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The World Bank has for decades influenced the regulation and international liberalisation of public procurement markets. However, proliferating procurement chapters of trade agreements and cheap commercial credit flooding emerging markets, along with new development banks on the horizon, forced the Word Bank to conduct the first complex reform of its procurement policies, and to compete for its share in the market of development aid. The reform has produced new Procurement Regulations to be implemented from July 2016 onwards. New rules offer plentiful options, of how to configure procurement processes, and give borrowers much more flexibility in terms of negotiating with bidders, or applying environmental and social considerations. Subject to the bank’s consent, the new rules allow the use of borrower’s own or other development banks’ procurement rules, continuing a process initiated with the introduction of Piloting Program on the Use of Country System in 2008. By doing so, the new rules are meant to attract borrowers who could now develop their national procurement systems and be compliant with international obligations without having to use special procurement regimes for bank-financed projects.

1. Introduction

The World Bank (‘WB’), including the International Bank for Reconstruction and Development (‘IBRD’), and the International Development Association (‘IDA’), has for decades influenced the regulation and international liberalisation of public procurement markets. Followed by other multilateral development banks (‘MDBs’), the IBDR and the IDA have been imposing public-procurement-related requirements on financed projects in parallel to public-procurement-relevant trade agreements like the World Trade Organization’s (‘WTO’) Government Procurement Agreement (‘GPA’). For long, developing countries relying on MDBs’ financing, to quote Reich, found themselves in a ‘waiting room’ for the GPA. At the same time, the WB has seen itself as the ‘global leader in good procurement for development’. As to the actual numbers, in 2013, the WB added 285 new operations worth US$ 31.1 billion to its pre-existing about 1,600 operations worth US$ 173 billion, and carried out a post-review of 9,268 contracts worth US$ 7,252.50 billion, while the total value of contestable public procurement in developing economies was estimated in 2012 at least US$ 825 billion.

However, in the last two decades, WB’s dominance has been challenged. On the one hand, proliferating public procurement specific chapters of bi-

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1 Established in 1944 to grant loans to middle-income countries.
2 Established in 1960 to grant credits to the lowest-income countries.
3 First adopted in 1979 (signed in Tokyo on 12 April 1979, in force 1 January 1981 ‘GPA79’), and subsequently revised by (i) the ’GPA87’ (signed in Geneva on 2 February 1987, in force 14 February 1988), (ii) the ’GPA94’ (signed in Manakish on 15 April 1994, in force 1 January 1996), (iii) and the ’GPA12’ (signed in Geneva on 30 March 2012, in force 6 April 2014).
8 See World Bank (in 6), tables 2.1–2.3 at 3–4.
lateral and regional trade agreements modelled after the GPA have encroached upon WB’s regulatory function.\textsuperscript{10} On the other hand, the cheap commercial credit flooding emerging markets, along with the establishment of new MDBs like the Asian Infrastructure Investment Bank (‘AIB’) on the horizon, has forced the WB to evolve and compete for its market share.\textsuperscript{11} Against this background, WB’s management decided to work on its first complex procurement reform in January 2011 and launched the first round of consultations in May 2012, chiefly in order to ‘sustain its leadership.’\textsuperscript{12} The core points of the reform included (i) a shift from ‘one-size-fits-all’ to ‘fit-for-purpose’ policy and a green light for more innovative procurement methods, (ii) capacity-building by the use of country-procurement systems, (iii) risk-based management along with more focus on the quality and performance during contract-administration, and (iv) harmonisation of WB’s policies with other international instruments regulating public procurement such as the GPA, RTAs, or European Union’s (‘EU’) procurement directives.\textsuperscript{13} Eventually, new Procurement Regulations for Borrowers (‘Procurement Regulations’) were approved by WB’s Board of Directors in July 2015 and have been applied to new projects from July 2016 onwards.\textsuperscript{14}

This article seeks to review core elements of this reform. This article starts by offering background information on (i) the history of WB’s procurement policies, (ii) their harmonisation with other MDBs, and (iii) avoiding conflicts between MDBs procurement policies and trade agreement (in part II). Then, it moves on to discuss the changes brought by Procurement Regulations in terms of (i) procurement procedures and their impact on international liberalisation of procurement markets, (iii) sustainable development, (iv) other novel features, and (v) specific rules for the selection of consultants (in part III). This article concludes by trying to assess new Procurement Regulations against the goals of the reform (in part IV).

