

# Project Administration Instructions

PAI 3.07  
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## PROCUREMENT METHODS IN SPECIAL CIRCUMSTANCES AND OTHER PROCUREMENT ARRANGEMENTS

1. Specific circumstances under special project designs and arrangements may require correspondingly special procurement arrangements or modifications of procurement methods. The principal reference for these special circumstances or arrangements are in paras. 3.8 to 3.18 of the ADB Procurement Guidelines.

### **A. Force Account for Works**

2. Force Account is otherwise known as “direct labor,” “departmental forces,” or “direct work.” Executing works by force account means undertaking works using the resources of a public agency or the government without competitive bidding or negotiated contracts. Force account for works (FAW) is done on an exceptional basis and must be fully documented in the procurement plan and justified at the management review meeting (MRM)/staff review meeting (SRM). The maximum amount to be allocated for FAW shall be provided in the procurement plan. FAW may also be proposed in the course of project implementation, in which case a change in the method of procurement shall be processed by staff following procedures in PAI 3.02.

3. Force account is employed when the size of the works and its location make it unsuitable to adopt competitive bidding (this may include village wells and village access roads, minor irrigation works, and other minor or remotely scattered works). Force account may also be used in other special cases where local contractors do not express an interest in undertaking the works or when force account can be demonstrated to be the most efficient and effective method of implementation. In some cases, an executing agency (EA) department may, as part of its standard operating procedures, account for only part of the required resources but competitively contract out either equipment rental or skilled manpower from specialized subcontractors, or alternatively use small-value contracts for both, to augment its departmental resources. Force Account may also be justified when: (a) the EA cannot define/ determine in advance the quantities of work involved; (b) work is required to be carried out without disrupting ongoing operations; (c) risks of unavoidable work interruption are better borne by the borrower than by a contractor; or (d) there are emergencies needing prompt attention.

4. In agreeing to the use of FAW, ADB must be satisfied that the construction facilities are efficient and the EA is capable (possibly with adviser or consultant assistance) of undertaking the works quickly and to the required quality at a reasonable cost.

5. Since FAW is for contracts that EA departmental workforces may normally implement, the value of contracts that project staff may reserve for this method in the procurement plan should be relatively small, i.e., more than the ceiling for shopping but within the normal contract amounts in the department’s average budget reserved for its routine project implementation, and in no case more than the national competitive bidding (NCB) ceiling for the project as indicated in the procurement plan.

### **B. Procurement from Specialized Agencies**

6. The guidelines allow for direct procurement from specialized agencies, including but not limited to UN agencies. This method may be utilized if it is more advantageous for the EA to procure: (a) small quantities of off-the-shelf goods, primarily in the fields of education and

health; and (b) specialized products where the number of suppliers is limited, such as for vaccines or drugs sourced directly from specialized agencies, such as a UN agency. The UN agency is often able to supply goods of guaranteed quality at an advantageous price, obtained through its own bulk purchasing arrangements. The benefits from volume purchasing by the UN agency may be passed on to the EA. Items to be procured from these specialized agencies should therefore be packaged, so as to take full advantage of the benefits offered by combining expected purchases into larger packages to avail of volume pricing, for example.

7. Contracts to be procured by an EA from specialized agencies should be identified and justified in the procurement plan. Procurement from the UN agency would be under direct contracting. ADB is not concerned with the procedures that the UN agency itself uses to obtain the goods, although it must satisfy the eligibility requirements (see PAI 3.01). The Procurement, Portfolio and Financial Management Department (PPFD) should be consulted when procurement directly from specialized agencies is proposed.

8. Project staff should note that some UN agencies may require advance payments for management fees.

### **C. Use of Procurement Agents and Inspection Agents**

9. Where there is lack of necessary organization, resources and experience, the EA may acquire, or ADB may require the engagement of specialized agents to conduct procurement on behalf of the EA, or to act as management contractor to oversee the implementation of works. The procurement agent shall be required by the EA to comply with the guidelines, the procurement plan, and the financing agreement. The procurement agent shall be selected following the procedures for consultant recruitment in the procurement plan.

10. Similarly, the services of inspection agents may be acquired to fulfill the inspection requirements of procurement. The agent should be selected following the procedures for consultant recruitment.

