actions to be taken by the employer (provided the contractor has signed the contract, and submitted advance payment guarantee), and 2. both parties shall record their agreement of fulfilment.   If these actions are not completed within 180 days the contractor cannot be expected to wait forever, and is entitled to terminate the contract. This has not changed.  On the other hand, the new 4.1 puts an onus on the contractor that before commencing any activity (in the sense of executing the activity), the Engineer shall be satisfied that appropriate ESHS risk management strategies and plans are in place. This means that ESHS risks and impacts need to have been considered, and where appropriate addressed.  This obligation to ensure that ESHS strategies and plans are in place before undertaking works is not a one-off provision that applies only at the commencement of the contract. It is a continuing obligation that is ongoing throughout contract implementation.  Even where the commencement date is established and the contractor notified of the date and commences execution of the works (as soon as is reasonably practicable after the commencement date) the Contractor has an additional general obligation (COPA 4.1), on a continuing basis, to ensure that appropriate measures are in place to address ESHS risks before carrying out any activity. This ensures that ESHS risks are addressed throughout the implementation of the contract (including e.g. geotechnical investigation, site preparation, quarries and borrow pits etc. to the actual construction of permanent work elements) without delaying the Commencement Date. |
| 22. | **Implementing the enhancements** | How are you mainstreaming these ESHS enhancements across the Bank | There is a continuing programme of outreach to Bank staff, industry and Borrowers. Four pathfinder projects will also share lessons of implementation. |
| 23. | **Leading by example** | How can we impose ESHS requirements on a Borrower? | It may be difficult to impose ESHS requirements on to a Borrower. We are not telling them what to do, but we can support them towards better practice by suggesting what aspects of their practice need to be strengthened**.**  It is difficult for Borrowers to impose ESHS requirements on contractors, if they themselves are not demonstrating good ESHS practice**.**  Borrowers need to be encouraged to lead by example. e.g. it would not be good to have a promotional photo of Borrower staff on site without a hard hat or high viz vest.  It is also for the Bank to lead by example. Do we ask for and get an induction before going on the site? Do we have the right PPE? These are questions that need to be asked. |
| 24. | **Managing risks** | What happens when: a project requires establishing sewage drainage. To protect rivers, it means that effluent needs to be treated before being discharged. But this is not part of the project. | The protection of the water course should have been built into the project from the start, for example through the iterative ESIA process. The project should not proceed if such ESHS risks are not addressed and managed satisfactorily. |
| 25. | **Managing risks - ESMPs** | To what extent can we require detailed ESMPs from bidders at the beginning of the procurement when many of the details are not known. | ESMPs can only be based on the information that is available at the time that they are developed. That is why in the contract, the contractor is now required to regularly review and update them.  Preparing the full ESMP for a contract requires details that can only really be obtained once the contractor has understood the works requirements, and identified how they are going to deliver the activities (e.g. what equipment, programme, and approach etc. is needed) and this requires a considerable investment and requires the site team to be assembled and effective.  It is therefore not recommended that the complete ESMP is requested at bidding, as it is unlikely to be meaningful.  Rather the updated SPDs, require bidders to provide the detailed actions they will take for four particular activities (MSIPs - identified by the Borrowers as being of particular significance for the contract) for agreement during the bidding process. Additional MSIPs are required to be developed to the satisfaction of the supervising engineer prior to the start of activity and cumulatively these MSIPs will comprise the ESMP. |
| 26. | **National competitive bidding (NCB)** | These enhancements apply to procurements subject to international competition. What happens where the Borrower is undertaking NCB using its own bidding documents?  How will ESHS risks be addressed, especially given the increased thresholds for using NCB e.g. in India now the 90% of the procurement in the transport sector is done by approaching the national market.  Specific guidance from OPCS will be of help to the teams in addressing this issue consistently across portfolios and avoiding case by case reference by the teams.  