



TRANSPARENCY INTERNATIONAL - PAKISTAN

September 09, 2024

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TL2024/0909/2A

Principal Secretary to PM
Prime Minister House
Islamabad

(For attention of the Honorable Prime Minister)

Subject: Transparency International Pakistan Recommendations on Transparent Complaint Handling Procedure under PPRA Rules 2004

Dear Sir,

TI Pakistan refers to the Prime Minister's direction given in mid August 2024 to the Law Minister, that under PPRA Rules, Complaint Redressal Committee shall not be within the department conducting the tendering, and within 15 days, rule must be changed to make Complaint Redressal Committee comprised of independent members.

TI Pakistan recognizes that since 2017, the federal government with the assistance from World Bank has been implementing e-Procurement project which has been fully implemented since 1st July 2023. As per the details, the e-procurement is 45 million dollars project, and it has been implemented in 37 ministries and over three hundred procuring agencies of the federal government so far (Annex-A).

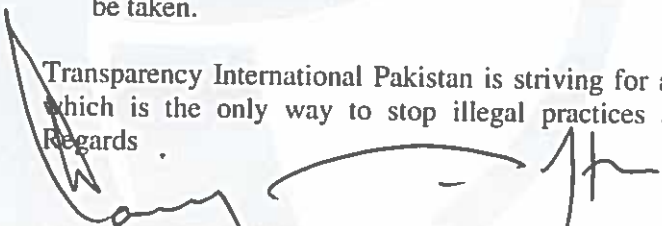
TI Pakistan appreciates and recognizes that e-procurement is the step towards transparency and accountability in the procurement system. In December 2023, TI Pakistan released National Corruption Perception Survey (NCPS) 2023, Tenders and Government Contracts was perceived by the citizens to be the second most corrupt sector in Pakistan (Annex-B). Therefore, a transition towards digitization and openness of the procurement system will enhance citizens trust and improve public perception.

To ensure full efficacy of the e-procurement system, fully digitised Evaluation Procedure as well as Digitised Complaint Handling Process, without the involvement of department's officials, is imperative. In this regard, TI Pakistan recommends the following:

Recommendations:

1. The entire procurement process shall be carried out online without any manual involvement, from evaluation, submission of attested testimonials, complaint Redressal, to issue of Letter of Award.
2. An online evaluation process shall be adopted by making a mandatory requirement of submission of an affidavit from all bidders, testifying that their submitted documents are genuine., and in case of a submission being false/fake, bid shall be subjected to PPRA Rule 7 – Integrity Pact.
3. Complaints shall be examined by digitised software, on compliance or non-compliance basis, and in case complainant producing false documentation submitted by the most responsive bidder, the system shall accept the complaint. ADB also uses IT based evaluation for its projects (Annex-C).
4. In case of fake documents submission, action against the bidder under Blacklisting Rule shall also be taken.

Transparency International Pakistan is striving for across-the-board application of the Rule of Law, which is the only way to stop illegal practices and achieve Zero tolerance against corruption.
Regards


Advocate Daniyal Muzaffar,
Trustee/Legal Advisor
Transparency International Pakistan



Copies forwarded for the information with a request to take action under their mandate to:

1. Minister, Ministry of Law, Islamabad
2. MD, PPRA, Islamabad
3. Registrar, Supreme Court of Pakistan, Islamabad

Note:

This is to clarify that Transparency International Pakistan is not a complainant, it acts as a whistleblower and operate under Article 19-A, of the Constitution of Pakistan which gives the right to public to know how government is being run by public officers. Article 19-A makes the right to access of information pertaining to a public authority a fundamental right, and a three-member bench in the case of Mukhtar Ahmad Ali vs the Registrar, Supreme Court of Pakistan, Islamabad, headed by Chief Justice Qazi Faez Isa in the landmark judgment on 16 October 2023, in CP No. 3532/2023, has declared that

“What previously may have been on a need-to-know basis Article 19A of the Constitution has transformed it to a right-to-know, and the Access to information is no longer a discretion granted through occasional benevolence, but is now a fundamental right available with every Pakistani which right may be invoked under Article 19A of the Constitution”

Projects over Rs2bn to be validated by third parties

Mubarak Zeb Khan | Published August 25, 2024

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ISLAMABAD: Prime Minister Shehbaz Sharif has ordered third-party validation of all development projects with outlay exceeding Rs2 billion to bring transparency to the procurement process.

The premier issued the directive on Saturday while chairing a review meeting on electronic procurement, e-Pak acquisition, and disposal system/e-PADS at the Prime Minister's Secretariat.

He directed the authorities to ensure third-party validation to make the grievances and concerns redressal system effective in the procurement process. He said the government is taking concrete steps to ensure transparency in all kinds of procurement procedures.

The premier said the system for redressal of complaints about procurement should be outside the procuring agency and also directed measures for amendments to the rules and regulations in this regard.

PM Shehbaz expressed dissatisfaction over the delay in implementing the e-procurement project and directed that it be completed within a month. He was briefed that the e-procurement project was started in 2017 with funding from the World Bank.

The meeting was told that the total project cost of e-procurement is \$45 million, and it has been implemented in 37 ministries and over 300 procuring agencies of the federal government so far.

