Minutes of Consultation Meeting

Concerning the comprehensive Review of the African Development Bank’s (AfDB)
Procurement Policy

Date: 15 July 2014
Location: DFID, London

Present

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Discussion

The following are the main questions raised by DFID and Ministry of Economy & Finance in Italy and the responses provided by the AfDB:

- **How will the new procurement policy help the Bank improve the efficiency of its procurement processes?**

  - The efficiency of procurement processes under projects financed by the Bank has been continuously improving and this is reflected in the reduction of the Bank’s procurement
lead time. At the present time, the process delays for Bank financed contracts are lower for International Competitive Bidding contracts than those of its peers. It is acknowledged, however, that further efficiency gains are possible. Under the new proposed procurement policy, the establishment of more practical thresholds at the country, sector and projects' levels as well as the expected reduction in the use of International Competitive Bidding (ICB) will contribute to speeding up procurement. In addition, the increased use of country procurement systems (wherever possible), as well as post reviews is also expected to reduce the procurement lead time in the long term. The Bank believes, however, that simple monetary thresholds for prior-review of contracts is an unsatisfactory proxy for risk and that other factors should be considered while determining such thresholds.

- The Bank should also be developing efficiency measures to help them determine their performance, this could be tender timescales but also reductions in contract variation clauses etc.

- **How will the Bank go about change management? Is Bank staff nervous about the new responsibilities? How will the Bank prioritize procurement capacity building? Are the current resources in the Bank sufficient to implement the new policy?**

- We recognize the challenges involved in the implementation of the new policy. Intensive and regular consultation meetings are held with various staff of the Bank (including procurement staff) regarding developments concerning the new procurement policy. In addition, the Bank has in place a comprehensive capacity building plan that includes, skills assessment, training of procurement staff, e-learning as well as training of trainers. It should be mentioned that the Bank has just finalized a financing proposal requesting DFID for funds for performing this exercise that is planned to start in the last quarter of 2014. The capacity building exercise will include change management and will also focus on behavioral change of Bank staff towards more innovative thinking across the whole project life cycle.

- It is believed that the current resources in the Bank with regards to the number of procurement staff is sufficient for the implementation of the new policy. Concerning capacity building in borrowers’ countries, the new policy will enable a more focused approach as a detailed assessment will be carried out and specific areas of weakness will be identified. It should be mentioned that capacity building at the country level is envisaged to be a collective effort and will be coordinated amongst all donors. The Procurement department also intends to engage the Governance department in order to join efforts while conducting this exercise.

- **There was no reference to key suppliers’ management under the new policy?**

- The Bank fully supports active and continuous engagement with relevant Industry segments to understand specific needs and to discuss if contract conditions specific to the industry need to be included in the bidding documents. However, more active engagement with specific identified suppliers on setting standards and signing “Heads of Agreements” need to be approached with some caution taking into account the arms’ length that the Banks maintain in its relationship with bidders and suppliers and the principle that the ownership and leadership by the country in any development transaction is critical. The possible liability issues also need to be considered. The Bank also believes that standardizing technical specifications should be the responsibility of other specialized
bodies and that, while the Bank should play a role in simplifying and standardizing contract conditions, this is primarily the responsibility of institutions like FIDIC and NEC for framing standard contract templates. The new policy is expected to provide multiple options to countries in the use of contract documents, and signing of “Heads of Agreement” would run counter to this philosophy. After deliberations, however, it was decided that this issue will be further discussed with procurement experts of DFID in the coming days.

- How will the handling of complaints and disputes be addressed under the new policy?
  
  ➢ The Bank’s role as mandated by its charter is to ensure that funds provided by it are used for their intended purpose (fiduciary responsibility). The Bank is not party to any contract that it finances and therefore maintains an arm’s length with both the borrower and the bidder/contractor. It has a responsibility, however, to ensure that legitimate complaints from bidders are fairly and speedily resolved. In this connection, a revised Presidential Directive was recently issued giving a detailed procedure for accepting, registering and dealing with complaints in a credible and efficient way. The Terms of Reference of the Procurement Review Committee has also been modified to bring greater transparency in the complaint handling process. The Bank is also contemplating including in the bidding documents a dedicated mail address where dissatisfied bidders could submit complaints. For receivable complaints, a mis-procurement decision can also be taken where the Bank can refuse to finance the contract.

