BIDDING-RELATED COMPLAINTS

GUIDANCE NOTE ON PROCUREMENT

JUNE 2018

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6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines
Tel +63 2 632 4444; Fax +63 2 636 2444
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CONTENTS

Tables and Figure	iv
About This Publication	v
Abbreviations	viii
Executive Summary	ix
I. Introduction	1
II. Definitions and Common Terms	4
III. Procedure for Handling Complaints	5
IV. Roles and Responsibilities	10
Appendix 1: Complaint Template	12
Appendix 2: Acknowledgment Template	14
Appendix 3: Post Review (Sampling) Situations—Recommended Practice	15
Appendix 4: Executing Agency Actions If Complaints Are Upheld	17

TABLES AND FIGURE

TABLES

1.	Definition of Common Terms Used in the Guidance Note	4
2.	Timelines for Submission of Complaints	8

FIGURE

	Bidding-Related Complaints in the ADB Procurement Cycle	2
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ABOUT THIS PUBLICATION

In April 2017, the Asian Development Bank (ADB) approved its new procurement framework, the ADB Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time); and the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time). These replace the former Guidelines on the Use of Consultants (2013, as amended from time to time) and Procurement Guidelines (2015, as amended from time to time). The procurement policy and the procurement regulations address the procurement activities of project executing agencies and implementing agencies on projects financed in whole or in part by a loan or grant from ADB, or by ADB-administered funds. ADB designed the 2017 procurement policy to deliver significant benefits and flexibility throughout the project procurement cycle, as well as to improve project delivery through a renewed focus on the concepts of quality, value for money (VFM), and fitness for purpose.

This note is part of a series of guidance notes published by ADB in 2018 to accompany the 2017 procurement policy and the procurement regulations. Each note discusses a topical issue for borrowers (including grant recipients), bidders, and civil society under the new framework (see list below). The guidance notes cross-reference each other frequently and should be read in conjunction. All references to “guidance notes” pertain to these notes. The notes may be updated, replaced, or withdrawn from time to time.

List of Guidance Notes for the 2017 ADB Procurement Policy and the Procurement Regulations

1. Value for Money	14. High-Level Technology
2. Procurement Risk Framework	15. Quality
3. Strategic Procurement Planning	16. Bidding-Related Complaints
4. Procurement Review	17. Noncompliance in Procurement
5. Alternative Procurement Arrangements	18. Standstill Period
6. Open Competitive Bidding	19. State-Owned Enterprises
7. Price Adjustment	20. E-Procurement
8. Abnormally Low Bids	21. Framework Agreements for Consulting Services
9. Domestic Preference	22. Public-Private Partnerships
10. Prequalification	23. Contract Management
11. Subcontracting	24. Fragile, Conflict-Affected, and Emergency Situations
12. Consulting Services Administered by ADB Borrowers	
13. Nonconsulting Services Administered by ADB Borrowers	
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ADB procurement reforms intend to ensure VFM by improving flexibility, quality, and efficiency throughout the procurement cycle (see illustration below and the *Guidance Note on Value for Money*). VFM is part of a holistic procurement structure with three support pillars: efficiency, quality, and flexibility. The two key principles of transparency and fairness weave across all elements of the structure.

Time

Time is an important element of VFM. When a project is delivered promptly or when a process is completed rapidly, greater value is created for all stakeholders. For example, a road project completed early provides economic benefit, security, or other value to the community it serves. It increases the return on investment to the executing agency and accelerates the project and payment cycle to the successful bidder. Likewise, a project delivered late loses significant value.

When considering VFM in the context of procurement, pay attention to anything that (i) shortens the procurement cycle time frame or (ii) accelerates delivery of the development project.

Objective

This guidance note is intended to assist readers by elaborating on and explaining ADB's 2017 procurement policy and procurement regulations for borrowers (including grant recipients).

This note identifies additional information for the reader to consider when applying ADB's procurement policy and procurement regulations to their circumstances.

Living Document

This guidance note is intended to be a living document and will be revised as required.

Be sure to check the ADB Business Center website for the latest version and updates, <https://www.adb.org/business/main>.

