

Project Administration Instructions

PAI 3.04
Revised April 2008
Page 1 of 4

LOCAL PROCUREMENT

A. Introduction

1. International competitive bidding (ICB) is the most appropriate method for procuring ADB-financed goods and related services, or works in most cases. However, other procurement methods conducted within the borrowing developing member country (DMC) may sometimes be more appropriate. Alternatives include national competitive bidding (NCB) and Shopping. NCB and Shopping may be more economical than ICB as they normally require shorter prequalification and bidding times. Bidding documentation may be simpler as well, especially for Shopping. NCB and Shopping also support one of ADB's guiding principles of promoting domestic manufacturing and construction industries in the DMCs. Foreign bidders from other ADB member countries have the right to bid under ADB-funded NCB and Shopping procedures. The flow chart in Appendix 1 shows the main steps for procurement under NCB.

B. National Competitive Bidding

2. NCB may be considered only if ADB is satisfied that

- foreign contractors and suppliers are not likely to be interested in bidding;
- local production or construction facilities are available, offer prices below the international market, and are adequate for prompt delivery;
- domestic procurement procedures are satisfactory to ADB; and
- where the borrower requested the use of NCB.

Moreover, NCB may be considered for contracts that

- are of small value;
- consist of a series of small-value works;
- are located in several areas that may be far apart in the borrowing DMC; and
- will be executed at different times.

3. Where NCB is proposed as a method of procurement, ADB's processing missions are to satisfy themselves that an adequate number of domestic producers or contractors are capable of providing the required quantity and quality of goods and related services or works at reasonable costs and within the required time frame. The threshold for NCB is between \$1.0 million and \$10 million for works contracts, or between \$0.5 million and \$1.0 million for supply of goods, depending on the capacity of the borrower. Where the threshold is set above the lowest value in the range, it is determined on a country-by-country basis, in consultation with the Central Operations Services Office (COSO). Contracts above the threshold would normally be procured following ICB procedures, unless another method (such as direct contracting, or limited international bidding) has been specifically described and agreed upon in the procurement plan.

C. Shopping

4. Shopping is a simplified procedure, used for procuring low-value, readily available off-the-shelf goods, or simple civil works of low value. When considering Shopping, ADB should be satisfied that there are a sufficient number of local suppliers (or contractors for works) that can meet the requirements of the procurement and ensure a satisfactory level of price competition.

5. The threshold for Shopping is currently set at \$100,000 for all borrowers, but may be adjusted in consultation with COSO depending on the capacity of the borrower. Contracts above the threshold would normally be procured following NCB or ICB procedures, unless another method (such as direct contracting, or limited international bidding) has been specifically agreed for in the relevant financing agreement and the procurement plan.

6. For the procurement of items below \$10,000, the EA may purchase the items directly from the supplier. In such cases, ADB should be satisfied that the price paid is reasonable.

D. Role of Project Processing Missions

7. ADB's processing missions formulate procurement packages with the executing agency (EA). These are documented in the procurement plan. Every effort must be made to formulate packages for ICB. NCB may only be used if the EA has complied with all conditions stated in paras. 2–3. COSO is to be consulted when finalizing the use of NCB and Shopping procedures. Approval is to be secured at the management review meeting or through the back to office report of the processing missions. Prior to, and if necessary, during loan negotiations, ADB and the borrower are to agree upon

- the list of contract packages¹ for which NCB and Shopping is to be adopted;
- the procedures to be used to ensure acceptability to ADB; and
- the threshold amounts for NCB and Shopping, and the requirements for ADB approval that are to be reflected in the procurement plan.

E. Evaluating Procedures

8. Project processing missions² review NCB procedures normally used by the EA under the laws and regulations of the borrowing DMC and verify their acceptability to ADB. While NCB procedures need not be identical to ADB's ICB procedures, they must provide adequate competition to ensure reasonable prices and must not conflict with the basic principles underlying ADB's *Procurement Guidelines*. Evaluation of bids and contract awards must be fair, and evaluation criteria must be made known to all bidders. Factors to be considered when evaluating NCB procedures of an EA are briefly described in Appendix 2. COSO routinely assesses national procurement regulations and procedures, and prepares an NCB annex, which documents clarifications and adjustments necessary for the national systems to be used on ADB-financed contracts bid under NCB procedures. These annexes are available for certain countries in *COSO Online* and where available are to be attached to the procurement plan. The NCB

¹ The type or category of contracts envisaged for NCB or Shopping should be specified in the procurement plan, even if the contracts cannot be listed because of the nature of the project and timing of processing missions.

² Any COSO representative in the mission is to be involved. OGC should be consulted on specific legal issues.

annex should form the basis for discussions with the EA on NCB procedures during project preparation and should not be modified without prior consultation with COSO and OGC. Where an NCB annex is not available for a given country, COSO will assist with assessing proposed NCB procedures. Similarly, Shopping procedures should be reviewed during project processing to ensure they meet the requirements of ADB's *Procurement Guidelines*

F. Treatment of Foreign Bidders

9. Suppliers and contractors from all member countries are entitled to participate in local procurement and may not be denied participation due to nationality. Contractors and suppliers may apply for prequalification (where used) and to bid for contracts under NCB bidding procedures. ADB requires the borrowing DMC to permit such participation, but foreign bidders must adhere to local procedures acceptable to ADB, including using the local language and paying in local currency, if required by the bidding documents. Under local procurement procedures, the delivered cost of materials including import duties and other taxes may be used when comparing bids. ADB's domestic preference policy shall not be applied.

