



The World Bank
Procurement Policy Review
Feedback Summary

Date: August 6, 2012

Venue: New Delhi, India

Total Number of Participants: 16

Overview and General Reactions

A consultation workshop was conducted on August 6, 2012 with participants representing many federal states in India that has reformed the public procurement systems in their states over the last decade. The states participated included the Government of Tamil Nadu, the first state in India to bring in a public procurement act (PPA) in 1998, Government of Karnataka, the second state in India to have enacted a PPA in 2000; Government of Rajasthan, the latest state to have passed the PPA in 2012, and Government of Andhra Pradesh, the frontrunner in rolling out e-procurement for entire state Government procurement in early 2000s.

General observations:

- Participants acknowledged the fact that Bank's procurement policies have been constant while keeping up with the changing times, and this review will only strengthen the commitment.
- The group recommended the new guidelines may be divided into three parts: 1) General Policies and Procedures. 2) Policies and Procedures applicable for specific sectors. 3) Policies and Procedures applicable for specific countries. Present guidelines are mainly addressing infrastructure projects, and should now be revised to cover social sector, as well as smaller contracts.

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?

- Participants raised the issue that over a period of time WB procurement process has become compliance-oriented. They discussed their witnessing of the decreasing competition, as the compliance mode is becoming a restriction for domestic bidders in many cases, particularly in the health sector.
- Bank policies do not allow borrowers to negotiate on commercial terms. In a market where pricing is adhoc and influenced by many factors, finding and establishing a fair and reasonable price for goods, works and services they acquire through the WB procurement processes is a major cause of concern.
- Bank procedures for Procurement of commodities (para 2.68) does not clearly work for the procurement of agriculture and livestock commodities, where on-the-spot negotiations are required. Guideline does not serve its purpose completely as it is difficult to adhere to Bank guidelines in CDD procurements.
- Cost of advertising has come up as another area of concern. Today, when almost everyone has access to internet, organisations are demanding a departure from this huge expenditure of putting advertisements for every contract. They think that the Bank must allow publication of tenders on the website rather than in nationwide paper editions.
- The competition outside Bank-financed projects has increased. For example, in the area of road construction, where the same set of bidders is competing for bigger-value government contracts, as opposed to the Bank-funded miniscule projects. The Bank must collect and study the empirical data to understand the changing behaviour of bidders and see how the procedures have influenced them. Find out how many effective bidders do exist beyond the natural country borders especially in cases of ICB. A realistic approach to what is happening in the country has to be taken into account, with examples of an Indian company developing airports across the nation, while the Bank insists for ICB for values of INR 20 crores. Relevance of ICB was raised time and again. It was unanimously established within the group that ICB should not only be on cost terms but it should also take care of the productivity concerns.
- Negotiations on prices is another major issue and challenge faced by the Bank projects as it has been observed that the Bank projects pay premium price to obtain the same goods and services, for which other government projects get a reasonable or justified price from the same set of suppliers/contractors. For the same officer who has to approve both negotiated Government contract and non-negotiated Bank-funded contract, later audit observations could be adverse. Bank needs to investigate the shortcomings in the procedures and make appropriate revisions to counter these variations.
- Getting approvals in time from concerned authorities and the Bank sometimes poses a challenge for effective procurement management. Some mechanisms (for example, default approval in case of no response within the service level agreed) need to be put in place and clauses to safeguard the project implementation from such delays be introduced.

- Other highlighted challenge was in consultancy contracts where a fixed responsibility for delivery is not evident. Employers' rights are loose. On key personnel, replacement requests come in weeks' time and agencies are forced to accept them. The level of control exercised by the employer is not enough. Clauses on damages also do not help in improving the situation. Introduction of penalty clauses with proper and well-timed implementation may help in improving the situation.

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?

- Condition for using ICB as a method should change from value threshold to those goods which are not manufactured in country.
- In India, where work contracts are established on the basis of piece rate agreements on estimated pricing, procurement experts recommended that small work orders should be given to the registered contractors without contracting. LCB should be under \$200,000/- . It was also suggested to study the country system where, the District Commissioner or a small committee can avail the benefits of pre-approved rates during emergency situations. Those rates are to be updated/revised annually.
- **New guidelines must provide solutions for an everlasting demand for price negotiations.** “An omnibus ban is not good” as the procurement is as good as the operating environment. The overall signals of politics and economy are indicators for the bidding authority to decide. The emphasis on no negotiations has been counter productive.
- Considering recent unfavourable outcomes from ICB, experts demand that thresholds for ICB be increased to USD 50 million. The group recommends that the Goods procurement thresholds be revised upward and ICB should only be done for the products not manufactured locally.
- Separate, simple and straight forward procedures and documents for conducting NCB are necessary. The Bank must look into developing SBDs for Turnkey projects, BOT, PPP projects, EPC and Non-consulting services. SBDs specific to country and sector are also required. The review must simplify the documents and procedures.
- Many participants voiced that this review is a good time to revise the Prior Review arrangements. Obtaining the Bank's clearance on certain details (i.e. bid validity, extension of bid submission, technical addendum) is time consuming. The Bank must make provisions for delegating powers to projects to reject bids and restrict the review to prior review contracts only. Bank should consider increasing thresholds for Prior Reviews. Bank should exercise restriction in case of material extension and approvals for above 15% cases to only prior reviewed contracts.
- In Goods procurement, payment terms are biased towards the suppliers. This needs to be addressed in the review.
- Thresholds for NCB need revision taking into account the present scenario where local bidders have raised their capacities and foreign bidders are not forthcoming for ICBs.
- In case of pharmaceuticals, where the shelf life is limited, the Bank needs to consider introducing rate contracts. It was also brought into the discussion that procedures are cumbersome when it comes to large number of schemes and entities. In MVS, a bidder will bid 300% times more. The Bank should be able to counter this by introducing percentage bidding.
- Consultancy procurement should be single stage as it normally takes 12 – 18 months for a full cycle. Dispense with EoI

