Reviewed of ADB’s procurement policy, procedures and processes

Policy framework paper

Procurement and Fiduciary Services Department

May 2014
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADB</td>
<td>African Development Bank</td>
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<td>ADF</td>
<td>African Development Fund</td>
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<td>AUFI</td>
<td>Audit and Finance Committee</td>
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<tr>
<td>CD</td>
<td>Capacity Development</td>
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<td>CDD</td>
<td>Community-Driven Development</td>
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<td>CDS</td>
<td>Capacity Development Strategy</td>
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<tr>
<td>CODE</td>
<td>Committee on Operations and Development Effectiveness</td>
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<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<tr>
<td>COI</td>
<td>Conflict of Interest</td>
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<td>CPAR</td>
<td>Country Procurement Assessment Report</td>
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<td>DAC</td>
<td>Development Assistance Committee of the OECD</td>
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<td>DAM</td>
<td>Delegation of Authority Matrix</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>ESRP</td>
<td>Environmental and Socially Responsible Procurement</td>
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<tr>
<td>FCS</td>
<td>Fragile and Conflict-affected States</td>
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<td>FIDIC</td>
<td>International Federation of Engineers</td>
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<tr>
<td>F&amp;C</td>
<td>Fraud and Corruption, including collusive, coercive and obstructive practices</td>
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<tr>
<td>FTA</td>
<td>Free Trade Agreement</td>
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<td>GPA</td>
<td>Government Procurement Agreement</td>
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<td>HOP</td>
<td>Heads of Procurement of the MDBs</td>
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<td>ICB</td>
<td>International Competitive Bidding</td>
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<td>IEG</td>
<td>Independent Evaluation Group</td>
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<td>LOC</td>
<td>Lines of Credit</td>
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<td>MAPS</td>
<td>Methodology for Assessment of National Procurement Systems</td>
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<td>MDBs</td>
<td>Multilateral Development Banks</td>
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<td>MPDs</td>
<td>Master Procurement Documents</td>
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<td>NCB</td>
<td>National Competitive Bidding</td>
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<td>NTF</td>
<td>Nigeria Trust Fund</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
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<tr>
<td>PBO</td>
<td>Policy-Based Operation</td>
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<td>PCR</td>
<td>Project Completion Report</td>
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<td>PPP</td>
<td>Public Private Partnership</td>
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<td>PRC</td>
<td>Procurement Review committee</td>
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<td>REC</td>
<td>Regional Economic Community</td>
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<td>RMCs</td>
<td>Regional Member Countries</td>
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<td>RTA</td>
<td>Regional Trade Agreements</td>
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<td>SAL</td>
<td>Structural Adjustment Loan</td>
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<td>SBD</td>
<td>Standard Bidding Document</td>
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<td>SECAL</td>
<td>Sector Adjustment Loan</td>
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<td>SOE</td>
<td>State Owned Enterprises</td>
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<tr>
<td>SWAps</td>
<td>Sector-Wide Approaches</td>
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<td>TA</td>
<td>Technical Assistance</td>
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<tr>
<td>UCS</td>
<td>Use of Country Systems</td>
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<td>UCPS</td>
<td>Use of Country Procurement Systems</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCITRAL</td>
<td>United Nations Commission on International Trade Law</td>
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<tr>
<td>WAEMU</td>
<td>West African Economic and Monetary Union</td>
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<td>WB</td>
<td>World Bank</td>
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<tr>
<td>WTO</td>
<td>World Trade organization</td>
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EXECUTIVE SUMMARY

Given changing circumstances of regional member countries (RMCs) of the African Development Bank (the Bank) since its establishment in 1963, while maintaining exacting fiduciary standards, the Bank must support an increasingly complex set of development objectives. Existing procurement policy has served the Bank, RMCs and bidder communities well in past years, but there is recognized need for a more responsive and flexible approach given the general perception that the Bank’s Rules and Procedures are too long, prescriptive, complex and indiscriminately standardized, particularly for complex procurement.

The objective of this paper is to set out a new procurement policy framework for approval before a detailed policy document and methodology are drafted to implement such approved framework. It is intended for the new policy to go beyond -- but not waive -- the traditional fiduciary mandate. In doing so, necessary trade-offs to achieve a more progressive procurement policy focused on performance and results and aimed at achieving a broader set of strategic objectives, including environmental and social sustainability, will need to be identified and addressed.

The paper is divided into three parts. Part 1 examines existing procurement policy of the Bank and assesses how it has performed. Part 2 outlines emerging global best practice trends affecting the Bank’s procurement policy. Part 3 explores a new vision for the Bank to achieve its dual development effectiveness and fiduciary compliance roles and details the main features of the proposed new procurement policy and supporting policy framework.

Part 1: Present Procurement Policy: Evolution, Application and Performance

The Bank’s current Rules and Procedures are grounded in the Charter-based imperative to ensure that proceeds of any loan made or guaranteed by the Bank are disbursed with due attention to considerations of economy and efficiency. Four core considerations underlie the Bank’s procurement policy, namely, economy and efficiency, equal opportunity, transparency and encouraging the development of local industry and capacity in Africa. The Rules and Procedures specify various procurement methods and circumstances when they can be used. While actual procurement is the responsibility of the borrower, the Bank’s fiduciary mandate requires the Bank to ensure that financing has been used for the purposes intended. Revisions to the Rules and Procedures have been made, from time to time, to reflect, among other changes, more comprehensive provisions on fraud and corruption and increased transparency in publication of contract awards.

The Bank’s role in procurement primarily involves transactional oversight (in terms of ex ante or ex post reviews of borrower procurement activities) and/or advisory services including diagnostic work at country, sector and project levels. For project lending, the preferred approach has been open competition through international competitive bidding (ICB) for larger value and more complex contracts. Over the years, the Bank’s procurement policy has been affected by a number of factors. These include the evolution of its portfolio from mainly large infrastructure projects to multi-sector interventions, the increasing role of the private sector and public/private partnerships (PPP), performance-based procurement, financial intermediaries, community participation in
procurement, and use of procurement agents, among others. Significantly, the internal Bank business model has also changed, including through reorganization of the procurement function and improving the level of qualified and decentralized staff to handle an ever-increasing number of transactions.

While the Bank’s approach to procurement has evolved to reflect the Bank’s increasingly diverse and varied set of lending modalities and instruments, the Bank has consistently recognized the critical importance of capacity development (CD) in promoting inclusive growth and poverty reduction in Africa. But operational data indicate that the Bank’s efforts at CD vary considerably among projects and sectors and seem to be in many instances uncoordinated and lacking a common framework. The Bank has, however, been at the forefront of public procurement reform in Africa and committed to promoting the goals and objectives of the Paris Declaration and successor pronouncements, including undertaking a measured and gradual approach to increase use of country procurement systems. Central to this effort, the Bank commenced assessment of national competitive bidding (NCB) procedures in RMCs in 2009. This assessment has resulted in progressive use of national procedures and documents by RMCs for Bank-financed projects.

The Bank’s Rules and Procedures encourage development of local and regional industry. For goods and works, domestic or regional preferences have been rarely applied in past years in Bank-financed ICB procurement. In a few isolated cases where such preferences were applied, there was no material impact in changing the outcome of the bidding process. The Bank has also encouraged use of national consultants in RMCs in several ways, including adding domestic firms on shortlists and point-based incentives for use of local firms and individual consultants in evaluation criteria. Recent data indicates that RMC firms have become reasonably well-versed for mid-sized consulting services contracts.

**Part 2: Emerging Trends Affecting the Bank’s Procurement Policy**

There have been several emerging trends that have significant impacts on application of the Bank’s procurement policy. First, there has been significant harmonization of Multilateral Development Banks (MDBs) procurement policies, including a common standardized set of bidding documents. Moreover, MDB procurement policies share essentially harmonized approaches to issues of integrity and fraud and corruption and related prohibited practices. Similarly, collective MDB initiatives through mediums such as the OECD/DAC Procurement Task Force have led to standardized diagnostic tools for procurement assessments.

Second, given the significant quantum of purchasing by governments, procurement has come to be seen as a strategic function within public expenditure management to effectively and efficiently deliver needed services to citizens. Related to this has been the evolution of two key concepts, namely, ‘Value for Money’ and ‘Fitness for Purpose’. The former enables governments to consider achievement of objectives beyond ‘lowest cost’ when spending public funds; the latter permits more selective use of particular methods of procurement to optimize achievement of Value for Money.

Third, governments increasingly use procurement policies to support socio-economic objectives, such as promotion of local industries and environmentally and socially responsible procurement
(ESRP). Use of such approaches requires clear national policies that are well-articulated independent of any procurement framework. These policies must provide a proper balance between such objectives and economy and efficiency in application of the procurement function. Applying such policies requires, inter alia, assessing associated costs through a cost–benefit analysis measuring fiscal impact and effect on overall competitiveness.

Other significant trends include increasing use of electronic procurement and more specialized methods of procurement methods and procedures such as, for example, competitive dialogue, reverse auctions, framework contracts which are not covered well by existing Bank procurement policy or, if covered, do not adequately take into consideration recent developments because of inadequate knowledge or lack of operational specificity. Further, there has been increasing interest of RMCs in international trade agreements to promote international trade, create common markets or grant reciprocal market access while maximizing comparative advantage. Trade liberalization affects, in lesser or greater degree, national procurement policies.

Finally, there has been the impact of globalization. This has blurred the distinction between bidders from developed and developing countries and promoted diversification of suppliers and, typically, increased competition. This has resulted in an increase in market segmentation and specialization with foreign firms typically participating in higher value, more complex contracts. At the same time, the distinction between ‘local’ and ‘foreign’ firms has been increasingly difficult to assess because, at the practical level, local bidders are in many instances either owned or controlled or affiliated with foreign firms or entities.


The trends highlighted in Part 2, coupled with increasing RMC expectations for more responsive and flexible approaches to procurement by the Bank -- that are difficult to fully accommodate under the existing Rules and Procedures as discussed in Part 1 -- underscore the need for a new, more dynamic procurement policy that more fully supports development effectiveness within an acceptable fiduciary compliance framework. As effectiveness is sustained only if supported by efforts to strengthen country institutions, systems and legal frameworks, modernization of the Bank’s procurement policy will, while ensuring fiduciary compliance, entail sharper focus on enhancing development effectiveness and building RMCs’ institutions.

The contemplated new procurement policy is envisioned to support Bank operations by maximizing ‘Value for Money’ based on considerations of economy, efficiency, effectiveness and equity through processes that are competitive, fair and transparent. Value for Money necessarily accommodates the notion of ‘Fitness for Purpose’ and its underlying imperative of proportionality and predictability in applying methods of procurement. Fitness for Purpose permits more flexible and customized approaches for complex and high value and higher risk procurement to more standardized and prescriptive methods for relatively less complex, lower value and lower risk procurement. To this end, a balancing process is applied within the framework of economy, efficiency, effectiveness and equity to achieve the most appropriate result or outcome.

Through application of this dynamic approach, the Bank will position itself, inter alia, to tailor application of policies to individual RMC capacities with greater efficiency and effectiveness, to
incorporate new concepts, approaches and procurement methods more easily as Bank and/or RMC business changes, innovations occur and lessons emerge over time, to work more effectively with development partners on enhancing harmonization and use of country systems, and to develop synergies between such areas as public sector management and governance and anti-corruption initiatives.

Finally, to achieve development effectiveness, the Bank and its RMCs must consider public procurement as a strategic function in the context of public sector financial management and economic governance. Targeted building of country capacity and strengthening country systems, both in procurement and complementary areas such as competition and industrial and trade policy, constitutes the central axis within a Value for Money framework to ensure policy coherence and sustainable results.

A Procurement Policy Document, based on clearance of this paper, will be presented to CODE/AUFI on or about 24 June 2014. To support application of the new Procurement Policy Framework, the Methodology, Procedures and Toolkit, will be completed by December 2014.
POLICY FRAMEWORK PAPER: REVIEW OF ADB’S PROCUREMENT POLICY, PROCEDURES AND PROCESSES

Introduction

The African Development Bank’s (the Bank) Regional Member Countries (RMCs) have undergone significant changes since the Bank was created in 1963. As a result, the development agenda has evolved and so has the Bank’s response. The Bank has adopted new instruments, enhanced its support to broad reforms, increased its lending capacity and reorganized, staffed up and decentralized to provide better-fit solutions to its RMCs. Given the wide diversity of country circumstances and relatively large number of small, Fragile and Conflict-affected States (FCS), the Bank must remain focused on supporting an increasingly complex set of development objectives within an environment that has changed profoundly in many areas including trade policy and competition; governance and anti-corruption; public sector management and enhanced accountability in the use of public finances.

The Bank has continuously adapted its procurement policy to accommodate emerging demands and needs, redress particular shortcomings, facilitate the increased complexity of its operations, adjust to its new lending instruments and account for the prevailing conditions in its RMCs. The Bank’s procurement policy is harmonized with those of partner multilateral development banks (MDBs), and is considered a “gold” standard. Nevertheless though the current procurement policy has generally served the Bank, RMCs and the bidders’ communities well for many years, the general perception points to the need for a more responsive, nimble and flexible policy to accommodate RMCs’ reform agendas and to address remaining challenges, including the observation that the Bank’s Rules and Procedures are too long, prescriptive, complex and indiscriminately standardized especially for complex procurement.