In many countries (where the Bank has agreed harmonized NCB bidding documents with the Governments and the Borrowers have issued the regulations/decrees for use of such NCB documents in Bank financed contracts), incorporating ESHS enhancement will require the revision to the Borrower’s regulations/decrees/standard documents once the changes have been discussed and agreed. This may take considerable time before the ESHS enhancements can be operationalized in NCB works. | The Bank’s SPDs are mandated for international competitive procurement. For national competitive procurement, the Borrower may use its procurement documents, acceptable to the Bank.  The Bank is not mandating the enhanced ESHS requirements in SPDs to be applied in national competitive procurement. For the latter, it is only if ESHS provisions are appropriate, and have been agreed with the Borrower, that they should be applied. A discussion can be held with the Borrower on the mitigation of ESHS risks and impacts.  At this stage, the updated SPDs with ESHS provisions shall be used for international competitive procurement. |
| 27. | **NCB** | How will this apply to NCB? And to situations where there is no prior review? | These provisions are not mandatory for NCB. But the Borrower can be encouraged to adopt the practice stated in the SPDs for NCB, if appropriate. |
| 28. | **P4R** | How will this apply to P4R | The enhanced SPDs with ESHS provisions apply to Investment Project Financing (IPF). |
| 29. | **Performance security** | Have the risks of applying this been assessed in terms of it being considered a barrier to entry to doing business. | The inclusion of an ESHS performance security will not normally result in the sum of the total performance security being greater than 10%. If the sum of the total were to increase beyond 10% that this could be seen as a barrier to entry.  It is recommended that the ESHS Performance Security is used where ESHS risks are high.  The engagement with industry to date suggests that ESHS Performance Security can be provided by the market, although this engagement has not reached all providers. |
| 30. | **Performance security** | What happens if you call the ESHS Performance Security? Is the contract then also cancelled? | To call in a Performance Security indicates a contractual breach or failure. Whether or not the contract is also terminated will depend on the individual facts and circumstances of each case. |
| 31. | **Performance security** | The ESHS Performance Security, to be employed for contracts with significant risk, will normally be in the amount(s) of 1% to 3% of the Accepted Contract Amount. The Performance Security in the case of unbalanced bids could potentially go up to 20%. So, does this mean that a 23% performance security can be required (that includes ESHS considerations), in some situations? | It is correct that a ESHS Performance Security is normally in the range of 1 to 3 %. However, where an ESHS Performance Security is included, the sum of the total Performance Securities shall not normally exceed 10%.  Where there is, an unbalanced or front-loaded bid the total amount of the performance security may be increased to a level not exceeding 20% of the contract price. |
| 32. | **Performance security** | Though introducing the Performance Security for ESHS (in addition to usual Performance Security) is for the better enforcement of compliance to ESHS, this clause possibly limits Employer’s rights under the contract e.g. in case of nonperformance of ESHS requirements leading to termination of contract, the Employer may call only ESHS performance Security and not the usual performance security.  We suggest some interlinking clause (cross fall breach clause) be introduced in a manner that in the event of termination of contract by the Employer due to Contractor’s default, the Employer shall call both the Performance Securities. | The ESHS performance security specifically covers a breach of the contractor’s ESHS obligations. If the Employer assesses that the breach is of a nature that could also be considered as a breach of the contractor’s obligations for the whole contract, the performance security could also be called upon by the Employer.  All scenarios cannot be covered.  Further GCC 15.2 (a) on termination has already a catch-all provision which states:  “*The Employer’s election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise*.”  Having said this, we will continue to look into the application of this instrument. |
| 33. | **Performance security** | Will asking for a ESHS Performance Security disincentivize suppliers from bidding? | It is not thought that the addition of an ESHS Performance Security will be a disincentive to bidding. This is because the total sum of securities (which cannot exceed 10%) has not changed. i.e.: the practice is not 10% plus the ESHS performance security.  Also, an ESHS performance security will normally only be required where there are high ESHS risks. |
| 34. | **Provisional sum** | There should not be a provisional sum. Payments should be part of the contract. | The normal approach is to build in the ESHS costs as part of the works being delivered by the contractor.  The enhanced bidding documents introduce an option to include an ESHS Provisional Sum. This provides some flexibility for the Borrower who can opt to use this provision, or not.  Provisional Sum can be used as an incentive to contractors to go beyond the minimum level of performance. The provisional sum needs to be carefully written to ensure that the actions and outcomes are specific and clear. |