  ➢ While the Bank will take necessary and prompt steps to handle complaints from dissatisfied bidders, it acknowledges that disputes under a contract should be dealt with under the provisions of the contract. The Bank believes that contracts should include necessary provisions for multi-step dispute resolution mechanisms. Most of the standard contract templates used have such provisions.

- Special clarity and division of responsibility between the procurement function and project management? Will the Delegation of Authority Matrix be reviewed?
  
  ➢ The Bank will soon be reviewing its Delegation of Authority Matrix. The requirements of the new procurement policy with regards to the responsibility and authority shall be taken into consideration during this exercise.

- To what extent will the new procurement policy support market development as a basis for value for money?
  
  ➢ Aside from the increased use of National Competitive Bidding (NCB), the policy will be an enabling tool, i.e. it will look at the aspirations of the government of the borrower country towards developing certain sectors or promoting certain considerations in public interest including those relating to environmentally and socially responsible transactions. It should be noted that the assessment of the procurement systems will be done at three levels the country, sector and the project and that the assessment at the sector level will specifically include market analysis and development.
• How is harmonization envisaged under the new policy especially while the World Bank is also reviewing its procurement policy?

➢ The Bank is continuously in contact with all other MDBs and is keeping them informed about its approach to reviewing its procurement policy. At the level of principles, the direction the Bank is taking is not very different from that of the World Bank. The African Development Bank, understandably, is putting emphasis in its policy on the African context. It must be admitted, however, that the Bank has some disquiet about a few provisions that are being considered by the World Bank in its revision of the Procurement Policy (for example, the possible use of country systems for those countries that sign the Agreement on Government Procurement of the WTO). However, these departures from the WB Bank policy should not significantly affect Harmonization and we are in constant touch with the operations procurement arm of the World Bank to ensure that implementation of the policies does not lead to any problems.

• How will the new policy address FCS?

➢ The Bank is considering multiple options to deal with procurement in Fragile and Conflict Affected States (FCS). These include, for example, increased use of UN organizations present on the ground and who are in the best position to provide assistance. The Bank is, in that regard, very close to finalizing an agreement which enables UN organizations to use their procurement rules and procedures with certain caveats. We shall also ensure that local capacity building remains an integral part of such arrangement. The other options being considered include more hands on technical assistance and use of simplified procurement methods for upstream procurement related to preparatory stages of implementation. More details will be worked out and provided in the subsequent documents to the policy.

• How will the new procurement policy achieve Value for Money?

➢ While the current policy allows the use of life cycle costing (and therefore takes into account the initial price and the operations, maintenance and disposal costs), the new policy will go beyond the financial value realized by the project to its economic impact. Depending on the horizontal policies of the Borrower country, the new arrangement could consider other parameters including social and environmental issues provided the principles of competition, fairness and transparency are not adversely impacted.

➢ The new procurement policy will also look at the cost of delivering the fiduciary services by the Bank. The Bank is also undertaking a study to determine if the criterion used for evaluation are adversely affecting the procurement costs. Some recent measures taken by the EU in this regard are also being considered for possible adoption by the Bank.

• What are the next steps

➢ The new procurement policy is scheduled to be submitted to the joint meeting of the Development Effectiveness and the Audit and Finance Committees (CODE/AUFI) of the Boards on the 6th of October 2014. If endorsed, it will be subsequently submitted to the Boards of Directors for final approval. In the meantime, the drafting of the other three documents namely the Methodology, Operations Procurement Manual and Toolkit has
already started and is expected to be finalized by the end of 2014. The internal capacity building exercise is planned to start during the last quarter of 2014.

Conclusion

DFID and the Ministry of Economy & Finance, Italy provided broad support to the direction of the Bank’s and requested that:

- Further discussions be held with them on the issue of the Management of key suppliers;
- The Bank devise metrics for measuring performance in various parameters;
- Provide more information (as these become available) on addressing Fragile countries and on change management within the Bank.