

## **Report on Asian Development Bank Reform Progress**

Consistent with Section 2126 of the Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10), the Department of the Treasury is providing the following report describing the manner in which the Asian Development Bank (AsDB) is making substantial progress in the following areas.

### ***(1) Implementing procurement guidelines that maximize international competitive bidding in accordance with sound procurement practices, including transparency, competition, and cost-effective results for Borrowers.***

As reported previously, the AsDB's Procurement Guidelines provide for maximizing the use of international competitive bidding in the projects that it funds, including through: (1) strong international advertising requirements, (2) endorsement and use of open competition in the contracting process; and (3) mandatory use of publicly available standard bidding documents for international competitive bidding. In 2011, 68.6 percent of Bank-financed procurement budget expenditures were subject to international competitive bidding, compared to 65.1 percent in 2010 and 69.8 percent in 2009. When procurement budget expenditures subject to national competitive bidding are added, over 90 percent of 2009-2011 procurement budget expenditures were subject to either international or national competitive bidding. However, whether these project procurement budget expenditures are subject to international competitive bidding, national competitive bidding or a different method, the procurement must be open to all Bank member countries, including the United States.

Separately, the AsDB is implementing a procurement accreditation program to build staff procurement expertise, including by strengthening the procurement supervision capacity of Resident Missions.

### ***(2) Providing greater public disclosure of loan documents, with particular attention to persons affected by AsDB projects.***

The AsDB recently concluded a review of its Public Communications Policy, and made a number of modifications that became effective in April 2012. These modifications improved upon a policy that already followed a presumption in favor of disclosing all information about Bank-assisted operations (subject to very limited exceptions). The modification included significant improvements that have made core information about the Bank's operations easier to find and interpret, and should be particularly helpful for persons affected by Bank-assisted projects. Key elements include:

- The AsDB will now release the majority of Board documents (e.g., loan proposals for sovereign projects, regional cooperation strategies and country partnership strategies) to the public more quickly, disclose summaries of the Board discussions on Country Partnership Strategies, and narrow the scope of some categories of information that are exempt from disclosure.

- Information on specific projects and programs will now be made available to affected persons at each stage of the project or program in a manner, form, and language understandable to them and in an accessible place. A project/program focal point will be designated for regular contact with affected persons and other stakeholders. These changes were made to allow affected persons and other stakeholders to provide meaningful inputs into project/program design, preparation, processing and implementation.

***(3) Implementing best practices in domestic laws and international conventions against corruption for whistleblower and witness disclosures, and protections against retaliation for internal and lawful public disclosures by AsDB employees and others affected by AsDB operations who report illegality or other misconduct that could threaten the AsDB's mission, including best practices for legal burdens of proof; access to independent adjudicative bodies; and results that eliminate the effects of proven retaliation.***

As reported previously, the AsDB reformed its whistleblower policy in December 2009, and it is consistent with best practices in anti-corruption and witness protection. Under this policy, any individual who reports a suspected integrity violation or misconduct can remain anonymous and has numerous protections against retaliation. In instances where retaliation is alleged, the Bank's policy provides recourse for the whistleblower to transfer to another office, obtain security protection, or seek other reasonable measures. Furthermore, retaliation against those who in good faith bring allegations of unsatisfactory conduct or misconduct to the attention of Management, or who avail themselves of the Bank's grievance procedures, is considered misconduct that can lead to disciplinary measures.

Since the last report, we have sought information on the implementation of this policy from AsDB staff and management. The Bank notes that, over the last five years (2007-2011), its Office of Anticorruption and Integrity (OAI) received, on average, about 200 registered complaints each year. During this period, there were five specific requests for "whistleblower protection," and retaliation was not at issue in any of these matters.

In one matter, the ensuing investigation revealed that the allegations made by the employee were unfounded. In another matter, an employee who was unhappy with his superior requested whistleblower protection. However, because the employee's complaint did not allege that adverse action was taken against him in response to his reports of misconduct, this employee did not qualify for whistle-blower protection. In two other matters, the employees who made the request resigned from the AsDB before the requests could be decided upon. In the fifth matter, an employee requested whistleblower protection after being terminated for sending allegedly malicious messages to Bank Management and Board members. This matter has been appealed to the Appeals Committee (consisting of Bank staff serving under one year appointments), and referred to the Administrative Tribunal by the former employee.

Thus far in 2012, OAI has received two further cases where information concerning suspected misconduct or integrity violations is or might be covered under the Whistleblower Protection Policy. In neither of these two cases has the involved staff member specifically asked for whistleblower protection, but all allegations referred to the OAI by staff are registered as

whistleblower cases. In these ongoing cases, no concerns about retaliation have as yet been raised.

