

Project Administration Instructions

PAI 3.03
Revised August 2009
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INTERNATIONAL COMPETITIVE BIDDING

A. Introduction

1. International competitive bidding (ICB) is the most appropriate method of procurement under ADB financing in most cases. This provides an executing agency (EA) with a wide choice in selecting the best bid from competing suppliers and contractors. It gives prospective bidders from eligible source countries equal opportunity to bid on goods and related services or works that are being procured under ADB financing. The flow chart in Appendix 1 shows the main steps for procurement under ICB.

2. The EA must follow ADB's *Procurement Guidelines* and procedures in preparing prequalification, bidding, and contract documents; advertising bid invitations; and accepting, opening, and evaluating bids. These requirements are discussed in subsequent PAIs. Draft prequalification and bidding documents, bid evaluation reports, and proposed awards of contract are subject to post or prior review and approval by ADB as explained in PAI 3.01.

B. Price Thresholds for International Competitive Bidding

3. ICB procedures are normally employed for contracts with an estimated value that exceeds the threshold values set for national competitive bidding (NCB). The threshold values are normally stated in the procurement plan. Where thresholds are not specified in the procurement plan, refer to values specified in PAI 3.04 or consult with the Central Operations Services Office (COSO).

C. Type and Size of Contracts

4. Whenever possible, procurement should be such that each bid package or contract is large enough to attract ICB. The size and scope of individual contracts will depend on the size, nature, and location of the project. The objective is to divide the requirements of the project into a manageable number of appropriate contract packages that will produce the maximum competitive response from bidders. To do this, the nature and value of goods being grouped into each contract package, and the conditions of the potential market of supply, must be understood. Contract packaging is concluded during project processing by agreement between the EA and ADB. The contract packages and methods of procurement are documented in the procurement plan and reported in the report and recommendation of the President (RRP).

5. Each contract includes only goods of the same or related specialty. For projects requiring both civil works and supply and installation of equipment, separate contracts are normally awarded for these items. When a large, complex contract is to be undertaken, a design, supply, install (turnkey) contract should be considered. Sometimes, however, a project may comprise several components of similar works, where the works are located in areas far from each other. An example of this would be the construction of irrigation canals in different parts of the country. In this case, although the nature of the work is similar, the works can be awarded as separate contracts because of the distance between the construction sites.

6. Contract size must also be considered. International suppliers and contractors are unlikely to be interested in competing for small contracts, so where feasible, each bid package or contract is to be large enough to attract international competition. NCB may be considered in the circumstances set out in PAI 3.04.

7. For similar but separate construction works or items of equipment, bids are to be invited under alternative contract options so contractors or suppliers (both small and large) can bid for individual sections of the contract or for a group of similar goods. Bids and combinations of bids are evaluated simultaneously to determine the least cost combination of bids. The method of evaluation and award of contract must be clearly stated in the bidding documents.

D. Design, Supply, Install (Turnkey) Contracts

8. Design, supply, install (turnkey) contracts are those under which the engineering, design, supply of equipment, and the construction and commencement of operation of a complete plant are provided through a single contract.

E. Bidding Procedures

9. ADB has adopted four bidding procedures from which the EA may select to suit the procurement: single-stage, one-envelope; single-stage, two-envelope; two-stage, two-envelope; and two-stage biddings. Choosing the appropriate bidding procedure will depend on the complexity of the contract and the circumstances surrounding procurement.

1. Single-Stage, One-Envelope Bidding Procedure

10. For this procedure, bidders submit the price proposal and the technical proposal in one envelope. These envelopes are opened in public on the date and at the time designated in the bidding documents. The bids are evaluated, and following ADB approval (where prior review and approval is applied), the contract is awarded to the bidder who submitted the lowest evaluated substantially responsive bid.

2. Single-Stage, Two-Envelope Bidding Procedure

11. For this procedure, bidders submit two sealed envelopes simultaneously, one containing the technical proposal and the other the price proposal.

