



African Development Bank

**APPROACH PAPER
COMPREHENSIVE REVIEW
OF THE ADB'S
PROCUREMENT POLICIES
AND PROCEDURES**



Procurement and
Fiduciary Services
Department

REVIEW OF POLICIES

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ABBREVIATIONS AND ACRONYMS

ADB	African Development Bank
ADF	African Development Fund
AUFI	Audit and Finance Committee
BOS	Business Opportunities Seminar
CICA	Confederation of International Construction Associations
CODE	Committee on Development Effectiveness
DAM	Delegation of Authority Matrices
ESRP	Environmentally and Socially Responsible Procurement
EU	European Union
FIDIC	International Federation of Consulting Engineers
FO	Field Office
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
IACD	Integrity and Anti-Corruption Department
IADB	Inter-American Development Bank
ICB	International Competitive Bidding
ICT	Information and Computer Technology
IEG	Independent Evaluation Group
IFC	International finance Corporation
MDB	Multilateral Development Banks
MEAT	Most economically advantageous tender
NCB	National Competitive Bidding
OECD	Organization for Economic Cooperation and Development
ORVP	Operations Regional Vice-President
PPP	Public-Private Partnerships
RMC	Regional Member Country
RRC	Regional Resource Centre
SBD	Standard Bidding Document
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
WTO	World Trade Organization

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APPROACH PAPER

1. Background

- 1.1. **Procurement policy and development effectiveness:** *The African Development Bank (ADB)'s Procurement Policy constitutes a pivotal element of its lending framework governing its investment operations.* This is because the Agreement Establishing the Bank makes it mandatory for it to ensure that the loans granted by it are used for the purposes intended – a fiduciary obligation. The Bank's procurement policy, which is outlined in the Rules and Procedures for Procurement of Goods and Works and the Rules and Procedures for the Use of Consultants (Rules), govern how clients acquire goods, works and services under projects financed by the Bank, and the roles and responsibilities of the Bank and clients in that process. It is to be recalled that the Regional Member Countries (RMCs) of the ADB spend an estimated 5 to 20 percent of their gross domestic product (GDP) on the procurement of goods, works and services, and a difference between effective and less effective procurement policies that implies savings of even 1 percent of GDP would represent a significant part of governments budgets.
- 1.2. **Evolution of Procurement Policy:** *The ADB's Procurement Rules were first drafted in the early eighties and have undergone several revisions in response to the need for adaptation to the changing roles of the Bank.* In terms of the major principles expounded by the Rules, competitive bidding open to all potential qualified bidders has been the default method for procurement of goods, works and services founded on four main considerations comprising the need for economy and efficiency, the interest in ensuring that all eligible bidders have equal opportunity to participate in bidding, the desire to encourage the development of domestic industries and the importance of having a transparent procurement process. It is by this means that the Bank has become a leader in Africa in supporting good public procurement practice. The periodic updates over the years have embodied significant cumulative changes that represent the evolution of a policy that has served the Bank and its borrowers well. Issues that have been advanced by revisions to the Rules have included strengthening of borrowers' procurement practices, use of country systems, curbing fraud and corruption, transparency in the bidding process, enhanced business opportunities, and improved access to information. The version presently in use, approved by the Boards in May 2008 and revised in July 2012, to take into consideration the cross debarment agreement reached between the MDB's, is currently under revision once again, to keep in step with the overarching goal of the assurance of the highest standards of fiduciary oversight at the MDBs/IFIs level and continued reduction in transaction costs at the Borrower level.
- 1.3. In recent years, dedicated implementation of the MDBs harmonization agenda which is aimed at keeping in step with the overarching goal of the assurance of the highest standards of fiduciary oversight at the MDBs/IFIs level and continued reduction in transaction costs at the borrower level, has led to the situation in which, presently, the MDB's procurement policy documents - called Guidelines or Rules depending on

the MDB- are substantially harmonized. These Guidelines or Rules are supported by Manuals and Standard Bidding Documents (SBDs). In particular the bidding community have felt that the SBDs have introduced considerable improvements into the bidding process.

- 1.4. **Context of the Review:** *Much progress has been made in advancing good procurement practices, over the years through revisions of the Rules as new demands emerged but there is a certain perception of limited positive impact.* The key to the effectiveness of the policy lies in their implementation. It is here that operational experience has highlighted delays in project execution from the use of these Rules. The general perception is that the complexity and prescriptiveness of the Rules, while reflecting the complexity of the procurement processes, have limited their positive impact especially in RMCs that lack capacity and sound institutional, legal and governance systems.
- 1.5. It is in this light that, in order to continue to align its procurement policies and processes more effectively to the achievement of true development effectiveness in the rapidly evolving economic climate in its borrowing Regional Member Countries (RMCs), given its commitments, and also to continue to ensure modernization and simplification of its processes, that the Bank has decided to undertake a comprehensive and detailed review of its procurement policy. This paper outlines the approach that Management proposes to follow in carrying out the review.

