

American College of Construction
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**International Procurement: Problems and
Solutions in Challenging Times**
**PPP Procurement a major challenge for the
World Bank and other Multilateral**

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1. World Bank in a nutshell



Five institutions

- The International Bank for Reconstruction and Development (IBRD)
- The International Development Association (IDA)
- The International Finance Corporation (IFC)
- The Multilateral Investment Guarantee Agency (MIGA)
- The International Centre for Settlement of Investment Disputes (ICSID)

Main Objectives

- Poverty reduction and sustainable growth in the poorest countries, particularly in Africa
- Pulling together the best knowledge to support development

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2. World Bank in a nutshell (Ctd)

Measurable objectives

- Meeting the Millennium Development goals (MDGs) example: access to water

Means and power:

World Bank is a financial institution lending money to borrower countries at low interest rates:

- For middle income countries a small markup over its own lending costs
- For low income countries soft loan with a rate of less than one per cent and extended grace period for reimbursement
- Loans for low income countries are possible thanks to the periodic “replenishments” (grants) coming from affluent member countries of the World Bank

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3. World Bank participation in project lending



Size

- World Bank lending amounts to forty billion dollars a year
- one thousand five hundred significant projects per year
- Tens of thousands of contracts each year

Role

- World Bank limits its involvement to the financing of projects
- The Bank is:
 - never in charge of project implementation
 - not a party to the contract to be entered into between the State borrower and a contractor

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4. World Bank « duty » to harmonize procurement



Efficient procurement is the only mean permitting the Bank to:

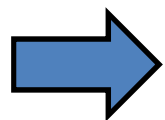
- Approve a project
- Execute a loan
- Keep some control of the use of the funds

The legal instrument for imposing World Bank procurement standards:

- The loan or credit agreement and its annexures

Non discrimination and consequences

- Lending terms between borrower countries must be based on similar procurement standards around the world



As a result World Bank has a de facto obligation to harmonize procurement rules throughout the world

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5. World Bank global leader in international procurement (other than PPP)



Two levels of harmonization: Procurement Guidelines and Standard Bidding Documents:

I. Procurement guidelines

Two main guidelines

- Good works services other than intellectual (red)
- Intellectual services (green)

A. *Overview of the Red guidelines (applicable to the contracting industry)* ***Underlying principles***

- Economy and efficiency in project implementation
- Same information and equal opportunity from bidders of all countries;
Caveat: encouraging development of domestic supply and contracting in the borrowing country
- Governance and Transparency in the procurement process

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6. World Bank global leader in international procurement (other than PPP) (Ctd)



B. Procurement methods

- Principle open competition: international competitive bidding
- Other procurement methods:
 - Limited international bidding
 - National competitive bidding
 - Shopping
 - Direct contracting

The guidelines detail the situation where the procurement methods can be used

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7. World Bank global leader in international procurement (other than PPP) (Ctd)

II. Standard Bidding documents; general

- Three main set of Standard Bidding Documents (SBD) have been developed. Their use is mandatory.
- SBD standardize and facilitate the process of preparation evaluation of the bids and contract performance.
- SBD represent in practice a high degree of harmonization. Their influence in the day to day practice extend much beyond World Bank financed projects.

SBD generally include:

- Invitation to bid
- Instructions to bidders
- Form of contract
- Conditions of contract (both general and special)
- Specifications and drawings
- Relevant technical data (including of geological and environmental nature)
- List of goods or bill quantities
- Delivery time or schedule of completion; and
- Necessary appendices, such as formats for various securities

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8. World Bank global leader in international procurement (other than PPP) (Ctd)



III. Standard bidding documents for work contracts

The World Bank has issued two sets of bidding documents for works above ten million dollars. These two sets are similar in all respects with the notable exception of the contract conditions.

- The first set includes the so-called FIDIC MDBs ie: contract conditions deriving from the UK/ACE (then FIDIC) contract forms.
- The second set includes contract conditions deriving from French standard condition (CCAG) as adapted to the international scene.
- The rationale for these two different set is based on the lessons learned after an attempt of using a single source of standard documents.

