

# **DIRECTIVE**

## **Procurement Reviews and Complaints**

1 May 2023

## Contents

<b>Section I: Purpose</b>	3
<b>Section II: Definitions</b>	3
<b>Section III: Legal Basis</b>	4
<b>Section IV: Scope</b>	4
1. Introduction	4
2. Application	4
2.1 General Application of Directive	4
2.2 Other types of complaints	4
3. General provisions Bank Procurement Review and Procurement Complaint	5
3.1 When to submit a Request for Bank Procurement Review or Procurement Complaint?	5
3.2 Who can submit a Request for Bank Procurement Review or a Procurement Complaint?	5
3.3 Computation of Time	6
3.4 Bank Request for Extension of Time Procurement Process	6
4. Requests for Bank Procurement Review	6
4.1 How to submit a Request for Bank Procurement Review?	6
4.2 Timing and Deadlines Submission Request for Bank Procurement Review	7
4.3 Bank Review Process	7
4.4 Outcome of the Bank Review Process	8
5. Procurement Complaints	8
5.1 How to submit Procurement Complaints?	8
5.2 Timing and Deadlines for Submission of a Procurement Complaint	9
5.3 Assessment Admissibility Procurement Complaint	9
5.4 Substantive Review Procurement Complaint	10
5.5 Decision on the Procurement Complaint	10
Annex 1 – Process Diagram Procurement Review and Complaints	11
<b>Section V: Waivers, Exceptions and Disclosure</b>	12
<b>Section VI: Transitional Provisions</b>	12
<b>Section VII: Effective Date</b>	12
<b>Section VIII: Responsible and Accountable</b>	12
<b>Section IX: Review and Reporting</b>	12
<b>Section X: Related Documents</b>	12

## DIRECTIVE

### Procurement Reviews and Complaints

#### Section I: Purpose

This Directive regulates the submission and review of Requests for Bank Procurement Review as well as Procurement Complaints received by the Bank from Participants in procurement processes governed by the Bank's Procurement Policies and Rules.

This document supersedes the previous Procurement Complaints Review Directive (DIR/2020/2).

#### Section II: Definitions

Terms used in this Directive have the below meanings. Terms not defined in this Directive have the same meaning as set out in the Procurement Policies and Rules.

<b>Application</b>	means an application submitted by a Participant for Prequalification.
<b>Banking Team</b>	means the unit of the Bank responsible for the Bank Operation or the Bank-financed Contract.
<b>Debriefing Guidance</b>	means the Bank's Guidance on Procurement Debriefing Process by Clients of 1 May 2023 (GUI/2023/3).
<b>OCCO</b>	Means the Bank's Office of the Chief Compliance Officer.
<b>Participant</b>	means an entity, individual or JVCA that has submitted, or is in the process of submitting, or has submitted a Submission.
<b>PCC</b>	means the Bank's Procurement Complaints Committee.
<b>PPAD</b>	means the Bank's Procurement Policy and Advisory Department.
<b>Procurement Complaint</b>	means a procurement-related complaint submitted by the Participant in accordance with paragraphs 3 and 5 of this Directive.
<b>Procurement Complaints Form</b>	means the form, described in paragraph 4.3(i) of this Directive, to be completed by the Participant to submit a Procurement Complaint.
<b>Procurement Policies and Rules or PPR</b>	means the Bank's Procurement Policies and Rules as amended from time to time.
<b>Request for Bank Procurement Review</b>	means the request submitted by a Participant in accordance with paragraphs 3 and 4 of this Directive.
<b>Request for Debriefing</b>	means a request submitted by a Participant for a debriefing by the Client as submitted pursuant to the Debriefing Guidance.
<b>Request for Clarification</b>	means a request by the Participant to the Client for clarifications as submitted pursuant to the applicable procurement documents.

## **Section III: Legal Basis**

Section III, Articles 2.12 – 2.14 of the Procurement Policies and Rules (POL/2022/8) or Section III, Articles 2.10 and 2.11 of the Procurement Policies and Rules (POL/2017/3), as applicable.

