

- Stakeholders expressed their support for more attention to quality, life cycle costs and performance at the same time as the integrity of the procurement process.
- Sustainability and green procurement are also seen as an important goal and a challenge. Several contributors cited the need to ensure that environmental and social impacts and the Bank’s safeguards were adhered to, particularly for major investments.
- There was wide agreement that procurement ought to support the development of a vibrant local private sector. CSOs advocated for the Bank to support smart procurement that provides incentives to help local SMEs and that encourages socially responsible behavior.

Context-specific methods, best fit for purpose, room for innovation

- Many stakeholders supported the need to move away from one-size-fits-all to a more flexible approach.
- They also advocated for more room for innovation. One stakeholder observed that currently technical solutions were locked in by the tender specifications that inhibit innovation. The best method should be selected to get the best outcome, duly balancing the interests of bidders not to block competition.

Use of country systems

- The trend to “localization” was recognized but support for greater use of country systems was mixed:
 - CSOs called for the Bank to reflect its international commitments in its procurement policies, with country systems as the default.
 - One contributor considered the Inter-American Development Bank’s approach as a potential model.
 - Some saw it appropriate to use borrower systems that come close to the Bank’s standards, contingent on maintaining consistency, integrity, and a commitment to improve as part of the development agenda. Differences among countries could be categorized.
 - Another stakeholder recommended separating the use of country systems from the Bank’s procurement policies, encouraging the Bank to keep its “gold” standard,

with reasonable thresholds of ICB, while at the same time, working at the policy level with borrowers to strengthen capacity.

- A stakeholder proposed continuing to use ICB, with increased thresholds, and using country systems for contracts that would be let under NCB.
- One industry contributor argued that it was not efficient or effective for global trade for private sector firms to have to adjust to the idiosyncrasies of individual countries.
- On the other hand, private sector contributors from developing countries saw that the Bank's policies needed to adapt to local conditions, including language, and that there ought not be a general model.
- There was general agreement that the Bank's role should be helping countries improve their local systems, providing best practice, setting standards, identifying weaknesses and filling gaps. The Bank's assessment should not just look at the laws and regulations governing country-borrower systems but how they are applied, the professionalism of the procurement staff, and the level of transparency. It should examine the areas in which there is divergence between local legal requirements and practices and the Bank's policies.
- Various comments were made on how to do this. Several contributors recommended that efforts should be based on self-assessments, done by local institutions and international experts, and argued for self-assessment by borrowers in order to avoid a Bank-led process. CSOs criticized CPARs and CPIAs as not mutually agreed diagnostic instruments and MAPs as not including indicators such as poverty impacts and social-environmental impacts.

E-procurement

- E-Procurement was generally seen as beneficial, to counter F&C, facilitate data capture, increase transparency, and reduce bureaucracy. It would be positive even if it was just to aid communications between bidders and borrowers.
- It ought to be used both ways—for interested bidders to learn about opportunities and for them to submit their bids and to follow the bid process. Ideally, it could be used to link to other automated government systems, such as customs.
- Stakeholders warned that e-Procurement may be less suitable for large, complex civil works contracts and it should be optional for SMEs. Efforts should be directed to increase access by local companies.

Capacity building and strengthening public sector administration

- Strengthening borrower capacity was seen by all stakeholders as a major priority. Capacity building ought to be clearly part of the Bank's procurement policy and constitute a long term commitment that goes beyond short term project specific needs. It is an area in which the Bank should take on a meaningful and critical role. If not, this would be a missed opportunity.
- Capacity is viewed broadly. It should address professionalization. Efforts should include an array of local bodies and institutions, not just procurement staff. The Bank's new CSO fund might be useful and WBI could also expand its offerings. The private sector from developing countries requested that support also be provided to the private sector, especially SMEs.
- Training and professionalization were also on the top of the list of recommendations. Some thought that training should be a mandatory requirement in contracts so that experienced contractors/suppliers would transfer technology and know-off to local staff and sub-contractors.

