

# Project Administration Instructions

PAI 3.04  
Revised in June 2018  
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## MODIFIED INTERNATIONAL COMPETITIVE BIDDING

1. When procurement is undertaken for certain loan products and/or projects, procedures that deviate from normal international competitive bidding (ICB) may be acceptable, e.g., for imports for policy-based loans, for commodities, or for urgent additional requirements for an ongoing project originally using ICB. Part II of the Procurement Guidelines includes a final section on modified ICB (paras. 2.66 to 2.69) that refer to repeat order bidding, procurement under program loans,<sup>1</sup> and procurement of commodities.

2. Since the modified procedures are still considered ICB, the procurement plans, if any,<sup>2</sup> still need to state the type of review—prior or post—and whether the thresholds for review applicable to regular ICB also apply. As for review responsibilities and authority, those for ICB procedures are adopted unless modified in the procurement plan.

3. In all cases, the executing agency (EA) must review the ADB sanction list to confirm the eligibility of potential bidders.

### **A. Procurement under Program or Policy-Based Lending (Loans and Grants)**

4. ICB procedures are not relevant to procurement under program or policy-based lending (PBL) loans (and grants). Procurement under PBL will be based on normal commercial practice for the private sector and on government procurement procedures for the public sector. As PBL loans do not directly involve any specific procurement, ADB ensures that standard public and private sector procurement procedures used in the developing member concerned are adequate from the point of view of competition and efficiency.

5. When the foreign exchange provided by ADB is used for procurement by public sector entities rather than private commercial importers, staff must review the standard public sector procurement procedures used by the borrower with regard to economy and efficiency<sup>3</sup>. Paras. 2.66 and 2.67 of the ADB Procurement Guidelines discuss procurement of contracts financed under PBL.

### **B. Repeat Order Bidding**

6. Urgently needed additional quantities of items initially procured for a project through ICB may be procured for the same project using repeat order bidding, provided that loan/grant funds are available and that no advantage can be gained through full competitive bidding.

7. Under this modified ICB method, bids for the new contract may be invited only from those who submitted responsive bids to the earlier advertisement, or if many bidders originally responded, from the five original lowest responsive bidders, with a bidding period of 30 days.

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<sup>1</sup> Now policy-based loans and, when referred to in this PAI, includes grants.

<sup>2</sup> No procurement plan is included in the Report and Recommendation of the President for policy-based loans.

<sup>3</sup> Operations Manual Section D4.

## **C. Procurement of Commodity Contracts under International Competitive Bidding<sup>4</sup>**

### **1. Special Features of Commodity Trade**

8. Unlike capital goods, commodities (like petroleum products, edible oils, fertilizers, and metals) are extensively traded daily in the world market. Many buyers and sellers participate, and price fluctuations are reported daily. Prices are competitive in organized commodity markets such as those in Chicago, London, or Singapore. Specifications for most commodities are standardized, and purchase decisions are often taken within 24 to 48 hours. Prices quoted often reflect prices prevailing in a commodity market on a specific date plus or minus an adjustment or discount factor, plus freight and insurance rates. Bidding and bid validity periods are short, and bid securities and performance securities are uncommon.

9. Practices for procuring capital goods, e.g., long bidding and bid validity periods, and requirements for bid securities and performance securities, may be unsuitable for efficiently procuring commodities. Consequently, ADB has approved procurement procedures appropriate to the trade and acceptable to ADB for commodities traded extensively in world commodity markets. To be acceptable to ADB, commodity procurement under ADB loans/grants must conform to the principles underlying ICB procedures and the ADB Procurement Guidelines. These involve economy, efficiency, equal opportunity for bidders from all ADB eligible countries<sup>5</sup>, transparency, and adherence to the eligibility criteria for bidders, suppliers, and goods.

### **2. Reviews to be Carried Out during Project Processing**

10. When ADB decides to finance the procurement of commodities, processing missions are to identify the EAs that will carry out procurement and to evaluate their commodity procurement practices. This evaluation refers to the basic principles mentioned above. These include fair decision making, observing criteria stipulated in the bidding documents (or the standard conditions of purchase for the agency), and consistent application of relevant local, acceptable regulations. As a result of the evaluation, the mission is to certify that the agency's procedures are acceptable to ADB or to agree in writing (in the memorandum of understanding or aide memoire) with the borrower and the EA on how it can modify standard practices to make them acceptable to ADB. If necessary, a procurement specialist from the Procurement, Portfolio and Financial Management Department (PPFD) may assist processing missions with the following:

- preparing a draft summary (one or two pages) of the EA's standard commodity procurement procedures, demonstrating that they will be acceptable to ADB;
- finalizing the draft; and
- adding it in the procurement plan (attached to the Report and Recommendation of the President [RRP]).

