Comprehensive Review of the AFDB’s Procurement Policies and Procedures

Summary of Literature on Harmonization in Public Procurement

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This summary has been prepared by a Consultant and the views expressed herein are those of the Consultant and not of the Bank.

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ACRONYMS

ADB  African Development Bank
AfDB  African Development Bank
AsDB  Asian Development Bank
BSTDB  Black Sea Trade and Development Bank
CDB  Caribbean Development Bank
CEB  Council of Europe Development Bank
COMESA  Common Market for Eastern and Southern Africa
DAC  Development Assistance Committee
EBRD  European Bank for Reconstruction and Development
eGP  electronic government procurement
EIB  European Investment Bank
EU  European Union
FIDIC  Federation Internationale des Ingénieurs-Conseils
GC  General Conditions
GPA  Agreement on Government Procurement
GPA  Government Procurement Agreement
HLF  High Level Forum
HLFs  High Level Forums
HOPs  Heads of Procurement
IaDB  Inter-American Development Bank
IBRD  International Bank for Reconstruction and Development
IBRD  International Bank for Reconstruction and Development
ICB  International Competitive Bidding
IFIs  International Finance Institutions
IFIs  International Finance Institutions
IsDB  Islamic Development Bank
MAPS  Methodology for Assessment of Country Procurement Systems
MDBs  Multilateral Development Banks
MERCOSUR  Mercado Común del Sur
NAFTA  North America Free Trade Agreement
NTF  Nigeria Trust Fund
OECD  Organization for Economic Cooperation and Development
ORPF  Procurement & Fiduciary Services Department
SBD  Standard Bid Documents
SPQD  Standard Prequalification Document
SWAPs  Sector Wide Approaches
UNCAC  United Nations Convention Against Corruption
UNCITRAL  United Nations Commission on International Trade Law
WB  World Bank
WG  Working Group
WTO  World Trade Organization
SUMMARY OF LITERATURE ON HARMONISATION IN PUBLIC PROCUREMENT

I. OBJECTIVES

1. The objectives of this Paper are to review, analyse, synthesise, and to summarise background documentation available in the public domain concerning the theme of harmonisation in public procurement, which could be of relevance to, and also inform the Bank’s review of its procurement policies, procedures and processes.

2. This Summary relies on a number of publications and articles, which are itemised hereafter, in the List of References and Resources. Among these, due note needs to be taken of the following: The WB’s Procurement Policies and Procedures: Policy Review – Approach Paper; Procurement Harmonization – World Bank Group; Development Partners and Governance of Public Procurement in Kenya: Enhancing Democracy in the Administration of Aid; and Aid Effectiveness – Wikipedia.

II. FINDINGS

3. Harmonisation in public procurement which for some time now, has been an integral part of the OECD/DAC Aid Effectiveness process, essentially began with the various High Level Forums (HLFs) linked to that process. Aid Effectiveness, by definition, is the efficiency of development aid in achieving economic or human development (or development targets) and the search by aid agencies for new ways to improve aid effectiveness, have included conditionality, capacity building and support for improved governance.

4. The Aid Effectiveness process commenced because, for several of the preceding decades, it had been observed that international development assistance had not achieved its primary goal of alleviating poverty. In short, aid was ineffective. The ineffectiveness of aid was attributed to factors such as the policy of donor countries of tying aid to specific conditions, the provision of aid against the background of persistent protection of markets in donor countries, and bad governance in recipient countries. For, it was observed at the time that tied aid was “grossly inefficient”, and that it encouraged a donor-driven approach to development, and also signalled that development agencies’ concern was not development, but contracts won by their national companies [especially, in the case of bilateral donors].

5. Therefore, donor countries had sought to improve the effectiveness of aid, particularly by abandoning stand-alone projects (as it occurred previously) in favour of “Sector Wide Approaches” (SWAPs), realising that conditioned aid rarely persuaded developing countries to reform their policies, and that these governments were often “…overwhelmed by the sheer number of donors and donor projects, with the result that public expenditure became an unplanned aggregation of donor projects lacking a coherent framework of policies, priorities and service standards...” As an example, in Tanzania in the early
1990s, donors were implementing 15 separate stand-alone projects in the health sector only, and thus Tanzania had to produce more than 2400 reports a year for the donors, who sent into the poor country 1000 missions a year.