Market analysis (shape of markets, competition, impacts, especially on local industry)

- Several stakeholders highlighted the need for the Bank to be more conscious about the impact of procurement on local industries and on the poor. This ought to cover both the demand side (that is, what works, goods and services are being procured, demand management) and the supply side (what works, goods, and services are offered, supply management).
- A number of stakeholders acknowledged that developing local markets is a goal. But others stated that the promotion of local industry ought not come at the expense of competition and that there should be recognition of the value of the transfer of know-how from international firms. Incentives should be created to encourage joint ventures between local and international firms. Technology transfer and training should be mandated for large, complex contracts.
- Some contributors called for the Bank to drop the provision providing domestic preference, at least for IBRD countries. Others thought this provision could be retained. And still others recommended that preferences be provided to local SMEs.
- In its submission, Engineers Against Poverty provided a critique of reliance on open competition and evaluation based on lowest cost for works, practices that the private sector has abandoned except for the most straightforward and simple contracts. This is

especially a problem in low income countries with poorly developed markets and a particular concern when construction contracts are let on the basis of fixed costs. There can be errors in cost estimation, aggressive bidding and/or collusion with contractors hoping to make up for losses and/or bribes during implementation. Value for money is then compromised.

- Several contributors recommended that there be an open relationship with the private sector, both on the part of the Bank and its borrowers, focusing on problem solving and knowledge sharing.
- This is the case of medical equipment. Suggestions were offered on ways this could be done: attendance at trade shows, expanded training by WBI, an annual technology day at the World Bank for staff and industry and increased technical skills in the Bank. Procurement under PPPs is another area in which more collaborative approaches may be warranted.

Coverage of the full procurement cycle

- Stakeholders supported the role for the Bank in the implementation phase in order to improve development effectiveness. The issues of quality are particularly important in contract execution as this is where the most damage is incurred from the effects of F&C and poor performance. The analysis carried out under the transparency CoST initiative shows that cost-overruns are pervasive. There are high costs associated with making adjustments, adapting contracts, and dealing with incomplete contracts.
- Against this background, there was consensus that the Bank should have a higher profile in contract execution. This should include identifying fictitious works, and evaluating the validity of material changes in the scope of contracts and the quality of the final product.
- The Bank's involvement in the early phase ought to concentrate on advising on the technical specifications and upfront quality control parameters.
- There should be more emphasis on accountability throughout the procurement and execution cycle, such as biased specifications, poor clarifications to bidders, high number of claims, abnormally low bids, unjustified or large and frequent change orders, etc.

Transparency, access to information, civil society, audits, dispute resolution

- Several contributors called for greater transparency, throughout the project cycle—from definition of needs and public hearings with affected people, to the invitation to bid, evaluation and implementation. This would be especially important for large contracts.
- Civil society should be more involved in monitoring procurement processes, throughout the full procurement/contract execution cycle. The Bank should work to ensure that information is accessible and of adequate quality.
- Stakeholders recommended closer links to independent external monitors and oversight agencies, such as India’s vigilance commission.
- Clear complaint handling and disputes resolution mechanisms were high on the agenda for a number of stakeholders. The current Bank policy, and practice, in this regard are sometimes deemed to be little more than a “cc” on correspondence with borrowers and not considered reliable.
- Moreover, there should be a separation of responsibilities inside the Bank between those who provide implementation support to borrowers or are involved in the review of the procurement processes (and may have given the “no objection” to the borrower recommendation) and those who respond to or should address the complaints.
- There was a call for an Ombudsman to allow direct, real time, and speedy access to the Bank to deal with irregularities (i.e. that fall short of allegations of F&C that are handled by INT). This could be warranted for contracts of a certain size. In the case of major infrastructure investments, it was recommended that the Bank require the setting up of independent Dispute Resolution Boards or Adjudicators to be financed with loan proceeds.
- Some stakeholders recommended that the Bank review of complaints or protests at the bid evaluation stage, before contract award, is not effective and that the current process of debriefing is too late and ineffective to obtain redress.
- Further, resources should be made available to countries in case the national/local procedures do not meet international standards and best practices or are not followed. Some contributors recommended international arbitration to be revisited to avoid interference by local courts.
- Some recommended that the Bank follows upon complaints through to the end and helps to enforce decisions made by the relevant authority.

