



The World Bank

Procurement Policy Review Feedback Summary

Date: August 2, 2012

Venue: New Delhi, India

Total Number of Participants: 16

Overview and General Reactions

A consultation workshop was conducted on August 2, 2012, with participants from major Public Sector clients of the World Bank in India. The organizations participating in the consultation included Powergrid Corporation, National Highway Authority of India (NHAI), Indian Railways, Dedicated Freight Corridor Corporation of India (DFCCIL), Directorate General of Supplies and Depot (DGS &D), Satluj Power Corporation, and Haryana Power Distribution Corporation (HVVNL). Participants consisted of senior management representatives working on procurement and project management.

General observations:

- Participants acknowledged the Bank's review as a "good initiative."
- Participants stated that many good practices have been learned from the World Bank, and that there is no doubt that the World Bank has been a major player in building professional capacities in the public sector.
- Participants suggested that a sector- or industry wide study of the procurement environment should be carried out as a first step of revising the World Bank's procurement policy to assess the availability of a "bidder's market" for each sector, factors affecting bidder preferences for

participating in competitions, and the gap between real demand and supply. Participants were of the opinion that in many sectors, the growth of sector requirements (power, roads, railroads, etc.) are leading to situations where bidders can choose whether they want to bid or not. As the world leader in public procurement policies, the World Bank should address this critical issue.

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?

- The World Bank's procurement policy review should address the issue of gaps between demand and supply in procurement. With changing environments especially for large projects, the World Bank's procurement regime has not been able to capture the "essence of achieving efficiency in delivery" by following traditional procedures for meeting transparency and fairness. It has been found that sometimes procedures bind the agencies to reject bids. Very often these procedures lead the client to awarding a contract "as required by the rule book" without focusing on the end goal of implementation. "We get stuck in procedural issues resulting in rejection of bids."
- The World Bank's policy should be principle based; it should be less prescriptive, and more dependent on and in line with implementing agencies' systems. There is a clear demand from the participants for the World Bank to move away from prescribing any guidelines. They would rather like the World Bank to assess their procurement systems in light of trust and the specific political and economic environment of the country. Both sides can agree upon a mutual decision and then implement with that understanding.
- The challenge is to understand and appreciate the changing economic scenario and how it affects the procurement environment in a specific country or sector. In India, there are more than Rs. 2,200 Billion worth of projects in the pipeline in the power sector alone, but the bidding community is limited. There is a tendency in bidders to grab the opportunity even if they don't have the technical and financial capability to do so, which results in delays. The "one size fits all" approach of the procurement procedure does not take into account this important aspect of "market limitation" and forces the same ICB or NCB routes where the lowest responsive bidder would not be the most capable and may be difficult to manage, but would still have to be awarded the contract. They would meet all capacity requirements with Joint Ventures with partners from anywhere in the world, but would fail in implementation down the line. The new procurement policy should consider situations like these and allow flexibility to make a selection that ensures delivery of the outcome rather than just choose the lowest responsive bidder at the time of bidding.
- Some of the participants felt that methods like 2-envelope-bidding, presentations during selection, site appraisal visits, seeking written or verbal references from past clients etc. could be adopted in the selection process. Some participants

were also wary of cartelization. It was pointed out that procedures of seeking post bid clarifications could lead to collusion and can create situations where one or two parties join together and decide among them not to agree or reply to written requests, thus forcing the client to accept what the bidders offer.

- One major issue highlighted by the participants regards the current requirements of assessing bids and proposals based only on the documents furnished by the bidders. Since the World Bank does not allow any interaction with bidders during the selection stage, it becomes difficult to assess their capacity. The documents may be cleverly prepared to win awards and once it is obtained, contractors go for sub- contracting. For the project, termination is the only option left in case of sub-contracting, but this option is generally not exercised, considering the importance of work completion and the substantial amount of time that has already been spent in reaching the present stage. Bid documents need to address this issue. It is important to assess the past performance of the bidder in qualitative terms to understand the bidder's ability to execute the contract. No data is available to help the agencies do this assessment to find out about the exact situation of the bidder.
- Participants recognized this as a universal problem, but highlighted differences in approaches taken by Bank and country systems that could benefit the current review. Participants are of the opinion that the World Bank should consider and rely on the methods and processes followed by the agencies for performance assessment, rather than sticking to the provisions stated in the guidelines. The World Bank needs to recognize the integrity and applicability of processes developed and followed within the agencies for bidder performance assessments for contracts that are valued many times the value of Bank funding.
- Another issue highlighted was the problem of international bidders' winning awards and not being able to commission contracts. Reasons for this problem are varied and include environmental, security and other political considerations. The World Bank needs to address the capabilities and realities on the ground.
- Open tendering as traditionally envisaged to promote severe competition among the bidders is not giving value for money or leading to the right outcome every time. In many areas, very few vendors enter the market each year. Given the surge in economic and industrial activities created by the private sector, there are very few vendors that are willing to bid for government contracts. This reality of a shrinking market of bidders for public works and goods need to be considered by the World Bank when revising the procurement policy.
- Participants also raised issues regarding some of the interpretations and positions taken by the World Bank's procurement review systems and commented particularly on the highly perplexing legal language used by the World