- Initially, only the technical proposals are opened on the date and at the time advised in the bidding documents. The price proposals remain sealed and are held in custody by the EA. The technical proposals are evaluated by the EA and cannot be amended or changed. The objective is to allow the EA to evaluate the technical proposals without referring to price. Bids that do not conform to the specified requirements may be rejected, with ADB's approval in the case of prior review, as deficient bids.
- Following ADB's approval of the technical evaluation (where prior review and approval is applied), and on the date and at the time advised by the EA, the price proposals of the technically responsive bidders are opened in public. The price proposals of the

technically responsive bidders are evaluated, and following approval by ADB (where prior review and approval is applied), the contract is awarded to the bidder who submitted the lowest evaluated substantially responsive bid.

3. Two-Stage, Two-Envelope Bidding Procedure

12. For this procedure, bidders submit two sealed envelopes simultaneously, one containing the technical proposal and the other the price proposal

- Initially, only the technical proposals are opened on the date and at the time advised in the bidding documents. The price proposals remain sealed and are held in custody by the EA. The technical proposals are evaluated, and if the EA requires any amendments or changes they are discussed with the bidders, and all bidders are advised in writing by the EA of the changes required. The objective is to ensure that all technical proposals conform to the same acceptable technical standard and meet the EA's technical requirements. Bids of bidders who are unable or not prepared to amend their technical bids to conform to the final technical standard required by the EA may be rejected, with ADB approval in the case of prior review, as deficient bids
- Following ADB's approval of the evaluation of technical proposals (where prior review and approval is applied), the bidders who meet the qualifying criteria are invited to submit revised technical proposals and supplementary price proposals. The supplementary price proposals must only contain changes in price resulting from changes in the technical proposals. Supplementary price proposals that contain changes other than those discussed during technical evaluation may result in rejection of the bids.
- The original and supplementary price proposals, and the revised technical proposals, are opened in public on the date and at the time advised by the EA. They are evaluated, and following ADB approval (where prior review and approval is applied), the contract is awarded to the bidder who submitted the lowest evaluated substantially responsive bid.

4. Two-Stage Bidding Procedure

13. For this procedure, bidders first submit their technical proposals, in accordance with the specifications, but without prices:

- The technical proposals are opened on the date and at the time advised in the bidding documents. The EA evaluates the technical proposals and discusses them with the bidders. Any deficiencies, extraneous provisions, and unsatisfactory technical features are discussed with the bidders, and all bidders are advised in writing by the EA of the changes required. The bidders who meet the qualification criteria are invited to revise or adjust their technical proposals to meet the EA's technical requirements. The objective is to ensure that all technical proposals conform to the same acceptable technical standard and meet the EA's technical requirements. Bids of bidders who are unable or not prepared to amend their technical bids to conform to the technical standard required by the EA may be rejected, with ADB approval in the case of prior review, as deficient bids.

- After ADB approves the evaluation of technical proposals (where prior review and approval is applied), the second stage is to invite bidders who meet the qualification criteria to submit revised technical proposals and price proposals that are opened in public on a date and time designated by the EA. In setting the date, the EA is to allow time for bidders to prepare revised technical proposals and price proposals. The revised technical proposals and price proposals are evaluated and, following ADB's approval (where prior review and approval is applied), the contract is awarded to the lowest evaluated substantially responsive bidder.

5. Overview

- 14.
- The single-stage, one envelope bidding procedure is the main bidding procedure and is used in most procurement financed by ADB.
 - The single-stage, two-envelope bidding procedure allows bids to be evaluated initially on purely technical and commercial grounds without reference to price.
 - The two-stage, two-envelope bidding procedure is used for large and complex contracts and for procurement where alternative technical proposals are possible, such as for certain types of machinery, equipment, or manufacturing plant.
 - The two-stage bidding procedure may be adopted for large and complex contracts where technically unequal proposals are likely to be encountered or where the EA is aware of its options in the market, but for a given set of performance requirements, two or more equally acceptable technical solutions are available to the EA.

