

BDI Position Paper on the “*Proposed New Procurement Policy Framework*” of the World Bank

International Markets

Development Policy

I. Abstract

As part of a broader *Procurement Policy Review*, the World Bank has recently proposed a *New Policy Framework for Procurement in World Bank Investment Project Finance*. The overarching aim of the new framework is “*achieving value for money with integrity in delivering sustainable development*”. The Federation of German Industries (BDI) appreciates the continued dialogue with the World Bank as well as the inclusion of several of our suggestions into the *Policy Framework*. Nonetheless, BDI still sees a need for further adjustments. We are particularly concerned that current procurement safeguards, guidelines and methods may be modified in the future and used merely as ‘*voluntary tools*’ and no longer as mandatory requirements. BDI asks the World Bank to hold further consultations with stakeholders once the more detailed framework has been released. Moreover, BDI supports a review of the reform after three years of implementation and respective consultations with important stakeholders.

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II. Introduction

As part of a broader *Procurement Policy Review*, the World Bank has recently proposed a *New Policy Framework for Procurement*. The overarching aim of the new framework is “*achieving value for money with integrity in delivering sustainable development*”.

The Federation of German Industries (BDI) appreciates the continued dialogue with the World Bank. We also strongly support the formation and work of the *International Advisory Group on Procurement (IAGP)* that has contributed valuable expertise to the earlier phases of the consultative process.

BDI has been engaged in the consultation process of the *Procurement Policy Review* since its inauguration in 2012. During the first phase of consultations in 2012, the BDI provided a position paper addressing the “*Approach and Initial Discussion Paper*” of the World Bank. The BDI position paper outlined main requirements, principles and criteria from an industries perspective that should be considered in furthering the procurement policy of the World Bank. BDI welcomes the incorporation of several of our suggestions into the *Policy Framework*. Nonetheless, BDI still sees a need for further adjustments, which is why we lay out our recommendations in the following paper.

BDI acknowledges that the World Bank paper from the next phase will go into more detail about what the changes to Standard Bidding Documents will entail. Therefore, we encourage the World Bank to hold further consultations with key stakeholders after the ‘*Detailed Framework*’ has been released.

**Bundesverband der
Deutschen Industrie e.V.**
Member association
BUSINESSEUROPE

Telephone contact
T: 030 2028-1502
F: 030 2028-2502

Internet
www.bdi.eu

E-Mail
L.Selwig@bdi.eu

III. BDI Recommendations

1. The consultative Process

BDI is of the opinion that the consultative process should be continued by having other rounds of public consultation, when 1) the detailed framework has been published, and 2) when guidelines, safeguards and standard documents are to be reviewed.

BDI strongly supports the formation and work of the *International Advisory Group on Procurement (IAGP)*. In our view, the IAGP not only has an important role in the consultation process but also beyond. Thus, BDI suggests further using the expertise of the IAGP in the subsequent implementation of procurement reform.

Moreover, BDI supports a review of the reform after three years of implementation and respective consultations with important stakeholders, including technical experts.

2. The vision of the proposed New Procurement Policy Framework

BDI strongly supports the vision of the new framework that "*procurement in World Bank Operations supports clients to achieve value for money with integrity in delivering sustainable development*".

BDI agrees that the new framework should lay out a *set of guiding principles* that underline this vision. We welcome the World Bank's decision that specific procurement arrangements shall be based on a specific analysis of the sector, market and project context and that the overall standard of procurement performance required by each borrower shall be no less than currently required, for instance under *International Competitive Bidding*.

BDI acknowledges that the *proposed new framework* addresses many issues of sustainable procurement policies and approaches, including quality evaluation, life-cycle considerations and integrity issues. Addressing these issues is in line with the new approach to incorporate upstream and downstream requirements into the new procurement policy and contributes to creating a level playing field in procurement.

