

Project Administration Instructions

PAI 3.01
Revised in June 2018
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ADB PROCUREMENT SYSTEM

A. Introduction

1. The ADB procurement system is designed to be competitive, fair, and transparent, governed by clear and objective rules and procedures based on internationally accepted principles and policies. It is administered by staff of executing agencies and ADB. The objective is to deliver contracts with the best possible prices or total cost of ownership for goods, construction, and other services in the right quantity and quality, at the right time, and in the right place for the direct benefit or use of governments and their constituents.

2. Procedures applicable to procurement under ADB-financed projects are derived from principles in the Agreement Establishing the Asian Development Bank (Charter), from experiences of ADB and other multilateral and bilateral development financing institutions, and from sound commercial practice. These principles and procedures are contained in the ADB Procurement Guidelines (guidelines). Adherence to the guidelines is normally required¹ under the financing agreement entered into between a borrower and ADB. Staff are advised to read the guidelines thoroughly before referring to the Project Administration Instructions (PAIs).

3. Staff may refer to this PAI to understand the ADB procurement system including: (a) the responsibilities of ADB and the borrower's executing agencies; (b) how to apply the principles and procedures set out in the guidelines including country eligibility requirements; and (c) how the ADB Anticorruption Policy applies to procurement in ADB-financed projects.

B. Responsibilities

4. The responsibility for implementing a project and consequently the award and administration of contracts under a project rest with the borrower or grant recipient.² In some countries or circumstances, borrowers may delegate the performance of these functions to an agent as agreed with ADB in the financing agreement, but borrowers remain ultimately responsible for all procurement decisions.

5. ADB takes a procurement oversight role to ensure that the proceeds of its financing are used for the purposes intended with due attention to considerations of economy and efficiency, fairness, and transparency, all in accordance with the guidelines and the financing agreement. Oversight review requirements are further discussed in PAIs 3.02, 3.03, 3.05, and 3.10.

C. Documents Governing ADB Procurement

6. The following documents govern procurement:

- (1) the Charter particularly Article 14;
- (2) financing agreement/(s) between the borrower and ADB in respect of a project in which one schedule (generally Schedule 4) deals with procurement;

¹ Generally, the ADB Procurement Guidelines are applicable to investment projects financed by ADB, and the procedures discussed in these PAIs likewise generally apply to these investment projects. For results-based lending for programs, however, only the principles apply. See also para. 7.

² For grants, "grant recipient" is the corresponding term for "borrower." Throughout the rest of these PAIs, the term "borrower" includes "grant recipient."

- (3) ADB Procurement Guidelines;
- (4) ADB Operations Manual, the staff reference compilation of: (a) ADB policies which are short, focused statements that follow from the Charter, the Regulations of the Asian Development Fund (ADF), the Regulations of Ordinary and Special Operations, and operational policies adopted by the Board of Directors; and (b) operational procedures that spell out procedural requirements and guidance on the implementation of the policies;
- (5) PAIs providing ADB recommended internal procedures for administering loan, grant, and technical assistance projects;
- (6) standard bidding documents (SBDs) that describe the bidding process and define the rights and obligations of the borrower and the providers of goods and works for the project; and
- (7) user's guides,³ other guides,⁴ and handbooks⁵ that provide guidance on ADB recommended practices and procedures to those carrying out ADB-financed projects.

For staff administering projects, all the above documents are relevant; staff need to be familiar with all of them. Executing agencies need to be familiar with the guidelines and should be trained to use the SBDs and user guides.

7. Based on the operating principles of the Charter, the guidelines propound the following five basic principles to guide procurement for ADB-financed projects:

- (i) Restrictions to ADB member country procurement will apply, except where the Board of Directors determines otherwise⁶;
- (ii) Economy and efficiency in project implementation, including procuring goods and works;
- (iii) Adequate and equal opportunity and information for ADB member countries to participate in supplying goods and works⁷;
- (iv) Encouraging the development of domestic contracting and manufacturing industries in borrowing countries; and
- (v) Transparency in procurement to achieve economy and efficiency and to combat fraud and corruption

8. The principles and procedures described in the guidelines apply to all contracts for goods and works financed in whole or in part by ADB.

D. Eligible Sources of Goods and Works

Member Country Eligibility Policy and Requirements

9. For any ADB-financed procurement transaction, Article 14 (ix) of the Charter gives two requirements for determining the "country" eligibility of participating suppliers/contractors, goods, and services:

³ Each SBD has a user's guide. See PAI 3.03. para. 25.

⁴ For example, the Guide on Bid Evaluation which is discussed in PAI 3.09.

⁵ For example, the Handbook on Problems in Procurement for Projects Financed by the Asian Development Bank

⁶ For example, a blanket waiver of such restrictions applies in certain cofinanced ADF operations. See Operations Manual J3 (Procurement) for information on ADB member country procurement eligibility restrictions which may vary according to the funding source. See Operations Manual D2 for information on the blanket waiver. See para. 18 of this PAI.

