



10th BUSINESS OPPORTUNITIES FAIR 2019



Anticorruption, Integrity, & Complaints —*Procurement-Related Complaints*

Julian Doczi
**Procurement, Portfolio & Financial
Management Department, ADB**
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Overview



- What is (and is not) a procurement-related complaint?
- Who can submit one?
- Where, when, and how to submit one?
- What happens after submitting one?



What is a Procurement-Related Complaint?

- A term formalized in the ADB's new Procurement Policy and Procurement Regulations

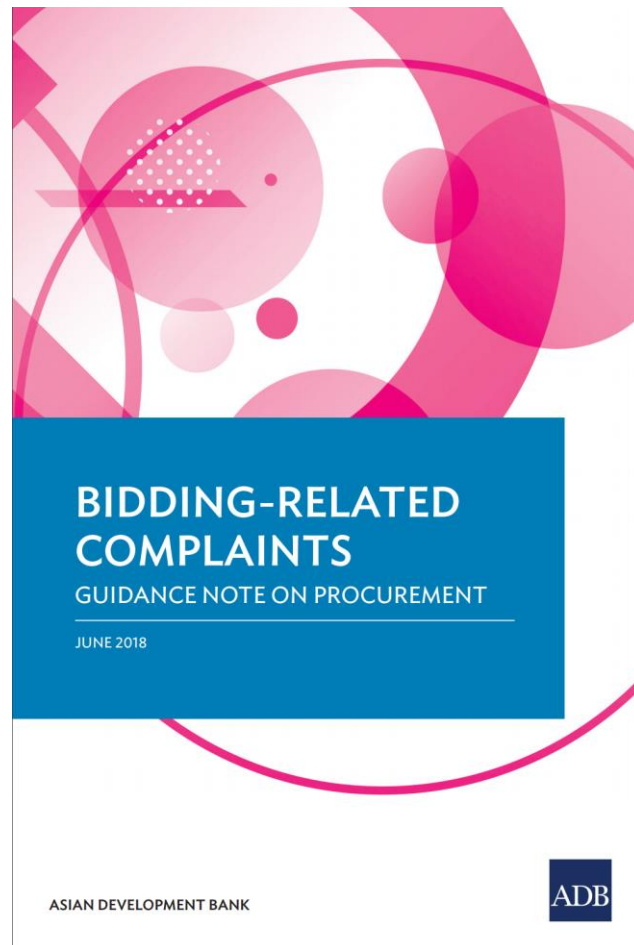




What is a Procurement-Related Complaint?



- More information also in new guidance note



<https://www.adb.org/documents/bidding-related-complaints>



What is a Procurement-Related Complaint?



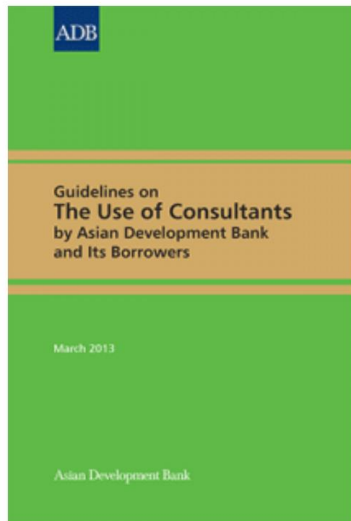
- Some complaint-related language under old Guidelines, but mostly considered within specific procurement documents

Applicable Law and Settlement of Disputes

2.60 The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Consultants' contracts shall always include a clause for settlement of disputes. International commercial arbitration may have practical advantages over other methods for the settlement of disputes. Borrowers are, therefore, encouraged to provide for this type of arbitration. ADB shall not be named an arbitrator or be asked to name an arbitrator.

Complaints during the Recruitment Process

1.7 If, during the recruitment process, consultants wish to bring information with respect to the integrity of the selection process to the notice of the borrower, ADB, or both, they should do so in writing through the borrower, or they may write to ADB directly if the borrower does not respond promptly or if the communication is a complaint against the borrower.



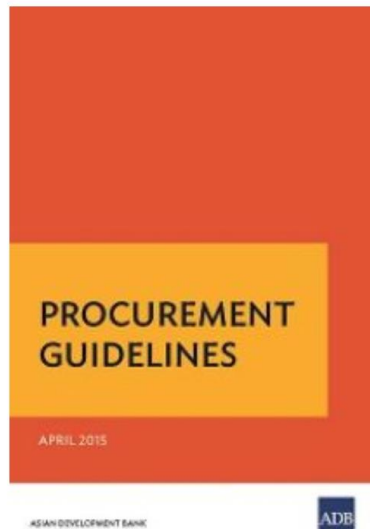


What is a Procurement-Related Complaint?