G. International Advertising

10. Procurement of NCB contracts is advertised in adb.org via posting of the Procurement Plan (PAI 3.01 paras 8 – 11).

H. Using Standard Bidding Documents for NCB

11. Borrowers are to be encouraged to use ADB-approved standard bidding documents for NCB, ideally based on the standard bidding documents for ICB. This will help ensure high quality and consistency in the documents and will hasten ADB's review. The documents should reflect local procurement requirements but must not contravene the basic principles underlying the *Procurement Guidelines*. If standard bidding documents acceptable to ADB are not yet available in borrowing DMCs, COSO may provide assistance to help develop them. Once prepared and approved, the use of standard bidding documents will be mandatory for all ADB-financed NCB contracts in the DMC (as for ADB-funded ICB contracts).

I. ADB Review of Procurement Documents

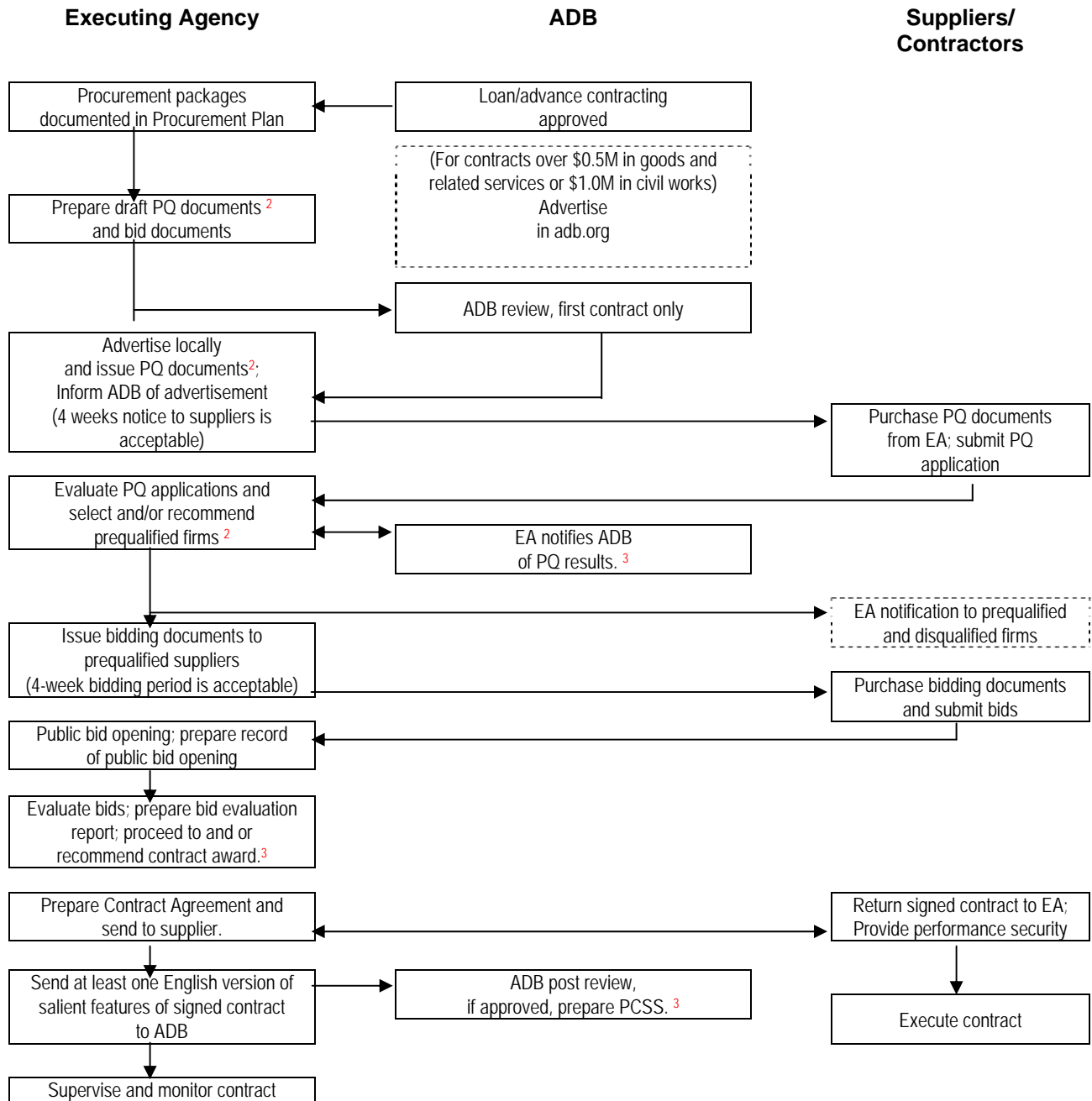
12. For each project, the first draft English language version of the procurement documents should be submitted for ADB review and approval regardless of the estimated contract amount. The documents will be reviewed by the sector division, COSO, and the Office of the General Counsel (OGC). OGC will review the special conditions of contract and will advise on specific legal issues, including covenants to be complied with in the financing agreement, in accordance with agreed review procedures (post and prior review). ADB-approved procurement documents should be used as a model for all procurement financed by ADB for the project, and need not be subjected to further review unless specified in the procurement plan, or required under special arrangements.

