

Use of Procurement Agents in Asian Development Bank (ADB) Financed Projects: Policy and Related Issues

Yinguo Huang, Director,
Operations Procurement for East Asia, Southeast Asia and Pacific (COS2),
Asian Development Bank

Ladies and gentlemen, good morning,

In their speeches, our country director for People's Republic of China (PRC), Mr. Hamid Sharif, and Central Operations Services Principal Director, Mr. Sean O'Sullivan, provided a clear picture of ADB's role in the region's economic development and our strong interest in promoting good governance in the development work of ADB's developing member countries (DMCs).

I will now elaborate a bit further at the operational level, particularly on the reasons why ADB is interested in organizing this conference, what we would like the conference to achieve, and what ADB would do on the follow up actions, depending on the outcome of the conference.

To set the discussions in an appropriate context, I would like to start with highlighting some of the basic principles set forth in ADB's Charter and in its Procurement Guidelines.

The Agreement Establishing the Asian Development Bank, also commonly referred to as the ADB Charter, mandates in Chapter I, Article 1, that "The purpose of the Bank shall be to foster economic growth and co-operation in the region of Asia and the Far East (hereinafter referred to as the "region") and to contribute to the acceleration of the process of economic development of the developing member countries in the region, collectively and individually. In Chapter III, Article 8, the Charter also requires that "The resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth respectively in Articles 1 and 2 of this Agreement."

ADB's Procurement Guidelines were formulated in accordance with this general policy framework, and were based on the following general considerations:

The responsibility for the implementation of the project, and therefore for the award and administration of contracts under the project, rests with the borrower. ADB, for its part, has the obligation to ensure that the proceeds of its financing are used with due attention to considerations of economy and efficiency. While in practice the specific procurement rules and procedures to be followed in the implementation of a project depend on the circumstances of each particular case, five basic principles generally guide ADB requirements:

- (1) subject to the qualification stated in paragraph 2.11 with regard to procurement under loans or grants from Special Funds resources, the proceeds of ADB financing can be used only for procurement of goods and works supplied from, and produced in, member countries of ADB, except in any case in which the Board of Directors determines otherwise under Article 14 (ix) of the Articles of Agreement of ADB;
- (2) the need for economy and efficiency in the implementation of the project, including the procurement of the goods and works involved;
- (3) ADB's interest in giving all eligible bidders from developed and developing countries the same information and equal opportunity to compete in providing goods and works financed by ADB;
- (4) ADB's interest in encouraging the development of domestic contracting and manufacturing industries in the country of the borrower; and
- (5) the importance of transparency in the procurement process.

ADB's Procurement Guidelines also indicates that open competition is the basis for efficient public procurement and the Borrowers shall select the most appropriate method for the specific procurement. In most cases, international competitive bidding (ICB) is the most appropriate method.

In highlighting the above policy framework and key principles, we may note the following key words:

- economy and efficiency
- equal opportunity to compete
- transparency

Let me first start with efficiency. ADB expects the executing agencies (EAs) of ADB financed projects to complete the procurement process starting from advertising the invitation for bids to signing the contract in not more than 145 days for a single-stage-one-envelope (1S1E) bidding as shown in Figure 1, or 189 days for a single-stage-two-envelope (1S2E) bidding (Fig 3). Unfortunately, these written processes are not reflected in actual practice., because most of ADB's developing member country borrowers have taken much more time to accomplish these two most commonly used bidding processes. In fact, some executing agencies have taken more than a year, or even two years, to complete a relatively simple bidding process. In the case of a more complex bidding process, such as two stage bidding or turn-key or bidding for plant design, supply and install, the actual time spent by the executing agencies in certain developing member countries was generally two or three times more than expected. As an example, Figure 2 shows the actual time taken by the EAs from bid opening to completing bid evaluation for procurement (based on statistics of contracts valued above \$10 million in 2011). Comparing the data in Figure 1 and 3, we may note that ADB expects the executing agencies to complete the bid evaluation in 30 days for 1S1E while the EAs in most subregions, except East Asia, actually took 42 days to 90 days to complete bid evaluation and submit the bid evaluation report to ADB for review and approval.

