

New Development Bank Procurement Policy

Owner: Operations Division

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Change Log

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Abbreviations

BOD	Board of Directors
CIC	Credit and Investment Committee
IFI	International financial institution
NDB	New Development Bank
TA	technical assistance

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New Development Bank: Procurement Policy (Draft)

A. Governing Principles

1. The Procurement Policy the New Development Bank (NDB) is guided by Article 21 of the Agreement of the NDB in pursuant to the purpose and functions of the Bank as stipulated in Articles 2 and 3 respectively.

2. Article 21 mandates:

“(v) the Bank shall place no restriction upon the procurement of goods and services from any country member from the proceeds of any loan, investment or other financing undertaken in the ordinary or special operations of the Banks, and shall, in all appropriate cases, make its loans and other operations conditional on invitations to all member countries to tender being arranged;

(vi) the proceeds of any loan, investment or other financing undertaken in the ordinary operations of the Bank or with Special Funds established by the Bank shall be used only for procurement in member countries of goods and services produced in member countries, except in any case in which the Board of Directors determines to permit procurement in a non-member country of goods and services produced in a non-member country in special circumstances making such procurement appropriate;

(vii) the Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank, or any equity investment, are used only for the purposes for which the loan or the equity investment was granted and with due attention to considerations of economy and efficiency.”

B. Objective

3. The policy upholds the following six principles of good procurement as essential to facilitate efficient and economic use of NDB support by clients.

- i. Economy. Procure goods and services of right kind, quality, quantity, and technology to achieve cost effectively the envisaged project output and outcomes over the project’s entire life cycle.
- ii. Efficiency. Plan and procure goods and services timely using methods that are most appropriate for the scale and scope of activity and the risks associated with procurement.

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- iii. Value for money. The procurement outcome needs to provide the best value for money for the client. This may require consideration of life cycle costs (purchase price, maintenance and running costs, and cost of disposal), fit for purpose (type, quality, quantity, timeliness, and technology), and impact on other developmental objectives—social economic, and environmental. Thus, value for money means price alone may not necessarily be the sole indicator of value.
- iv. Fit for purpose. Procurement outcomes achieve value for money when (i) procurement is appropriate, and of a necessary standard, for its intended use; and (ii) methods and procedures used for procurement and its oversight are also appropriate for the purpose.
- v. Competition. Promote competitive procurement by (i) providing equal access to information and opportunity to all eligible bidders to participate, and (ii) following fair and consistent process to achieve the best price outcomes.
- vi. Transparency. Combat moral hazards, fraud, and corruption during procurement and execution of contracts by ensuring high standards of transparency during the entire project cycle, with clients and bidder/suppliers/contractors participating in NDB financed procurement are required to maintain highest standards of integrity and avoid conflict of interest during procurement and execution of contracts.

a. Definitions

- 4. Client. Client is a recipient of NDB support. When NDB support is intermediated by a client to other entities and agencies for projects implemented by them, then clients include such entities and agencies.
- 5. Consultant. Consultant is an individual expert or a firm providing consulting services. A firm means any legal entity—a corporation, a company, a partnership, national and international organizations, nongovernment organizations, universities and educational institutions, and public sector organizations.
- 6. NDB support. Includes support NDB provides to the public sector and the private sector through loans, grants, guarantees, equity participation, other financial instruments, co-financing, and technical assistance (TA).¹

¹ Article 1. Agreement on the New Development Bank.