J. Approval of Contract Award

13. For NCB, ADB will review the bid evaluation report (BER) and award of contract on a post-review basis. The concerned sector division may, however, agree with the EA to conduct prior review of the BER and to give prior approval for contract award. This would depend on the borrower's procurement capacity and should be described in the procurement plan. The review arrangements will also be specified in the procurement plan. Similarly, for Shopping, ADB will normally review the award of contract on a post-review basis.

14. The EA must submit copies of the BER and signed contract in English to the concerned sector division or resident mission for post review as soon as possible following contract award (unless prior review is specified in the procurement plan). The EA should be advised that ADB reserves the right to refuse financing for the contract if it is found during post review that the procurement has not been conducted in accordance with the *Procurement Guidelines*, or other provisions specified in the financing agreement. Requirements for consideration of the procurement committee apply to local procurement (see with PAI 3.11).

Procurement under National Competitive Bidding¹



- ¹ While NCB procedures are not required to be identical with ADB's ICB procedures, they must reflect the underlying principles and not contravene ADB's *Procurement Guidelines*.
- ² Prequalification is discouraged for NCB. DMCs may have a register of suppliers. The processing mission should ensure that the registration system is acceptable to ADB (e.g., it reflects the underlying principles of ADB's *Procurement Guidelines*); and where acceptable, a PQ may not be required.
- ³ If the prequalification or procurement requires prior consideration of the procurement committee, in accordance with PAI 3.11, the EA must be advised not to notify prequalified firms or award contract prior to the committee's deliberations and subsequent ADB approval.

Evaluating NCB Procedures in the Developing Member Countries

While NCB procedures do not need to be identical with the ADB's ICB procedures, the basic objectives of the latter such as economy, efficiency, transparency, and equal and fair opportunity for all eligible bidders must be met. The following checklist helps evaluate the procedures.

A. Eligibility

All qualified local bidders are eligible. For foreign bidders see para. 8 in PAI 3.04 main text.

B. Advertising

NCB contracts estimated to cost \$500,000 or more for goods and related services and \$1,000,000 or more for civil works will be advertised in the Business Opportunities section of adb.org concurrently with the general procurement notice. Advertising in the local language in local web site or newspapers is acceptable.

C. Bidding Period

This could be shorter than for ICB; 4 weeks is acceptable.

D. Prequalification

Prequalification is discouraged for contracts bid following NCB. Where used, an individual prequalification exercise is acceptable for each contract as is the use of a registration system (or approved standing list) of contractors based on criteria such as experience, financial capacity, and technical capacity. However, foreign bidders from eligible member countries must be allowed to obtain such registration and to bid without unreasonable cost or additional requirements.

E. Bidding

Bids can be made in the local language, restricted to local banks for bid and performance security (where used), and limited to local currency for bidding and payment. Specifications are to be unambiguous; international standards are not required. A copy of the bidding documents must be made available in English to ADB for review.

The use of standard bidding documents is encouraged. Once ADB accepts the documents they must be used for all subsequent ADB-funded NCB procurement for the applicable project.

Public bid opening and recording of bids is mandatory.

Two-stage bidding procedures are acceptable for eliminating nonresponsive bidders before opening price proposals.

Bracketing and lottery systems are not acceptable to ADB.

The use of multiple-delivery places for bids and bid opening is unacceptable.

Bids should not be invited on the basis of a percentage premium or discount over the estimated cost.

The estimated contract value may be published³ but bids should not be rejected only on the basis of a comparison with the EA's estimate.

Extension of bid validity may be sought only under exceptional circumstances.

Factors, evaluation methodology, and evaluation criteria must be explicitly stated in bidding documents and applied consistently; and the contract award must be to the bidder who submitted the lowest evaluated substantially responsive bid.

Price negotiations with bidders before signing contracts is not acceptable, except when all bids received are substantially higher than the estimate and ADB gives prior approval to negotiate with the bidder who submitted the lowest evaluated substantially responsive bid for a price reduction, before resorting to rebidding.

F. Domestic Preference

ADB's domestic preference policy or any other domestic preference policies are not applicable under NCB. When foreign bidders participate, comparison will be on the delivered price including import duties and taxes.

G. Restrictions

Restrictions on the sources of transportation and insurance are acceptable.

H. Contract

Price adjustments for inflation, and settlement of disputes by local courts or local arbitration, are acceptable.

I. General

Staff should consult COSO on any unusual features and OGC on any specific legal issues.

³ Estimated total values for each package should be disclosed in the procurement plan.