F. Invitation, Submission, and Opening of Bids

1. Introduction

15. The EA should be informed of the following procedures for inviting, submitting, and opening bids.

2. Invitation for Bids and Bidding Documents

16. Three copies of the invitation for bids and all related bidding documents for ICB (including instructions to bidders, conditions of contract, specifications, and bid forms) must be submitted to ADB for approval. Where prior review is used, the documents must reach ADB at least 21 days prior to the proposed date for issuing bidding documents to allow sufficient time for review and approval, and to allow time for a specific notice to be published on *adb.org*. The scope of ADB review will include review of:

- the invitation for bids—to ensure it contains complete and necessary information and is consistent with the information contained in the bid data sheet;

- the instructions to bidders—to ensure that it is identical to the relevant provisions of the relevant User's Guide;¹
- the bid data sheet—to ensure that it contains complete and necessary information and is consistent with the RRP and the financing agreement for the project, and the *Procurement Guidelines* and Chapter 3 of the PAI;
- the evaluation and qualification criteria—to ensure that the parameters adopted for each criterion are adequate and reasonable and otherwise conform to parameters recommended by ADB in the *Procurement Guidelines* and the User's Guide;
- the bidding forms—to ensure that they conform to the standard forms in the User's Guide and that any additional statements or deviations comply with the *Procurement Guidelines* and Chapter 3 of the PAI and the requirements in the bid data sheet and the evaluation and qualification criteria;
- the list of eligible countries—to ensure that the list is updated and complete;
- the schedule of supply or employers requirements, as relevant—to ensure that it contains complete and necessary information to allow bidders to efficiently and accurately prepare bids that are realistic and competitive;
- the general conditions of contract—to ensure that it is identical to the relevant provisions of the relevant User's Guide;
- the special conditions of contract—to ensure that all information that the general conditions of contract require to be included have been included and that any additional provisions comply with the *Procurement Guidelines* and Chapter 3 of the PAI;
- any specific conditions to the award of the contract or covenants required to be complied with under the relevant financing agreement for the project—to ensure they are complied with; and
- the procurement plan.

Where post review is used, 5 working days should be given to allow posting of invitations. Irrespective of whether post or prior review is applied, review by ADB of draft bidding documents will be conducted by the concerned sector division. Following its review, the administering office will have the documents reviewed by 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 required to be

¹ The relevant User Guides are as follows: Guide on Bid Evaluation, ADB, August 2005; Procurement of Plant-Design, Supply, Install, ADB, September 2005; Procurement of Goods, ADB, November 2004; Prequalification of Bidders (Standard Procurement Document), ADB, September 2005; Procurement of Works (Small Contracts), ADB, September 2005; or Procurement of Works, September 2005.

complied with under the relevant financing agreement. EAs must use ADB's appropriate standard bidding documents (SBDs). Modifying or departing from the SBDs for project-specific conditions must be

- minimal and consistent with the *Procurement Guidelines*;
- subject to ADB approval; and
- introduced only through bid data sheets, and the special conditions of contract or conditions of particular application.

Where ADB has not issued relevant SBDs, the EA must use similar internationally recognized bidding documents acceptable to ADB.

3. Issuing the Invitation for Bids

17. As soon as the invitation for bids is advertised in accordance with the *Procurement Guidelines*, ADB is to be given a report on the advertising. Such a report must include

- the name of the web site or newspaper in which the invitation for bid was advertised,
- the date of advertising, and
- a copy of the published advertisement.

18. For ICB procurement, invitations for bids require a minimum bidding periods of 6 weeks. This period is counted from the publication date of the relevant invitation in the *Business Opportunities* section of adb.org, or locally in English (locally known website or local newspaper), or the date when documents are available for issue, whichever is the latest, up to the date for submission of bids.

19. The date, hour, and place for the latest delivery of the bids are to be clearly stipulated in the invitation. The manner for submitting bids must also be specified, and besides allowing for submission in person, delivery of bids by registered mail or electronically will similarly be acceptable and stated in the instructions to bidders.

4. Opening of Bids

20. Bids delivered after the deadline for submission are to be returned unopened.

21. Bids must be opened in public on the date and at the time and place stipulated in the documents. The name of each bidder and, the total amount of its bid, discounts, bid security (if required), and other important information are to be read aloud and recorded. All the aforementioned information is to be included in the record of the opening of bids, together with the names of the representatives present.

G. Examination and Evaluation of Bids and Award of Contracts

1. Examination and Evaluation of Bids

22. The examination and evaluation of bids must be consistent with the method, terms, and conditions set forth in the bid documents and follow the procedures set out in the *Procurement Guidelines*.

