

DIRECTIVE

**Procurement Complaints Review
Directive**

1st October 2020

Table of Contents

Section I – Purpose..... 3
Section II – Definitions 3
Section III – Legal Basis 4
Section IV – Scope..... 4
1. Application..... 4
2. Allegations of Prohibited Practices 4
3. Procurement-related complaints 5
 3.1 Introduction..... 5
 3.2 Who can file a complaint? 5
 3.3 How to file a complaint 5
 3.4 Complaints review process 6
Section V: Waivers, Exceptions and Disclosure..... 7
Section VI : Transitional Provisions 7
Section VII: Effective Date..... 7
Section VIII: Responsible and Accountable 7
Section IX: Review and Reporting 7
Section X: Related Documents..... 7

DIRECTIVE**Procurement Complaints Review Directive****Section I: Purpose**

This Directive regulates the review of Complaints received by the Bank from Participants in procurement processes governed by the Bank's Procurement Policies and Rules. EBRD's clients are responsible for implementing Bank-financed projects, including all aspects of the procurement process for the contracts needed for the project from the planning stage through to the award of contracts, as well as the administration of such contracts. The Bank monitors the procurement process, but is not a party to the resulting contracts. The rights and obligations of the client vis-à-vis Participants in procurement processes for goods, works and services (including consultancy services) are governed by the pre-qualification, tender or selection documents issued by the client.

The Bank's role in a Complaints review process is to determine if the client has followed the agreed procedures, or not. Should the Bank consider that the Bank's client has, in a material way, not followed the agreed procedures it may decide not to finance the subject contract, and may reduce the amount of financing provided by the Bank by the corresponding amount in accordance with Section III, Article 2.12 of the PP&R. It should be noted that a determination by the Bank to uphold a procurement complaint might affect the availability of Bank funding for the contract, but may not alter the outcome of the tender process.

This Directive does not regulate the complaints process when a Participant submit a procurement complaint to a Bank client.

This document supersedes the previous Procurement Complaints Review Directive (DIR/2019/23).

Section II: Definitions

Terms used in this Directive have the following meanings:

Bank-financed operations or Bank projects or Bank contracts	means operations or projects or contracts that are financed in whole or in part from the ordinary capital resources or Special Funds resources of the Bank or from any other resources or grants administered by the Bank;
Banking Team	means the unit of the Bank responsible for the Bank-financed operation or project or contract;
Complaint	means a procurement-related complaint filed in accordance with Section IV, paragraph 3 of this Directive;
EBRD Procurement Complaints Form	means the form with that title which can be accessed at www.ebrd.com ;

Enforcement Policy and Procedures	means the Bank's Enforcement Policy and Procedures (POL/2017/1) as amended from time to time;
PCC	means the Bank's Procurement Complaints Committee;
PPAD	means the Bank's Procurement Policy and Advisory Department's Policy Unit;
Participant	means any person or entity other than the Bank's client participating or seeking to participate directly in a procurement process governed by the Bank's Procurement Policies and Rules;
Procurement Policies and Rules or PP&R	means the Bank's Procurement Policies and Rules (POL/2017/3) or the Procurement Policies and Rules (BDS08-205 (F));
Prohibited Practice	as defined in the Bank's Enforcement Policy and Procedures;
Request for Bank Procurement Review	means a review process conducted in line with the Bank's guidance note on "Request for Bank Procurement Review" that can be found on the Bank's website www.ebrd.com .

Section III: Legal Basis

The Procurement Policies and Rules (POL/2017/3) and the Procurement Policies and Rules (BDS08-205 (F))

Section IV: Scope

1. Application

This Directive applies to procurement processes governed by the Procurement Policies and Rules November 2017, excluding procurement processes under other procurement arrangements applied in line with Section III, Articles 2.4, 3.10, 3.11 and Section III, Article 4 (Procurement in Private Sector Operations). This Directive also applies to the Procurement Policies and Rules October 2014 excluding procurement processes under other procurement arrangements applied in line with paragraph 2.4, 3.13, 3.14 and Section 4 (Procurement in Private sector Operations).

2. Allegations of Prohibited Practices

Any occurrence, or suspected occurrence, of a Prohibited Practice in the procurement process, award or implementation of any contract in the context of a Bank financed project shall be dealt with in accordance with the provisions of the Enforcement Policy and Procedures and is not covered by this Directive. Allegations of Prohibited Practices shall be submitted to the Bank's Chief Compliance Officer and can be submitted by anyone at any time.

