STANDSTILL PERIOD

GUIDANCE NOTE ON PROCUREMENT

JUNE 2018

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6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines
Tel +63 2 632 4444; Fax +63 2 636 2444
www.adb.org

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Notes:

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ABOUT THIS PUBLICATION

In April 2017, the Asian Development Bank (ADB) approved its new procurement framework, the ADB Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time); and the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time). These replace the former Guidelines on the Use of Consultants (2013, as amended from time to time) and Procurement Guidelines (2015, as amended from time to time). The procurement policy and the procurement regulations address the procurement activities of project executing agencies and implementing agencies on projects financed in whole or in part by a loan or grant from ADB, or by ADB-administered funds. ADB designed the 2017 procurement policy to deliver significant benefits and flexibility throughout the project procurement cycle, as well as to improve project delivery through a renewed focus on the concepts of quality, value for money (VFM), and fitness for purpose.

This note is part of a series of guidance notes published by ADB in 2018 to accompany the 2017 procurement policy and the procurement regulations. Each note discusses a topical issue for borrowers (including grant recipients), bidders, and civil society under the new framework (see list below). The guidance notes cross-reference each other frequently and should be read in conjunction. All references to “guidance notes” pertain to these notes. The notes may be updated, replaced, or withdrawn from time to time.

List of Guidance Notes for the 2017 ADB Procurement Policy and the Procurement Regulations

1. Value for Money
 2. Procurement Risk Framework
 3. Strategic Procurement Planning
 4. Procurement Review
 5. Alternative Procurement Arrangements
 6. Open Competitive Bidding
 7. Price Adjustment
 8. Abnormally Low Bids
 9. Domestic Preference
 10. Prequalification
 11. Subcontracting
 12. Consulting Services Administered by ADB Borrowers
 13. Nonconsulting Services Administered by ADB Borrowers
 14. High-Level Technology
 15. Quality
 16. Bidding-Related Complaints
 17. Noncompliance in Procurement
 18. Standstill Period
 19. State-Owned Enterprises
 20. E-Procurement
 21. Framework Agreements for Consulting Services
 22. Public-Private Partnerships
 23. Contract Management
 24. Fragile, Conflict-Affected, and Emergency Situations
-

ADB procurement reforms intend to ensure VFM by improving flexibility, quality, and efficiency throughout the procurement cycle (see illustration below and the *Guidance Note on Value for Money*). VFM is part of a holistic procurement structure with three support pillars: efficiency, quality, and flexibility. The two key principles of transparency and fairness weave across all elements of the structure.

Time

Time is an important element of VFM. When a project is delivered promptly or when a process is completed rapidly, greater value is created for all stakeholders. For example, a road project completed early provides economic benefit, security, or other value to the community it serves. It increases the return on investment to the executing agency and accelerates the project and payment cycle to the successful bidder. Likewise, a project delivered late loses significant value.

When considering VFM in the context of procurement, pay attention to anything that (i) shortens the procurement cycle time frame, or (ii) accelerates delivery of the development project.

Objective

This guidance note is intended to assist readers by elaborating on and explaining ADB's 2017 procurement policy and procurement regulations for borrowers (including grant recipients).

This note identifies additional information for the reader to consider when applying ADB's procurement policy and procurement regulations to their circumstances.

Living Document

This guidance note is intended to be a living document and will be revised as required.

Be sure to check the ADB Business Center website for the latest version and updates, <https://www.adb.org/business/main>.

The Reader

In many circumstances, readers are expected to use this guidance note in a manner unique to their needs. For consistency throughout the suite of guidance notes, the following assumption is made about the reader:

The reader is a professional involved in activities financed in whole or in part by an ADB loan or grant, or by ADB-administered funds.

FAQs

Frequently asked questions, clarifications, examples, additional information, links to training, and other useful resources will be made available on the ADB website.

Be sure to check the ADB Business Center website for more information, <https://www.adb.org/business/main>.