### **D. Procurement in Loans (or Grants) to Financial Intermediaries**

11. The proceeds of loans to financial intermediaries (like agricultural development banks, cooperatives, and fisheries), for relending to small private sub-borrowers, may be used to procure machinery and equipment. Procurement is usually undertaken by the respective beneficiaries in accordance with established private sector or commercial practices, which are acceptable to ADB. However, even in these situations, ICB may be the most appropriate procurement method for the purchase of large single items or in cases where large quantities of like goods can be grouped together for bulk purchasing. For centralized procurement, bids are invited by the intermediary agency as in ICB, and any interested supplier may submit a bid. After the bids have been opened, sub-borrowers place their order from among the lowest responsive bids within a range the EA and ADB previously agreed upon. With proper justification, procurement may be done through direct contracting by sub-borrowers, in accordance with established commercial practices or through centralized competitive procurement by the intermediary agency. Using these modified procurement methods is to be examined during project processing and must take account of conditions in the project area and past procurement experience for similar types of goods.

12. When any of these modified procurement methods is to be employed, it shall be agreed between PPFD and regional department (RD), documented in the procurement plan and included in the Report and Recommendations of the President (RRP) with the following:

- the circumstances justifying using direct contracting by sub-borrowers or centralized competitive procurement; and
- the terms and conditions as well as specific procedures to be followed (for centralized

procurement).

13. Normally, the relending conditions will provide project “eligibility” criteria that include acceptable procurement procedures that are discussed in the RRP and in the project administration manual (PAM)/ facility administration manual (FAM). The acceptable procurement procedures are elaborated in the financing agreement. ADB will request financial intermediaries to ensure ADB that procurement procedures prescribed by them to individual sub-borrowers or applied by them in evaluating subloan proposals involving completed procurements are appropriate and acceptable. These include the following:

- reasonable prices as a result of preferably competitive procedures;
- procurement from eligible source countries; and
- fair canvassing and/or evaluation when selecting suppliers.

Furthermore, ADB will encourage financial intermediaries to require their sub-borrowers to adopt ICB when the amount of investment is unusually large (within the ICB threshold for the borrower) and using ICB is not detrimental to the project schedule and the budget.

14. While it is not necessary to require that a procurement plan be prepared, project staff should devise a post review procedure for awarded contracts.

**E. Procurement under Build-Own-Operate/ Build-Own-Transfer/ Build-Own-Operate-Transfer (BOO/BOT/BOOT) Concessions and Similar Private Sector Arrangements**

15. ADB does not insist on ICB for its loans to the private sector without government guarantees. Staff should consider, however, that ADB requires borrowers to demonstrate that procurement was transparent and preferably conducted through competitive bidding. Therefore, a procurement report should be required in a format that provides, to the extent possible, the information found in the Procurement Approval Form. The report should assure ADB that goods and works procured are suitable for the project and were selected and awarded fairly. It should also confirm that the goods or works procured are from eligible countries and the contracted entities are not on ADB sanction list.<sup>1</sup>

16. When ADB is participating in financing a BOO/BOT/BOOT or similar type of project, either of the following procurement procedures is used:

- The project sponsor will be selected transparently, preferably through competitive bidding acceptable to ADB. This may include several stages to reach the optimal combination of criteria for establishing the most economic and efficient proposal. These could include performance specifications for the facility offered, costs charged to the user or purchaser, and the period of depreciation of the facility. The project sponsor so selected will then be free to procure the goods and works for the facility from eligible member countries. Staff should note, however, that entities on the ADB sanction list are not eligible to become project sponsors.
- Project sponsors selected in a manner different from the above will be required to ensure that the goods and related services and works for the facility financed by ADB are procured from eligible countries through competitive bidding procedures acceptable to ADB.

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<sup>1</sup> includes entities debarred and cross-debarred by ADB.

## **F. Procurement under Loans Guaranteed by ADB**

17. Under these schemes and if ADB guarantees all or part of the debt service of a loan made by another lender, the goods and related services and works financed by the loan will be procured in an economic and efficient manner. ADB must be satisfied that the procedures will allow the project to be carried out efficiently and that goods and works to be procured:

- are from eligible countries,
- are open to competition from eligible bidders,
- are of satisfactory quality and compatible with the balance of the project,
- will be delivered or completed on time, and
- are priced so as not to undermine the project's economic and financial viability.

