

German Government views on key issues of the World Bank Procurement Review Phase 2 Consultations

General comments

GER is very content with the proposed comprehensive reform of the WB's procurement framework, which is geared towards **value for money** and achieving **sustainable results**, embraces **modern methods** of procurement, including **sustainable procurement**, takes a **risk-based** and **fit for purpose** approach, makes use of **alternative procurement arrangements** and places greater emphasis on **strengthening procurement capacity** in borrower countries. We agree with the proposed structure of the new Procurement Framework, its **Vision** and **Core Principles** (specific additional comments are provided below under Question 10) and expect those to remain unchanged.

We recognize the **challenging task** that the World Bank Procurement Review Team has had to tackle in coming up with a proposal that **strikes an appropriate balance between different shareholder and stakeholder views**, and deals with the realities of **WB resource constraints** – we **commend the Team for having done well** in this regard. Though we would have liked to see farther reaching improvements in some areas, e.g. on sustainability or the utilization and strengthening of procurement systems in borrower countries, we accept the existing limitations. We would however not want to see any further dilution of the proposed changes.

We commend and thank the World Bank for the **highly consultative process** it has undertaken during this review, and also its openness to engage with stakeholders **besides official consultations** in informal and technical meetings throughout the drafting process

Answers to questions raised by the World Bank during consultations in Berlin

1. How should the Bank implement support to borrower procurement capacity building and institutional strengthening?

We would like to see increasing efforts to support capacity development in partner countries. We are very pleased that a commitment to **strengthening procurement capacities** in borrower countries, linked to wider governance reforms, features prominently in the **draft policy (Vision Statement)** – as part of the dual purpose of Bank procurement along with fiduciary assurance – an aspect that has been of key concern to Germany. We consider several aspects as important **requirements** for capacity building support to succeed:

- a **systematic and long-term** approach (ideally linked to greater incremental use of borrower institutions to incentivize improvements in institutional capacity)
- focus on the **actual functioning** of the system / institution (second generation reforms), not just the legal and regulatory framework
- integration into wider **governance / public financial management reforms**

We understand the Bank's **resource constraints** that affect the scope of its capacity building efforts in borrower countries and drive its proposal to **target only a few countries** with broader capacity strengthening programs. For such a **targeted capacity building program**, we consider important, apart from the points mentioned above, that:

- country **selection** is based on clear and transparent **criteria**, and allows for broader **lesson learning** beyond the individual target country context (with a view to informing future phases of the same capacity building programs or next generation countries) – for this purpose, it might

be useful to consider a mix of different country categories or characteristics (e.g. IDA, FCS, MICs)

- the capacity building **methodology** is clearly identified upfront, and a realistic, strong **results framework** is in place
- the use of **different funding sources** (investment lending, TA, WB grants, new trust fund) should be guided by clear purpose, hierarchy / selection criteria and a systematic approach
- **Trust Fund** resources should only be **additional** and not replace WB and borrower funding sources

It should also be clarified **what happens to other countries** or institutions that not part of the above mentioned targeted capacity building program and for which weaknesses have been identified by the new diagnostic tool to assess procurement agencies or in the Procurement Strategy.

2. How should the Bank operationalize the potential broader use of VFM criteria in borrower contract award decisions?

We highly welcome the proposed new Procurement Framework's overarching focus on VFM, which is clearly spelled out both in the Vision Statement and the Core Principles. We strongly welcome that this includes **quality and sustainability** considerations based on the concept of **whole-of-life or life-cycle costing**. We are also pleased about the World Bank's intention to make use of various modern **methods of procurement** that make the implementation of a VFM approach more feasible. To operationalize a VFM approach to procurement, we consider the following **elements important**:

- A clearly articulated **Procurement Strategy** as the strategic starting point and planning tool for VFM procurement operations, within the context of CPF and program / project objectives, which explains the rationale for the particular choice of procurement approach
- **Strong guidance** from the World Bank (both in the forthcoming Guidance Material and in country operations) about the **interpretation** and **application** of VFM (**including sustainability** issues) and **its benefits**, especially where countries are hesitant to move away from long used lowest price criteria – this should also explain how to **avoid risks** relating to the **fairness and integrity** of the procurement process that may arise from the use of qualitative criteria, and implement respective mitigation measures
- World Bank support in building **borrower** and **supply side capacity** on VFM criteria
- Tools to track, manage and measure **supplier performance** on VFM criteria

3. How should the Bank target its procurement staff resources to get the best results?

We agree with the proposed risk-based approach that targets Bank procurement staff resources (with Prior Reviews) towards **higher risk / higher value projects** and thus allows greater involvement along the **entire procurement cycle** – including upstream strategy development, hands-on support in low capacity / high risk environments, and downstream contract management.