The Reader

In many circumstances, readers are expected to use this guidance note in a manner unique to their needs. For consistency throughout the suite of guidance notes, the following assumption is made about the reader:

The reader is a professional involved in activities financed in whole or in part by an ADB loan or grant, or by ADB-administered funds.

FAQs

Frequently asked questions, clarifications, examples, additional information, links to training, and other useful resources will be made available on the ADB website.

Be sure to check the ADB Business Center website for more information, <https://www.adb.org/business/main>.

Legal and Order of Priority

This guidance note explains and elaborates on the provisions of the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) applicable to executing (and implementing) agencies under sovereign (including subsovereign) projects financed in whole or in part by an investment loan from ADB (i.e., excluding ADB results- or policy-based loans), ADB-financed grant (excluding ADB-administered technical assistance and staff consultancies), or by ADB-administered funds.

In the event of any discrepancy between this guidance note and the procurement regulations, the latter will prevail. The financing agreement governs the legal relationships between the borrower and ADB. The rights and obligations between the borrower and the provider of goods, works, or services are governed by the specific procurement document issued by the borrower and by the contract signed between the borrower and the provider, and not by this guidance note.

ABBREVIATIONS

ADB	—	Asian Development Bank
APA	—	alternative procurement arrangement
ITA	—	intention to award
OAI	—	Office of Anticorruption and Integrity
VFM	—	value for money

EXECUTIVE SUMMARY

Through this guidance note, ADB addresses, for the first time, the handling of bidding-related complaints in a comprehensive manner. It expands on the provisions of ADB's 2017 procurement policy and procurement regulations related to complaints, to provide direction and procedures on submitting and handling complaints under a procurement process subject to ADB regulations.

Addressing bidding-related complaints objectively and in a timely manner may

Increase Efficiency, Ensure Quality, and Reduce Procurement Time

- Poor handling of complaints and unclear processes may be time-consuming and delay intended project outcomes. The proposed procedures can help
 - › substantially reduce time in handling bidding-related complaints,
 - › reduce resources devoted to handling complaints, and
 - › achieve better procurement and project outcomes.

Improve Transparency and Fairness

- Clear procedures ensure that borrowers (including grant recipients) and complainants understand their roles and responsibilities, that complaints are well-justified and clearly specified, and that decisions are objective and timely.

Reduce Risk

- Improve compliance to audit requirements.
- Reduce the risk of litigation.

I. Introduction

A. Purpose

1.1 Under the Asian Development Bank (ADB) Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) and Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time), bidding-related complaints brought to the attention of the borrower or ADB must be addressed objectively and in a timely manner, with transparency and fairness. A well-managed, robust, and objective complaints handling mechanism is an essential characteristic of any public procurement system. It provides a check on arbitrary decision-making and encourages competition.

1.2 The purpose of this guidance note is to provide information to borrowers (including grant recipients), through their executing agencies and any implementing agencies, as well as interested parties in a procurement process subject to ADB's 2017 procurement regulations, on submitting, reviewing, and handling complaints. This guidance note should be read in conjunction with the procurement regulations (in paras. 1.31 and 1.32, and Appendix 7), as it elaborates on its provisions on complaints. In this guidance note, an "interested party" is a potential or an actual participant in a bidding process, defined further in section III.

B. Scope

1.3 The procedures described herein apply to the treatment of complaints arising from, or in connection with, a bidding process financed in whole or in part by an ADB loan or grant, or by ADB-administered funds, as submitted by an interested party. Bidding-related complaints may arise during the procurement planning, bidding (including prequalification), bid evaluation, contract award, post-award, and implementation stages of the ADB procurement cycle (see Figure).

Figure: Bidding-Related Complaints in the ADB Procurement Cycle

Source: Asian Development Bank.

1.4 Complaints can arise under three possible scenarios:

- (i) Complaints that allege fraud, corruption, or any prohibited practice under ADB's Anticorruption Policy (1998, as amended to date)¹ and Integrity Principles and Guidelines (2015, as amended from time to time).²
- (ii) Complaints that arise out of, or relate to, a bidding process subject to an alternative procurement arrangement (APA) that may allege fraud, corruption, and/or some other bidding-process-related irregularity or omission.