Fig 1. Average Time Taken for ICB Single-Stage-One-Envelope Bidding

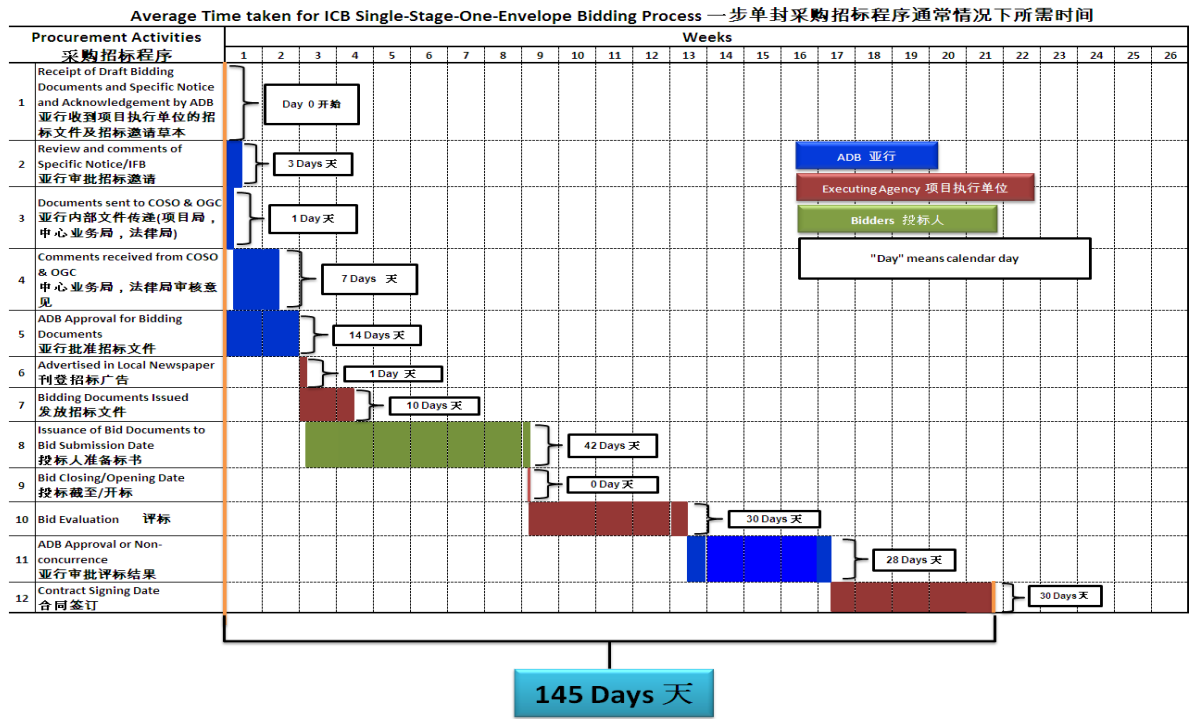


Fig. 2. Actual Average Time taken for bid evaluation by EAs for ICB Single Stage: One
亚行发展中成员国项目执行机在一步单封国际招标中实际平均所用的评标时间

