

Guidance Note

Request for Bank Procurement Review

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| Responsible | Associate Director, Procurement Policy and Advisory Dep. |
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Guidance Note

Request for Bank Procurement Review

Section I: Purpose

This Guidance Note regulates the review of requests for Bank procurement review received 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 from the planning stage through to the award of contracts, as well as the administration of the contracts themselves. The Bank monitors the procurement process but is not a party to the resulting contracts. The rights and obligations of the Bank's 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.

A "Request for Bank Procurement Review" allows Participants in a procurement process to raise questions, suggestions or request clarifications on a prequalification, as well as an on-going tender or selection process with the Bank. Following a Request for Bank Procurement Review and the Bank's review on the issues raised, the Bank will communicate to the client its recommendations for action, if any. If, based on the review, the Bank considers that the client has in an irrevocable and material way not followed the agreed procedures, it may decide to elevate the issues raised to the status of a Complaint.

Section II: Definitions

As used in this Guidance Note, the following terms have the meanings set out below:

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| (1) 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. |
| (2) Banking Team | Means the unit of the Bank responsible for the Bank-financed operation or project or contract. |
| (3) Complaint | Means a procurement-related complaint filed in accordance with Section IV, paragraph 3 of the Procurement Complaints Directive. |
| (4) Enforcement Policy and Procedures | Means the Bank's Enforcement Policy and Procedures (POL/2017/1) as amended from time to time. |

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| (5) Participant | Means any party participating or seeking to participate in a procurement process governed by the Bank’s Procurement Policies and Rules. |
| (6) PPAD | Means the Bank’s Procurement Policy and Advisory Department. |
| (7) Procurement Complaints Directive | Means the Procurement Complaints Review Directive DIR/2020/2 approved by ExCom (EX20-186) on 18 September 2020, as amended from time to time. |
| (8) 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)). |
| (9) Prohibited Practice | As defined in the Bank’s Enforcement Policy and Procedures. |
| (10) Request for Clarification | Means a request to the client for clarification filed in accordance with the tender or selection documents. |

Section III: Legal Basis

The Procurement Policies and Rules (POL/2017/3) and the Procurement Policies and Rules (BDS08-205 (F)), Procurement Complaints Review Directive DIR/2020/2.

Section IV: Scope

1. Application

This Guidance Note applies to procurement processes governed by the Procurement Policies and Rules November 2017 (BDS17-057), 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 Guidance Note also applies to the Procurement Policies and Rules October 2014 (BDS08-205(F)), excluding procurement processes under other procurement arrangements applied in line with paragraphs 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 Guidance Note. Allegations of Prohibited Practices shall be submitted to the Bank’s Chief Compliance Officer and can be submitted by anyone at any time.

3. Request for Bank Procurement Review

3.1 Introduction

The Bank expects a Participant in a procurement process to inform the Bank's client of any irregularity or ambiguity in any documents related to such procurement process or to request clarifications from the client in line with the instructions in the procurement documents.

Should the Participant not be satisfied with the client's response(s) then the Participant is entitled to submit a formal Request for Bank Procurement Review to the Bank for its consideration. Participants submitting a Request for Bank Procurement Review to the Bank are responsible for ensuring that any Request for Bank Procurement Review is supported by appropriate documents to the issues raised and for ensuring that information provided to the Bank is accurate and verifiable.

Any issues related to the procurement process applied or the respective procurement documents issued that are submitted to the Bank before the opening of tenders¹ or financial proposals are considered as a "Request for Bank Procurement Review" and will be reviewed in line with this Guidance Note².

A Request for Bank Procurement Review:

- (a) Will only be accepted by the Bank if a formal request for clarification in line with the procurement documents or the issue for review had been addressed with the Bank's client first. A Request for Bank Review that is received by the Bank without the issue having been addressed to the client first will be forwarded directly to the client for its response.
- (b) Shall only be addressed to the Bank if the response by the client is considered unsatisfactory or absent.

3.2 Who can submit a Request for Bank Procurement Review?

A Request for Bank Procurement Review can only be filed by a Participant. Firms or individuals that act as sub-contractor/consultant to the Participant or do not in any way participate in the relevant procurement process do not have the right to file a Request for Bank Procurement Review.

Participants include those who seek to participate in a procurement process, but consider that they may be unduly excluded or restricted by the provisions of the procurement documents from participating in a procurement process.

3.3 How to submit a Request for Bank Procurement Review

The request shall be submitted to the Bank via an e-mail entitled "Request for Bank Procurement Review" to the mailbox ebdprocurementreview@ebd.com

¹ In respect of multi-stage open tendering process, pursuant to Section III, Article 3.8 of the PP&R, the tender refers to the final proposal, stating the tender price.

² These reviews also cover the prequalification or shortlisting process and their outcome.

The request shall state a) the project name, b) the name and number (if applicable) of the procurement process in question, and c) the exact issues being raised and with reference to the applicable paragraphs in the procurement documents and a copy of relevant communication with the Bank's client shall be enclosed.

Failure to provide sufficient information may invalidate the request for Bank Procurement Review.

3.4 Deadline for submission of a Request for Bank Procurement Review

A Request for Bank Procurement Review shall be submitted to the Bank as soon as the Participant has become aware of the issue and before the opening of tenders or financial proposals as outlined in section 3.1 above.

3.5 Review process

Once a Request for Bank Procurement Review has been submitted by a Participant and received by the Bank in accordance with the above requirements, the Participant will receive an e-mail acknowledging receipt by the Bank and the Bank will notify the client that a request has been received.

PPAD will review the issues raised in the Request for Bank Procurement Review based on the information provided by the Participant and the client. The Bank may use any other information available to the Bank including the opinion provided by consultants in assisting the Bank in its review. If considered necessary, PPAD may request further information, documents or clarifications from the Participant as part of the review process.

Once PPAD has finalised its review, it will inform the Participant that PPAD has finalised its review; and the client of its considerations. It is the client's responsibility to inform the Participants in the procurement process of any actions following the Request for Bank Procurement Review.

Section V: Waivers, Exceptions and Disclosure

Waivers

The Director of PPAD may grant a deviation from a requirement of this Guidance Note that is not explicitly permitted by the terms of this Guidance Note.

Exceptions

Not Applicable.

Disclosure

This Guidance Note will be published on the Bank's website www.ebrd.com.

Section VI: Transitional Provisions

None

Section VII: Effective Date

This Guidance Note is effective from 1 October 2020

Section VIII: Responsible and Accountable

Accountable

Director, Procurement Policy and Advisory Department

Responsible

Associate Director, Procurement Policy and Advisory Department

Section IX: Review and Reporting

Review

The Guidance Note may be reviewed from time to time by the Bank's management.

Reporting

None

Section X: Related Documents

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

The Procurement Complaints Review Directive DIR/2020/2.