6. To make matters even worse, each donor [whether bilateral or multilateral] brought in a different set of Rules, Guidelines and bidding documents. This constituted a nightmare scenario for borrower executing agencies. Under the circumstances, the large number of donor interventions, coupled with the various policy orientations, turned the development scene into a battle ground. Because, while donors were literally berating recipient countries about shortcomings in governance and demanding reforms to get their houses in order, the latter were screaming back at donors to get their acts together, too, given the multiplicity of policy documentation they imposed on poor countries. Consequently, the Aid Effectiveness process was in response to serious disagreements within the international development arena.

7. On the other hand, it is recognised that attention to harmonisation, alignment, and managing for results had begun before the HLFs, although the HLFs became the culmination of the different efforts in the development arena. For, various agencies had begun to explore the area in a range of countries. For example, the Strategic Partnership for Africa [launched in 1987], had provided a framework for the donor community to cooperate with African countries in pursuing development progress and reform; and the Utstein Group [comprising the ministers of international development from Germany, Netherlands, Norway, Sweden, and the United Kingdom], had collaborated for improved development effectiveness. The European Union committed at the Barcelona Summit in March 2002 to “reach concrete steps in the coordination of policies and the harmonisation of procedures before 2004”

8. Even more importantly [and coming closer home to the subject at hand], a forum for procurement harmonization was established in 1999 [at the level of the Heads of Procurement: HOPs], aiming to provide a coherent mechanism for procurement cooperation between MDBs, IFIs and key development partners, namely: the Asian Development Bank (AsDB), African Development Bank (AfDB), Black Sea Trade and Development Bank (BSTDB), Caribbean Development Bank (CDB), Council of Europe Development Bank (CEB), European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB), Inter-American Development Bank (IaDB), International Bank for Reconstruction and Development (IBRD or World Bank), and Islamic Development Bank (IsDB).

9. It is therefore against this backdrop of situations, events and initiatives that one must establish an appropriate perspective of the developments surrounding the Aid Effectiveness agenda. A historical account of the international development scene itself will be useful.

10. The international aid system was born out of the ruins of the Second World War, when the United States used their aid funds to help rebuild Europe. The system came of age during the Cold War era [from the 1960s to the 1980s]. During this time, foreign aid was often used to support client states in the developing world. Even though funds were generally better used in countries
that were well governed, they were instead directed toward allies. In other words, politically-motivated aid was ineffective.

11. After the end of the Cold War, the declared focus of official aid began to move further towards the alleviation of poverty and the promotion of development. The countries that were in the most need (and poverty) became more of a priority. It is against this background that the international aid effectiveness movement began taking shape in the late 1990s. Donor governments and aid agencies began to realize that their many different approaches and requirements were imposing huge costs on developing countries and making aid less effective. They began working with each other, and with developing countries, to harmonize their work to improve its impact.

12. The aid effectiveness movement picked up steam in 2002, at the International Conference on Financing for Development in Monterrey, Mexico, which established the Monterrey Consensus. There, the international community agreed to increase its funding for development—but acknowledged that more money alone was not enough. Donors and developing countries alike wanted to know that aid would be used as effectively as possible. They wanted it to play its optimum role in helping poor countries achieve the Millennium Development Goals, the set of targets agreed by 192 countries in 2000, which aimed to halve world poverty by 2015. A new paradigm of aid as a partnership, rather than a one-way relationship between donor and recipient, was evolving.

13. In 2003, aid officials and representatives of donor and recipient countries gathered in Rome for the High Level Forum (HLF) on Harmonization. At this meeting, convened by the OECD, donor agencies committed to work with developing countries to better coordinate and streamline their activities at the country level. Indeed, donors committed to align development assistance with partners' strategies and improve systems, harmonise donors' policies and procedures, and implement principles of good practices in development cooperation. A summary of the programme of Rome is provided below:

- To ensure that harmonization efforts are adapted to the country context and that donor assistance is aligned with the development recipient's priorities.

- To expand country-led efforts to streamline donor procedures and practices.

- To review and identify ways to adapt institutions' and countries' policies, procedures, and practices to facilitate harmonization.

- To implement the good practices principles and standards formulated by the development community as the foundation for harmonization.