However, BDI urges the World Bank to implement the vision more thoroughly. This not only demands putting requirements of *sustainability, value for money and integrity* at the heart of the *guiding procurement principles* and procurement policies but also extending the scope of procurement by considering the full procurement cycle – from strategic procurement planning to contract execution. It might further demand the introduction of more innovative and inclusive methods.

As already outlined, BDI supports attempts to enhance current procurement policies in order to improve the risk management in procurement of developing countries and economies in transition and to achieve higher *value for money*. However, BDI would like to emphasise that strengthening the borrowing countries' ownership and allowing a more frequent use of country systems should not lead to decreased quality in procurement.

3. The role of the World Bank as international standard setter (at the global level)

The World Bank states in paragraph 1 and 5 of draft framework that "*The countries that borrow from the (World) Bank spend several trillion US dollars annually on public procurement. The (World) Bank finances less than one per cent of that amount.*" BDI is of the opinion that this statement might trigger misleading conclusions. In our view, the role of the World Bank is still very significant, also in terms of numbers. If the World Bank were to adjust the corresponding numbers by excluding the IBRD's top ten borrowers, which all have very sizeable national procurement markets, the share of World Bank financing in relation to total national procurement would increase significantly. Thus, in many developing countries the World Bank is still the main or one of the main financial institutions that provides grants and loans. In other words: China is different from Chad, Brazil is different from Bhutan, and Mexico cannot be compared with Mali.

Moreover, 38% of the *International Development Association (IDA)* lending of the World Bank goes to improving infrastructure.

Thus, the World Bank still has an important role as standard setter at a global level: It not only influences the procurement policies of borrowing countries but also the lending policies of bilateral donor agencies and regional banks. Hence, the current World Bank procurement policies and corresponding guidelines, its standard bidding documents as well as its environmental and social safeguards — considered to be an international benchmark — serve not only the World Bank but also other financial institutions. Therefore, BDI is of the opinion that the World Bank should maintain or even extend its role as a '*leading advocate for good procurement*'.

We are particularly concerned about the idea that in the future current procurement safeguards, guidelines and methods will mainly serve as guidance or '*voluntary tools*' within the new tool kit of recommended good practice methods and no longer as mandatory requirements.

Thus, mandatory use guidelines, safeguards, standard bidding documents should prevail, at least in the case of large and complex infrastructure and engineering works for major supply contracts which naturally attract international competition. As only a limited number of contracts fall into these categories, BDI believes that this could still be handled with existing World Bank resources. Adjustments needed should be explained thoroughly and be applicable for all and not on a country-by-country basis.

4. The "guiding principles" as outlined in the proposed New Procurement Framework

As already outlined in our 2012 position paper, BDI thinks that the establishment of guiding principles is crucial to fostering more sustainable procurement and to ensuring a level playing field. Procurement principles also make it possible to better define '*more development effectiveness*', which is a shared goal. BDI welcomes that the proposed new framework contains the following principles: economy, efficiency, effectiveness and integrity/openness/transparency/fairness. In particular, the clustering of the latter, however, has allowed for a less than thorough definition. Some key challenges demand particular attention and counter-actions, such as fraud & corruption and equal access & non-discrimination. Therefore, it might be useful to divide the clustered guiding principle into single guiding principles.

4.1. Economy

BDI strongly supports the thorough definition of the guiding principle *Economy* in paragraph 15 that serves to elucidate the goal of achieving high *value for money*. In particular, BDI welcomes the strategic procurement approach built on whole life considerations. We would also like to emphasise that sustainability is a significant part of high *value for money*, in addition to *Economy*.

4.2. Efficiency

BDI appreciates the Bank's proposed definition of *Efficiency* but would like to suggest the incorporation of further methods and practices that would be beneficial. First, a *single interactive platform* for all necessary downloads, official reports, and announcements could speed up the tender process significantly. Such a platform should also be used to publish procurement notices, if possible, for both *International Competitive Bidding* (ICB) and *National Competitive Bidding* (NCB) related procurement notices. This would still provide tenderers with a single access point, thereby increasing the likelihood for diverse suppliers. Second, *reverse auctions* as well as *standing offers* would increase the efficiency of procurement procedures.