¹ ADB. 2010. *Anticorruption and Integrity*. Manila. <https://www.adb.org/sites/default/files/institutional-document/31317/anticorruption-integrity-policy-strategy.pdf>.

² ADB. 2015. *Integrity Principles and Guidelines* (2015). Manila. <https://www.adb.org/sites/default/files/institutional-document/32131/integrity-principles-guidelines.pdf>.

- (iii) Complaints that allege misapplication or omission in application of ADB's 2017 procurement policy and/or procurement regulations during a bidding process financed in whole or in part by an ADB loan or grant, or by ADB-administered funds, to which the procurement regulations apply, which would amount to a breach of the policy and/or regulations.

1.5 The provisions under this guidance note do not apply to the handling of complaints that allege integrity violations, which is governed by ADB's anticorruption policy and integrity principles and guidelines, regardless of whether the bidding process falls under APA. Any complaint received by a borrower that alleges an integrity violation must be promptly referred to ADB's Office of Anticorruption and Integrity (OAI). ADB may, in such cases, request the borrower—or, in APA situations, a cofinancier or an accredited agency, as the case may be—to provide detailed information about the alleged integrity violation.

1.6 Complaints related to transactions under APAs are not covered in this guidance note. Handling of such complaints will depend on the applicable procurement regime, whether it be with the lead cofinancier or an accredited agency of the borrower. In APA situations, in the absence of actual or suspected integrity violations,³ bidding-related complaints are handled by either the lead cofinancier, under the relevant mutual reliance agreement(s), or by the accredited agency of the borrower under the relevant project agreement and applicable local procurement rules and procedures.

1.7 Complaints from anonymous sources or parties that do not qualify as interested parties, such as civil society organizations, while not covered under this guidance note, must be addressed by the borrower. Any such complaints received by the borrower must be promptly reported to ADB and will be dealt with on a case-by-case basis in consultation with ADB.

³ For transactions under APA, ADB's anticorruption policy and integrity principles and guidelines continue to apply. Therefore, ADB reserves the right to determine whether any of its policies and procedures have been violated, including independently investigating integrity violations under such APA procurement. In such circumstances, ADB's findings of noncompliance to its anticorruption policy may result in remedial action, including sanctions imposed by OAI. ADB may also exercise its right to withdraw, suspend, or terminate its own participation or financing under the relevant mutual reliance agreement and/or financing agreement.

II. Definitions and Common Terms

2.1 Table 1 describes common terms used in this guidance note.

Table 1: Definition of Common Terms Used in the Guidance Note

Term	Definition
bidding process	All stages of procurement activities starting from procurement planning to final notice of award, as described in Appendix 7, para. 2 of the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time).
business day	An official working day in the country of the borrower at the exclusion of the borrower's public holidays.
holding period	The duration specified in the bidding document within which unsuccessful bidders in two-envelope or two-stage procedures can challenge proposals to proceed to the opening of price bids or to the next stage.
post review (sampling)	The review of procurement decisions by ADB after procurement has been completed, following the requirements of Appendix 6, paras. 10–14 of the procurement regulations; discussed further in the <i>Guidance Note on Procurement Review</i> .
prior review	The review of procurement decisions by ADB under which key decisions at different steps of the bidding process must be reviewed and approved by ADB before the borrower can proceed with the procurement. Requirements are detailed in Appendix 6, paras. 7–9 of the procurement regulations; and discussed further in the <i>Guidance Note on Procurement Review</i> .
procurement documentation	A set comprising the invitation for bid or prequalification; all documentation constituting a bid, prequalification application, or proposal; notices to bidders; communications from the executing agency related to the bidding, etc. A detailed description is provided in Appendix 7, para. 6 of the procurement regulations.
standstill period	If used, the duration specified in the relevant bidding documents, subsequent to a notification of intention to award a contract, within which an unsuccessful bidder may file a complaint to challenge such proposed award of contract, as referred to in Appendix 3, para. 87 of the procurement regulations; and discussed further in the <i>Guidance Note on Standstill Period</i> .