FBR group to achieve Rs13tr target

In a separate development, FBR Chairman Rashid Mahmood Langrial has set up a 32-member working group to identify revenue collection gaps and opportunities for enhancement to meet this year's target.

The working group, comprising 22 officers from the Inland Revenue Service and 10 from Pakistan Customs, began work on Saturday and would have its first meeting on Aug 30. It has two weeks to complete its report on clearly identifying gaps in existing taxes (income tax, sales tax, federal excise duty, and customs duty). The committee will then suggest interventions and quantify the expected revenue resulting from such interventions.

According to a notification, the working group will deliberate on crucial reform areas of tax administration to meet this year's tax collection targets. The reform areas include procedures/machines, human resources, administration and taxpayer facilitation.

The FBR chairman told Dawn that he has devised a sound plan to maximise revenue based on dependable estimates. Unlike previous traditions, he stated that the approach would be local and consider ground realities rather than copying any developed countries' model.

The group will operate in three phases: first, it will identify potential gaps in the present tax system, followed by the second phase, which will determine the timeline for the intervention to close the loopholes. In the third and final step, the working group will quantify the potential outcomes of the intervention in terms of additional revenue.

Mr Langrial stated that a new working group has been formed to focus solely on tax data analytics. Data analytics will assist in finding potential gaps in the tax system. The focus of analysis will be on income tax and sales tax.

In the budget for FY25, the government projected a collection target of Rs12.9 trillion, more than 41pc higher than the collection set for FY24. The government believes that the automated revenue collection will be Rs11.1tr in FY25.

Published in Dawn, August 25th, 2024

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Survey Results

Annex-B

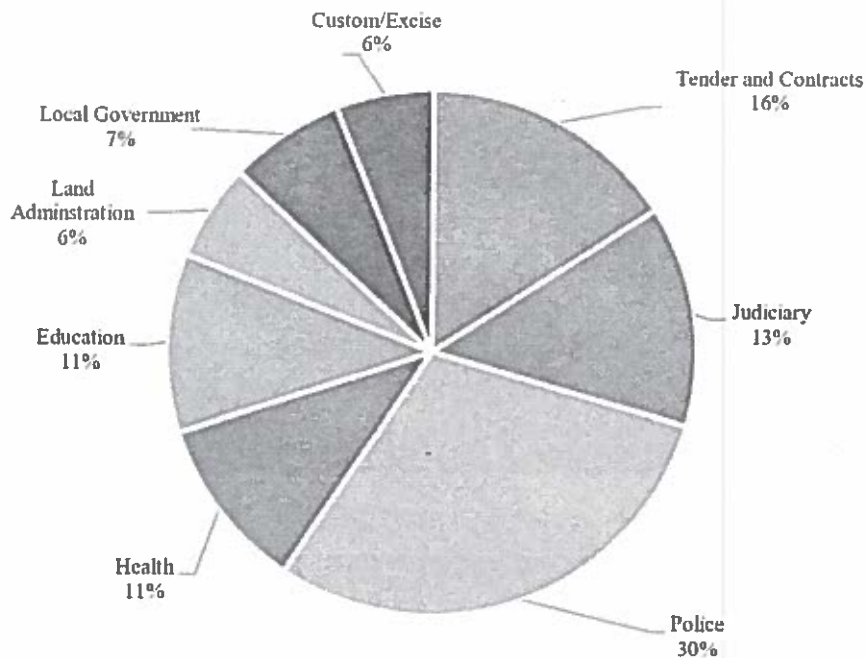
Q1: In your opinion, which is the most corrupt sector?

- 1. Tender & Government Contracts
- 2. Judiciary
- 3. Police
- 4. Health
- 5. Education
- 6. Local Government
- 7. Custom/Excise/Income Tax

Table 1:

	National		Sindh		Punjab		KP		Baluchistan	
	F	%	F	%	F	%	F	%	F	%
Tenders & Government Contracts	232	16%↓	52	14%↓	24	6%↓	50	13%↓	106	31%↑
Judiciary	201	13%↓	28	7%↓	63	17%↑	56	15%↓	54	16%↓
Police	439	30%↑	137	37%↑	92	25%↓	143	37%↑	67	20%↑
Health	157	11%↑	43	12%↑	56	15%↑	29	8%↓	29	8%↑
Education	162	11%↓	48	13%↓	48	13%↑	38	10%↑	28	8%↑
Land Administration	87	6%	10	3%	24	6%	25	7%	28	8%
Local Government	104	7%↑	37	10%↑	38	10%↑	17	4%	11	3%↓
Custom/Excise/Income Tax	88	6%↓	14	4%↓	31	8%↑	23	6%↑	20	6%↓
Total	1470	100	369	100	376	100	381	100	343	100

National Average



ANNEX C

PAI 3.08
June 2018
Appendix 1

17. Contracting authorities may use e-GP to open bids/proposals.

- Electronic and/or print bids if submitted shall be opened in a public opening at a location and time (deadline) designated in the bidding documents.
- Bidders who choose to do so may attend the bid opening and are invited to sign a record of attendance. Information read out at the bid opening (prices, discounts offered, and pertinent information) shall be simultaneously posted onto a website. A record of the bid opening must be kept in print copy and signed by individuals authorized to initiate the opening. Contracting authorities shall make the bid/proposal opening minutes freely available by means of a website download.
- Bids/proposals in electronic format shall be protected against access by unauthorized persons until the publication of the contract award.
- Contracting authorities shall open bids/proposals in electronic format first followed by the bids/proposals submitted on paper.