This paper’s objective is to propose a new procurement policy framework for approval before a detailed policy document and methodology to implement it are drafted. This framework document identifies trends and the latest thinking on procurement issues and their potential benefits. It also identifies the necessary trade-offs of a Bank procurement policy more adapted to the emerging context, focused more on performance and results; a policy going beyond but not waiving the traditional fiduciary mandate, and aimed at achieving a broader set of strategic objectives, including environmental and social sustainability, and covering the full procurement cycle. In so doing, the gender dimension, as an important component of social sustainability, will also be considered. While the current principles of the Bank’s procurement policy remain valid, they will be enhanced to accommodate changes and to incorporate new concepts, methods and procedures based on worldwide best practice providing additional flexibility and simplification whenever possible without diluting fiduciary standards.

While the proposed framework focuses on the policy applicable to Bank-financed operations, performance of these operations also requires faster processes and more effective interactions between the Bank and RMCs. As the Bank amends its policy to fit a changing world, effectiveness and efficiency are also principles that apply to the Bank’s internal structure and processes and will be taken into consideration when analyzing how the Bank is structured and resourced to deliver its dual development and fiduciary mandate. The Bank’s procurement oversight model, based on risk assessment, decentralization, and delegation of authority, will be revisited to enhance effectiveness in implementing the new policy and ensure that the flexibility it affords is preserved.
The Bank will aim to continue to exercise regional leadership in public procurement and retain its key role in setting standards that reflect modern international best practices. It will continue collaborating with other key stakeholders, including other MDBs and donor partners within the harmonization umbrella and the Paris declaration and the post-Busan country systems agenda, to improve procurement systems of RMCs to international standards. This requires the Bank to reassess, along with other donors and MDBs, how to best support initiatives at the country level, scale up capacity development (CD) initiatives, increase reliance on country procurement systems, encourage harmonization and develop local industry.

This paper is divided into three parts. Part 1, following immediately hereafter, examines the present procurement policy, its evolution and application and highlights aspects of its performance. The emerging trends affecting the Bank’s Procurement Policy are outlined in Part 2, while Part 3 explores a new vision for the Bank to achieve its dual development effectiveness and fiduciary compliance roles and details the main features of the Bank’s new procurement policy. The paper also contains additional supporting materials in Annexes that provide a deeper analysis of the major topics in this paper.

In line with the observations made by the members of CODE/AUFI during the presentation of the Approach Paper in February 2014, extensive internal and external consultations were undertaken in March and April 2014. In addition to online consultations, more than 30 workshops were conducted in member countries of the Bank to seek inputs from various stakeholders representing government, the private sector, academia and civil society. The results of these consultations were carefully analyzed and have informed this paper.

PART 1: THE PRESENT PROCUREMENT POLICY: EVOLUTION, APPLICATION AND PERFORMANCE

1. **Evolution of the Bank’s Procurement Policy, Role and Organization**

1.1 In 1963, the Agreement establishing the Bank created the responsibility to “ensure that the proceeds of any loan made or guaranteed by it are used only for the purpose for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or non-economic influences or considerations.” The Bank was expanded by the establishment of the African Development Fund (the Fund), as a result of an agreement between the Bank and 13 non-regional countries in 1972. In 1976 the Nigeria Trust Fund (NTF) was created by an agreement between the Government of the Federal Republic of Nigeria, the Bank and the Fund with the goal of assisting low-income RMCs with concessionary funding. Both the Fund and NTF substantially follow the Bank in respect of procurement policies and practices. To achieve the fiduciary obligations mandated by its Charter, the Bank Group’s procurement policy is set forth in the *Rules and Procedures for Procurement of Goods and Works* and the *Rules and Procedures for the Use of Consultants* (the Rules). These continue to govern how the RMCs procure goods, works and services under projects and programs financed by the Bank.

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1 See Article 17.1(h) of the Agreement Establishing the African Development Bank (Charter). This provision is the basis for the Bank’s ‘fiduciary responsibility’ in procurement.
1.2 The procurement policy of the Bank is based on four core imperatives: (i) the need for economy and efficiency; (ii) the Bank’s interest in ensuring that all eligible parties have equal opportunity to participate; (iii) the need for transparency in the procurement process and (iii) the desire to encourage the development of domestic industries and capacity in Africa. The Rules specify various procurement methods and circumstances when they can be used. While actual procurement is the responsibility of the client, the Bank reviews and provides no-objection during the procurement process to exercise the Bank’s fiduciary function to ensure that financing has been used for the purposes intended. In some cases (particularly for small value contracts), this review by the Bank can be exercised ex-post, after the procurement process has been completed and the contract signed.

1.3 Detailed revisions to the Rules have been undertaken over the years to provide for, inter alia, harmonization with other MDBs, increased transparency, the use of Standard Bidding Documents (SBDs), and specific guidance on different methods of procurement. The adoption of a zero tolerance policy on fraud and corruption (F&C) by the Bank led to the inclusion of a section in the Rules defining F&C and making it a basis for declaration of misprocurement, cancellation of loan proceeds and disbarment of the service provider from bidding on future Bank-financed contracts for a specified period of time. The increasing role of the private sector in the supply of public infrastructure was recognized by inclusion of provisions for procurement under public private partnership (PPP). The May 2008 revision to the Rules included expansion of the definitions for F&C to include collusive and coercive practices and incorporated requirements for procurement plans, as well as for greater transparency in the form of publication of contract awards. The Board of Directors approved the most recent amendments to the Rules in 2012, taking into consideration the cross debarment agreement reached between the MDBs and adding obstructive practices to the F&C provisions.

2. The Bank’s Role in Procurement

2.1 The responsibility for the implementation of the project, including for the award and administration of contracts, rests with the Borrower. Most Bank-financed procurement mandates use of SBDs and contracts awarded are only between the Borrower and the supplier, contractor, service provider or consultant. The Bank is not a party to the contract. The Bank exercises its fiduciary responsibilities by: (i) agreeing with borrowers during the project cycle on the specific procurement arrangements to be applied under the project; (ii) handling complaints\(^2\) from bidders on contracts financed by the Bank; and (iii) conducting prior or post reviews and audits of contracts awarded. The Bank also provides assistance and advisory services, starting with diagnostic work at country, sector and project levels and oversight throughout the project cycle.

2.2 Since the Bank began operations, development assistance to its RMCs has been channeled through many instruments for disbursing its loans and grants. The main instruments have been Specific Investments or Project Lending, and Policy-Based Operations (PBOs). Specific Investments have taken the form of public sector (sovereign) and private sector (non-sovereign) loans, Lines of Credit (LOC), Technical Assistance Grants, Equity Investments and Guarantees. The PBOs, on the other hand, took the form of either structural adjustment loans (SALs) or sector adjustment loans (SECAL) when

\(^2\) The Bank’s Procurement Review Committee (PRC) handles any receivable procurement-related complaints from bidders.
first introduced. Different types of PBOs were introduced subsequently to address specific economic and financial problems that borrowers have encountered in course of time.

2.3 Specific Investments involve procurement of goods, works and services. Open competition in the form of international competitive bidding (ICB) is used for large value, more complex goods and works with contracts packaged to appeal to international service providers to the extent possible. National Competitive Bidding (NCB), the competitive bidding procedures normally used by the borrower but modified in accordance with Bank requirements, is followed for medium-sized contracts below the ICB threshold. Technical assistance usually involves the use of consultants or small value procurement of goods and works following the procedures for specific investments. For guarantees, the use of funds is triggered by the conditions set out in the guarantee agreement and there is no direct procurement although the current Rules do set out general principles applicable for procurement out of funds that have been guaranteed by the Bank.

2.4 The Bank introduced its first policy-based operations (PBOs) in the mid-1980s to address the serious economic crises that the RMCs encountered following the oil price increases. PBOs were primarily aimed to offset balance of payments deficits and to support general imports based either on a negative list (e.g., any import other than military or luxury goods) or a positive list (e.g., fertilizers, petroleum, grains). The operations followed normal commercial practices by private importers with some unspecified form of competitive bidding by public sector entities. With the introduction of SALs and SECALs, this approach was modified to include application of the Bank’s standard ICB procurement for large value contracts including prior review. In 2008, a modified ICB procedure was set for large value contracts with: (i) no requirement for publication of the GPN; (ii) reduction in the minimum bidding period; and (iii) the use of a single currency.

2.5 The Bank’s procurement policy has been affected by a number of factors, including the evolution of public procurement worldwide and the evolution of its portfolio over the years from large infrastructure projects to those in a wide array of sectors. More significantly, the policy has gradually taken into account the new requirements of Bank by including new provisions related to public/private partnership (PPP), performance-based procurement, financial intermediaries, community participation in procurement, and procurement agents.

3. Internal Structure and Processes for Procurement

3.1 Prior to 2008, the Procurement Unit of the Bank executed the Bank’s procurement policy function and Operations Complexes were responsible for borrower procurement oversight responsibilities. Subsequently, the Unit was upgraded to a Department (ORPF), with two divisions: (i) a Procurement Services Division (ORPF.1); and (ii) a Financial Management Division (ORPF.2). The staff of ORPF now provide fiduciary services to operations covering, inter alia, project preparation, appraisal, launching, and supervision as well as preparation of country strategy papers and portfolio reviews. In addition, activities include prior and post review of procurement documents for designated values, assurance of quality at entry in the form of preparation of quality procurement plans and early assessment of the borrower’s procurement implementation capacity, and in monitoring and evaluation of quality during project implementation.
3.2 The Bank has established six regional procurement hubs that operate as coordination centers with respect to fiduciary functions for all field offices and countries covered by each hub. Each regional hub is headed by one or more Regional Procurement Coordinators (RPCs) and through this organization, a critical mass of specialized procurement staff focused on delivering high quality services at country level and headquarters within the context of decentralization, has been created. While the impact of the present policy on the human resources within ORPF will need to be studied (particularly in terms of organizational structure, decentralization, and risk assessment & management), it is anticipated that any gaps identified will be closed mainly through capacity building and enabling IT tools to streamline workflow and improve monitoring and reporting capabilities. The additional human resource requirement is not expected to be significant.

4. **Procurement Capacity Development**

4.1 While the Bank’s approach to procurement has evolved to reflect the increasingly diverse and varied set of lending modalities and instruments, the Bank has over the years consistently recognized the critical importance of Capacity Development (CD) in the attainment of its agenda for inclusive growth and poverty reduction in Africa. Prior to formulating the most recent 4-year Capacity Development Strategy CDS (2010-2014), the Bank attempted to respond to such challenges by including CD components and activities in most operations. In 2012, the bank prepared a Procurement-Specific Capacity Development Strategy (PCDS) to improve performance of Bank operations and syneritize capacity development efforts with development activities for obtaining competent country procurement systems.

4.2 The Bank’s operations documents show that approaches to CD vary considerably among projects and sectors, the effort is uncoordinated and there is no common framework for articulating them systematically in an integrated manner. While the Bank has made considerable efforts to promote public procurement reform in RMCs, CD initiatives in this context were relatively few and have also been varied and with mixed results.

5. **Bank’s Role in Public Procurement Reform in Africa**

5.1 In 1998, the foundations for public procurement reform in Africa were laid by the Abidjan Conference on Procurement Reform organized by the Bank in cooperation with the UN Development Program (UNDP), World Bank (WB), OECD and other donors. This Conference, attended by 30 African countries, succeeded in setting the agenda for improvement of public procurement in Africa by highlighting the need for: (i) modernization of public procurement to meet international standards and best practices; (ii) forging a consensus among all stakeholders on engaging in public procurement reforms; and (iii) promoting national reform programs with a common strategic framework focusing on accountability, transparency and efficiency. The Abidjan Conference jump-started many

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3 Under the Decentralization Roadmap the Bank has over the years developed and opened a network of Field Offices in RMCs to create greater proximity with the clients, improve the management of its operations and promote better policy dialogue. In 2012, a new Delegation of Authority Matrix (DAM) was issued to improve timely and quality service delivery while minimizing fiduciary risks and enhancing accountability.

4 The main goal of the Bank’s CDS is to enable the Bank to contribute to building sustainable capacity for development effectiveness in the RMCs.

national procurement reform programs in African countries. Moreover, Africa’s Regional Economic Communities (RECs) such as the Common Market for Eastern and Southern Africa (COMESA) and the West African Economic and Monetary Union (WAEMU) also initiated procurement reforms at the regional level.

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<td>The development of RMCs capacity has been a Bank-wide concern throughout the years and thus Country Strategy Papers (CSPs), Regional Integration Strategy Papers (RISPs) Policy-Based Operations, Sector Strategies as well as Investment Projects of the Bank have all included components of CD. For example, 89% of the 546 Project Appraisal Reports (PARs) approved by the Boards of Directors from 2000 to 2013 included elements of capacity development. In a similar review of 215 Project Completion Reports (PCRs) prepared by the Bank over the same period, 95% of them reported implementation of elements of capacity development. These components have focused on (i) human capacity development mostly through technical assistance and training for farmers, social sector workers, civil servants, different types of financial management and infrastructure sector workers; (ii) organizational capacity building through establishment and support for various types of management information systems, trade facilitation, data bank for transport sector and customs systems, e-government and e-procurement; and (iii) institutional capacity building through strengthening financial management regulatory frameworks, development of policies, protocols, operational manuals, master plans, action plans and M&amp;E frameworks. However, the data also showed that although 33.3% of RMCs are FCS, capacity building was contained in only 29% and 24% respectively of projects in the PARs and PCRs. Thus the Bank is not adequately supporting capacity development in FCS.</td>
</tr>
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5.2 The Abidjan Conference also marked the commencement of the Bank’s commitment to supporting increased transparency and accountability in public procurement in RMCs. The Governance, Economic and Financial Management Department established in 2006 assumed responsibility for the design of the majority of the Bank’s policy based operations and the adoption of the Governance Strategic Directions and Action Plan (GAP). Through these operations the Bank supported: (i) establishment of Public Procurement Regulatory Authorities in more than 15 RMCs; (ii) decentralization of national procurement systems; and (iii) development, improvement, integration, or connection of Procurement Information Systems to Public Financial Management Information Systems. At the REC level, the Bank has provided assistance to WAEMU to modernize and harmonize public procurement systems in its eight member countries by implementing a regional public procurement regulatory framework adopted by WAEMU, and to COMESA to support modernizing and harmonizing the laws, regulations and procedures and by strengthening the countries’ capacities to manage modern public procurement systems (Box 2). An independent evaluation done by OPEV in 2012 highlighted the most significant achievement of COMESA’s achievement to be the adoption by member states of the COMESA Procurement Directive in 2003 and the regulation in 2009. This demonstrates the high level of commitment to public procurement reforms at the regional level with about 14 of the 19 member states aligning their procurement policy to the Directive by 2009.