II. Background

1. Six Decades of Procurement Regulation

Since its inception, the World Bank has been required by the Articles of Agreement to “make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.”\textsuperscript{15} However, the procurement process remained unregulated until 1951 when the International Competitive Bidding (‘ICB’) was introduced in order to (i) break up previous de facto monopoly of the US suppliers, and (ii) prevent the IBRD from financing projects coming from circles with vested interests in providing equipment, services or construction works for specific projects.\textsuperscript{16} More regulation came in 1964 with the Guidelines on the Procurement of Goods, Works and Non-consulting Services (‘General Guidelines’ also known as the ‘red book’) regulating the ICB, followed by the separate Guidelines on Selection and Employment of Consultants (‘Consultant Guidelines’ also known as the ‘green book’) first issued in 1966.\textsuperscript{17}

Yet in 1956, the WB ‘tied’ granted loans by limiting eligible bidders to nationals of the IBRD (plus Switzerland) and continued to finance mostly large projects subjected to the ICB throughout the 1970s.\textsuperscript{18} Suppliers and contractors from Western Europe, the

\textsuperscript{10} See: World Bank (n 9), points 37-40 at 15-16.


\textsuperscript{12} See: World Bank (n 9), 1 point; World Bank (n 5).

\textsuperscript{13} See World Bank (n 9), para 4 at v; World Bank (n 9), point 6, 2nd ital 10, point 8 at x and para 48 at 20; point 39 at 16, point 41 at 17, point 42 at 18-19; See also: J Jaeger, ‘World Bank Tries Procurement Reform to Cut Fraud’ (2015) 12(143) Compliance Week 16; B Swick, H-J Priess and Ch R Yukins, ‘International Procurement Developments in 2013: Structural Reforms to International Procurement Laws’ GW Legal Studies Research Paper No. 2016-6, (Washington 2016), 8-9.


\textsuperscript{15} See US Department of Treasury, ‘Articles of Agreement. International Bank for Reconstruction and Development’ (Bretton Woods 1 to 22 July 1944, as last amended 27 June 2012), section 5.b. See also World Bank, ‘Articles of Agreement. International Development Association’ (Washington effective 24 September 1960), section 1.g.

\textsuperscript{16} See: R R Hunja, ‘Recent revisions to the World Bank’s procurement and consultants selection guidelines’ (1997) 6 Public Procurement Law Review 217; World Bank (n 9), points 3 and 4 at 2.

\textsuperscript{17} See: Hunja (n 16), 221; World Bank (n 9), point 10 at xi, points 3, 4 at 2; S Williams, ‘The Debarment of Corrupt Contractors from World Bank-Financed Contracts’ (2007) 36(3) Public Contract Law Journal, 277, 279.

\textsuperscript{18} See World Bank (n 9), point 4 at 2.
United States, Canada and Japan accounted for 62% IBRD’s disbursement between 1966 and 1970, and for 80% of IDA’s disbursement in 1971.\textsuperscript{19} However, since 1966, the World Bank has allowed some forms of domestic procurement in the case of smaller contracts and even preferences for domestic suppliers and contractors.\textsuperscript{20} This led, in the 1980s, to the development of alternative procurement methods like the National Competitive Bidding (‘NCB’) or ‘shopping.’\textsuperscript{21} Such smaller contracts were subjected only to a limited post-review by the WB staff\textsuperscript{22} whereas the largest contracts subjected to the ICB continued to be approved \textit{ex ante} and, since 1980s, also had to be based on contract-templates and be accompanied with standard bidding documents (‘SBD’).\textsuperscript{23}