Bank in bidding documents to define and interpret matters such as minor deviations, seriously imbalanced, etc. Agencies have been struggling with these as the legal framework in the country does not allow the leniency Bank can take based on their “guideline” approach. Both employers and the Bank need to be on the same page and a balance needs to be arrived at.

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?

- There is a need to have dynamic assessments and evaluation arrangements in the bidding process. Some mechanisms need to be evolved to assess bids and evaluate the performance of contractors in terms of their technical and financial capacities to undertake or finish present contracts.
- It is unavoidable that some amount of subjectivity will come in the process of selection in service procurement. Bank procedures try to reduce bidder evaluation to a mathematical game which is impossible when you have to evaluate human beings. Bidding documents do not allow seeking any clarifications; invariably some decisions have to be taken which may reflect the subjective judgment of the evaluator. The World Bank has to take efforts to reduce subjectivity in service procurement.
- There is an enormous need for the World Bank to consider the added value of reviews, especially prior reviews. With clients asserting their own systems, with their own checks and balances, and with the money that they borrowed, the burden of reviews is impacting the overall project performance. This initiative is an opportunity to think about the existing supervision approach that the World Bank has adopted over the years.
- Engaging in Joint Ventures has become a bone of contention. While the World Bank insists on having Joint Ventures, large infrastructure agencies maintain that Joint Ventures should not be insisted upon without understanding the logical reasoning for it. Joint Ventures should be need-based and not compulsory. In some cases Joint Ventures have been counterproductive.
- The process of procurement needs to be shortened. It normally takes six months to one year to have contracts in place. The review policy needs to address this. Prior approvals of model documents would make drastic changes. Once an approval has been given on the basis of principles, there should not be any further approval required except for deviations, e.g., if the lowest responsive bidder from among the minimum number of responses is selected, there should not be any review. Reviews shall be limited to deviations and to address emerging issues.
- ICB is not really giving much of opening markets and competition. With only 2-3 bidders, competition from the international community is not wide. The policy review needs to look into the bidding documents, they may not be structured optimally. It is worth noting that some bidders are prevented from bidding by “technical parameters or

	<p>restrictive specifications.”</p> <ul style="list-style-type: none"> • Selection of contractors should be like the selection of consultants. A 70/30 criteria should be established with clear cut evaluation criteria of EOI. One stage 2 packet systems should be allowed.
<p>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?</p>	
	<ul style="list-style-type: none"> • The World Bank does not emphasize post contract management, which can result in large failures. This compromises quality and quantity. Inspection and quality assurance should be a priority. The World Bank’s support in addressing the risks during contract administration would be welcome. • In situations of disagreements and contract failures it takes years to finally punish the guilty or reach a conclusion. By that time, the guilty party would either have gotten away or evidence would have vanished. Justice delivery systems have to be timely. That is the only way the World Bank and clients could tackle the issues of fraud and grievance redress to ensure the effectiveness of investments made in the sector.
<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"> • In high technology areas where Indian capacities are low, international bidder participation is scant and requirements are fast growing, time gaps and repeat bidding are becoming commonplace. The challenge will be to develop methods and arrangements for procurement to bridge such gaps at a much faster pace. Strategic Partnerships, allowing new players to enter contracts with minor stakes in the early years (as being done by Indian Railways for bringing new vendors in fold), etc., could be attempted. • “It will be a paradigm shift if the World Bank decides to move out of procurement supervision,” but that should be done only with proper capacity assessment and situation analysis. Powergrid has benefited from World Bank supervision. • Capacity building in procurement is in its infancy and exists only on paper because procurement as a function is not professionally managed. This policy review is an opportunity for the World Bank to rethink its capacity building strategies and associate with the implementing agencies to support their systems. • “When thinking about corruption, please depend on the systems and procedures of the agency, don’t distrust.” The World Bank could take the opportunity to build capacity in the implementing agencies. Shift the approach, evolve the systems. Every organization would welcome this change. The need to shift approaches from supervision to supporting