5.3 The Bank’s experience at promoting public procurement reforms in RMCs aimed at national and regional integration and good governance suggests that such reforms will be most effective when addressed with a long-term perspective through dialogue and the coordinated actions of all stakeholders. These efforts should include support for capacity development for public procurement systems, the private sector and civil society
organizations as well as contain mechanisms to support follow-up activities and sustainability.

### Box 2: Public Procurement Reform in Bank-funded Projects

An examination of the PARs for 546 Investment Projects funded by the Bank Group from 2000 to 2013 indicated that elements of national public procurement reform were contained in only 8% of these projects, while 13% included aspects of sector reform. In 215 PCRs examined over the same period, while sector reform elements were involved in only 2% of the cases, national public procurement reform was included in 25% of projects. It may be concluded that in the recent past 21% to 27% of Investment Projects have included reform initiatives. The Bank’s support for public procurement reform in African has been modest and has been decreasing as compared to Africa’s needs. On the other hand, 43% of projects containing national procurement reform were in FCS in the PARs with 32% in PCs showing increasing support for procurement reform in FCS.

### 6. Use of Country Procurement Systems

#### 6.1 In 2005, the Paris Declaration established a number of goals and objectives with defined performance indicators across a range of areas important to country development and aid effectiveness, among which were two “indicators of progress” specifically dealing with procurement. The Bank prepared its Policy Paper on the Use of Country Systems that was approved by the Boards of Directors. In the paper, the Bank recognized that applying this policy to procurement entails fiduciary risks as many countries’ systems were not adequately established to comply with the standards of efficiency, economy, transparency, and equal opportunity. The paper set out a measured and gradual approach towards increasing use of country procurement systems.

#### 6.2 The Bank’s use of country systems policy approach was predicated on four key principles of high standards, gradual transition, measured approach and partnership. Subsequently in the implementation of this approach, the Bank’s Use of Country Procurement Systems (UCPS) was focused on (i) putting greater emphasis on projects and programs supporting procurement reforms in RMCs; (ii) implementing the existing provisions of the Rules aimed at enhancing the UCPS; and (iii) participating as an observer on the World Bank UCPS Piloting Program to draw lessons for the future. The Bank subsequently developed a draft Strategy on the UCPS around the guiding principles of strengthening national procurement systems and selectivity in addition to the key principles set by the Policy Paper.

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6 Indicator 2 - Reliable country systems – Number of partner countries that have procurement and public financial management systems that either (a) adhere to broadly accepted good practices, or (b) have a reform program in place to achieve these; Indicator 5b - Use of country procurement systems – Percent of donors and of aid flows that use partner country procurement systems which either, (a) adhere to broadly accepted good practices, or (b) have a reform program in place to achieve these.


8 Proposal for Strengthening Country Procurement Systems and Enhancing their Use in African Development Bank Operations, Procurement and Fiduciary Services Department.

9 The UCPS draft Strategy proposes a three-phased approach gradually progressing from: Phase I - assessment of country procurement procedures and documents and expanding their use, through Phase II - use of country procurement systems for non-ICB, to Phase III - use of country procurement systems for ICB procurement.
6.3 Central to efforts to put the Bank’s use of country systems Policy into operation, the Bank commenced assessment of the National Competitive Bidding (NCB) procedures and documents of RMCs in 2009. By December 2013, the Bank had completed assessments on 48 countries representing 89% of the RMCs and found that 77% had national procedures and documents acceptable for use under Bank-financed projects, subject to a few amendments required by the action plan identified by the review. Agreements are progressively being signed with African governments for the use of their national procedures and documents under Bank financed projects.

6.4 One of the key lessons learned by the Bank from various initiatives on Use of Country Systems, is that expecting countries to have national procurement systems that are equivalent to internationally accepted standards as a pre-condition for their use “all or nothing” approach is actually setting the bar too high. What is clear is that there are typically difficult political economy issues at play and that it is critical to get senior level political commitment for any meaningful procurement reform. In that regard, the Bank should play an active role to ensure that UCPS becomes a progressive, gradual and measured approach, contributing to strengthening integrity of country procurement systems and enhancing national institutional capacity while minimizing fiduciary risks. Using a complex methodology to assess national procurement systems against international standards, such as the Methodology for Assessment of National Procurement Systems (MAPS), is also, in many respects, simply too difficult to implement.

7. Application of Domestic or Regional Preference Margins

7.1 One of the considerations guiding the Bank’s procurement policy, as noted earlier, is the Bank’s interest in encouraging the development of RMCs’ domestic and regional contracting and manufacturing industries. The Rules stipulate how this consideration is to be applied in practice. If procurement is made through ICB, the borrower may grant a margin of preference to domestically manufactured goods or to domestic contractors when evaluating bids. The borrower may alternatively grant a margin of preference to goods produced or works provided by contractors from other RMCs that have joined the borrowing country in a regional economic arrangement. (Box 3)

Box 3: Application of Domestic or Regional Preference

A review of 546 PARs and 215 PCRs for Investment Projects funded by the Bank Group from 2000 to 2013 showed that Domestic Preference Margins were granted in only 4% of PARs and actually applied in 5% of PCRs while Regional Preference Margins were granted in 2% of the PARs and applied in 1% of PCRs. It can be said, given the time lag between PARs and PCRs that while use of domestic preference by the RMCs is decreasing, application of regional preference is modestly increasing. On the other hand, the use of national/regional consultants varied from 24% of projects in PARs to 17% of project in PCRs, thus, there is an increasing trend. For FCS, domestic or regional preference was granted in 15% and 9% of the cases where this was granted but actually used in none, while use of national/regional consultants were granted in 26% of the cases and used in only 8%. This trend is to be expected because of the weak capacity in FCSs.

7.2 The Bank also encourages the development and use of national consultants in its RMCs in three main ways: (i) by requiring its borrowers to include at least one firm from the RMCs in international shortlists unless qualified firms from RMCs are not identified; (ii) by
including in the evaluation criteria points for inclusion of national consultants in the proposed key experts; and (iii) by permitting borrowers to compile shortlists comprising entirely of national consultants if the assignment is below thresholds established and a sufficient number of qualified firms are available.

7.3 Over the past years, for goods and works, domestic or regional preference has been rarely applied in Bank financed ICB procurement and its impact has been minimal. In the few isolated cases where it was applied, it did not have a material effect in changing the outcome of the bidding process. It is evident that the policy is not achieving its objective and the procurement process does not, by itself, generate much benefit for domestic or regional industries. RMC consulting firms are, however, reasonably well used for mid-sized consulting services contracts. *(See Annex 1: A Perspective on Preferences and Local Content Under the Bank’s Procurement Policy)*

PART 2: EMERGING TRENDS AFFECTING THE BANK’S PROCUREMENT POLICY

8. Harmonization and Evolution of MDB’s Procurement Standards

8.1 The harmonization of MDBs’ procurement policies, to which the Bank has contributed in a significant way, has served the RMCs, bidders and the Bank well over the years and has helped establish international standards. Based on regular meetings of the Heads of Procurement Group (HOPs), procurement harmonization among MDBs has resulted in common Master Procurement Documents (MPDs) for all categories of procurement, e-procurement guidelines, knowledge products and guidance on PPP and private sector procurement arrangements. The private sector has, in the main, supported harmonized MDB policies, in particular the evolution of MPDs, as a “gold” standard that presents many advantages, including predictability, transparency and ensuring a level-playing field for all firms regardless of origin.

8.2 The Bank has also played an active role in international initiatives such as the OECD/DAC Procurement Task Force that are critical for acceptance and use by donors and RMCs of resulting standards of good practice. These initiatives have led to the development of diagnostic tools, such as the Methodology for Assessment of Procurement Systems (MAPS). The Bank has also participated with the WB in preparing Country Procurement Assessment Reports (CPARs) for many countries in Africa to assess fiduciary risks in procurement. Such involvement has also permitted sharing of experiences from MDBs to better inform procurement reform in countries and eventually to increase reliance on country procurement systems.

8.3 The WB recently shared with HOPs critical features of its major ongoing procurement policy review. The Bank took particular note of this initiative given the close relationship between the two Banks. The World Bank’s framework has adopted a “fit for purpose procurement approach” at the project level based on: (i) progressively using client

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10 *In addition to HOP-led harmonization, broad consultations have taken place with private sector representative associations, inter alia, the International Federation of Consulting Engineers (FIDIC) and CICA (International Confederation of Contractors Associations), in particular as part of harmonizing MPDs.*
procurement arrangements; (ii) managing associated risks; and (iii) taking a risk-based approach to fulfill fiduciary assurance needs. (See Annex 2: Risk-Based Procurement)

9. **MDBs Anti-corruption Initiatives**

9.1 MDBs' anti-corruption policies have evolved since the mid-2000s to take a broader stance on governance, coordinate efforts and support countries in establishing comprehensive frameworks to fight Fraud and Corruption (F&C). This process was given momentum by the adoption by the UN General Assembly in 2005 of the United Nations Convention Against Corruption (UNCAC). MDBs have increasingly expanded their anti-corruption focus to broad project design, implementation and management. This has helped strengthen governance in many countries, but MDBs investigations of F&C have remained almost exclusively focused on procurement. Private sector representative organizations have increasingly been vocal about what they perceive as a lack of level-playing field given that F&C provisions of MDBs procurement policies focus on bidders and not on the corrupt environments in which they operate. They, and other stakeholders such as Transparency International, have recommended the adoption by MDBs of simpler and more straightforward “integrity” pacts or representations by bidders that they are behaving ethically.

9.2 MDBs procurement policies share harmonized definitions of F&C (corrupt, fraudulent, collusive, coercive and obstructive practices) and require bidders to observe the highest standards of ethics. They include F&C practices as a cause for rejection of bids or declaration of misprocurement as well as various forms of sanctions, including cross-debarment among the five MDBs. There is not enough information to truly correlate F&C cases with categories of procurement, the use of specific methods (in particular ICB versus other methods), or sectors. Many cases have affected relatively small contracts, and most debarments have been for fraudulent practice, which is relatively easier to investigate and document.

10. **Changes in Public Procurement Worldwide**

10.1 Public procurement has been traditionally thought of as an administrative task with a set of fair and transparent rules and procedures to ensure adequate fiduciary control. Due to the significant volume of public expenditure through procurement, countries now increasingly recognize public procurement as a strategic function and an important development policy tool to effectively and efficiently deliver services to their citizens, supply quality goods and implement key civil works with a focus on performance and obtaining more value for money. For this to be achieved, there are important pre-requisites: performing institutions; qualified professionals; the strategic use of technology; and nimble contract management. Poor procurement outcomes reduce development effectiveness through reduced fiscal space for social investment, high cost of doing business, and reduced competitiveness. Many RMCs now apply new approaches to public procurement by focusing on broader public administration and governance rather than merely on compliance with the rules and procedures of the underlying administrative process.

10.2 Two key emerging concepts of public procurement are: (i) “value for money” that enables governments to consider achieving a range of objectives beyond “lowest cost” when spending public funds; and (ii) “fit for purpose” that allows selective use of different
methods of procurement to best fit the conditions of obtaining the requirement and achieving value for money. These approaches can address such challenges as complexity, risks and procurement process efficiency. Effective implementation of these concepts requires skilled workforce as well as efficient markets and the capacity of the relevant executive structure to make strategic business decisions and manage complex relationships with the private sector.

10.3 Governments are increasingly using their procurement policies to support socio-economic objectives that are not core to the procurement process per se but directly impact the effectiveness of public expenditures, the quality of services and infrastructure investments and promote national industries and employment. This requires clear national policies that are well-articulated independently of any procurement framework. More importantly, these policies should provide a proper balance between specific procedures supporting such socio-economic objectives and sound procurement frameworks to avoid possible negative impacts or inconsistency with international agreements. The public sector, typically the largest purchaser in countries, is in a position to affect the nature of demand and supply by impacting competitiveness through encouraging participation of particular types of suppliers or the demand for specific types of goods and services.

10.4 Several countries have successfully adopted procurement policies, procedures and practices that address specific socio-economic objectives, such as environmentally and socially responsible procurement (ESRP). Application of ESRP requires a solid legal basis and a strong scientific and institutional capacity to determine relevant bid qualification and evaluation criteria with relative objectivity based on the concept of ‘whole life-cycle’ as a way of capturing total costs and benefits. Countries have also adopted “diversity” mechanisms aimed at supporting access to procurement opportunities for certain target groups (e.g. small suppliers, female-headed or minority-owned companies) through set-asides and/or the application of a margin of preference as part of bid evaluation, or simplifying bidding requirements and targeting pre-bid assistance programs. Adopting such mechanisms requires assessing associated costs through a cost-benefit analysis, measuring overall fiscal impact, and analyzing effects on the competitiveness of the private sector.