Too many differences leading to complex problems have been found between common law and civil law

- Major difference in the underlying legal systems
- Major difference in the industry practices
- Differences in employer's (and often contractor 's) organization
- Major difference in contract interpretation principles

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9. World Bank and PPP procurement Bank is not a leader



Particulars of PPP Procurement

- Procurement of PPP is a major issue throughout the world
- Many PPP projects have become projects in distress
- There is often a lack of understanding of the PPP fundamentals by the stakeholders including:
 - Public authorities
 - Private sectors
 - Banking sectors
 - Legal community

World Bank has little involvement in PPP procurement

- One general reference only: Article 3.13 of the red guidelines
 - when Concessionnaire is selected in a competitive manner World Bank procurement rules do not apply to the various contracts (contractors, suppliers etc...)
 - when Concessionnaire is not selected in a competitive manner World Bank procurement rules apply to the various contracts

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10. World Bank and PPP procurement (Ctd)



World Bank prohibits some modern procurement techniques for PPP

- Prequalification cannot be limited to some prospective bidders
- Obligation to assess qualification of prospective bidders on a pass/fail basis. All bidder with a minimum requirement accepted
- Competitive dialogue and competitive negotiation not accepted
- Award based can not be based on criteria other than the lowest evaluated bid (lowest evaluated bid to be expressed in monetary terms)

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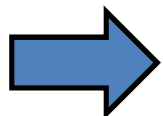
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11. World Bank and the future of PPP procurement



I. World Bank: new proactive approach to PPP development

- World Bank recognize that in most developing countries PPP is the only possibility to develop the infrastructure public services permitting to alleviate poverty
- In many of those PPP schemes the public authority needs to participate to the financing in order to attract the private sector (grant subsidies etc...)
- World Bank has launched in 2008 the sustainable infrastructure Action plan (SIAP) where tens of billions us dollars a year will be dedicated to public service infrastructures
- In the World Bank own words the condition of success of this plan is



“to crowd in the private sector in PPP”

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12. How the World Bank is approaching PPP procurement?



II. World Bank trends in PPP procurement

- No real action plan so far: the organization has some time different agenda at local and central level
- Debate is still under way on the scope of special procurement rules:

Current trends:

- Special procurement rules not felt necessary for public procurement PPP (PFI type PPP) where the project company is not in direct contact with end users and where the service is paid by the Public Authority
- Public procurement rules often felt essential when the private party is in charge of direct delivery of a public service and recovers from users' fees (concession and assimilated schemes)

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13. How other institutions deal with Public procurement for efficient PPP



Four leading institutions have started to shape procurement standards. Those efforts are essentially directed to concession agreements and assimilated schemes (on the basis that PFI type PPP could be entertained by existing procurement rules)

- **UNCITRAL** guide and model legislative provision 2004
- **The European Union:**
 - Directive on competitive dialogue
 - Green paper on PPP
 - Communication on procurement for institutional PPP
 - Directive on concession procurement underway
- **The European Investment Bank** has developed much interesting guidance document and practices for concession while complying with the flexible EC rules (similar to the French procurement rules for concession) Example: best and final offer (BAFO) concept through negotiation with two or three preferred bidders
- **UNECE:** guidebook on good governance principles on PPP 2008

14. CONCLUSION

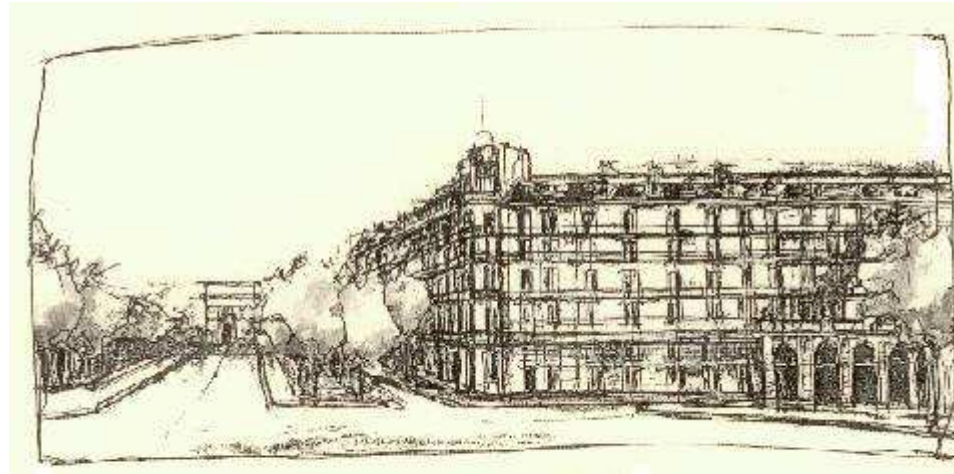


- The lessons learned internationally are:
 - 1- Most PPP and in particular concession type PPP are based on underlying common factors which need to be better appraised
 - 2- There is sufficient experience throughout the world to draft guidelines and to summarize some key documents
- Such an effort will facilitate a lot the design and effective implementation of resilient PPP at least, in the core infrastructure public sector
- The World Bank and other multilateral are welcoming exchanges on those major issues essential for economic development and poverty alleviation
- This is in fact an open invitation to ACCL to participate, if interested

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Thank you !



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