Legal and Order of Priority

This guidance note explains and elaborates on the provisions of the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) applicable to executing (and implementing) agencies under sovereign (including subsovereign) projects financed in whole or in part by an investment loan from ADB (i.e., excluding ADB results- or policy-based loans), ADB-financed grant (excluding ADB-administered technical assistance and staff consultancies), or by ADB-administered funds.

In the event of any discrepancy between this guidance note and the procurement regulations, the latter will prevail. The financing agreement governs the legal relationships between the borrower and ADB. The rights and obligations between the borrower and the provider of goods, works, or services are governed by the specific procurement document issued by the borrower and by the contract signed between the borrower and the provider, and not by this guidance note.

ABBREVIATIONS

ADB	—	Asian Development Bank
VFM	—	value for money

EXECUTIVE SUMMARY

Through this guidance note, ADB addresses for the first time the issue of standstill periods in procurement. Now, subject to national standstill provisions, or those of another development partner, it is possible to instigate a standstill period to allow unsuccessful bidders the opportunity to challenge a contract award decision.

Effective use of a standstill period may

Increase Efficiency and Reduce Risk

- Prevent the potential of a project being halted or suffering a long delay after contract award because of bidding-related complaints.
- Avoid project failure and expensive rework.

Improve Fairness and Transparency

- Ensure all bidders are given the same opportunities and have equal access to information.
- Provide a credible mechanism for addressing bidding-related complaints.

Improve Value for Money

- Prevent project delays and risks to its development outcomes.
- Improve competition by increasing bidders' confidence in the procurement process.

I. Introduction

1.1 This guidance note is intended to assist users on how to effectively manage standstill periods in procurement, if national provisions or those of another development partner apply. The Asian Development Bank's (ADB's) Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) now allow for this process for projects financed in whole or in part by an ADB loan or grant, or by ADB-administered funds. However, it should be recognized that this process has the potential to delay projects if it is not managed correctly. Standstill periods take effect at the contract award stage of ADB's procurement cycle (Figure 1).

Figure 1: Standstill Period in the ADB Procurement Cycle

Source: Asian Development Bank.

1.2 The purpose of a standstill period is to allow unsuccessful bidders an opportunity to challenge an intended contract award decision before the actual notification of award. Although it delays the contract award for a period, it mitigates the risk of legal challenges that may delay a contract for far longer than the standstill period. It may improve levels of competition, as it will increase potential bidders' confidence that the procurement process will be transparent and fair.

II. The Standstill Process

A. General Procedures

2.1 As described in the 2017 procurement regulations, “ADB may permit application of national standstill provisions or those of another development partner.”¹ To understand how complaints received during the standstill period will be addressed, refer to the *Guidance Note on Bidding-Related Complaints* and Appendix 7 of the procurement regulations.

2.2 When ADB agrees to permit the adoption of national standstill provisions or those of another development partner, it will be described in the project’s procurement plan. The applicable processes will be described in the project’s bidding documents.

2.3 A borrower (or grant recipient) may request ADB’s agreement on the use of a standstill period when not required to do so by national regulations or by other involved development partners. In this case, the standstill period will still be described in the project’s procurement plan and the applicable processes described in the bidding documents.

2.4 In all cases, at the start of the standstill period, the borrower shall notify in writing each bidder that submitted a bid of its intention to award a contract to the successful bidder at the end of the standstill period, and shall include with that notification the details described in Appendix 3, para. 87, of the procurement regulations.

2.5 The remaining guidance in this note applies to the use of standstill periods requested by the borrower when not required to do so by national regulations or by other involved development partners.

B. Designing and Beginning the Standstill Period

2.6 It is essential that a standstill period is managed closely to ensure that it does not delay the delivery of development objectives. ADB recommends a standstill period of not less than 10 working days following the notification of intent to award a contract, during which the bidders may challenge the award decision.