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7. Internal administrative budget. The budget to defray the cost of operations and administration of NDB.
8. Operations resources. The resources NDB mobilizes to support infrastructure and sustainable development projects and related activities in BRICS and other emerging economies and developing countries.²
9. Procurement in a member country. Procurement in a member country means:
 - i. If the supplier/contractor/consultant is (i) a natural person, he/she must be a citizen of a member country; (ii) a corporation/company, it must have incorporated in a member country; (iii) an unincorporated partnership, not less than 60% of ownership must vest with nationals of member countries; and (iv) an unincorporated joint venture, must consist of nationals (natural persons, corporations, and partnerships) of member countries and must be registered in a member country.
 - ii. Purchase price must be in a member country's currency.
 - iii. Goods and services are produced in a member country. Goods and services should have come into existence in a member country in the form in which they are to be procured. Goods are produced in a country where the goods have been cultivated, grown, mined, manufactured or processed; or come into existence when through substantial and major assembling of components,³ another commercially recognizable product that is substantially different from its components results.
- b. *Responsibilities and scope***
10. The client is ultimately responsible for project implementation and hence for the determination of the nature and the type of goods and services to be procured and their procurement. The rights and obligations of the client and the supplier of goods and services are governed by the terms and conditions and technical specifications stated in the bid document, and the contract entered into by the client with the supplier. NDB's responsibility under this policy is to ensure its support is used for the purposes it is intended for with due considerations of economy, efficiency, competition, and transparency and in accordance with the applicable procurement process.

² BRICS refers to Brazil, Russian Federation, India, Peoples Republic of China, and South Africa.

³ A good is considered substantially domestically produced when the direct import content valued at cost, insurance, and freight is 50% or less of its ex-factory/ex-works price.

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11. The policy applies to the goods, works, and services—including consulting services—procured using NDB support. This policy does not apply to corporate procurement funded by NDB’s internal administrative budget.

C. Procurement under Public Sector Operations

a. Country systems

12. NDB’s procurement policy aims to use the country procurement system with risk-based outcome-focused supervision of the procurement processes based on an assessment.⁴ The type and size of project, the complexity of procurement, and the capabilities of the executing agency determine the level of supervision. On a case-by-case basis, and as appropriate, NDB may require clients to include specific provisions that may be at variance with the country procurement system in particular to ensure procurement meets the requirements of the Articles of Agreement.
13. When a new member country is admitted, NDB assesses the efficacy and effectiveness of the new member’s country procurement system and determines the procurement policy and associated guidelines to be followed.
14. When NDB supports a non-member country,⁵ it may rely, using risk based supervision, on the country procurement system of the member country that is materially interested in providing such support or on NDB’s own policy and guidelines as appropriate. NDB may allow domestic preferences if required by the member country’s domestic legislation.

b. Risk based supervision

15. NDB follows risk-based supervision of the procurement process to supplement, as required, the Government’s own oversight procedures. Country procurement assessments may be carried out to assess the country systems, during preparation of country assistance plan to understand (i) country procurement system’s alignment with core principles of this policy; (ii) business environment for procurement and the capabilities of local industry to supply goods and services; (iii) strengths and weakness across institutions and levels of governments; and (iv) the government’s, particularly the project executing agencies’, capacity to provide effective governance for efficient

⁴ The assessment will be based on four criteria: (i) completeness of legislative and regulatory framework and its compliance with the principles of procurement of this policy, (ii) institutional framework and management capacity, (iii) competitiveness of national markets and (iv) integrity and transparency of public procurement system.

⁵ Under Article 19 (d) and (e) of the Articles of Agreement of the New Development Bank.

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and economic procurement. The procurement assessments determine procurement risks and help set appropriate country and sector supervision thresholds.

16. To manage procurement, NDB uses two methods—“prior review” and “post review”—based on the risk assessment. The objective is to ensure client’s procurement is in compliance with the national law and regulations, and meets the core principles of NDB’s policy.
17. Prior review is used for (i) complex projects where NDB may advise the executing agency on the process of procurement, (ii) large projects with higher risk in procurement, and (iii) all projects involving direct selection and/or potential conflict of interest.⁶ The review could cover only the first, some, or all contract packages.
18. Post review method is used when (i) the executing agency has high capability to manage large procurements, (ii) the risk of mis-procurement is low, and (iii) contracts are small. The post review of procurement process is done after the contract is awarded. The review could cover all or only a sample of contracts based on risk.
19. The choice of, prior or post, review to be used to manage procurement and the thresholds thereof is determined during project appraisal.