2. Justification

- 2.1 The underlying justification for the Bank to undertake this proposed comprehensive review of its procurement policies and procedures can be found in the transformations that have taken place during the past forty years both in the Bank's business and in global economy that have impacted the world in which the Bank operates.
- 2.2 *The Bank's borrowers and staff have often found the procedural provisions in the Rules too prescriptive, complex and time-consuming.* The Bank's portfolio of projects has evolved from mostly infrastructure investments to new lending instruments spanning from Public-Private Partnerships (PPP) financing through sector-wide approaches to ever-increasing numbers of smaller, dispersed contracts, performance-based and community-based activities. The Rules have continuously been revised to accommodate new concepts and ways of carrying out public procurement. Innovative procedures such as output-based procurement and life cycle evaluation have been incorporated, and the fight against fraud and corruption has been advanced by the inclusion of appropriate provisions. But at the same time procedures that are prescriptive, in particular regarding ICB and NCB, while effective in ring-fenced project environments, may have limited impact on the overall effectiveness of country systems. RMCs such as Fragile States can lack capacity, and the Bank itself faces challenges and resource constraints in implementation.
- 2.3 Trends that have impacted the Bank's procurement practice include the following:
 - 2.3.1. *Globalization and integration have transformed the market for items financed by the Bank such that merchandise export from developing countries has multiplied many*

times. Supplying countries for Bank financed operations are increasingly developing economies with national companies increasingly winning contracts in their countries (Box 1). On the other hand developed countries have become more specialized, emphasizing high-value and technologically-driven goods.

- 2.3.2. *Public procurement has become big business*. New demands for open and transparent public procurement has been created by new international instruments such as the WTO's Government Procurement Agreement (GPA) and regional and bilateral agreements such as the EU's Directives on Public Procurement with the UNCITRAL Model Law on Public Procurement playing a pivotal role.
- 2.3.3. *New concepts and practices of what makes for good procurement practice have emerged*. Among these is e-procurement which, in addition to improved efficiency through computerization of processes, represents a powerful information and management tool that underpins the strengthening of public procurement systems and which can transform the provision of public services.
- 2.3.4. *The desire of governments to obtain better value for money and to make their procurement systems faster and cheaper is also driving modern public procurement systems*. There has essentially been an important change in perception from viewing public procurement as a set of bureaucratic rules to a strategic government function at the core of delivering quality public service and giving value to taxpayers. The question then is how to obtain value for money and achieve fitness for purpose? This has resulted in greater flexibility being introduced into procurement systems entailing rebalancing between compliance and performance, between rules and principles.
- 2.3.5. *Embedded in the new approaches are issues of governance, accountability and probity in public procurement resulting in expectations of high ethical standard on the part of both private firms and public sector counterparts*. Public procurement has become the nexus of governance, anti-corruption and competition offering opportunities to build on the common values of openness, transparency, fairness, competition, value for money and accountability.
- 2.3.6. *Improved and varied procurement capacity in RMCs has generated and driven up client expectations of the support they receive from the Bank to reform their procurement policies and to build the corresponding institutions*. In most RMCs, new legal structures are being adopted and institutions are being put in place to handle public procurement. Advancements in these areas in some middle income countries include using e-procurement systems to simplify and automate procurement transactions, with high returns. This entails a certain set of assistance requirements from the Bank. On the other hand, a different strategy is called for in case of small countries, fragile and conflict-affected states, and post conflict countries, which needs to be geared towards capacity development, introduction of flexibility and simplification of procedures in order to ensure effectiveness.
- 2.3.7. *The Bank is required to meet international commitments on harmonization and convergence with respect to enhancing the effectiveness of development programs*. These commitments enshrined in the Paris Declaration with specific actions to be taken to strengthen procurement capacities under the Johannesburg Declaration and the Busan Fourth High Level Forum on Aid Effectiveness, mandate the Bank to

meets its international obligations. This now requires the Bank to undertake a reassessment of how it uses country systems, encourages dialogue on harmonization, and strengthens RMC capacity under its investments.