ADB = Asian Development Bank.

Source: Asian Development Bank.

III. Procedure for Handling Complaints

A. General Considerations

3.1 This guidance note addresses complaints submitted by an interested party under a bidding process subject to the 2017 procurement regulations, other than those alleging an integrity violation or subject to APA. For the purpose of this guidance note, an interested party (see Appendix 7, para. 4 of the procurement regulations) is defined as

- (i) an applicant for prequalification;
- (ii) a bidder bidding for, proposing to bid for, or being notified award of or intention to award a contract; and/or
- (iii) a party interested in bidding or expressing interest.

An interested party submitting a complaint may also be hereinafter referred to as the “complainant.”

3.2 The handling of bidding-related complaints will involve the following key steps:

- (i) submitting a complaint;
- (ii) debriefing⁴ by borrower (and/or ADB as required), as provided for in the bidding document; and
- (iii) review of the complaint by borrower (and ADB as required).

3.3 For complaints relating to transactions subject to the procurement regulations, other than those alleging integrity violations or subject to APA, the complaint handling procedure and the type of information required will depend on the stage of the bidding process to which the complaint relates, as well as the review modality (prior review or post review [sampling]). Any such complaint must provide basic information and identify the stage of the bidding process and the alleged inconsistency or integrity violation, including the requested remedy following procedures detailed below.

⁴ See the procurement regulations (Appendix 3, para. 99; Appendix 9, para. 23) and the *Guidance Note on Standstill Period*.

3.4 Complaints from interested parties can arise under the following situations:

- (i) prior to the submission of bids,
- (ii) after submission of bids but prior to contract award, and/or
- (iii) after contract award.

3.5 Complaints received prior to the submission of bids may consist of (i) a challenge to the procurement documents, if the bidder has not received clarification as requested or has not been satisfied with clarifications received; or (ii) reporting misapplication of the provisions of the procurement documents.

3.6 Complaints submitted after bid submission but prior to contract award would typically relate to the borrower's decision to exclude a bidder from a bidding process prior to the decision of contract award under the following circumstances:

- (i) The complaint follows a notification of an intention to award (ITA) a contract where a standstill period applies.
- (ii) The complaint follows a proposed decision to exclude a bidder from the bidding process under two-envelope and two-stage procedures allowing a holding period.

3.7 Complaints submitted after the award of a contract in the absence of a standstill or holding period will typically challenge the decision to award the contract.

B. Submitting a Complaint

3.8 Complaints must be submitted in writing as follows:

- (i) by mail (courier or personal delivery), e-mail, or fax to the address or numbers specified in the bidding document;
- (ii) through an electronic procurement system as applicable; and/or
- (iii) at the relevant borrower website link identified for such purpose.

3.9 Complaints are preferably submitted electronically to the designated e-mail or portal of the borrower specified in the bidding document and/or at the relevant borrower website link for more expeditious handling.

3.10 Communication for a complaint should typically provide the following:

- (i) establish the complainant's status as an "interested party" (e.g., potential or actual bidder) and identify the exact stage of the bidding process where the violation allegedly occurred;
- (ii) identify and summarize the nature of the complaint (e.g., "specifications were unduly restrictive") in terms of the exact provisions of the ADB 2017 procurement policy or procurement regulations that the complainant considers the borrower to have violated or compromised;
- (iii) identify supporting documentary basis for the complaint (e.g., issues relating to the procurement plan, prequalification, terms of reference or specifications, invitation for bids, request for proposal, bid addendum, etc.); and
- (iv) identify any relevant communications with the borrower (or third parties) on the bidding process (e.g., debriefings) that relate to submissions in the complaint.

3.11 Appendix 1 gives a suggested complaint submission template. A complainant may also send a copy of communications with the borrower to ADB.

3.12 Complaints relating to the award (or ITA) or a proposed decision to exclude a bidder from the procurement process should be submitted preferably only after the bidder has obtained a timely debriefing from the borrower. If not, the bidder should specify why obtaining a debriefing was not possible or not sought in the circumstances.