10.5 Public procurement policies regulate the public sector’s interactions with domestic and international markets in ways that directly impact their efficiency and competitiveness. As the role of the private sector evolves from that of service providers (on the basis of straightforward technical specifications) to becoming partners, including through PPPs and outsourcing, it affects the very nature of bidding and contractual procedures. With increase in such contracts in Africa, the private sector has made some progress in developing its technical and financial capacity. It is important, therefore, that governments develop mechanisms to promote local competition and engage stakeholders frequently, openly and equitably. This requires deep market analysis and assessments of the overall investment and business environment.

10.6 A significant and pervasive recent trend in public procurement is the increasing use of technology-based tools to allow a more strategic use of procurement. The range of options from open websites to E-tendering is large. E-procurement helps create conditions for easier and faster access to information, lower transaction costs, participation of a larger pool of firms from broader markets, and an expedited bidding process. It is also conducive to improved interactions with bidders, enhanced transparency and accountability in the
use of public funds, and potentially less F&C, all of which build trust. The interface with public financial management and budgeting is also facilitated through the growing use of technology and this is essential to better managing resources and improving service delivery. RMCs are keen to use e-procurement to make improvements to their public procurement systems and take advantage of the gains that can be realized.

10.7 A very large number of procurement methods and procedures have been identified worldwide, including: competitive dialogue or other negotiations-based methods; framework contracts; reverse auctions; and Public Private Partnerships (PPPs). In some cases, particular procurement methods are not well covered by Bank policies. In others, while a degree of flexibility exists under the Rules, use of specialized procurement methods for particular circumstances has been limited either because of insufficient knowledge or lack of operational specificity for application of such methods. For example, bid evaluation procedures based on more subjective and qualitative criteria (e.g. most economically advantageous bid or merit points) are increasingly being requested by RMCs even though they are more difficult to apply. Use of any of these emerging methods and/or procedures should be considered based on a careful assessment of the specific country context (capacity, state of the market, sector specificities) and a deep understanding of the sector and cost structures. The Bank’s current Rules with regard to ICB procedures are characterized in the main by application of prescriptive provisions that can sometimes result in higher transaction costs, additional delays and burden on the private sector or potentially negative impacts on economy, efficiency and competition.

11. International Agreements

11.1 Procurement policies can be a crucial part of Governments’ efforts to gain maximum benefits from trade by creating a level playing field for both foreign and national firms, or protecting their domestic markets from competition. The objectives of trade agreements are to promote international trade, create common markets, or grant reciprocal access to domestic government procurement markets and contract opportunities. The increasing interest of RMCs in international agreements reflects the fact that the full potential of regional trade is far from being achieved in the Africa Region\textsuperscript{11}. Importantly, however, both free and regional trade agreements do not represent a comprehensive systemic set of accepted global procurement standards as their primary focus is on ways in which to facilitate international or regional market access. In some instances, such agreements are inconsistent with particular provisions of MDB procurement policies.

12. Globalization and Market Evolution

12.1 Globalization has blurred the distinction between bidders from developed and developing countries, and brought the benefits of increased competition and diversification of suppliers. Though increased competition has benefited RMCs achieve greater economy in procurement, some challenges exist for the domestic or regional bidders. For example, the private sector in Africa remains affected by a lack of access to cheap capital and a dearth of qualified staff. This has resulted in a deficit of sustainable and high-performing companies that are able to bid for and manage complex and high-value contracts in large infrastructure projects, supply specialized goods and provide complex services. The

\textsuperscript{11} Intra-regional trade is estimated at 5 to 10%, figures reach 20% for the ASEAN, 35% for NAFTA, and up to 60% in the EU.
development of local firms and hence employment remains a major policy objective of RMCs. While increased investment in infrastructure and demand of some goods and services has seen the development of competitive African contractors winning small and medium sized contracts, the picture that emerges is one of market segmentation and specialization. First, segmentation occurs as firms from RMCs tend to supply off-the-shelf low-value goods, deliver local services and carry out small-scale infrastructure contracts, while foreign firms tend to participate in larger and more sophisticated contracts, provide high-end services (e.g. engineering, design, and other knowledge-based activities) and supply high-value goods. Second, specialization results as firms from emerging economies gain contracts in civil works and firms from OECD companies remain largely involved in large and complex projects such as dams, power plants, and large transport systems. The overall picture acquires more complexity due to the growth of trade and the multiplication of subsidiaries and/or affiliates of global companies, most being registered as local firms, to the point where it has become extremely difficult to fully understand the nature of corporations, their structures and the actual extent of local content in, and ownership and control of, goods that are traded worldwide. The ground reality is that increasingly “local” bidders are in many cases either owned or controlled or affiliated with foreign corporate entities or in some cases are, in fact, foreign companies registered to do business in RMCs.

**PART 3: EXPLORING A NEW VISION – THE BANK’S NEW PROCUREMENT POLICY**

13. **The Bank’s Vision**

13.1 The trends highlighted in Part 2 above have impacted the Bank’s capacity to meet the changing needs and requirements of its RMCs and therefore it is imperative to put in place a new procurement policy. The overarching objective of this new procurement policy will be to support development effectiveness in RMCs within an acceptable fiduciary compliance framework. As mentioned in the preceding sections, while the current procurement policy has generally served the Bank and the RMCs well in issues of fiduciary compliance, it is being increasingly seen by partner countries as lacking sufficient flexibility and dynamism to address their varied and evolving development needs. Effectiveness is truly developmental in nature only if it is supported by efforts to strengthen country institutions, systems and legal frameworks by building upon and improving these through increased use and application. Modernizing the Bank’s procurement policy, therefore, entails a sharper focus on enhancing development effectiveness and building RMCs’ institutions through the Bank’s wide range of instruments while ensuring fiduciary compliance. As the Bank amends its policy, it will also aim at enhancing the efficiency of its internal structure and resources to ensure that the internal service standards are met.

13.2 The proposed procurement policy is envisioned to support Bank operations maximize Value for Money based on considerations of Economy, Efficiency, Effectiveness and Equity through processes that are competitive, fair and transparent.

13.3 The new procurement framework includes policy, procedures and processes that are robust, streamlined, nimble and efficient to implement while adhering to fiduciary standards and to a set of agreed principles. These will need to be appropriately adapted
to different situations of RMCs capacity and risk, maturity of market, and soundness of country systems. The framework will advance the Bank’s overall development agenda while maintaining compliance with its charter and fiduciary obligations. Through this means the Bank can, for the future, position itself to:

i. tailor application of its policies better to individual RMCs’ capacities;
ii. adapt to the specific requirements of individual operations with greater efficiency;
iii. incorporate new concepts, approaches and procurement methods more easily as its business changes, innovations occur, and lessons emerge over time;
iv. work more effectively and seamlessly with development partners on enhancing harmonization and use of country systems;
v. develop synergies between such areas as public sector management and governance and anti-corruption;
vi. help co-financing efforts and use of frameworks of other development partners that follow acceptable standards; and
vii. achieve greater cost effectiveness and value added in the use of resources with downstream gains for RMCs and the private sector.

13.4 The procurement policy framework animated by an overall objective of achieving value for money will result in the ability to apply flexible and customized approaches for certain types of transactions and more prescriptive and standardized methods for others, depending clearly on which approach maximizes this overarching requirement for the relevant intervention. This balancing process is undertaken within the framework of economy, efficiency, effectiveness and equity to achieve the most appropriate result or outcome. These four critical principles which will be mutually supporting and reinforcing are briefly outlined below:

- **Economy**: total pricing of goods, works or services, including life-cycle costing, under a procurement process;
- **Efficiency**: proportionality, time-sensitivity and cost-effectiveness of a given procurement process, including transaction costs and execution or implementation capacity;
- **Effectiveness**: ultimate results or outcomes of a procurement process in the context of a development intervention, given particular execution or implementation capacity; and
- **Equity**: transparency, openness and fairness (including absence of fraud, corruption, collusion, coercion and any illegal or unethical practices) in a procurement process that ensures integrity and credibility of outcomes.

13.5 The procurement policy will facilitate co-financing with other donors or partners. While the policy of the Bank will be the preferred option, the Bank could use those of other donors (or of other partner countries) provided standards used are similar to those of the Bank and the above core principles are adequately covered. The policy will not, however, automatically recognize procurement policies based on trade agreements given that they may not provide a comprehensive basis to regulate procurement under Bank-financed projects and, more importantly, as such alignment may pose some risk of lowering the Bank’s fiduciary standards.
14. **A dynamic Approach**

14.1 To realize value-for-money in procurement, from a practical standpoint, it is necessary to accommodate the notion of ‘fit for purpose’ and its underlying imperative of proportionality and predictability in applying methods of procurement. While the Rules permit some latitude in principle, this flexibility is limited. In fact, the very need to characterize procurement as special or exceptional to gain flexibility underscores the relatively narrow frame of reference under the Rules that has fairly prescriptive provisions under ICB. What is needed is a dynamic approach that not only accommodates but also encourages a more strategic and flexible deployment of Bank resources from low-value and standardized to complex and high-impact procurement. The new procurement policy proposes a range of options depending on country and transactional circumstances but based on proportionality and predictability of outcomes yet allowing coordination with other multi-lateral and bilateral donors.

14.2 Under a principled value for money framework, customization of each specific procurement process can follow a fit for purpose approach that is more responsive to diverse RMCs’ needs. To allow flexibility and customization, the policy will rely on a methodology to define the procurement rules, methods and procedures applicable to the project, as well as the need for specific safeguards to address issues of capacity, performance, fiduciary and other risks. Other factors could include, depending on the RMCs’ objectives, the level of innovation, time sensitivity, and specific national policies with regard to such issues as sustainable procurement (encompassing environmental and socially responsible procurement or the development of a particular local industry). All methods, rules and procedures will be agreed with the RMC, and laid out in binding procurement plans. The strategy will be contextual and accommodate the wide diversity of country capacities in the Region. This approach will permit standardized procurement for lower-capacity countries and FCS, and more customized and flexible methods of procurement for countries with requisite capacity. This approach will necessarily include: a review of applicable local regulatory laws and regulations; a focused market analysis (e.g. country, sector/industry); an executing/implementing agency capacity assessment; and a risk-based categorization of the nature and complexity of the procurement involved. *(See Annex 3: A Dynamic Procurement Framework)*

14.3 A new dynamic procurement policy framework requires the Bank and its RMCs to consider public procurement as a strategic function and an essential tool to achieve development effectiveness in the context of public sector financial management and economic governance. Targeted building of country capacity, including professionalization of the procurement function, as well as strengthening country systems not only in procurement but in complementary areas such as competition and industrial and trade policy constitutes a central axis of the proposed value for money framework to ensure policy coherence and sustainable results. The framework will enhance development effectiveness through building and supporting procurement systems predicated on accountability and good management.

14.4 Using a ‘fit for purpose’ approach that incorporates socio-economic considerations also brings certain challenges. For example, by encouraging the use of “green” or energy efficient products, procurement policies can jump-start demand for particular types of goods or production processes that promote sustainable end-use as well as encourage
industry innovation or mandate more equitable production standards (e.g. fair trade). Even assuming that socio-economic policies can be framed into applicable bid qualification or evaluation criteria that are sufficiently objective, use of such considerations can significantly change the nature of the market for a given procurement by excluding particular products or suppliers or by limiting eligibility only to a selected group of qualified products or bidders. Countries that do not have such technologies and supply capability may perceive application of such ESRP policies as discriminatory and possibly intended to promote particular supplier interests. The proposed policy will seek to frame a sufficiently dynamic procurement regime that accommodates such considerations in a principled way within an acceptable value for money framework.

14.5 The Bank’s experience with the application of its existing policy has shown that, by and large, it has served the Bank generally well with respect to low or medium risk (impact and probability of failure) procurement cases that are primarily procured based on fairly clear technical specifications and evaluation criteria. However in FCS environments, or for the somewhat complex, high-risk (and often high value) cases that are not amenable to precise technical input specifications, the present policy and procedures pose some difficulties. These will be positively impacted by the new policy. Issues such as, standards for NCB, determination of fit-for-purpose procurement methods (See Annex 4: Procurement Methods), and practical implementation of capacity building initiatives will be considered in more detail in subsequent documents (methodology, manual, and tool-kit). These, taken together will constitute the procurement standards that the Bank will seek to establish.

15. Modernizing the Bank’s Procurement Policy

15.1 The update and modernization of the Bank’s procurement policy is aimed in particular at: (i) incorporating worldwide advances in public procurement practice; and (ii) providing greater flexibility in use of more appropriate instruments to improve value-for-money considerations while maintaining fiduciary standards. It is challenging, but the potential benefits to the Bank, the RMCs, and the private sector are significant. In addition, the update will not reduce fiduciary standards. The Bank will continue to develop the necessary tools to allow procurement staff discharge their fiduciary mandate. Enhanced reliance on monitoring results and measuring performance and increased reliance on credible RMC institutions and procedures will be an important cornerstone of the new policy.