14. A year later, in Marrakech (Morocco; February 2004), the Heads of MDBs and the Chairman of the OECD-DAC affirmed their commitment to foster a global partnership on managing for results. Together, these international agreements define key goals and objectives for the aid effectiveness agenda.
15. As a matter of principle, managing for development results [defined as “a management strategy focusing on performance and achievement of output, outcomes and impact”] builds on the precepts set by the development community in the domains of country ownership, donor harmonization, and alignment. These principles, endorsed in the Rome Declaration on Harmonization in February 2003 and further developed in the DAC Good Practice Paper “Harmonizing Donor Practices for Effective Aid Delivery,” provide that development agencies should:

- Rely on and support partner countries’ own priorities, objectives, and results. This implies alignment with the national strategy (a sound poverty reduction strategy or equivalent, with national linkage to the Millennium Development Goals as applicable) and use of reliable national systems and procedures (including the government’s budget, reporting cycle, and monitoring timetable).

- Coordinate with other development agencies under partner country leadership and promote joint action whenever possible (including through delegated cooperation—that is, one donor acting on behalf of another).

- Strengthen partner countries’ own institutions, systems, and capabilities to plan and implement projects and programs, report on results, and evaluate their development processes and outcomes, avoiding parallel donor-driven mechanisms.

16. In Paris [February/March 2005], countries from around the world endorsed the Paris Declaration on Aid Effectiveness, a more comprehensive attempt to change the way donor and developing countries do business together, based on principles of partnership. The Paris Declaration is grounded on five mutually reinforcing principles:

- **Ownership**: Partner countries exercise effective leadership over their development policies and strategies, and coordinate development actions.

- **Alignment**: Donors base their overall support on partner countries’ national development strategies, institutions, and procedures.

- **Harmonization**: Donors’ actions are more harmonized, transparent, and collectively effective.

- **Managing for results**: Managing resources and improving decision making for development results.

- **Mutual accountability**: Donors and partners are accountable for development results.

17. Three years later, in 2008, the Third HLF in Accra, Ghana took stock of progress and built on the Paris Declaration to accelerate the pace of change, with the Accra Agenda for Action. Consequently, although there has been a continuum of efforts with respect to Aid Effectiveness, it is unfortunate to
observe that the principles agreed upon in the declarations have, however, not been always practiced by donors and multilateral bodies.

18. As a follow-up to the Paris Declaration, the Joint Venture on Procurement [JVP] of the OECD/DAC [under WB leadership], took on the task of developing the tools and mechanisms for effecting measurable improvement in local procurement systems and encouraging the use of national systems, as those systems improved. One of the results of this work was the development of the Methodology for Assessment of Country Procurement Systems (baptised MAPS). The next step was the piloting of the Use of Country Procurement Systems in WB-financed operations, launched in FY09.

19. According to observations, the program proved to be time-consuming and was ultimately not successful in reaching the final stage of actually using country systems in a project. Nevertheless, at the end of the piloting program, four countries had been conditionally cleared to be able use their respective country systems; so far none has chosen to do so. The key lesson from this experience is that expecting countries to have national procurement systems that are unequivocally equivalent to the Bank's policies—all or nothing—is an unrealistic expectation. It is more likely to be the case that country systems have strengths and weaknesses and that some national agencies are more capable than others.

20. Moreover, the piloting program demonstrated that procurement reform is a complex and lengthy process that requires progressivity and gradualism. At the same time, the piloting program was successful in demonstrating how to benchmark national procurement capacities and stimulating interest in procurement reform. As a result, there is now great interest and synergy among donors and countries alike in improving local procurement capacities.

21. On the other hand, the aspects of harmonisation in public procurement relating to MDB procurement policies and standard bidding documents were undertaken through the afore-mentioned HOP process. The HOPs acted through various Working Groups [e.g., Preparation of Master Procurement Documents; Master Standard Request for Proposals; Harmonisation of Guidelines]. The achievements of the HOP process to date includes:

- harmonization of MDBs’ procurement guidelines in principle, and standardization of bidding documents for the procurement of goods, works, small works, plant design supply and installation, and consultant's request for proposals;
- dialogue and cooperation on a wide range of issues impacting on the application of good procurement procedures and practice, including electronic government procurement (eGP), procurement in Fragile and Conflict situations, Country Procurement Reform, national debarment of firms, etc.; and
- joint training, capacity building, diagnostic work as part of co-financed projects, knowledge sharing and business outreach initiatives.
22. In this regard, the HOP process of harmonisation of policy guidelines led to a gradual alignment and convergence between the policies, the WB versions serving as the standard. Thus, for example, the AfDB Rules [1999] were aligned onto the WB Guidelines [1999]. And, the AfDB Rules [2008] reflected the WB Guidelines [2004]. The latest round of updates followed the MDB agreement on clauses defining fraud and corruption. In the case of AfDB, the revised Rules are dated July 2012. Consequently, with the exception of minor areas of specificity (ADB and NTF eligibility; preference margins; etc.), the two sets of policy documents of WB and AfDB have largely been harmonised.

23. The Harmonized Master Procurement Documents reflect what is considered “best practices” and are intended to be used as a basis by the participating organizations for issuing a standard procurement document for each individual institution. A brief account of the HOP-Working Group [WG]’s approach to the preparation of the items could prove to be useful.

24. The WG undertook the work in two broad phases. The first phase consisted of the adoption of a source document for each of the four initial documents. In the case of Goods, the source document naturally became the existing HOP SBD: Goods & User’s Guide [1999]. For Small Works, the choice fell on the existing IADB SBD: Small Works. The WB SBD: Works, and the AsDB SBD: Plant, were picked, respectively, for Works and Plant.

25. For each of these source documents (and one after the other), the WG discussed in detail and extensively, section by section, clause by clause, the formulation that was most representative in terms of best practices, and which the participating institutions would use collectively. Upon the completion of each document, the WG presented it to the HOPs for approval, following which the HOPs designated the new document as the Harmonised MPD. The WG thus produced the four Harmonised MPDs: Goods; Small Works; Works; and Plant Design, Supply and Installation.

26. At the completion of this initial phase of harmonised documents, the HOPs charged the WG with the responsibility of Cross-Harmonising the four Harmonised MPDs. The second phase thus involved the harmonisation of the harmonised MPDs. This implied that the four harmonised MPDs should be transposed into a recognisable family of MPDs, with a common structure [3 Parts; 9 Sections; common formulation of clause texts; shared bidding forms; contract forms; etc.].

27. In this quest, the WG succeeded in largely cross-harmonising the three Parts [1: Bidding Procedures; 2: Employer’s/Purchaser’s Requirements; 3: Conditions of Contract and Contract Forms]; as well as several Sections (I: Instructions to Bidders; II: Bid Data Sheet; III: Evaluation and Qualification Criteria; IV: Bidding Forms; V: Eligible Countries; VI: Requirements; VIII: Particular Conditions; and IX: Contract Forms). However, in the case of Section VII: General Conditions (GC), only Clause GC 1 could be cross-harmonised, given the fact that the GC of the four source documents were just too different to enable their effective cross-harmonisation. For example, the GC for the Works MPD were prepared by FIDIC, commissioned by, and the costs shared between, MDBs, including AfDB. The WG thus proposed, and
the HOPs approved, that, outside of the **cross-harmonised** Clause GC 1, the rest of the texts and clauses of Section VII should remain **MPD**-specific. And, this explains why Section VII is almost entirely different for each of the **MPDs**.

28. Notwithstanding this difficulty with Section VII, the WG produced four **Cross-Harmonised MPDs** [**Goods; Small Works; Works; and Plant Design, Supply and Installation**], together with the **Generic MPD**. The function of the **Generic MPD** is to serve as the blueprint for the preparation of future **MPDs**. In this respect, the **Generic MPD** guided the preparation of the AfDB **SBD: Procurement of Non-Consultant Services**. The HOP **Standard Prequalification Document (SPQD); 2003** was not covered by the WG. Also, the **Standard RFP** was prepared by a separate HOP Working Group.