We recognize that the intended changes to the Bank's procurement framework bring substantial challenges to **internal capacity** and require a recalibration in staff technical capacities as well as in their approach to procurement as a development tool. We expect that the inclusion of procurement staff into the **Governance GP** will help in nurturing such a broader perspective and understanding of procurement in a wider governance context.

4. How and when should alternative procurement arrangements be used for procurement in Bank projects and how should they be assessed?

In line with our Paris and Busan commitments, we would like to see the Bank take a **gradual approach** to increasingly **making use** of procurement arrangements in borrower countries, as their **capacity improves**, and treat the utilization and strengthening of client procurement institutions as **dynamic processes going hand in hand**.

We welcome as a starting point the outlined approach to dealing with, and using, **alternative procurement arrangements**, which will begin with **GPA member** countries and **MDBs** in co-financing arrangements where the WB is a minority financier as well as **individual agencies** that are deemed suitable as per the new assessment tool that the WB is currently developing

It is important however to retain **flexibility** to extend this approach to other countries and contexts in the future, i.e. non-GPA members and beyond the individual agency level (GPA membership should not be understood as the only ever existing requirement to get Bank acceptance for the use of borrower procurement arrangements at country level) - we welcome the **wording in the draft Policy** in this regard.

We agree with the laid out conditions for using alternative procurement arrangements – it is important that the WB maintains the **right to review and take action** as necessary in cases of complaints, concerns over fraud and corruption. We also welcome the **flexible approach** towards GPA member countries' use of procurement arrangements, which still allows the use of the WB procurement framework if deemed most fit for purpose for a particular activity.

We would like to recommend that the Bank considers establishing a “**roadmap**” or plan, where suitable, in individual countries for **gradually increasing the use** of borrower procurement arrangements **in parallel with institutions being strengthened** rather than moving on an ad hoc and uncoordinated basis forward with expanding the use of individual procurement agencies – such a “roadmap” as planning tool **to guide and incentivize capacity building measures** was also recommended by the GIZ study from May 2014 on using and strengthening client procurement systems

We welcome that the World Bank is working on a **new diagnostic tool** for assessing client procurement systems in the context of strengthening and using them – in this regard, we consider **important that the new tool:**

- Addresses **weaknesses of other tools** (eg MAPS), taking on board the recommendations of the IEGs 2013 evaluation of Bank procurement
- Allows for an effective assessment of the **actual functioning** of systems (not just laws and regulations or institutions in place)
- Is repeated in adequate scope and frequency to take stock of any upward or downward changes to capacity
- Avoids a proliferation of different assessment tools – clarity is needed regarding the link to PEFA, CPAR and an updated OECD MAPS

To our understanding, the tool will be used to make a decision regarding the use of agency procurement arrangements but also to inform capacity building efforts – given the selective approach to capacity building support, identified weaknesses can however **not be met with capacity building efforts in all assessed countries** and agencies. It should be clarified how to deal with those cases.

Lastly, clarity is needed on the **process and timing for applying the tool**. Para. 31 in the main framework paper (CODE document, page 17) states that it will be applied “at the request of country directors and the relevant Global Practices” which seems somewhat discretionary.

5. How should sustainable procurement matters be addressed in Bank-financed contracts?

We are very pleased that economic, environmental and social sustainability are addressed in the proposed new procurement framework: sustainable development is part of the **Vision Statement**, sustainable procurement is part of the **Core Principle** on economy, **new SP methods and modalities** will be provided for in the Procedures and Guidance.

We also welcome the provisions made for sustainable procurement in **project preparation and implementation** as well as in **capacity building** at three levels: through a comprehensive toolkit, through inclusion in general diagnostic tool to assess agency procurement capacity, and through WB internal staff training. To operationalize those provisions, we consider it important that SP becomes part of the Bank’s **targeted capacity building programs** as well as the Bank’s **day-to-day project level support** to borrower procurements.

While we understand that focus would primarily be on **highest risk/ highest value** projects (page 20, para 41), sustainable procurement may however also be relevant for **other projects**, depending on the context and borrower policy. We would thus welcome if the documents provided room for this possibility.

We would also like to ask the Bank to provide more clarity regarding the non-mandatory character of the use of SP criteria and the identification of risks **as well as opportunities** (the framework paper mentions risks and opportunities, yet the Borrower Procedures only talk about risks). **Also, it is not clear whether it is still not mandatory to address certain sustainability risks, once identified.** – Also, whilst we understand that sustainability is not a general mandatory requirement, it is not clear whether this also applies to certain risks once identified during project preparation.