4.3. Effectiveness

BDI supports the inclusion of *Effectiveness* as a guiding principle. We encourage the World Bank to further define the guiding principle *Effectiveness* and to explain how it will implement a '*fit-for-purpose*' approach in Phase II.

4.4. Integrity, Openness & Transparency, Fairness

BDI encourages the World Bank to enhance the user-friendliness of the *Contract Awards Database* as *procurement by tender and contract awards* needs to be communicated to suppliers in a more comprehensible way.

BDI supports the idea of making use of international arbitration and to create for example a list of acceptable international arbitrators.

BDI welcomes the intention of the World Bank to improve its *Supplier Relationship Management*, including amongst others complain mechanisms, feedback to suppliers, attraction of talent (maximising competition), project execution issues. In this regard, BDI encourages the World Bank to play to some extent the role of a mediator/convener in case of disputes between *Contractors* and *Borrowers*.

Furthermore, BDI urges the World Bank to create a separate *guiding principle* for protection against *Fraud and Corruption*. In Section 5.2, this guiding principle is laid out more in depth.

5. The '*guiding principles*': Why is there still a need for defining further principles?

Guiding principles allow a better definition and implementation of the procurement vision "*to achieve value for money with integrity in delivering sustainable development*". While '*value for money*' (via '*economy*') and '*integrity*' have been addressed in the above mentioned principles, '*sustainable development*' or

'sustainability' has not. Further, it might be required to better define 'anti-fraud & anti-corruption'.

5.1. Sustainability

Sustainability as particularly described in annex 1 of the *Policy Framework* does not seem to be addressed as core issue of procurement but as an 'add-on'. As *sustainability* has been mentioned as vision or overarching aim of the proposed New Procurement Policy Framework ("*achieving value for money with integrity in delivering sustainable development*"), it should also be regarded as core principle of the '*guiding principles*'.

In terms of sustainability, BDI endorses a holistic approach to procurement, an important aspect of achieving *value for money, fit for purpose* and *innovation*. Furthermore, more *sustainability* in procurement encourages the use of *state-of-the-art technologies* and the dissemination of '*best practices*'. *Systemic procurement* takes into account the overall performance of the system throughout its life period. It considers *life-cycle costs* and comprises *planning, delivery and installation, services and long-term maintenance, and training*. Thus, a more sustainable and systemic approach to procurement fosters a *level playing field* in international tenders and enables the contracting authority to perceive the *economically most advantageous bids*. E.g. by designing a whole project that acknowledges the tight interlocking of single pieces in (*technical*) systems, the release of one tender, with the necessary sub-tenders, would ensure the compatibility of all components within the system.

5.2. Anti-Fraud & Anti-Corruption

As fraud & corruption remain key challenges, particular guiding principles on anti-fraud and anti-corruption should be defined. Furthermore, public sector anti-corruption measures, which should play a core role in the guiding principles, need to be adjusted and/or reformed.

Anti-Corruption measures are crucial. Thus, approaches and instruments should be described more in-depth. For example, a copy of all bids could be stored at the Bank, a neutral actor. BDI strongly supports the continued independent role of the *Integrity Vice Presidency (INT)* in investigations of alleged corruption. INT should have adequate staffing and authority to carry out immediate and effective investigations in a country where such corruption is alleged, rather than several years later, when the project is under a compliance review.

As fraud and corruption not only occurs in the private sector, the World Bank might also consider the modification of the current World Bank *guidelines on fraud and corruption* (in particular paragraph 11). BDI suggests that Member states and/ or any of its representatives should no longer be exempt from the *World Bank's sanctions regime*.