## **G. Performance-Based Procurement**

18. Procurement for performance-based contracts (or output-based contracts) would normally follow ICB or NCB procedures subject to the following: (i) the EA should provide a satisfactory technical analysis of the different options for procurement prior to proposing the use of this type of procurement; and (ii) the use of such type of procurement method should either be included in the financing agreement or subject to prior approval by ADB. The procurement plan needs to highlight whether special bidding documents need to be developed or whether any ADB standard bidding documents may be adapted and modified and what review procedures will be followed. The award of contract will be to the lowest evaluated bidder that substantially complies with the requirements of the bidding.

19. Examples from ADB developing members are in road construction where 3- to 5-year maintenance contracts are attached to construction contracts awarded after competitive bidding. Standard works bidding documents are adapted with monitoring standards and payment terms, including penalties for maintenance problems.

## **H. Community Participation in Procurement**

20. To ensure sustainability and to achieve the social objectives of the project, the procurement method and procedures, specifications, and contract packaging of selected components may be adapted to: (i) involve local communities and nongovernment organizations (NGOs); (ii) use more local knowledge and materials; and (iii) use labor-intensive and other technologies.

21. For small-value projects with community participation, an implementation guide is provided in PAI 5.10. These civil works projects are intended to be in the total cost range of \$10,000 to \$30,000. Procurement will involve supplying materials such as cement, steel, stone aggregate, and sand that the community will use to realize the project outputs. The prescribed method of procurement for such materials is shopping. If no suitable and adequately skilled labor within the community can be identified or organized, the labor contract<sup>2</sup> may also be procured by shopping, by inviting quotations from three local contractors or, as suitably decided by the processing missions, by taking into consideration local situations wherever practicable. In exceptional cases, if enough contractors are not available, the contract can be awarded on a direct contract basis after ascertaining the capability of the proposed contractor and the reasonability of its rates. The procurement arrangement may be called a community force account.

22. There may be other projects, however, in which local communities or NGOs are available or

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<sup>2</sup> PAI 5.10 provides samples of contracts, while PAI 3.06 and OpsPedia provide a sample Request for Quotation for Shopping for Works.

deemed suitable to offer the services required for a project. For example, components of a larger project requiring minor infrastructure in scattered and remote areas may avail of the flexibility offered by the guidelines, in terms of adapting procurement methods and procedures, specifications, and contract packaging. Since such procurement arrangements are local in nature, adaptations are made to ADB local procurement methods and procedures—NCB, shopping, direct contracting and force account—based on available local laws, rules, and regulations. For these larger projects, staff should therefore review the local laws, rules, and procedures mentioned in the NCB annex to the procurement plan and confirm the applicable provisions for participation of local communities or NGOs in procuring goods and works, or determine whether said rules may be modified to allow these groups to participate within the provisions of local law and acceptable to ADB.

23. The adapted procurement procedures should generally have the following features:

- easily understood and implemented by local project staff and the community;
- sufficiently transparent to permit real competition among suppliers and contractors; and
- use simple, standardized documents.

24. Other acceptable practices for these procurement arrangements, subject to confirmation of their consistency with local laws, rules, and regulations, are the following:

- no mandatory newspaper advertisement;
- simplified qualifications including local registrations for legal status;
- no bid or performance securities;
- advance payments, possibly a larger percentage than regular ICB/NCB contracts;
- allowing design-construct works contracts;
- allowing direct contracts up to \$10,000;
- award is generally based on lowest price;
- community bidding committee;
- contract award within 3–5 days of submission deadline;
- post review by sampling;
- simple, Internet-based monitoring system.

25. The procedures to be followed must be stipulated in the relevant financing agreement and the procurement plan.

#### **I. Procurement under Disaster and Emergency Assistance**

26. Under ADB policy<sup>3</sup> for disaster and emergency assistance, flexible approaches are to be applied to procurement so as to speed up the supply of necessary goods and the construction or rehabilitation of needed infrastructure. Various arrangements for works and contracts are possible, including abbreviated NCB and direct contracting to contractors already working in the area (working under ADB-funded, or other donor-funded contracts). For supplying goods, limited international bidding (LIB) is expected to be the norm. In all cases, abbreviated bidding periods may be used, but in no case shall they be less than 7 days for local procurement.