	local systems comes up in the discussion time and again.
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?	
	<ul style="list-style-type: none"> • The World Bank’s environment is not conducive to eProcurement yet. The Bank does not move forward but forces the agencies to go back to manual operations which are prone to malpractice. eProcurement makes it easy, prevents cartels and has many advantages as compared to manual procurement systems. The World Bank should switch to eProcurement now. • With a new Procurement Law in place in India and agencies switching to eProcurement, the World Bank will be expected to follow the local system. • The new policy must adopt eProcurement which is the call of the day. The World Bank should study the eProcurement system of different agencies, understand how it works and appropriately adapt to the changing needs and environment of the countries.
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?	
	<ul style="list-style-type: none"> • Once the Procurement Law is in place in India, it will be mandatory for agencies to follow the Act. The Act is one thing but understanding, interpreting and implementing is another. The Bank must appreciate local capacities. In order to move to country systems, the World Bank should guide the projects in understanding and administering the newly proposed Indian Law. That would be a great service from the World Bank, as those efforts will help us improve in the 100% of procurement we undertake rather than only the less than 10% that have Bank funding. • Though sufficient efforts have been made between multilaterals and bilaterals, these efforts are largely based on interactions. Various procurement counterparts approach and interpret various issues differently, which leaves a wide gap in system harmonization. As an example: the World Bank and ADB approach issues related to Joint Venture differently. • There is a need for the World Bank to shift from controlling to associating with implementing agencies. The Bank needs to make efforts to harmonize. The terminologies of the new law are very different,; however, this law will harmonize the procurement systems among the government and public sector agencies, and the Bank needs to think about where it will fit in.
7. What suggestions do you have to monitor and evaluate the Bank’s Procurement policies and assess their impact and effectiveness?	

- The World Bank should evolve a new supervision model for procurement management through this policy review. Instead of prior and post review, the focus can shift to milestones achieved in the procurement process. This would offer better insight into the World Bank’s own procurement performance as well.

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?

- Bidding documents must clearly stipulate that international bidders need to establish an office in the project country.
- A plan must be in place to react to fraud and corruption in a timely manner. Grievance redress decisions need to have a bigger and more lasting effect.
- The new policy should make provisions for locking in the “key personnel” in service contracts. Participants advocate for the introduction of penalties when consultants are replaced. There should to be some mechanism in the agency or the World Bank that monitors the frequent movement of consultants, which hampers the progress of services. The qualification criteria hence need to undergo tremendous changes.
- **There is a dire need to move away from the Joint Venture approach.** Participants emphasize strongly that their collective experience shows that Joint Ventures are loose associations formed only to win awards. Partners are only part of the bidding stage and are not carried through to implementation. Joint Ventures should require pre-formulated contracts. The World Bank also needs to revisit the bidding documents that state that there can be a Joint Venture or intent to form a Joint Venture. Joint Ventures are not legally defined: allowing associations on the basis of “Intent” is risky. **Define the responsibilities of both partners.** Make provisions for providing evidence for partners actually working together.
- Build provisions for evaluating consultants with regard to their earlier assignments. Provide for bid/performance security and imposition of LD on service contracts. The current policy allows consultant to choose their currency, which is not allowed in many Indian agencies because of foreign exchange rules. **Formulate formal guidelines for bid security and performance security with country specific validations.**
- Presently variations of more than 15 % are not allowed. Experts from the infrastructure sector argue that the allowed variation is very small. This should be dealt on case to case basis or according to type of the project. Unit rates must be discussed if variation goes beyond 15%. The procedure is quite complicated for both employers and bidders. Some

	<p>provisions need to be made for fixing unit rates. Both parties should be bound by those provisions because often contractors take advantages of price changes. There should be some flexibility in the procedures. A unit price should be agreed upon at the time of contracting and this agreed upon rate should be used for any revisions of quantities.</p>
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