6. Prerequisites for a '*progressive use of clients procurement arrangements*'

BDI is concerned that the proposed new procurement framework no longer calls for the '*equivalence*' of clients systems with the World Bank's own procurement procedures and documents but that the standard will be watered down to '*acceptable procurement practices*' – a term, which is neither destined to give

clear guidance nor to produce verifiable results. Hence, BDI would like to draw the World Bank's attention in particular to the following issues:

6.1. Capacity assessment (at the country level): Use of country systems

BDI shares the view of the World Bank that an assessment of the procurement capacity of the respective country is crucial. BDI goes even further and regards assessments as a prerequisite to any 'use of country systems'. In this regard, BDI would like to ask the World Bank to lay out how the assessment of countries will actually be made and who the actors involved are.

Furthermore, capacity assessment should be more inclusive and involve other development partners and advisers. BDI urges the World Bank to base the assessment on 'objective' and transparent criteria. The final decision on how to deal with the outcome of the assessment and to classify the 'state of capacity' should be made by the World Bank.

Capacity assessment should be linked to capacity-building and capacity-development in particular regard to 'strategic procurement planning' and addressing identified gaps. Capacity assessment should further be linked to taking corrective actions, mandatory in the case that they are needed, the subsequent monitoring of those actions, and subsequent remedies.

6.2 Capacity-building/ capacity-development

In many countries there is still a need to continuously improve the national procurement systems. Many national procurement systems lack particularly adequate capacity. Thus, one important aim of the new *World Bank's Procurement Policy* is to enhance the procurement of borrowers in order to achieve better development effectiveness and to strengthen the ownership of developing countries and economies in transition. We would like to ask the World Bank to explain how this will be achieved. Moreover, as *capacity-building* seems to be key to overcoming challenges in many national procurement systems, it might also be treated as a *guiding principle*.

BDI welcomes the idea of the World Bank to strengthen the support for client *capacity-building*. From BDI's perspective this demands a clear definition of the rights and obligations of the customers, especially regarding the intensity of *capacity-building* (technical and/ or practical training of users and maintenance staff).

6.3 Anti-risk principle

BDI asks the World Bank to keep its prior reviews of contracts. As half of all contracts currently reviewed are under US\$ 100,000 value, the World Bank considers to raise the threshold. BDI is of the opinion that this could only be done with a great sense of proportion and in close consultation with the private sector.

Large-scale, high-value and high-risks contracts should principally be excluded from national procurement arrangements. The current thresholds should be maintained and transparent criteria to better define *high-risk contracts* should be developed.

7. Choice of procurement methods

The World Bank intends to assess which sectors primarily attract international competition and which attract national companies, and adjust their procurement thresholds for *International Competitive Bidding* (ICB) and *National Competitive Bidding* (NCB) accordingly. BDI is of the opinion that this approach is very challenging. It might lead to less competition in a number of sectors. Thus, BDI would like to ask the World Bank to provide further information on which sectors will be affected and which thresholds might be considered.

7.1. International Competitive Bidding (ICB)

The World Bank states that *International Competitive Bidding* (ICB) is currently the "method of choice". Most of the large-scale, high-value and high-risk contracts are tendered, managed and carried out under ICB.

The World Bank argues that this puts a heavy bureaucratic burden on the World Bank staff. However, the largest 1,000 contracts represent approximately only 10% of the total number of contracts but more than 80% of the total value. As the World Bank argues that risk management is crucial for a *modern procurement system*, BDI urges the World Bank to keep those tenders and the high number of contracts under ICB, thus maintaining the threshold.

From BDI's perspective ICB has a proven track record. ICB contributed to better ensuring a level playing field and more competition, thus to developing smarter solutions. If ambitious criteria of modern procurement were applied, it could further contribute to knowledge transfer and to a more sustainable conduct of complex contracts.

