



FIDIC Submission to the
Audit Committee on Development Effectiveness
Paper dated 9 July 2014
Procurement in World Bank Investment Project Finance
Phase II: Developing the Proposed New Procurement Framework

Background

The International Federation of Consulting Engineers (FIDIC), the Confederation of International Contracting Associations (CICA), and European International Contractors (EIC) as full members of the IAGP, have participated in discussions on the proposed Procurement reforms of the World Bank and, together with the international contracting industry, have represented the views of the private sector construction industry, which account together for more than 50% of the prior-review Bank-funded contracts awarded under IDA/IBRD investment projects.

Introduction

The construction industry welcomed the publication of “Procurement in World Bank Investment Project Finance, Phase I: A Proposed New Framework” and the World Bank’s procurement reform initiatives. From the outset of the consultation process in May 2012, CICA, FIDIC and EIC have actively participated in the Bank’s review their procurement policies and procedures and have strongly welcomed the Bank’s decision to re-position itself in the context of its modernisation agenda and its multi-faceted international commitments. All three federations have provided extensive written feedback to the Bank’s Initiating Discussion Paper dated 29 March 2012 and have offered their support for Phase two of the Bank’s initiative.

This submission represents FIDIC’s comments on Procurement in World Bank Investment Project Finance Phase II: Developing the Proposed New Procurement Framework, dated 9 July 2014 and draws heavily from the New Procurement Framework Executive Summary (referenced ‘es’), and reflects on key issues outlined in that summary. We have noted the current submission of CICA and EIC, and are largely supportive of the issues raised by them, as indicated in the joint covering letter.

Comment 1: The Role of Procurement

We applaud the Bank’s focus on procurement as a development instrument and a strategic policy tool, designed to support economic and social development objectives and acknowledge the challenges of optimising the balance between delivering positive development outcomes, and maintaining the Bank’s fiduciary assurance - es1; es2.

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We anticipate that, in order to achieve the stated objectives, a far closer partnership will be required in future between the public and private sector. FIDIC represents the collective best practices of the delivery side of the professional services aimed at helping clients achieve value for money decision-making with their contracts - the Bank's objectives in relation to procurement in the Global Construction Industry.

As a key stakeholder, FIDIC has offered to support the Bank in providing professional advice necessary to assist its borrowers in building the capacity required to develop effective Procurement Strategies for their infrastructure related projects, and help with enhancing their capacity to enable them to better manage the resultant contracts post-award.

We acknowledge therefore the Bank's move away from mandating procurement procedures, to mandating the Borrower's use of rigorous procurement and contract management procedures - es3. Given the global nature of infrastructure development today, it is the view of FIDIC that sustainable development of borrower capacity must be matched by development of the local industry. In this light, we are pleased to note the inclusion of a number of strategic issues, long supported and promoted by this industry, as being essential to the development of a sound procurement strategy. Examples include the recognition of the importance of non-price attributes to ensure that quality outcomes are more likely to be achieved - es5; the critical importance of integrity in the procurement strategy - es6; and a stronger focus on sustainability issues in determining that the optimum solutions for a given investment are assessed in developing the procurement strategy - es7.

FIDIC has also offered, and continues to make available, its internationally recognised tools. These have been created specifically to support the development of effective procurement strategies used for good investment in infrastructure.

Comment 2: International Best Practice

We are aware of the many sensitive issues raised previously, not least of which deals with the acceptability of alternative procurement arrangements by borrowers - es9. We are pleased to note therefore that the Bank proposes to continue setting and supporting guidelines for international best practice in its procurement - es17.

FIDIC, as the global leader in advocating and supporting best practices for consulting services, has offered to provide the Bank its expertise and various relevant guidelines as part of the Procurement Tool Box. We also propose strengthening support to Borrowers' best practices through FIDIC's own membership at the national level, where FIDIC's 100 member associations are required to offer guidance and support to local procurement agencies, many of whom work not only with multinational development agencies, but also with bilateral agencies, and their own procurement agencies.

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PO Box 311 1215 Geneva 15, Switzerland
Tel: +41 (22) 799 49 00 Fax: +41 (22) 799 49 01
E-mail: fidic@fidic.org www.fidic.org



Further, given that much closer collaboration between the Bank, its Borrowers, and industry will be essential in achieving the Bank's objectives, this presents a significant opportunity to broaden the level of FIDIC collaboration with the World Bank through regional and national representation, a collaboration which to date has been primarily at the global level only.

Comment 3: International Competitive Bid (ICB) and National Competitive Bid (NCB) Projects

Although the broad guidelines are set out in the Bank's Framework document, FIDIC feels that the issues of NCB versus ICB warrant further discussion, both in terms of the more specific parameters, but also in terms of the impact on local capacity development; the involvement of international firms in the development of procurement strategies; the anticipated participation in development projects by both local and international firms; and in terms of a more robust, inclusive and transparent participation by all stakeholders in assuring that optimum solutions are able to be provided to end users.

With the Bank's clear focus toward building local capacity, and encouraging the development of best national practice, we support the proposed guidelines for NCB, provided sufficiently robust support for good practice is maintained - es13. We are pleased to note that, for ICB projects, the Bank will continue to mandate its own international best practices, including the use of recognised standard bidding documents (which include the use of FIDIC contracts). We would, however, appreciate the opportunity to discuss further with the bank, how the thresholds between NCB and ICB are determined. FIDIC would maintain that not only high risk, high value projects might warrant the use of ICB – es14. It should be noted that even certain types of individual consulting contracts can be high risk.