An increasing reliance on local procurement (combined with WB’s new focus on the efficiency and integrity of borrowers’ public expenditures, public-sector management and institutions) led to the introduction of Country Procurement Assessment Reviews (‘CPAR’), first in the 1980s only for countries with ‘weaker’ procurement systems, and for all borrowers since 2002.\textsuperscript{24} This went in tandem with the provision of mechanisms for (i) the debarment of suppliers/contractors in the case of corruption initially narrowly defined as bribing in 1996 (since 2004 also bid-rigging, collusion, and price-fixing etc.), and (ii) the cancellation of related WB’s loans for such misprocurement.\textsuperscript{25} WB guidelines were constantly refined in communication with WB’s major borrowers (last time in July 2014). However, in the eyes of many, guidelines became overly complicated while, at the same time, remained conservative like by disallowing negotiated procurement methods.\textsuperscript{26} As such, WB’s procurement rules could not help develop efficient country procurement systems, instead often force borrowing countries to use separate rules for WB-financed projects and more flexible provisions for other procurement (a practice known as ‘ring-fencing’).\textsuperscript{27} Thus, in order to prevent ring-fencing, WB’s executive directors agreed to launch works on the use of country systems in September 2004 and approved a piloting program in April 2008, which was in force until the implementation of the discussed reform.\textsuperscript{28}

2. Harmonisation with other MDBs

Meanwhile, since 1999, major MDBs have taken steps to harmonise their procurement policies under the WB’s leadership and under the coordination by the Development Assistance Committee (‘DAC’) of the Organization for Economic Co-operation and Development (‘OECD’), so far resulting among others in (i) alignment of procurement guidelines, (ii) adoption of a number of harmonised SBDs, and (iii) creation of cross-debarment mechanism among the MDB.\textsuperscript{29} In line with the 2003 Johannesburg Declaration and 2005 Paris Declaration on Aid Effectiveness, major MDBs and the DAC have also jointly worked toward common methods for assessing country procurement systems and toward untying development aid.\textsuperscript{30} In 2006, the Joint Venture for Procurement

\begin{flushleft}
19 See ibid., point 24 at 10.
20 See ibid., point 4 at 2.
21 See ibid., points 4-6 at 2, point 6 at 3.
22 See ibid., points 6 at 3.
23 See ibid., point 9 at 3. See also: K V S K Nathan, ‘World Bank Procurement Sacred Cow or Case of Mad Cow Disease’ (2001) 2(4) The Journal of World Investment & Trade, 713, 726; World Bank (n 7), 716.
24 See World Bank (n 9), point 11 at 4, 5.
25 See ibid., point 13 at 5; 6; Williams (n 17), 80.
\end{flushleft}
chaired by the DAC and the WB drew up the Methodology for Assessment of National Procurement Systems (MAPS), first tested on 22 countries, and then used by the WB in its CPARs and in the abovementioned WB’s piloting program on the use of country systems.\textsuperscript{31} The WB’s loans were untied in 2004 when both General Guidelines and Consultant Guidelines ceased to restrict the eligibility for bidding to nationals of WB members.\textsuperscript{32} Other MDBs have generally followed those developments and have drawn upon WB’s CPARs and MAPS, as well as have largely untied their loans with the notable exception of the Asian Development Bank.\textsuperscript{33} Most recently, even the AIIB, initially believed by many to fend off from other MDB’s harmonisation efforts, pledged to pattern its procurement policies on WB’s documents, use MAPS and to offer untied loans from the beginning of its operations (since January 2016).\textsuperscript{34}

3. Conflicts with Trade Agreements

Finally, it must also be noted that in the case of potential conflicts, public-procurement-related trade agreements have always given precedence to WB’s and other MDBs’ procurement rules. For example, the most recent text of the GPA provides that the GPA does not apply “under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Agreement,”\textsuperscript{35} and similar provisions can be found in procurement chapters of RTAs or in EU’s procurement directives.