15.2 The new policy will apply to the full procurement cycle: from project design (focusing on broad institutional procurement arrangements, market analysis, strategic procurement planning, and applicable rules and procedures) to contract execution, including measurement of overall and transactional performance, quality and results. While adhering to the current approach in terms of which the Bank remains at ‘arm’s length’ in handling procurement processes managed by executing and implementing agencies, the new policy will, more meaningfully address contract administration and monitoring. The role of the Bank in this important phase will be mainly capacity building of the Borrower as also better reporting. (See Annex 5: Strengthening the Procurement Cycle)
16. Development Effectiveness as Part of Broader Fiduciary Assurance

16.1 Bank procurement policy must acknowledge the elements that constitute a good country procurement system and, critically, that the Bank’s fiduciary responsibilities include assisting RMCs in upgrading their procurement systems as part of promoting effective public sector management and good economic governance. It is well understood that realizing such broader objectives are not contingent on the dictates of procurement policy alone: enhancing development effectiveness and building local institutions depend on many other Bank policies. However, to continue to narrow procurement policy objectives exclusively to fiduciary compliance shortchanges increasing RMC expectations to improve sustainability of development outcomes through deeper commitment to reform and upgrading of local systems.

16.2 At the country or national levels, diagnostic tools for both benchmarking and promoting systemic improvement in procurement systems have been developed (for example, CPARs and MAPS). Most MDBs undertake specific risk-based procurement capacity assessments of executing and/or implementing agency. These assessments inform the framing of procurement arrangements and plans at the transactional (i.e. project or sector) level and set out a capacity building roadmap or plan for implementation by the relevant borrower as part of the development intervention. These tools, with further refinement and harmonization among development partners, provide a practical roadmap for systemic procurement reform at country, sector and project levels. A more robust and deepened application of diagnostic tools will be critical in any effort to make modernization of the Bank’s procurement policies truly effective in project implementation.

17. RMC’s Needs-Based Approach

17.1 While public procurement reform has been advancing in the RMCs, reliance on local systems poses operational challenges with respect to the fiduciary responsibilities of the Bank. At the country level, the Bank’s support will vary from advisory to more hands-on interactions. Capacity-building initiatives will include professionalization of the procurement function, with comprehensive action plans for addressing gaps to build sustainable institutions and uphold the integrity of systems. The Bank’s support to strengthening procurement in RMCs will go beyond first-generation reforms by focusing on performance and results in the implementation of second-generation reforms\textsuperscript{12}. The Bank will adopt a strategy based on inter alia: (i) a gradual approach tailored to each situation and country circumstance; (ii) reasonable/achievable reform programs; (iii) significantly increased levels and more effective ways to deliver technical assistance (e.g. through partnerships, twining arrangements, etc.); (iv) close collaboration between all stakeholders; and (v) national collective ownership of the reforms.

\textsuperscript{12} The Pillars governing a sound procurement system comprise: Public Procurement Legislative and Regulatory Framework (Pillar 1); Public Procurement Institutional Framework (Pillar 2); Efficient Procurement Operations and Practice (Pillar 3); and Integrity of the System (Pillar 4). Advancements and support for procurement reforms in Africa to date have focused on the first two Pillars (first generation reforms). It is expected that future support to RMCs procurement reforms will be concentrated on the last two Pillars of Procurement Operations, Practice, Performance and Integrity.
17.2 FCSs have additional challenges to overcome to achieve effective country procurement systems reform. The Bank needs to adapt its approach to FCS States to provide for: (i) a gradual approach suited to each specific situation and country; (ii) creation of reasonable/achievable reform programs; (iii) significantly more technical assistance; (iv) close collaboration between all stakeholders; and (v) national ownership of the reforms.

17.3 The Bank will take a broad perspective which goes beyond the scope of projects and technical assistance by addressing capacity development in a holistic way: (i) by supporting public procurement systems, the private sector and civil society; and (ii) by relying on national systems whenever possible to better align with RMCs governments’ commitments to strategic use of public procurement. Bank support will be country-focused and will be agreed with each RMC as part of its Country Assistance Strategy and supported at the project level. To go beyond supply-driven training and TA that have achieved modest results, it will be essential to leverage resources and make them available to RMCs to pursue their reform efforts. Broad financial support and/or specific grants will be needed for each Bank-financed or public sector development operations focusing on procurement or including strong procurement components, especially for conflict-affected states with limited capacity.

17.4 Achieving success in strengthening country procurement systems requires addressing complementary areas such as competition, anti-trust, industrial and trade policy, to ensure policy coherence and sustainable results. The Bank's strategy will be to support RMCs in designing and implementing all-encompassing public procurement reforms to strengthen institutional and legal frameworks. This strategy will aim at longer-term engagement based on dialogue, coordinated actions of all stakeholders, and mechanisms that support follow-up activities and provide for sustainability.

17.5 A key objective for the Bank is to increase its reliance on country procurement systems, essential to sustained and effective development, while meeting its overarching principles and maintaining its fiduciary responsibilities. The policy will be based on proportionality and support the use of country systems through a progressive and measured approach to enhancing national institutional capacity while minimizing fiduciary risks under Bank-financed projects. Given the diversity of the RMCs circumstances, the policy will rely on its overarching principles to measure acceptability of country systems without benchmarking against specific international instruments, or rating RMCs on a "pass/fail" basis. The Bank will use appropriate tools to carry out country procurement assessments, including an analysis of the sectors, markets (regulatory laws and regulations, competitiveness, capacity, hindrances), institutions and overall risks. At the project level, the country systems focus will be to ensure adaptability to the specific context and sector, based on the application of the fit for purpose approach.

17.6 The Bank will develop a monitoring and evaluation framework to determine the impact of CD activities and measure progress, as well as a standardized format to systematically report on Bank support. This systematic approach will be based on an encompassing and sustained strategy for broad support and reforms at the country level, targeting the specific needs of sectors and institutions.
18. **Bank’s Commitment to Harmonization**

18.1 Through strategic intervention, the Bank will continue its procurement – related commitments to the Paris Declaration, the Accra Agenda for Action, and the Busan Consensus. Given the sheer magnitude, complexity and long-term nature of current development effectiveness challenges, coordination between the Bank, other donors and RMCs is paramount. Similarly, the Bank’s commitment to harmonization with other MDBs will remain robust. The Bank will continue to contribute to the development of new tools and fully participate in the MDBs HOP Group, the OECD/DAC, and relevant other fora including those led by representative private sector associations. New partnerships with African-based stakeholders will also be supported.

19. **Socio-economic Considerations**

19.1 Special consideration will be given to the role and the development of national and regional industry. Experience has shown that both the application and impact of domestic or regional preference margins have been minimal and these provisions will be revisited to enhance their use. Bank policy will also consider other avenues to encourage the development of domestic and regional contracting and manufacturing industries in the RMCs and ways to accommodate RMCs’ policies in regard to local content and "offset" principles aimed at tying transfers of technology; taking into consideration issues of bid evaluation (criteria) and complex bid processes that require sophisticated executing agencies to apply the concept. The Bank will also revisit provisions with regard to SOEs and COI, mandating analysis of the structures of global companies and their affiliates to better understand the nature of corporations, their structures and the extent of local content in contracts awarded.

19.2 Obtaining the potential benefits of innovative procurement and accommodating the consideration of socio-economic factors in procurement will require significant changes to Bank policy. The Bank is considering: integrating new factors (e.g. environmental, gender and social); adopting new provisions allowing a wider range of procurement categories and methods for each sector; developing ways to accommodate innovative methods; and introducing flexibility in management and institutional arrangements. First, it will comprehensively consider methods that are best fit to the African context, and secondly, it will stipulate the conditions under which external factors such as ESRP could be considered and social policies or remedy imbalances accommodated. Second, the Bank will rethink how and when ICB and other procurement methods are used, for which country and for what items and sectors. This is what gives cause to being less prescriptive, not for the sole purpose of simplifying procurement that in many cases is and will remain complex, but to meet key principles of economy, efficiency, effectiveness and equity.

20. **Fraud & Corruption**

20.1 There are also a number of avenues to consider when revisiting the Bank’s procurement F&C provisions including: (i) F&C aspects throughout the Bank’s project cycle; (ii) revisiting the investigation paradigm to include project design and contract execution; (iii) the analysis of the impact of recent more stringent provisions in MPDs and SBDs on reducing F&C under contracts financed by MDBs; and (iv) the potential for alternative ways to deal with F&C in procurement.
21. The Next Steps

21.1 Following the consideration of this Policy Framework Paper by the CODE/ AUFI Committees of the Boards of Directors, Management would have concluded Stage I of the review. Preparation of the Procurement Policy Document (Stage II), based on the clearance of this Framework paper will be presented to CODE/AUFI by the 24 June 2014. The Methodology providing details for operationalizing the policy, the Procedures Manual outlining the specific processes, and the Tool kit containing standard documents, formats, guidance notes and case studies, to support application of the Procurement Policy will follow thereafter. These are scheduled for completion by December 2014. During Stage II, Management will, through periodic briefings, report progressively to CODE/AUFI.
One of the procurement principles of the Bank is the development of national and regional industries in its RMCs. For that purpose, the Bank's rules allow borrowers to grant a margin of preference to domestically manufactured goods and to domestic contractors when evaluating bids while using International Competitive Bidding (ICB). Similarly, a Borrower may, in agreement with the Bank, grant a smaller margin of preference to goods produced in and services provided by contractors from other regional member countries which have joined the Borrowing country in a regional economic institutional arrangement. The use of these preferences is at the discretion of the borrower (in agreement with the Bank) and may not always be desirable because of its potential for inflation of the bid price.

The Bank’s experience has shown that domestic and regional preferences are rarely used, and when used, they rarely determine the outcome of the bidding process. A recent study by the World Bank in 2012 has found that over ten years (1999 - 2009), this provision was used in 0.3 percent of contracts (0.4 percent by value) awarded by the World Bank during this period and was estimated to have potentially affected the outcome of the bidding process on only 12 out of 57,000 contracts. The above-mentioned paper also concludes that it is doubtful that the domestic preference policy continues to benefit local industries. A recent survey conducted by the Bank found that many stakeholders believe that the Bank’s current domestic/regional preference scheme is ineffective, as it is narrow in scope and thus limited in relevance. It may be mentioned, however, that many RMCs allow similar preferences under their national procedures.

A recent analysis of contracts awarded in Bank financed operations in East Africa in the last 10 years found that the present practices (of somewhat harsh qualifications requirements, including those relating to financial turn-over, liquidity and experience) have resulted in local firms not getting a fair share of Bank’s contracts. Some national firms that have won a few large value contracts are actually subsidiaries of foreign firms who have registered offices in Africa (and are therefore, notionally national, but do not materially impact local development). The largest share of African firms winning contracts is in social or agriculture sectors for small or medium value contracts where the works or the supply is often to remote places where foreign firms would not be interested or competitive.

It should also be mentioned that while strong voices from the free trade proponents suggest that protection of national industry and capacity leads to waste and promotes collusion and corruption, most countries in Africa are progressively and loudly demanding incorporation of minimum local content, mandatory joint ventures and other protective clauses to reap the full benefits of public investment.

With regards to consultancy services, the perception has been that the Bank’s usual insistence on securing geographic diversity (that is, not more than two bidders per country to be included in a shortlist) limits positive development outcomes in countries where there are strong local consultant capabilities. Though the Bank’s rules allow for entirely national shortlists for relatively small assignments where national expertise also exist, It is still felt that the geographic diversity requirement screens out capable local bidders and thus discriminates against domestic consultants. Foreign consultants often do not bid in markets with good domestic capability, as they fear that their price will not be competitive. Unintended consequences could be less total competition and the screening out of qualified domestic firms.
Internationally, different instruments may guide governments in conducting public procurement, including provisions for domestic preference. For example, the UNCITRAL Model Law allows evaluation criteria to include a margin of preference for the benefit of domestic suppliers or contractors or for domestically produced goods. It also allows for any other preference, if authorized or required by procurement regulations or other provisions of state law. However, the World Trade Organization’s Government Procurement Agreement and European Union Directives do not allow such preferences and maintain the principles of nondiscrimination and equal treatment among members.
ANNEX 2: RISK–BASED PROCUREMENT

A. Increasing Responsiveness

1. The approach to procurement planning and oversight has not kept pace with the significant increases in the volume of goods, works and services financed by the Bank in recent years. This has resulted in somewhat sub-optimal deployment of Bank procurement resources. There is, therefore, a pressing need for a more strategic approach to reviews of procurement transactions that will align depth of procurement focus with the extent of potential risk and quality of impact of the Bank’s development interventions.

2. A strategic approach to procurement oversight must necessarily become more fully risk-based. While the current transactional approach sets out prior and post–review thresholds, this determination is made essentially through singular focus on the value of the contemplated procurement. To be sure, at country and sector levels, use of diagnostic tools, to the extent undertaken, such as CPARs and MAPS, has helped to provide broader systemic assessments of procurement risks. Similarly, at a transactional level, undertaking of executing and implementing agency capacity assessments, while at times more cursory than desirable, have in many instances provided meaningful inputs into procurement plans and setting of prior and post review thresholds.

3. However, for a dynamic contextual framework based approach to procurement grounded in value for money and fitness for purpose, the requisite level of staff qualification and inputs needed for such reviews and diagnostic analysis will be much greater than what characterizes the Bank’s current staff approach to the project (and procurement) processing and implementation cycle.

4. This Annex sets out some indicative parameters to illustrate how a more fully risk–based approach to procurement will take place under the contemplated new policy framework.