| 35. | **Remedies** | We now have several remedies e.g. (i) withholding interim payments and (ii) the ESHS performance security. Which one should come first? | Which remedy is appropriate will depend on the facts and circumstances of each case.  Normally, withholding payments is applied first. But this remedy can only be used where the circumstances allow for this remedy.  It is only where there is a serious breach, or a series of persistent breaches, that the ESHS performance security may be used. |
| 36. | **Remedies** | We probably have provisions in the contract with ESHS, but the problem is about enforcement. e.g.: an Engineer says I kept serving the contractor notice after notice. Even with explicit provisions, there can still be a genuine challenge because people will be skeptical about how to use them. | The impetus must come from the Borrower. The Borrower must provide clarity about acceptable levels of ESHS performance (the ESHS Policy) and signal that meeting these levels is important to contract implementation. The Borrower must also support the supervising engineer in enforcing the ESHS contract provisions and activating contractual remedies. Where the Borrower does not support the supervising engineer, the engineer will be unlikely to take on the challenge of enforcing ESHS performance against a difficult contractor. This may require behavioral change.  The enhanced provisions introduce two new remedies: the withholding of payments and ESHS Performance Security. These can be used in combination with the contractual remedies already existing in the applicable provisions of contract. |
| 37. | **Reporting** | Is there any plan to provide sample format for monthly/quarterly progress report? | Yes, the enhanced SBDs/SPDs include:   1. Appendix C to the General Conditions of Contract. This provides the metrics for monthly ESHS progress reports. These metrics should be amended to suit the individual facts and circumstances. 2. Particular Conditions of Contract, sub-clause 4.21 sets out the circumstances that require immediate notification. |
| 38. | **Review of bidding documents** | Can we put something in the system so that the bidding documents are reviewed by the appropriate specialists? | This should always be the case.  Team work involving the right specialists is always recommended. |
| 39. | **Risk** | How is the level of risk assessed? | Assessing risk involves using the current tools available, appropriate data and information (that is available at a country level and project level) and by applying sound judgement. The roll out of the ESF provides a definition of ESHS risk. |
| 40. | **Risk** | Where is this decision on risk documented? | From the procurement perspective, the assessment is documented in the Project Procurement Strategy for Development (PPSD). The PPSD may draw on other relevant information. |
| 41. | **SPD Supply and Install (S&I)** | Many S&I contracts may include major civil works and/or otherwise may involve significant labor influx, we are of the view that ESHS enhancements should also be included in PDSI documents. OPCS may look into this appropriately. | At this stage, given the relative prioritization and resources, only Works related SPDs have been updated.  It should be noted, that the S&I SPDs continue to have some useful ESHS clauses in the General Conditions of Contract. Further the RFP Plant and the updated RFB Plant, without going into the more comprehensive treatment in works related SPDs, require/advise the Employer (Employer’s Requirements- Section VII) to specify any Environmental, Social, health, and safety requirements as appropriate. Section IV (Method statement) to be provided by the Proposer also requires the Proposer to include its proposed environmental and social impact management arrangements.  In future, OPCS may further assess what more could be done at the SPD level for Plant. |
| 42. | **Task Team Leader** | Can TTLs be incentivized? | Better Project outcome is an incentive. |
| 43. | **Training** | ESHS training should be mandatory for TTLs. | Webinars have been provided to familiarize with the enhanced ESHS provisions.  TTL training is administered separately. Going forward, the design of the course may need to be updated to reflect the enhancements in ESHS provisions of SPDs. |
| 44. | **Translations** | When will the translated documents with the ESHS enhancements be available | Translations into French will be available in early FY18. Translations into Spanish should follow shortly after that. |
| 45. | **Two-envelope process** | These additional requirements make the evaluation of the technical proposal even more important. In OPRC-bids we use the two-envelope single stage process. This requires a 2-stage evaluation. These additional technical requirements require a two- stage evaluation. Otherwise we shall have lip service to these new requirements | It is essential that the ESHS technical requirements are given due attention in the evaluation of technical proposals whether with single envelope or two envelope options. |