



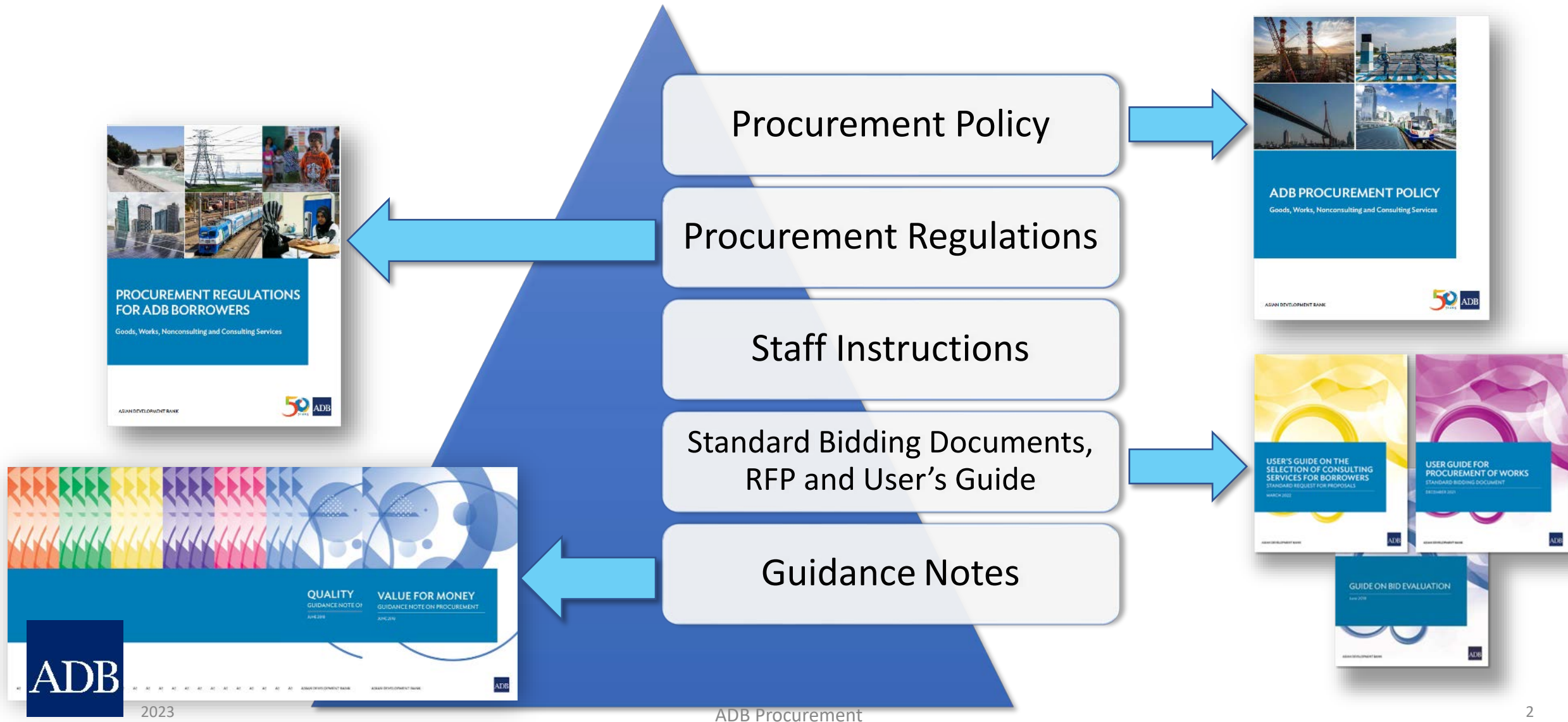
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ADB's Approach on Price Adjustment

Mohsen I. Khan, Senior Procurement Officer, ADB

ADB Procurement Framework



Guidance Notes

- It is used to operationalize ADB Procurement policy and Regulations.
- It is grouped based on themes.