Prima facie, such straightforward conflict-of-laws rules might seem very favourable for the WB and other MDBs. However, one could also claim that, in the era of public procurement-liberalising RTAs proliferating among countries borrowing from MDBs, such rules only add to the problem of ring-fencing and thwart WB’s efforts to support development of borrowers’ procurement capacity.\textsuperscript{36} Developing countries have actually found themselves between the devil and the deep blue sea, having to comply with (i) specific rules for WB-financed projects on the one hand, and (ii) different provisions of GPA-modelled RTAs, affecting such countries’ national procurement systems, on the other. And this explains well why, despite clear conflict-of-laws rules in place, the WB placed the alignment of its new procurement rules with the GPA on the agenda of the reform.\textsuperscript{37}

III. New Regulations

1. General Background

The Procurement Regulations have replaced both General Guidelines and Consultant Guidelines.\textsuperscript{38} In addition, as a part of the new procurement framework, previous ‘operational policies’ and ‘bank procedures’ (internal documents addressed to the WB’s staff)\textsuperscript{19} have been replaced by Procurement Policy, Procurement Directive, and Procurement Procure\textsuperscript{40} which altogether clarify how the WB’s staff shall implement the Procurement Regulations.\textsuperscript{41}

The absolute highlight of the New Regulations is that, unlike previous guidelines, they widely facilitate the use of alternative procurement arrangements (‘APA’).\textsuperscript{42} Subject to the WB’s consent, APAs may include procurement rules of (i) borrowers’ agencies or entities, replacing the piloting program

\textsuperscript{31} See World Bank (in 9), para 64 at 29; See also references made in footnote 28, point 5, 1st tier.


\textsuperscript{35} See GPA12, Article II:3(e)(iii).

\textsuperscript{36} See references made in footnote 27.

\textsuperscript{37} See references made in footnote 13.

\textsuperscript{38} See World Bank (in 14), Annex 1 – Summary of main changes between current Procurement Guidelines and proposed procurement Regulations for Borrowers, point 1.


\textsuperscript{40} See respectively, World Bank (in 14), Annex C, Annex D and Annex E.

\textsuperscript{41} See generally, World Bank (in 14), Annex G – Comparison between OP 11.00 and new Procurement Framework; Annex H – Comparison between BP 11.00 and New Procurement Framework.

\textsuperscript{42} See World Bank (in 14), point 3 at 1-2.
on the use of country systems, or (ii) other MDBs or bilateral aid agencies, which was not possible under the previous system.  

Procurement under APAs still needs to comply with (i) well-elaborated WB’s ‘core procurement principles’ of value-for-money, economy, integrity, fit-for-purpose, and (iii) the Procurement Regulations’ governance-related provisions on accountability, conflict of interests, ban on multiple proposals, eligibility of bidders, non-compliance with loan agreements, and handling complaints.  

Moreover, in the case of WB’s guarantees and procurement financed through WB’s intermediaries, Procurement Regulations do not apply at all. This all implies that the role of the detailed procurement procedures offered by the Procurement Regulations will be diminished compared with previous guidelines, and will largely depend on the scope of APAs’ application.

2. Procurement Methods and International Liberalisation

Various purchasing procedures under Procurement Regulations need to be looked at along with their impact on the international liberalisation of public procurement markets. This is because the approach to liberalisation, since the introduction of the ICB, has always been a built-in feature of specific procurement methods, now renamed as market approach options (‘MAO’). And this is all the more true given the attempts to align Procurement Regulations with the provisions of the GPA, the purpose of which has been to liberalise procurement markets. In very simple terms, the GPA opens ‘covered’ procurement (i.e. the procurement of listed goods and services by listed agencies or entities, and above high value-thresholds) to international competition by imposing requirements of national treatment, most-favoured-nations clause, a ban of offsets, and a ban on discrimination against foreign-owned local establishments. For covered procurement, the GPA favours open tendering and, only under certain conditions, allows less competitive or negotiated methods, including even direct sourcing whereby procurers might only covertly and greater legem prefer domestic to foreign content.