B. Procurement Risk Profiling

5. The primary objective for developing a country–based procurement risk profile is to feed into the setting of relevant prior-review benchmarks and/or monetary thresholds that may be country and/or sector based. In other words, a RMC with a higher country and/or sector level risk assessment will typically result in having all transactions within the ambit of the higher risk classification reviewed by the Bank or its delegated authority. Alternatively, for example, if monetary thresholds are set to correspond with such risk classifications, then higher risk classification will result in lower procurement Bank prior-review thresholds for a given country and/or sector which will mean correspondingly increased oversight by the Bank or its delegated authority for the relevant country and/or sector.

6. The secondary objectives for such country (and sector level) procurement risk profiles are the following:
To identify and frame any critical public procurement reforms and/or other improvement actions required at the country or sector level, taking into account the country system and national framework, to potentially improve the Bank’s procurement transactions and governance activities during project/program implementation;

Identify potential requirements for broad procurement-related technical assistance or capacity building, to be more accurately specified during project or program scoping and assessment exercises, jointly conducted with the government and other stakeholders;

To appropriately prioritize issues for discussion during the Bank’s country-related lending negotiations, taking into account the size and priority of the relevant country portfolio to the Bank’s overall lending objectives; and

To frame and inform the approach of the Bank to national and/or sector procurement – related policy dialogue.

7. The approach for the Bank’s procurement risk profiling will be as follows:

7.1 **Background Desk Review**: Each procurement officer assigned should perform a desk review of available resources for his/her country in advance of any scheduled project planning review and prepare a short briefing note based on such review. Where procurement legislation or regulations vary at the state level in that country, such briefing note should address the national environment but also identify when any issues relate to specific states or regions within the national framework.

Information sources will include:

(a) **Country Procurement Assessment Report (CPARs)**: If the relevant CPAR is outdated (>5 years old or there has been major change in the public procurement structure, law or implementation), this should be brought to the attention of the team leader concerned and the issue of possible updating of a CPAR should be raised during the Bank – borrower dialogue. Particular focus should be on compliance issues and bottlenecks;

(b) **MAPS**, the results of any MAPS self-assessment exercises undertaken for the relevant country should be assessed and updated;

(c) **National Competitive Bidding (NCB) Annex**: NCB conditionalities and caveats need to be reviewed and an assessment should be made about whether such conditions and thresholds continue to be relevant and/or need to be supplemented or amended;

(d) **Bank Country Sector Priorities**: The Bank’s country-specific operational and business plans and project and program pipelines should be reviewed to determine the Bank’s sector priorities and likely future lending patterns for the relevant country.

(e) **Prior Procurement Risk Assessment Management Plans**: Apart from CPARs or MAPs, for or some countries, sectors and Executing Agencies (EA), the Bank may have completed internal past procurement risk assessments and these

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13 Suggested formats for such briefing notes will be contained in the Tool kit to be prepared.
should be reviewed, particularly to assess if contemplated mitigation measures have been satisfactorily implemented;

(f) Procurement Plans and EA Capacity Assessment reports: Particular reference should be made to EAs in identified Bank priority sectors and their procurement performance under Bank-financed projects and, to the extent information is available, under other donor-funded projects. This should include checking post – review and prior review transactional history to determine if there are any recurring issues raised by Bank staff with respect to EA and IA performance.

(g) Procurement Committee Decisions: A review of any decisions relating to transactions involving the EA/IAs in the Bank’s priority sectors and identification of any potentially problematic situations;

(h) Integrity Department Project Procurement Related (and other) Reports: All Integrity related reports/audits for procurement under the Bank financed projects should be reviewed to identify possible integrity/corruption related risks.

(i) Misprocurement and loan cancellations: An assessment of the reasons behind any misprocurement or procurement related loan cancellations, if any, in the last 2 years should be made to ensure that underlying issues are addressed;

(j) Other Development Partners: the Bank’s responsible procurement officer focal should consult with other MDBs or bilateral donors active in the country to gain a view of their perception of the current status of country, sector and EA and IA procurement performance.

(k) Other background information: background information on the Bank’s portfolio performance, with particular focus on any implementation issues raised relating to procurement and consulting services should be reviewed. Other sources can also be checked, e.g. WB Doing Business Guides, TI Corruption Perception Index, etc.

7.2 **Detailed Diagnostic Assessment:** After the Desk Review (as above), each responsible Bank procurement officer will undertake a detailed operations (‘on the ground’) diagnostic assessment of country and sector level procurement risk, using the desk review as a guide. A Report will be prepared and each subject country will be given a country procurement risk rating (CPRR).

7.3 **Country-based Prior-Review Thresholds**: The Bank will decide prior-review thresholds for countries, sectors, projects and complexity of the transactions. “High risk” countries (or sectors) will be subject to Bank prior-review. CPRRs will be reviewed every [24-36] month period. In addition to CPRRs, as part of the procurement planning process for individual transactions, a transactional project-specific procurement risk assessment will be undertaken and a project–procurement risk rating (PPRR) will be given for each transaction. PPRRs are discussed in more detailed below. Importantly, for Bank prior-review purposes, a particular project that includes procurement packages that are given at higher PPRR can be subject to Bank prior-review.

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14 Whether Bank prior-review thresholds should be sector-specific within a country remains an open issue: some flexibility to accommodate differing prior-review thresholds for particular sectors within a country might be useful. For purposes of determining country procurement risk categories as a feed-in to set Bank prior-review thresholds, current ICB/NCB thresholds may not be relevant.
prior-review even though the CPRR for the relevant country falls within the ‘lower risk’ category.

7.4 Project Procurement Risk Ratings (PPRRs): At the stage of project design and procurement planning, an indicative PPRR will need to be given for the individual project based on application of indicative project-level procurement risk ‘filters’ comprising:

Higher Risk or Lower Risk ratings for each potential or indicative procurement package for **goods, works and non-consulting services:**

- Indicative project design - Contemplated items to be procured;
  - nature; and
  - value
- Market complexity;
  - production or work processes;
  - supply chain connections; and
  - competitive level
- Variability of cost estimates
- EA performance and capacity
- Sector and Country Environment

Higher Risk or Lower Risk ratings for each potential or indicative **consulting services** package:

- Indicative project design - Contemplated items to be procured;
  - nature; and
  - value
- EA performance and capacity
- Sector and Country Environment

Importantly, PPRRs will be ‘dynamic’ – that is, a PPRR can change during project processing and/or implementation. Two critical project processing entry points for procurement risk classification will be at the preliminary design and detailed design stages; at implementation, for contract management, the three critical entry points will be at contract award, substantial completion of the contract and at termination of the defects liability period or after testing and commissioning, whichever occurs later. When the indicative list of pipeline projects (and related preliminary procurement packaging) has been identified within the Bank’s project processing framework, the responsible Procurement Officer will review such list in consultation with the assigned Project Task Manager and Sector Specialist. After such review, and (if available) taking into account the CPRR, classify such project as having either ‘higher’ or ‘lower’ procurement risk in terms of the contemplated indicative procurement activities.
C. **Strategic Staff Deployment and Deepened Risk Mitigation**

8. The contemplated risk-based approach to procurement, applying ‘risk filters’ at country, sector and transactional levels, permits a more strategic allocation of staff time and expertise and will result in more efficient and timely project processing and, for higher risk procurement, deepened focus on both procurement planning and contract execution, in addition to the actual bidding process. For higher risk procurement, a strategic ‘filter’ approach will result in improved procurement planning, budgeting and more effective contract management and monitoring. This will permit more responsive risk management and mitigation, including more sustained EA capacity building.
A. **Value for Money**

This schematic in Figure 1 amplifies the concept of ‘value for money’ (VfM) and ‘fitness for purpose’ (FFP) in procurement within the operational policy framework proposed for the Bank going forward to permit more dynamic and responsive procurement for RMCs and other Bank clients. VfM is driven by four broad imperatives: economy, efficiency, effectiveness and equity. Within those broader considerations, each imperative in turn is determined by several other critical factors. ‘Equity’ by transparency, openness, equal opportunity and fairness; ‘Effectiveness’ by, inter alia, proportionality and predictability, as well as the ability to implement successfully socio-economic objectives of RMCs as part of their legitimate industrial policy commitments to the extent those are adequately translated into public procurement incentives that encourage particular types of bidders or engender sustained demand for specific goods and services such as, for example, ‘green’ products. ‘Economy’ and ‘efficiency’ underpin, in lesser or greater degree, all types of procurement modalities whether for goods, works and/or services.

*Figure 1: Four Pillars for VfM*
B. *Fit for purpose or ‘proportionality’*

Problematic challenges can arise in applying a VfM and FFP framework to particular projects and programs because the critical procurement policy imperatives set out above can and do, not infrequently, conflict with one another within the context of a particular transaction or series of transactions. For example, for smaller value procurement, it may not be cost-effective to require international advertising or the use of standardized international bidding documents both in terms of cost but also in terms of time as this may result in a more protracted process where costs outweigh benefits of amplified procedural detail. In other cases, in terms of economy and efficiency, a particular government procuring entity might be best served by aggregation of demand and use of, for example, framework contracts, although this approach may not necessarily optimize the access of new market entrants for supply of the relevant products or services.

Consequently, there is, in most instances, the need to calibrate appropriate trade-offs between particular procurement policy imperatives to arrive at what may be considered the optimal procurement solution for particular client needs. It is this ability to ensure responsive calibration of differing policy priorities that result in a dynamic and responsive approach to handling procurement at an operational level. To make this happen, however, a procurement policy framework that is characterized by core flexibility in application is necessary.

Flexibility or contextual responsiveness for procurement of goods, works and services, is a function of transactional complexity, value and risk. In short, the greater the complexity and value of a particular procurement, the higher the fiduciary risk to the Bank and its clients in handling such procurement if such procurement is undertaken in less than optimal ways or is, for some reason, miscarried through collusion or other improper practices. At the same time, the higher the complexity and value of a particular transaction, the more likely that the impact of such procurement will be greater for overall project or program results or, more broadly, for the ultimate development effectiveness of such intervention.

Keeping this conceptual framework in mind, the schematic in Figure 2 (below) attempts to show the basis for a dynamic or contextual approach to identifying the ways in which the Bank should select particular methods of procurement for specific types of transactions. At the same time, this schematic also sets out a dynamic procedural framework for handling procurement depending on whether it is more or less standardized. To illustrate, a specific transactional procurement with low complexity and low value will typically entail lower fiduciary risk for the Bank and its client. In such cases, the proposed procurement policy framework will permit the Bank to use a standardized approach, whether full or partially prescribed by local and/or Bank procurement requirements in terms of procedure and documentation. At the other extreme, if a specific procurement is highly complex and of high value, clearly the potential adverse impact and risk to the Bank and its client, should such procurement be implemented in less than optimal ways, is high. In such cases, a ‘fit for purpose’ approach with customized procedures will be applied – put differently, in such cases, the Bank’s procurement policy will permit consummate flexibility in order to allow a tailor-made or customized approach that will maximize VfM for the Bank’s client. In such cases, therefore, the level of standardization and prescriptiveness is *de minimus*.

Finally, the schematic in Figure 2, apart from reference to dynamism in application of policy and procedures, includes two other critical dimensions of the proposed Bank procurement framework. First, a ‘Procurement Methodology’ will be detailed to operationalize policies and procedures that will include the approach to be applied for procurement country, sector and project level diagnostics, capacity gap identification and assessment and remedial capacity building and
development. Second, a ‘Procurement Toolkit’ will be assembled that will provide the actual ‘on the ground’ guidance to Bank and client staff in transactional implementation, including standard bidding documents, templates, case studies and guidance notes.

C. **Principled application of policy and procedural framework**

The new Bank procurement policy framework will include these four components to ensure that the proposed new flexibility and robustness that underpins a dynamic ViM and FFP approach is applied in a principled and considered manner and only where properly justified by the circumstances of the relevant transaction. In other cases, the proposed policy framework will continue to mandate use of standardized procedures and documentation, whether as set down by the Bank in its contemplated procedures, methodology and toolkit or whether embodied in the requirements of local procurement systems acceptable to the Bank.
Figure 2: Procurement Policy and Procedural Framework

Procurement Policy

- Standardized Frameworks with Equivalent Standard (including Country Systems)
- Fit for purpose
- Proportionality
- Transparency/Equal Opportunity

Procurement Procedures

- Customized Procedures
- AfDB Procedures
- National Procedures
- Low Prescriptiveness/Predictability
- High

Procurement Toolkit

- SBDs
- Templates
- Case Studies
- Guidance
- Notes

Methodology

- Diagnostics
- Gaps Assessment
- Capacity Building
- Monitoring & Evaluation
ANNEX 4: PROCUREMENT METHODS

A. Background

This Annex covers generic procurement methods and its purpose is to propose broad categories/classifications and identify innovative and nontraditional methods, as well as best-practice methods currently not contemplated in the Bank’s procurement policy. It is not an attempt at identifying the very many that exist in the world with their own specificities. The objective of this exercise is to set the basis for consideration of the acceptability of various methods and procedures in each RMC context (country capacity, state of the market, sector characteristics, etc.) with particular attention to the situation of small and Fragile and Conflict-affected States (FCS).