GUIDANCE NOTES

Preparation and Planning	Procurement Methods	Bidding Procedures	New Principles and Practices	Complaints, Compliance, and Eligibility	Specialized Areas
<ul style="list-style-type: none"> • Procurement Risk Framework • Strategic Procurement Planning • Procurement Review • Alternative Procurement Arrangements 	<ul style="list-style-type: none"> • Open Competitive Bidding • Consulting Services Administered by ADB Borrowers • Non-consulting Services Administered by ADB Borrowers • Framework Agreements 	<ul style="list-style-type: none"> • Price Adjustment • Prequalification • Subcontracting • Domestic Preference 	<ul style="list-style-type: none"> • Value for Money • Quality • Contract Management • Abnormally Low Bids 	<ul style="list-style-type: none"> • Bidding-Related Complaints • Noncompliance in Procurement • Standstill Period • State-Owned Enterprises 	<ul style="list-style-type: none"> • Fragile, Conflict-Affected, and Emergency Situations • E-Procurement • Public-Private Partnerships • High-Level Technology • Sustainable Public Procurement • Use of Merit Point Criteria for Bid Evaluation

Guidance Notes



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ADB Procurement

What is the difference?

- Price Adjustment vs Price Escalation ?

Who should bear the risk ?

- It may be tempting to assign the risk of input price fluctuation to contractors.
- Usually comes at a higher overall cost
- Higher average prices paid for the same works
- Reward the bidder that takes the highest risk
- Significantly increase the risk of non-performance and default
- May be used in consulting and nonconsulting service contracts to adjust remuneration rates for contracts with duration of 18 months

When to apply PA?

- for goods contracts with long delivery periods;
- for works contracts with long completion periods;
- for major civil works contracts;
- for contracts that contain supplies or commodities whose prices fluctuate significantly over a short period;
- for time-based consulting services, such as construction supervision services; and
- due to any unusual circumstances in the market in question.
- PA **generally** for 18 months or longer.
- The price of some components may still vary significantly within time periods shorter than 18 months.
- Such as bitumen, fuel, cement, reinforced steel, and price fluctuates over short periods
- It is also appropriate to include a price adjustment clause, whatever the length of the contract

When not to apply PA?

- simple supply contracts
- certain types of equipment where normal commercial practice
- engineering, procurement, and construction contracting
- fixed-price contracts that are common in projects financed by
- contracts for the supply, installation, and construction of facilities wherein the value of the permanent works represents the major part of the estimated cost of the contract. All major equipment is usually supplied from fixed production lines; thus, an experienced manufacturer should be able to mitigate the risk of price fluctuations.

The Formula

SBD	Reference	Clause	Formula
Large Works	FIDIC MDB 2010 ^a	GCC 13.8	$P_n = a + b \left(\frac{L_n}{L_o} \right) + c \left(\frac{E_n}{E_o} \right) + d \left(\frac{M_n}{M_o} \right) + \dots$

“P_n” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “n,” this period being a month, unless otherwise stated in the contract data.

“a” (default value is set at 0.15) is a fixed coefficient, stated in the relevant table of adjustment data, representing the nonadjustable portion in contractual payments.

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the works, as stated in the relevant table of adjustment data. Such tabulated cost elements may be indicative of resources such as labor, equipment, and materials.

$$(a + b + c + d + \dots = 1)$$

“L_n”, “E_n”, “M_n”, ... are the current cost indexes or reference prices for period “n,” expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the payment certificate relates).

“L_o”, “E_o”, “M_o”, ... are the base cost indexes or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the base date.^b

Table(s) of Adjustment Data

Table A - Local Currency

Sr. No.	Description	Unit	Weightages	Applicable Index
(i)	Fixed Portion	-	0.68	-
(ii)	High Speed Diesel	Litres	0.07	Pakistan State Oil
(iii)	Labour Unskilled	Day (Per Day)	0.15	Monthly Statistical Bulletin of Pakistan published by Federal Bureau of Statistics
(iv)	Cement (Ordinary Portland Cement)	Metric Ton	0.03	Monthly Statistical Bulletin of Pakistan published by Federal Bureau of Statistics
(v)	Iron Bar (M.S. Bar)	Metric Ton	0.07	Monthly Statistical Bulletin of Pakistan published by Federal Bureau of Statistics
	Total		1.00 [Sum of (ii), (iii) (iv) and (v) shall not increase 0.32]	

Price Adjustment Provisions in SBD (Works)