2. Conditions of Contract

23. General conditions of contract are provided in the Standard Bidding Documents (SBD). Terms and conditions specific to the bidding are specified in the bidding documents. The *Procurement Guidelines* include provisions related to currency of payment, terms and method of payment, price adjustment, performance security, liquidated damages, language, transportation and insurance, and dispute resolution, force majeure, applicable law and settlement of disputes. These provisions should be reviewed when developing specific conditions of contract. The following guidance (which is not intended to be exhaustive) is also provided:

- Performance security is required for works contracts and, in some circumstances, for supply of goods. Requirements for performance security and are to be described in the bidding documents. Its form shall be either cash, or a bank guarantee. It must be issued by a reputable bank or financial institution. If the issuer is located outside the borrower's country, it must have a correspondent in the borrower's country to insure enforceability. Performance security would normally be about 10% of the contract value.
- Liquidated damages are to be specified in the bidding documents. Normally, liquidated damages will be limited to about 10% of the contract value.
- Price adjustment provisions must be provided in contracts with delivery or completion periods that exceed 18 months. They are not required for simple supply contracts with short delivery periods. The method and formula for price adjustment is specified by the EA and provided in the bidding documents. The formula indices will be given by the EA and the bidder, depending on the source (for example, some indices might reflect costs in the bidder's home country, in which case they would be specified by the bidder as provided for in the bidding documents).

3. Proposal for Award

24. Where prior review is applied, as soon as the bids are evaluated and the EA has determined the lowest evaluated bid, the evaluation results and the proposal for award of contract are to be submitted to ADB for review and approval. The recommendation must be approved by ADB before a contract is awarded or a letter of intent is issued. For this, promptly after the bid evaluation but at least 30 days prior to expiration of bid validity, ADB must be given three copies of

- an account of the public opening of the bids (together with the minutes of bid opening),
- a summary and detailed evaluation of the bids,
- the proposal for award (together with the consultants' recommendations, where applicable),
- a draft contract if such a draft differs from the draft previously approved by ADB, and
- an appropriate certificate of eligibility for the proposed contract.

25. For single-stage (two-envelope), two-stage (two-envelope), and two-stage bidding procedures, ADB's approval of the evaluation results of each envelope are to be obtained before the results are communicated to the bidders and prior to opening the second envelope or proceeding to the second stage.

26. Under post review procedures, the EA submits the documentation described in para. 24 above, for review, but continues the procurement process without waiting for the outcome of the review. Documents should be submitted for post review as soon as they are completed and issued, but no later than one month after their issuance. ADB should ideally complete its post review within one month—if it is not done within 6 months, it is assumed ADB has no objection. If, through its post review, the ADB disapproves of an action by a borrower, it can declare misprocurement, even though a contract may have been executed. Depending on the circumstances, the financing for the contract may be cancelled. Borrowers are informed of this risk when requesting post review.

4. Award of Contract

27. Where prior review is used, if the contract proposed to be executed differs substantially from the draft approved by ADB or if any substantial amendment to the contract is proposed, the proposed changes are to be submitted to ADB for prior approval. Promptly after each contract is awarded, ADB is to be given three copies of the contract as executed. Where post review is used, ADB will check the contract as executed for substantive amendments to the recommendation of the evaluation and award process.

28. Modifications to contracts, awarded under a post review arrangement, will require ADB prior approval in some cases. Changes orders that increase the original contract amount by more than 15% in aggregate require ADB prior approval. Material extensions in time, and modifications or waivers of conditions of contract similarly require prior approval of ADB. In all cases, contract amendments must be submitted to ADB for its records.