The Bank’s procurement policy has gradually included methods and provisions that reflect the overall evolution of public procurement, cover emerging sectors and categories of procurement that the Bank is financing, and account for lessons from experience and borrowers’ needs. It contemplates each of the three main categories of methods: open competition, restricted competition, and non-competitive methods. The preferred ICB method (although not the default as often misconstrued but de facto preponderant) for relatively complex and large contracts that grant broad competition is basically open competitive bidding with detailed procedures regarding advertising, bid evaluation, contract award, and payment mechanisms. NCB methods constitute the other predominately used open competition method relying on specific considerations of the borrower country. Other methods that are contemplated are mostly restricted competition methods (e.g., LIB, Shopping) or non-competitive methods (e.g., direct contracting, force account). In addition, the Bank’s policy covers procedures that address specific concerns and are not procurement methods per se in that they specify Bank review processes but may be of a competitive, restricted competition or non-competitive nature (e.g., PPPs, FIs, community-based procurement or procurement from UN agencies). By and large, therefore, the Bank’s policy covers a large array of procurement methods and procedures.

The range of methods for the selection of consultants is wide and most countries have not developed policies and procedures for selection of consultants distinct from those that govern the procurement for works, goods and non-consulting services, and/or do not differentiate between consulting services, which are of an intellectual or advisory nature, and services of a nonintellectual nature in which the physical aspects of the activity predominate. Even countries whose procurement rules recognize the specificity of consulting services often have policies and procedures that differ significantly from those of the Bank. The selection of consultants hence opens specific issues to address, going beyond the scope of methods themselves into such avenues as short-listing procedures, weighting of quality and cost, financial proposals computation rules, negotiations procedures, or contract terms and provisions, including liability, insurance and payments.

The review of the policy offers, however, an opportunity to revisit the extent of acceptable methods that the Bank may consider relying upon, but also to rethink the classification of the methods, the role of the ICB method, the conditions under which other methods can be used, and finally which provisions need to be further updated. To this effect, this Annex covers the extent of further consideration with regard to the use of procurement methods. Related topics that will be covered at a later stage of the review include the related bid evaluation and award procedures and types of contracts.
B. Traditional Procurement Methods

Open Competition methods are based on open bidding with descriptive documents. They usually constitute the preferred method, other methods being acceptable only under specific circumstances. They meet the key principles of value for money and are aimed at reaping the benefits (high quality and right price) from broad competition from all firms that are technically and financially capable of executing the contract under procurement, and is based on key procedural features such as wide advertising and open access. Bid evaluation and award procedures vary, however, the two main options being the lowest-evaluated qualified and responsive bid (lowest price among bidders evaluated as meeting the qualification requirements and the terms and conditions of the bid) and the most-economically advantageous bid (ranked first among firms meeting both qualification requirements and satisfying weighted award criteria, including price, and eventually based on merit points bid evaluation procedures). The former applies in standard Bank provisions, while the latter is contemplated in limited circumstances under Bank policy and will be further considered as part of the revised policy.

There are no truly open competition methods with regard to the selection of consultants because short-listing is not a full-fledged qualification process. However, because they are based on an open short-listing process open to all firms through a request for expressions of interest, Quality and Cost-Based Selection (QCBS) and Quality-Based Selection (QBS) can be considered in that category.

Restricted competition methods are based on the pre-selection of bidders which may then bid at a later stage; not all firms, even if qualified, are called on to participate (note that this is different from prequalification). There are many avatars of restrictive competition, including shopping and procurement of commodities based on comparing price quotations obtained from a limited (minimum) number of bidders. Such methods are appropriate when open competitive methods are not justified on the basis of economy and efficiency, usually for small value contracts (relative concept to be defined according to each market and country/sector situation), e.g. limited quantities of goods and commodities that are readily available or subject to standard specifications, or simple civil works and non-consulting services.

In regard to consulting services, Least-Cost Selection (LCS) and Selection Based on the Consultants’ Qualifications (CQS) are the restricted competition methods that can be relied upon when open competition is not justified on grounds of economy and efficiency (cost of preparing proposals, duration of the whole selection process). This typically applies to cases where the scope of works is fairly simple and standardized, the estimated contract cost is of a relatively small value (again depending on the specific market and sector), or sometimes in an emergency (defined according to clear criteria). Selection under a Fixed Budget (FBS), although an open competition method because of some of its features, may be considered restricted in the sense that, contrary to QCBS and QBS, firms cannot make financial offers that differ from the fixed budget. In addition, its conditions of application are fairly similar to LCS and CQS (note that a fixed budget should be of a low value).

Non-competitive methods are based on direct contracting (single-sourcing, sole-sourcing) where the same firm or individual is selected under very limited circumstances, usually when there is no possible competition and hence the key procurement principles, in particular of economy and efficiency, would not be served well by a competitive process. They should be avoided because of their potential negative impact on quality and price, lack of transparency, and possible encouragement to F&C practices. Circumstances under which they may be considered include: (i) additional scope of works under an existing contract that was procured through a competitive process and a new competitive process is not granted by market conditions (prices ought to be consistent with the original contract
though), (ii) standardization of equipment, spare parts or proprietary equipment, (iii) low value (depending on market and country), i.e. usually small quantities of standard goods or small and simple works; (iv) specialized non-consulting services that can be restricted to national administration or in some cases SOEs; and (v) clear and well-defined emergencies. Non-competitive methods include force account (direct labor, departmental forces, or direct work) by a government-owned construction unit that is not managerially, legally, or financially autonomous and uses its own personnel and equipment.

The mirror method in regard to the selection of consultants is Single-Source Selection (SSS) when competition is not deemed to meet the key procurement principles. It may be appropriate for assignments that represent a natural continuation of previous work or are simple and/or of a small-value, or when only one firm presents the required experience and qualifications.

Prequalification vs postqualification

Prequalification is preferred when the scope of works is complex and hence the estimated costs of preparing bids are high (e.g., supply and installation of large equipment and facilities such as power plants, waste disposal stations, or water supply systems; large infrastructure such as toll roads, suspended bridges, tunnels, harbors, or dams; highly-specialized and complex non-consulting and Information and Communications Technology -ICT and supply and installation of Information Systems -IS) so that bids are invited only from qualified and experienced firms which have resources and can meet the technical and financial qualification requirements at the later bid stage. Prequalification is also often used for complex forms of contract (e.g., Single Responsibility, Turnkey or Design and Build) and may be used in any other circumstances in which competition is deemed potentially biased. To be noted, the size and estimated cost of a contract is not in itself sufficient to justify prequalification; for example, large standard works in markets with limited competition may be better off being bid without prequalification.

One-stage vs two-stage bidding

The choice between one-stage and two-stage bidding is independent of the choice of a particular category of methods (open competition, restricted competition, or not competitive) although two-stage bidding is used for open competition methods that require the sophistication of the longer and more complex process. One-stage bidding is usually the preferred option as the process is simpler and quicker, and may apply to both open and restricted competition.

Two-stage bidding consists of the submission of purely technical proposals, without any financial or price information, on the basis of a feasibility study or preliminary design with indicative specifications, in the first stage, followed by submission of final technical and financial bids, in the second stage, based on amended bidding documents, respecting the confidentiality of the first stage bidders’ proposals. Two stage bidding is justified and present advantages when design is complex and technical, functional or performance specifications cannot be completed before further interactions with potential bidders (e.g., power plants) or because the sector is subject to rapid changes (e.g., ICT).

C. Non-traditional methods

The following methods are typically not used under Bank financing because of their complexity and the nature of what the Bank finances. They are not specifically forbidden, and are sometimes contemplated under broad non-prescriptive provisions. They usually fall under an open competition
process but could also be subject to restricted competition. They all offer an opportunity to be further considered for incorporation in the revised policy.

Competitive dialogue and other negotiations-based procedures

Competitive dialogue is a relatively new method intended for use in particularly complex procurement processes, especially when the technical requirements are difficult to fully define in advance. The process is designed to arrive at innovative solutions through interactions and debate between the procuring agency and potential bidders, and differs from the standard approach in that negotiations are somewhat inverted with the bidding and evaluation phase. Bringing forward negotiations with bidders before issuing BDs favors the adoption of precise technical, financial, commercial and legal provisions which cannot be (re)negotiated after bid evaluation (only the final contract is). Its main comparative advantage is to favor innovative solutions to a degree that even two-stage bidding processes have difficulty producing at both technical and financial levels. The review of options, assessment of optimal solutions, definition of indicative solutions and their associated prices, and finally final requirements constitute a systemic approach. Competitive dialogue must start with clear objectives, appropriate planning and very detailed and well-defined award criteria that are essential to success. A particular aspect that requires attention is the respect of confidentiality and equal and fair treatment of all bidders during the dialogue phase.

Other negotiations-based procedures typically include parallel negotiations as opposed to traditional sequential negotiations with the lowest-evaluated bidder, and eventually second-ranked bidder, and the others following, if and when negotiations fail with them.

Design & Build (DB)

This method, also a contract form, provides for bids on the basis of the Employer's technical and/or functional requirements and specifications, usually under a standard one-stage bidding process. Particularly complex scopes of works may be bid under a two-stage bidding procedure. This method is typically used for a plant, facility or factory, or sometimes complex infrastructure. Design, Build and Operate (DBO) methods are used either under traditional bidding including commissioning and the initial phase of operation of a plant, facility or infrastructure, or by concessionaires under PPP arrangements (see below).

Engineering, Procurement and Construction (EPC)

This is more of the nature of a contract than a procurement method, and is akin to a turnkey contract under which the contractor takes on the full responsibility for design and construction as well as commercial risks with other service providers. This is typically used in situations when the Employer wants to reallocate risks and there is ample uncertainty in regard to the price and duration of the contract. It is, however, a highly controversial method as such works are typically carried out by a contractor under a concession agreement with a so-called Special Purpose Vehicle or Company (SPV) which passes most risks on to the contractor through an EPC or turnkey contract.

Concessions

Concessions or PPP arrangements usually rely on processes such as Build, Own and Operate (BOO); Build, Own and Transfer (BOT); Build, Own, Operate and Transfer (BOOT) which are not procurement methods per se in that they are not defined in details as are the above-captioned traditional ones. They are, however, getting traction in an increasingly open market at a time of international financial crisis. The evaluation and award process is based upon open competition multi-
stage procedures based upon complex evaluation criteria that go beyond the traditional technical, financial and commercial qualification requirements. Of particular interest are the structure of the financing and financial balance of the project, minimum performance requirements, user charges and income-generation, and depreciation mechanisms. The firm or concessionaire selected will typically procure the goods, works, and consulting and non-consulting services required for the contract according to its standard corporate procedures and practices.

Performance-Based procurement (Output-Based Procurement or Performance-Based Contracting)

This method refers to processes resulting in a contractual relationship where payments are made on the basis of measured outputs that meet defined technical specifications and functional needs in terms of quality, quantity, and reliability (as opposed to inputs in traditional contracts). It is a procurement method as well as a form of contracting that differs from traditional procurement in that technical specifications are defined as results, bids may be dissimilar to allow for bidder innovation (most appropriate solution); goods, works and non-consulting services can be provided under a single contract, firms bear commercial and performance risks, and payment is subject to performance. It explicitly includes specific characteristics such as indicators by which to measure outputs and overall contractor performance, data collection, payment in accordance with the quantity and quality of outputs (fixed and variable parts), and rewards and sanctions such as performance bonuses or reductions from payments and debarment.

This applies in particular to rehabilitation, maintenance, management, design/supply/ construction (or rehabilitation) contracts, and eventually their commissioning and/or operation and maintenance for a defined period of years; DBO contracts; concessions with Output-Based Aid (OBA) schemes.

Pay for performance (P4P) covers a number of similar approaches for the provision of non-consulting services, including improvement in service quantity, quality and/or coverage based on an explicit link between performance and payment, financial rewards for good performance, and quick termination for non-performance. Contracts specify explicit and measurable outcomes. Fee for service payments to providers have consistently led to better and increased service provision. This approach may suffer from an ethical issue because poorly performing areas which need the most help may receive fewer resources, which can reinforce pre-existing inequalities.

Output-Based Aid (OBA) and Output-Based Disbursement (OBD)

OBA is the use of explicit, output or performance-based subsidies to complement or replace user fees for the provision of previously specified outputs or services meeting certain pre-specified performance standards. This implies that the service provider assumes the risk of pre-financing the achievement of the agreed outputs. OBA should not be confused with Performance-Based Procurement, although it may be considered as a specific application, as it is limited to the payment of the subsidy element. OBD mechanisms utilize a similar but distinct approach as it specifically applies to government or public entities which do not operate on a commercial basis.

Auctions

Procurement auctions are reverse auctions where the lowest bidder is the one with the final lowest price offer among all technically and responsive bidders. They may take different forms. Their use is predominantly fit for simple processes such as the procurement of off-the-shelf goods with simple technical specifications, standardized low intellectual content non-consulting services, or repetitive contacts with very well-defined TORs or scope of works.
Framework Agreements (FAs)

FAs are long-term agreements with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements (call-offs) can be made quickly throughout the term of the agreement. They are also known as, common use contracts, standing offers, rate contracts, parallel rate contracts, panel contracts, draw-down contracts, IDIQ (indefinite delivery / indefinite quantity) contracts, multi-use lists and standing offer arrangements. The terms agreements and contracts are often used interchangeably. FAs are set up in the first stage of a competitive procurement method and executed subsequently through repetitive second-stage call offs. They are generally based on prices that are either pre-agreed, or determined at the second-stage through competition or a process allowing their revision without further competition. However, an FA may not be itself a contract; while the FA resulting from the first-stage procurement sets out terms and conditions for subsequent second-stage call offs, the FA could constitute a standing offer and a contract would be formed only with each call off.