Fraud and corruption

- Integrity was highlighted in several contributions. Some saw a dilemma between the Bank's efforts to fight corruption and to achieve development results, especially if those efforts slow down procurement processes. There were questions as to whether the Bank could take on the role of "super" ombudsman: how would it deal with corruption in the political system?
- Some stakeholders questioned the effectiveness of the current approach in terms of its real impact on reducing F&C. Instead, more effort could be placed on making sure that designs are complete, contracts are subject to a gateway system, and the quality assurance and transparency processes are in place. The Bank's efforts on F&C should also focus on contract execution and results.
- Many contributors concurred that the ability to reject an abnormally low bid would be a benefit, not only to curb F&C but to reduce unfair completion and risks to quality and to prevent poor execution.
- Some others called for greater use of pre-qualification or two- envelopes procedures that they deem would be helpful to weed out contractors with poor track records. This could be complemented with registration procedures for small companies that would facilitate their involvement given their capacities.
- Others thought that more could be done, for example, to certify bidders and to provide protection for whistleblowers. There was a call for requiring measures, such as Integrity Pacts or Pledges, the EU's Declaration of Honor, or support under the CoST's Transparency Initiative, especially for large contracts. All stakeholders should be required to adhere to a Code of Ethics.
- Some encouraged the Bank to accept the debarment or de-registration of companies by local authorities if those processes were documented and transparent.
- All parties need to be involved. The approach should be holistic, with borrowers ratifying and implementing the UN Convention on Anti-Corruption (UNCAC), and take into account the country's anti-corruption program. Some contributors recommended that the Bank have the right to pursue legal action against member states and to sanction government officials and employees.
- Stakeholders saw considerable potential to enhance transparency and reduce F&C. Stakeholders also saw that enhanced complaints handling systems would also likely help.

- Stakeholders identified the need for all parties—the Bank, oversight agencies and CSOs—to increase their capacity to carry out risk assessments, due diligence (especially for PPPs), and implement and use systems of “red flags”.

Harmonization

- Some stakeholders warned that a true consensus on harmonization across the donor community did not yet exist since they see emerging donors from the South as being excluded from the Busan agreements. This heightens the need for international cooperation.
- Some saw the need for a clear set of international standards and a process of certification of those standards.
- CSOs advocated that liberalization of public procurement markets not be part of policy conditionality.

Bank’s role (internal organization, roles and responsibilities, staffing, professionalization, efficiency, fiduciary, reviews, value-added, processes and disputes)

- Many stakeholders made specific recommendations to modify the Bank’s role on the basis of contract size and complexity. They called for a sharply differentiated treatment:
 - The largest 100 contracts should be screened in terms of compliance with environmental and social safeguards with specific protocols developed by major sector, technology transfer, and innovations. There should be certification (e.g. ISO 1400, OHSAS 18001, core labor standards, sustainable construction standards).
 - Large, complex contracts (to be defined) should be evaluated on the basis of value for money—e.g. the EU’s Most Economically Advantageous Tender (MEAT)—that would entail more accounting of qualitative aspects.
 - Fiduciary assurances should be provided through the full cycle for at least the top 1000 contracts. These top 1000 contracts could also incorporate innovative procurement methods. The Bank should also take a more active role in monitoring payments and performance and resolving disputes for these contracts.
 - For small contracts, shopping should be more limited than it is now, say to less than US\$10,000, with simplified national procedures used for contracts valued at greater than \$10,000 to say \$50,000-\$100,000.

- Changes should be made to the Bank’s model for supervision. There should be increased emphasis on quality control, risk identification, management and mitigation, and the chain of responsibility, as outlined in the “Well Prepared Project”. Options could include a Project Management Advisory Board to help local implementation.
- The private sector of some developing countries called for simplification. They find the current procedures too complex, time consuming and prohibitive for local firms, especially SMEs.
- There were calls for the Bank to be more proactive in promoting local industry. CSOs made the suggestion that an independent commission be formed to examine the barriers to local firms/SMEs. The private sector from some developing countries request support for a pre-financing facility/guarantee mechanism to help meet mobilization and other costs.
- Stakeholders also made recommendations on how to proceed on a number of fronts, as follows:
 - *Green/Sustainable Procurement:* The Bank should closely study the benefits and costs across a range of concerns—environmental, social, health, etc— and incorporate incentives for the adoption of green methods. Green products should be identified at the design stage and all bidders required to supply such. Merit points should be allowed for green solutions and included at the pre-qualification stage.
 - *PPPs:* The Bank should pursue the recommendation by the G20 High Level Panel on Infrastructure and take a more proactive role in PPPs, providing best practices, guidance, technical assistance during project preparation, and financing/guarantees. It should also lay out the specific criteria for the selection of service providers under Bank financing. There needs to be a clear legal platform for licensing, tariffs and risk allocation, standard bidding documents (SBDs), and a definition of what constitutes the public sector with comparators of different situations.
 - *Legal Frameworks, SBDs, and Templates:* The Bank should create a circle of learning to examine these questions, among other things how to incorporate principles of civil law into common law systems.
 - *Quality Criteria:* More discussion is needed on the weights to be given to qualitative/non-price factors. Quality assurance systems, third party verification and/or certification are needed. The experience of Sweden, for example, could be examined. The Bank could also examine a scoring system similar to that used for consultants for works and goods. This could be prone to discretion so there should

be objective methods and there is a need for differentiating qualifications based on past performance.