- 2.3.8. *The efficiency, effectiveness and costs of the Bank's internal review and clearance processes and its procurement supervision and oversight are significant and must be addressed.* The number of contracts under prior-review by the Bank dictates the procurement staff resources that would be required. Even though post-review is contained in the Rules, Project Appraisal Reports (PARs) mandating post review are few and therefore as at present borrowers' contracts are mostly prior reviewed, even for relatively small amounts. The Bank's Procurement Annual Reports consistently show a high concentration of contracts of small value in SAP PMS (Box 1). Thus extensive prior review requirements compete with capacity development and system-wide improvements for staff time and attention. There may be ways to increase the value added of the Bank's work to have a multiplier effect on the entire range of borrowers' public procurement with considerable potential for generating savings for both borrowers and private bidders.

Box 1: Extracts from the ADB Annual Procurement Report for 2011

The Procurement Annual Report for 2011 highlights the following for contract registered in the Bank's SAP Project Management System for contracts under prior review:

- *There is a high concentration of contract numbers in the low contract value ranges;*
- *97% of contracts for Goods in terms of number and value were awarded through ICB;*
- *Almost 100% of contract for Works in terms of number and value were awarded through ICB;*
- *79% of contract for Consulting Services by number and 89% in terms of value were awarded through competitive selection methods;*
- *There is a high success rate for national bidders in some of the RMCs in ICB, particularly for Works contracts;*
- *ICB contract procurement took at least 20% more time than for NCB.*

- 2.4 In light of these changing circumstances, past reviews of the Bank's Rules have modified provisions, largely to encompass new methods as well as aspects of the Bank's oversight procedures but these have not addressed the underlying policies. Instead, changes over time have been largely incremental, in response to new concerns, lending instruments, and innovations in the delivery of development assistance, as the need arose. Such changes have added new provisions and requirements to improve procurement processes and ensure acceptable fiduciary compliance but have resulted in making procurement, in the eyes of a number of borrowers and Bank staff, more complex and time-consuming, especially for projects that do not entail large and complex contracts.

3. Goals and Objectives

- 3.1 The broad goal of this review is to properly structure the Bank's approach to procurement to enhance development effectiveness and the mutual reinforcing and complementary goals of harmonization, use of country systems, competition, governance, anti-corruption, good public sector management and accelerated investment in infrastructure. A second broad goal is to position the Bank to assist its borrowing RMCs with procurement capacity development and enable them adapt and adopt best practices while ensuring that its policies respond to the full range of RMCs capacities and operational needs. A third broad goal is for the Bank to continuously strive to reach its full potential in its own cost-effectiveness and maximize its value added to the economies of the RMCs. The purpose of the review is to clearly define a path for completely revising the Bank's procurement policies, internal practices to ensure that they remain in tune with the changing world situation, in particular Africa, and to continue to effectively serve our borrowers while ensuring fiduciary compliance.
- 3.2 This review will constitute a major multidimensional undertaking with significant implications and it therefore requires to be methodical, thorough, inclusive, and be based on evidence. It needs to be founded on policies that are transparent, equitable and efficient while contributing to sustainable procurement capacity development in the Bank's RMCs. The outcome should meet the needs of the Bank's RMCs and other shareholders, strike the appropriate balance between the sometimes conflicting interests of RMCs and international actors, and reflect the outstanding commitments by the Bank and the rest of the donor community, to strengthen country procurement capacity. It should address the specific needs of the Bank's RMCs in Africa while also complying with the harmonization agenda of the MDBs. The resulting procurement policies, procedures and practices should continue the evolution of the Rules from largely designed for stand-alone large infrastructure projects, to one that is capable of responding effectively and efficiently to the needs of constantly improving public procurement systems in an Africa that is increasingly globalizing on the one hand while on the other, there are fragile states that have recently emerged from conflict.

4. Approaches of the MDBs: The World Bank and the IDB

- 4.1 ***The World Bank's Proposed New Procurement Policy Framework:*** The World Bank, recognizing that it finances less than 1 percent of the several trillion US Dollars spent annually on public procurement by the countries borrowing from it, has concluded that, if it can better support clients to strengthen their public procurement, the benefits can be transformational, both for its borrowing countries and also for itself. Accordingly it has undertaken a review of its operational procurement procedures and has drafted, in its Phase I, a Proposed New Framework for Procurement in World Bank Investment Operations. The review team consulted with about 2,000 stakeholders from 96 countries between May 2012 and February 2013. The Framework, based on the vision "*Procurement in Bank Operations supports clients to achieve value for money with integrity in delivering sustainable development*", sets out, the principles that would guide implementation of the vision, namely, economy, efficiency, effectiveness, fairness, integrity, openness and

transparency, all backed by good management. In addition to elaborating roles for the World Bank, it also articulates a value proposition, based on sustainable development, integration, flexibility, adaptability and support for procurement reform. At the centre of how the operating policy that governs investment lending would evolve, is adopting at the project level, a “fit for purpose” procurement approach, making greater use of country systems in investment operations, while managing associated risks and taking a stronger, more risk-based approach to fulfil the World Bank’s assurance needs. The details of the new policy and the implementation issues are to be outlined in Phase II which will be expected to take into consideration the Independent Evaluation group (IEG)’s evaluation of procurement in Bank operations to be concluded in 2013. Phase II would also see more dialogue with staff, clients and stakeholders. The revised policy document will be drafted for approval by the Executive Directors in 2014 to be launched in FY 2015.