8. Bid Evaluation and Contract Award

18. The contracting authority may use pre-approved automated evaluations as long as the evaluation aligns with the criteria established in the bidding documents; is consistent with the principles of economy, efficiency, equal opportunity, and transparency; does not violate other MDB requirements (such as restrictions on price bracketing or price negotiation); and results in a contract award to the lowest evaluated, responsive bidder.

- A bid evaluation report (BER) shall be prepared as required by ADB.⁷ It may be transmitted electronically for review if an MDB requests (including post review). The BER shall, on request, contain scanned copies of the signed record of bid opening, the advertisement, and other documents for which copies are required. A print copy of the BER shall be kept on file.
- Contract awards shall be published online consistent with bid advertising. (See section 2).

9. Information Security Management

- For any e-GP internally or through third parties, the contracting authority shall develop, maintain, and implement an information security management system that conforms with international standards⁸ and takes account of recognized best practices including but not limited to asset security, access security, human resource security, operations management and business application controls, documentation and script sufficiency and security, physical and online security, business continuity, record keeping, and compliance.
- There shall be no outstanding audit issues that represent material risk to the integrity or security of any project.
- Contracting authorities shall indicate in the bidding documents/RFPs the procedures to be followed in the case of any failure, malfunction, or breakdown of the electronic system used during

⁷ This will be compliant with the Guide on Bid Evaluation.

⁸ Such as ISO/IEC 17799:2001, AS/NZS 7799.2:2003, HB 231:2000.

Project Administration Instructions

PAI 3.08
Revised in June 2018
Page 1 of 2

ELECTRONIC PROCUREMENT

1. Executing agencies (EAs) and implementing agencies may use electronic systems to conduct procurement on ADB-financed contracts when the procedures involved meet acceptable standards. Appendices 1 and 2 provide guides for assessing the suitability of proposed procedures involving electronic procurement.

- Appendix 1 provides a guide for assessing systems used for electronic bidding (also called electronic tendering). These systems would commonly be used for international competitive bidding (ICB), national competitive bidding (NCB) and limited international bidding (LIB).
- Appendix 2 provides a guide for assessing systems that use electronic reverse auctioning. Such systems may be used at ADB for procurement using shopping method.

Assessment is the responsibility of the project division or resident mission assigned to implement the project. The Procurement, Portfolio and Financial Management Department (PPFD) will assist if requested. This assessment should not be limited to the e-procurement system software. It should cover: (i) EA e-procurement procedures and capacities; (ii) bidding documents supporting e-procurement; (iii) readiness of the supplier/contracting industry to use e-procurement; and (iv) EA experience in undertaking e-procurement. It can be done as part of the project preparatory technical assistance, ideally by the time of preparation of the procurement plan. A master bidding document for e-procurement should also be prepared for the different contract types (see PAI 3.02 Part G).

2. The use of e-procurement should be carefully assessed using the guide in Appendix 1, in line with the following principles:

- The requirements described here apply to ICB, NCB, LIB and shopping modes of procurement. They do not apply to recruiting consultants. Use of other electronic methods such as electronic catalogues that may be applied to direct contracting or other modes of procurement should be referred to PPFD.
- Electronic approaches must adhere to the requirements specified in the ADB Procurement Guidelines and to the principles of economy, efficiency, transparency, and award of contract to the lowest evaluated substantially responsive bid.
- The use of electronic systems does not excuse deviations from any current practices, except those specific to the electronic handling and management of bidding documents and bids. Opportunities may be advertised electronically, bidding documents may be issued electronically, correspondence may be electronic, and bids may be received electronically. All other requirements, such as use of standard bidding documents for ICB are retained.
- Based on the results of the assessment of their e-procurement capacity, EAs may be allowed to fully utilize electronic procurement for all bidders. Accordingly, an EA's electronic procedures for a specific procurement may or may not use parallel, paper-based procedures. However, parallel procedures are required for procurement of ICB contracts under ADB financing. Only when contracting authorities demonstrate that interested bidders are not excluded from participation due to lack of access to the required internet and information technology facilities or for other reasons, the exclusive use of electronic means may be accepted. When exclusive electronic means are

Guide to Assessing e-bidding Systems
(Based on E-Bidding Requirements for Multilateral Development Bank-Financed Procurement)

A. Introduction

1. Borrowing countries/grant recipients are increasingly inclined to use electronic procurement systems and means for processing and managing activities funded by the multilateral development banks (MDBs). For the purposes of the following specifications, electronic government procurement (e-GP) is defined as the use of information technology systems and networks by governments in conducting their procurement relationships with suppliers and contractors for the procurement of works, goods, and related services and consulting services¹ required by the public sector.

2. All stages of procurement can benefit from electronic processes including pre-qualification, advertising, preparation and issuance of bidding documents, receipt of bids, bid opening, evaluation of bids, clarification and modification, notification, and publication of results.