3.13 In situations where a complainant is not satisfied with responses received from the borrower during a debriefing or in response to a complaint, or in a situation where the complainant alleges a lack of responsiveness on the part of the borrower, the complainant may submit a complaint directly to ADB. In such cases, ADB will undertake its own investigation into the facts and circumstances of the case and communicate with the borrower accordingly.

3.14 For submission of complaints or copies of complaints directly to ADB, complainants may use the "Complaints" page of the ADB website.⁵

⁵ <https://www.adb.org/forms/complaints>.

3.15 Subsequent to filing a complaint, the borrower (or ADB) may require a complainant to provide further particulars. Complainants must provide such information within 3 business days of receipt of a request. Table 2 summarizes timelines for submitting complaints.

Table 2: Timelines for Submission of Complaints

Bidding Stage	Timeline for Submission
Pre-bid submission	File complaint within the time specified in the bidding or prequalification document; or not later than 7 business days prior to the deadline for submission of bid or prequalification application, if the bidding or prequalification document does not specify a time.
Post-bid submission (standstill or holding period applies)	If the bidder wishes to avail of a debriefing, this should be requested in writing within 3 business days from the date of the challenged action that gave rise to the complaint. The complaint must be submitted within the specified standstill or holding period set out in the bidding document (or within any permitted extension). See the <i>Guidance Note on Standstill Period</i> for further details.
Postcontract award (No standstill or holding period)	The complaint must be submitted as soon as possible after notification of contract award.

Source: Asian Development Bank.

C. Review of the Complaint by the Borrower

3.16 For a complaint addressed and directly submitted to the borrower, the borrower must acknowledge receipt (including notifying of rejection if the complainant has not provided sufficient detail and focus for their submission to constitute a complaint) within 3 business days of receipt. The borrower promptly provides a copy of the complaint to ADB within 1 business day of receipt. Appendix 2 provides the recommended template for the borrower to acknowledge a complaint. As provided for in para. 3.15 of this guidance note, the borrower may request further particulars from the complainant, if needed, and should provide a copy to ADB of any supporting documents received within 1 business day of receipt.⁶

3.17 **Complaints relating to award of the contract.** Prior to contract award, complaints can be filed only where either a standstill or a holding period applies. Where the bidding document does not provide for a standstill or a holding period, complaints can be submitted only after notification of contract award.

⁶ Under this approach, ADB does not receive a copy of any borrower request until the complainant responds and supplies the documents.

3.18 The borrower undertakes a timely and careful review of any complaint in a fair and impartial manner, taking into consideration all relevant facts and circumstances. Where no debriefing was requested, the borrower provides ADB with a draft response to the complaint within 5 business days of the receipt of a complaint, either answering the complaint or requesting additional information as per para. 3.15 of this guidance note. Where a bidder was debriefed, the borrower will submit a draft response within 3 business days of the debriefing. The borrower will expedite dispatch of any final response to the complainant at the earliest possible time.

3.19 **Complaints postcontract award.** If a complaint is submitted after contract award (with no standstill or holding period), the borrower drafts a response and submits it to ADB for review within 7 business days of receipt. However, if the complaint is upheld, remedies would be those provided under the national laws and/or regulations.

3.20 **Confidentiality.** In responding to any bidding-related complaint, the borrower has an obligation to maintain the confidentiality of proprietary commercial or financial information, including trade secrets, which have been provided by the complainant as part of its bid or otherwise.

D. Review of the Complaint by ADB

3.21 This subsection addresses the handling of complaints related to transactions under ADB's prior review. Appendix 3 describes the recommended practice for post review (sampling) situations.

3.22 ADB will promptly forward any complaints it receives to the borrower for review and resolution in consultation with ADB (while maintaining confidentiality of the complainant if expressly requested in a complaint filed directly with ADB). The complainant will be informed accordingly.

3.23 Normally, except for acknowledging receipt, ADB will not enter into discussion or correspondence with any complainant until after the borrower awards the contract and has responded to or debriefed the complainant—unless ADB determines that further communications are warranted in connection with any investigation, audit, evaluation, or other assessment of the challenged bidding process. (See Appendix 9, paras. 22–23 of the procurement regulations.)

