



The World Bank

Procurement Policy Review Feedback Summary

Date: August 20, 2012

Venue: Pretoria, South Africa

Countries connected by videoconference: Angola, Botswana, Lesotho, Malawi, Mozambique, Zambia and Zimbabwe

Total Number of Participants: 101

Overview and General Reactions

The consultations involved a large number of stakeholders, covered a broad set of issues and produced a wide range of questions, observations and recommendations. In general terms, it appears that the Bank is taking cognizance of the existing country procurement environment and the localization efforts being made by a country. In addition, there are capacity constraints on both the Bank and the country side and these have to be attended to.

Three themes were emphasized in the discussion. In addition, suggestions were offered to amend the Bank's policy on contract award. These points are summarized below.

Clarity of the Current Policy

The participants raised a number of concerns and had questions about the Bank's current policies which were unclear. Among the points raised were:

- The current Bank policy on Expressions of Interest is not clear.
- With the cross debarment, it is not clear who has audit rights when the contract was financed by the World Bank.

- With regards to the current Bank sanctions policy and the debarment of contractors and consultants, it is unclear as to the reasons why a company or individual has been debarred. In addition, during implementation it is unclear whether a contract can be extended or if an addendum can be issued. Also it is unclear if the Bank can give additional work to a debarred company and if debarment applies only to contracts financed by the World Bank. It is also unclear as to what happens to contracts that are subject to co-financing if the contractor/consultant is debarred.
- With regards to harmonization of procedures and guidelines and recognizing the procurement policies of other institutions, would the Bank accept other standards such as those of the EU?
- Some institutions are currently undergoing assessments of their procurement systems by other development partners. Would the Bank accept the results of these assessments?
- Effectiveness of a procurement policy needs reliable information, acceptability of the policy and the necessary value added that the policy brings. Does the Bank have access to Auditor Generals Reports?
- Are there any mechanisms to support the setting up of electronic procurement systems that are being financed by the borrowers own budget?

Achieving Development Objectives

There was shared concern among the participants of the importance of procurement to spur local development, participation and capacity.

The points raised include:

- Many countries in Sub Saharan Africa have weak economies and large economies like South Africa export goods and services to these countries. How will weak economies develop in this scenario? Will foreign firms partner with local firms by choice or as a result of policy? Major beneficiaries of World Bank financed contracts are firms that are not from Sub-Saharan Africa. Will the new Bank policy mandate foreign firms to partner with local firms?
- There is a shift in dynamics on the continent and it is notable that Africa's growth is based on commodities. Some countries are landlocked and are looking at regional integration through construction of economic and social infrastructure. The procurement policy reforms therefore will have effects beyond national boundaries and individual country plans.
- The ratio of people to engineers in Africa at 20,000 people / engineer is a cause of concern. Japan has a ratio of 25 people / engineer. This means there is need for a structured capacity building and empowerment programme that compels foreign firms to build the capacity of local firms. In addition countries need to build a responsible private sector centered around sound capacity and ethical practices.
- European firms have more experience than local firms and effective joint ventures need to be constituted. Firms have to look not just at commercial interests but also at corporate governance. Skills transfer needs to be focused on by for example using the balanced score card method. Intellectual knowledge of tendering is mostly found in large firms and so small firms are challenged to compete with them. Sustainability post project is important and a lack of local skills leaves local firms dependant on foreign firms.
- NCB threshold and threshold for a shortlist of national consultants should be increased to enable local firms to be awarded

contracts. Development of local businesses should be beyond a project and should be done at country level.

- Empowerment of local contractors should be focused on. However, interpretation of empowerment differs and there is a lack of compliance checks to see if this is really being achieved.
- There needs to be emphasis on domestic value added in contracts. Foreign firms should be required to enter into mandatory joint ventures in order to assist the development of local capacity. The policy should also be in line with the local laws.
- It is suggested that international firms be required to subcontract 20% of the work to local firms.
- Some expressed the view that joint ventures should not be mandatory but the policy should be flexible to allow the use of a countries own localization approaches especially in mature systems such as those at ESKOM.
- With regards to capacity building of vendors and supplier management, a vendor data base would give the Bank an opportunity to review prequalified vendors.
- The Bank should provide guidelines for skills transfer from foreign consultants to local consultants. It was noted that when foreign firms were hired, the practice was to give the administrative duties to local consultants whilst the foreign consultants retained the technical duties thereby leading to no real skills transfer.
- With regards to national participation, the Bank should increase the number of NCB tenders and the NCB threshold as well. The Bank should also consider increasing the use of local consultants.

Capacity Building

- Capacity building of local firms is of paramount importance. The presentation showed that in other countries, ICB contracts are being awarded to national bidders. It has been noted that there is low participation by national bidders on high value contracts. How can the policy review incorporate the building of the capacity of local bidders?
- Developing countries have the challenges of low capacity of firms. How can capacity of local firms be built using the procurement process?
- Procurement Officers and other project staff also need capacity building.
- Consultants and contractors should also be included in the capacity building programmes.
- With regards to capacity building in procurement and the human resources available in the procurement profession it has been noted that procurement is not formally studied in the curricula of learning institutions and universities. The Bank is requested to take the lead by piloting this at a local university.
- Capacity building must be institutionalized and should not be project by project.
- Procurement professionals are not recognized and should be strategically placed in projects as well as in government.
- The Bank needs to support professionalization of the procurement profession by using only certified staff in projects.