4.2 ***The World Bank and Public Procurement – An Independent Evaluation by the Independent Evaluation Group (IEG):*** The IEG, in 2012/2013, evaluated the World Bank’s procurement systems and practices focusing on two aspects; namely, the Bank’s support to improve countries’ own public procurement systems and raising the efficiency of public expenditures and also on the extent to which the Bank’s procurement guidelines and processes helped support its own goals of competition, economy, efficiency, and transparency in its lending operations. Its findings, broadly endorsing the use of the World Bank’s Guidelines, were the following:

- There was a wide array of efforts to support training and capacity building for procurement in client countries which was fragmented and focused substantially on legal and regulatory reform, including extensive use of policy-based lending and grants, with limited systematic integration of procurement into the wider context of effective public expenditure.
- Regarding use of country systems, some of the Bank’s country clients point out gains from alleviating the need to maintain parallel systems. However, private suppliers want the World Bank to retain its role to ensure a level playing field, greater transparency and selection, and perceptions of higher levels of recourse.
- The present World Bank procurement guidelines constitute broadly adequate instruments for its operations lending terms of development impact, albeit with a need for review of selected provisions such as consultant selection, new and complex forms of procurement processes and public-private partnerships. On the other hand, World Bank procurement processes are time consuming and have posed difficulties because of inflexibilities in interpretation.
- The World Bank has a highly articulate set of instruments to manage fiduciary risk that have been strengthened in recent years.

4.3 The following recommendations were made by the IEG:

- The World Bank could better support capacity building for procurement through country-level strategies, the use of lending instruments adapted to providing hands-on assistance, and a fine tuning of its present diagnostic instrument to enable them to capture how well procurement markets function;

- There is scope for the Bank to move further toward using country systems, on an incremental basis, in line with the approach adopted by global partners;
- Process change requires better monitoring, clear standard and changes in incentives that would lead to the exercise of reasonable judgment and less risk aversion;
- More integrated risk management systems and a greater focus on risk, as opposed to value, could reduce the need for oversight through prior review; and
- There is a significant need to improve Bank procurement processes in two areas: the setting of monitoring service standards and the introduction and use of procurement monitoring tools; these are imperative to help the World Bank to track the achievement of procurement goals such as economy, efficiency, and value for money.

4.4 ***The Inter-American Development Bank (IADB)'s Study on Procurement-Related Issues that Affect Project Execution:*** The IADB, which uses its version of the MDB's harmonized procurement Guidelines, completed its empirical Study on Procurement-Related Issues that Affect Project Execution in July 2013. This study was aimed at identifying and validating procurement-related aspects in sovereign-guaranteed operations that cause delays in the execution of operations, and proposing solutions to address or mitigate these obstacles. It covered 487 operations in 26 countries. The study found that 44% of the aspects identified as contributing to project execution delays did not relate to procurement while 26% related to procurement and there were no delays in 30% of the cases. Of the 9 main factors identified, only two; namely, EA's deficiencies in procurement planning and limited contractors and suppliers participation, related to procurement.

4.5 ***Lessons learned from the MDB's Approaches:*** The World Bank procurement policy review has amply demonstrated the need for change to its procurement approach and has proposed a Framework which will be transformational for its clients and staff, but which will take into consideration the findings of the IEG. This new policy is expected to be launched in FY 2015. Clearly, the IEG's main finding that the World Bank's current Guidelines, which is harmonized with those of the other MDBs, are substantially adequate for its lending operations and the IADB Study's results that only 26% of project implementation delays are due to procurement, both seem to be in conflict with the World Bank's new Framework approach. Therefore, there will be need for reconciliation or trade-offs between these two different positions, as mandated by the World Bank's Board, and the resulting solution could take time to become operational. Given this situation the ADB's view is that before the World Bank's Framework position becomes fully concretised and the other MDBs are mandated to adopt it, it is important that other approaches should be explored. It is for this reason that the ADB wishes to determine its position more systematically by undertaking this comprehensive review of its procurement policy.