Tables of Adjustment Data

Table A: Local Currency

To be entered by the Employer				
Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Proposed Weighting
L: Labor E: Equipment M1: Material 1 M2: Material 2 ..etc...	Nonadjustable	—	—	a: <u>0.15</u> b: _____ c: _____ d: _____ e: _____
Total				1.00

To be entered by the Bidder. (Employer may prescribe the range of weighting)

Price Adjustment Provisions in SBD (Works)

Tables of Adjustment Data

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L: Labor E: Equipment M1: Material 1 M2: Material 2 ..etc...	Nonadjustable	—	—	a: <u>0.15</u> b: _____ c: _____ d: _____ e: _____
Total				1.00

To be entered by the Bidder. (Employer may prescribe the range of weighting)

Sample calculations

- Imagine a simple projects with two following activities

Item No.	Description	Rate	Unit	QTY	Amount
106c	EXCAVATE SURPLUS COMMON MATERIAL	263.88	CM	4000	1,055,520.00
401a1ii	CONCRETE CLASS A1 (ON GROUND)	9034.97	CM	5512	49,800,754.64
				Total =	50,856,274.64

Rate Analysis for 106c

Package: CSR-2011 **RATE ANALYSIS (CONSTRUCTION)**

Item Description 106c - EXCAVATE SURPLUS COMMON MATERIAL

District: 57 - RAWALPINDI (PUNJAB)

Assumed Daily Progress = 550.00 CM

Manpower

Code	Description	No.	Hours	Rate (Rs.)	Amount (Rs.)
1001	SITE ENGINEER	1	2.00	263.28	526.56
1021	SUPERVISOR	3	8.00	86.80	2,083.20
1022	SURVEYOR	1	2.00	115.70	231.40
1041	HELPER	2	2.00	40.63	162.52
			14.00		3,003.68

Material

Code	Description	Unit	Quantity	Rate (Rs.)	Amount (Rs.)
NIL	NIL	NIL	NIL	NIL	NIL

Equipment

Code	Description	No.	Hours	Rate (Rs.)	Amount (Rs.)
3003	BULL-DOZER. 90 H.P.	1.00	9.00	2,717.46	24,457.14
3006	FRONT END LOADER. 1.50 CUM.	2.00	6.00	2,921.97	35,063.64
3032	DUMPER. 18 T.	3.00	8.00	2,232.68	53,584.32
					113,105.10

BASIC COST FOR 550.00 CM 116,108.78

116,108.78

BASIC COST PER CM 211.11

211.11

OVERHEAD & PROFIT (10 + 15) PERCENT 52.78

263.88

TOTAL COST PER CM 263.88

Rate analysis for 401a1ii

Item Description 401a1ii - CONCRETE CLASS A1 (ON GROUND)

District: 57 - RAWALPINDI (PUNJAB)

Assumed Daily (8 Hours) Progress

72.00 CM

Resource for above progress

Manpower

Code	Description	No.	Hours	Rate (Rs.)	Amount (Rs.)
1001	SITE ENGINEER	1	20.00	263.28	5,265.60
1003	CONCRETE PLANT ENGINEER	1	4.00	187.50	750.00
1013	FOREMAN CONCRETE	1	24.00	115.70	2,776.80
1021	SUPERVISOR	1	24.00	86.80	2,083.20
1022	SURVEYOR	1	20.00	115.70	2,314.00
1023	ASSISTANT SURVEYOR	1	20.00	78.13	1,562.60
1031	MASON	8	8.00	78.13	5,000.32
1032	CARPENTER	10	24.00	78.13	18,751.20
1041	HELPER	15	24.00	40.63	14,626.80
1051	LABOUR	10	8.00	40.63	3,250.40
		49	176	1085	56,380.92

Material

Code	Description	Unit	Quantity	Rate (Rs.)	Amount (Rs.)
2021	COARSE SAND	CM	32.76	572.63	18,759.36
2025	AGGREGATE 3/4" - 3/8"	CM	12.00	900.66	10,807.92
2026	AGGREGATE 3/8"-No.4	CM	16.00	600.44	9,607.04
2027	AGGREGATE NO.4 - NO.200	CM	24.42	494.48	12,075.20
2053	CEMENT TYPE-I (OPC)	BAG	597.40	330.00	197,142.00
2060	CURING COMPOUND	LIT	160.00	51.00	8,160.00
2065	WATER	1000LIT	15.45	90.00	1,390.50
2123	SHUTTERING (B)	CM	72.00	686.96	49,461.12
			930.03	3,726.17	307,403.14