The Office of the General Counsel (OGC) may be consulted on specific legal issues, and the Controller's Department (CTL) may be consulted on financial aspects, especially on related taxes and duties. The arrangements for commodity procurement are to be stated in the procurement plan which is to be discussed and agreed during loan negotiations (and to be annexed to the minutes of loan negotiations). This PAI describes acceptable practices to enable the mission to understand the commonly used procurement methods in the commodity trade.

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<sup>4</sup> See Procurement of Commodity Contracts under National Competitive Bidding in PAI 3.05.

<sup>5</sup> For ADB eligible countries, refer to PAI 3.01.

### **3. Actions to be Taken during Project Implementation**

11. Commodities are usually purchased in bulk, and the values of contracts may be greater than the ICB threshold. Accordingly, for most commodity procurement, ADB review of documents and contract approval procedures are similar to those adopted for ICB contracts that may be under prior or post review depending on the size of contracts.

12. The EA's bidding documents (or its conditions of purchase and standard contract form) are reviewed during project processing at the same time that the master bidding documents for goods and works are prepared. The EA is to standardize such documents for all commodity procurement under the loan. Simplified bidding documents are recommended with correspondingly simplified procedures and shortened time periods to adapt to fluctuating market conditions. In view of the nature of procurement in the commodity market, contract-specific bidding documents for commodity procurement shall not undergo prior review and approval.

13. As soon as a loan is approved or advance contracting is approved, an advertisement is placed on adb.org and sent electronically to United Nations Development Business (UNDB). Advertisements are often issued immediately after the management review meeting (MRM)/ staff review meeting (SRM). The advertisement should indicate: (i) the agency's address, fax, e-mail, and telephone numbers, the type and quantity of commodities expected to be procured each year, and the expected timing of procurement (see Appendix of this PAI); and (ii) whether bids will be requested by fax or e-mail from a list of registered bidders, and whether advertisements inviting bids will be placed in the local newspapers at the time of each procurement. The project division concerned forwards the details for this advertisement to PPFD which will arrange for its publication.

14. Many EAs have a registration procedure (creating a standing list of prequalified bidders) and invite fax, e-mail, or postal bids from all registered bidders. Others advertise in newspapers or on websites to invite bids for each procurement. Both practices are acceptable. Under the former, ADB reviews the registration procedures to ensure they do not discriminate against any ADB eligible country and that they are consistently applied. In either case, bidding must follow the bidding documents or standard purchase conditions and contract forms acceptable to ADB. Bid security may be required from new registrants, but performance security may not be required. If the EA invites bids by mail, the bidding period may be as short as 7 to 15 days, and the bid validity period may be between 15 and 30 days. For fax or e-mail inquiries and bids, the bidding and bid validity periods may be as short as 2 to 3 days.

### **4. Authority to Approve Bid Evaluation Reports**

15. The review of bid evaluation and contract award shall be in accordance with the supervision thresholds discussed in PAI 3.02 and decision authority presented in PAI 3.03. The procurement plan should indicate whether post or prior review procedures are to be applied. If prior review is used, the agency submits the bid evaluation report to ADB for approval within 2 to 3 working days after the bid closing date. This report should be brief and can be sent electronically (fax, e-mail with scanned documents). The evaluation reports and contract award proposals are approved in accordance with PAI 3.03 unless modified in the procurement plan. The ADB response is normally sent within 3 working days after the evaluation report is received. In straightforward and urgent cases, the EA issues a letter of intent to the selected bidder (subject to ADB approval of the proposed contract award) to ensure that decisions are taken within the short period of bid validity. If post review is used, a review is conducted by the concerned project division as soon as possible after contract award. Refer to PAI 3.10 for procedures related to concurrence of the procurement committee.

## **5. Contract Award Practices**

16. Normally, the contract is awarded to the lowest evaluated, substantially responsive bidder. When this bidder does not offer the full quantity of commodities required under the bid (a common occurrence in commodity procurement), the EA procures the remaining quantity from the next lowest responsive bidder, until the required quantity is obtained. If two or more bids are determined to be equal and are the lowest responsive bids (generally called tied bids), the EA may distribute the quantity among the tied bids. The bidding documents (or standard conditions of purchase) are to indicate clearly that the EA has such discretion.

## **6. Limitations on the Use of ADB Funds**

17. ADB loans/grants are normally used to procure commodities using on-the-spot purchases. These usually involve a single transaction, whereas long-term purchases involve several transactions and forward purchases, speculative or otherwise. ADB funds are not used to finance the procurement of commodities purchased under special bilateral financing agreements<sup>6</sup> or under long-term contracts.<sup>7</sup> Invitations for bids ask for prices only and not for any financing offers or countertrade facilities. In bid evaluations, no preference is to be given to such arrangements.