## **Section IV: Scope**

### **1. Introduction**

In accordance with the PPR, Clients are fully responsible for implementing a Bank Operation, including all aspects of the procurement process from planning to contract award, as well as the contract administration and implementation and the resolution of claims and disputes with Participants. The Bank reviews the project delivery strategy and the relevant documents in the procurement process and may advise and assist the Client in the procurement process and institutional development for a specific project, but the Bank is not a party to the resulting contracts. The rights and obligations of the Client vis-à-vis Participants shall be governed by the procurement documents issued by the Client and the terms and conditions in the resulting contracts.

The Bank expects a Participant to first resolve with the Client any irregularity, issue, or complaint in relation to the procurement process, for example through clarification requests or during the debriefing process. In case the Client does not respond to the Participant or the raised issues or complaints are not resolved with the Client to the satisfaction of the Participant, the Participant has, depending on the stage of the procurement process, two options. If the procurement process is still ongoing and the Proposal containing the financial offer has not yet been opened, the Participant can submit a Request for Bank Procurement Review (please refer to paragraphs 3 and 4 of this Directive for more details). If the Proposal containing the financial offer has already been opened, the Participant can only submit a Procurement Complaint to the Bank for its consideration (please refer to paragraphs 3 and 5 of this Directive for more details). A Participant can also submit a Procurement Complaint if they have received an unsatisfactory response to its Request for Bank Procurement Review, regardless if the procurement process is still ongoing (please refer to paragraph 4.4 of this Directive).

Allegations of Prohibited Practices or environmental and social concerns in relation to the procurement process are handled separately as further detailed in paragraph 2.2 of this Directive.

### **2. Application**

#### *2.1 General Application of Directive*

This Directive applies to procurement processes for Public Sector Operations governed by the Procurement Policies and Rules. Nevertheless, this Directive does not apply when the procurement process is conducted under national laws or by utilities in accordance with Section III, Articles 3.58 - 3.62 of the PPR. In these circumstances, the applicable national procurement system or the complaint review system as set up under the Client's established procurement policies and rules, as applicable, shall apply to procurement-related complaints or requests for procurement review.

In case the procurement process is governed by other procurement rules or regulations (e.g. the exclusions stipulated in Section III, Article 2.6 of the PPR), such rules or regulation shall govern procurement-related complaints or requests for procurement review.

#### *2.2 Other types of complaints*

This Directive does not apply to the processing of allegations of Prohibited Practices. Any occurrence, or suspected occurrence, of a Prohibited Practice with respect to the procurement process, award or

implementation of any Bank-financed Contract is dealt with in accordance with the Enforcement Policy and Procedures. OCCO is responsible for investigating such allegations of Prohibited Practices. Anyone, who suspects the occurrence of Prohibited Practices in relation to a Bank-financed Contract, can submit a written report to OCCO directly. For more information on the reporting of Prohibited Practices, please refer to the following link: <https://www.ebrd.com/who-we-are/our-values/investigating-fraud-and-corruption.html>.

This Directive furthermore does not apply to environmental, social and disclosure matters in relation to a Bank-financed project, which are addressed by the Independent Project Accountability Mechanism (IPAM). IPAM's mandate is to independently review Project (environmental, social and information disclosure) issues that the requesters believe to have caused (or to be likely to cause) harm. For more information on IPAM and how to submit a request, please refer to [Independent Project Accountability Mechanism \(IPAM\) \(ebrd.com\)](#) and [submit a Request](#).

This Directive does not apply to complaints about the procurement of contracts for goods, works, services or consultancy services that are contracted by the Bank directly. These types of complaints are handled under the Bank's Corporate Procurement Policy and can be submitted with the Bank's Procurement Operations & Delivery Department (PODD). For more information, please refer to <https://www.ebrd.com/procurement/corporate-procurement.html>.

