

No. 9/6/2010-FBIV
Government of India
Ministry of Finance
Department of Economic Affairs
(Multilateral Institutions Division)

North Block, New Delhi
Dated: Apr 17, 2018

CIRCULAR

Subject: Advisory services by World Bank/ International Finance Corporation/ Asian Development Bank, other multilateral development banks and their affiliates - procedure for procurement by Government entities, including public sector entities, in India regarding.

This is in supersession of the Department of Economic Affairs' Circular of even number dated May 15, 2014 on the above mentioned subject. The World Bank/ International Finance Corporation/ Asian Development Bank, other Multilateral Development Banks (MDBs) and their affiliates, and some bilateral lending agencies (hereinafter collectively referred to as 'MDB-Advisory Services Agency(ies)' [MDB-ASA], unless otherwise indicated), offer advisory services - on payment basis or without payment - and engage with various Central and State Government Departments, Public Sector Units and other entities (hereinafter collectively referred to as 'Indian Procuring Entity(ies)', unless otherwise indicated). Since these Advisory Services are intended to achieve various developmental and transactional objectives and are offered/ delivered by MDB-ASA, which have official administrative relationship with India through the Department of Economic Affairs (DEA) and there are different cost and developmental implications, there is a need to regulate procurement of such services.

Classification of Advisory Services

2. For appropriate regulation, Advisory Services shall be classified as under:
 - i. All Advisory/ Technical Services provided for in and delivered as part of an approved loan project [Loan Paid Services];
 - ii. All Advisory/ Technical Services which are part of a standalone/ separate agreement and which are to be fully or partly Paid-for, variously described as reimbursable advisory services, transaction advisory services, technical assistance, etc., with different payment options like upfront fee, delivery-based payment and/ or success fee, and would also include Advisory Services which are partly subsidized by Trust Funds [Reimbursable or Paid Services]; and
 - iii. All Advisory/ Technical Services, part of a standalone agreement, described in any form but for which Indian Procuring Agencies are not required to make any payment. These services are offered and delivered free of cost [Free or Unpaid Services].



3. **Loan Paid Advisory Services**

3.1 MDB-Advisory Services which are part of a loan agreement will be procured and delivered as per the terms and conditions agreed to as part of the said loan agreement.

4. **Reimbursable or Paid-for Advisory Services**

4.1 **Exploring scope for such services:** The concerned MDB and Indian Procuring Entity [Central Ministry/ Department (or through the concerned Central Ministry/ Department in the case of an Entity under a Central Ministry/ Department) or the State Government (or through the State Government in the case of an Entity under the State Government)] may get in touch with each other, without prior intimation to DEA, to explore whether there is any scope for offering such an advisory service or availing an advisory service. Once they reach an *in principle* decision to engage a particular MDB-ASA, an offer for Paid-for Advisory Services may be sent to the Central Ministry/ Department (or in the case of an entity under a Central Ministry/ Department to the concerned Central Ministry/ Department) or the State Government (or in the case of an entity under the State Government to the concerned Department in the State Government) by the MDB-Advisory Services Agency directly.

Provided that –

In case of Paid-for Advisory Services pertaining to the North Eastern region of the country, the Central Ministry/ Department or the State Government shall obtain the clearances of the Ministry of Home Affairs, Ministry of External Affairs and Ministry of Development of North Eastern Region.

4.2 **Intimation to DEA:** At the time of making such an offer for providing Paid-for Advisory Services of any kind by an MDB-ASA, an intimation in this regard would be sent to the Multilateral Institutions (MI) Division of DEA by such an MDB.

4.3 **Applicable Procurement Guidelines:**

4.3.1 It must be ensured at all stages that procurement of such services will be subject to the fulfillment of the requirements under the provisions of the General Financial Rules (GFR) or financial rules (FRs) of the concerned State Government as the case may be, and that budget provision exists for incurring expenditure on such Paid-for Advisory Services.

4.3.2 The procurement of Paid-for Advisory Services of any kind shall be done through competitive bidding following the provisions of the GFR or FRs of the concerned State Government as the case may be. However, single source procurement of these advisory services of any particular MDB-Advisory Services Agency may be undertaken only if:

- (a) There is (are) any overriding reason(s) for such procurement;
- (b) The GFR or FRs of the concerned State Government as the case may be permits such engagement; and



- (c) Such single source procurement is considered by the concerned Central Ministry/ Department or State Government on a case to case basis, only after fulfilling the requirements under relevant financial rules, and approved by the competent authority therein.

4.4 Finalization of the contours of engagement: After the request for Paid-for Advisory Services of any kind is posed by the Indian Procuring Entity, the concerned MDB-Advisory Services Agency shall, in consultation with the said Indian Procuring Entity, finalize the contours of its engagement with the Indian Procuring Entity, in the form of a Memorandum of Understanding (MOU) and/ or Cooperation Agreement (CA), which shall provide for the terms of reference of the engagement, expected deliverables and outcomes, measures for capturing performance, obligations of the two parties, period of engagement, project cost and contribution of resources (funds/ manpower/ administrative support/ time) by the two parties.