29. In preparing the institutional own standard procurement documents, the **Cross-Harmonized Master Documents** are expected to be followed, insofar as possible, while allowing for institutional and member country considerations. A detailed list appears below, with relevant completion dates:

- Master Standard Request for Proposals (October 2011)
- Generic Master Procurement Document (July 2008)
- Master Document for Procurement of Small Works (July 2008)
- Master Document for Procurement of Works (July 2008)
- Master Document for Procurement of Goods (July 2008)
- Master Document for Procurement of Plant Design, Supply, and Installation (February 2007)

**Guidance & Other Notes**

- July 2012 Communiqué
- Procurement Guidance for MDB Public Sector PPP engagements (February 2012)
- Requirements for Local Procurement in Borrowing Countries (August 2003)
- MDB Procurement Principles applicable to Private Sector Transactions (October 2012)

30. Here again, it must be noted that, AfDB, a very active member of the HOP-WG for the preparation of the MPDs, was the first institution among MDBs/IFIs to adapt and adopt the **Cross-Harmonised MPDs** into its current **Standard Bidding Documents**, complete with accompanying **User’s Guides**.
31. Without a doubt, it is such a concerted HOP-level effort that has to be mustered during the forthcoming round of harmonisations of MDB procurement policies and SBDs, a situation made necessary by, on the one hand, the advent of new concepts, tools and technologies in public procurement, and, on the other, the need for greater harmonisation and convergence of procedures as the result of international agreements. The fact that a number of donors (as well as some borrowing countries) have instituted, adopted, and are using these new concepts makes it incumbent upon MDBs and IFIs to seek ways and means of taking on board the elements concerned, specifically to avoid a return a multiplicity of donor procedures.

32. Concerning the theme of new concepts, tools, and technologies, it should be noted that these elements have been discussed in detail in the Summary companion to this one, entitled: Innovations in Procurement.

International Instruments and Agreements

33. The opening of public procurement to competition has come about gradually. For, overcoming protectionism has taken more than thirty years of international negotiations, with the job not yet complete, and still jeopardized during times of economic crisis. Even though liberalization had long been on the radar screen, there was virtually no restraint under international agreements until the General Agreement on Tariffs and Trade Tokyo Round Agreement on Government Procurement came into force in 1981. The WB’s use of ICB—from the outset—obviously put it at the vanguard of institutions advocating for open competition in public procurement [other MDBs followed suit].

34. A critical turning point came in the early 1990s with the adoption of the second plurilateral Government Procurement Agreement (GPA), under the auspices of the WTO [1994], and the issuance of the Model Law of Procurement of Goods, Construction, and Services by the United Nations Commission on International Trade Law (UNCITRAL) [1993]. As of 2011, 42 countries, mostly OECD members, were bound by the GPA and 23 others, mainly developing countries, were associated, either as accessing countries (9) or observers (14).

35. Furthermore, the UNCITRAL model law plays an important role in setting standards for public procurement laws that constitute an essential step in reshaping procurement systems: 20 countries are reported by UNCITRAL’s Secretariat to have passed national procurement laws inspired by the Model. In parallel, there has been a proliferation of regional trade agreements, such as the North America Free Trade Agreement (NAFTA) and customs and economic unions, such as COMESA in southern and eastern Africa, and MERCOSUR in Latin America, which bind members on trade and market opening. The European Union (EU), with its single market launched in 1993, has adopted standardized procurement regulations and directives that apply to its 27 member states and are gradually adopted by Eastern European countries that are candidates to entry in the EU, or serve as a model to those
under its Neighbourhood Policy. In parallel, the growing concern about corruption has led to the negotiation of the United Nations Convention Against Corruption (UNCAC). It came into force in 2005, with 159 countries ratifying it.

**Convergence and Harmonization**

36. There is a common acknowledgement by MDBs and their development partners of the benefits of greater convergence and harmonization of procurement policies, in order to enhance overall development effectiveness. Yet, there is no direct path for doing so. Moreover, the motivations for these new international instruments and agreements differ. Because, some of them focus on reshaping domestic procurement systems and realizing greater transparency in public procurement, while others focus on non-discrimination, trade liberalization, and market access.

37. In order to position MDB procurement policies in the context of these new international instruments [and, to get an overall sense of the degree of convergence], a comparison has been made of the main features of the EU Directives, the WTO GPA, UNCAC, and the UNCITRAL Model Law with the WB Guidelines, as an example. This comparison illustrates the shared principles on which all these various documents are grounded, namely: transparency, economy, equal access, efficiency, and integrity. At the same time, it demonstrates the extent to which “…the devil is in the details…” For, differences abound in vocabulary, and the way that the common principles are put into practice. The main commonalities and specific differences are summarized below:

- **Concerning transparency,** there is consensus among the agreements, with only minor deviations on advertising requirements, publication of procurement-related regulations and documents, and timeframes for submitting and opening bids. Nevertheless, public opening of bids is not required in all agreements.