Applicable Law and Settlement of Disputes

2.43 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration has practical advantages over other methods for the settlement of disputes. Therefore, ADB recommends that borrowers use this type of arbitration in contracts for the procurement of goods and works. ADB shall not be named arbitrator or be asked to name an arbitrator. In case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.



- requests for extension, irrespective of the period.
- (e) If after publication of the results of evaluation, the borrower receives protests or complaints from bidders, a copy of the complaint and a copy of the borrower's response shall be sent to ADB for information.
- (f) If as result of analysis of a protest the borrower changes its contract award recommendation, the reasons for such decision and a revised evaluation report shall be submitted to ADB for no objection. The borrower shall provide a republication of the contract award in the format of paragraph 2.60 of these Guidelines.
- (g) The terms and conditions of a contract shall not, without ADB's prior

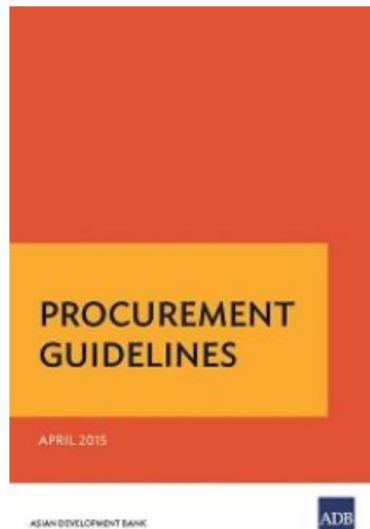


What is a Procurement-Related Complaint?



Action by ADB

11. Bidders are free to send copies of their communications on issues and questions with the borrower to ADB or to write to ADB directly, when borrowers do not respond promptly, or the communication is a complaint against the borrower. All such communications should be addressed to the project officer for the project, with a copy to the Director General, Operations Services and Financial Management Department.





What is a Procurement-Related Complaint?

- Under the new Procurement Policy:

XI. Complaints

14. **Procurement-related complaints** may be brought to the attention of the borrower or ADB, or both, at the appropriate stage of the procurement process. They must be addressed objectively and in a timely manner, with transparency and fairness.



What is a Procurement-Related Complaint?

- Under the new Procurement Regulations:*
- *Note: this document applies to borrowers, but similar internal provisions exist for ADB TA grants*

Complaints

- 1.31 Procurement-related complaints with regard to a bidding process may be brought to the attention of the borrower or ADB, or both, at the appropriate stage of the procurement process. Such complaints must be addressed objectively and in a timely manner, with transparency and fairness.
- 1.32 Guidance on the complaints procedure during bidding is provided in Appendix 7.



What is a Procurement-Related Complaint?

From Appendix 7:

- “A communication recorded in written form, including mail, e-mail, fax, or communication through an e-procurement system submitted by an interested party to the borrower and/or ADB arising out of or relating to a specific procurement process that alleges a misapplication or omission in application of ADB’s Procurement Policy and/or Procurement Regulations, amounting to a breach thereof.”
- The complaint “must be submitted within the permitted time frame and to the appropriate official designated for receipt of such complaints, if specified in relevant procurement documentation”



What is a Procurement-Related Complaint?



- Key considerations:
 - **Recorded in written form:** No calls / walk-ins
 - **Interested party:** (upcoming slide)
 - **Borrower and/or ADB:** Depending on whether loan or TA
 - **Specific procurement process:**
 - Procurement planning; costing; TOR; preparation & issuance of all procurement-related documents; evaluation; award (or intention to award); debriefing
 - (generally not contract implementation - governed by contract)
 - Must be subject to the Procurement Policy (not old Guidelines)
 - **Misapplication/omission:** Must make allegation in terms of specific provisions within the Policy or Regulations
 - **Within time frame and to appropriate official:** Where specified (e.g., standstill periods)



What is NOT a Procurement-Related Complaint?

- Other exceptions:
 - Complaints alleging **fraud, corruption, or any prohibited practice** under ADB's Anticorruption Policy and/or Integrity Principles and Guidelines (send these to OAI: integrity@adb.org)
 - Complaints arising out of an **alternative procurement arrangement** (rules are those of the lead agency)
 - Complaints related to **ADB's own institutional procurement** (governed by separate (similar) internal rules)
 - Any other type of complaint (safeguards, compliance, HR-related, etc.)



Who can Submit a Procurement-Related Complaint?

- Only an **interested party**:
 - An applicant for prequalification
 - A party interested in bidding or expressing interest
 - A bidder bidding for, proposing to bid for, or being notified of award of (including notification of intention to award) a contract
- *Anonymous sources and parties that do not qualify as interested parties may still submit complaints, but their consideration will be at the discretion of the borrower and/or ADB*



Where, When, and How to Submit a Procurement-Related Complaint?