FAs should be limited to a maximum number of years, for maximum aggregate amounts set in accordance with risks, and with a minimum of suppliers/contractors. There is no requirement of a maximum number of suppliers/contractors under multi-supplier/contractor FAs. The terms and conditions shall be clearly defined, including call-off procedures which should not allow material changes of the terms and conditions. Initially submitted and agreed prices may be revised in accordance with clearly defined procedures in the terms and conditions of the FA. Where ceiling prices were established after the first-stage, call-off prices of a supplier/contractor should not exceed the ceiling prices of the same supplier/contractor.

FAs constitute a good alternative to restricted competition or non-competitive methods for off-the-shelf or common use with standard specifications goods, and simple non-consulting services or small value works contracts, when the required volume and delivery dates cannot be precisely predicted. Significant volume discounts will be achieved by aggregating the demand of multiple purchasing agencies. They are mostly appropriate when there is frequent re-ordering based on the same (or similar) set of specifications; the required volume and delivery dates cannot be precisely predicted; independent procuring agencies are acquiring the same goods and/or lack capacity; or in an emergency. There are many potential benefits in cost and time, improved quality and reliability, better supply chain management, or enhanced governance and budget planning. The inappropriate application of FAs can, however, increase the risk of restricting competition, creating or consolidating a monopoly of supply, discriminating against small suppliers/contractors, and increasing the potential for collusion among those suppliers/contractors.

Indefinite Delivery Contracts (IDCs)

They are FAs for consultants (firms and individuals). Once the framework is in place, individual assignments (call-offs) can be awarded without further competition thus avoiding the duplication of repeat procurement. After a few years, the competition is re-run to refresh the list of consultants and maintain the competitive nature of the process. Both types have similar (efficiency) advantages: reducing the costs associated with duplicated selection procedures; reducing the time needed for selection; providing a fully competitive means of providing experts at short notice in emergency situations; and allowing economies of scale.

Preferred Supplier Pricing Program

Countries pay different prices for the same goods, mostly because of market conditions or low volumes. Several have rationalized procurement through so-called quick gains based on the following
premises (identify and prioritize major areas of expenditures, diagnostic of project expenditures, cost analysis and pricing benchmarks for commonly purchased goods). There are also examples of multi-country procurement processes e.g. for HIV-AIDs drugs, and "pre-negotiated" contracts and prices with UN agencies.

The Bank has traditionally and for good reasons (being a third party to procurement processes and contracts led by borrowers) not been involved in negotiations of preferred rates. Collective negotiations with vendors across different countries or projects would be somewhat equivalent to setting ‘ceilings’ (bracketing) which are anti-competitive. The Bank’s approach is rather focused on assisting countries in developing e-procurement platforms.

Offset principles

Procurement under Offset situations entail long-term, open and multi-year contracts, including in particular banking counter trade credits against future bids, which raises issues of bid evaluation (criteria) and complex bid process that require sophisticated executing agencies to understand and apply the concept. They have often been used in defense contracts and in emerging economies to tie transfers of technology.

Leased Assets

Leasing is used as an alternative to purchasing when there are economic and/or operational benefits such as lower financing costs, tax benefits, assets used for a temporary period, reduced risks of obsolescence. This method includes capital leasing (financial-leasing or lease-purchasing) or operating leasing. Under a lease contract, the owner of the asset (the “lessor”) conveys to the user (the “lessee”) the right to use the equipment in return for a number of specified payments over an agreed period of time. Capital leasing serves to finance an asset for a major part of its useful life with the benefits and risks transferred to the lessee. Operating leasing is similar to renting of assets, and is typically for a shorter period than the asset’s useful life, at the end of which the lessee returns the assets to the lessor without further obligation. Bidding documents (usually SBD for Goods) specify the required duration and type of lease. Leasing should normally apply to the entire procurement package, i.e., bidding packages shall not mix leased goods with the procurement of other goods, not even as specific line items or lots. If purchase offers are allowed to compete with lease offers, the evaluation method that would be used to compare lease and sale terms should be clearly stipulated in the bidding documents. Typically, a Net Present Value (NPV) calculation of the different bids is carried out.

Secondhand Goods

Under some circumstances, the procurement of secondhand goods or refurbishment of expensive equipment may be more economic and efficient than the procurement of new supplies. The procurement of secondhand goods can be relied upon in some circumstances (but not for budget saving reasons only) and should not be procured through a competitive process that also allows bids with new goods. Market circumstances should be assessed: (i) existence of a surplus (in suitable quantity and quality) of the type of goods required from enough sources to ensure competitive bidding, and (ii) lack of economies of scale in the procurement of new goods resulting in excessive costs. Technical Requirements/Specifications should describe the minimum characteristics of the secondhand supplies such as age and condition (e.g., refurbished, like new, or acceptable if showing normal wear and tear).
ANNEX 5: THE PROCUREMENT CYCLE

A. Strengthening the Procurement Cycle

The revision of the Bank’s procurement policy provides an opportunity to review how the role of procurement in the Bank’s overall fiduciary oversight and development effectiveness model can be further strengthened. Under the existing Rules, the Bank has primarily focused on the procurement bidding or contract award process, not infrequently to the exclusion of two other critical stages in the procurement cycle, i.e. procurement planning (covering pre-bidding) and contract execution (covering post-award) activities.

From a more dynamic and results-oriented perspective, the procurement process can be defined as a comprehensive process both at the whole project level and the individual contract level. At the country/project level, it means thinking procurement from the project design phase (i.e. beneficiary needs assessment and overall procurement planning) to performance measurement and overall results achievement, in coordination with the country’s overall procurement organization and planning. At the contract level, it means including all stages from planning, through bidding/selection procedures and contract award, to successful implementation and completion of the contract.

In fact, the Bank’s fiduciary mandate covers the whole project cycle. While typically proper attention is given to the project implementation plan and procurement plan at the design stage (project identification and preparation) and the application of the Bank procurement rules and procedures through relatively close monitoring and compliance enforcement, it is not usually so with regard to contract management procedures. Even when a bidding or selection process has proved efficient and effective, assuming that the procurement planning process has been undertaken efficiently and effectively, many challenges and risks remain at the contract management stage.

The Bank does not, however, perform contract monitoring and accounting, nor systematically review the borrower’s procedures in this area during project preparation and implementation. There is also a (perceived) lack of clarity regarding the Bank’s implementation support role and some degree of ambiguity in responsibilities for contract management although contract management lies entirely with the borrowers.

B. Re-aligning the Bank’s Procurement Review Paradigm

Effective procurement compliance oversight, and monitoring and evaluation (M&E) of project implementation and outputs in the context of a broader procurement cycle, requires the Bank to revisit the paradigm of prior, post, and independent reviews in order to satisfy the Bank’s fiduciary mandate in a cost-effective manner. Among other changes, there will need to be deeper integration between the Project Implementation Plan (PIP), Procurement Plan (PP) and M&E. Further, to undertake effective due diligence on contract management, there will need to be considerably more focus on addressing inconsistencies between PPs and actual implementation progress.
For effective project M&E, performance indicators to identify and measure various aspects of actual implementation will need to be framed and applied. For example, such indicators would measure: (i) quality of, and adherence to, contract implementation criteria, including results of physical inspections and technical audits to improve; (ii) compliance with the Bank procurement policy framework; and (iii) adherence to all contractual terms, including quantum and timeliness of payment schedules. At individual project contract management levels, the technical and monitoring capacity of the relevant borrower will need assessment, including whether, or to what extent, outsourcing of contract management responsibilities may be a preferred approach. It will also be necessary to consider a more flexible, conciliatory, collaborative ‘win-win’ approach to contract management by resolving or mitigating tensions and fostering a constructive relationship to enable an increased degree of ownership of the contract processes from both owner and contractor sides.

Realignment of the Bank’s procurement review process cannot be made effective without corresponding improvement in the Bank’s disbursement processes: additional control over expenditures, particularly to check that payments conform to the terms of the contract, do not exceed the value of the contract, are made to eligible firms, and are reconciled and recorded, will be necessary. Enhancing contract monitoring will necessarily require strengthening and modernizing the disbursement process to increase efficiency both internally and for borrowers. Moreover, developing an enhanced assurance framework for high – risk projects would need to be carefully considered.

C. Procurement Planning

While the Bank’s role in procurement planning has been reinforced through the requirement of preparation of a procurement plan as set down in the Rules, operational practice does not seem to have applied this requirement in many cases with sufficient depth or commitment. Not infrequently, preparation of procurement plans has been done more as a clerical requirement, simply setting ICB or NCB or national consultant thresholds, without more meaningful efforts to optimize procurement packaging and set out the most responsive methods of procurement for a specific project.

In particular, detailed and accurate upfront client ‘need assessments’, with related market survey and analysis to get an accurate picture of the nature of local and international suppliers and/or contractors and/or consultants for a given procurement package or set of packages required for a particular project or program, are more often the exception rather than the rule. Further, risk-based procurement planning procedures should be considered to improve procurement efficiency and effectiveness. Current procurement procedures are not meaningfully risk-based but are, essentially, value-based and, in practice, prior and post-review thresholds do not meaningfully reflect procurement risk (see Annex 2 on Risk – Based Procurement).

Insufficient focus or attention, as noted, has been given to generating (and updating) accurate market surveys and cost estimates for contemplated goods and works procurement. Related to this is the issue of price adjustments during the duration of longer-term contracts. In some cases there are substantial price escalations in civil works contracts and such cost increments are typically not captured in original cost estimates for a given procurement. In these types of cases, focus on contract monitoring may justify application of a Price Monitoring Mechanism (PPM) that would provide guidance to Bank staff in assessing the reasonableness of bidding prices and thereafter price
escalation. Certain initiatives to promote increased transparency of cost estimates, such as CoST and/or Open Contracting, are helping to give borrowers a more accurate framework for preparation of procurement plans. Equally problematic, however, has been the limited focus on comprehensive client needs assessments, as well as a lack of detailed market surveys.

Sound procurement planning, including developing accurate cost estimates and tracking and updating such figures throughout the bidding process as well as identifying the most suitable procurement method for a given market or markets, also needs to address the suitability of contract forms and specific contractual provisions to be applied within a given bidding process. There is a need to determine, for example, whether for certain higher risk situations it may be necessary to consider inclusion of special conditions of contract. In the case of late, or lack of payments, for instance, it may be prudent to use letter of credits for payment or to include in standard forms of contract a mechanism for opening escrow accounts to be used for payments.

D. **Contract Management**

The Bank’s role in regard to contract management has traditionally been part of overall project supervision as it is not a party to the contracts it finances. The Bank oversight function in regard to contract management is currently largely limited to the assessment of contract management capacity (internal processes and systems) and of risks (developing as may be needed mitigating measures) to ensure effective contract monitoring and the achievement of end results.

This does not, and should not, mean a lack of Bank concern about what happens after contract award, since this is inter alia a stage arguably most prone to F&C, and the impact of undue time and costs overruns, poor performance and lack of quality etc. on project outcomes can be huge.

In practice, however, the Bank has less leverage to play an active role during the post-award period when the responsibilities fall almost entirely onto borrowers. Beyond the overarching priority of capacity building and calls for less focus on prior reviews and more on ex-post reviews and audits, more attention to contract management and risk assessments is of the essence.

One key reason leading to the failure to ensure that contract management is properly addressed is that implementing agencies lack guidance and support from the Bank when executing contracts. While it is the RMCs’ ultimate responsibility to employ the most appropriate mechanisms to ensure that the outcomes of the contracts are achieved with due consideration of the project development objectives, there is scope for the Bank to better address project implementation issues, including through its procurement policy by focusing more on contract management support.

Contract management should, in order to achieve the overarching principles of the procurement policy, be considered as an integral part of the procurement process, which requires clear rules for all parties (borrowers and private sector) to follow, and for the Bank to exercise its fiduciary mandate. Considering the whole procurement cycle, from overall project procurement planning to contract completion, would allow enhancing fiduciary assurance at both contract bidding and execution phases, monitor and control all stages of the procurement cycle from preparation of TORs/specifications to final acceptance and payment, and develop an appropriate framework for the
Bank and RMCs to get such, including quality evaluation and monitoring, contract management, and contractor performance.

An integrated procurement-related fiduciary system at the Bank, including coverage of contract management and monitoring, is consistent with the Bank’s broad governance agenda and the need for effective risk management in exercise of the Bank’s fiduciary mandate. Some critical areas for increased focus in the context include: (a) modifications of the General Conditions and development of comprehensive guidelines, standards, protocols and criteria related to the exercise of remedies; (b) better monitoring of compliance with rules and practices; and (c) realignment of staff incentives and analysis of resource allocation, as well as relevant training on the Bank’s rights, responsibilities, and practices relating to contract management. In focusing on a broader procurement cycle, including contract management, the Bank would have the opportunity to place more priority on understanding markets and, in assisting the Bank’s Integrity personnel, undertake more meaningful follow up on suspicious procurement transactions.

E. **Procurement Audits**

Procurement audits can be used to complement prior and post review and inform management about the quality of procurement. They typically cover a broader range of issues, including the overall performance of both the Bank and the borrower in regard to procurement management. Related considerations include relying on third-party oversight and extended, integrated and more comprehensive audits, revisiting the role of supervising engineers, and making amendments to bidding documents and contractual forms to permit more timely and extensive audits. Such audits can also add value from an internal perspective: they can assess how effectively Bank procurement staff work with other units, inter alia with regard to governance and fraud and corruption. A related issue is the need for revisiting and improving third party audit clauses that are included in Bank-approved bidding and other documentation, particularly for sub-contractors and sub-consultants.