In contrast, previous General Guidelines favoured the ICB which, among others required international advertising, application of SBDs, and the use of (i) English, French, or Spanish standards determined by the International Standardization Organisation, and (vi) fully convertible currencies. Nonetheless, the ICB also allowed mentioned domestic preferences, which included price penalties against (i) foreign goods of not more than 15%, and (ii) foreign contractors of not more than 7.5%, the latter only applicable to projects realised in the least developed countries. The General Guidelines also allowed a number of other procurement methods including (i) modified ICB for programmes of imports and procurement of commodities, (ii) limited international bidding (‘LIB’) if the pool of likely bidders was limited, whereby procurers could directly invite bids, (iii) the NCB in the case contracts unlikely to attract foreign suppliers contractors for the reasons such as meagre procurement value, labour-intensive character of procured works, or lower domestic cost of procured content against its cost in international markets, (iv) ‘shopping’ in the case off-the-shelf products (not more than US$100,000) or basic civil-engineering works (not more than US$200,000), or (v) direct contracting for extensions of existing contracts, supplementary supplies, or for purchases in emergency. Importantly, interested foreigners

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43 See WB Procurement Regulations, point 2.3; note 39, OP 11:00, points 9 and 10.
44 See WB Procurement Regulations, points 1.3 and 2.4.
45 See ibid., point 2.1, World Bank (n 14), point 3 at 1-2.
46 See WB Procurement Regulations, point 7.1, Table 1.
47 See references made in footnote 13.
48 See GPA 12, Article IV.1.
49 See ibid.
50 See ibid., Article IV.2.
51 See ibid., Article IV.6.
52 See WB General Guidelines 2014, point 1.3.
53 See ibid., point 2.7.
54 See ibid., point 2.12.
55 See ibid., point 2.15.
56 See ibid., 2.19.
57 See ibid., 2.28.
58 See references made in footnote 20.
59 See WB General Guidelines 2014, Appendix 2 points 5 and 8 and footnote 82 to point 8.
60 See respectively, ibid., points 2.66 and 2.68.
61 See ibid., point 3.2.
62 See ibid., point 3.3.
63 See ibid., point 3.5.
64 See ibid., point 3.7.
could participate in the NCB but under the conditions applicable to national bidders, including having to (i) comply with local procurement rules and local bidding documents, and (ii) use local language and currency.\footnote{See ibid., points 3 and 3.4.}

The Procurement Regulations have brought complicated, yet largely editorial modifications. Domestic preferences have remained in place (except for procurement related to the development of industrial plants)\footnote{See WB Procurement Regulations, point 5.3.} despite the fact that (i) preferences’ margins were determined randomly, and (ii) preferences were used only occasionally and, even if they were, it had no material effect on the outcome of the bidding process.\footnote{See Nathan (n 23), 720; Ch Fletcher and A Myrna, ‘Background Paper: Review of the World Bank’s Procurement Policies and Procedures: The Use and Impact of the Bank’s Policy of Domestic Preferences (World Bank, July 2012) 9, 5.} Previous procurement methods, the ICB included, have been (i) replaced by Approved Selection Methods (‘ASM’) and Approved Selection Arrangements (‘ASA’) determining details of procurement process, and (ii) decoupled from approaches international liberalisation now determined by mentioned MAOs.\footnote{See footnote 46.}

