

Guidance Note on Procurement Related Complaint Handling



June 2020



Guidance Note on Procurement Related Complaint Handling

The document provides a brief step-by-step process and roles and responsibilities of various stakeholders in handling procurement related complaint on Operations financed by the Islamic Development Bank (IsDB).

Key responsibility for the handling of procurement complaint lies with the Beneficiary whereas the responsibility to respond is borne to the Executing Agency. IsDB only ensures that the complaints are addressed appropriately and plays the fiduciary role.

Roles and Responsibilities of Key Stakeholders are:

1. Beneficiary	2. Complainants	3. IsDB
<ol style="list-style-type: none"> 1. Providing timely and sufficient information to Bidders, including through the 'Notification of intention to Award' and debriefing; 2. Acknowledging the receipt of each complaint and undertaking prompt review; 3. Treating Complaints fairly by providing timely information to prevent and resolve issues; 4. Preserving confidentiality of commercial and financial information and trade secrets; 5. Handling complaints in an independent, impartial and objective manner; 6. Maintaining complete records of all Procurement Related complaints; and 7. Providing timely information to IsDB of any complaint submitted and furnishing all relevant information in relation to such complaint. 	<ol style="list-style-type: none"> 1. Complying with the requirements in relation to the complaint and time frames that apply to Procurement-Related complaints (see section V of the guidance note); 2. Understanding the provisions in the Procurement Documents as well as the Project Procurement Guidelines which detail the rules that govern the procurement process; 3. Ensuring that debriefings are requested in a timely manner; and 4. Submitting any Procurement-Related Complaint within the stated timeframe 	<ol style="list-style-type: none"> 1. Project Procurement Unit performs a fiduciary role in the operations of the Bank and oversees project procurement compliance on matters related to IsDB's financing provided to Beneficiaries; 2. Whenever a Procurement-Related Complaint is addressed to IsDB, IsDB will promptly forward it to the Beneficiary for review and action; 3. An independent Committee within IsDB is responsible for the examination, review and settlement of Procurement-Related Complaints; and 4. IsDB, except for acknowledging receipt of a complaint will not discuss or communicate with any Bidder/Proposer during the evaluation and review process, until the publication of the Award of the Contract.



Types of Complaints

Types of complaints are: 1) Procurement Documents 2) Decision to exclude the complainant prior to the award of the contract 3) Decision to award the contract

Procurement-Related Complaints can only be brought to the Beneficiary or IsDB by an 'Interested Party'. An 'Interested Party' is either:

- A. Potential applicants/Bidders/Proposers:** Firms, Suppliers, Contractors, Individuals or Consultants that are interested in participating in a Prequalification or, where there is no Prequalification, a Request for Bid (RFB), a shortlisting process or an RFP but have not yet submitted an application, bid or proposals.
- B. Actual applicants/Bidders/Proposers:** Firms, Suppliers, Contractors, Individuals or Consultants that are participating in a procurement process by having submitted an application, bid or proposals.

Guidance Note on Procurement Related Complaint Handling



Submission

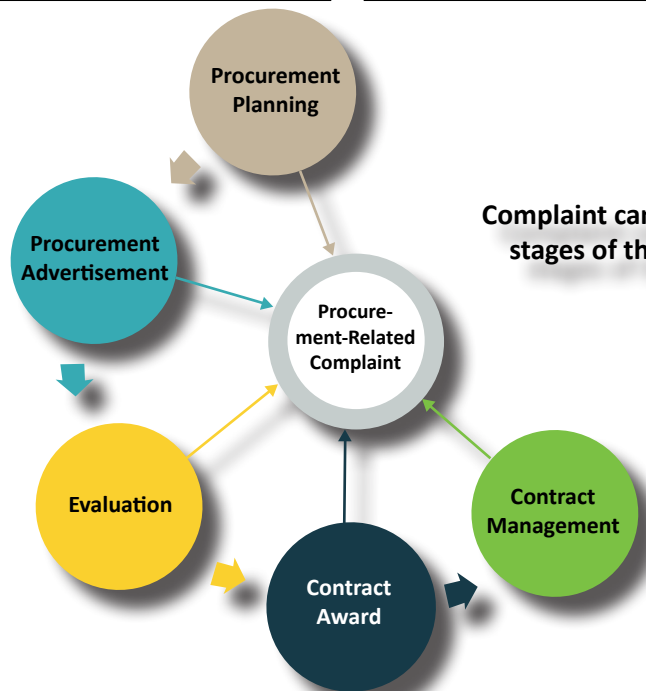
Complaints should contain:

1. Complainants Identity
2. Complainants Details
3. Complainants Interest
4. Identify the specific project
5. Previous Communications
6. Nature of Procurement Related Complaint
7. Grounds for the Procurement/Integrity Related Complaint
8. Other relevant information by the complainant



If subjected to prior review:

The Beneficiary is required to review the complaint and undertake objective assessment and promptly inform IsDB of any complaints received and shall provide for IsDB's review all relevant information and documentation, including their draft response to the complainant once available. Furthermore, the beneficiary also addresses complaint with transparency, impartiality and in a timely manner.