3.24 Complaints addressed directly to ADB that allege an integrity violation must be referred to OAI.

IV. Roles and Responsibilities

A. Interested Party (Complainant)

4.1 The roles and responsibilities of an interested party are as follows:

- (i) The interested party must ensure that any complaint filed is sufficiently clear, specific, and informative in providing
 - (a) basic information;
 - (b) identification of the stage of the bidding process; and
 - (c) the substance of the alleged inconsistency or violation, including requested remedy.
- (ii) The interested party should make a timely request (and within the prescribed period, if any standstill period applies) for debriefing by the borrower.
- (iii) The interested party must submit a complaint within the applicable period, fully supported by relevant procurement documentation.⁷

B. Executing Agency

4.2 The roles and responsibilities of the borrower, through its executing agency for the project, are as follows:

- (i) The executing agency must promptly acknowledge receipt of bidding-related complaints.
- (ii) The executing agency must provide prompt and meaningful debriefings⁸ upon notification of ITA or contract award at the request of any interested party who has submitted a bid, while preserving the confidentiality of submissions by other interested parties.
- (iii) The executing agency must undertake a timely, considered, fair, and impartial review of any complaint, taking into consideration all relevant facts and circumstances.

⁷ Procurement documentation includes either standard bidding documents or customized documentation, if approved by ADB, prepared for the relevant transaction.

⁸ Information provided by the executing agency during debriefings should be in sufficient detail so any interested party submitting a bid can make an informed determination as to whether any grounds exist to justify the filing of a credible complaint in relation to the bidding process at hand. In situations in which an interested party submitting a bid is not satisfied with the briefing of the executing agency, such party may file a written request to schedule a meeting with ADB. (See Appendix 3, para. 99 and Appendix 9 para. 23 of the procurement regulations.)

- (iv) The executing agency must actively, and in a timely manner, consult with ADB throughout the complaint review and resolution process. To this effect, the executing agency must provide ADB with a draft response to the complaint within the periods specified above, with expedited dispatch of any final response to the interested party at the earliest possible time, but no later than the deadline of the standstill period, if one applies.
- (v) Any final response by the executing agency to the interested party should include sufficient information regarding the facts and circumstances of the complaint, a clear and concise framing of the issues for review, a meaningful and reasoned analysis of the basis for the decision to uphold or deny the complaint, and a clear articulation of the final decision. Appendix 4 provides examples of actions an executing agency may take at different stages of the bidding process in the event the executing agency upholds a complaint.
- (vi) The executing agency must maintain complete, up-to-date records of the substance and timing of all debriefings and complaints, including details on filing, reviewing, and resolving each complaint, and whether the relevant complaint arising out of a bidding process financed in whole or in part by an ADB loan or grant, or by ADB-administered funds, is subject to prior review or post review (sampling).

C. Asian Development Bank

4.3 The roles and responsibilities of ADB are as follows:

- (i) ADB must promptly forward complaints addressed to ADB to the executing agency for review and resolution, in consultation with ADB (while maintaining confidentiality of the interested party submitting the complaint, where expressly requested).
- (ii) ADB must provide timely review of actions proposed by the executing agency in respect of debriefing, denial of a complaint, or correction of inconsistencies or violations identified in the complaint.
- (iii) Normally, ADB will not enter into discussion or correspondence with any interested party filing a complaint until after the publication of notice of contract award (para. 3.23 of this guidance note). However, ADB may initiate direct communications with an interested party if warranted by the circumstances and nature of the complaint.
- (iv) After contract award, if a bidder is not satisfied with the explanations provided by the borrower during a debriefing, the bidder may write directly to ADB.

Appendix 1: Complaint Template

A1.1 This is a sample complaint submission letter that must be modified to reflect the specific details and circumstances of each actual complaint scenario. The interested party may submit the complaint by mail, e-mail (with scanned PDF or similar attachment), or fax to the address or numbers specified in the bidding documents; through the borrower's electronic procurement system, if applicable; or at the borrower's relevant website link identified for such purpose. The subject line of the cover communication should state "Bidding-Related Complaint" and specify if the complaint involves "Pre-bid," "Post-bid," or "Award" situations.