For the sake of good record, the ASMs include (i) request for proposals, (ii) request for bids, (iii) request for quotations, and (iv) direct selection.\footnote{See respectively, (i) WB Procurement Regulations, points 7.3.-7.7, (ii) ibid., points 7.8.-7.9, (iii) points 7.10, and (iv) ibid., points 7.11-7.13.} The ASAs include among others (i) competitive dialogue, (ii) public-private partnerships, (iii) commercial practices, (iv) e-auctions, (v) imports, (vi) commodities, and (vii) community driven development.\footnote{See respectively, (i) ibid., points 7.37-7.39, (ii) ibid., points 7.40-7.42, (iii) ibid., point 7.43, (iv) ibid., point 7.48, (v) ibid., point 7.49, (vi) ibid., point 7.50, and (vii) ibid., point 7.51.} In addition, core MAOs include (i) open competition, as a preferred MAO, (ii) limited competition only allowed if “there are only a limited number of firms or there are other exceptional reasons that justify departure from open competitive procurement approaches,” (iii) international competition preferred for complex, high-risk contracts above threshold set by the WB, and (iv) national competition allowed for contracts unlikely to attract foreign competition.\footnote{See respectively, (i) ibid., point 7.14, (ii) ibid., points 7.15, (iii) ibid., point 7.16, and (iv) ibid., point 7.1 ibid.} On top of that, procurement can be also be configured with ‘particular types of contractual arrangements’ including (i) framework agreements, or (ii) performance based contracts whereby “the payments are made for measured outputs instead of inputs” like, for example, in the case of contract for rehabilitation and maintenance of roads within specified periods.\footnote{See respectively, (i) ibid., points 7.54-7.55 and Annex XV, (ii) ibid., point 7.57 and points 2.4-2.5 to Annex VII.}

The Procurement Regulations now give borrowers a wide leeway in matching specific ASMs and AOAs with specific MAOs, subject only to obvious limitations such as for example that (i) direct selection (an ASM) cannot be matched with any MAO, or (ii) community driven development (an ASA) cannot go in tandem with international competition.\footnote{See: World Bank (n 9), point 95 at 46; World Bank, ‘Review of Operational Policy Waivers’ (25 July 2011), 76236.} Unlike the General Guidelines, the Procurement Regulations accept interactions between procurers and bidders like by allowing (i) competitive dialogue (an ASA) when procurers cannot define technical specifications or relevant legal and financial arrangements upfront, (ii) multi-stage procurement in the case of request for proposals (an ASM) if a project involves complex design works, (iii) free negotiation following bid evaluations, yet only in the case of contracts open to international competition and subjected to WB’s prior review, or even (iv) commercial practices so long as they are consistent with core procurement principles.\footnote{See: World Bank (n 14), Annex I, points 31, 33 and 34; WB Consultant Guidelines 2011, points 3.14 and 3.6.}
requirements of international competition related to currencies, languages, publicity or the use of SBDs are not unlike requirements previously imposed by the ICB. The rule that “if foreign firms wish to participate in open national competitive procurement, they are allowed to do so on the terms and conditions that apply to national firms” repeats an identical solution which was also previously applicable to the NCB. Finally, domestic preferences can still not be applied to national competition (just like they could not be previously applied to the NCB), and can only be matched within international competition combined with various AOMs/AOAs (just like previously they could only be matched with the ICB).

3. Sustainable Procurement

The actual revolution in WB’s procurement policies can be seen in the recognition of procurers’ right to integrate non-commercial considerations (green, social) at various stages of the procurement process. The WB’s staff was traditionally strongly reluctant to accept any such considerations but the reform had to embrace the developments in the EU directives and the GPA since the late 1990s.

In short, in 1998, the European Commission first issued a procurement-related sui generis communication which stated that it was “necessary to lay down clear guidelines to purchasers on how they handle environmental and social criteria can be taken into account in their contract award procedures, while complying with Community law, particularly as regards transparency and non-discrimination and the public procurement rules.” Subsequently, the Commission’s stance was confirmed in the(i) Concordia case decided in 2002 referring to the 1998 Communication, and (ii) fourth generation procurement directives (passed in 2004) which referred to Concordia and expressly allowed, among others, to support sheltered employment or protect environment and labour rights. Meanwhile, negotiations on the text of GPA12 were underway and most likely also on the EU’s initiative; the GPA’s 12 text (agreed already in 2006) allowed incorporating environmental considerations in technical specifications and in evaluation criteria.

The Procurement Regulations go even further providing that “if agreed with the Bank, Borrowers may include sustainability requirements in the Procurement Process, including their own sustainable procurement policy requirements where they are applied in ways that are consistent with the Bank’s Core Procurement Principles.” Sustainability requirements can be applied at various stages of procurement, including pre-qualification of firms, functional/technical specifications, evaluation criteria, or contract terms and conditions. Moreover, Procurement Regulations also indicate that the “[t]he Borrower may adopt international sustainability standards covering a wide range of product and service groups.” And this, interestingly, is in line with developments in the EU’s fifth generation directives (to be implemented 2016-2018) which list a number of almost universally accepted agreements, to which suppliers/contractors have to conform regardless of the place of their operations.