Resolution

A response to a complaint should, as a minimum include:

1. Statement of Issues;
2. Facts and Evidence;
3. Decision and reference to the basis for the decision;
4. Analysis; and
5. Conclusion

In case the complainants are not satisfied with the outcome. He can escalate it according to the Bank's procedure and Delegation of Authority (DoA).

Review

Process for each review differ slightly

1. Prior to the RFB or RFP Closing;
2. Following RFB or RFP Closing but before the 'Notification of Intention to Award';
3. Following 'Notification of Intention to Award' and within the Standstill Period; and
4. Complaints regarding Bidding or selection procurement processes subject to Post Review



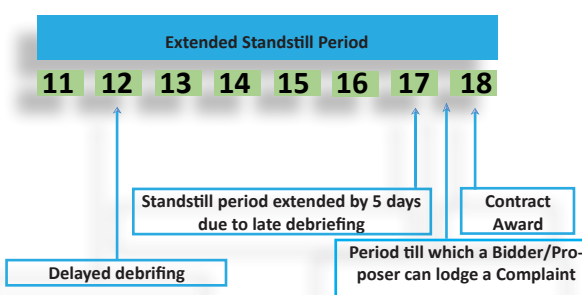
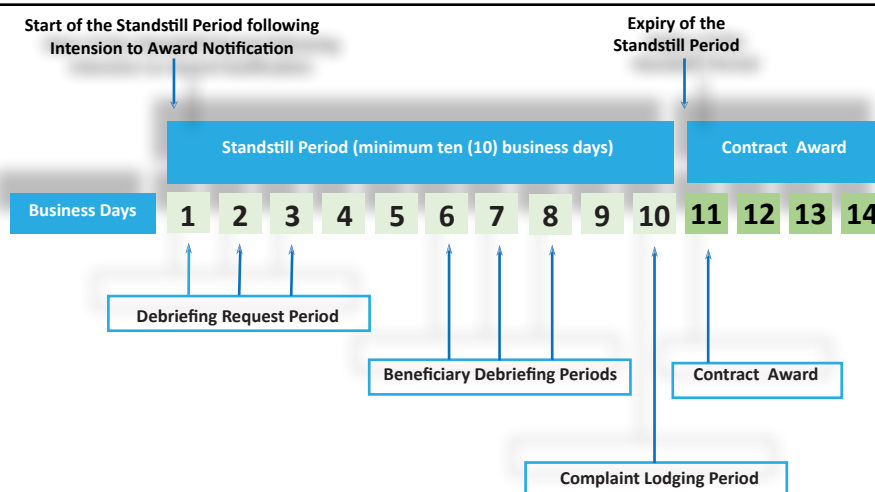
Guidance Note on Procurement Related Complaint Handling

Standstill Period

The Standstill Period is a period of at least ten (10) Business Days following the 'Notification of Intention to Award' decision, before the contract is signed with the successful Firm, Supplier, Contractor (including sub-Contractors) or Consultant.

The purpose of a Standstill Period is to allow unsuccessful Bidders or Proposers an opportunity to challenge an intended contract award decision before the actual 'Notification of Contract Award' is issued. A Standstill Period can also improve the level of competition, as it can in some cases increase potential Bidders/Proposers confidence that the procurement process will be conducted in a fair and transparent way.

The Standstill Period is fixed, and the Beneficiary has no obligation to respond to challenges received after its expiry. The following figure describes a typical Standstill Period process including a debriefing request and debriefing delays.



If the Beneficiary fails to deliver a debriefing within this five (5) day period, for reasons not within the control of the Bidder or Proposer, the Standstill Period must be extended by five (5) business days after completion of the debriefing.

In case of complaint:

If the Beneficiary receives a Procurement-Related Complaint within the Standstill Period, the Beneficiary must immediately acknowledge in writing the receipt of the complaint within three (3) days following its receipt using the template provided in Annex I of the Guidance Note on Complaint Handling. The Beneficiary is required to promptly take appropriate action, including preparing a response in writing. Simultaneously, the Beneficiary must inform IsDB and provides IsDB with all relevant information and documentation, including its proposed course of action and justification and a draft response to the complaint for IsDB review.

Standstill Period Conclusion

Once the Standstill Period concludes the Beneficiary should then proceed with the contract award to the successful Bidder/Firm if:

- The Beneficiary has not received a challenge from an unsuccessful Bidder/Firm.
- The Beneficiary receives a challenge from an unsuccessful Bidder/Firm, the Beneficiary shall not proceed with contract award until the challenge has been suitably resolved.
- Five (5) business days after a late debriefing is delivered, if the borrower previously failed to deliver a valid debriefing request as required within the original Standstill Period.

Guidance Note on Procurement Related Complaint Handling (

Beneficiaries need to refer to this document specifically at the stage of preparation of Bidding or Request for Proposal Document, shortlisting or Prequalification, evaluation process, award of contract, complaints handling and during contract amendments.

