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ADB Procurement Policy and Regulations 2017

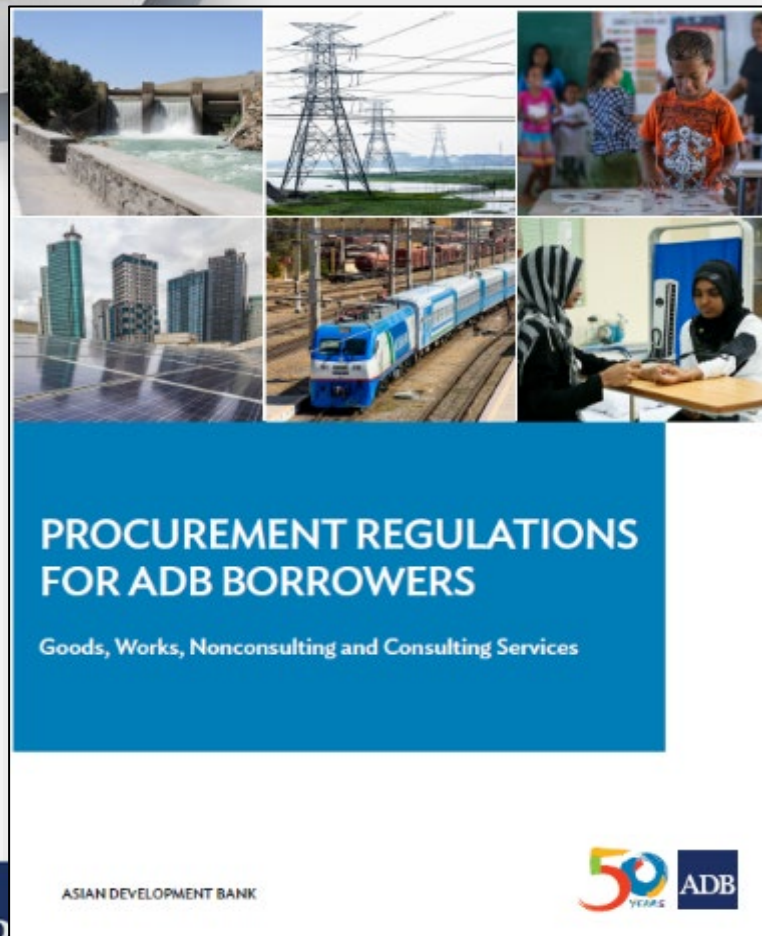
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10 May 2023 | Islamabad, Pakistan

Procurement Regulations for ADB Borrowers

- Approved by the ADB President
- Applicable for all projects financed in whole or in part
- Details of policies, procedures including ADB's fiduciary oversight through prior or post review process
- International best practices:





Procurement Policy 2017

Procurement Regulations for ADB Borrowers

- Procurement Principles
 - Adhere to Core principles
- Fitness for Purpose
 - Appropriately reflect needs of the situation
- Eligibility
 - Funds are to be used for approved purposes only
 - Country eligibility (pay attention on sources of funds and if universal procurement is applicable or not)
 - Bidder's capacity

Eligibility exceptions

- **Compliance with UN council decision**
- **State-Owned-Enterprises (SOE)**, may participate if they;
 - (i) can operate as a commercial entity;
 - (ii) is legally and financially autonomous; and
 - (iii) is not a dependent agency of the borrower.
- **Declaration of ineligibility by ADB**



- Government-owned universities or research centers of the borrower's country- may provide services on exceptional basis – **case by case**
- Government officials, civil servants –(**not hired immediately by the same agency before going on leave; no COI**)
- Development of Domestic Industry
 - Encouraged
- Integrity
 - Highest ethical standards
- Accountability
 - Applies to ADB and Borrowers, combines requirements of transparency and responsibility

Anticorruption Policy

- ADB requires observance of the highest standard of ethics during procurement process and contract execution.
- ADB provides specific definition on what constitutes corrupt practice, fraudulent practice, coercive practice, and collusive practice.

Involvement in the above practices will lead to disqualification and declaration of ineligibility and may affect Project Financing.