27. A procurement plan is required. Procurement methods and review procedures (prior or post review) should be documented in the procurement plan.

#### **J. Procurement of Used Goods**

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<sup>3</sup> Operations Manual Section D7/BP Disaster and Emergency Assistance Policy.

28. Used or secondhand goods may be procured for a project if they offer reduced costs and the quality is acceptable (refer to Operations Manual Section H3 Cost Sharing and Eligibility of Expenditures for ADB Financing). Justification for the purchase of used goods should consider the following:

- The used goods must be available in sufficient quality and quantity to provide for competitive bidding.
- The used goods should be more economical and efficient than new goods (for example, new equipment may be more sophisticated than what the EA requires).
- Used goods are required to replace existing goods that are no longer available in the market. For example, a particular type of equipment may have been discontinued, but continued use of the same type of equipment may be required by the EA to comply with operating and maintenance requirements or to make use of existing spare parts inventories.
- Used goods should be considered only when purchasing new goods would result in excessive costs. In establishing cost comparisons between new and used goods, factors such as refurbishment and added maintenance costs of used goods should be considered.
- The used goods to be procured shall not be assets already owned by the borrower.

29. Used goods should normally be procured through competitive bidding, in line with the ADB Procurement Guidelines (ICB, LIB, NCB, or shopping). Procurement may not be structured so that new goods compete with used goods. PPFD should be consulted if other methods are proposed, or if there is any question about justifying the procurement of used goods.

#### **K. Land and Right-of-Way Acquisition**

30. Regional departments are to undertake full due diligence of market conditions prior to deciding to finance land or right-of-way acquisitions. Refer to Operations Manual H3, Cost Sharing and Eligibility of Expenditures for ADB Financing, on the factors to be assessed through the due diligence. Procurement procedures should follow acceptable commercial practice in the country concerned. This would include procedures for establishing the price; the terms and conditions of the purchase agreement; and the payment of agent fees, taxes, and legal fees. Reasonable prices are to be established and documented through comparisons with similar transactions under similar market conditions (e.g., comparing transactions for similar properties at about the same time). PPFD and the Office of the General Counsel should be consulted on the procedures to be followed prior to the acquisition.

#### **L. Procurement of Leased Assets**

31. Leasing assets may offer advantages over purchasing them. Justifications for leasing rather than purchasing should be made on the basis of the least cost option for equivalent equipment. Refer to Operations Manual H3, Cost Sharing and Eligibility of Expenditures for ADB Financing, on factors to be considered. Cost comparisons should take into account total life cycle costs including disposal. When possible, procuring leased assets should follow a competitive procedure. PPFD should be consulted if other methods are proposed or if there is any question about justifying the procurement of leased equipment.

#### **M. Procurement under Results-Based Lending for Programs<sup>4</sup>**

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<sup>4</sup> Based on **Piloting Results-Based Lending for Programs**, February 2013

32. Results-based lending (RBL) for programs finances expenditures for a member country's own sector programs and disburses based on achievement of program results. Eligible expenditures shall include, initially, small value contracts procured using the country's procurement laws, rules and regulations and existing implementation arrangements. Acceptable procurement systems should be guided by sound procurement principles of competition, economy and efficiency, transparency and fairness and equal opportunity, the same principles guiding ADB procurement in general.

33. Staff preparing an RBL shall assess the procurement system for the whole program. The scope of the procurement system assessment should cover the critical stages of the procurement cycle for the program to determine if it has reasonable:

- (i) arrangements for procurement planning and budgeting,
- (ii) procurement rules that are accessible to the public,
- (iii) capacity for contract management and administration,
- (iv) oversight and control systems, and
- (v) complaint mechanisms.

Where weaknesses are identified, ADB and the DMC will agree on the improvements required. The actions to be undertaken should aim to integrate sound procurement principles with the existing procurement system of the program in the DMC.