3. It is not, however, necessary for an e-GP system to include all procurement functions. For some steps, online technology is extremely efficient (such as for advertising bid opportunities), but in other instances online technology and its applications are more problematic and uncertain such as for authentication when governments are often still considering their legislative approaches (if any) and management and security are issues. It is possible to apply e-GP to selected steps in procurement adding more steps to the system in a phased approach as resources, legislation, or developments permit.

4. Where e-GP systems are intended to be used for bidding for goods, works, services, or consulting services¹ under ADB-financed projects using any of the approved bidding procedures, the ADB unit administering the project shall, consistent with any approved delegations, evaluate the e-GP system features, standards, and operations to ensure they satisfy the conditions that follow in this guide. Requirements will also be provided for online reverse auctions and e-purchasing.

B. Key Principles of the Administration of Multilateral Development Bank-Funded Activities

5. The ADB and other MDBs recognize and encourage individual governments to find their own paths in the development and implementation of e-GP and have provided considerable resources to facilitate it. There is no single "right" solution. The resulting systems will reflect the specific requirements and priorities of each government; however, in recognizing these individualities the MDBs also have responsibilities to their donors, to other borrowing countries, and to their own governance rules. These responsibilities mean that the MDBs have minimum standards and qualities that must be met if such electronic systems are to be applied to the activities that they fund, just as they have mandatory processes for traditional paper-based procurement.

6. These minimum standards and qualities are designed solely to ensure that basic standards of good governance apply to these resources.

¹ Under ADB e-procurement practices, electronic procurement is not done for recruiting consultants.

7. What are these basic standards that the following requirements aim to safeguard? The MDBs require that the key principles of

- transparency,
- non-discrimination,²
- equality of access,
- open competition,¹
- accountability, and
- security of process

must apply to the deployment of these resources.

8. The following requirements are designed to support these principles for MDB-related activities. Translating these core principles into operational effect has implications for variables such as

- bid advertising,
- technological neutrality,
- technical standards for interoperability and security,
- some processes such as ensuring good audit trails,
- cost and ease of participation.

9. Should any government agency believe that it should be exempt from any of these core principles or that their systems satisfy these requirements in other equally satisfactory ways, they can discuss the options with the members of the MDB e-GP Working Group.

10. These requirements supplement and do not replace existing requirements that apply to traditional procurement procedures for ADB and other MDB-funded activities.

C. E-Bidding Requirements

1. System Access

11. If e-GP is to be applied to ADB-funded activities or programs, it shall have the following minimum features.

- System access shall be open, equal, and unrestricted to all prospective bidders and members of the public. Those who want to submit information or receive online alerts or notifications of amendments or clarifications shall be offered an online enrollment facility. Enrollment³ shall be free.
- The principle of single sign-on shall apply. Single enrollment shall allow bidders the multiple use of the same electronic system for different projects from different parts of the government.

² For ADB, eligible country requirements apply (see PAI 3.01 Part D).

³ There is no consistent international definition of what is in many cases on the Internet referred to as "Registration." In some countries, registration for government procurement requires a legalistic offline authentication process. For the purposes of this guide "enrolment" refers to an online process of providing some basic identifiers such as user name, contact name, company name, and type of business with which the entity will be enrolled in the e-bidding program and eligible to receive bid documents and bulletins and may be issued a password. Many countries will identify this with registration.

- The e-GP system shall be interoperable through open standards with information communication technology (ICT) products in common use. The system shall be an Internet-based approach accessible by users through readily available and commonly used browser software.
- Downloaded documents shall be readable through open standards with a range of commonly used office software. If specialized software is necessary, this shall also be downloadable (e.g. software to read documents in PDF) free of charge and compatible with commonly used system and office software. Similarly, the requirements for electronic submissions, if provided for, shall require only open standard interfaces with commonly used office software, or the submission software shall be available online from the contracting authority's system as required.
- The system shall perform reliably and securely in time-sensitive, commercial application.

The principle of non-discrimination between paper-based and electronic information and transactions shall, as far as practical, be reflected in the system. Contracting authorities shall have in place the transitional option of paper-based procurement for bidders/consultants who wish it or who do not have access to e-GP. Only when contracting authorities demonstrate that interested bidders are not excluded from participation due to lack of access to the required Internet and information technology facilities or for other reasons, the exclusive use of electronic means may be accepted.

2. Advertising

12. Electronic advertising of procurement opportunities will be considered to satisfy ADB procurement advertising requirements by meeting the following conditions.

- The advertisement shall be posted on a publicly accessible website (or the official site if it exists) that is well known nationally, well maintained, functional, and affords free and unrestricted access.

There shall be no material difference between the paper documents and those advertised online.

- Concurrent advertising may be also required on additional sites and media⁴
- The bidding period shall be measured from the date of publication on the required sites/media, and if these dates vary, the date of publication shall be whichever is later. A secure log of these entries shall be available for audit as required.
- Where bidding is restricted or subject to prequalification, this shall be clearly disclosed in the bid advertising. The bid advertisements and results disclosures shall not be restricted.