### 3. General provisions Bank Procurement Review and Procurement Complaint

#### 3.1 When to submit a Request for Bank Procurement Review or Procurement Complaint?

The Bank expects a Participant to first resolve any complaint or issue relating to the procurement process (e.g. irregularity or ambiguity in the procurement documents, any procurement-related decision by the Client) with the Client in accordance with the applicable procurement documents, such as via means of a submission of a Request for Clarification or Request for Debriefing, as applicable. A Participant may request a debriefing after notification by the Client of the outcome of the evaluation of Applications or Proposals, as applicable. Further details on the debriefing process are set out in the Debriefing Guidance ([https://www.ebrd.com/content/dam/ebrd\\_dxp/assets/pdfs/project-procurement/directives-and-guidances/Guidance-Procurement-Debriefing-Process-by-Clients-1-May-2023-FINAL.pdf](https://www.ebrd.com/content/dam/ebrd_dxp/assets/pdfs/project-procurement/directives-and-guidances/Guidance-Procurement-Debriefing-Process-by-Clients-1-May-2023-FINAL.pdf)).

If the Participant was not able to resolve the issue with the Client directly or the Client neglected to respond to the Participant, the Participant may subsequently submit the issue to the Bank for its consideration by, depending on the stage of the procurement process, submitting a Request for Bank Procurement Review or a Procurement Complaint (see table below). If deemed necessary, the Bank may reclassify a Participant's Procurement Complaint as a Request for Bank Procurement Review or vice versa. The Bank shall inform the Participant of such reclassification.

Stage of procurement process	Type of request to the Bank	Sections in Directive
Procurement process is still ongoing and the Proposal containing the financial offer has <b>not</b> yet been opened.	Request for Bank Procurement Review	Paragraph 4
Procurement process is still ongoing, but the Proposal containing the financial offer has already <b>been</b> opened.	Procurement Complaint	Paragraph 5
Participant has received an unsatisfactory response to its Request for Bank Procurement Review, <b>regardless</b> if the procurement process is still ongoing.	Procurement Complaint	Paragraph 5

Please refer to Annex 1 for a diagram depicting the Procurement Reviews and Complaints process.

#### 3.2 Who can submit a Request for Bank Procurement Review or a Procurement Complaint?

Only a Participant can submit a Request for Bank Procurement Review or a Procurement Complaint. A Participant includes also those firms or individuals who seek to participate in a particular process, but

consider that they may have been unduly excluded or restricted by the provisions of the procurement documents from participating in such process. A potential Sub-contractor is not entitled to submit a Request for Bank Procurement Review or a Procurement Complaint.

In case of a JVCA, the Request for Bank Procurement Review must be submitted by the lead partner in accordance with the respective JVCA agreement. In case a Procurement Complaint is submitted by a representative of a Participant, the submission must be accompanied by a valid power of attorney authorising the representative to act on behalf of the complaining Participant for the submission of the Procurement Complaint and during the following review process. If the Participant is a JVCA, the representative must have a valid power of attorney from each JVCA partner.

### *3.3 Computation of Time*

Unless stated otherwise, the term “days”, as used in this Directive, means calendar days, including weekends and holidays in the Client’s country. If the last day of any deadline in this Directive falls on a weekend or a public holiday in the relevant Client’s country, the period shall run until the next working day, provided that prior to the original deadline the Participant has informed the Bank that the original deadline falls on such weekend or public holiday.

### *3.4 Bank Request for Extension of Time Procurement Process*

In case the Bank needs additional time to complete its review of issues raised under this Directive, the Bank at its discretion may require the Client to extend applicable deadlines or the validity of Proposals to avoid an irreversible effect on the procurement process in question.

### *3.5 Discontinuation of Bank review*

If the procurement process in relation to which a Participant submitted a Request for Bank Procurement Review or Procurement Complaint, as applicable, has been annulled, the Bank will discontinue its review of the matter and inform the relevant Participant accordingly.

