

Procurement Complaints Committee

Terms of Reference

approved on 4 March 2009 by the Executive Committee

(updated as of January 2014)

Preamble

1. To enhance the overall quality of the Bank's procurement work and ensure that the major procurement decisions and positions taken by it comply with the Procurement Policies and Rules (PPR) or the Corporate Procurement Policy and Procedures (CPP), as the case may be, and are both consistent and fair, the Bank has set up the Procurement Complaints Committee (PCC). The PCC performs the functions detailed in these Terms of Reference.
2. The terms of reference of the PCC are to:
 - Review and decide the Bank's position relative to complaints and disputes arising from tendering and contracts for goods, works and consultant services (including those funded by TC funds or the Bank's budget) subject to the PPR or the CPP, as the case may be; and
 - Review and/or advise on procurement and related matters referred to it by the Executive Committee or the Operations Committee.

Composition

3. The membership of the PCC is constituted as follows:
 - Deputy General Counsel, Banking & Finance
 - Chief Compliance Officer
 - Director, Administrative Services Department
 - Executive Counsellor, Banking Department
 - Executive Counsellor, Policy Department
 - Director, Operational Risk & Information Security

General Procedures

4. The PCC will only be convened as necessary and has a quorum of four members. It may decide to consider certain cases or complaints on a no-objection basis on the basis of the documentation circulated to PCC members, without

convening for a meeting. The Deputy General Counsel, or in his absence, the Chief Compliance Officer, will chair the committee.

5. Any PCC member who considers that his or her involvement in the committee's review of a matter might give rise to a conflict of interest will seek the advice of the Chief Compliance Officer as to whether he or she should be excused from further participation in the deliberations of the committee on that matter.

6. If the PCC considers that a matter before the committee turns on the assessment of technical matters outside the competence of PCC members, or on other complex issues giving rise to a need for advice from external experts, the committee may request the appointment of one or more suitably qualified consultants to assist in the committee's deliberations.

7. Decisions of the committee are taken by a majority of PCC members voting. At the option of any dissenting member(s), the area of disagreement may be presented at a meeting of the Executive Committee. Based on the advice of the Executive Committee, the President will make a decision.

PPR Matters

8. For matters involving application of the PPR, the Director, Procurement Department will act as secretary of the PCC. The secretary, supported by the Procurement Department, will prepare appropriate documentation, arrange for the appointment of consultants to assist the committee in its review of a case if so requested by the committee, record decisions and monitor all follow-up actions.

9. (a) Complaints from or on behalf of aggrieved tenderers for contracts to be procured in accordance with PPR should be referred to the PCC for its consideration once the PD and the Operations Team have concluded their initial review. The Complaint Review Memorandum will be prepared by the PD and signed by the PD Director, with appropriate input from the Operations Team, and will be circulated to PCC members via e-mail as well as in hard copy, including all attachments referred to in the Complaint Review Memorandum. It will summarise the case and present the PD's recommended course of action, including whether it believes that a PCC meeting is required. Any member of the PCC can request a meeting. As a general rule, PCC meetings will be scheduled not less than three business days following circulation of hard copies of the Complaint Review Memorandum.

(b) The responsible Team Leader (TL) and the Operation Leader (OL) would normally attend. In addition, the OGC project lawyer and/or the Procurement Specialist(s) from the PD or Sector Teams who are knowledgeable about the case, as well as any external consultants, may be invited to brief the committee and answer any questions.

CPP Matters

10. For matters involving application of the CPP, the head of the Corporate Procurement Unit will act as secretary of the PCC. The secretary, supported by the Corporate Procurement Unit, will prepare appropriate documentation, arrange for the

appointment of consultants to assist the committee in its review of a case if so requested by the committee, record decisions and monitor all follow-up actions.

11. (a) Complaints from or on behalf of aggrieved tenderers for contracts to be procured in accordance with the CPP should be referred to the PCC once the Corporate Procurement Unit and any other EBRD unit involved in the procurement action under review have concluded their initial review. The Complaint Review Memorandum will be prepared by the Corporate Procurement Unit and signed by the head of the Corporate Procurement Unit, with appropriate input from any other team involved in the matter, and will be circulated to PCC members via e-mail as well as in hard copy, including all attachments referred to in the Complaint Review Memorandum. It will summarise the case and present the recommended course of action, including whether the head of the Corporate Procurement Unit believes that a PCC meeting is required. Any member of the PCC can request a meeting. As a general rule, PCC meetings will be scheduled not less than three business days following circulation of hard copies of the Complaint Review Memorandum.

(b) The responsible member of the Corporate Procurement Unit normally attends the PCC meeting. In addition, any other EBRD staff members who are knowledgeable about the case, as well as any external consultants, may be invited to brief the committee and answer any questions.

Reporting

12. The PCC will report annually to the Executive Committee on complaints reviewed by the committee during the previous year.