4. Other Relevant Modifications

Other noteworthy changes to WB’s procurement policies defy easy categorisations. To begin with the subject of procurement, the Procurement Regulations clearly allow a procurement of used and leased
assets while previously only WB’s internal operational policies addressed this issue. Next, at the stage of screening bids, procurers can now identify abnormally low prices and require higher performance-security or reject bids in the case of unsatisfactory clarifications by the bidders, which was not possible before. Regarding evaluation criteria, the WB emphasises allowing procurers to factor-in life-cost, risk or innovation on top of the initial cost of procurement. However, under the previous General Guidelines, procurers could similarly identify lowest-cost bids based on factors such as delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, or safety. An actual novelty in the evaluation process can rather be seen in the introduction of two-envelope system, assuring that an assessment of bidder’s qualifications and technical offers (first envelope) would be unaffected by proposed prices (second envelope), which was previously only used in the selection of consultants. Finally, the Procurement Regulations have eventually, at least partly, regulated the timing of procurement process by requiring (i) giving firms 20 or 30 days for the bids’ preparation in the case of respectively national and international competition, and (ii) a 10 days’ standstill-period after a notification of intention to award a contract before the actual award, in the case of large contracts subjected to WB’s prior review.

5. Consultant Guidelines

Although consultant-specific provisions have now been merged with the general provisions, the Procurement Regulations still include two largely separate regimes whereby consultant-specific provisions, in principle, continue to consist in selecting consultants among shortlisted firms. Compared with the previous Consultant Guidelines, the Procurement Regulations now define more concisely the term ‘consultant’ as being ‘a firm (acting either in its individual capacity or as part of a joint venture) or an individual that provides specialized advice or services for limited amounts of time without any obligation of permanent employment.’

The Consultant Guidelines tangle various procurement methods with specific criteria as regards the consultancy’s assessment. The quality and cost-based selection (‘QCBS’) used to be a preferred two-stage method of selecting invited short-listed potential consultant, and included (i) cost-blind assessment of consultants’ quality, followed by (ii) equally-weighting assessment of price proposals. The Consultant Guidelines also allowed (i) quality-based selection (‘QBS’) in the case of complex tasks such as engineering design for large infrastructural projects or policy-studies of country-wide importance whereby the final price was negotiated only with the bidder who submitted highest-rank-proposal in terms of its merits; (ii) selection under fixed budget (‘FBS’) in the case of uncomplicated and precisely defined consulting tasks; (iii) least-cost selection (‘LCS’), only applicable to simple tasks like non-complex engineering design or audits, (iv) selection based on the consultants’ qualifications (‘QCS’) in the case of small assignments or emergency; and (v) single source selection in exceptional cases.

Like in the case of new general rules, the Procurement Regulations have replaced previous procurement methods with a number of MAOs (identical with general rules) and consultant-specific ASMs and ASAs. The new ASMs in essence substitute the previous most important procurement methods and now include (i) QCBS, (ii) FBS, (iii) LCS, (iv) QBS, (iii) ‘CQS’, and (v) direct selection only applicable to individual consultants. AOAs additionally include among others (i) commercial practices, (ii) non-prof-
it organisations, or (iii) banks. On top of that, framework agreements can now be also used for employing consultants, which was not possible under the Consultant Guidelines. All ASMs and APAs need to be matched with an open MAO, except for (i) QCS which can also go in tandem with a limited MAO, and (ii) direct selection.

The application of international and national MAOs also to consulting services has slightly improved their international liberalisation. Similar to the Consultant Guidelines, the new consultant-specific rules do not allow any price penalties against foreigners, instead allowing other forms of discrimination. Under the Consultant Guidelines, the WB could agree to shortlist only domestic consultants if they were available at a competitive price and international competition was prima facie not justified. In contrast, under the Procurement Regulations, similar to the new general rules, the national MAO allows to indirectly discriminate against foreigners (like by using local language or advertising in local media only) but disallows to preclude foreigners from competing for contracts.