4 Scope of the ADB's Review

- 5.1 La The ADB's procurement policy review will start from first principles in order for it to be sufficiently comprehensive. It will begin with the definition and clarification of the underlying policy objectives and their strategic alignment, identifying areas of congruence, inconsistencies, and competing demands where trade-offs need to be made. In light of the many meaningful goals that can be pursued, it is essential to define from the start, which of these goals will be the most important. Accordingly, the review will examine the best ways to structure the policies, procedures and practices, and define the governing principles behind these policies, procedures and practices, looking for ways to get the best fit with the varying demands of the Bank's business instruments, fiduciary obligations, sectors, delivery mechanisms, RMC capacities, and risks, while taking into consideration international commitments, instruments, agreements and best practices. The review will identify and explore areas in which there may be gaps as well as areas for improvement and for simplification. Through examination of the documents from the World Bank's procurement policy review, relevant materials available in the public domain, the ADB's procurement track record, additional studies, and analysis, the review can assess the relevance and applicability to the Bank and its RMCs of the many new concepts and innovative approaches to public procurement that have emerged in recent years, including value for money, best-fit-for-purpose, most economically advantageous tender (MEAT), tailor-made procurement, e-procurement, the use of preferences, interactive ways of working with potential bidders, methods to increase efficiency, sustainable procurement or Environmentally and Socially Responsible Procurement (ESRP). Special consideration will be given to the needs of Africa's Fragile States. The review will seek ways to simplify the demands on the RMCs and bidders alike, and to increase the Bank's cost-effectiveness and value added in Bank-financed operations.
- 5.2 In terms of the scope of the analysis and as guidance to the Review Committee, it is anticipated that the review should investigate and explore the viability of the following:
- 5.2.1 *Objectives and Principles*: Defining a robust set of procurement objectives and principles that would apply across a range of Bank instruments and sectors, and the basis upon which specific procurement procedures, practices and standards can be grounded, while allowing for results to be measured and innovations to be introduced over time.
- 5.2.2 *Objectives versus Principles*: Determining the tradeoffs between key and sometimes conflicting objectives and the principles of transparency, fair treatment, access, economy, and competition.
- 5.2.3 *Principles versus Procedures*: Determining the tradeoffs between the principles-based and rules-based approaches.
- 5.2.4 *Procurement Oversight*: Analysing the overall implications of the Bank's approach to procurement oversight and striking the appropriate balance between procedural compliance, risk management, RMC capacity, performance, and results.
- 5.2.5 *Flexibility*: Incorporating into the policies and procedures the flexibility to adopt additional concepts and approaches that have emerged over the past twenty years drawing on the experience of others such as the financing of PPP arrangements in

Africa, and the use of international as well as African-based agreements and instruments.

- 5.2.6 *From one-size-fits-all to Tailor-made Procurement with due Attention to small or Fragile and Conflict Affected States*: Moving from the current one-size-fits all approach to all categories of procurement and situations, in applying the Bank's procurement policies and procedures, to adapting to different needs, reflecting the growing strengths and diversity of RMC's capacities as well as in different sectors even in the same RMC, and thus better account for risks. This would cover different approaches in different RMC and specific sector situations which may vary from entities that are well-endowed institutionally to those in small or fragile and conflict-affected states.
- 5.2.7 *Strengthening Country Procurement Systems*: Developing new and innovative modalities for the Bank to provide the incentives and ways to strengthen procurement systems in RMCs.
- 5.2.8 *Capacity Development in RMCs*: Developing new and innovative modalities for the Bank to provide support to the RMCs for procurement capacity development.
- 5.2.9 *Quality Procurement Cycle Oversight*: Incorporating new modalities for the Bank and its RMCs to receive quality assurances, including quality evaluation, monitoring, contract management and contractor performance, during all stages of the procurement cycle from bidding to contract execution and completion. This may include possible use of (a) third-party oversight; (b) integrated, extended, and more comprehensive audits; (c) clear definition of the role of supervising engineers; and (d) changes to bidding documents during the bidding process and contract forms during execution.
- 5.2.10 *Integrated Fiduciary Systems*: Including an integrated fiduciary system of clear accountabilities, controls, remedies, and recourse mechanisms, that bring a level of comfort and reassurance in keeping with the Bank's management of risks while retaining high standards and exercising the Bank's fiduciary responsibilities.
- 5.2.11 *Bank's Leadership Role in Public Procurement Reform in Africa*: Providing unified multidimensional platform linked to different aspects of the Bank's development agenda, competition, governance, anti-fraud and corruption, public sector management, and capacity development, from which the Bank can retain, a leadership role, and at the same time advocate and model best international practice in its dialogue with RMCs.
- 5.2.12 *Promote and Expand Harmonization and Partnerships*: Promoting harmonization with development partners and ensure convergence with emerging international standards, while expanding opportunities to include partnerships and co-financing mechanisms, recipient-executed Trust Funds, and the involvement of other development institutions such as the UN Organizations and Global Funds in Bank-financed operations in emergency situations and in fragile and conflicted effected states.
- 5.2.13 *Determination of Resource Implications*: Determining the organizational, business processes, resources, and skills implications of any new policy proposal, both for the