- **On equal access,** the principle of non-discrimination is reflected in all agreements. The main differences have to do with eligibility in terms of the nationality of bidders, with international agreements often promoting restricted access based on reciprocity. The EU stands out in not having an explicit “Buy Europe” policy for its members, even though it has minimum rules of origin for territories not covered by bilateral or regional agreements. There is common ground on the use of name brands, for example, but not on the use of domestic preferences, which the WB allows and others do not. Some instruments such as the GPA and the EU framework explicitly allow social and economic considerations to come into play under certain conditions.

- **With regard to efficiency,** there is a common understanding that this is one of the main goals, but there is less understanding on what efficiency means (or how to measure it). There are wide variations in the allowable procurement methods: typically the other instruments allow more flexible methods than the WB’s, including negotiations, other forms of interaction
with potential suppliers, and means to speed up procurement processes, such as framework agreements, standing-offers, lists of pre-qualified suppliers, reverse auctions, and electronic procedures. There are differences on when direct (no-bid) contracting may be justified. Increasingly, the test of proportionality, stemming from German law, is being applied to EU procurement processes by the courts. On the other hand, the WB’s use of local shopping differs considerably from the practices of the others, and opens a wide field in which borrowers can procure rapidly at low cost to both the bidders and the contracting agency.

- How the principle of economy is applied is perhaps the hardest to gauge and to measure, as there are many ways to evaluate bids and many factors to take into consideration. The main difference revolves around ways to assess value for money, including costs as well as benefits, the use of merit points and the evaluation of non-monetary costs and benefits, such as quality, reliability, post-sales service, and user friendliness. Generally, the other international instruments are more explicit as to what factors to take into account and allow greater incorporation of non-monetary considerations than do the WB Guidelines. Other differences, for example, centre on the role of prior experience as a qualification criterion, as compared to other qualifications (e.g., professional standing, quality assurances). Another difference is the possibility of rejecting an abnormally low bid, which some agreements allow and the WB does not.

- On integrity, the WB has the most far-reaching requirements, in line with the UNCAC’s provisions, plus specific debarment procedures. This does not mean that there is not a shared vision with these other groups, as the more recent agreements are on the same page as the WB, and the EU has already acknowledged the necessity to cover such issues in the new directives under preparation.

38. In the specific example of the EU Procurement Directives, the EC undertook a comprehensive modernization thereof, in 2011/2012. It completed an evaluation of the Directives’ impact and effectiveness. The evaluation [as the basis for drawing fact-based lessons and to inform the policy debate], revealed that EU procedures were well understood and appreciated by the public, and that compliance among member countries was on the rise, as were better reporting, structures, and adoption of e-procurement systems. Greater transparency had been one of the main impacts. It also showed that only about 20 percent of total public procurement was done in compliance with the EU Directives (i.e., the share of contract value above the EU thresholds), indicating that the specific national procurement rules and procedures applicable below the thresholds still prevailed for the bulk of procurement carried out by EU members.

39. The evaluation showed that EU procurement was increasingly sophisticated: among other things, framework contracts were becoming popular, especially among central or joint procurement agencies. The use of electronic means of procurement had also become increasingly sophisticated: all members now have e-procurement legislation. There was a growing interest as well in using
public procurement to achieve other goals such as environmental sustainability and innovation. The EU's less orthodox procurement methods such as competitive dialogue, restricted competition, and negotiations remained small, as a share of the number of contracts, although they represented a significant share of the value of contracts. It is noteworthy that open competition represented 52 percent of the total value of contracts let over the 2006-2010 period. Overall efficiency was high: the average time to award a contract was around 58 days, with more complex contracts and less conventional procurement methods taking considerably more time.

40. In terms of bidding costs, the average was estimated at Euros 28,000 per contract, of which 75 percent was incurred by bidders, or about 1.2 percent of the resulting contract value. These bidding costs represented a disproportionate share of the value of small contracts [up to 29 percent], with the median cost falling between 6 and 9 percent of the contract value. On the positive side, advertisement and open competition were estimated to have generated 3.8 percent in savings. The end result was that the cost-benefit ratio for following the EU Directives was clearly positive, although there continued to be considerable scope for reducing the costs of administration. The extent of cross-border tenders was another area for potential deepening as companies still were reluctant to bid in other states.