c. Procurement plan

20. A well prepared and realistic procurement plan is at the core of good project design; it (i) provides an overview of project components and their implementation sequence; (ii) enhances transparency by disclosing the size, nature, and timing of procurement opportunities to suppliers of goods and services; (iii) records and discloses the obligations of all concerned parties; and (iv) improves monitoring and management of procurement as well as project implementation.
21. At project appraisal, in consultation with NDB, the client prepares the procurement plan for the entire project. The plan needs to be detailed for 1/3 of the project implementation period showing: (i) the description of contract packages for the goods, works, and/or services (including consulting services) to be procured; (ii) cost estimates; (iii) the proposed methods for procurement and related NDB review process; and (iv) expected dates for completing key procurement milestones. The client updates the procurement plan at least annually and when needed. Special

⁶ Excludes contracts of small value—the threshold to be determined in the staff guidelines to be issued by NDB Management.

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attention is paid to have accurate cost estimates to minimize the risk of inefficient procurement.

22. Where project components and their implementation sequence cannot be determined in advance as in the case of projects requiring community participation, project finance facility and multi-tranche loans, clients make suitable arrangements for procurement planning in consultation with NDB.
23. The procurement plan indicates, with justification, the requirements for and/or the possibility of sourcing of goods and services from non-member countries to seek the approval as appropriate (see paragraph 44).

d. *Advanced procurement action and retroactive financing*

24. Advanced procurement action is encouraged to speed up project implementation where feasible. However, this is done with an understanding that the approval of advanced procurement action does not commit NDB to approve the project or finance the associated procurement. Vice-President and Chief Operations Officer approves advanced procurement action from member countries. Approval for advanced procurement from non-member countries should be sought under Article 21 (vi) through Board of Directors (BOD) circulation with a 15-day limit (see paragraph 44).
25. Expenditures incurred prior to signing of agreement for NDB support are not reimbursed unless retroactive financing has also been approved. Based on the considerations of urgency and development impact, NDB may approve retroactive financing, up to the limits specified in its “Policy on Loans with Sovereign Guarantee” to cover eligible expenditures incurred during the eligibility period.

e. *Procurement methods*

26. The preferred method of procurement is through an international competitive bidding process among the member countries. National competitive bidding may be used when there is a strong justification. Other methods of procurement—limited competitive bidding, shopping, direct contracting—may be used when the client demonstrates the superiority of the selected procurement method(s) in terms of economy, efficiency, transparency, and appropriateness under the given circumstances. For international competitive bidding, NDB encourages the use of its adapted version of the harmonized master bidding documents developed by Multilateral Development Banks to procure goods and works.

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f. Procurement under financing partnerships

27. NDB may, in partnership with other agencies, co-finance a project. The co-financing may be (i) parallel to finance separate contract packages of a project, or (ii) jointly with other partners to finance a particular contract package. NDB (i) prefers its own procurement policy in the case of parallel co-financing, (ii) prefers its own procurement policy when it is the dominant partner in a joint co-financing arrangement, and (iii) where the Government has accepted the policy of a co-financier, may use the procurement arrangement accepted by the Government provided that such arrangement meets the principles enumerated in paragraph 3 of this policy. Procurement under a special fund administered by NDB will be in accordance with the stipulations of the agreement to administer such fund.

D. Procurement under Non-sovereign Operations⁷

a. Procurement frame-work

28. Though the importance to ensure economy and efficiency in the use of NDB funds applies equally to its sovereign guaranteed and non-sovereign operations, the differential nature of incentives and risks in procurement in the public sector and the private sectors warrant differentiation in the procurement policy. Rather than using formal competitive tendering, private sector clients may follow commercially acceptable procurement methods that seek to fulfill multiple strategic considerations besides the usual concerns about price, quality, reliability, service, and technology. This policy ensures that private sector clients receiving NDB support use appropriate cost effective commercially acceptable procurement methods suitable for the project to select right kind of goods, works and services at prices comparable to fair market prices in a competitive environment, and under judicious contracting conditions that are similar to normal market practice. Procurement will normally be from NDB member countries unless otherwise permitted by NDB.