Altogether, after the reform, slightly modified consultant-specific provisions are none the closer to aligning with other instruments regulating public procurement markets modelled after the GPA. However, consulting services related to research and development are expressly exempted from the GPA while other consulting services are simply poorly covered in annexes to the GPA or RTAs’ procurement chapters. Even in the case of EU’s single market, no strict procurement rules have applied to services related to legal advice education, recreation, culture, health or sport, which somewhat overlap with the WB’s concept of consulting services. One could therefore claim the alignment of WB’s consultant-specific rules with the GPA might not be necessary. Seeing that procurement of such services is usually subjected to very limited regulation, the risk of conflicts of rules, ring-fencing of consultant-specific provisions, and of undermining WB’s efforts to develop borrowers’ procurement capacity, has been minimal.

IV. Assessment

The WB seems to have come away unscathed from the reform which it had to carry out under changing circumstances of development-aid business, in order protect its market share. The reform has produced the extremely embroiled and overdone Procurement Regulations but one could see a clear method in this ‘madness’. The Procurement Regulations offer plentiful options of how to configure procurement processes (plus APAs if those options were insufficient), in order to attract borrowers who could now develop their national procurement systems and be compliant with international obligations without having to ring-fence various procurement regimes for various purposes. By doing so, the WB is continuing a process initiated by the introduction of the piloting program on the use of country system, the actual purpose of which could be far from the declared capacity-building in borrowing countries. Namely, in the course of works on the piloting program, WB’s insiders were to admit that the WB was ready to take part in creditors’ race to the bottom in terms of standards, only in order to ‘stay relevant’.

Indeed, the reform has clearly met the expectation of WB’s best clients that derive from vibrant middle-income emerging economies who, during consultations, wanted less complicated rules especially for low-value contracts. Less rigid rules and more re-
liance on country systems were not well received by multinational firms and, surprisingly, by some low-income countries whereby the latter have argued that (i) using country systems without prior proper capacity-building might only add to the problems of fraud and corruption, and reduce competition, and (ii) the WB should not blend its capacity-building-related efforts with its procurement policy sensu stricto.\textsuperscript{110} In turn, big business has called for keeping one system under WB’s strong leadership at least in the case of the highest-value contracts because it has not been enthusiastic about having to familiarise with a number of procurement systems along with their diversified approaches to quality and sustainability problems in place of the previous universal lowest-price paradigm.\textsuperscript{111}

Interestingly, the outcomes of the reform might be more challenging for bidders from emerging economies and multinationals relying on offshoring their production than for businesses located in mostly-developed economies which offer high-valued and technology-based works and goods. Indeed, the times are gone when G7 countries still dominated supplies for WB-financed projects, or when WB’s procurement policies were believed to discourage bidders from establishing their permanent presence in borrowing countries.\textsuperscript{112} In the last two decades, the business of WB-financed contracts has been virtually taken over by locally established subsidiaries of multinationals or by firms originating from BRICS countries whereas high-valued, technology-based solutions have been driven out of the market because of WB’s lowest-price paradigm and aversion to negotiated procedures.\textsuperscript{113} The WB’s new more flexible stance on negotiations, commercial practices and sustainability considerations might at least partly reverse this trend.

\textsuperscript{110} See Feedback in 109), 8. In any case, all consulted countries agreed that WB’s procurement policies, whatever they would be, should be harmonised with policies of other MDBs and other international instruments regulating procurement. See ibid, 8, 13.
\textsuperscript{111} See World Bank (n 5), point 8 at 2; Lauger (n 13), 17.
\textsuperscript{112} See ’G7 suppliers dominate World Bank procurement’ (1998)(322) International Trade Finance 3; Nathan (n 23), 716.
\textsuperscript{113} See World Bank (n 9), point 6m first tire at ix, points 31-36 at 12-15.