Provided that –

- (a) In the case of Transaction Advisory Services, since the MDB-Advisory Services Agency, as Transaction Advisor, will assist the Indian Procuring Entity in conducting the bidding process for award of work to the successful bidder for implementation of the project/ transaction, it must be ensured through the MOU/ CA and otherwise that there is no conflict of interest between the Transaction Advisor and the bidders, including the winning bidder.
- (b) The MDB-Advisory Services Agency may charge as its fee, one or more of the various fee types, namely upfront retainer fee, management fee, success fee, etc., which may be on lump-sum or percentage terms. The MDB-Advisory Services Agency would make all efforts to ensure that a substantial portion of the fee is subsidized by the said MDB-Advisory Services Agency or by any of its Trust Funds. The Indian Procuring Entity while undertaking the bidding process or otherwise in the case of single source nomination shall ensure reasonableness of the fee charged by ascertaining the prevalent market rates for tasks of a similar nature and on the basis of objective reference points such as project cost, cost of consultants, etc.
- (c) If the MDB-Advisory Services Agency, as Transaction Advisor or otherwise, charges a success fee, which is a certain percentage of the project cost, it must be ensured through the MOU/ CA and otherwise that sound principles are adopted for fixing of the project cost, and that the MDB-Advisory Services Agency is not in any way involved in fixing these principles or the project cost.
- (d) The success fee so charged by the MDB-Advisory Services Agency, as Transaction Advisor or otherwise, may be linked to the fees charged by Consultants (like Lawyers, Bid Process Manager, Bid Platform Agency, Technical Consultation, etc.). These Consultants may be appointed by the Indian Procuring Entity or by the MDB-



Advisory Services Agency as Transaction Advisor. In either case, it must be ensured through the MOU/ CA and otherwise that there is no conflict of interest between the MDB-Advisory Services Agency and the Consultants. If Consultants are appointed by the Indian Procuring Entity, it must be ensured that all requirements under provisions of the GFR or FRs of the State concerned as the case may be are fulfilled. If the Consultants are appointed by the MDB-Advisory Services Agency as Transaction Advisor, it must be ensured through the MOU/ CA and otherwise that the MDB-Advisory Services Agency shall employ all principles of probity, transparency and competition in the selection and appointment of the consultants and that sound principles are adopted for fixing of their remunerations.

4.5 No Objection by DEA for finalizing the Advisory Services arrangement: The process prescribed for granting a no-objection to IFC for lending/ investing in Indian companies will be followed. The concerned MDB will obtain/ await no-objection from DEA before finalizing the Advisory arrangement with the Indian Procuring Entity. An approval if granted by the DEA shall be a 'no objection' on the engagement of the MDB-Advisory Services Agency by the Indian Procuring Entity as per the finalized MOU and/ or CA only, and shall not be an authorization on the process of engagement, for which the concerned Central Ministry/ Department or the State Government will be responsible.

4.6 Execution of Agreement: On obtaining NOC from the DEA, the Indian Procuring Entity shall execute the MOU/ CA with the MDB-Advisory Services Agency.

4.7 Expenditure and Audit Norms: As Paid-for Advisory Services of any kind could be financed either by the resources of the Indian Procuring Entity only or of both the parties i.e. Indian Procuring Entity and the MDB-Advisory Services Agency, one of the following approaches could be utilized for execution of the advisory services:

4.7.1 If the Paid-for Advisory Service, as a whole or a sub-component of it, is solely financed by the Indian Procuring Entity, all related expenditures would be effected by the said Indian Procuring entity, which shall also be accountable for the expenditure/ procurement decisions, with applicability of the normal audit procedures as applicable. The rules of procurement of the relevant Government (Central/ State) shall apply and audit of the expenditure shall be done by the CAG.

4.7.2 If the Paid-for Advisory Service, as a whole or a sub-component of it, is co-financed by the Indian Procuring entity and the MDB-Advisory Services Agency, then the cost sharing ratio shall be specified upfront and any running bill of such co-financed activities shall be settled in the ratio agreed ex-ante in the MOU/ CA. In a co-financed scenario, the rules of procurement of the relevant Government (Central/ State) shall apply. For specific procurements done exclusively by the MDB-Advisory Services Agency, Procurements Guidelines of the said MDB-Advisory Services Agency may also be made applicable.



However, the audit norms of such expenditure and procurement shall be in accordance with the established norms for externally assisted projects i.e. the audit shall be done by the CAG.

5. Unpaid Advisory Services

5.1 Permission of DEA required for availing such advisory services: Unlike Paid-for Advisory Services, Unpaid Advisory Services can be offered by any MDB or availed by an Indian Procuring Entity with the prior approval of DEA.

5.2 Request for Engagement: The request for Unpaid Advisory Services of any kind may be sent by the Central Ministry/ Department (or through the concerned Central Ministry/ Department in the case of an entity under a Central Ministry/ Department) or the State Government (or through the State Government in the case of an entity under the State Government) in the prescribed format to MI Division of the DEA.