3. Correspondence, Amendments, Substitutions, and Clarifications

13. Correspondence with bidders during bid preparation may be done electronically as long as print correspondence is used for bidders who request it. Copies of all correspondence shall be kept for audit and the bid evaluation report.

⁴ The procurement policies of the Asian Development Bank (ADB), the Inter-American Development Bank (IDB) and the World Bank are broadly consistent but contain some differences that need to be taken into account: see for ADB Procurement Guidelines at www.adb.org, for IDB see the Project Procurement Information on www.iadb.org/procurement and for the World Bank Guidelines Procurement under IBRD Loans and IDA Credits at www.worldbank.org/procure.

- All clarifications and amendments or substitutions of the bidding documents as well as any pre-bid conference minutes shall be posted simultaneously onto a bid tracking page of the bid advertising website that is freely accessible to all. Bidders who have already expressed an interest should be directly informed electronically of any such postings.
- Amendments or substitutions by any official will be tracked and recorded for audit. Systems shall ensure that only authorized changes can be made.
- In case of any amendments or substitutions to the bidding document/request for proposal (RFP) by the contracting authority, the authority shall not replace the bidding document/RFP with a new one, but provide such changes by means of an additional document in line with the same distribution mechanism as for the original.
- Contracting authorities shall track receipt by bidders/consultants when distributing pre-bid amendments, substitutions, and clarifications online.
- If contracting authorities stage online pre-bid conferences and clarifications, including for example online conferencing and chat facilities, such facilities shall not function after the bid submission deadline.
- Correspondence during bid evaluation for the purpose of clarification may also be done electronically with the normal restrictions against modifying the substance or price of the bid. Any correspondence of this type shall be directed through the chair of the evaluation committee. The confidentiality of the bid evaluation shall be maintained.

4. Bidding Documents

14. Contracting authorities may distribute bidding documents by using electronic systems (downloaded from a website) or means (sent as email attachment, on a compact disc, or flash drive or other storage devices if appropriate).

- The use of standard bidding documents is required. Bidding documents must be provided to ADB in an approved language and, if required, in print copy for review and approval.

There shall be no difference between electronic and print versions of the bidding documents. Splitting documents into combinations of electronic and printed portions should be avoided.

- While contracting authorities may offer the distribution of bidding documents in generally available electronic formats (e.g. xml, html, doc, rtf, xls, ppt), they shall ensure that these documents can be traced to the contracting authorities' legally binding bidding documents in paper or electronic format.
- Contracting authorities shall ensure the integrity of bidding documents in electronic format⁵, and their online publication. Amendments shall be similarly secure and stored with the bidding document. Contracting authorities shall inform bidders/consultants where the legally binding bidding documents can be accessed.

⁵ ADB also requires a paper copy.

5. Submission of Bids/Proposals

15. Bids/proposals may be submitted electronically if option is available or in paper format. Contracting authorities may offer enrolled bidders the use of electronic systems (uploaded through a website) to submit bids/proposals conditional on the following.

- There shall be security arrangements⁶ to ensure confidentiality (i.e. protect privacy by allowing only authorized persons access to the content at the authorized time) and integrity (i.e. not allow any modification) of bids/proposals in electronic format.
- Bids/proposals submitted online shall be scanned for viruses by the contracting authority before being uploaded and accepted into the online bid box, and if this causes a bid to be rejected, the bidder shall be notified immediately.
- Online submissions shall be received into an electronic bid box and maintained at high standards of security for long-term recordkeeping and auditing. At no time shall bids/proposals be in unencrypted format. Copies taken and decrypted for bid evaluation purposes shall not affect the integrity of the original record.
- Contracting authorities shall ensure that the date and time of an automated closure of an electronic bid deadline can be set only simultaneously by at least two authorized persons. There must also be secure procedures to ensure that the settings are in accordance with international time zone standards. A secure log of these processes shall be available for audit as required.
- Bidders shall be advised that their bids/proposals must be readable through open standard interfaces.
- Bidders shall be allowed to submit modifications to bids/proposals or to withdraw previously submitted bids/proposals electronically up to, but not after, the time of the bid submission deadline. Receipt of a modification or a notice of withdrawal including the date and time must be acknowledged and shall also be done electronically.
- Contracting authorities shall accept only those bids/proposals in electronic format that were submitted or modified at the time of the bid submission deadline. Receipt of electronic submissions, including the date and time, must be acknowledged immediately and shall also be sent electronically.
- The date and time for the receipt of bids/proposals shall be the same for both regardless if submitted electronically or on paper.

6. Bid Securities

16. In order to facilitate procurement when using electronic systems or means, bid securities are not encouraged. Contracting authorities may employ other measures such as requiring bidders to sign a declaration and/or sanctioning bidders who do not honor bids.

7. Public Bid Opening

⁶ See section 9.

17. Contracting authorities may use e-GP to open bids/proposals.

- Electronic and/or print bids if submitted shall be opened in a public opening at a location and time (deadline) designated in the bidding documents.
- Bidders who choose to do so may attend the bid opening and are invited to sign a record of attendance. Information read out at the bid opening (prices, discounts offered, and pertinent information) shall be simultaneously posted onto a website. A record of the bid opening must be kept in print copy and signed by individuals authorized to initiate the opening. Contracting authorities shall make the bid/proposal opening minutes freely available by means of a website download.
- Bids/proposals in electronic format shall be protected against access by unauthorized persons until the publication of the contract award.
- Contracting authorities shall open bids/proposals in electronic format first followed by the bids/proposals submitted on paper.