H. Variations to International Competitive Bidding

29. There are circumstances where international bidding is followed, but normal ICB procedures can be varied. The *Procurement Guidelines* prescribe modified procedures in the following circumstances:

1. Limited International Bidding

30. Limited International Bidding (LIB) is employed where there is only a limited number of potential bidders, or other exceptional circumstances exist that justify a departure from the full open tendering process provided for under ICB procedures (possibly including where the estimated contract amount is not large enough to interest foreign suppliers and contractors through the ICB process). The use of SBD is not required, although using SBD as a model to develop simplified documents is recommended (invitation to bid, instructions to bidders, and conditions of contract from the ICB SBD, for example, can be used with little modification). Domestic preference cannot be applied under LIB procedures. A flow chart showing the main steps for procurement under LIB is provided in Appendix 2. For LIB procurement, the EA

- issues written invitations to bid (providing clear technical specifications for the required goods and related services or works, and the terms and conditions of purchase) to all bidders judged able to provide the goods, preferably a minimum of three bidders, with a minimum bidding period of 3 weeks;
- where it is thought additional suppliers might be interested in the procurement, advertises

- the notice inviting bids in English (on web site, in local newspaper, through notice to embassies, etc) with a minimum bidding period of 4 weeks;
- adopts the procedures for public bid opening; and
- evaluates the bids in the same way as for ICB.

31. Unless otherwise indicated in the procurement plan and financing agreement, ADB's review will generally occur after the award of the contract (but before authorizing disbursement) when the EA sends

- the withdrawal application;
- copies of the signed contract;
- the bidding documents;
- details of bid opening procedures, including minutes of bid opening;
- the bid evaluation report;
- the results of the evaluation; and
- a certificate of eligibility of the contract where required by ADB.

These steps ensure fairness and transparency. ADB reserves the right to refuse to finance the contract in case of misprocurement. ADB, therefore, discourages the system of prior award of contract by the EA and after the fact approval by ADB unless the EA has sufficient funds to finance the contract if ADB declares misprocurement.

32. Normally, LIB is permitted for contracts estimated at up to a maximum value of \$1,000,000. In special cases, project processing missions may recommend higher ceilings for LIB, appropriate to the competence and experience of the EA, as well as the size and nature of the goods and related services or works to be procured. Justification for proposing higher ceilings of LIB rather than using ICB procedures are to be included in the issues identified for management review meeting (MRM) and, if approved by the MRM, in the RRP under the procurement section. For rules related to consideration of LIB contracts by the procurement committee, see PAI 3.11.

33. LIB is the most appropriate method of procurement where the needed items are available only from a limited number of suppliers, or early delivery is of paramount importance for certain works under the project. Bidders that will satisfy this requirement probably has an uncommon technical specialty, skill or product, and best results will be obtained by ensuring bids are not restricted to local suppliers (although local representatives of foreign suppliers may be used). Contract packages proposed for LIB, the ceiling amount, and provisions for prior or post review will be detailed in the procurement plan. The requirements for adopting LIB (regardless of the amount involved) should be identified during project processing, fully justified and authorized by the MRM.

2. Repeat Order

34. Additional items may be procured through repeat order bidding when more of the same items procured earlier through ICB are urgently needed, loan funds are available, and no advantage can be gained through competitive bidding. Under this procedure, bids may be invited only from those who submitted responsive bids for the earlier advertisement, or if many bidders originally responded, from the five original lowest responsive bidders, with a bidding period of 30 days.

35. In exceptional cases, when few bidders originally responded and the lowest evaluated bid was superior (in price, reliability of equipment, availability of spare parts and after-sales service, and delivery period) the additional items required may be procured by a repeat order with that bidder. This is if

- the repeat order follows shortly after the earlier order,
- no better offer is likely, and
- the unit price for the repeat order is not more than the original unit price.

36. The repeat order is to follow within 18 months of the earlier order, and the additional quantities are not to exceed 30 percent of the original quantities. A repeat order may also be made when the EA, with ADB's agreement, provides an option to order additional items in the original contract documents.

