



The World Bank

## Procurement Policy Review Feedback Summary

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**Date:** Sept 19 – 20 2012

**Venue:** Asian Development Bank (ADB), Manila, Philippines

**Total Number of Participants:** 80

### **Overview and General Reactions:**

The World Bank (Mr Bernard Becq, Chief Procurement Policy Officer, Mr. Enzo de Laurentiis and Elmas Arisoy (EAP RPMs) and Rowena M Gorospe, Senior Counsel, Operations Policy, Legal Department) held two-day consultations with ADB senior staff principally responsible for procurement policy and operations from the Central Operations Service Office (COSO), sectors (CWRD, EARD, SARD, SERD, PARD), Office of the General Counsel (OGC), OAG, SPD, and OAI. Mr. Becq also made a Bank-wide presentation to ADB staff which included some representatives from the ADB's Board of Executive Directors.

The ADB has been part of the Multilateral Development Banks (MDBs) Heads of Procurement (HOP) group, which was first convoked in 1998 to pursue harmonization in procurement policies. Since the main comparator for its own Procurement and Consultant Guidelines (as with the Inter-American Development Bank's) are the World Bank Guidelines, the ADB expressed great interest in the Bank's review, coinciding with its own internal stock-taking of its procurement function as a prelude to a more comprehensive strategic review. The discussions were both broad and specific, ranging from the ADB's focus (based on its Strategy 2020) on inclusive growth, environmentally sustainable growth, and regional integration trade -which has implications for procurement - to the minutiae of data analysis of ICB contracts and technical assistance (TA) contracts. Both the World Bank and the ADB recognized the alignment in their concerns and on the key issues, and agreed that the challenge lies in articulating a new procurement policy framework which meets their fiduciary and development mandates, enables improved operational

responsiveness to borrowers, and allows flexibility in application for borrowers given varying capacities, risks and markets. A major aspect which would need to be addressed is how procurement is a strategic tool in the decision to finance a project and if so, the choice of financing options; how procurement planning is tied to the project cycle in particular project identification, design, implementation (and contract management); and overall readiness for effectiveness. A new policy framework also poses institutional challenges in ensuring internal policy coherence in the governance of the fiduciary mandate, which does not rest in the procurement function alone. The existing paradigm on fraud and corruption, which focuses heavily and relies almost entirely on procurement procedures to identify instances of fraud (but not corruption) may be more effective as a preventive measure rather than a sanctioning measure. Institutional issues, such as resources (doing more with less), staff core skills, and managing the transition, demand as much introspection as the policy review itself.

<b>Specific Feedback from Stakeholders</b>	
<b>1. The analysis presented in the Initiating Discussion Paper captures the key issues and concerns that should be addressed in the review. Are there other challenges which the review should try to address?</b>	
	<ul style="list-style-type: none"> <li>• The ADB agreed with the Bank’s approach and emphasized the need for a proactive approach to procurement as an important driver of the development effectiveness agenda.</li> <li>• The ADB seeks a clear balance among its development partners on the development agenda and the competition agenda. In this respect, its focus on regional cooperation and integration (arising from its Strategy 2020) has clear links to trade issues such as regional market access and supply chains which can be affected by country based regulatory requirements on public procurement. The ADB expressed interest in the World Bank’s upcoming analysis on international agreements on public procurement.</li> <li>• Based on its own analysis on the choice of selection methods by borrowers, ADB noted that there seems to be a preference by some borrowers for using CQS and queried whether the Bank has determined if there is a bias towards the use of some methods such as CQS (selection based on Consultant Qualifications) due to thresholds or avoidance of other selections methods which are perceived to be more prone to fraud/corruption.</li> </ul>
<b>2. Taking into account the new concepts of public procurement and the broader context of public sector management best practices, what type of changes should the Bank take into consideration in modernizing its procurement policies?</b>	
	<ul style="list-style-type: none"> <li>• The integration of the financial management and procurement functions as part of strategic public expenditure management (which was included in the Bank’s UCS Piloting Program in which many countries failed to achieve the benchmark).</li> <li>• Life-cycle costs in the procurement evaluation were raised for its potential to contribute to sustainable</li> </ul>