## **4. Requests for Bank Procurement Review**

### *4.1 How to submit a Request for Bank Procurement Review?*

The Request for Bank Procurement Review must include the following:

- (i) the title of the relevant Bank Operation;
- (ii) the title and number (if applicable) of the relevant procurement process and Bank-financed Contract;
- (iii) the Participant’s specific issues or concerns with the procurement process that have led to the submission of the Bank Procurement Review, with a reference to the applicable sections in the PPR and / or the relevant procurement documents;
- (iv) a copy of the Participant’s Request for Clarification or the Request for Debriefing, as the case may be, and any subsequent relevant communication with the Client relating to the outcome of the clarification or the debriefing; and
- (v) any other information or documentation that the Participant finds necessary to support its Request for Bank Procurement Review.

To submit its Request for Bank Procurement Review, the Participant may use the Form “Request for Bank Procurement Review”, which can be accessed [here](#).

The Participant shall submit the Request for Bank Procurement Review to the Bank by e-mail to [ebdprocurementreview@ebd.com](mailto:ebdprocurementreview@ebd.com). The Subject of the email shall be entitled “Request for Bank Procurement Review”. The inbox is administered by PPAD.

Participants submitting a Request for Bank Procurement Review are responsible for ensuring that any request is supported by appropriate documents relevant to the issues raised and for ensuring that information provided to the Bank is accurate and verifiable. If the Request for Bank Procurement Review does not provide sufficient information for the Bank to reasonably assess the request, the Bank may request further information from the Participant. If insufficient or no further information is provided, the Bank may reject the Request for Bank Procurement Review.

#### *4.2 Timing and Deadlines Submission Request for Bank Procurement Review*

The Bank will assess a Request for Bank Procurement Review only if the Participant had first submitted a Request for Clarification or a Request for Debriefing to the Client and the Participant considers the Client’s response unsatisfactory or the Client neglected to respond.

If the Participant subsequently wishes to submit a Request for Bank Procurement Review, the conditions set out in (a) or (b) will apply.

##### *(a) After Request for Clarification*

In the event the Participant wishes to submit a Request for Bank Procurement Review, such request must be done as soon as possible, but no later than seven (7) days prior to the deadline for submission of the Application (in case of Prequalification), the Proposal (in case of a single stage procurement process, with or without two envelope process), or the final Proposal (in case of a multistage procurement process).

##### *(b) After Request for Debriefing*

In the event the Participant wishes to submit a Request for Bank Procurement Review, such request must be submitted, as soon as possible, but no later than seven (7) days after:

- (i) the Participant’s debriefing with the Client;
- (ii) the Client’s explicit rejection of the Participant’s Request for Debriefing; or
- (iii) the Participant’s submission of a Request for a Debriefing without receiving a response from the Client within the timeline in accordance with the applicable procurement documents.

Additionally, a Request for Bank Procurement Review can only be submitted as long as the Proposal (in case of a single stage procurement process), the financial proposal (in case of a single stage, two envelope process) or the final proposal (in case of a multistage procurement process) has not been opened. In case the aforementioned proposals have been opened, the Participant can only submit a Procurement Complaint in accordance with the conditions set out in paragraph 5 below.

#### *4.3 Bank Review Process*

If a Request for Bank Procurement Review is submitted in accordance with paragraphs 4.1 and 4.2, PPAD will acknowledge receipt of the Participant’s Request for Bank Procurement Review by email. PPAD will also notify the Client, as appropriate.

PPAD will review the issues raised in the Request for Bank Procurement Review. This review will be based on the information provided by the Participant, the Client and/or the Banking team. PPAD may use any other information available to the Bank including opinions provided by consultants who are assisting PPAD with its review. If considered necessary, PPAD may request further information, documents or clarifications from the Participant as part of its review process.

#### *4.4 Outcome of the Bank Review Process*

After completion of the review of the Request for Bank Procurement Review, PPAD will communicate to the Client its findings and recommendations for action by the Client, if any, and set deadlines for implementation of the recommendation. The Client is responsible to inform the Participants in the relevant procurement process of any actions taken following the Request for Bank Procurement Review.

PPAD will inform the Participant, who submitted the Request for Bank Procurement Review, that PPAD's review is completed and that either no further actions are to be taken or that actions are to be taken by the Client who will further inform the Participant, as appropriate.

Should the procurement process remain ongoing, the Participant cannot submit another Request for Bank Procurement Review in relation to the same issue, unless the Participant can demonstrate that new information has come to light.