## **7. Summary of Appropriate Procedures for Commodity Contracts**

18. Based on the above considerations, the appropriate procedures for commodity contracts with a value exceeding the ICB threshold are summarized below. Other procedures appropriate to the trade may also be accepted by ADB on a case-by-case basis, provided they meet the criteria indicated in paras. 8 and 9 of this PAI. The procedure for contracts for less than the ICB threshold is discussed in PAI 3.05 on national competitive bidding.

19. Whenever the value of a contract for procuring commodities exceeds the ICB threshold, the following simplified ICB procedures are adopted:

- A general procurement notice is published on adb.org and UNDB in the format given in the Appendix of this PAI as soon as the loan is approved or as soon as advance contracting is approved during project processing.
- The EA's master bidding documents (including the form of contract) or at least its standard terms and conditions of purchase are reviewed and approved by ADB for use in all commodity procurement under the loan/grant, at the period of preparation of the procurement plan or at loan negotiations.
- The individual contract procurement requires that eligible registered bidders be invited individually by letter, fax, or e-mail to submit a bid. The invitation specifies the type and total quantity sought to be procured under the contract, the minimum acceptable quantity from any bidder, the bidding period, the bid validity period, and bid security if required. The advertisement in an English language local newspaper or on a well-known website invites interested eligible parties to bid by specifying the type and total quantity of the commodity sought to be procured under the contract, the minimum acceptable quantity from any bidder, the bidding period, the bid validity period, and bid security if required.

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<sup>6</sup> This includes contracts financed from sources other than freely available foreign exchange such as bilateral credits, countertrade, and compensatory trade.

<sup>7</sup> Procurement under long-term contracts that are concluded prior to loan processing is to be especially avoided.

- Normally, bid prices are required under CIF (cost, insurance, and freight) or CIP (carriage and insurance paid to). Any FOB (free on board) price quotes are prepared for comparing bids by the freight rates (usually the average freight rate assessment of London) and insurance rates, the basis for which is specified in the bidding documents.
- The invitation for bids specifies the type of commodity and the quality required, payment terms, and the delivery period so that bid comparisons are based only on the prices quoted. If any other factor is included in the comparisons, the factor and the method of loading for deviations is explicitly stated in the invitation for bids.
- A bid security and performance security may or may not be required at the EA's discretion.
- Financing offers (including countertrade and barter trade) are not invited and are not considered in the evaluation of bids.
- A public bid opening with bidders' representatives who choose to attend occurs when sealed bids have been invited. When bids are requested by fax or e-mail, a public opening is not necessary.
- The contract for each item is awarded to the lowest evaluated bidder. No price negotiations are conducted with the bidders. If prices received are inconsistent with market trends and are likely to lead to uneconomic procurement, then the EA may allow all bids to lapse after informing ADB of the reasons for such a decision and receiving ADB approval. Rebidding will be conducted at an appropriate time.
- If the lowest bidder offers an insufficient quantity that is more than the minimum acceptable quantity, the EA may request the lowest bidder to increase the quantity at the original bid price or to procure the remaining quantity from the next lowest bidder(s) at their bid prices. The agency may also rebid for the remaining quantity at an appropriate time informing ADB of its decision and reasons for it.
- If prior review is prescribed, the EA is expected to complete bid comparisons and forward the evaluation report to ADB by fax within 2 to 3 days after bid closing and prior to awarding the contract. ADB approval is normally provided within 3 working days after receiving the evaluation report. If post review procedures are followed, the EA submits the contract immediately after contract award, in which case, ADB reserves the right not to finance a contract if it is not satisfied with the procurement process used or the evaluation of bids.

**Draft General Procurement Notice on adb.org and UNDB  
(For commodity procurement)**

1. (The borrower's name) has received/applied for a loan from the Asian Development Bank, the proceeds of which will be used to finance procurement of the following commodities:

Year of Procurement	Commodity	Quantity to be Procured
2006	Fertilizer (Urea)	100,000 metric tons
2006	Fertilizer (DAP)	50,000 metric tons
2008	Fertilizer (Urea)	100,000 metric tons

2. The executing agency handling this procurement is:

Name of the executing agency  
Address  
Email/fax/telephone  
Name of the contact officer

3. Bidding for all contracts will follow standard bidding documents terms and conditions and a standard contract [which may be purchased from the executing agency for \$..... on or after ..... (date)....].

4. Advertisements on [name website] will be issued with a short bidding period of [7/15/30] days immediately before the procurement of each contract. Those who are interested are encouraged to appoint local agents or representatives who will follow the local advertisements, file bids on their behalf, and provide any bid security and clarifications.

or

The executing agency maintains a list of registered prequalified bidders and requests bids from all of them whenever it decides to buy. Those interested in bidding (but not already registered) are requested to register with the executing agency.