⁷ References to "goods and works" include related services (other than consultant services)

- procurement is in member countries of ADB except in any case in which the Board of Directors determines otherwise⁶; and
- goods and services are produced in and provided from ADB member countries except in any case in which the Board of Directors determines otherwise⁶.

10. Procurement in member countries means the following:

- the supplier/contractor⁸ must be a national of a member country;
- the place of contract must be in a member country and performance by the supplier must occur in member countries; and
- the purchase price must be incurred in members' currencies.

11. The supplier/contractor may be a person, corporation, or group of persons. Generally, nationality is determined by referring to the law of the member country in which a supplier/contractor claims nationality.

- (i) For a natural person, nationality can usually be established by referring to the person's passport or any other legal test of nationality acceptable to ADB.
- (ii) For a corporation,⁹ generally only the place of its incorporation needs to be considered. Incorporation means establishing a corporation and is not to be confused with "registration," which is sometimes required to permit a foreign company to conduct business.¹⁰ The nationality of the owners or shareholders of the corporation is irrelevant.¹¹
- (iii) To be eligible, partnerships that are not incorporated and have individual members must be registered in a member country and have a substantial majority (not less than 60%) ownership by nationals of member countries.
- (iv) To be eligible, a joint venture that is not incorporated¹² and does not have a legal personality independent of its members must be registered in a member country and consist of nationals (individuals, partnerships, or corporations) of member countries.

12. The second requirement of eligibility is that the goods and related services or works to be procured must be produced in and provided from member countries. This requirement is discussed in three typical contexts of procurement:

- goods and related services;
- works; and
- consulting services.

13. To be eligible, goods must have been mined, grown, or produced in a member country. That is, the goods should have come into existence in a member country in the form in which they are to be purchased. Goods are produced or deemed to come into existence when through manufacturing, processing, or

⁸ A supplier is a person, corporation, or group of persons contractually bound to supply the goods and related services or works purchased but is not necessarily a manufacturer and may appoint an agent on its behalf.

⁹ Corporation refers to an entity having a legal personality of its own, independent of its members. In some countries, corporation describes a company.

¹⁰ A company incorporated in Brazil may be registered in the Philippines to enable it to do business there, but it would not be considered a national of the Philippines for the purposes of determining eligibility. A few member countries with a civil law background may prescribe that the location of the center of administration rather than incorporation determines the nationality of a corporation. France, Netherlands, and Spain among others have civil law systems, but not all countries believe that the central administration's location determines nationality.

¹¹ For example, a corporation incorporated in the United States would be an eligible supplier even though it is a wholly owned subsidiary of a Mexican company.

¹² It is not necessary to incorporate a joint venture in order to be eligible to participate in bidding. A group of firms with intent to form a joint venture may participate subject to certain requirements.

substantial and major assembling of components, another commercially recognized product results that is substantially different from its components.¹³

14. The contractor must be eligible for works contracts in accordance with para. 11. Works contracts include civil works, plant construction, and turnkey contracts. Labor, equipment, and materials for the works under the contract must be supplied from member countries. Sometimes the contractor is required to provide equipment and materials through subcontractors. These subcontractors must also separately meet the eligibility requirements.

15. The requirement of "production in member countries" for consulting services is satisfied if the services are supplied from member countries as follows.

- The services of an individual consultant are deemed supplied from the member country of which the consultant is a national.
- The services of a consulting firm generally consist of work at the home office of the firm and of fieldwork by a team of individuals assembled by the firm. The home office is to be in a member country under the nationality requirements (para. 11). Nationals of member countries provide the services. Where the consultant subcontracts out portions of the services or is required under the contract to purchase certain items of equipment, such subcontracts or equipment must also separately meet eligibility requirements.

16. If in doubt, staff should consult the Procurement, Portfolio and Financial Management Department (PPFD). Thereafter, staff may consult with the Office of the General Counsel (OGC) on any specific legal issues(s) relating to eligibility, including issues regarding nationality.

17. Additional information regarding eligibility of bidders and subcontractors to participate in a specific bidding exercise for ADB-financed contracts is found in paras. 23-24 of PAI 3.09.

ADB Board Waiver of Member Country Eligibility

18. The guidelines authorize the Board to waive member country restrictions. In March 2013, the Board approved a blanket waiver of the member country procurement eligibility restrictions applicable to operations financed by the ADF and to operations financed from ADB-administered cofinancing resources in cases where: (i) ADB administers cofinancing resources for ADF-financed operations; or (ii) ADF resources and a cofinancier's resources are used to jointly finance individual procurement packages. For details, staff should refer to the [Q&A Blanket Waiver](#).