3. Procurement-related Complaints

3.1 Introduction

Any Complaint must include documentary evidence substantiating the alleged facts giving rise to the Complaint. Complaints not adequately supported by verifiable evidence or otherwise failing to meet the formal requirements set forth herein may be disregarded by the Bank and returned to the Participant without further action.

A Complaint will only be considered by the Bank if filed by or on behalf of a Participant after the deadline for:

- (a) In respect of goods, works, commodities and other non-consultancy services tenders, the opening of the final tender which includes the financial proposal;
- (b) In respect of consultancy services, the opening of the financial proposal.

Any issues concerning a prequalification process, the technical proposal stage in a Multi - stage Open Tender process or the first stage in a Two stage open competitive consultancy selection process i.e. before the financial proposal is opened and while adjustments to the procurement process can still be done shall be submitted to the Bank in line with the Guidance Note “Request for Bank Procurement Review” which can be found on www.ebrd.com.

3.2 Who can file a Complaint?

A Complaint may only be filed by or on behalf of a Participant.

A Complaint submitted by a representative of a Participant must be supported by a valid power of attorney authorising the representative to act on behalf of the complaining Participant.

Where the Participant is a joint venture, the representative must have a power of attorney from each joint venture partner.

3.3 How to file a Complaint?

Complaints will only be considered by the Bank if:

- (a) the complaining Participant has requested and received a debriefing (see the Bank’s Guidance Note on Procurement Debriefing on www.ebrd.com) by the client or if the Bank’s client declined to arrange a debriefing explicitly or by not responding to a request;
- (b) the Complaint is set forth in the format of the EBRD Procurement Complaints Form, duly completed, accompanied by relevant documents, and submitted via the Bank’s procurement complaints portal, which can be accessed through the Bank’s website at www.ebrd.com or the Bank’s e-tendering platform ECEPP;
- (c) the complaining Participant has provided reference(s) to the paragraph(s) or section(s) of the procurement documents that are alleged to have been violated and has described the substantive nature of the issues raised; and,

- (d) the complaint was received by the Bank within 10 calendar days after the date of the debriefing provided by the client (please see Section 3.3(a) above) or 10 calendar days after the date when the debriefing was requested by the Participant and the Bank's client declined to arrange a debriefing explicitly or did not respond to the request for a debriefing

Complaints that are received by the Bank after the above deadlines or in any other form or through any other communication channel will not be considered by the Bank.

3.4 Complaint review process

Once a Complaint has been submitted by a Participant and received by the Bank in accordance with the above requirements, the Bank will send an email to the Participant acknowledging receipt by the Bank.

The Complaint will subsequently be reviewed by PPAD, who will undertake its review in close liaison with the relevant Banking Team and the Bank's client, as appropriate. The Bank may request from the complaining Participant or the Bank's client further information which the Bank requires in order to assess whether the agreed procedures have been followed, or not. This may be an iterative process and may involve the use of independent consultants.

PPAD will submit its assessment and recommended decision to the EBRD Procurement Complaints Committee (PCC). The Complaint, PPAD's analysis of the Complaint and its recommendation will be reviewed by the PCC for its decision. Ordinarily, the Bank's review will be limited to the issues raised in the Complaint and will conclude with the Bank's decision to uphold or not uphold the Complaint. Once the PCC has made its decision, the Bank's client, the complaining Participant and any other parties concerned will be informed by the Bank of the outcome of the review.

The Bank's decision is final and not subject to appeal.

The terms of reference of the PCC (including its composition) can be accessed through the Bank's website www.ebrd.com.

Section V: Waivers, Exceptions and Disclosure

Waivers

The President may grant a deviation from requirements of this Directive.

Exceptions

Not Applicable.

Disclosure

This Directive will be disclosed on the Bank’s website.

Section VI: Transitional Provisions

This Directive also applies in respect of procurement processes for goods, works, services initiated and governed by the provisions of the Procurement Policies and Rules of October 2014 (BDS08-205 (F)).

Section VII: Effective Date

This Directive is effective from 1 October 2020.

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 October 2014 (BDS08-205 (F))
2. Procurement Policies and Rules (POL/2017/3)
3. Bank’s Guidance Note on “Request for Bank Procurement Review”
4. Bank’s Guidance Note on “Procurement Debriefings”
5. EBRD Procurement Complaints Committee, Terms of Reference