Minutes of Consultation Meeting
Concerning the Comprehensive Review of the African Development Bank’s (AfDB) Procurement Policy

Date: 14 July 2014
Location: Engineers Against Poverty, London

Present

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Discussions

The ORPF Mission had very useful discussions with the representatives of the Engineers Against Poverty (EAP) exchanging views on issues related to the Bank’s Comprehensive Review of its Procurement Policy:

Summary of the Status of the Review: A statement on the key principles, considerations and components of the Review was made by the Bank highlighting Equity as the one of the key imperatives to the Bank’s approach. On a request from the EAP team, the mission explained a brief outline of the differences between the World Bank (WB) and the AfDB’s approaches, indicating that at the level of broad policy principles there is little divergence. At the framework level the differences are generally acceptable considering that there are areas where the Bank needs to take different positions in accordance with its African context, such as acceptance of policies that promote local or regional supplying, contracting or consulting industries. On the other hand, some of the new ideas that WB may be considering, may be somewhat difficult for the African Development Bank to accept conceptually. These include, for example: (a) the use of procurement systems of countries that have signed the WTO’s GPA, which is a market access plurilateral instrument. Some reasons for the hesitation for the African Development
Bank to accept this concept are (i) countries that have signed the GPA may not necessarily have strong and reliable institutions, as this is not part of the assessment made to become a signatory of the GPA; (ii) use of country systems by signatories of the GPA may be discriminatory to non-GPA partner countries; (iii) there are other international procurement instruments, such as the COMESA Procurement Directive, which may then also push for similar consideration; (b) Secondly, there is also a shift in thinking, towards the WB getting involved in contractual disputes, which may unravel during implementation as the WB is not a party to the Contract between the Borrower and Supplier, Consultant or Contractor; and (c) the AfDB has a reservation with respect to the notion of signature of Heads of Agreements in respect of Framework Contracts with companies given, among other things, possible liability issues.

**Approach to Anti-corruption:** The Mission outlined the Bank’s approach with regard to anti-corruption. Firstly, there is the indicative high cost of implementing the current MDBs’ sanctions policy. Secondly, it would also appear that corruption is not isolated but rather more widespread than anticipated. EAP agreed to this position. In effect, corruption in construction is more endemic and must be approached more constructively and systematically.

**Development of Local Industry:** The EAP agreed with the Bank’s thinking on Capacity Development in the proposed Policy. It pointed out that the building of local industry is critical to development in Africa but this is currently constrained. It considered that companies may be nurtured using framework and serial contracts. The old thinking had been one based on economics with fixed options (which has not worked), but the new approach could incorporate different options, with encouragement to Procuring Entities to understand the rules in greater depth. For example, Tanzania’s new Procurement Law includes aspects to assist development of local industry such as appropriate packaging of contracts.

**Adequate Local Budget Allocations for Projects:** It was considered that adequate local budgeting for projects would make the procurement process more transparent, help to ensure prompt payment and prevent corruption. Lessons could be learned from the UK’s example in setting local project bank accounts to facilitate cash flow down the subcontracting chain.

**Summary of EAP’s Comments on AfDB’s Approach:** Commenting on AfDB’s approach to the comprehensive review, EAP indicated that it very strongly supported. For example, it found the Equity consideration especially attractive as it balances the Bank’s intervention with RMCs capacity resource constraints. There is the need for donors to fully recognize the weaknesses in RMCs project implementing agencies and to support them. Procurement should be adequately integrated into appropriate project design and with specific government idiosyncrasies to ensure successful project execution. While there will be challenges in some countries but these may be constructively addressed. Public investment management should consider procurement wholistically throughout the project cycle. The present emphasis should be on selection of capable contractors, consultants and suppliers. There is need to consider and address problems of project design. Consideration should be given to new models of construction contracts, such as fixed budget, force account and cost plus approaches. If cost plus approaches are too complicated for RMCs then perhaps pilot approaches may be considered. The Policy needs to have flexibility. Reeducation of both Bank and RMCs Procurement staff will be essential. Harmonization with the WB is critical.

**CoST:** Both the Bank and EAP agreed to continued cooperation with regard to CoST. Perhaps a formal relationship needs to be forged. In addition to continued cooperation through projects (Uganda, Malawi, Madagascar, and Burundi), ORPF is currently discussing with the Integrity...
and Anti-Corruption Department (IACD) of the African Development Bank, a proposal to use some funds (obtained through negotiated settlements) on promoting the CoST program. A Conference on CoST in Tunis is planned for October 2014.

Conclusion

It was agreed that the current prescriptive ICB approach (auction system) has not adequately achieved value for money and a more flexible approach is needed. Also integrity issues needed to be addressed in a more holistic manner. Thus the current thinking and the progress made regarding the Bank’s comprehensive review of its procurement policy were endorsed by the EAP.