Equipment

Code	Description	No.	Hours	Rate (Rs.)	Amount (Rs.)
3006	FRONT END LOADER. 1.50 CUM.	1.00	2.00	2,921.97	5,843.94
3024	WATER TANK BOWSER TYPE 12000 LTR.	1.00	3.00	1,445.48	4,336.44
3071	CONCRETE BATCHING PLANT. 30 CUM/H	1.00	3.00	4,009.06	12,027.18
3074	CONCRETE TRANSIT MIXER. 6 CUM.	6.00	4.00	4,624.35	110,984.40
3086	PUMP 4" DELIVERY (DIESEL)	1.00	2.00	492.32	984.64
3210	VIBRATOR (POCKER 1.5")	2.00	6.00	213.52	2,562.24
3214	CONCRETE PUMP	1.00	4.00	4,972.91	19,891.64
			24.00	18,679.61	156,630.48

Total

520,414.54

Unit Cost

7,227.98

Total + OH + P

9,034.97



Table of adjustment data

Skilled	0.0730	7%
Unskilled	0.0337	3%
Cement	0.3710	37%
Diesel	0.3149	31%
Total Variable		78%
Total Fixed		22%

World Bank's Sheet

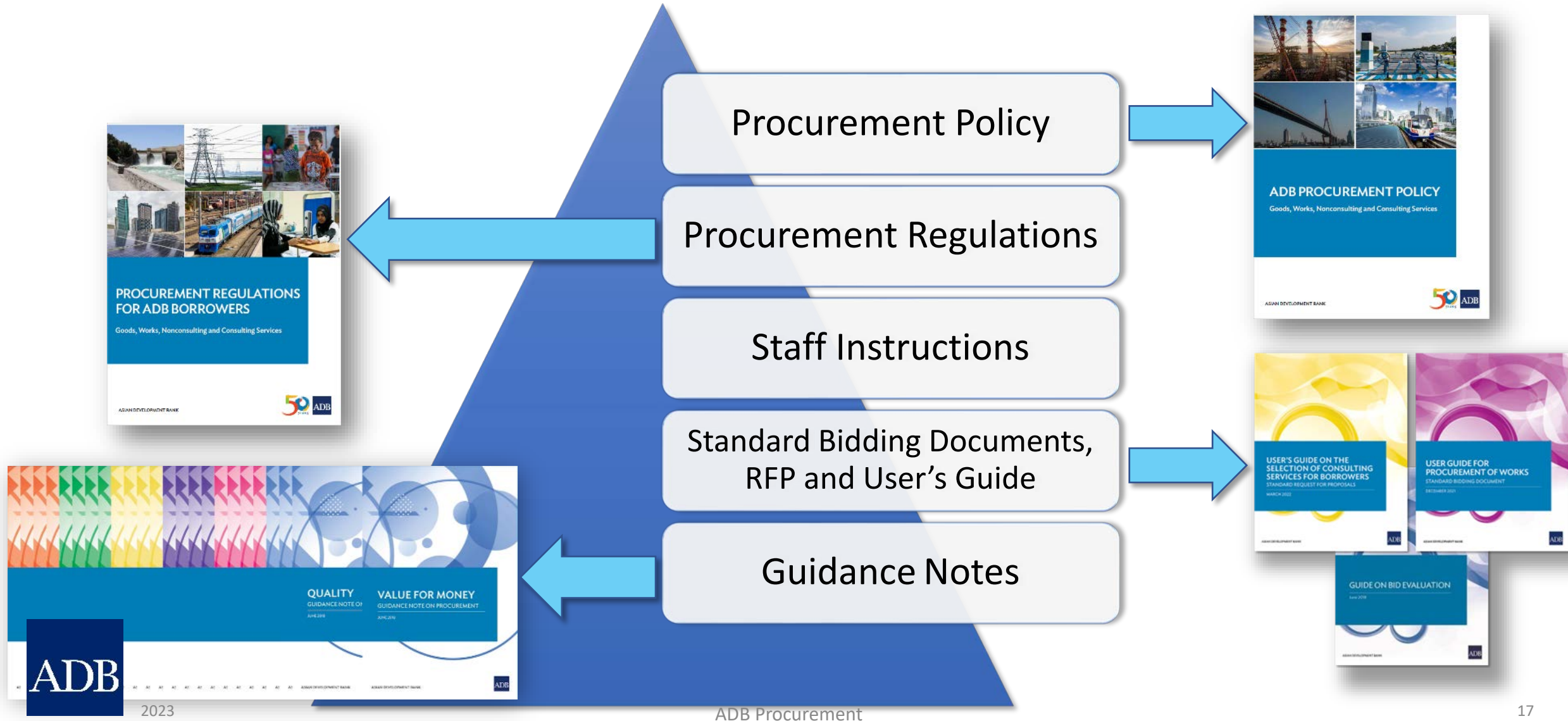




ADB's No-Objection on Contract Modifications

Mohsen I. Khan, Senior Procurement Officer, ADB

ADB Procurement Framework



Variations SC 13.1

- Each Variation may include:
- changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation);
- changes to the quality and other characteristics of any item of work;
- changes to the levels, positions and/or dimensions of any part of the Works;
- the omission of any work, unless it is to be carried out by other without the agreement of the Parties;
- any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work; or
- changes to the sequence or timing of the execution of the Works.

What is Modification?

- Appendix 6 Para 9 States:

*In the case of contracts subject to prior review, the **borrower shall seek ADB's no-objection** where any modification would individually or in aggregate **increase the original price of the contract by more than 15%**. If ADB determines that the proposal would be inconsistent with the provisions of the procurement plan, it shall promptly inform the borrower and state the reasons for its determination.*

- Changes to the contract that increases the original contract amount.
- Proposal to modify or waive terms and conditions of contract or possible inconsistencies with provisions of ADB financing agreement.

PSI Part-II, Para-10

- For changes to the contract that individually or combined with all previous modifications increases the original contract amount by more than 15%, since last contract modification acceptance.
- OAI (if any integrity-related concerns e.g., proposal to modify or exclude any anticorruption or integrity related clause).