8. Bid Evaluation and Contract Award

18. The contracting authority may use pre-approved automated evaluations as long as the evaluation aligns with the criteria established in the bidding documents; is consistent with the principles of economy, efficiency, equal opportunity, and transparency; does not violate other MDB requirements (such as restrictions on price bracketing or price negotiation); and results in a contract award to the lowest evaluated, responsive bidder.

- A bid evaluation report (BER) shall be prepared as required by ADB.⁷ It may be transmitted electronically for review if an MDB requests (including post review). The BER shall, on request, contain scanned copies of the signed record of bid opening, the advertisement, and other documents for which copies are required. A print copy of the BER shall be kept on file.
- Contract awards shall be published online consistent with bid advertising. (See section 2).

9. Information Security Management

- For any e-GP internally or through third parties, the contracting authority shall develop, maintain, and implement an information security management system that conforms with international standards⁸ and takes account of recognized best practices including but not limited to asset security, access security, human resource security, operations management and business application controls, documentation and script sufficiency and security, physical and online security, business continuity, record keeping, and compliance.
- There shall be no outstanding audit issues that represent material risk to the integrity or security of any project.
- Contracting authorities shall indicate in the bidding documents/RFPs the procedures to be followed in the case of any failure, malfunction, or breakdown of the electronic system used during

⁷ This will be compliant with the Guide on Bid Evaluation.

⁸ Such as ISO/IEC 17799:2001, AS/NZS 7799.2:2003, HB 231:2000.

procurement. Contracting authorities shall not accept any responsibility for failures or breakdowns other than in those systems strictly under their own control.

- e-GP systems and information security shall ensure that secure records are kept of every process; procedure; transmission; receipt; and transaction in terms of the content, executing individual, and authorizations, time, and date. These records shall be kept for at least 2 years after the closing date of the loan/grant agreement and be made available for audit on request.

10. Authentication

19. If a digital certification/signature is required the following shall apply.

- Bidders shall be certified for a reasonable period of time (at least 1 year) and shall not be required to request certification for each bid.
- Certification shall be open permanently allowing bidders to submit the request for certification at any time to allow them to register in advance for future bids.
- Certification shall allow bidders to take all actions required within their own countries.
- Certification shall accept an electronic signature or a digital certification/signature issued by certifying authorities within the country of the bidder or shall accept submission of online or offline documentation to certify the authenticity of the bidder's representative, accepting documentation that can be obtained under commonly used procedures in the country of the bidder (for example, no notarization in a consulate or embassy shall be required).
- Certification shall not require information with origin outside the bidder's own country.

11. Payment

20. Best practice provides free and open access to all information and allows bidders to submit bids without any charges; however, in special circumstances a nominal fee may be charged under the following restrictions.

- Prospective bidders shall have open and free access to all specific procurement notices and bidding documents published in electronic format. No payment shall be required.
- A single, nominal fee may be charged as a condition for submitting a bid. For the purpose of these requirements, nominal is expected to be an amount less than or similar to that charged for obtaining paper bidding documents.
- Bidders shall be offered an electronic payment facility (e.g. electronic check, credit card) to avoid situations where bidders incur charges online but must visit an office to pay for them. Bidders could be asked to have an account and be invoiced by the system for the fees resulting from the number of bids submitted during a specific period (e.g. month or year).

12. Other Considerations

21. National legislation indicates that with the procurement guidelines of ADB prevailing, any discrepancies in the applications of any of the requirements in this document shall be subject to prior approval by ADB.

22. Executing agencies may use e-GP systems operated by a third party under a service contract arrangement. Third party service providers and their subsidiaries or parent companies shall be ineligible to be awarded contracts for procurement undertaken through the said e-GP system. Irrespective of who operates the system, all requirements and conditions of this guide shall apply.

23. The e-GP requirements presented here support the core framework principles already described. The requirements apply where countries intend to use e-GP for ADB-financed procurement. If particular circumstances arise in any contracting authority or country that cause the e-GP requirements to be in conflict with these principles, the circumstances shall be referred to the MDB e-GP Working Group for interpretation.

24. The application of borrower country electronic systems to ADB-financed activities shall comply with the above requirements. Borrowers are urged to review their electronic arrangements before approaching ADB for approval of such applications, at which time ADB shall review and sign the approval for the borrower to proceed.