41. The fact that the WB policies and procedures fall in the mainstream among these other instruments reflects its long-standing role as trend-setter on international public procurement and its active engagement with these other organizations. Yet, there are a number of areas in which the WB has been more reactive than the others to innovations in public procurement. For example, the WB has only recently incorporated framework contracts for the purchase of off-the-shelf goods and low-value non-consulting services, and integrated new concerns about environmental and social impacts that are now a more common feature of public procurement.

42. The WB, because of its focus on discrete projects that are often ring-fenced, has always struggled in dealing with the borrowers' institutional dimensions, including staffing capacity and ethics, independent review mechanisms, statistics and information availability, confidentiality, and supplier performance monitoring and evaluation that may be covered, to varying degrees, by international instruments or agreements. Nor has the WB clearly established de minimis conditions for the application of its policies. Part of this reflects the on-going transformation of the WB policies originally designed for stand-alone large infrastructure contracts [which can be bid without recourse to the methods mentioned above], to a set of policies and procedures that deal with a wider range of public procurement categories, including repetitive procurement processes and small, dispersed and decentralized transactions.

43. On the other hand, as compared to these instruments, the WB policies and procedures appear to be the most comprehensive and perhaps more prescriptive (e.g., provisions on the role of state-owned enterprises, turnkey contracts, purchase of commodities, use of INCOTERMs, mandatory use of SBDs). The WB [like other MDBs] also has separate Guidelines for Consultant
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Services, with provisions stipulating geographic dispersion and limiting the number of firms called on to offer proposals.

44. More importantly, the proliferation of international instruments governing public procurement has resulted in some borrowers now being bound by conflicting provisions. That was not the case at the WB’s beginnings, nor was it even the case twenty years ago, but there are now a number of countries that are parties to international and regional agreements and bound by those requirements at the same time as the WB Guidelines. Some participating countries in the Piloting Programme for the Use of Country Systems felt themselves squeezed between the test of equivalency with the WB Guidelines and EU requirements or specific procurement rules prevailing under bilateral agreements. Harmonization will need to address these discrepancies and a closer look is needed to assess their materiality and impact on procurement outcomes.

45. Finally, it should be highlighted that there are areas of public procurement with which none of the instruments deals in any depth. These include subcontracting, contractor performance, and remedies for breach. Rarely do any of the international agreements take into account explicitly the costs of bidding on the private sector. Generally, none of the agreements deal well with the issues of contract execution, focusing on the bidding and awards processes, to the neglect of what happens next. Nor do these instruments provide for any systematic mining of procurement data and accompanying analysis in order to assess overall performance, detect trends in public procurement, and gain intelligence on industry competitiveness, let alone to counter corruption and anti-competitive behaviour.

46. Indeed, nothing is stipulated in any instrument on the fiduciary dimensions and how procurement controls, checks, and balances are integrated into overall public management systems and accountability frameworks. In the case of the WB, given its range of implementation capacities among borrowers, these issues are at the forefront. Indeed, dealing with corruption head on, as being discussed, mandates a paradigm shift to risk management, performance, and accountability. The WB [and other MDBs] must take the opportunity to examine where they can fill gaps, streamline policies, and achieve greater convergence.

III. APPLICABLE LESSONS

47. From all indications, a concerted HOP-level effort must be gathered together with the view to handling the forthcoming round of harmonisations of MDB procurement policies and SBDs, a situation created by, firstly, the introduction of new concepts, tools and technologies in public procurement, and, secondly, the need for greater harmonisation and convergence of procedures as the result of international agreements. The fact that a number of donors [notably, the EU] (as well as some borrowing countries) have instituted, adopted, and are using these new concepts makes it incumbent upon MDBs and IFIs to seek ways and means of taking on board
the elements concerned, specifically to avoid a return a multiplicity of donor procedures being imposed on borrower execution agencies.

48. Given its rich experience gained from actively participating in the HOP process [including its various Working Groups], AfDB should not be found wanting in the forthcoming harmonisation exercises. Indeed, having taken the lead among MDBs/IFIs in adopting and adapting the Cross-Harmonised MPDs into its own SBDs, this familiarity should stand AfDB in good stead during the process. In this regard, the Bank may wish to plan and mobilise the relevant resources for this laudable MDB-partnership venture.
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