Based on its review, PPAD may advise the Participant to elevate the issues raised to the status of a Procurement Complaint. The issues will subsequently be dealt with pursuant to paragraph 5, as applicable. Furthermore, in case the Participant is dissatisfied with the outcome of the Bank review process, regardless if the procurement process is still ongoing, the Participant can submit a Procurement Complaint in accordance with paragraphs 5.

### **5. Procurement Complaints**

The Bank's role in a Procurement Complaints review process is to determine whether the Client has followed the procurement procedures as agreed with the Bank.

#### *5.1 How to submit Procurement Complaints?*

When submitting a Procurement Complaint to the Bank, the Participant must submit the following documentation:

- (i) a Procurement Complaints Form, which can be accessed [here](#). The form must be fully completed and duly signed by the Participant or its representative, including a substantive description of the specific issues or concerns with the procurement process that have led to the submission of the Procurement Complaint, with a reference to the applicable sections of the PPR and / or the procurement documents that are alleged to have been violated;
- (ii) a copy of a valid power of attorney;
- (iii) a copy of the Participant's Request for Debriefing or the Request for Bank Procurement Review, as the case may be, and any subsequent relevant communication with the Client relating to the outcome of the debriefing process or the Bank review process; and
- (iv) any other information or documentation that the Participant finds necessary to support its Procurement Complaint.

The Participant shall submit its Procurement Complaint to the Bank by e-mail to the dedicated email address [ProcurementComplaint@ebrd.com](mailto:ProcurementComplaint@ebrd.com). The inbox is administered by PPAD.

Participants submitting a Procurement Complaint to the Bank are responsible for ensuring that:

- (i) such complaint is submitted in the prescribed form and through the identified communication channel;
- (ii) any submission is supported by appropriate documents relevant to the issues raised; and
- (iii) the information provided to the Bank is accurate and verifiable.



Procurement Complaints received in any other form, through other communication channels, not adequately supported by verifiable evidence, or otherwise failing to meet the requirements set forth in this Directive may ultimately lead to a rejection by the Bank of the Procurement Complaint.

## *5.2 Timing and Deadlines for Submission of a Procurement Complaint*

### After the Bank review process

If the Participant wishes to submit a Procurement Complaint after the outcome of the Bank review process under paragraph 4, the Participant must submit its complaint within seven (7) days after receiving an unsatisfactory response to their Request for Bank Procurement Review. If the Participant fails to submit a Procurement Complaint within the aforementioned deadline, the Participant will have waived its right to submit a Procurement Complaint for the same issue at the later stage in the procurement process.

### After Request for Debriefing

In the event, the Proposal (in case of a single stage procurement process), the financial proposal (in case of a single stage, two envelope process) or the final proposal (in case of a multistage procurement process) has **been** opened and the Participant wishes to submit a Procurement Complaint, such complaint must be submitted within seven (7) days after:

- (i) the Participant's debriefing with the Client;
- (ii) the Client's explicit rejection of the Participant's Request for Debriefing; or
- (iii) the Participant's submission of a Request for Debriefing without receiving a response from the Client within the timeline in accordance with the applicable procurement documents.

## *5.3 Assessment Admissibility Procurement Complaint*

Upon receipt of the Procurement Complaint, PPAD will first verify that the complaint is admissible. A complaint is admissible if the following conditions have been met:

- (i) the Participant submitted the Procurement Complaint in the form of a duly signed and completed Procurement Complaints Form, including the necessary power of attorney;
- (ii) the Procurement Complaint has been submitted to the Bank through the designated inbox [ProcurementComplaint@ebrd.com](mailto:ProcurementComplaint@ebrd.com);
- (iii) the Participant has submitted a Request for Debriefing to the Client or a Request for Bank Procurement Review, as the case may be, in relation to the same issue that is subject to the Procurement Complaint and these processes have been completed;
- (iv) the Procurement Complaint is submitted within the deadlines set out in paragraph 5.2;
- (v) the Participant has provided a substantive description of the specific issues or concerns with the procurement process that have led to the submission of the Procurement Complaint, with a reference to the applicable sections of the PPR and / or the procurement documents that are alleged to have been violated;
- (vi) the Procurement Complaint falls within the scope of the Bank's jurisdiction:
  - a. it is a complaint in relation to a procurement process for a Bank-financed contract, which process has been governed by the PPR.
  - b. no exception as set out in paragraph 2.1 applies and the complaint should not be reviewed under another procurement complaints review system.
- (vii) the evidence is reliable and verifiable by the Bank through further checks.

