

Project Administration Instructions

PAI 3.11
Revised in June 2022
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PROCUREMENT CONTRACT MONITORING, SUPERVISION, AND REVIEW

A. Monitoring Procurement Contracts

1. Once fully operational, the Procurement Review System or PRS will be the main monitoring system for the procurement of contracts.

B. Contract Modifications

2. During the course of administering a works, goods, or design-supply-install contract, it may become necessary to modify the contract to do the following:

- (i) grant a material extension of time for performance;
- (ii) modify terms and conditions without a corresponding change in the original contract amount; or
- (iii) modify or waive terms and conditions (including by issuing a change order) with a corresponding increase or decrease in the original contract amount.¹

3. Contract modifications must be approved by ADB in accordance with the following procedures. Prior ADB approval is required for modifications to contracts subject to prior review.² For contracts subject to post review, ADB approves contract modifications on an *ex post facto* basis. With respect to contracts subject to post review, if the sector director, country director, or procurement committee, as applicable, fails to respond to any time extension or modification request within 6 months of receipt of the required documents, then ADB shall be deemed to have given its no-objection to the contract modification unless it has specifically informed the borrower otherwise.

- (i) For approval of a material extension to the stipulated time for performance of a contract:

The director of the project division approves material time extensions for a contract. A proposed time extension that is likely to require an extension of the loan closing date shall be considered material. The approval memorandum shall describe the justification for the extension, the proposed period of extension, the number of past extensions and the cumulative period of such extensions, and steps to be taken to ensure project completion and disbursement within the recommended period. If an extension of the loan closing date is sought in the same memorandum, the requirements set out in PAI 4.04 must also be met.

- (ii) For approval of a modification that does not affect the contract amount:
The director of the project division approves the modification after consultations with Procurement, Portfolio and Financial Management Department (PPFD), if necessary.

¹ Changes in the contract price brought about by the application of the price adjustment mechanism specified in the contract are not considered contract modifications.

² Prior approval is not required in extreme emergencies.

The Office of the General Counsel (OGC) must be consulted if the proposed modification relates to the conditions of contract (Special/Particular Conditions of Contract), or if there are other legal issues involved (e.g., possible inconsistencies with the provisions of ADB financing agreements for the project). The approval memorandum shall describe the justification for the modification.

- (iii) For approval of a modification that when combined with prior contract modifications would increase the original contract amount by more than 15%, but would be less than \$70 million in the aggregate:

The director of the project division approves the modification after consultations with PPF. The approval memorandum shall, at a minimum, contain the following information: (a) rationale and analysis of the cost effectiveness of the proposed modification, (b) physical and financial status of the contract, (c) an assessment of contractor/supplier performance to date, (d) the likelihood that the contract will be completed on time, (e) original and revised contract amount, (f) brief description and amounts of prior contract modifications (if any), and (g) confirmation that contractor/supplier is not sanctioned by ADB. Staff should ensure that sufficient funds are available to finance the contract modification. Consultations with the Office of Anticorruption and Integrity (OAI) prior to seeking approval are required if the contractor or supplier appears on the ADB's complete Sanctions List. OGC must be consulted if the proposed modification relates to the conditions of contract (Special/Particular Conditions of Contract), or if there are other legal issues involved (e.g., possible inconsistencies with the provisions of ADB financing agreements for the project). After a sector or country director approves a contract modification in accordance with this subparagraph, a subsequent contract modification affecting the contract amount will require ADB approval only if the subsequent modification, when combined with other contract modifications processed after the date of the last ADB approval of a modification increases the contract amount by more than 15% in the aggregate.

- (iv) For approval of a modification that when combined with prior contract modifications would increase the original contract amount by more than 15% and to \$70 million or more in the aggregate:

The procurement committee approves the modification following the procedure set forth in paragraphs 11 and 12 of PAI 3.10.

4. For contract modifications covered by para. 3 (iii) and (iv) of this PAI, staff should note that contract variation/change orders beyond the normal limits set in the original contract take the character of direct contracts for which justifications are required to be in accordance with Part C of PAI 3.06 (Other Methods of Procurement).

5. Staff shall seek and obtain OAI endorsement prior to approving any modification of a contract involving a sanctioned firm or individual, to ensure that the contract modification is not considered an attempt to circumvent sanctions.

6. After approval of the contract modification, the project division will issue an update of the executing agency (EA) contract record by issuing a Procurement Contract Update Sheet (PCUS) in the Loan/Grant Financial Information System (LFIS/GFIS). The reason for the

contract modification and data such as the original contract amount and completion date should also be indicated in the PCUS for future reference as should any extension of time.

C. Contract Termination

7. When an EA proposes to terminate a contract, it sends a recommendation to ADB. Staff should note there are specific procedures for terminating contracts under the conditions of contract, and should ensure that the EA has complied, before endorsing contract termination.

- (i) The sector/country director will be responsible for approving any contract termination when the amount of the contract price is less than \$70 million. Consultations with PPFD on such a contract termination are at the discretion of the director.
- (ii) The procurement committee will be responsible for approving any contract termination when the amount of the contract is \$70 million or more. Consultations with PPFD are mandatory for such a termination.
- (iii) Consultations with OGC are mandatory for contract termination.

8. The sector division or resident mission in both cases should prepare a memorandum justifying or rejecting the EA request to terminate the contract.

9. Staff shall remind EAs that when the remaining portions of the terminated contract will undergo rebidding, they should proceed immediately to technically assess the remaining scope to provide the basis for preparing the rebidding documents. These documents shall also instruct bidders to visit and inspect the site and the condition of the completed portions, if any.

D. Procurement Review for Effective Implementation

10. A procurement review for effective implementation (PREI) should ideally be undertaken during implementation when approximately half of the contracts in the procurement plan have been procured, preferably as part of the midterm review to evaluate key indicators and risks that are associated with the EA's procurement performance. In such a case, the Director of PFP1/PFP2 may carry out a PREI in consultation with the project division director. The PREI will validate and reassess the results of the EA capacity and procurement risk assessment that were conducted during CPS and project processing, and will update or modify procurement risk ratings. Based on the findings and ratings of the PREI, ADB may: (i) require adjustments in the EA procurement plan such as on the prior review thresholds and procurement methods; and (ii) agree with the EA to adopt an action plan to build capacity and mitigate risks within the prescribed period.³

³ The PREI user's guide and manual are available in OpsPedia through this link:
https://myadb.adb.org/wps/myportal/home/departments/ppfd/searchresult!/ut/p/z1/hVLJboMwEP0VXzhWHghhOZK NkGbpIkJwplLZ5JYY4pCFfn1NmksrJfHFmvF7b2beGBO8wUTQly9owytBSxXHxPqYTJbe7NnXwTFXDnhhX3f7K9 CDRQ-vL4DlyggnZqDrjjXWwbCm5mAeBeCPepjc4ZvWlQ83jgeP-BGO_QGO5bn0RsVV7U675H6xNSZ_C_qzI75ScN2e_TqH1dD4D4D56x8cbQM02Gg8PYVcM- RR11MAc8wKcqK_W6Af-52xMMkqUSTnRu8Sap9hS6RaFDJmaSy1YcmDHGVk2pxGqRZTWWzVYi9Bh1BgzKjUnBRICpSINCaJrxpETvwm IVZDRpJ-eU9ryTKqAbQVxeqZZUcZnZJIZkdeXba41gZbd80OIT_osPhUFRyq4Z474auE57i2HFtO2cApmUZJs106uZGzhzbc hzGUmbjehuGon36epue2t73YPEDxcBnYw!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/