	<p>procurement. For the MDBs, the issue would be the borrower's capacity to conduct a merit based evaluation; merit evaluations open the door to manipulation. This raises the broader issue of the role of quality in evaluation of goods/works procurement, rather than relatively singular focus on cost, something that has been raised in the context of sustainability and 'green' procurement and otherwise.</p> <ul style="list-style-type: none"> <li>• Procurement planning as a tool was introduced in the Bank's procurement guidelines in 2004, and the MDBs need to assess why it has become a somewhat perfunctory exercise. Better upstream procurement planning, as an integral part of project planning, is needed, inter alia to allow greater flexibility in the choice of methods.</li> </ul>
<p><b>3. In light of various levels of risks and capacity among borrower agencies, how can the Bank best ensure that funds provided by the Bank are used for the purpose intended?</b></p>	
	<ul style="list-style-type: none"> <li>• If the Bank move towards a more principles based approach, different tiers of review, methods to be used depending on the risk and market should be contemplated. The decision becomes what should be mandatory and what can be discretionary, and how that decision is made. Differentiation across sectors should also be considered.</li> <li>• Special attention is required for countries where "hand-holding" remains largely necessary.</li> <li>• The Bank pointed out that the Bank's earliest procurement policies from 1964 were principles-based, but as they evolved there were many implementation issues which led to a more prescriptive approach. In 1997. The developmental aspect of procurement and not just the fiduciary aspects were integrated into the policy. The Bank shared some of the views of borrowers that they themselves recognize that there are weaknesses in their systems.</li> <li>• In response to a query on the use of procurement agents, the Bank clarified that some of these procurement agents are not effective and in some cases have actually failed their employers (i.e. the Bank's borrowers). As non-public agencies, there is the wrong impression that these agents are immune from fraud and corruption, which they are not. In short, they have their own special issues. The ADB noted that work was ongoing to develop a knowledge product on the use of procurement agents, based primarily on the experience in PRC and ADB would share this with the Bank in due course.</li> </ul>
<p><b>4. The Initiating Discussion paper highlights the multiplicity of demands and contexts procurement is serving today - diverse sectors, instruments, delivery mechanisms and clients with varying institutional frameworks and governance conditions. What recommendations could help the Bank best tailor its procurement requirements to meet these diverse and varying demands and needs?</b></p>	
	<ul style="list-style-type: none"> <li>• It was recognized that the profile of sector specialists in the Bank today has changed; they are technical specialists who do not deal with the nitty gritty, day to day Project management. Procurement Staff, on the other hand, constitute an in-house critical mass with skills which can be leveraged with Project management skills that go beyond procurement.</li> <li>• ADB, for example, has started to integrate the use of Integrity Specialists in operational divisions to deepen fiduciary due diligence and encourage upstream 'preventive' approaches to integrity issues as part of project</li> </ul>

	<p>processing and implementation.</p> <ul style="list-style-type: none"> <li>• More sector and market analysis are needed.</li> <li>• It was asked if risk should be used as basis for procurement decisions. The Bank explained that there are multiple dimensions of risk which are not based on the value on the contract or the capacity of the executing agency, such as complexity and innovation. Risk assessments may also be subject to a mechanistic approach. A broader and streamlined approach, linking with non-procurement aspects, needs to be defined.</li> </ul>
<p><b>5. What could the Bank do to simplify and streamline its current policies and to take advantage of the potential gains offered by e-procurement and IT-based tools?</b></p>	
	<ul style="list-style-type: none"> <li>• ADB shared their experience in achieving greater synchronicity in all integrity systems through integration of databases.</li> <li>• The ADB and the World Bank have collaborated on e-Procurement; the ADB noted that e-Procurement has the potential for efficiency and to improve governance but questioned if it is viable in all countries. For its part, the Bank has supported e-Procurement as a tool to enhance transparency in the procurement process and publication of notices and awards. E-Procurement is not without risks, and the main consideration is to engage a country to adopt and pursue an overall strategy.</li> </ul>
<p><b>6. International consensus calls for use of country systems and harmonization among development partners. What can the Bank do to advance the use of country systems and harmonization among partners?</b></p>	
	<ul style="list-style-type: none"> <li>• The ADB shared the view that alignment of MDB procurement policies with country systems is critical to the Review, but there are concerns where there is weak or no capacity environments (such as in fragile and post-conflict states), which the Bank approaches with more flexibility within its policy parameters. The policy should evolve to allow the needed flexibility and pursue the avenue opened by the new PforR instrument, somehow focusing on becoming more of a “facilitator” and less of a “dictator”.</li> <li>• The ADB pointed out that there are non-procurement issues which affect harmonization among MDBs at the institutional level, such as eligibility, investigation and sanctions procedures, sanctions lists, and audits.</li> <li>• Harmonization in the approach to the professionalization of their respective procurement staff and accreditation of non-procurement staff should be further pursued. The ADB noted that contract management is key to Project supervision but there is limited contract management training for staff; one way to monitor would be through procurement audits. The Bank mentioned that the broader concept of “audit” is part of the Review, including on who has the capacity to conduct such audits. There is concern that consulting firms will jump on the “auditing” bandwagon though few have real capacity to perform such work.</li> <li>• MDBs harmonized SBDs are mandatory for use under ICB with minimum or no changes. Executing agencies have developed their own bidding documents and contracts which have been in long use and there was a suggestion for revisiting the “no change to SBDs” policy in the Procurement guidelines. The SBDs represent, however, international best practice and have been accepted for use by all MDBs participating in the HOP after extensive discussions with FIDIC and CICA. Harmonized SBDs are complex documents that could be simplified and used</li> </ul>