⁷ NDB support without a sovereign guarantee constitutes NDB's non-sovereign operations. Typically this covers support to the private sector entities but also includes support provided, without a sovereign guarantee, to public sector enterprises, national financial institutions, and sub-national governments. Non-sovereign operations are covered by two policies—(i) *New Development Bank. Policy on Loans without Sovereign Guarantee to National Financial Intermediaries*; and (ii) *New Development Bank. Policy on Transactions without Sovereign Guarantee (except Loans to National Financial Intermediaries)*.

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b. Concessions

29. Concession involves engagement of a private sector client by a public sector entity on a long-term contract to build, operate, and maintain an infrastructure facility in a satisfactory manner for the benefit of the public.
- i. When a private sector client is selected as a concessionaire based on a transparent, competitive, and fair bidding process in accordance with national laws, the client can procure goods and services using suitable private sector procurement processes.
 - ii. When the client is not selected as a concessionaire in the manner stated in (i) above, the client needs to follow the procurement procedures applicable for NDB's public sector operations.

E. Financial Intermediation

30. In the case of NDB's support to designated national financial institutions (NFI), the concerned NFI is required to make adequate arrangements for effective supervision of procurement under sub-projects. Arrangements for procurement management will be assessed and agreed during appraisal of the facility.
31. When NDB supports financial intermediary institutions to facilitate intermediary's support to private sector sub-projects, the beneficiaries procure goods, works, and services using the procurement processes applicable to the private sector subject to meeting the principles of good procurement (paragraph 3 and paragraph 28). During the appraisal of such support, NDB defines the responsibilities of the financial intermediary to put in place adequate oversight arrangements to ensure efficient, economic, and transparent procurement is done in a competitive environment.

F. Consulting Services

a. Scope and responsibilities

32. Consultants are used to (i) get high level expertise for project preparation and design, and supervision; (ii) develop and disseminate knowledge; and (iii) meet temporary need for skilled personnel.
33. Clients use consultants to prepare, implement and evaluate NDB supported projects and programs. NDB uses consultants (i) for TA projects financed out of its operations resources, and (ii) to meet temporary in-house staff/skill needs financed out of its internal administrative budget.

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34. Clients are responsible for selecting, engaging, and supervising the consultants they use for NDB supported projects. Clients may use their country procurement system where adequate to recruit consultants. The role of NDB is to ensure its support is used only for the purposes for which it is intended with due considerations of economy, efficiency, competition, and transparency. NDB uses risk based supervision to provide appropriate oversight of the TA implementation.

b. Principles of recruitment

35. Consultants are normally procured in a member country. Consultant selection is based on competition among those who are qualified and short-listed. Technical qualifications and relevant experience are the most important criteria in the selection of consultants particularly for complex assignments. Where there is adequate justification, direct selection of a consultant is permitted in exceptional cases.

36. NDB (i) encourages the use of qualified consultants from client's own country, and (ii) places suitable restrictions on engagement of civil servants as consultants to prevent conflict of interest.

37. If circumstances warrant—such as for complex projects and the possibility of unavailability of qualified and experienced candidates in member countries—consultants may be procured using international competitive bidding open to non-member countries. The need for and/or the possibility of sourcing of consultants from non-member countries is assessed as and when requested or during project appraisal in the case of projects, and during fact-finding for TA projects, to seek approvals as appropriate (see paragraph 44). The Credit and Investment Committee (CIC) periodically reports such recruitment to the Board of Directors.

38. This policy does not cover recruitment of consultants, including from non-member countries, using NDB's internal administrative budget to meet temporary staff/skill needs.