borrower and the Bank, with further strengthening of both RMC and Bank information and management systems.

5.2.14 *Monitoring Impact and Outcomes*: Establishing a framework for monitoring the impact and outcomes of any policy changes.

5.2.15 *Cost-effectiveness and value Added*: Increasing the cost effectiveness and value-added of the Bank's internal processes, with commensurate gains for borrowers and the private sector.

5.3 In summary, the Bank's procurement policy, procedures and practices, must become robust, streamlined, nimble and efficient both for the Bank and its RMCs to implement, while adhering to a set of agreed principles, rules and procedures appropriately adapted to different situations of capacity and risk, maturity of market, and soundness of country systems with special attention to small or fragile and conflict-affected states. These policies, procedures and practices should support achievement of the development objectives of effectiveness, sustainability, capacity development, and advance the Bank's overall development agenda while maintaining compliance with the Bank's Articles of Establishment and its fiduciary obligations. Grounded in these commonly accepted principles should be a range of procedures based on assessed risks. Through this means the Bank can, for the future, position itself to; (a) tailor application of its policies better to individual RMC capacities; (b) adapt to the specific requirements of individual operations with greater efficiency; (c) incorporate new concepts approaches and procurement methods more easily as its business changes, innovations occur, and lessons emerge over time; (d) work more effectively and seamlessly with development partners on enhancing harmonization and use of country systems; (e) develop synergies between such areas as public sector management and governance, anti-corruption; and (f) achieve greater cost effectiveness and value added in the use of resources, downstream gains for RMCs and the private sector.

6 Methodology

6.1 The review will carefully analyse best practices, conduct a comprehensive fact-finding exercise and draw lessons in order to map out a route forward and draft the appropriate policy, procedures and practices documents. It will identify and elaborate on issues to be addressed and list those areas where change will be required. The review will fully recognize the significant work that has already been completed by the World Bank in the review of its procurement policies and procedures and it will also access the relevant work that is currently available in the public domain on the subject and examine the ADB's procurement track record. The work will involve (i) detailed literature review; (ii) analyses of the Bank's procurement track record and benchmarking with other MDBs; (iii) drafting of the governing framework for the policy and procedures documents; (iv) presentation of findings to the Executive Directors Committees, CODE and AUF1; (v) dialogue with all stakeholders through the Bank's Website; (vi) drafting of the policy and procedures documents; and (vii) Approval by the Boards of Executive Directors.

6.2 *Detailed Literature Review*: The review committee will seek to deepen our knowledge on all aspects of this subject by compiling and carefully analysing all the

studies and background documents prepared by the World Bank under its procurement policy and procedures review, relating to Africa. These will include all the consultation materials such as the Initial Discussion Paper, Approach Paper, and the Phase I Proposed New Framework, on-line feedback and written statements and the background papers comprising those on the use of domestic preference, sustainable public procurement in LICs, green procurement, fraud and corruption, supplier diversity, innovation in the energy sector, and use of country systems, capacity building, innovations in procurement and professionalization of procurement staff. The team will specifically also examine the documentation, findings conclusions and recommendations from the IEG's evaluation as well as the IADB Study on procurement related issues that affect project execution. The team will access material on the subject available especially from the other MDBs and in the public domain and copiously examine them. From these the team will identify and elaborate issues to be addressed and list those areas where change will be required in the Bank's procurement policy and procedures. This work will assist the team draw lessons learnt that will help to map out the route forward.