- *Technical Specifications*: Technical specifications can be too narrow, too prescriptive and perhaps biased. The Bank should shift to more performance-based criteria. The appropriate skills, e.g. engineers, need to be involved in establishing specifications.
- *Measuring Performance*: This is another area where more work is needed and experimentation is possible. Among potential models, the Bank could look at the UK's Capability Assessment Toolkit and Denmark's benchmarking tool. An objective index of reputation is another dimension to examine. This pertains to the engineering industry, among others, with consideration of some type of qualification processes such as FIDIC has. Such systems would have to cover pre-qualification, backstopping/guarantee of quality, and performance.
- One stakeholder cautioned the Bank to ensure adequate opportunities for consultation for the review as it proceeds, and also to phase in implementation if large scale changes are to be made. There should be piloting for say 3-4 years, with ample opportunities for transparency, public involvement, and discussion of success and failure.

Recommendations on Different Procurement Policies and Practices

- As indicated at the start, the written set of inputs from these stakeholders covered a wide range of specific issues, going beyond the format of the face to face consultations. This section summarizes those specific recommendations:
 - *Prequalification*: Standards should be increased. There should be a uniform set of criteria including corporate social responsibility, conditions of work, health and safety standards, and training/transfer of knowledge. The criteria more generally should reflect the type of contract, the timeline, market/industry configuration and not (at least solely) contract value.
 - *Selection Criteria*: They should be more precise as to what is “must have” and what is “nice to have”.
 - *Training and Services*: Tenders ought to define the training and servicing requirements, going beyond the basics.
 - *Abnormally Low Tender*: Analysis is needed on the pros and cons to detect, examine and eliminate abnormally low bids. The policy should be to reject such bids. This should be made clear in the bidding documents.

- *Quality -Based Selection of Consultants:* The guidelines should be improved with respect to the preparation of TORs and selection criteria.
- *Standard Contract Templates:* Templates should be prepared by sector, and reflect the nature of the contract (e.g. simple or complex), and the legal systems (common or civil law).
- *Framework Contracts:* There are considerable benefits to framework contracts in terms of cost and time savings but the Bank's current policy is limited—both in terms of when the method can be used (e.g. emergencies or small works) and the duration (five years should be the norm).
- *Serial Contracts:* The Bank should consider the award of serial contracts if the contractor has performed well under the previous contract. This would add to business continuity for small businesses, lower bidding costs and time gains.
- *Negotiations, Cost Plus and Open Accounting:* There is room for the Bank to experiment with alternatives to fixed-price contracts. A cap can be set along with a pain-gain formula. Models such as the NEC3, Option C, could be used.
- *Forward Rate Invoicing (FRI):* FRI should be included in the financial-economic terms for contracts that are expected to take a long time to implement.
- *Community Participation:* Provisions should be allowed for mandatory community participation in contracts executed in remote/rural areas. A certain share of contracts and/or employment could be devoted to local-on-site contractors only.
- *CPA Index:* Some countries' indices are too vague and unknown. Bidding documents should allow specific CPA indices to be used.
- *Alternative Bids:* These should be allowed, in order to provide more choice and opportunity to get the best bid and obtain cost savings.
- *Negotiations:* There should be more flexibility to negotiate with the selected bidder prior to award as is the case with consultations. This would increase clarity and provide opportunity to tailor and correct minor omissions.
- *Selection of Consultants:* The rule to have no more than three firms from any country should be dropped. So should the limit on the number of firms on the short list. These changes would allow for more flexibility and provide more opportunity for local consultants.

- *Review of General Conditions:* Prior to issuing bids, the general conditions should be reviewed to ensure that all specific project requirements are covered. Changes should be signed off by the Bank.
- *Insurance:* Wrap-up insurance coverage for all contractors should be relied upon as per terms (e.g. insurance requirements and basis for bidding) to be specified in the bidding documents. The insurance provider should be selected based on competitive bidding, with PWOI and PWI as options.
- *Role of Engineers:* Industry representatives called for the Bank to recognize the importance of engineers through the complete procurement and contract execution cycle. Among other things, the present approach of hiring individual engineers at the design phase leads to fragmentation and lack of continuity. The selection of engineers should be based on quality.