	<p>and allow empanelments of consultants on an annual or a two-year basis.</p> <ul style="list-style-type: none"> • Value for money has to be considered. New policies should address the whole life cycle cost concept for evaluating bids and value of items, including the reverse auction, competitive negotiations, framework agreements, rate contracts that are being successfully implemented in other projects and sectors.
<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"> • Maintenance must be made important element in long-term Works contracts. A large part of the Bank's funding goes towards Works, and it becomes all the more imperative that the exchequers' money expresses its value not only in terms of final output but demonstrates greater sustained results for the beneficiaries over a long period of time. • Concepts of investment and maintenance have been followed by other projects and SBDs should be developed for this type of procurement to leverage the value for money from the investments made by the Bank.
<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"> • Handling multiple projects of different funding agencies has its own set of problems. Participants shared their thoughts on having to use multiple procedures which create confusion. Moving to country systems was suggested as an option for the future.
<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-procurement and IT-based tools?</p>	
	<ul style="list-style-type: none"> • The Government of Rajasthan has made eProcurement mandatory for every procurement above Rs. 2.5 million. The Bank needs to move swiftly towards adapting the new technologies like eProcurement, electronic reverse auctions, etc. • Separate NCB documents for Goods and Works are demanded by the participants for eProcurement. • Government of Andhra Pradesh has brought forward many reforms in procurement in early 2000s and pioneered eProcurement in the country. Presently every procurement above INR One lakh is being done through eProcurement. The Bank took a lot of time to give its concurrence for using eProcurement for NCB. There is already a Government site available for hosting ICB and other procurement notices (www.cppp.org), however a customized portal for Bank projects should be considered in association with NIC of India.
<p>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?</p>	

	<ul style="list-style-type: none"> • Government of Rajasthan has enacted a law which is based on UNICTRAL and UN Model laws. While supplementary procurement rules, guidelines and manuals are being finalized along with standard bidding documents for Goods, Works and Services. There is a need to establish a cell in the ministry to guide, train and upgrade skills of public sector and government departments. • CPAR was done in 2001. Participants suggested that once the CPAR has been followed and state has enacted a law, state should be allowed to follow its own procurement systems. • Government of Tamil Nadu enacted a law in 1998 and very soon the Government of India will have a Procurement law which will be applicable nationwide. Both laws share the same principles as the WB procurement guidelines. Is there a need for another set of guidelines? • The Bank's documents are legal and exhaustive; they will serve the purpose for high value procurements if thresholds are enhanced. The Bank's policy should be to get the bidder at the required rate of efficiency. The Bank should impress upon governments to have harmonized public procurement systems. There shall not be any difference between the principles, not even the operating environment as the clients as well as the bidders are same. Encourage countries to follow Bank norms across the board or vice versa that the Bank follows country systems. • There are no official "International standards", but standards acceptable at international level exist. Make a guideline with all such acceptable norms and processes for all countries. This will ensure that the Bank follows country systems rather than countries follow the Bank systems. • The Bank needs to streamline and harmonise PPP documents.
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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"> • When country systems are followed, there is no need for the Bank to get involved in contract administration. Bank's reviewing project outcomes should be sufficient. All things on capacity shall be reviewed at appraisal.
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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?

	<ul style="list-style-type: none"> • <u>The Bank must introduce a Public portal</u> dealing with contract awards and complaint handling. The Bank must also address the grievance redressal system, with defined provisions for first and second appeals and penalties for offences. Projects should be allowed to advertise directly at UNDB. • A strong grievance redressal system is needed. Participants noted that though contract clauses are fine in case of Works but the dispute resolution layer of DRB is not functioning well as parties go for arbitration anyway, which leads to unnecessary delays. • Participants voiced that the Bank must dispense with Post Reviews. In India, where CAG is engaged in concurrent audits and states have their own AGs, Post reviews by Bank are mere formality. Bank must establish performance based reviews. • The review must make provisions for Liquidated Damages and Performance security under consultancy services.
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	<p>Similarly in Goods procurements, product description must also emphasize performance complementing equipment specifications.</p> <ul style="list-style-type: none">• Thresholds need to be introduced for small and medium sized procurement for which publishing in newspapers did not prove to be useful. It was also suggested that having smaller thresholds for shopping with a revision in procedures should not insist on having 3 quotations for small value items. For example, even for Rs. 1,000/- one has to have 3 quotations, this elongates the procurement procedures and encourages fraudulent practices. This needs to be addressed.• <u>Semi-government organisations should be allowed to compete for contracts</u> as they are specialized in some manufacturing sectors. State acts allow for certain exemptions to selected entities, and the Bank should not insist on barring such bodies. New guidelines should make the procedures flexible, easier and realistic.
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