3. Procurement under Program Lending

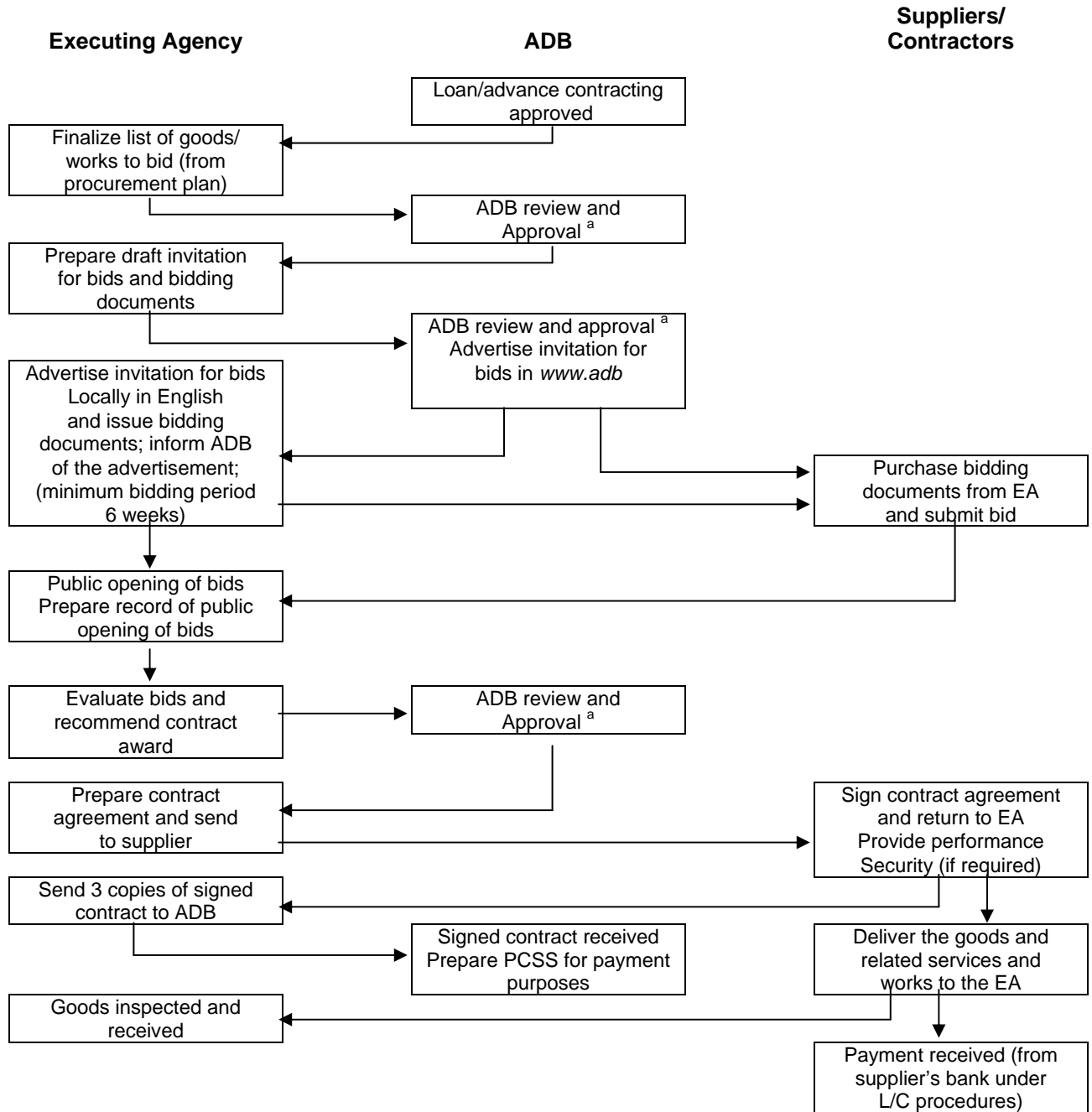
37. The main objectives of a program loan² are to support policy and institutional reforms of developing member countries (DMCs) in order to enhance economic efficiency in a sector. Program loan funds provide balance-of-payment support for economywide (or sector-specific) imports and generate counterpart funds for a DMC's budget. In view of these objectives, ICB procedures are not relevant to procurement under program loans. Procurement under program loans will be based on normal commercial practice for the private sector and government procurement procedures for the public sector. As program loans do not involve any specific procurement, ADB ensures that standard public and private sector procurement procedures used in the DMC concerned are adequate from the point of view of competition and efficiency.