¹ ADB. 2017. *Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services*. Manila. Appendix 3, para. 87.

2.7 The standstill period is fixed and the borrower will have no obligation to respond to challenges received after its expiry. Figure 2 describes a typical standstill period process. Standstill periods will not be applied under the following conditions:

- (i) for framework agreements, the mandatory standstill period applies at the stage at which the agreement itself is awarded, but not during subsequent call-offs or mini-competitions within the agreement;
- (ii) in cases where only one bid or proposal was submitted in an open competitive bidding process;
- (iii) in cases of direct contracting, also referred to as single-source selection;
- (iv) in the first stage of a two-stage bidding process;
- (v) in the technical evaluation of a two-envelope bidding process; and
- (vi) for the results of prequalification.

Figure 2: Standstill Period Process with No Delays from Debriefing or Complaints

Source: Asian Development Bank.

C. Debriefing during the Standstill Period

- 2.8 The requirements for debriefing by borrowers are as follows:
- (i) Debriefing is independent of a bidder’s right to challenge an award decision. Borrowers are required to provide debriefings following the 2017 procurement regulations regardless of whether a standstill period applies or not.
 - (ii) When a standstill period applies, ADB recommends that the bidding documents allow bidders 3 business days from their receipt of the notification of intent to award a contract to make a written request to the borrower for a debriefing, and the process for doing so will be described in the bidding documents.
 - (iii) The borrower is required to debrief the bidder within 5 business days after receiving a debriefing request in writing. If the borrower fails to deliver a debriefing within this 5-day period, for reasons not within the control of the bidder requesting the debriefing, the standstill period shall be extended by 5 business days after the debriefing is delivered.
 - (iv) All costs incurred for participating in a debriefing shall be borne by the bidder.
 - (v) A written summary of each debriefing shall be included in the borrower’s official procurement records, and copied to ADB for contracts subject to prior review.

2.9 Figure 3 describes the standstill period process with timely debriefing. Figure 4 describes the process with a late debriefing by borrower.

Figure 3: Standstill Period Process to Request Debriefing and File Complaints

Source: Asian Development Bank.

Figure 4: Extended Standstill Period Process with a Late Debriefing by the Borrower

Source: Asian Development Bank.

D. Concluding the Standstill Period

2.10 The standstill period concludes under the following conditions:

- (i) At the end of the standstill period, the borrower can then proceed with contract award to the successful bidder, if the borrower has not received a challenge from an unsuccessful bidder.
- (ii) If the borrower receives a challenge from an unsuccessful bidder, the borrower shall not proceed with contract award until the challenge has been addressed as specified in Appendix 7 of the 2017 procurement regulations.
- (iii) Five business days after a late debriefing is delivered, if the borrower previously failed to deliver a valid debriefing request as required within the original standstill period, as described in para. 2.8 of this guidance note.

2.11 If, after the standstill period concludes, a bidder wishes to ascertain the grounds on which the bid was not selected, the bidder may request an explanation from the borrower. If the bidder is not satisfied with the explanation provided by the borrower, or if the borrower fails to provide such debriefing, the bidder may forward the request directly to ADB. This should be done in writing to the director general of the Procurement, Portfolio and Financial Management Department, who will arrange a meeting at the appropriate level and with the relevant ADB staff as specified in Appendix 9 of the 2017 procurement regulations.

Standstill Period

Guidance Note on Procurement

This guidance note addresses the issue of standstill periods in procurement. Now, subject to national standstill provisions, or those of another development partner, it is possible to instigate a standstill period to allow unsuccessful bidders the opportunity to challenge a contract award decision for ADB projects. The standstill period will be described in the project's procurement plan and the applicable processes described in the bidding documents. ADB recommends a standstill period of not less than 10 working days following the notification of intent to award a contract, during which the bidders may challenge the award decision.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to a large share of the world's poor. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

ASIAN DEVELOPMENT BANK

6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org