- 6.3 *Analyses of the Bank's procurement track record in project implementation effectiveness and benchmarking with other MDBs:* The committee will examine documents available in the ADB, assess the level of success of the Bank's project implementation and the role of procurement, relative to achievement of the Bank's development objectives, and conduct benchmarking and comparison analysis with the other MDBs and other organizations. This will lead to identification of any gaps and specific issues to be addressed. Appropriate studies and or activities will be conducted to fill in the identified knowledge gaps.
- 6.4 *Drafting of the governing framework for the policy and procedures documents:* The team will lay out clearly; (a) the overarching framework for the future evolution of the ADB's procurement policies and procedures; (b) the principles to guide the formulation of those policies and procedures and how they will be applied; (c) the specific parameters and dimensions that would constitute the departure from the current Rules, along with their justification; (d) the issues that would be critical for implementation of the proposed policy framework, such as modalities for procurement monitoring and oversight, with appropriate suggestions for mitigation; (e) the departures that will be required from the World Bank's proposed new framework; and (f) the recommendations on the overall strategic direction, implementation, and the way forward.
- 6.5 *Presentation of the governing procurement framework to the Executive Directors Committees, CODE and AUI:* ADB Management would present these recommendations and the proposals for an overarching framework and guiding principles for eventual revisions to the Bank's procurement policies and procedures to the Board of Executive Directors Committee of CODE and AUI. The review team would be invited to assist at the forum and to incorporate CODE and AUI's suggestions into the framework.
- 6.6 *Dialogue with stakeholders through the Bank's Website:* The procurement framework documents approved by CODE and AUI will be placed on the Bank's Website and comments will be solicited from the Bank's stakeholders and client countries. The team will consolidate these and integrate them into the drafting of the policy and procedures documents.

- 6.7 *Drafting of the policy and procedures documents:* Drafting of the actual revised statement of procurement policy and accompanying operational procedures and practices including recommendations of specific revision to the Rules applicable to borrowers, will be undertaken at this stage. To the extent that these can be estimated the documents will comprise (i) A concise Procurement Policy Document containing purely policy and guiding principles to be approved by the Boards to replace the current Rules; (ii) Two Procurement Manuals – one for Goods, Works and Non-Consulting Services and the other Consultancy Services, containing explanatory and advisory notes on the principles and outlining the procedures, practices, processes and standards to be followed, as well as providing flexible prescriptions to suit specific situations. Some of the materials may possibly be derived from the current Rules and the existing Manuals¹; and (iii) A Procurement Guide². While the first two documents will be targeted for use by both borrowers and Bank Staff the Guide will be aimed purely at Bank Staff.
- 6.8 *Approval by the Boards of Executive Directors:* Only the Procurement Policy Document containing purely policy and guiding principles will need to be approved by the Boards. The two Manuals and Guide will be tabled only for information.

7 Phasing and Timing

- 7.1 The review will be undertaken in two steps with - Stage I - covering the examination of the documentation and execution of all consultations culminating in drafting of recommendations which will set out the overarching framework for the future evolution of the Bank's procurement policies, the principles to govern the formulation of those principles and how they are to be applied, and the specific parameters and dimensions that would be modified together with justifications, for execution of Stage II which will be the actual drafting of the proposed new Rules.
- 7.2 **Stage I: Commencement:** At the commencement of the review considerable attention will be paid to examining all the available data from the World Bank, IEG, IADB, and from the public domain as well as on analysing the Bank's procurement track record. An initial activity will be to secure initial inputs from the Bank's procurement community, Operations Complex, IACD, Legal Department and the FOs and RRCs, and other parties within the Bank, in order to identify issues and broadly define the full scope of the review. As part of the analysis of the Bank's procurement track record the following will be undertaken:
- A compilation and analysis of available data on RMC capacity and any case studies;
 - An examination of the contracts approved by the Bank, and incorporated in the Bank's SAP Project Management System (PMS) – Annual Procurement Report 2011 and 2012;

¹ There are two existing draft manuals; namely "*Procurement Manual for Goods and Works*" and "*Procurement Manual for Consultancy Services*" both dated January 2012.

² There is an existing draft "Procurement Guide" dated January 2012.

- A search of the Bank's document archives and other related, academic articles, and literature on public procurement to provide background and inform the proposed review;
- An examination of the Bank's internal processes and structures, focusing on cost effectiveness, quality, value added: and
- A survey of Procurement and other operational staff to secure their early inputs.

7.3 **Inception Report:** The results from these initial analyses will be compiled in the Inception Report (IR) to be submitted three weeks after commencement of the work. This IR will describe the historical context of the Bank's procurement policies and procedures, present an initial diagnosis, and offer suggestions on where the review could usefully focus attention on the way forward. The IR will specifically contain: (i) a description of the evolution over time of the Bank's procurement policies and procedures; (ii) an analysis of changes in the global markets and the makeup of the supplying countries under Bank-funded operations; (iii) a comparison between international agreements and the Bank's Rules; (iv) a description of emerging best practices and innovations in public procurement; (v) an assessment of the diversity among Bank RMCs paying particular attention to the specific needs of Fragile States and small countries; (vi) and overview of the changes to the Bank's business over time; (vii) an assessment of the Bank's internal capacities and processes, and an analysis of the efficiency and resources to consistently and effectively implement the current procurement authority structure outlined in the 2012 DAM.