- ADB reserves the right to inspect and audit contractor's or consultant's accounts and records and other documents relating to procurement process and to the performance of the contract by ADB or its representative.



Conflicts of Interest

(Declare, Address, Mitigate)

Bidders or consultants may be considered to have a Conflict of Interest if they:

- Participated as a consultant for design/technical specification/project management/supervision of bid package
- Have common controlling shareholders (sister concern)
- Have same legal representatives for their bids
- Submit more than one bid in the bidding process
- Have relationship with each other, directly or through common third parties, that puts them in a position to have access of information about another bidder or influence the decision of the purchaser.
- A conflict of interest may not, in all cases, in and of itself, constitute a violation of ADB's Anticorruption Guidelines, if appropriately addressed or mitigated.

Noncompliance

- Noncompliance may have impact on funding/project implementation
- Procurement noncompliance relates to potential or actual situations where the borrower (including other parties involved in the procurement process) fails to follow the applicable provisions of the 2017 procurement regulations - through their actions or inactions
- Replaces the concept of mis-procurement. It allows a more proportional and incremental approach to handling situations of noncompliance guided by i) nature and seriousness of the noncompliance; and ii) the level of commitment of the borrower to remedy the situation.

Noncompliance- Few Examples

Few examples of non-compliance

- i) bid documents not endorsed by ADB;
- ii) EA took decision against ADB's decision (no-objection)
- iii) EA did not follow agreed bidding procedures as per approved procurement plan
- iv) information by the EA is misleading or incomplete for a transaction
- v) EA's failure to take action on contractual breach by a Contractor

Remedial Action

- Not fund that particular transaction
- Suspend or take remedial action with specific assurances
- Extreme cases, cancel portion of loan of that specific transaction

Treatment of unbalanced/front loaded Bids

Options Available

Issues encountered

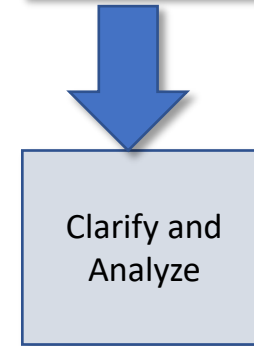
What is new; possible to:

- i) Accept a bid
- ii) Increase Performance Security as condition of award
- iii) **Reject a Bid**

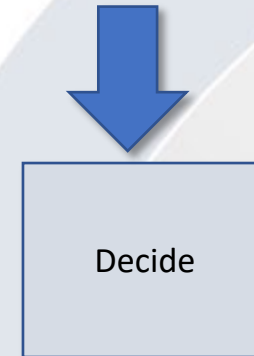
Abnormally Low Bids (ALB) Process



If a bid seems abnormal (due to price, risk, schedule) – identify it and investigate



Clarify information with the bidder and analyse the responses – working with ADB to determine if the bid is an ALB, or if there is justification for the bid as submitted.



Justify the decision made, communicate with ADB and document.



Standstill Period

Procurement Regulation (Appendix 3, para 87)

- Application of Standstill period is not a default option
- Standstill period **may be applied** as agreed in the SPP and reflected in the bid documents
- Updated Bid documents (Goods, works and Plant)
- No such provisions in srfp



Standstill Period, if used effectively

Increase Efficiency and Reduce Risk

- Preventing potential projects delays after contract awards
- Avoid project failure and rebidding/cancelation

Improve Fairness and Transparency

- Ensures bidders have same opportunity and equal access to information
- A credible mechanism for addressing complaints

Improve value for money

- Enhance Bidders confidence
- Prevent project delays ad risks to development outcomes

Situations when it is not applicable

- Framework Agreement
- Only one bid/proposal
- Direct Contracting/SSS
- First stage of a two – stage bidding process
- Technical evaluation of two envelope bidding process
- Result of PQ



Conclude Debriefing

- i) If not challenged - proceed with contract award
- ii) Challenged – not to proceed until addressed
- iii) If not debriefed by the EA within 5 days, extend the 5 days after the debriefing