Performance and Contract Management

Another common theme was the importance of covering all aspects of the procurement cycle from design through to implementation and assessing performance:

- The management of funds should cover the procurement process as well as the delivery and implementation phase.
- On a Bank financed project, during the procurement process the Bank procurement policies take precedence. However during contract management, the national laws take effect. This is a challenge as firms now have to comply with the national laws after contract award. This raises issues with risk management and the acceptability of national laws and regulations.
- It was noted that many clients lack the capacity to review complex designs. In addition design checks are not carried out and work goes out to tender based on wrong designs and inferior specifications leading to problems during implementation.
- A recommended bidder may be subjected to post qualification but is still awarded a contract irrespective of the fact that the bidder has a history of poor past performance.
- Past performance records of bidders is hard to obtain both within a country and also from outside the country. It was suggested that a firm's performance should be formally evaluated and that this should be shared internationally as a step to prevent poor performing firms being awarded contracts.
- The shortlisting process considers the firm's financial standing, the types of contracts done before, and the firm's ability to also develop the local capacity. However, what happens post construction is an issue. Institutional reforms in borrower countries need to be done to take this into account.
- Eligibility of consultant firms and past performance of individual consultants presented in a firm's proposal must be taken into account.
- During implementation some gaps arise. Sometimes there is need to take taxes into account at preparation stage.
- During the design phase of a project, many issues are not considered. It is recommended that thorough discussions are held during the design phase to prevent disagreements during implementation.

Specific Recommendations on Contract Award

- The Bank needs to consider introducing a limit on the number of contracts a firm can be awarded.
- The Bank should not place a limit on the maximum number of firms on a shortlist and should allow for more than 6 firms to be shortlisted.
- The Bank should encourage the use of quality based selection as opposed to least cost selection which has been seen to lead to price escalations during implementation.
- The Bank should consider allowing negotiations for complex works, goods and supply and installation contracts where specifications are not easily defined as issuing variation orders has proven to be costly.

The Bank should consider inclusion of net present value and life cycle costing in bid evaluation.

Specific Feedback from Stakeholders

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?	
	<ul style="list-style-type: none"> • The Approach paper does not consider the impact that a project has on the surrounding community. It is important that the long term social and environmental impacts and effects of projects on a community are taken into account. • How will the policy relate innovation and flexibility to governance and anti-corruption? • Will the policy mandate public procurement audits and making findings public?
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?	
	<ul style="list-style-type: none"> • Public procurement should borrow some best practices from the private sector. In the private sector the focus is on having a few value added activities whilst the public sector has many non value added administrative procedures. Public procurement must therefore transform its many administrative procedures to a few value added functions.
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?	
	<ul style="list-style-type: none"> • With regards to ensuring funds are used for the intended purpose, capacity building at all levels is needed. The Bank should provide a compliance officer based locally to review the procurement process. • The Bank should support the use of country procurement authorities to clear bidding documents, identify risks, conduct procurement audits, provide monitoring and evaluation and recommend payments. • The Bank should assist with strengthening of country systems that deal with anti-corruption. Country contexts differ and in some cases there is need to strengthen the Anti-Corruption agencies. • With regards to ensuring that funds are used for the intended purpose, it was noted that the current Bank policy focuses more on process and compliance and less on the outputs of the procurement process. The Bank should therefore go beyond compliance and also look at outputs and the value added that the process brings. • It was noted that Fraud and Corruption is treated the same as anti-competitive behavior and this needs to be looked at in detail. • With regards to risk management, it was noted that MCC has a risk management committee that looks at safety, health and environment, social matters, training and development. The Bank should consider such an approach and involve the various stakeholders in risk management.

	<ul style="list-style-type: none"> • The Bank should allow audits to be conducted by the Auditor General’s Office to streamline and improve on M&E of funds. • With regards to the use of funds, it is noted that the capacity of oversight bodies needs to be strengthened. Instead of each Bank financed project having its own private sector auditor, then audit function should be given to Auditor General’s office who can then be supported by the Bank to carry out this function.
<p>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?</p>	
	<ul style="list-style-type: none"> • No one size fits all, ESKOM has mature processes and systems and a local threshold should therefore be allowed for local capacity development. • The policy review should focus on making the Banks procurement policy fit for purpose. • Professional body acts should be reviewed by the Bank and best practices adopted for harmonization and also to provide checks and balances. Standard bidding documents can be prepared by the public procurement authority if the Bank is in agreement and this can in time lead to capacity building. The Bank can rely on bi-annual reports for feedback. • The current procurement policy provides for conflict of interest clauses that restrict the participation of firms who have previously worked with the client on related assignments. In some sectors this is proving to be problematic due to the small number of experienced and qualified specialist firms in the field of the assignment. • With regards to eligibility of state owned enterprises, the Bank can also apply the Millennium Challenge Corporation practice of restricting SOEs irrespective of their origin. This helps prevent market distortion caused by SOEs which may also result in monopolies. • It was suggested that bidding documents and contracts should be tailored made for specific risk profiles and country and industry contexts. • The Bank should assist managing the procurement process of these large contracts due to the delays seen in various countries. • The Bank should look at current legal framework and see which principles can be incorporated and guide countries appropriately.
<p>5. What could the Bank do to simplify and streamline its current policies and to take advantage of the potential gains offered by e-</p>	