Guide for Assessing Electronic Reverse Auctioning Systems (used for shopping at ADB)
(Based on E-Reverse Auction Guidelines for Multilateral Development Bank-Financed Procurement)

A. Introduction

1. Borrowing countries are increasingly inclined to use electronic procurement systems and means for processing and managing MDB-funded activities.
2. If e-GP systems are intended to be used for e-reverse auctions⁹ for works, goods or services under ADB-financed procurement, the ADB project division or resident mission administering the project will, consistent with any approved delegations, evaluate the e-reverse auction features, standards, and operations to ensure they satisfy the conditions that follow in this guide.
3. Not all procurement is suitable for an e-reverse auction. It should deal only with contracts for which the specifications can be determined with precision, in which price is the only determinant, and if significant numbers of potential bidders exist. It must also be possible to transparently establish the respective ranking of the bidders at any stage of the electronic auction. Those aspects of the bids that imply an assessment of non-quantifiable elements should not be the object of electronic auctions. Care must also be taken not to use the method in markets that might be especially vulnerable to manipulation or to anticompetitive behavior such as collusion. Markets with only a limited number of independent, qualified bidders or markets dominated by one or two major participants will be especially vulnerable to this danger.
4. Some governments consider e-reverse auction to be a special case of electronic bidding while others see it as part of electronic purchasing. An electronic reverse auction is perhaps more of a special case of electronic purchasing rather than electronic bidding, i.e., it is suitable for simple, well defined purchases (usually off-the-shelf) in which the determining factor is price or quantity and if a considered evaluation (common in electronic bidding) is not required. The United Nations Commission on International Trade Law (UNCITRAL) Working Group has analysed whether to treat an e-reverse auction as a procurement method in itself or alternatively as an optional phase in other procurement methods. UNCITRAL concluded that it would be preferable to base the draft provisions on the use of e-reverse auction as a procurement method in itself. This is the approach adopted by ADB and other MDBs.
5. For UNCITRAL, an e-reverse auction is described as an online, real-time, dynamic auction between a buying organization and a number of suppliers who compete against each other to win the contract by submitting successively lower priced bids during a scheduled time period.¹⁰

B. E-Reverse Auction Guidelines

1. System Preparation

6. Where e-reverse auctions are to be applied to ADB-funded activities they will have the following minimum features.
 - The procurement must be accurately specified and the purchase matter and requirements must be suitable for simple bidding in which evaluation is solely in terms of price.

⁹ The European Union defines electronic auctions as, "a repetitive process involving an electronic device for the presentation of new prices, revised down-wards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods."

¹⁰ UNCITRAL thirty-eighth session Vienna, 4–15 July 2005 Report of Working Group I (Procurement) on the work of its seventh session (New York, 4–8 April 2005).

Procurement proposals that include multiple variables and qualitative factors should not be subject to e-reverse auctions.

- The auction scope and the evaluation criteria for selection and award of a contract must be clearly established and advertised, and more generally, the value of purchase should be high enough to make it commercially viable for a competitive supplier base, but not so high as to materially reduce competition.
- The contracting authority must verify whether all operational conditions are met for starting the auction (e.g., if all participants are connected and whether conditions required for safeguarding anonymity are in place).
- There should be good intelligence on past transactions in the marketplace and market structure. Each auction should be carefully monitored for market manipulation. Auctions should not be used if the relevant market structure exposes them to significant risk of improper practices such as predatory pricing (low-balling) or collusion.
- E-reverse auctions should be applicable only for purchases below the international competitive bidding (ICB) threshold. E-reverse auctions should be used only for procurement in which price is the sole determining factor. This will generally be for goods only. Also, e-reverse auctions should not be used if they conflict with the principle of open competition by locking out significant numbers of otherwise eligible bidders who do not have access to the required technology.

2. Bidding Specifications

7. The published specifications shall include, inter alia, the following:

- all the conditions (e.g., the event and timing of the auction, rules for participation, valid bid increments, how to bid and whether the auction is divided into successive phases) as well as the technical information needed to participate in the auction, the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection;
- the information that will be made available to bidders in the course of the electronic auction and, where appropriate, when it will be made available to them;
- any other relevant information concerning the electronic auction.

3. Advertising

- 8.
- The notification of an e-reverse auction shall be posted on a publicly accessible website (or the official site if it exists) that is well known, well maintained, functional, and affords free and unrestricted access. Concurrent advertising may also be required on additional sites and media.
 - The notification should include all the specifications, terms, and conditions for the proposed contract. A pro forma contract should be available online with the notification.

- The notification period will be measured from the date of publication on the required sites/media, and if these dates vary, the date of publication will be whichever is later. A secure log of these entries should be available for audit as required.
 - The reverse auction notice must mention that an e-reverse auction will be used.
 - Contracting authorities shall ensure the integrity of master documents in electronic format and their online publication. Modifications must be similarly secure and stored with the master. Contracting authorities shall inform bidders where such master documents can be accessed.
- 4. Operation**
9. • The contracting authority shall run the auction according to the information specified in the invitation to the e-reverse auction. The auction device shall collect anonymous bids electronically and without human intervention that shall be automatically ranked by the system. It shall inform bidders instantaneously of new ranking(s) as they occur, together with prices in such a way that bidders are able to ascertain their ranking at any moment.
- Under no circumstances can the identities of the bidders be disclosed or identified by any party during any phase of the auction.
 - If a bidder submits an invalid bid, it will be notified online immediately with a message explaining why the bid was rejected.
 - When deciding to give out additional information, the contracting authority shall verify that this information does not distort competition and informs all bidders simultaneously.
 - The contracting authority shall close the auction in accordance with the option it has specified. Closure will be either (a) at the time and date previously published or (b) when a previously advertised time period has elapsed during which no new valid bids have been received. It shall immediately inform bidders about auction closure including any decision to extend the deadline. Under no circumstances shall the auction be closed before the deadline has lapsed.
 - The contracting authority shall monitor whether there is improper use of the reverse auction including, for example, evidence of collusion or interference with the proper operation of the technology. Bidders (including their subsidiaries) found to have engaged in collusive activities or other improper practices will be treated in accordance with ADB policies and practices on anticorruption.
- 5. Correspondence, Amendments, and Clarifications**
10. • All pre-auction clarifications and amendments of the bidding documents as well as any pre-auction conference minutes shall be posted simultaneously onto the bid advertising website. Whenever possible these should also be emailed to businesses that have previously shown an interest.
- Modifications to any of the procedures, operations, specifications, or conditions by any operator will be tracked and recorded for audit. Systems should ensure that only authorized changes can be made.