The Bank may not consider Procurement Complaints further if they do not meet the admissibility conditions set out in (i)-(vii) above. This decision by the Bank is final and not subject to any further review or appeal.

If a Procurement Complaint is considered admissible, PPAD will send an email to the Participant acknowledging receipt by the Bank of the Procurement Complaint. PPAD will also notify the Client, as appropriate. Subsequently, the Procurement Complaint will be reviewed on its merits in accordance with paragraph 5.4.

#### *5.4 Substantive Review Procurement Complaint*

The Procurement Complaint will be reviewed on its merits by PPAD, who will undertake its review in close liaison with the relevant Banking Team and the Client, as appropriate. PPAD may request from the complaining Participant or the Client further information to assess whether the Client has followed the agreed procurement procedures. This may be an iterative process and may involve the use of independent consultants to assist PPAD with their assessment. The review by PPAD may normally be limited to the issues raised in the Procurement Complaint.

After completion of its review, PPAD submits the Procurement Complaint, its assessment of the complaint, and its recommendation to the PCC for decision.

#### *5.5 Decision on the Procurement Complaint*

Within the Bank, the PCC is responsible for reviewing and determining the Bank's position in relation to complaints arising from procurements governed by the Procurement Policies and Rules. The PCC's term of reference and composition can be found [here](#).

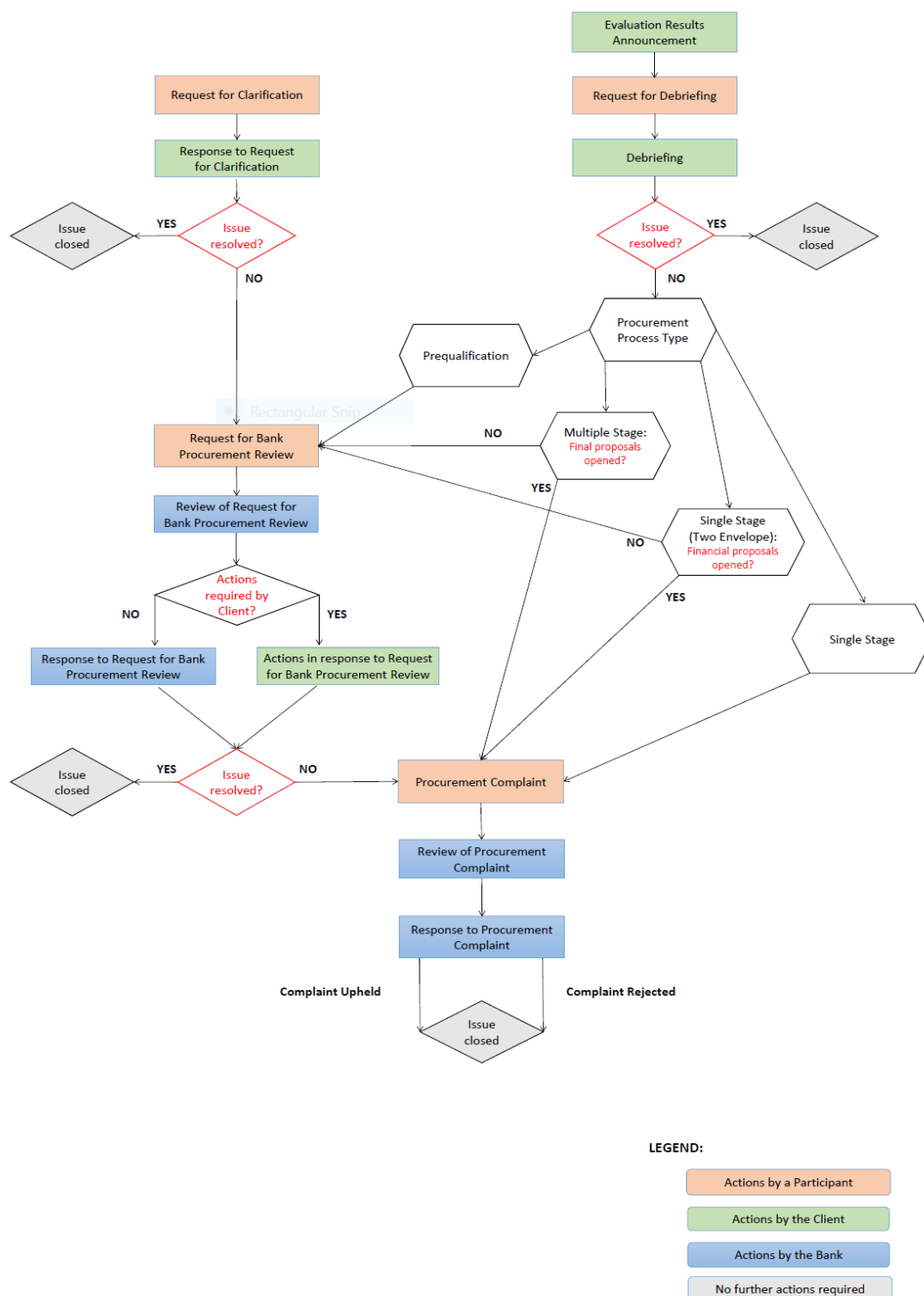
After submission of the Procurement Complaint, the PCC will consider and decide on complaints. The PCC will assess whether the Client has followed the agreed procurement procedures. If the Client has done so, the Procurement Complaint will not be upheld. However, if the PCC determines that the procurement process has not been materially carried out by the Client in accordance with the agreed procedures, the Procurement Complaint will be upheld.