In particular in the case of civil works projects, BDI would like to urge the World Bank to continue supporting the use of internationally excepted *standard conditions of contract* and *contract forms* (current part 3 of the *Standard Bidding Documents for the Procurement of Works*) even where clients are authorised to use their own procurement arrangements and institutions. The international community is familiar and comfortable with these documents available from or through FIDIC. The suite of documents, which support various procurement strategies, provide for a fair and balanced risk allocation between the contractual parties and are thus a prerequisite for smooth project implementation.

7.2. National Competitive Bidding (NCB)

BDI is of the opinion that *National Competitive Bidding* (NCB) should also meet criteria comparable to ICB. In this regard at least the use of the FIDIC standard forms should be mandatory.

8. (Future) role/use of mandatory guidelines, safeguards, standard bidding documents versus voluntary tool kit (at the country and project level)

While many aspects of a modernised procurement are generally and principally addressed as mentioned above, the implementation of the vision, the application of the guiding principles and of new approaches remains vague.

BDI understands the revised use of procurement guidelines, found in Annex I of *Phase I: A Proposed New Framework*, to be divided into three separate parts, namely (i) an operational policy (OP), (ii) a statement of bank procedures (BP), and (iii) a recommended tool kit containing standard bidding documents, among other materials. If the Bank intends this revision to be applicable to all procurement in the future (i.e. the current guidelines will no longer be mandatory), BDI must express its deep concern with such a change. By making the use of the tool kit optional, letting it serve merely as guidance to staff and borrowers, a huge risk is run that procurement is carried out in a less than fair and effective way. BDI would like once more to strongly emphasise the Bank's global role as standard setter and urge a reconsideration of the proposed change to the use of procurement guidelines.

BDI is particularly worried that the proposed new framework (in paragraph 33) does no longer call for the equivalence of client systems with the World Bank's own procurement procedures and documents and that the standard has been watered down to '*acceptable procurement practices*', a term which is not destined to give clear and verifiable results. In this context, it has been proposed elsewhere that the World Bank should accept that a country being a party to *WTO's Plurilateral Agreement on Government Procurement (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*.

BDI does not believe that this proposition stands the test of practical experience. GPA membership is not per se a guarantee for *quality procurement*. Even the assumption that an EU Member State always observes the minimum standard on *competition, transparency, and accountability* (as laid down in the EU procurement legislation) is unfounded.¹

As a consequence, BDI is of the opinion that the World Bank should retain all its audit and enforcement rights. In any case it would be essential for the World Bank to make in each case its own subsequent assessment at the agency level. Even if the World Bank would authorise GPA full members to use their own procurement arrangements and institutions, BDI urges the World Bank to continue supporting the use of internationally accepted standard *Conditions of Contract and Contract Forms* (current Part 3 of the *Standard Bidding Documents for the Procurement of Works*), in particular in the case of large infrastructure and supply contracts. The international community is familiar and comfortable with these documents available from or through FIDIC, as the suite of these documents, which support various procurement strategies, all provide for a fair and balanced risk allocation between the contractual parties and are thus a prerequisite for smooth project implementation.

¹ Since 1st January 2009, excluding cases of non-communication, 61 procurement infringement cases have been opened by the EU Commission against EU Member States in which the procedure reached at least the stage of sending a letter of formal notice. Out of a total 61 cases, 53 concerned incorrect application of the EU procurement rules. It can be assumed that the estimated number of non-reported cases of procurement infringements is umpteen times higher. cf. SWD(2012) 342 final, COMMISSION STAFF WORKING DOCUMENT, Annual Public Procurement Implementation Review 2012, see http://ec.europa.eu/internal_market/publicprocurement/docs/implementation/20121011-staff-working-document_en.pdf

9. Increased cooperation with the private sector

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BDI is of the opinion that a continuous dialogue with the private sector will lead to better outcomes of World Bank funded projects and might foster the knowledge building within the World Bank. Thus, BDI encourages the World Bank to take a more sector-based approach to procurement. This could include amongst others the establishment of sector dialogues, strategic partnerships with key providers, etc. Furthermore, an earlier involvement of the private sector in the project design process might increase the sustainability of projects.