G. Other Issues

a. E-procurement

39. The use of electronic systems can benefit all aspects of procurement—advertising, issuing and receipt of bid documents, bid opening and evaluation, and publication of results of procurement—in a manner that is efficient, economical, transparent, and speedy. NDB encourages the use of e-procurement if satisfied, based on an assessment, that the e-procurement system meets the principles of good

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procurement enumerated in paragraph 3. For this purpose, NDB will evaluate (i) e-procurement procedures and capabilities in the executing agencies, (ii) appropriateness of bidding documents, (iii) readiness and general capacity of suppliers to use the system, and (iv) experience of the executing agency to undertake e-procurement.

b. Conflict of interest

40. Conflict of interest in procurement arises when individual or entity participating in or associated with the procurement process improperly influences the outcome of procurement in ways that are detrimental to the interest of clients and NDB. NDB expects all the entities and individuals involved in procurement supported by its resources—suppliers of goods and services, bidders, client and its staff—maintain high standards of integrity and have no conflict of interest with respect to the procurement process. NDB reserves the right to take appropriate action to mitigate the impact of conflict of interest.

c. Corruption and fraud

41. Procurement is particularly at risk of corrupt and fraudulent practices.⁸ High standards of ethics and integrity are expected from the clients, bidders, suppliers, contracts and NDB staff. Corruption and fraud in procurement is not tolerated and are dealt with sternly by declaring mis-procurement, denying or limiting access to future procurement to corrupt individuals and entities in accordance with NDB's anti-corruption policy, and reporting the matter to appropriate authorities for action. Due consideration will be given to International Financial Institution's (IFIs) "Unified Framework for Preventing and Combating Fraud and Corruption (2006)" while taking decision regarding entities on which sanctions have been imposed by other IFIs.

d. Mis-procurement

42. Mis-procurement is declared when (i) procurement is not in accordance with the provisions of financing agreement, particularly those relating to the procurement plan; (ii) a contract could not be awarded to the successful bidder because the bidder is no longer available due to undue and unjustifiable delay in awarding contract; (iii) a bid is wrongfully rejected; and (iv) there is evidence of corruption and or fraud. NDB does

⁸ Corruption means behavior by individuals and entities associated with procurement when they misuse their position to improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so. Fraud means influencing a procurement process or the execution of contract to the detriment of the client by misrepresenting facts. This also includes collusive practices among bidders (prior to or after bid submission) to rig bid prices to artificial and noncompetitive levels by preventing the benefit of open competition.

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not finance mis-procured goods and usually cancels the mis-procured part of its support. If mis-procurement is discovered during a post review, NDB will seek refund.

e. Dispute resolution

43. Procurement contracts should be structured to settle disputes expeditiously using arbitration processes. To resolve disputes arising from international competitive bidding, the use of international commercial arbitration processes is considered efficient. The use of analogous dispute resolution processes such as review boards and adjudicators is encouraged to resolve disputes arising out of national procurement. NDB shall in no circumstances be named arbitrator or be asked to name an arbitrator.

H. Board Approval

44. **Approval of procedure for advanced Procurement, retroactive financing, and procurement from non-member countries.** In response to a request from client due to the nature of the project, or due to co-financing arrangements, any requirement for and/or the possibility of sourcing of goods, works and services (including consulting services) using international competitive bidding open to non-member countries is to be assessed. Following the assessment, approval may be sought under Article 21 (vi) through BOD circulation with a 15-day limit. Based on BOD's approval to use international competitive bidding open to non-member countries, CIC approves any procurement of goods, services (including consulting services) and works from non-member countries and reports such procurement to the BOD periodically.

I. Procurement Guidelines

45. NDB Management issues, from time to time, detailed staff guidelines taking into account country specific features to help staff manage procurement of goods, works and services including consulting services. The Procurement Policy and the associated guidelines apply to all procurement supported by NDB operations resources.

J. Review of the Policy

46. NDB may, as needed, review and modify the policy based on the experience gained in further implementing the policy.