- No bidding documents will be available to any party in advance of the advertising of the opportunity as set out in section 3 of these guidelines.
 - Contracting authorities shall track receipt by bidders when distributing pre-auction amendments and clarifications online.
 - If contracting authorities stage online pre-auction conferences and clarifications, including online conferencing and chat facilities, such facilities shall not function once an e-reverse auction begins.
- 6. Access**
11. • Access will be open, equal, and unrestricted to all eligible bidders. The process shall also be transparent to all observers without restriction.
- If suppliers are required to prequalify, the procedures must be approved in accordance with the open and public bidding of ADB as defined in the e-bidding rules, request-for-quotation rules (for small-value transactions), or other publications. Ane-reverse auction shall not be used if prequalification has reduced the number of bidders to a level that materially affects competition; under no circumstances shall there be fewer than three independent bidders.
 - If bidders must prequalify, an electronic invitation will be issued to admissible bidders simultaneously informing them of the e-reverse auction. Prospective bidders must be contacted electronically at least 2 working days before the start of the auction.
 - Contracting authorities shall not charge any fees to bidders other than for value-added services (e.g. automatic notification of business opportunities). In such cases, bidders shall be offered an electronic payment facility (e.g. electronic check or credit card) to avoid situations where bidders incur charges online but must visit an office to pay for them.
 - Ane-reverse auction should be interoperable through open standards with ICT products in common use accessible by users through readily available and commonly used browser software. If specialized software is necessary, this should also be downloadable and should not result in any compatibility issues.
 - The system should perform reliably and securely in a time-sensitive, commercial application consistent with the number of bidders participating.
- 7. Bid Securities**
12. In order to facilitate procurement when using electronic systems or means, bid securities are not encouraged. Contracting authorities may employ other measures, such as requiring bidders to sign a declaration and/or sanctioning bidders that do not honor bids
- 8. Bid Evaluation and Contract Award**
13. • An e-reverse auction award shall be based solely on prices such that the contract is awarded at the lowest price to the corresponding qualified bidder.

- Contract awards from e-reverse auctions should immediately be published online together with the winner and the awarded price.
 - There shall not be any negotiations during or after the e-reverse auction is closed.
- 9. Information Security Management**
14. • For any e-reverse auction engaged internally or through third parties, the borrower shall develop, maintain, and implement an information security management system that conforms with international standards¹¹ and takes account of recognized best practice, including but not limited to asset security, access security, human resource security, operations management and business application controls, documentation and script sufficiency and security, physical and online security, business continuity, record keeping, and compliance.
- There should be no outstanding audit issues that represent material risk to the integrity or security of any project.
 - Contracting authorities shall indicate the procedures to be followed in the bidding documents in case of any failure, malfunction, or breakdown of the electronic system used during the auction.
 - The e-reverse auction system and information security shall ensure that secure records are kept of every process; procedure; transmission; receipt; and transaction in terms of the content, executing individual and authorizations, time, and date. These records shall be made available for audit on request.
 - An e-reverse auction system shall use an international standard for time related to an external source known and available to all the bidders.
- 10. Authentication**
15. If a digital certification/signature is required, the following shall apply.
- Bidders shall be certified for a reasonable period of time (at least 1year) and shall not be required to request certification for each bid.
 - Certification shall be kept open permanently allowing bidders to submit the request for certification at any time in order to allow them to register in advance for future bidding.
 - Certification shall allow bidders to take all actions required in their own countries.
 - Certification shall accept an electronic signature or a digital certification/signature issued by certifying authorities within the country of the bidder or shall accept submission of online or offline documentation certifying the authenticity of the bidder's representative accepting such documentation that can be obtained under commonly used procedures in the country of the bidder (for example, no notarization in a consulate or embassy shall be required).

¹¹ Such as ISO/IEC 17799:2001, AS/NZS 7799.2:2003, HB 231:2000.

- Certification shall not require information with origin outside the bidder's own country.

11. Other Conditions

- 16 Executing agencies may use e-reverse auction systems operated by a third party under a service contract arrangement. Third party service providers and their subsidiaries or parent companies shall be ineligible for contract awards on procurement undertaken through the said e-reverse auction system. Irrespective of who operates the system, all requirements and conditions of this guide shall apply.