4. Procurement of Commodities

38. See PAI 3.10

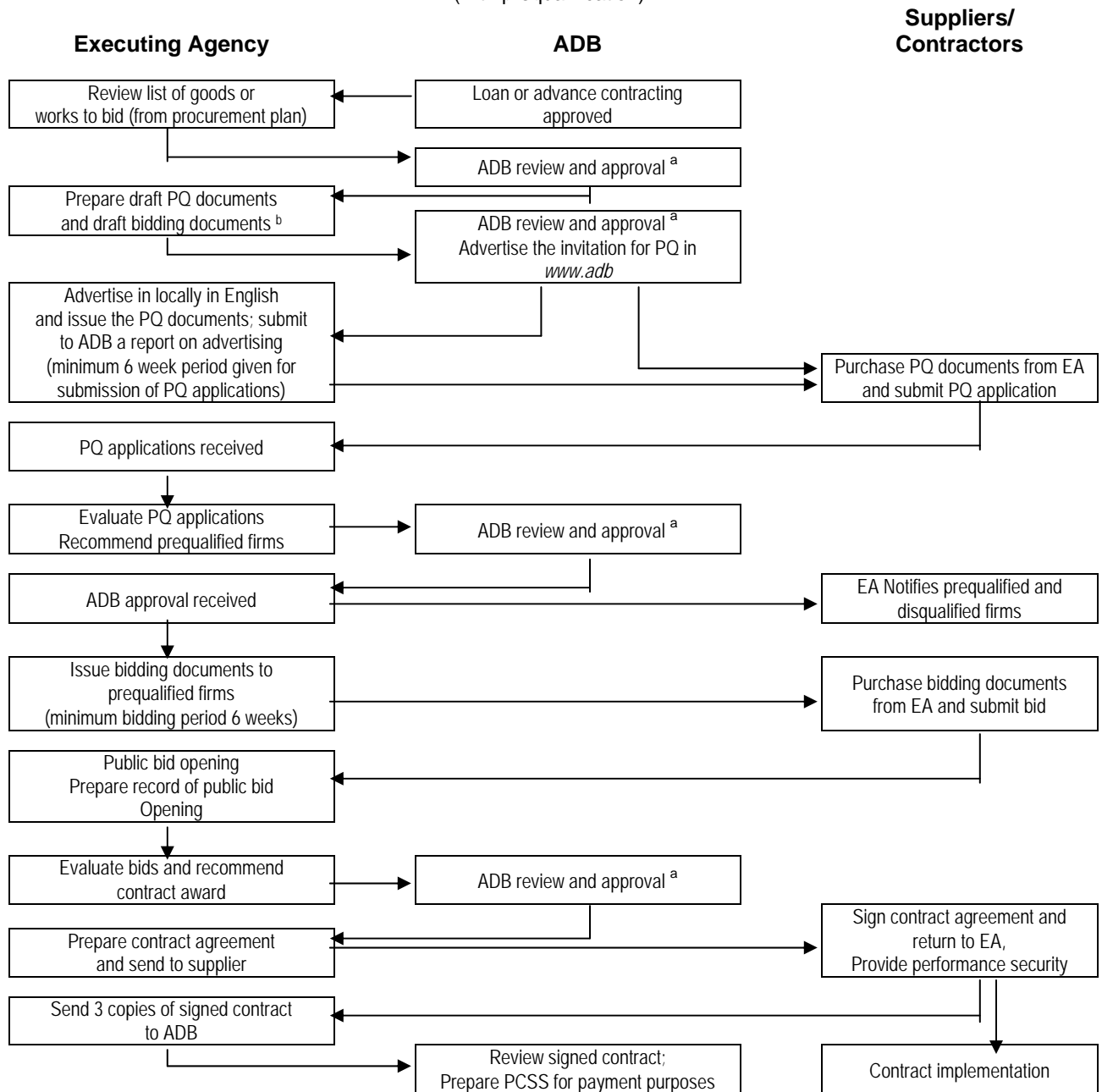
² R50-98: *Simplification of Disbursement Procedures and Related Requirements for Program Loans*, 23 March.