A determination by the PCC to uphold a Procurement Complaint may lead to the following outcomes:

- (i) the Bank requesting the Client to take corrective measures; and/or
  - (ii) the Bank declare misprocurement in accordance with Section III, Article [xx] PPR. The decision to uphold the Procurement Complaint, may not necessarily alter the outcome of the procurement process, but may have implications for the availability of Bank financing for the contract in question.
- Once the PCC has made its decision, PPAD will inform the Client, the complaining Participant and any other relevant parties of the outcome of the procurement complaints review process.

The decision by the PCC is final and not subject to appeal.

## Annex 1 – Process Diagram Procurement Review and Complaints<sup>1</sup>



<sup>1</sup> Please refer to the applicable timelines in paragraphs 4.2 and 5.2 of the Directive.

## **Section V: Waivers, Exceptions and Disclosure**

### **Waivers**

The President may grant a deviation from a requirement of this Directive that is not explicitly permitted by its terms.

### **Exceptions**

N/A.

### **Disclosure**

This Directive will be disclosed on the Bank's website: <https://www.ebrd.com/home/work-with-us/project-procurement.html#customtab-c037545a92-item-2d2dd13b00-tab>.

## **Section VI: Transitional Provisions**

N/A.

## **Section VII: Effective Date**

This Directive is effective from 1 May 2023.

## **Section VIII: Responsible and Accountable**

### **Accountable**

Vice President, Risk and Compliance and Chief Risk Officer.

### **Responsible**

Director, Procurement Policy and Advisory Department.

## **Section IX: Review and Reporting**

Annually, as part of the Bank's annual procurement review.

## **Section X: Related Documents**

1. Procurement Policies and Rules of 15 May 2022 (POL/2022/8).
2. Procurement Policies and Rules of 1 November 2017 (POL/2017/3).
3. Guidance on Procurement Debriefing Process by Clients of 1 May 2023 (GUI/2023/3).
4. EBRD Procurement Complaints Committee, Terms of Reference version March 2023.