- OAI advises if any types of changes to and/or under a contract involves a debarred or suspended firm or individual in the ADB Debarment and Suspension Register
- OGC advises, PTL clears and Procurement Staff decides the modification or waiving of any other terms and conditions of contract.



ADB's Approach on Processing Payments

Mohsen I. Khan, Senior Procurement Officer, ADB

The Clause

14.7

Payment

The Employer shall pay to the Contractor:

- (a) the amount certified in each Advance Payment Certificate within the period stated in the Contract Data (if not stated, 21 days) after the Employer receives the Advance Payment Certificate;
- (b) the amount certified in each IPC issued under:
 - (i) Sub-Clause 14.6 [*Issue of IPC*], within the period stated in the Contract Data (if not stated, 56 days) after the Engineer receives the Statement and supporting documents; or
 - (ii) Sub-Clause 14.13 [*Issue of FPC*], within the period stated in the Contract Data (if not stated, 28 days) after the Employer receives the IPC; and
- (c) the amount certified in the FPC within the period stated in the Contract Data (if not stated, 56 days) after the Employer receives the FPC.

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

Timely Payments are the essence of the contract

(ii) _____

** [if the Contractor constitutes an unincorporated JV, otherwise delete]*

- 3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein, in conformity with the provisions of the Contract.
- 4. The Employer hereby covenants to pay the Contractor, in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price at the times and in the manner prescribed by the Contract.

In Witness whereof the parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.

SIGNED by: _____
for and on behalf of the Employer in the
presence of

SIGNED by: _____
for and on behalf of the Contractor in the
presence of



ADB's Specific Preconditions for Commencement

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The Clauses

- SC8.1: The Engineer shall give a Notice to the Contractor stating the Commencement Date, not less than 14 days before the Commencement Date. Unless otherwise stated in the Particular Conditions, the Commencement Date shall be within 42 days after the Contractor receives the Letter of Acceptance. The Contractor shall commence the execution of the Works on, or as soon as is reasonably practicable after, the Commencement Date and shall then proceed with the Works with due expedition and without delay.