The Bank's above-mentioned Procurement Guidelines and Standard Bidding Documents are globally considered as setting an international standard. These have been adopted by other international and bilateral financial institutions and vetted through an extensive harmonisation process amongst the IFIs. We therefore believe that building on the Bank's "golden standard" of procurement documents and practices would be in the interest of the Bank, and also in the best interest of its shareholders and borrowers, as well as the private sector, civil society and all other stakeholders. We believe that the quality of the procurement system has a direct impact on efficiency, transparency and integrity, and raises the level of competition, and the quality of the tenders submitted. Any relaxation in internationally recognised standards will significantly impact on the industry's ability to offer cost effective services to Borrowers and the Bank, and significantly increase the risks and costs associated with effective infrastructure investment.

In addition, as FIDIC itself seeks to broaden the understanding and global use of DABs (or DRBs – es11), we are pleased to note and support the greater focus on Dispute Avoidance (quick and effective resolution of disputes) to ensure that projects can proceed quickly and efficiently, with the support of independent professionals engaged as part of the project team.

FIDIC SECRETARIAT

PO Box 311 1215 Geneva 15, Switzerland
Tel: +41 (22) 799 49 00 Fax: +41 (22) 799 49 01
E-mail: fidic@fidic.org www.fidic.org



Contract management has also been identified as a critical component – es15. FIDIC already arranges training courses around the world, some of which are in collaboration with MDBs. We would like to reiterate our strong interest in working more closely with the Bank to identify strategies and implement suitable training programmes for all those involved in managing contracts for development funded projects.

Comment 4: Ongoing Concerns of the Consulting Industry

In addition, we also have concerns that the proposed new framework no longer calls for the equivalence of client systems with the Bank's own procurement procedures and documents. In this context, it has been proposed elsewhere that the Bank should accept that, a country being a party to WTO's GPA, or subject to the EU Directives, or adopting UNCITRAL's Model Law, as sufficient evidence of the country having passed the "test" of the acceptability of a country's legal framework. The assumption seems to be that, by following WTO's GPA, the EU Directives, and/or adopting the UNCITRAL Model Law, countries already meet a minimum standard on competition, transparency, and accountability. It is our experience and strong opinion that this assumption is incorrect (eg Central Europe).

It is noted that total annual MDB investment equates to around 2% of global procurement. It is essential therefore, that the Bank(s) takes the lead in supporting and promoting high procurement standards. Building up local capacity, as noted in the Bank's document, must remain a priority.

Any proliferation of "acceptable" alternative procurement arrangements, without ensuring the capacity of the borrowers to effectively implement these alternate strategies, would result in the weakening of good procurement practices and detract from the ability of the industry to competitively respond – ultimately undermining sustainable infrastructure development.

In order to make more effective the Bank's stated objectives of developing a robust procurement strategy for each project, FIDIC would advocate that borrower's be required to submit to the Bank a procurement strategy for each project for approval. This would both help the Bank to assess the procurement strategy for a particular project and give the Bank the insight required for assessing the Borrower's procurement capacity, and the Borrower's capacity in effectively selecting the appropriate tools from the newly developed procurement tool-box. If Borrowers cannot use such tools, the impact will be far less effective – hence our proposal for a more integrated collaboration at global and national level. As mentioned elsewhere, FIDIC has offered to both help to develop such tools with the Bank and to work with the Borrower's to build their capacity in effectively using such tools.

Therefore, we would advocate that the process of verifying the quality of client procurement arrangements, including establishing assessment criteria for assessing procurement personnel.

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It is suggested that this oversight role could be performed by an External Oversight Committee, which would be composed of a broad range of experts from the Bank's client countries, the Bank's development partners, the private sector and their professional associations, civil society organisations and independent, internationally recognised public procurement academics. There may also be a useful role for the IAGP to play going forward.

Comment 5: Next Steps

An MDB Working Group has been established with FIDIC to review new contracts being developed by FIDIC, for possible use by the Bank and its MDB colleagues in their SBDs. Such discussions are likely to include consideration of Bank or Borrower specific requirements, as well as possible harmonisation of different forms of contract, to better meet the needs of the Bank and its Borrowers – standard construction contracts; design build projects; and perhaps design-build-operate contracts which are more closely aligned to life cycle considerations.

The terms of reference for that Working Group also note the importance of sharing best practices, and confirming the benefits of a harmonised approach to adopting international best practice in procurement, and the use of harmonised standard bidding documents.

Further, as FIDIC continues to expand its programme of training options, and new training modules developed, we would welcome further discussions on which of the FIDIC modules could add support to the Bank's capacity building objectives. Some of the more specific issues of mutual interest include:

- o Procurement practice
- o Contract management
- o Sustainability principles, tools and implementation strategies
- o Integrity management

As indicated in our previous submission, such tools are already in use in the industry, and are being utilised by public authorities and private clients alike. It is suggested that such programmes fit well within the overall objectives of the Bank and its new procurement strategy.

Conclusion

FIDIC looks forward to collaborating with the Bank in assessing the needs of its Borrowers, and developing suitable programmes. FIDIC is available at any time to offer feedback and comment on any aspect of the development of this new Procurement Strategy.

We look forward to the continued close collaboration between the private sector construction industry and the Bank.

FIDIC, 18 December 2014

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