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Procurement Policies Under Bank Financed Projects Incidence in Preventing Fraud and Corruption

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Implementation of development projects financed by the World Bank is primarily carried out through contracts for the supply of goods and services and the construction of civil works. Procurement and management of contracts is the sole responsibility of the borrower countries through government agencies in charge of project implementation. However, as required by its Articles of Agreement, the Bank has the fiduciary responsibility to ensure efficient implementation of projects and adequate use of the funds it provides. Rooted in the Articles of Agreement, and explicitly stated in the General Conditions Applicable to Loans and Guarantee Agreements, in the procurement Guidelines and Standard Bidding Documents, is the Bank's concern for transparency and the need to prevent corruption and fraud in public procurement.

Articles of Agreement

The Articles of Agreement require that Bank funds only be used for the purpose they are intended. As the Bank makes loans for specific projects and commits itself to disburse against particular expenditures under those projects, no loan funds can be diverted to other projects or expenditures other than those defined in each specific loan or agreement. For example, in a primary education project, the Bank may commit itself to support government efforts to extend the coverage and improve the quality of elementary education in a given region by financing expenditures for teacher training and new school construction. However, even projects with the same objective, but being implemented in regions other than the project region, and/or expenditures of a different nature would not be eligible for financing under the respective loan.

The Articles of Agreement also mandate equal opportunity and support for international trade. This translates into open competition by allowing participation of consultants, contractors and suppliers from eligible countries to bid for contracts financed by the Bank. It also entails that all bidders should be subject to the same bidding conditions with no preferences or exclusions, except for some exceptions specifically allowed in the procurement guidelines in order to promote local industries in borrowing countries.

Finally the Articles of Agreement mandate that Bank financed projects should be implemented with due regard to economy and efficiency. Accordingly, project objectives and scope, and the corresponding expenditures should be well defined and designed with realistic implementation plans and clear specifications. Likewise, contracts should be awarded on the basis of a competitive process that secures best prices without regard to political or other non-economic influences or considerations.

Derived from the Articles of Agreement, the General Conditions Applicable to Bank Loans and Credits provide the framework for project financing and implementation and state the commitments and obligations of the borrower countries in respect of the projects that the Bank finances. They also determine the need for the Bank to establish project implementation guidelines and supervision mechanisms. The General Conditions include specific language on prevention of fraud and corruption and require proof of project expenditures, insurance of project goods and works, planning and scheduling of project investments, record maintenance and reporting, etc.

The Guidelines

The Guidelines Procurement Under IBRD Loans and IDA Credits, January 1995/January-August 1996 (Procurement Guidelines) and *Guidelines Selection and Employment of Consultants by World Bank Borrowers*, January 1997 (Consultants

Guidelines), hereafter in this paper indistinctly referred to as The Guidelines, inform those carrying out a project financed in part or in whole by the Bank, of the general arrangements for the procurement of goods and works, and selection and employment of consultants under those projects. Loan and Credit agreements, which govern the legal agreements between the Bank and the borrowers, make the Guidelines of obligatory application and spell out specific procurement arrangements for the project.

The above mentioned notwithstanding, because the responsibility for procurement of goods and services financed under Bank assisted projects rests solely with borrowers and executing agencies, their rights and obligations, as well as those of consultants suppliers and contractors, are governed by the bidding documents and the contracts signed between the borrowers and those consultants, contractors and suppliers. The Bank is not a direct party in the bidding process or contract agreements thereof. The Bank responsibility is to ensure that project and contract implementation is carried out in an efficient, economic and transparent manner. Hence, the Bank has developed standard procurement documentation and monitoring and review mechanisms designed to assist borrowers in ensuring sound procurement consistent with the Guidelines.

The Guidelines are based on commercial practices and have drawn from the Bank's 50-year experience in project financing, implementation, procurement and contract management. Since their inception the Guidelines have been periodically updated to account for changes in the type of projects, recommendations by borrowers consultants, contractors and suppliers, as well as emerging trends in procurement and contract management, while maintaining the same general principles as outlined below

The Guidelines are based on the following four principles derived from the Articles of Agreement:

- a. the need for economy and efficiency in the implementation of the project, including the procurement of the goods works and consulting services involved;
- b. the Bank's interest, as a co-operative institution, in giving all eligible bidders and consultants from developed and developing countries an opportunity to compete in providing goods, works and consulting services financed by the Bank; and
- c. the interest of the Bank as a development institution, in encouraging the development of domestic contracting and manufacturing industries and the promotion of consultants in the borrowing country; and
- d. the importance of transparency in the procurement and selection process.

The procedures for the procurement of goods and works differ from those for the selection and appointment of consultants, although the same general principles apply. In the procurement of goods and works price is a principal factor. When selecting consultants, price is considered, but a high quality of service is the overriding factor.

Derived from the above principles, the Guidelines present a comprehensive methodology for competitive procurement of goods and works, as well as selection and employ ,merit of consultants. The preferred procurement method for goods and works is International Competitive Bidding (ICB). But other methods, such as, National Competitive Bidding (NCB), are also applicable in accordance with the specific circumstances of each project and contract. Direct contracting and quotations are also acceptable, though not favoured methods of procurement for low value contracts under exceptional circumstances. The latter methods should be used cautiously, as they are potential sources of corruption.