E. Economy and Efficiency through International Competitive Bidding

19. If called upon to discuss the merits of international competitive bidding (ICB), staff shall point to the mandate of Article 14 (xi) of the Charter to give due attention to economy and efficiency. This is achieved principally through open competition, in most cases by properly applying ICB procedures as described in the guidelines. ICB also promotes fair and equal opportunity for all member countries through advertising and appropriate bid packaging and special attention to specific requirements of particular projects.

20. The guidelines provide that ICB be applied to a specific ADB-financed procurement using ADB-issued SBDs that prescribe procedures that apply the procurement principles towards economy and efficiency and emphasize adequate information, transparency, and avoidance of fraud and corruption. The

¹³ For example, where a computer is assembled or manufactured needs to be an eligible source, and not the source of the computer's components.

procedures include the application of preferences for domestically manufactured goods and domestic contractors.

21. When ICB is not appropriate, other methods of procurement may be used as warranted under the circumstances described in the guidelines. PAIs 3.04 and 3.06 discuss other procurement methods that are acceptable alternatives to ICB under certain circumstances, while PAI 3.07 covers certain arrangements that complement any of the five main procurement methods discussed in PAIs 3.03 to 3.06 and that are applicable to special circumstances, e.g. the use of force account, the use of agents or performance-based contracts, and variants of the procurement methods applicable to other project arrangements (using agents or specialized agencies, public-private partnerships, and loans (or grants) to financial intermediaries).

F. Fraud and Corruption

22. Staff should emphasize to borrowers that economy and efficiency are also promoted by using procedures and bidding documents that are easy to understand and provide full, clear, and timely disclosures of relevant information. Transaction transparency means access to information concerning procurement that would enable the detection of fraud or manipulation.

23. Fully aware that procurement is specifically at risk of fraud and corruption, the ADB Anticorruption Policy requires borrowers (as defined in footnote 3 of the guidelines), as well as bidders, suppliers, and contractors under ADB-financed contracts, to observe the highest standard of ethics during the procurement and execution of such contracts. The SBDs issued by ADB clearly define what constitutes prohibited practices under the policy and what actions may be implemented when such practices have been manifested in any ADB-financed procurement. Such actions include the declaration of misprocurement when procurement is not carried out according to the financing agreement and the guidelines.

24. Staff shall keep in mind that any allegation involving fraud and corruption or any red flag manifesting at any stage of procurement should be brought to the attention of the Office of Anticorruption and Integrity (OAI).

G. ADB Review: Prior and Post Review

25. ADB reviews a borrower's procurement procedures, bidding documents, bid evaluations and award recommendations and contracts to ensure that the procurement process is carried out in accordance with agreed procedures. The extent to which the review procedures shall be applied in a specific project are specified in the procurement plan. These procedures, including the reviewing parties and decision authorities applied to different procurement methods and contract amounts, are discussed in detail in PAIs 3.02, 3.03, 3.05, and 3.10.

H. Misprocurement

26. The grounds for declaring misprocurement are: (i) if procurement is not carried out in accordance with the ADB Procurement Guidelines or the relevant financing agreement; (ii) if the no objection for award of contract was made on the basis of incomplete, inaccurate or misleading information; and (iii) if the terms and conditions of the contract had been modified without ADB's approval. Normally, the portion of the financing allocated to the misprocured contract is cancelled. The decision as to whether or not to cancel financing is based on the circumstances including such factors as the parties involved, the intent, and whether or not remedies are possible. Simple mistakes or technicalities that do not substantively affect procurement do not constitute misprocurement. For example, a failure to apply the correct period of

advertising, if determined to be an oversight, may be permitted if it is found that the advertising met its intended purpose of notifying potential bidders and ensuring competition.

27. In some instances, rebidding is a preferred solution to cancelling the financing for a misprocured contract. This would be done when noncompliance with agreed procedures cannot be remedied but when such noncompliance is an oversight or not the fault of the executing agency. For example, if a contract was not advertised on adb.org, and it was due to circumstances beyond the control of the executing agency (perhaps it was the fault of the advertiser), then rebidding might be the best solution. An alternative would be the reallocation of the financing amount for the misprocured contract to another contract under the project. Decisions on rebidding or reallocating the funds for a misprocured contract would similarly be based on intent, the seriousness of noncompliance, and whether rebidding or reallocating is a suitable remedy for any problems caused.

28. When post review procedures are used, misprocurement may be declared if it is found that the procurement was not carried out in accordance with agreed procedures. Rebidding would be unlikely because the review would be conducted after execution of the contract. In this case, the recovery of payments becomes a key concern and should be considered in the decision to declare misprocurement. Also as indicated above, the decision on cancelling financing needs to be based on the circumstances, the parties involved and the intent. Simple mistakes and technicalities that do not substantially affect procurement do not constitute misprocurement.

29. Misprocurement is declared by the appropriate reviewing and decision authority as per Tables 1 and 2 in PAI 3.10. In complex cases, regional departments may consult with OGC, PPF and OAI.