- For procurements where a borrower is involved:
 - First, to the borrower, **through the address(es) provided in specific procurement documents**
 - If response (or deemed lack of action) by borrower is unsatisfactory to complainant, then ADB may be contacted for further complaint and may consider it (depending on context)
- For ADB-led procurements:
 - Best way is to use our **new submission form** on the ADB website: <https://www.adb.org/forms/complaints>
 - Or, to address/official indicated in specific procurement documents
- **Be sure to do so within time frame and address it to appropriate official – only if specified**



When, Where, How: Specific Procurement Documents



31. Procurement-Related Complaint 31.1 The procedures for making a procurement-related complaint are as specified in the **Data Sheet**.

Procurement-Related Complaints

The procedures for making a procurement-related complaint are detailed in paragraphs 1.31 and 1.32 of the Procurement Regulations. If a Consultant wishes to make a procurement-related complaint, the Consultant shall submit its complaint following these procedures, in writing (by the quickest means available, such as by e-mail or fax), to:

For the attention: *[insert full name of person receiving complaints]*

Title or position: *[insert title or position]*

Client: *[insert name of Client]*

Project: *[insert name of Project]*

E-mail address: *[insert e-mail address]*

Fax number: *[insert fax number or delete if not used]*

In summary, a procurement-related complaint may challenge any of the following:

- (i) the terms of this Request for Proposal;
- (ii) the Client's decision to exclude a Consultant from the procurement process prior to the award of contract; and
- (iii) the Client's decision to award the contract.

For ADB-led, we are increasingly inserting <https://www.adb.org/forms/complaints> into this part of the data sheet



When, Where, How: Specific Procurement Documents



45. Bidding-Related Complaints

45.1 The procedures for dealing with Bidding-Related Complaints arising out of this bidding process are specified in the BDS.

ITB 45.1

The procedures for Bidding-Related Complaints are referenced in the Procurement Regulations for ADB Borrowers (Appendix 7). The Bidder should submit its complaint following these procedures, in writing, to:

For the attention: *[insert full name of person receiving complaints]*

Title/position: *[insert title/position]*

Employer: *[insert name of Employer]*

E-mail address: *[insert e-mail address]*

Fax number: *[insert fax number; delete if not used]*



Submit a Complaint



*Fields marked with * are required.*

Type of complaint: *

- ☐ **Procurement**
- ☐ **Consulting**

<https://www.adb.org/forms/complaints>

Complaint details

Project/Reference number

Provide the reference number

Contract package number

Provide the contract package number

Project type *

Select the project type *

Country *

Select the country *

Provide the agency, client, or employer

Executing Agency / Implementing Agency / Client / Employer



Complaint description *

Provide a detailed description of the complaint *

Evidence/clarification *

Provide evidence/short write up to the information above

Have you complained about this before? *

- Select -

Complainant details

Type of complainant *

Sub-type of complainant *

Would you like this complaint to remain anonymous?

- ☒ No
- ☐ Yes



Provide complete contact details

This question is for testing whether or not you are a human visitor and to prevent automated spam submissions.



I'm not a robot



reCAPTCHA
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What Happens After Submitting a Procurement-Related Complaint?

- **To the borrower:**

- Must acknowledge receipt of the complaint
- Then will determine complaint validity
- For valid complaints, Borrower must undertake a “timely and considered review” in line with Appendix 7 of the Procurement Regulations
 - Prior review: Borrower sends draft response to ADB for no objection
 - Post review (sampling): Borrower takes any action it considers appropriate, but ADB may review for noncompliance thereafter
- Resolution: Borrower’s response must be clear and meaningful, providing a concise statement of issues, facts, conclusions/decisions, and rationale



What Happens After Submitting a Procurement-Related Complaint?

- **To ADB:**
 - Will acknowledge receipt of the complaint (automatic if submitted through the web form)
 - Will determine complaint validity
 - For valid complaints, ADB may either:
 - Forward the complaint to the borrower (if applicable) for review and resolution, or
 - Review and resolve the complaint itself
 - For those ADB handles itself: ADB will undertake a timely and considered review, within the relevant context
 - Resolution: ADB's response will be clear and meaningful, providing a concise statement of issues, facts, conclusions/decisions, and rationale



What Happens After Submitting a Procurement-Related Complaint?

- **Possible remedial actions if a complaint is upheld**
 - Amending / reissuing / readvertising procurement plan, specifications, TOR, etc.
 - Modifying bid ranking or withdrawing/issuing declaration of nonresponsiveness
 - Modifying recommendation for contract award (or intent to award)
 - Cancelling procurement process and starting a new one
- All involved parties would be notified
- Currently no appeals process defined under the Policy (i.e., **decisions are final**, unless some new fact is discovered)



Thank you!
Questions?