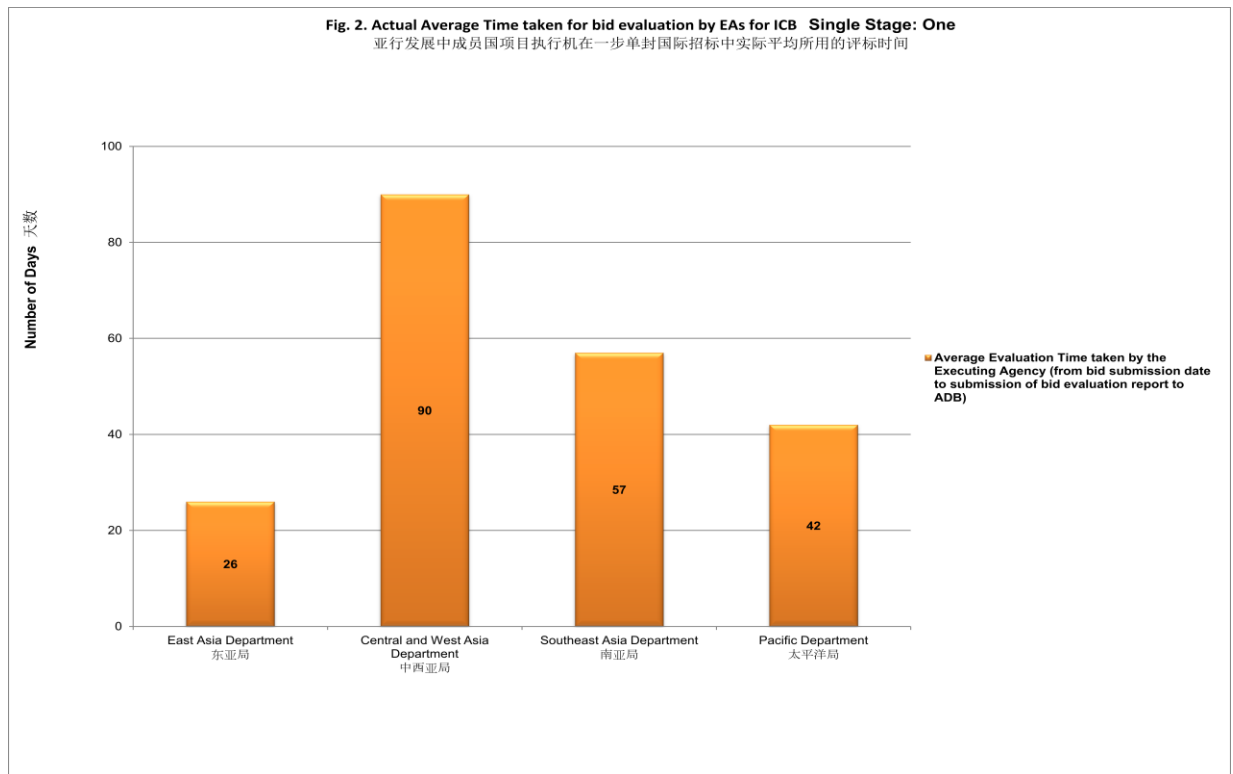


Fig 3.

As a popular Chinese saying goes, “time is money”. Procurement is often the bottle neck of most ADB projects; substantial delays in project implementation hold up valuable financial resources that could otherwise be used more effectively for social and economic development. Most of the delays are often the result of poorly handled procurement. Incompetently handled procurement also adversely affects the quality of the goods, equipment and civil works being procured for the projects. In turn, these cause financial loss or sometimes even failure of the investment projects. Certainly, economy is obviously one of the most important considerations in procurement, and is closely related to efficiency.

If we take a closer look at the chart in Figure 2, it will be seen that the average time taken for bid evaluation for all contracts above the \$10 million threshold in the East Asia subregion in 2011 was much less than the average time taken in all other subregions, such as South Asia, Southeast Asia and Central and West Asia. ADB’s records also show that nearly all international competitive biddings for contracts above \$10 million in the East Asia subregion were undertaken for projects in PRC. Relatedly, it should be borne in mind that public procurement for most sectors in PRC are done by procurement agents. For example, in the Ministry of Railway, the use of procurement agents to conduct competitive bidding is mandatory for projects financed by international organizations. Therefore, there is room to argue that the data in Figure 2 provides sufficient evidence to link the use of procurement agents with improved efficiency.

Weak capacity of the EA in handling procurement is the main reason for most of the delays in procurement. To address the issue on lack of procurement capacity, ADB’s Procurement Guidelines provides that “Where borrowers lack the necessary organization, resources, and experience, borrowers may wish (or be required by ADB) to employ, as their agent, a firm specializing in handling procurement. The agent shall follow all the procurement procedures provided for in the financing agreement and the Guidelines, including use of ADB Standard Bidding Documents, review procedures, and documentation. This also applies in cases where UN agencies act as procurement agents.”

While building up EAs capacity continues to be ADB’s priority, we also need to keep our mind open to optimal solutions for efficient project implementation within each country’s specific circumstances. For example, the approach towards capacity development in a non-English speaking country, and especially in cases where EA is unlikely to be required to frequently conduct international competitive biddings (ICBs), should not be the same as the strategy for a EA which has sufficient English capacity and will be required to frequently conduct ICBs. In the former case, it may make sense for the EA to use a procurement agent so the capacity development can focus more on project management, while specific procurement activities are delegated to a specialized agent.

In any case, the selection of a qualified procurement agent through a competitive selection process and the maintainance of a healthy client and service provider relationship are among the most fundamental issues this conference needs to address. To

provide some basic points for such discussions, I would like to highlight the relevant provisions in ADB's Guidelines on Use of Consultants in this regard – the ADB Guidelines provide that “When Procurement Agents (PAs) are specifically used as “agents” handling the procurement of specific items and generally working from their own offices, they are usually paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee. In such cases PAs shall be selected using Quality-and-Cost-Based-Selection (QCBS) procedures with cost being given a weight up to 50%. However, when PAs provide only advisory services for procurement or act as “agents” for a whole project in a specific office for such project they are usually paid on a time basis, and in such cases, they shall be selected following the appropriate procedures for other consulting assignments using QCBS procedures and time-based contract, specified in these Guidelines. The agent shall follow all the procurement procedures outlined in the loan agreement and in the procurement plan approved by ADB on behalf of the borrower, including the ... review procedures, and documentation.”