Procurement under International Competitive Bidding
 (with no prequalification)



^a Approval not required under post review

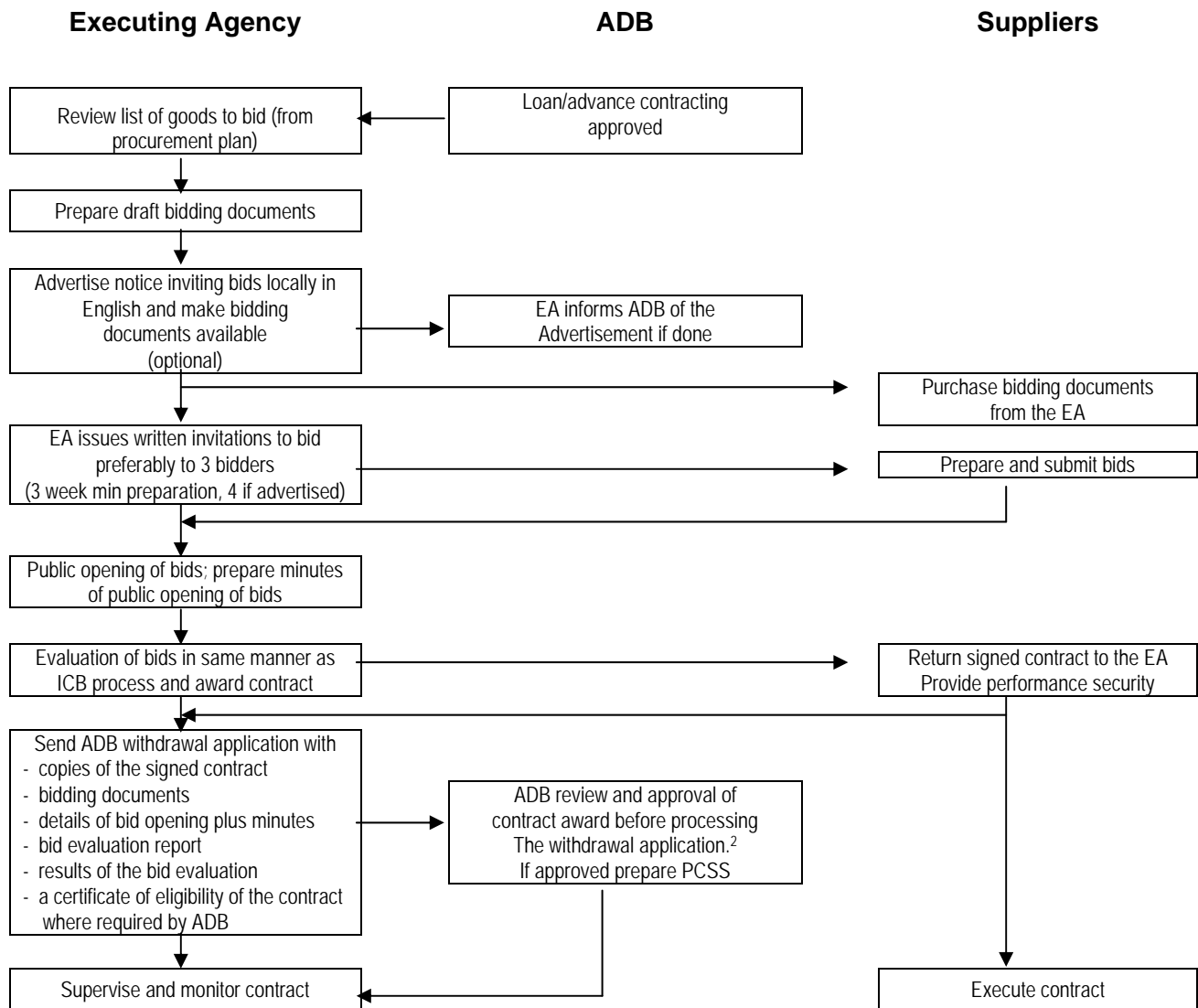
Procurement under International Competitive Bidding
 (with prequalification)



^a Approval not required under post review

^b The draft bidding documents can be prepared at a later stage provided that ADB approval is obtained before issuance of bidding documents to prequalified firms.

Procurement under Limited International Bidding¹



¹ LIB is primarily used for procurement where there are a limited number of suppliers and full ICB is not practical, in accordance with criteria in ADB's *Procurement Guidelines*.

² ADB prior approval is strongly recommended in the case of an inexperienced EA, or where the EA cannot demonstrate sufficient funds to finance the contract, in case of ADB's refusal to approve the contract award.