Overall, we would like to see the **WB take a proactive role** in supporting borrowers to adopt SP wherever possible, and help build capacity at buyer and supplier level – the study we commissioned in 2012 on SP in low income countries mentions a range of options on how to go about this. To **promote SP** more actively, we also propose that the Guidance includes details on the **benefits** of sustainable procurement

6. How should the World Bank manage fraud and corruption issues in the procurements it finances?

We consider it paramount that highest standards of transparency and integrity continue to be upheld in Bank procurement. We thus expect that the proposed new **risk-based approach** to Bank engagement and oversight (prior reviews) with prioritization of resources and attention to high risk and / or high value procurements, and the envisaged greater involvement of Bank procurement staff in strategic procurement planning as well as contract management will further strengthen management of fraud and corruption risks. At the same time, we agree with the proposals to use post reviews on a sample basis, make more use of national audit institutions, where suitable capacity exists, and to explore options of third party oversight. We are also pleased to hear that the Bank’s Anti-Corruption Guidelines remain intact.

We believe that setting more **context-specific prior review thresholds** will allow for a more fit for purpose approach to managing country, sector and market specific risks – but ask for a **robust methodology** to be followed in determining those thresholds. We also agree with the **streamlined requirements for NCB**.

Lastly, the success of the envisaged new risk-based approach strongly depends on internal **Bank staff capacity** to adjust to new risk tolerances and adopt a new understanding of more strategic and comprehensive risk management.

7. What would be suitable procurement metrics that the Bank should use to improve overall performance?

We highly welcome the planned introduction of a **performance tracking system** and a **balanced scorecard** that measures both capacity building and fiduciary assurance. In our view, it would be important to measure:

- process related efficiency, e.g. the time it takes to issue prior reviews or handle complaints, with the prerequisite that performance targets are established regarding the time within which WB staff should complete a certain step or process
- procurement related results, especially with regards to VFM, to be able to offer evidence on improved outcomes resulting from considerations of quality vs. lowest price
- wider development results relating to measures beyond the procurement process itself, i.e. relating to institutional strengthening

In general, we see the need to get **better data not only on prior reviews** but also on NCB procurements. We strongly welcome the Bank's recent initiative to improve transparency and user-friendliness of procurement data through its soon to be launched Procurement App.

We would also like to see an assessment of the implementation of the new procurement framework approx. 2 years (tbc) after its introduction in order to be able to **take stock** of initial results, make any adjustments where needed and inform future implementation with any early lessons learned.

8. What role should the Bank have with regard to complaints monitoring?

We strongly welcome a streamlined and **more efficient complaints handling process** – a major concern mentioned by various stakeholders. We also welcome the Bank's proposed **more active role** within the limits of not being party to the contract – which would include monitoring not only bid process related complaints but also post award related complaints, setting performance standards and developing measures for complaints tracking, providing access to arbitration, and increasing access to independent Dispute Resolution Boards / Experts.

9. What should be the Bank's role in contract management, and with regard to improving performance of suppliers?

We welcome the proposals put forward to increase Bank engagement in contract management including performance tracking for higher risk / value procurements, within the limits of not being party to the contract. We also agree with the Bank's intention to introduce the consideration of past supplier performance in the bidding process – which in our view could comprise, where appropriate, also other aspects than safety matters. This should be used on a case-by-case basis (fit for purpose) and will require careful management in order to avoid a biased process.

10. General comments on other issues?

10.1. Draft Policy

We agree with the **Core Principles** (value for money, economy, efficiency, integrity, fit for purpose, transparency, fairness) and do not expect any further changes to those – but have some **comments regarding wording and application** as stated in the draft Policy:

- Must all procurements (incl. NCB) **comply with** all Core Principles (corresp. to Preamble page A-2, para. 4) or only be “**guided**” by them (Preamble page A-2, para. 5)? Softer wording “guided” may give rise to misinterpretation, as adherence to principles is to our understanding mandatory
- Definitions of principles and the distinction between some of them should be made **clearer** and **more coherent** with regards to the level / type of information given (e.g. for some principles, the general meaning is provided; for others, WB requirements are listed) .
- The draft Policy mentions a few criteria for **eligibility** – it is unclear however what is meant by “(d) **other conditions** established in the Procurement Framework” on which basis participation can be denied.

The text of the draft Policy is otherwise fine, provides clear direction and at the same time is kept general enough to accommodate all currently envisaged changes as well as accommodate any later reforms..

10.2. Fragile states

We welcome a fit for purpose approach that allows **tailoring procurement to the special needs** of fragile states including the possibility of more **hands on support** by World Bank staff or engagement of a third party.

We consider it important that such a tailored approach does not only focus on the importance of flexibility and speed but also on **stabilization and development effects** of different procurement strategies (e.g. impact on local economy with a peace dividend).