Bidding-Related Complaint Letter Template

[To be submitted by the interested party: Use letterhead of the interested party—include all contact information, e.g., street address, fax, e-mail, telephone number]

Reference number: *[as applicable]*

Date:

[Executing agency's address, project or procurement contact person details]

Dear _____ *[executing agency contact person]*:

RE: _____ [specify project name and reference number, procurement package and transaction number, country name]

—Bidding-Related Complaint

1. We are an interested party in the above bidding process because:
[e.g., purchased bidding documents, filed expression of interest, filed application for prequalification, submitted a bid or request for proposal, etc.]

2. The bidding process is currently at the following stage: *[Procurement Plan]*
[Advertisement] *[Prequalification]* *[Issuance of Bidding Documents]* *[Submission of Bids]* *[Technical or Financial Bid Evaluation]* *[Contract Award Notification]* *[Intention to Award Notification]* *[Expand (if required) _____]*

3. Briefly, the facts giving rise to our complaint are as follows:
_____ *[provide the chronology and factual circumstances giving rise to the complaint, e.g., specifications or terms of reference, or (pre-) qualification criteria, are perceived to be unduly restrictive, technical bid has been held nonresponsive, debriefing indicates wrong scoring in final evaluation, etc.]*

4. In our understanding, these facts clearly indicate the following misapplication and/or violation [*or omission to apply*] of the Asian Development Bank’s (ADB’s) ADB Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) and/or its Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time).

5. [*Provide specifics of the alleged irregularity; the exact provisions of the 2017 procurement policy and/or procurement regulations that have been misapplied, violated, and/or not applied; details on how this has happened under the relevant facts and circumstances; and its adverse impact on the position of the interested party in relation to the relevant bidding process as a result.*]

6. Therefore, we submit that such action should be corrected as follows: [*provide details of requested corrective or remedial action*].

7. In substantiation of our complaint, we attach the following procurement and related documentation with references to the relevant sections and/or provisions highlighted for ease of reference: [*Provide copies of relevant correspondence, notices, bidding documentation, and/or any other applicable documentation.*]

Reference No.	Type of Document	Relevant Section
[e.g., 2005–2018]	[e.g., Request for Proposal]	[e.g., Section 5: Terms of Reference]
[e.g., Bidding Document]	[e.g., Bidding Document]	[e.g., Section 3: Evaluation and Qualification Criteria: Application of Merit Points]
[etc.]		

8. We request your urgent review and response; kindly acknowledge receipt.

Thank you for your consideration.

Sincerely,

[Authorized representative of interested party]

[cc: Asian Development Bank [as necessary]]

Appendix 2: Acknowledgment Template

Acknowledgment of Bidding-Related Complaint Letter Template

[To be sent by the executing agency: Use letterhead of executing agency—include all contact information, e.g., street address, fax, e-mail, telephone number]

Reference number: *[as applicable]*

Date:

[Interested party's address, project or procurement contact person details]

Dear _____ *[interested party contact person]*:

RE: _____ [specify project name and reference number, procurement package and transaction number, country name]
— Acknowledgment of Bidding-Related Complaint

1. We acknowledge receipt of your communication dated *[date of complaint letter]*, including attachments.

2. *[Option 1: “Your submission does not constitute a complaint for the following reasons:*

[e.g., status as interested party not clearly identified, makes vague and general allegations, lacks supporting documentation, etc.]

Please address these issues and resubmit your communication for us to consider your representations further.”]

3. *[Option 2: “We are considering your complaint and will respond to you at the earliest possible time. We will revert to you if we need further documentation or elaboration on any particular issue you have raised.”]*

Thank you.