 Goods, Works and Related Services	 Consultancy Services
 Conflict of Interest	
<p>Any Firm found to have a conflict of interest give rising to an unfair competitive advantage shall normally be ineligible for award of a contract.</p> <p>Firms shall not be hired under the circumstances set forth below:</p> <ol style="list-style-type: none"> Conflict between provision of Goods, Works, or Services Conflict with other contractual commitments Relationship with Beneficiary’s staff <p style="text-align: center;"><u>Provisions in a Prequalification Document</u></p> <p>A conflict of interest for an applicant can arise, if they participated as a Consultant in the preparation of the design or technical specifications or have been hired by the Employer as Engineer for contract implementation of the Works that are the subject of this Prequalification.</p> <p style="text-align: center;"><u>Provisions in a Standard Procurement Document</u></p> <p>A Bidder shall not have a conflict of interest. All Bidders found to have in conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this Bidding process, if:</p> <ol style="list-style-type: none"> Is under common control with another Bidder; or Receives subsidy from another Bidder; or Has the same legal representative as another Bidder; or Has a relationship with another Bidder; or Affiliates participated as a Consultant in preparation of the design or technical specifications; or Any of its affiliates has been hired as Project Manager; or Has a close business or family relationship with a professional staff 	<p>Consultants shall not be hired for any assignment that would conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Beneficiary.</p> <p>Consultants shall not be hired under the circumstances set forth below:</p> <ol style="list-style-type: none"> Conflict between Consultant activities and Procurement of Goods, Works, or related non-Consultant services Conflict among Consultant assignments Relationship with Beneficiary’s staff <p style="text-align: center;"><u>Provisions in Request for Proposal Documents</u></p> <p>Consultant shall not be hired under the circumstances set forth in the Standard Request for Proposal Document as per the requirements stated in the Guidelines for the Procurement of Consultant Services.</p> <p style="text-align: center;"><u>Unfair competitive advantage</u></p> <p>Consultants competing for a specific assignment should not derive an unfair competitive advantage from having provided Consultant Services related to the assignment in question.</p> <p style="text-align: center;"><u>Information for Consultants</u></p> <p>Request for Proposal Document/Data Sheet shall contain a statement that the Firm and any of its affiliates shall be disqualified from providing downstream Goods, Works, or related services under the project if, in IsDB’s judgment, such activities constitute a conflict of interest resulting in a competitive advantage with the Consultant Services provided under the assignment.</p>
 One Bid/Proposal per Bidder/Consultant	
<p>One Bid per Bidder: A firm shall not submit more than one Bid, either individually or as a joint venture partner in another Bid, except for permitted alternative Bids. Submitting or participating in more than one Bid results in the disqualification of all Bids in which the firm is involved.</p>	<p>One Proposal: A Consultant shall submit only one Proposal, either individually or as a JV member in another Proposal. If a Consultant, including a JV member, submits or participates in more than one Proposal, all such Proposals shall be disqualified.</p>

Guidance Note on Procurement Related Complaint Handling



Exceptions to Conflict of Interest Requirements for Bidders

Based on IsDB policy and provisions of Bid/Proposal documents, certain exceptions apply:

1. State-owned universities and research centers in the Beneficiary's country, and university professors and research staff, may participate if they are critical to the Consultant assignment. Such participation will be decided on a case by case basis and subject to IsDB No-Objection.
2. Government officials and civil servants can only be hired under Consultant Service contracts, either as individuals or as members of a team of a Consultant Firm, if they are (a) on leave of absence without pay; and (b) are not in any conflict of interest situation.
3. In case of Procurement of Plant, Design, Supply, and Installation the participation of a Bidder as a subcontractor in another Bid may be permitted if so, allowed by the IsDB's Standard Procurement Documents applicable to such types of Procurement.

Complaint Handling by Beneficiary

In resolving a Procurement-Related Complaint, the beneficiary should ensure a timely and Meaningful review of the complaint, Including all relevant document and facts and circumstance related to the complaint. The beneficiary is required to provide sufficient information in its response to the complainant, while maintaining the confidentiality of information provided by the Bidders or proposers which they have marked as confidential

A response to a complaint should, as a minimum Include the following elements:



Template for Acknowledgment of Procurement Related Complaint

[To be sent by the Executing Agency: Use letterhead of Executing Agency—include all contact information, e.g., street address, fax, e-mail, telephone number]

Ref. No. _____

Date:

[Interested party's address, project or procurement contact person details]

Subject: **[specify Project Name and Reference Number, Procurement Package and Transaction Number, Country name] — Acknowledgment of Bidding-Related Complaint**

Dear [interested party contact person],

We acknowledge receipt of your communication dated [date of complaint letter], including attachments.

[Choose any one of the Following Options to reply]:

[Option 1]:

Your submission does not constitute a complaint for the following reasons:

[e.g., "status as interested party not clearly identified, makes vague and general allegations, lacks supporting documentation, etc."]

Please address these issues and resubmit your communication for us to consider your representations further."

[Option 2]:

We are considering your complaint and will respond to you at the earliest possible time.

We will revert to you if we need further documentation or elaboration on any particular issue you have raised."

Thank you.

Yours sincerely,

[Authorized Representative of Executing Agency]



For any additional information, Please see

www.isdb.org/procurement

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Islamic Development Bank