7.4 **Stakeholders Views and Comments:** A comprehensive exercise of this nature requires consultations with all the Bank's stakeholders, including shareholders, representatives of RMCs procurement authorities, policy makers, practitioners, bilateral and multilateral development partners, international organizations, private sector representatives, business associations such as contractors' and consultants' associations, civil society organizations, and experts and academics. The views, inputs on issues requiring attention, concerns and reactions, of these stakeholders, on the performance of the World Bank's Guidelines, which is harmonized with the ADB's Rules, are contained in the World Bank's Initiating Discussions Paper. These will be reviewed in detail and when deemed necessary, further work will be undertaken relevant to Africa.

7.5 **More In-depth Analysis of Relevant Topics:** The Committee shall undertake more in-depth analyses of relevant topics at two levels. At the first level (i) new trends in public procurement, such as diversity and social policies, sustainable procurement and ESRP, innovative technologies (clean and renewable energy), ICT and e-procurement, output based procurement, value for money and best fit approaches, approaches to large, complex and cross-border projects, further consideration of alternative quality-based evaluation procedures, and alternative methods such as reverse and sequential auctions and for multistage bidding, as well as (ii) public procurement education, qualification, and certification systems, were analysed by the World Bank during its review, and the conclusions from this will be utilized. In addition, the Committee will examine and draw conclusions on the ADB's support for capacity development and procurement reform in its RMCs over the years, incidences of fraud and corruption in Bank-financed operations, use of domestic and regional preferences, as part of its analysis of the Bank's track record on project implementation effectiveness. The Committee will seek to benchmark the Bank's processes with selected national and international procurement agencies. Further

items to be looked into, at this stage, include “tailor-made procurement” and “most economically advantageous bid”.

- 7.6 **Stage I Report: Proposed New Framework:** The findings, conclusions and recommendations from Stage I will be the proposed new framework for the comprehensively revised Rules containing the (i) framework, principles, broad parameters and main features for the updating of the Bank’s procurement policies, procedures and practices; (ii) departures from the World Bank’s proposed procurement policy Framework; (iii) recommendations laying out the broad procurement policy strategic direction; (iii) implementation requirements; and (iv) institutional requirements such as the staffing, skills mix, responsibilities and resources.
- 7.7 **Stage II: New Revised Procurement Rules:** Drafting the specific revised statement of operational policies, revisions to the Procurement Rules, the accompanying Procedures, Manuals and Procurement Guide, will all be executed under Stage II.
- 7.8 **Timing:** The review is expected to take six months:
- 7.9 **Review Committee:** The review will be executed by a Committee which will be made up of senior procurement personalities drawn from the MDBs with experience in drafting MDB’s procurement policy. It will be chaired by the ADB Director for the Procurement and Fiduciary Services Department.

8 Expected Output and Dissemination

- 8.1 **Expected Output:** The expected output from the review exercise will comprise the following documents. These may be slightly modified as a result of the review:
- A concise Procurement Policy Document containing policy and guiding principles
 - Two Procurement Manuals:
 - Manual for Procurement of Goods, Works and Non-Consulting Services
 - Manual for the Use of Consultants
 - Procurement Guide for use by Bank Staff.
- 8.2 **Dissemination:** The new Policy Document (Rules) will be widely disseminated, among the Bank’s stakeholders including, RMCs through Executing Agency Staff Procurement Workshops, and among the international Business community through Business Opportunity Seminars (BOS) in the Bank’s member countries. The Manuals and the Guide will be widely disseminated among Bank staff through Staff Procurement Workshops. The documents will also be shared with the other MDBs through the meetings of the MDB’s Heads of Procurement.

9 Monitoring and Collaboration

- 9.1 **Steering Committee:** A Bank Inter-Departmental Steering Committee chaired by the Vice-President for Central Operations (ORVP) will provide guidance to the

Review Committee. The former will be composed mostly of Directors involved with Bank financed procurement. It will act as resource and sounding board for the review and for other operational policy matters relating to procurement. The proposed Members of the Steering Committee are given in Appendix A.

- 9.2 **Collaboration:** The Management of the Bank will regularly inform the Boards of Executive Directors through the CODE and AUFU Committees. The revised policy Document will be approved by the Boards of Executive Directors. Throughout the process, there will be regular briefings and discussions on the subject with the MDBs Heads of Procurement, with a specific meeting dedicate to this review to be organized if appropriate