Sincerely,

[Authorized representative of executing agency]

Appendix 3: Post Review (Sampling) Situations—Recommended Practice

- A3.1 Any complaint should be sufficiently clear and specific in establishing
- (i) the interest of the party submitting the complaint in the relevant bidding process;
 - (ii) the relevant project and procurement transaction and applicable rules and regulations;
 - (iii) the stage of the procurement process to which the complaint relates;
 - (iv) the substance of the alleged irregularity, misapplication, or omission to apply the Asian Development Bank (ADB) Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time), and/or its Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
 - (v) the relevant procurement documentation and correspondence that substantiates the complaint;
 - (vi) the actual or likely adverse impact on the interested party; and
 - (vii) the relief or remedy requested by the interested party.
- A3.2 The interested party should file any complaint within applicable time limits and following the recommended template in Appendix 1.
- A3.3 The interested party should provide the executing agency with all documents requested relating to the complaint in a timely manner.
- A3.4 The executing agency should review and resolve the complaint in a transparent and fair manner at the earliest possible time. Depending on the seriousness of the complaint and likelihood of potential impact on the bidding process, the executing agency should refrain from taking further steps in the bidding process until such review and resolution has occurred.
- A3.5 The executing agency should ensure the confidentiality of all proprietary commercial information and trade secrets of any interested party submitting a complaint, and of all other parties involved in the relevant bidding process.
- A3.6 The executing agency must maintain complete, up-to-date records of the substance and timing of all debriefings and complaints, including details on filing, reviewing, and resolving each complaint.

A3.7 If received, ADB will promptly forward any submission or complaint relating to transactions subject to post review (sampling) to the executing agency concerned for review and resolution, but are not responsible for any delays in receipt by the responsible executing agency, or for the expiry of any applicable period for filing of such complaint.

A3.8 If any such complaint received by ADB relates to allegations of integrity violations on the part of the executing agency and/or other parties, ADB will promptly forward such complaints to its Office of Anticorruption and Integrity for investigation and necessary action.

Appendix 4: Executing Agency Actions If Complaints Are Upheld

Stage of Bidding Process	Possible Executing Agency Action If Complaint Is Upheld
Pre-Bid Submission	<p>The executing agency may amend the procurement plan, specifications, terms of reference, prequalification document, invitation for bids, request for expressions of interest, bidding document (including request for proposal), and/or any other relevant documentation by way of bid addendum or otherwise.</p> <p>The executing agency then reissues and/or readvertises the amended document (e.g., invitation for bids, request for expressions of interest) with a new submission period, or extends the deadline for a pending bid submission through a bid addendum or otherwise, if necessary, to permit bidders to take into account modifications to the bidding or procurement documentation.</p>
Post-Bid Submission	<p>(i) The executing agency may modify the ranking of the relevant evaluation of responsive bids (e.g., technical rankings under a single-stage, two-envelope process); and/or withdraw a previous declaration of nonresponsiveness (e.g., failure to satisfy prequalification criteria, rejection of joint venture, etc.). The executing agency then notifies all parties of the relevant modification, or withdrawal of disqualification or exclusion, and the revised or amended evaluation results.</p> <p>(ii) The executing agency cancels bidding and initiates a new bidding process.</p>
Contract Award or Intention to Award	<p>(i) The executing agency modifies its recommendation for contract award or revises its ITA. The executing agency notifies all parties previously notified of contract award or ITA. The executing agency awards the contract based on the modified recommendation.</p> <p>(ii) The executing agency cancels bidding and initiates a new bidding process.</p>

ITA = intention to award.

Source: Asian Development Bank.

Bidding-Related Complaints

Guidance Note on Procurement

Through this guidance note, ADB addresses, for the first time, the submission and handling of bidding-related complaints in a comprehensive manner. The note provides direction and procedures on submitting and handling complaints under a procurement process subject to ADB regulations. Bidding-related complaints can arise prior to the submission of bids, after bid submission but prior to contract award, and/or after contract award. Complaints brought to the attention of the borrower or ADB must be submitted in writing and must be addressed objectively and in a timely manner, with transparency and fairness. An effective complaints handling mechanism provides a check on arbitrary decision-making and encourages competition.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to a large share of the world's poor. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

ASIAN DEVELOPMENT BANK

6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org