“Commencement Date” effects the following ...

- Progress Reports
- Contractor’s Supervision
- Programme
- Lumpsum Contract Price
- Termination by Contractor [No CD with 84 days of LoA]
- Care of Works
- Insurances
- Not linked with Claims (SC 20) and Disputes (SC21)

ADB COPA: why amending the Red Book? 4 main drivers



Driver 1: Reflecting Typical MDB Requirements (Pink Book)

Selected Examples:

- Audit and Inspection by the Bank (SC 1.7)
- Definition of « Bank » (SC 1.1.89) and « Borrower » (SC 1.1.90) introduced
- Limitation of Engineer's authority for Variations (SC 3.2)
- Clause 6 - Staff and Labour provisions: Recruitment of local staff (SC 6.1), HIV-AIDS prevention (SC 6.7), Forced Labour (SC 6.21) and Child Labour (SC 6.22), Respectful Work Environment (SC 6.28)
- The 4 conditions precedent to the Commencement Date (SC 8.1)

CP for Commencement SC 8.1

- “The Engineer shall give a Notice to the Contractor stating the Commencement Date, not less than 14 days before the Commencement Date. This Notice shall be issued promptly after the Engineer determines the fulfillment of the following conditions:
 - (a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country
 - (b) delivery to the Contractor of reasonable evidence of the Employer’s financial arrangements (under Sub-Clause 2.4 [Employer’s Financial Arrangements];
 - (c) except if otherwise specified in Sub-Clause 2.1 in the Contract Data, **effective access** to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works;
 - (d) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the conditions set out under Sub-Clause 14.2.2(a) and (b) have been fulfilled by the Contractor within 28 days from the receipt of the Letter of Acceptance. Otherwise, this sub-paragraph (d) shall not apply.



ADB's Specific Requirements Before Termination

Mohsen I. Khan, Senior Procurement Officer, ADB

PSI, Item 11, Part-II

- EA's recommendation to terminate a contract and proposal for further procurement arrangements for the uncompleted balance of the contract
 - ❖ EA submits the recommendations
 - ❖ PTL recommends
 - ❖ OGC advises
 - ❖ PPFD decides
- EA must provide complete documentations & justification, even in case of termination for convenience. ***Residual Risks*** must be identified & mitigated
 - ❖ High cost of balance works
 - ❖ Residual liabilities
 - ❖ Liens
 - ❖ Settlement Agreements

Discretion in local context

- All public functionaries, while performing their duties and exercising discretion vested in them by law, were required to perform such duties and exercise such discretion in a judicious & transparent manner – Any discretion with malafide on the part of public functionary will render all orders passed and proceedings so conducted as illegal and of no legal effect.
- Muhammad Amin Chapal Vs. Karachi Cantt. Board. PLD 2012 Sindh 1 (D.B)
- Fair and transparent discretion – principles - discretionary power conferred on government should be exercised reasonably and subject to existence of essential conditions, required for exercise of such powers within the scope of law. All judicial, quasi-judicial and administrative authorities while exercising mandatory or discretionary jurisdiction must follow the rule of fair exercise of power in a reasonable manner and must ensure dispensation of justice in the spirit of law.

Discretion in local context

- Seven instruments/principles: (i) open plans, (ii) open policy statement, (iii) open rules, (iv) open findings, (v) open reason, (vi) open precedents, (vii) fair informal procedure.

Power to exercise discretion would not authorize such authorities to arbitrarily, discriminately, and malafide. They have to act without ulterior motive.

- Discretion is to be exercised according to rational reasons which means that; (a) there be finding of primary facts based on good evidence and (b) decisions about facts be made for reasons which serve the purposes of statute in an intelligible and reasonable manner. Actions which do not meet these threshold equipments are considered arbitrary and misuse of power.
- Tariq Aziz ud Din In Re. Numan Rights Case, 2010 SCMR 1301, Also see AIR 1991 SC 101, 1997(7) SCC 622 (State of Gujrat), PLD 1991 SC 14, PLD 2001 SC 1, 2006 SCMR 1876, 2009 SCMR 1354



Thank You