procurement and IT-based tools?

- The interpretation of the guidelines and not just what is written in them leads to different understandings. Simplification should therefore look at not just the guidelines but also their interpretation.
- European firms experienced in EU Directives on Procurement who are tendering for Bank financed contracts raise objections to bidding clauses that compel them to disclose financial information such as remuneration and the value of previous contracts done. The firms cite confidentiality regulations of disclosure during bidding. This leads to excessive back and forth.
- It was suggested that poor bidder participation in Botswana may be due to complex bidding documents and the excessive information required. This must be looked into with a view of simplifying the bidding documents and reducing the information required.
- The Bank should have thresholds under which there is no need for prior review and no objection.
- Each country should have a procurement website with a list of approved suppliers and Bank financed projects can use the list as well. This may help reduce lead times and may be a more transparent method of supplier selection for small value contracts.
- The Bank should guide countries on e – procurement and ICT.
- The Bank needs to support the use of electronic procurement systems. Depending on an institutions capacities, electronic submissions which are key in green procurement should be encouraged.
- There are delays in the granting of no objections and giving feedback from the Bank. The procurement process needs to be fast tracked.
- Bidding documents need to be simplified to encourage local participation. Bidding documents are suited to international firms which sometimes subcontract the work to local firms.
- With regards to e-procurement, the framework and standard of e-procurement currently uses email based systems with low integrity. Security and legal frameworks have to be checked to see if this type of e-procurement is allowed.
- With regards to e-procurement and IT based platforms, it was stated that some countries do not have access to these systems and lack knowledge of how to use them. The Bank should therefore support such countries also assist with putting in place necessary regulations.
- E procurement is a problem as is its implementation.

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?

- Harmonization of procedures between borrowers and development partners may ease project implementation.
- It was noted that many different agencies are managing Bank financed civil works contracts in Mozambique leading to different practices that confuse the local contractors. This must be looked into.
- Harmonization of procurement policies amongst development partners with a focus on value for money will ensure that borrowers are not inundated with using different donor procurement policies and practices.
- The Bank should consider the use of country systems and recognition of a borrowers legal framework.
- With regards to use of funds for the intended purposes, harmonization and streamlining processes, the Bank should develop the capacity of procurement oversight and implementing agencies if efficiency is to improve.
- Application of domestic preference and qualification requirements need to be harmonized across the country.
- In addition countries in regional groupings should harmonize their procurement policies.
- The Bank should review how it can align its practices with the FIDIC guidelines.
- It was suggested that debarment be harmonized amongst development partners as well as borrowers.
- With regards to harmonization and the use of country systems, the Bank is involved in sector wide approaches and should advance this to other sectors in achieving harmonization. On use of country systems, the Bank should help identify system weaknesses and provide guidance and support on how to address them.

7. What suggestions do you have to monitor and evaluate the Bank's Procurement policies and assess their impact and effectiveness?

- With regards to monitoring and evaluation, the involvement of Project Steering Committee assisted by procurement professionals may be considered.
- More generally, it was noted that there is a lack of institutional framework for this. Institutions need to be set up to conduct this.
- With regards to monitoring the impact of a project, it is noted that value for money has been identified in the Approach paper. A suggested inclusion is to also monitor the development impact of the intervention. There is currently no Bank self assessment of the efficiency of the use of funds or the use of a baseline to

	show the improvements in the process and the development impact of projects.
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?	
	<ul style="list-style-type: none"> • As the procurement policy consultations cover a broad framework there is need for more discussions and engagement. Private sector participation, including financial services in particular, should be increased. • The Bank should consider participating in trade shows to sensitize stakeholders on public procurement and the Banks developmental role. • In the transitional phase as the new policy is awaited, the current policy would continue to be used. • With the launch of PIDA and the Presidential Infrastructure Champion Initiative and the North South Corridor developments, the Bank should play a more active role in capacity establishment of regional integration projects like roads. • Expressions of Interest and Proposals should be opened and managed by the same body to prevent confusion and misinterpretation. • With regards to the Bank's allocation of funds to a country for projects, it is proposed that there be two approaches: a mandatory approach and a voluntary approach. The mandatory approach would be done with agreement of the Bank's shareholders and would follow the usual Bank process. With the voluntary approach, 15% of a country's Bank financing would be used to develop the local industry.