***(4) Ensuring that the Investigations Office, Auditor General Office, and Evaluation Office are functionally independent, free from interference when determining the scope of investigations and audits, performing work and communicating results, and regularly report to the AsDB's board of directors and, as appropriate and in a manner consistent with such functional independence of the Investigations Office and the Auditor General Office, to the AsDB President.***

Since the last report, additional steps have been taken to strengthen the Office of the Auditor General (OAG) and buttress its independence. For example, as required under the new Terms of Reference approved by AsDB Management and endorsed by the Audit Committee of the Board (ACB) in the fall of 2011, the Auditor General confirmed OAG's organizational independence in its Annual Report to the ACB. In addition, the external quality assessment, which was done at the strong urging of the United States, was completed by the peer review team from the Institute of Internal Auditors. The assessment report was generally positive, but made a number of useful recommendations that the OAG is addressing through its internal strengthening program. These recommendations included such things as improving risk assessment and documentation processes, expanding fraud-related training, and expanding the use of computer-assisted audit techniques. These actions will be reviewed by the ACB as they are implemented. In addition, the Office of Anticorruption and Integrity (the "Investigations Office" in the legislation) continues to report quarterly to the ACB.

***(5) Requiring that each candidate for adjustment or budget support loans provide an assessment of reforms to budgetary and procurement processes to encourage transparency, including budget publication and public scrutiny, prior to loan or grant approval.***

As reported previously, prior to seeking Board approval for budget support (i.e., policy-based) loans, the AsDB prepares risk assessments and risk management plans for potential borrowers. These assessments and plans analyze financial management systems, with particular emphasis on the strength of procurement processes and anti-corruption controls.

In addition, under the recently-revised Public Communications Policy, the full governance risk assessments (which cover the above-mentioned risk assessment and risk management plans) that are used to prepare country partnership strategies are made public, subject to limited exceptions. In those instances where a limited exception is warranted, a summary of the governance risk assessment will be disclosed. Moreover, those elements of a budget support recipient's development expenditure program that are supported by AsDB budget support are disclosed in the development policy letter that recipients must submit to the Bank detailing policy reforms to be facilitated by the budget support. Further, the indicative costs of these elements are presented in the Report and Recommendation of the President for the specific budget support loan.

Under the revised Public Communications Policy, the AsDB now posts the Report and Recommendations of the President relating to each budget support loan on its website at the time of its circulation to the Board, subject to concurrence of the borrowing country regarding the

simultaneous disclosure. If the borrowing country does not consent to such early disclosure, the Report and Recommendation of the President will be posted on the AsDB website upon its approval by the Board.

***(6) Ensuring that the AsDB's Accountability Mechanism provides transparency and protects local residents affected by AsDB projects.***

The AsDB's accountability mechanism acts as a forum through which individuals affected by AsDB-assisted projects can appeal if they have concerns regarding the Bank's compliance with its operational policies and procedures. The mechanism provides a formal channel for local communities and affected persons to request an independent review of alleged policy violations in the formulation, processing or implementation of Bank-assisted projects. Results of compliance reviews are provided to the affected persons and are posted on the Bank's website.

Since the last report, a major development is the Board of Directors' approval of a revised Accountability Mechanism policy, which took effect in late-May 2012. This revised policy incorporates several positive changes, including: (1) a more streamlined process for receiving and reviewing complaints that includes direct access for project-affected persons to the compliance review function (rather than being required to first complete a mediation process), which will result in improved access and ease-of-use for those persons; (2) measures to increase awareness of the Mechanism in developing member countries; and (3) increased Board oversight and reduced Management influence over compliance review panels. Between the date this revised policy went into effect and end-June 2012, no new Compliance Review Panel (CRP) complaints were filed; the CRP investigates alleged noncompliance by the AsDB of its operational policies and procedures that has caused, or is likely to cause, direct and material harm to project-affected people. During this same period, four new complaints were filed with the Office of the Special Project Facilitator (OSPF); the OSPF performs a problem-solving function by assisting people who believe they have been adversely affected by an AsDB-assisted project, regardless of whether AsDB operational policies and procedures have been violated. Three of these four new complaints were deemed ineligible, and the fourth was under eligibility review at end-June.

***(7) Making publicly available external and internal performance and financial audits of AsDB projects on the AsDB's website.***

As reported previously, the AsDB makes its performance assessments available through its annual Development Effectiveness Review, which uses four broad indicators to measure the external and internal performance of the AsDB. These indicators include project design quality, measures of poverty reduction, and organizational effectiveness. This information is available on the AsDB's website.<sup>1</sup>

As reported previously, the AsDB does not develop its own stand-alone financial audits of projects, but the Bank does require borrowers to submit annual audited project financial statements under project loan covenants.

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<sup>1</sup> <http://www.adb.org/documents/series/development-effectiveness-review>

Under the revised Public Communications Policy that took effect in April 2012, the AsDB will begin posting on its website the full annual audited project accounts for sovereign projects. As this new disclosure requirement applies to projects whose loans became effective after the revised Public Communications Policy went into effect in April 2012, and given the time required for project processing and for loans to become effective (generally 90 days after they are approved by the Board), the AsDB expects that the earliest that these audited project accounts would begin being posted is April 2013. This additional disclosure brings Bank practice into line with that at the World Bank and the Inter-American Development Bank (IDB).