Under Bank financed projects, the following general principles and procedures should be followed for ICB or any other acceptable procurement method as applicable:

- i. give adequate and timely notification of bidding opportunities through advertisements in news papers and magazines of wide national and international circulation;
- ii. provide equal access to interested bidders by allowing a reasonable bidding period, and by adopting broad technical specifications and transparent bidding documents; the Bank has developed Standard Bidding Documents (SBD) of mandatory use in ICB procurement, and also encourages the use of standard documents for NCB;
- iii. give equal treatment to bidders by disclosing in the bidding documents transparent evaluation criteria, and applying it without discrimination to all bidders;
- iv. use of fair conditions of contracts with equitable distribution of risk;
- v. award of contract to the lowest evaluated and responsive bidder.

In contrast with the procurement of goods and works, Quality and Cost Based Selection (QCBS) is the preferred method for the selection and employment of consultants. This method adheres to the same principles as those for procurement of goods and works, but the approach is different. Competition is limited to a limited number of qualified firms, and price is still a factor in the evaluation of proposals, however quality is generally the overriding consideration for contract award.

Fraud and Corruption

The Guidelines principles and procedures have since inception implicitly included mechanisms to stop fraud and corruption. Nevertheless, in 1996 the Bank introduced into the General Conditions and the Guidelines more specific language defining such unacceptable practices, and also established remedies applicable to borrowers, contractors, suppliers and consultants when they participate in fraudulent or corrupt practices in the processing, award and implementation of Bank financed contracts. The Guidelines read as follows on the subject:

"It is the Bank's policy to require that Borrowers (including beneficiaries of bank loans), as well as supplies,

contractors and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement (of goods and works) and selection (of consultants) and execution of such contracts. In pursuance of this policy, the Bank

- a. *defines, for the purposes of this provision, the terms set forth below as follows:*
 - i. *'Corrupt practice' means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement or selection process or in contract execution; and*
 - ii. *'fraudulent practice' means a misrepresentation of facts in order to influence a procurement or selection process, or the execution of a contract to the detriment of the Borrower, and includes collusive practices among suppliers, contractors or consultants (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition;*
- b. *will reject a proposal for award if it determines that the Supplier, Contractor or Consultant recommended for award has engaged in corrupt or fraudulent activities in competing for the contract in question;*
- c. *will cancel the portion of the loan allocated to a contract for goods, works or consultants if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the loan during the procurement or selection process or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;*
- d. *will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Bank-financed contract; and*
- e. *will have the right to require that, in contracts financed by a Bank loan, a provision be included requiring consultants, suppliers and contractors to permit the Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank."*

In addition to fraud and corruption clauses, the 1997 Bank's Consultant's Guidelines introduced more transparency into the selection of consultants by requiring public advertising of larger assignments (above US \$ 200,000), public disclosure of short listed firms and their technical scores and public opening of financial proposals.

Specific instructions to bidders and contract clauses reflect the above principles in the standard bidding documents of mandatory use in Bank financed projects.

The Road Ahead

The Guidelines and anti-fraud anti-corruption clauses therein provide the framework for transparent procurement. Enforcement by borrowers of the principles and procedures in the Guidelines is mandatory and the Bank monitors compliance very closely. The Bank intends to increase ongoing efforts by supporting policy reforms to discourage corruption, providing training to Borrowers and Bank staff on procurement, strengthening day-to-day monitoring of procurement and carrying out up front assessments and ex-post audits. The Strategic Compact endorsed by the Bank Board of Directors in May 1997 provides for the recruitment of additional procurement specialists and financial resources towards these objectives.

On September 2, 1997 the Bank Board reviewed the Bank's role in helping countries to combat corruption. The Board adopted an additional amendment to the procurement guidelines allowing borrowers to introduce into bid forms for large contracts financed by the Bank and undertaken by the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption, as listed in the bidding documents (no bribery pledge).

Furthermore, the Board authorised additional specific actions designed to strengthen the Bank's capacity to monitor procurement, including:

- i. *conducting systematic ex-post procurement reviews in the field, to be carried out largely by external auditors;*
- ii. *focusing the Bank's procurement review expertise on larger contracts by progressive transfer of small-value contracts from prior to post review,*
- iii. *increasing the number of procurement staff at headquarters and in the field;*
- iv. *increasing assistance in country procurement reforms.*

There is no doubt in my mind that enforcement of the Bank's procurement guidelines and the implementation of the newly adopted policies have and will continue to enhance transparency in public procurement, thereby reducing the incidence of fraud and corruption. However, much remains to be done in particular by governments and executing agencies, as well as, consultants, suppliers and contractors whom are ultimately responsible for bidding, awarding and implementing contracts. It is very much the responsibility of governments and society at large to promote cultural changes, as well as to develop and implement aggressive measures that prevent and discourage corrupt and fraudulent practices among all concerned.

return to [table of contents](#)