	<p>with a degree of flexibility, and there are other contract models which can be explored.</p> <ul style="list-style-type: none"> <li>• It was also pointed out that while there is harmonization in procurement procedures, there are matters of interpretation (policy and legal interpretation) on which there should be more sharing of decisions. With respect to mutual reliance on other co-financing partners policies and procedures there is the question of how to decide on which institution each MDB can rely on, and the sort of due diligence to assess that they meet the same or similar standards. The World Bank, ADB, African Development Bank and Inter-American Development Bank represent the main co-financiers and are broadly harmonized in procurement with the noticable exceptions of eligibility and fraud and corruption provisions; however, the latter are not purely a procurement matter and have, along with issues related to the applicability of legal agreements and other legally-binding policies, their own set of issues on harmonization.</li> <li>• While not mostly a procurement matter, the harmonization among MDBs of integrity policies, sanctioning guidelines, treatment of corporate groups is critical.</li> <li>• The Bank explained that its Anti-Corruption Guidelines were adopted in 2006 based on the rationale that there is fraud and corruption outside procurement. However, MDBs investigations and sanctions remain focused on fraud in procurement. The F&amp;C paradigm is an integral part of the Bank procurement policy review.</li> <li>• On harmonization of the sanctions list, the issue with other bilaterals is that the substantive basis for sanctions extends beyond what the procurement policies allow; for national sanctions, they may be politically motivated and/or administrative and discretionary in nature which is inconsistent with what the policies require.</li> </ul>
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**7. What suggestions do you have to monitor and evaluate the Bank’s Procurement policies and assess their impact and effectiveness?**

	<ul style="list-style-type: none"> <li>• On fraud and corruption, the ADB explained that they focus their energy on investigations where they can have an impact on overall development effectiveness. They rely on and promote a culture change to enhance collaboration and upfront work integrating integrity specialists in task teams. This helps to identify all integrity issues so they can address systemic problems.</li> <li>• On its own technical assistance contracting (which they conduct themselves) the focus is on the due diligence by teams, which has helped create a better understanding of the need for their own staff to assume a certain amount of responsibility and accountability.</li> <li>• They have devoted more resources on procurement-related audits (including staff training), forensic audits to follow the “money trail”, spot audits and checks.</li> <li>• More work is needed in regard to defining lead firms in Joint Ventures, corporate clusters and affiliates, and dealing with the issue of “body shops”.</li> <li>• Investigations should be part of a feedback mechanism to the regional management, so discussions on “lessons learned” can be held with staff.</li> </ul>
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**8. Do you have other suggestions to help the Bank develop a proposal for a new policy framework and guiding principles for revisions to the Bank’s procurement policies?**

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|  | <ul style="list-style-type: none"><li>• In the course of its own review of its procurement policy, the ADB, like the World Bank, identified issue areas with respect to both its fiduciary and development mandates.</li><li>• There is a need to find the right balance with partner countries and development partners on achieving their development agenda, sustained economic growth, broad based industrial development and minimizing transaction costs, while retaining the competition principles.</li><li>• For the MDBs, there are institutional constraints and strengths. Constraints include such areas as: the need for more effective procurement risk assessment tools for strategic staff resource allocation, if fiduciary risk is to shift from risk avoidance to risk management; zero staff growth; and increased regional management role.</li><li>• MDBs strengths including their role as “knowledge banks” given their wealth of experience in procurement, capacity building, data systems, mining and analysis should remain.</li><li>• Basic takeaways from its own review thus far:<ul style="list-style-type: none"><li>• Need for more procurement transactional speed and efficiency, with focus on performance and results.</li><li>• Need for more flexibility and not compliance for the sake of compliance.</li><li>• Need varied approaches for varied client capacities.</li><li>• Need for meaningful tools for procurement risk management.</li><li>• Need proactive approach to procurement as an important driver of the development effectiveness agenda.</li></ul></li></ul> |
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