Provided that –

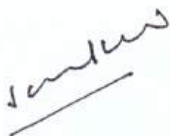
In case of advisory services pertaining to the North Eastern region of the country, the Central Ministry/ Department or the State Government shall obtain the clearances of the Ministry of Home Affairs, Ministry of External Affairs and Ministry of Development of North Eastern Region before sending the request to the DEA.

5.3 Screening of the Offer by DEA: The DEA shall screen the proposal in accordance with the extant guidelines for engagement with multilateral institutions issued from time to time, following the normal procedure of screening committee, before posing it to the MDB-Advisory Services Agency.

5.4 Finalization of the contours of engagement: After the request for Unpaid Advisory Services of any kind is posed by the DEA, the concerned MDB-Advisory Services Agency shall, in consultation with the Indian Procuring Entity, finalize the contours of its engagement with the Indian Procuring Entity, if needed, in the form of an MOU and/ or CA, which shall provide for the terms of reference of the engagement, expected deliverables and outcomes, measures for capturing performance, obligations of the two parties, period of engagement, project cost and contribution of resources (funds/ manpower/ administrative support/ time) by the MDB-Advisory Services Agency.

Provided that –

In the case of Transaction Advisory Services, since the MDB-Advisory Services Agency, as Transaction Advisor, will assist the Indian Procuring Entity in conducting the bidding process for award of work to the successful bidder for implementation of the project/ transaction, it must be ensured through the MOU/ CA, if any executed, and otherwise that there is no conflict of interest between the Transaction Advisor and the bidders, including the winning bidder.



5.5 **Agreement for Unpaid Advisory Services:** Unpaid Advisory Services agreements need to be signed on behalf of India by DEA or the Indian Procuring Entity depending upon the nature of services delivered and its mode of delivery. In some cases, there may not be any formal agreement signed and an authorization/ intimation from DEA may be sufficient.

5.5.1 **Finalizing the Advisory Services arrangement:** Once the engagement for Unpaid Advisory Services of any kind is finalized, the Indian Procuring entity shall send the proposal along with the MOU/ CA to the DEA for its approval. Upon approval being granted by the DEA and depending upon its nature, if the agreement is to be signed by the Indian Procuring Entity, DEA shall provide a 'no objection' on the engagement of the MDB-Advisory Services Agency to the Indian Procuring Entity. This 'no objection' shall not be an authorization on the process of engagement, for which the concerned Central Ministry/ Department or the State Government will be responsible.

5.6 **Execution of Agreement:** On obtaining NOC from the DEA, the Indian Procuring Entity shall execute the MOU/ CA with the MDB-Advisory Services Agency. Wherever the agreement is to be signed by DEA, it shall proceed to do so with the concerned MDB after approving the arrangement.

5.7 **Expenditure and Audit Norms:** As Unpaid Advisory Services of any kind would be financed solely by the resources of the MDB-Advisory Services Agency, procurement and expenditure can be done by the said MDB-Advisory Services Agency applying its norms for procurement expenditure, audit, etc.

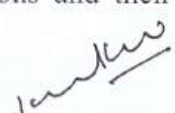
6. **Monitoring**

6.1 The approved project in respect of Advisory Services of any kind shall be monitored jointly by the concerned Indian Procuring entity and the MDB-Advisory Services Agency in accordance with the process established in the MOU/ CA. The monitoring reports shall be shared by the MDB-Advisory Services Agency with the DEA.

7. **Missions mounted by the MDB-Advisory Services Agency for implementation of Advisory Services:**

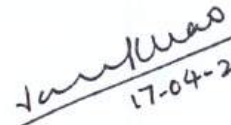
7.1 Missions by the staff of the MDB-Advisory Services Agency (or its representatives) to the project shall observe the established norms of missions to projects financed by multilateral institutions.

7.2 The MDB-Advisory Services Agency shall apprise the DEA prior to the Mission as per the established format and confirm the concurrence of DEA and the concerned Central/ State Government/ Indian Procuring Entity to the proposed project-related Mission. Each such Mission shall culminate in a wrap up meeting of the entire Mission Team with the Project Director, and thereafter, conclude with a debriefing at DEA. The record of the Missions, key findings, and follow-up actions and their timelines shall be shared by the



MDB-Advisory Services Agency through an Aide Memoire with the DEA and the concerned Indian Procuring Entity.

8. This issues with the approval of the Hon'ble Finance Minister.


17-04-2018
(Sameer Kumar Khare)
Joint Secretary (MI)

To

1. All Secretaries to Government of India
2. All Chief Secretaries of States and Union Territories
3. Executive Director (India), World Bank, Washington, D.C.
4. Executive Director (India), Asian Development Bank, Manila
5. Country Director (India), World Bank
6. Director (South Asia Region), IFC
7. Country Director (India), Asian Development Bank
8. Country Directors/ Representatives of other MDBs and bilateral donor agencies in India

Copy to:

1. Senior PPS to Secretary (EA)
2. PPS to Special Secretary (EA)
3. All Joint Secretaries in DEA
4. All Directors in MI Division, DEA
5. All Sections of MI Division, DEA
6. NIC, with a request to upload this circular in the website of DEA