As the procurement agents are hired and paid by the EAs, the next fundamental question one might ask is how the procurement agent will maintain its independence and objectivity in evaluating the bids, especially when there is a difference in opinion with the EA. The question is particularly crucial in a culture or society where a decision making process can be influenced by a “superior's order”, and it could become even more serious when the superior has been corrupted or has a conflict of interest in the bidding in question. ADB's Anticorruption Policy requires that borrowers (including beneficiaries of ADB financed activities), as well as bidders, suppliers and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. It is absolutely essential to establish a legal framework at the national level and a system with effective mechanisms, both within the EAs and the PAs, to ensure the independence and integrity of procurement agents in their services to their clients , and to create a competitive, fair and transparent environment for public procurement.

To provide a high quality of services to EAs in carrying out the procurement for ADB projects, ADB requires the procurement agents to be fully competent in dealing with all kinds of procurement issues related to ADB's bidding process, standard bidding documents, and in complying with ADB's procurement Guidelines and procedures. To help our DMCs build up the capacity in public procurement, the Central Operations Services Office (COSO) developed a Regional Technical Assistance program (ADB-RETA 7437) - the Asia Pacific Procurement Partnership Initiative - to provide a platform to strengthen regional (and sub-regional) exchange of information and partnership among public procurement officials. This conference is supported by this RETA. Depending on the outcome of this conference, we may consider follow up actions under this RETA, and one of the follow up actions could be establishing a capacity building program for procurement agents in ADB's DMCs. This program can be similar to what we current have for EA officials, but with greater technical focus on procurement at a more advanced level for PAs. The training courses in the capacity building program may be designed to support an accreditation program that is in line with the national requirements and/or specific to the requirements of the ADB.

In summary, ADB believes that the use of specialized agents for procurement can be an effective solution to ensuring quality, economy and efficiency in handling procurement activities for ADB financed projects, especially when the EAs capacity is found to be weak. While we will continue to build up EAs' capacity in all our DMCs, we will include PAs' capacity as well, particularly in DMCs where the option of using PAs is found to be more suitable in terms of achieving the best development outcome for the country. Creating a healthy and transparent environment for PAs to operate competitively and independently, following internationally recognized best practices, will also be on ADB's agenda in its policy dialogue with the DMC governments. We sincerely hope this conference will become a successful first step towards such dialogue.

Thank you!

亚洲开发银行有关在其融资项目中使用采购招标代理的政策及相关问题

亚洲开发银行东亚，东南亚及太平洋地区采购招标管理处处长黄尹国

亚洲开发银行(项目招标)采购指南(政策与规则)

(项目招标)采购代理

3.10 当借款人缺乏必要的机构、资源和经验时，借款人可能希望（或亚行要求借款人）聘请一家专门从事采购的公司作为其代理。采购代理必须代表借款人遵循资助协定和亚行指南规定的所有采购程序，包括使用亚行的标准文件、遵循审查程序和文件要求。这一条也适用于联合国机构作为采购代理的情况。

亚洲开发银行及其借款人使用咨询顾问指南(政策与规则)

e. 采购代理（PAs）

2.39 当借款人缺乏必要的机构、资源或经验时，聘请一个专门从事采购的公司作为其代理，不但效率高，而且效果也好。当采购代理是作为一个特别的“代理机构”负责具体品目的采购，而且是在其自己的办公室里工作时，通常是按采购额的一定百分比向其支付代理费，或按这种百分比和一个固定收费额相结合方式支付其代理费。在这种情况下，应按照基于质量和费用的选择方式来聘请采购代理，其中费用所占的权重最大为 50%。但是，当采购代理只提供采购顾问服务或作为“代理机构”在一个为项目而特别准备的办公室中为全项目服务时，通常是按时间向其支付代理费。在这种情况下，应像对待其他咨询任务那样，使用本指南规定的基于质量和费用的选择方式和以时间为基础的合同。代理机构应以借款人的名义遵守贷款协定规定的和亚行批准的采购计划规定的所有采购程序，包括使用建议书征询文件，审查程序和文件。

Transparency

Integrity

Independence of Procurement Agency

Capacity building