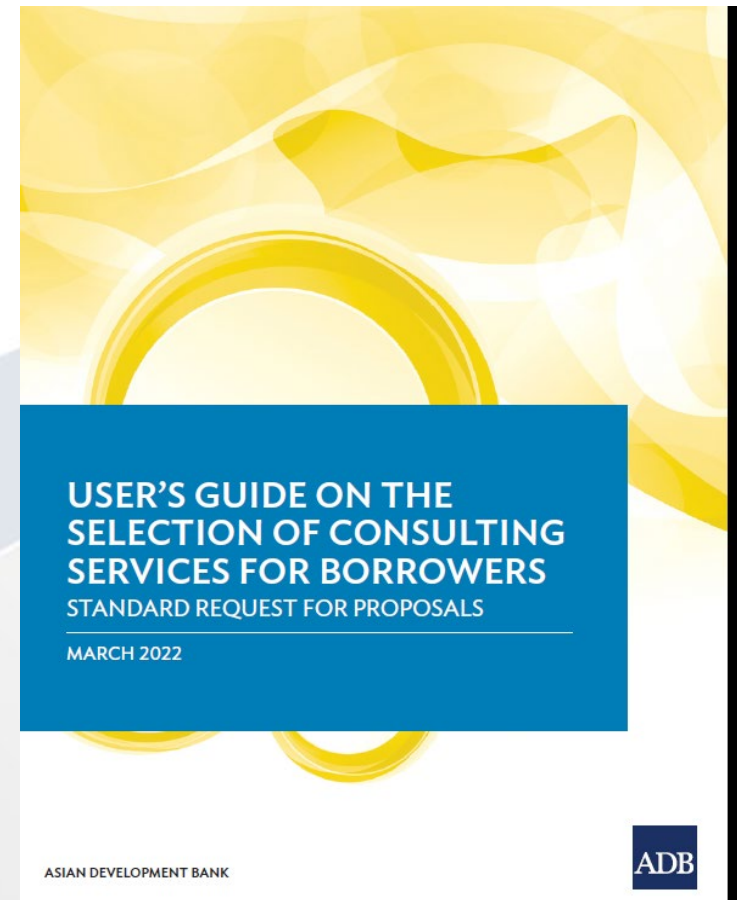
Note: after conclusion, Bidder may first approach EA and later to ADB if not satisfied

Recruitment of Consulting Firms

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User's Guide for Standard Request
for Proposal (**First time**)

Standard RFP



What's new in consulting services

Post Review (Sampling) and concurrent reviews

- Prior Review still the default approach for review
- Concurrent reviews conducted during processing
- Post Review (Sampling) an option, based on risk assessment

Shortlisting rules changed

- No more requirement to shortlist 6 consultants
- No longer max 2 firms from same member country
- No longer requirement for at least one consultant from DMC

Selection Method

- No value threshold related to use of either FTP, STP or BTP
- Based only on nature and complexity of assignment

What's new in consulting services

Eligibility

- Experts hired under firms are eligible regardless of nationality
- Rules on individual experts recruited directly unchanged

Clarifications during evaluation

- In exceptional cases and with prior approval of ADB
- Clarifications only on minor issues or obvious errors/inconsistencies
- Request for clarification in writing, copied to ADB

Domestic Preference

- Use of national experts for key positions can be used as evaluation criteria
- May be allocated up to 10% of overall scoring weight

Core Procurement Principles

Economy

Quality

Transparency

Efficiency

Value for Money

Fairness

Which two principles are new?

Eligibility

Is the bidder eligible for ADB financed projects, if the Bidder is in the national blacklist?

1- No

2- Yes

3- May be



Eligibility

Executing Agency (EA) submitted Contract Variation for the Contractor Bidder who was sanctioned by ADB. EA should not have submitted a contract variation for ADB no-objection as recommended Bidder was in ADB sanction List. What is your opinion?

- 1- EA should not have submitted case for ADB's no-objection
- 2- ADB sanction list is not applicable for contract variation/s
- 3- ADB accept contract variations for sanctioned entity on case-by-case basis.