
Updating the World Bank's Bidder Complaints Process To Meet International Best Practices

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ABSTRACT

Although the World Bank overhauled its procurement framework a decade ago, its bidder complaints process – an integral part of that framework – has not been updated to meet international best practices. The current process for bidder complaints affords relatively little transparency and accountability, and has been criticized (including by the U.S. Government Accountability Office) for failing to provide disappointed bidders an effective means of challenging failures in a procurement process. Reforming the Bank's complaints process could be done by aligning it with international best practices, using (among other things) the benchmarks suggested by the Methodology for Assessment of Procurement Systems (MAPS), which was developed with the support of the World Bank and the Organisation for Economic Co-Operation and Development (OECD) and which is regularly relied upon by the Bank. The complaints processes established by two other multilateral development banks, the European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB), also offer important benchmarks for reform. By updating its bid complaints process to meet international best practices, the World Bank could better ensure robust competition in the procurements it funds, bring to light more procurement failures for correction, and reinforce international confidence in the Bank's important work.

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I. Introduction

In July 2015 the World Bank's Board of Executive Directors formally approved the creation of a procurement framework which aimed to provide borrowers with the "best value for each dollar that we invest."¹ A year later, the Bank's procurement framework went into effect. The Bank's officials termed the new framework a success that "emphasizes greater choice and flexibility, quality, and accountability while enabling greater adoption to country contexts."² In particular, the framework also promised to "step up [the Bank's] approach to resolving procurement related complaints."³ Experience over the last decade shows, though, that although the Bank's overall procurement framework generally reflects best practices internationally, critical issues remain—particularly in the realm of bid complaints.⁴

Bid complaints – typically called "bid protests" in the United States, "remedies" in the European Union, and "appeals" in many jurisdictions – give bidders

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¹ See Press Release, World Bank, *New World Bank Procurement Framework Approved* (Jul. 21, 2015), <https://www.worldbank.org/en/news/press-release/2015/07/21/world-bank-procurement-framework>.

² See Press Release, World Bank, *New World Bank Procurement Framework Promotes Strengthened National Procurement Systems* (June 30, 2016), <https://www.worldbank.org/en/news/press-release/2016/06/30/new-world-bank-procurement-framework-promotes-strengthened-national-procurement-systems>.

³ See *id.* The World Bank's complaints procedures are described in paragraphs 3.26-3.31 and Annex III of the Bank's *Procurement Regulations for IPF Borrowers* (6th ed. 2025).

⁴ See Sope Williams-Elegbe, *Public Procurement and Multilateral Development Banks*, ch. 5 (Hart Publishing 2017).

an opportunity to challenge apparent failures in a procurement process. Bid challenges preserve competition by reassuring bidders that they will be treated fairly and in accordance with law, and they serve as a “red flag” system for bringing procurement failures to light.⁵ Bid challenge systems are required by Article 9 of the United Nations Convention on Corruption (UNCAC),⁶ countless international trade agreements,⁷ the European Union’s procurement directives,⁸ and national laws around the globe.⁹

International instruments which call for bid challenge systems typically call for an “effective” system. There is an objective means of gauging whether a bid complaints system is “effective”: complaints systems can be assessed against the globally recognized Methodology for the Assessment of Procurement Systems (MAPS), which was originally developed by the World Bank and the Organization for Economic Co-operation and Development (OECD).¹⁰ The MAPS approach (and other international measures of best practices, such as the complaints processes at the European Bank for Reconstruction and Development (EBRD)¹¹ and the European Investment Bank (EIB)¹²) thus provide a ready means of assessing how the World Bank’s complaints system could be brought up to international standards.

To better understand shortcomings in the World Bank’s bid complaints process, this paper undertakes an in-depth examination of the Bank’s process to measure its overall transparency, accountability, and efficacy – key measures under the MAPS approach. This article assesses the Bank’s bid complaints process holistically, drawing on other perspectives such as Daniel Gordon’s landmark analysis of the essential elements of a bid challenge system.¹³ Taking these perspectives in sum, the paper concludes that the Bank’s current process does

⁵ See, e.g., Christopher Yukins & David Drabkin, Acquisition Innovation Research Center, *DoD Bid Protests*, at 8 (Oct. 2022), available at https://document.acqirc.org/technical_reports/reports/1685973275.WRT-1049.7_REPORT_0511.pdf.

⁶ United Nations Convention Against Corruption (UNCAC), available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁷ See, e.g., Jean Heilman Grier, *The International Procurement System* 66-67 (Dalton Press 2022).

⁸ See European Commission, *Remedies Directives*, https://single-market-economy.ec.europa.eu/single-market/public-procurement/legal-rules-and-implementation/remedies-directives_en.

⁹ See, e.g., Ian Hargreaves, *Understanding the Standards of Bid Protest Standing: A Comparative Analysis of Bid Protest Standing Rights and Requirements Across Ninety-Eight Countries and the European Union*, 51 Pub. Cont. L.J. 227 (2022).

¹⁰ *The MAPS Initiative*, <https://www.mapsinitiative.org/en/about.html>.

¹¹ See European Bank for Reconstruction and Development, *Directive: Procurement Reviews and Complaints* (May 1, 2023), available at www.ebrd.com.

¹² See European Investment Bank, *Guide to Procurement for Projects Financed by the EIB*, Annex 7 (2024), https://www.eib.org/attachments/lucalli/20240132_guide_to_procurement_for_projects_financed_by_the_eib_en.pdf.

¹³ See Daniel I. Gordon, *Constructing a Bid Protest Process: Choices Every Procurement Challenge System Must Make*, 35 Pub. Cont. L.J. 1 (2006).

not meet international minimum requirements. While some may argue that the Bank's complaints process is intended only to complement borrower nations' own complaints procedures, and so should not be assessed on its own terms, as the analysis below shows in a Bank-financed project the Bank's bid complaints process can in practice control outcomes. Consequently, that process itself needs to be assessed – and if necessary reformed – to meet international standards.

This article proceeds in several parts. Part II discusses the basic elements of a bid challenge procedure. Part III offers an overview of the Bank's complaints procedure, addressing each element of the procedure in turn. To begin the assessment of the Bank's procedure, Part IV discusses key elements of a complaints system, drawing on a model first offered by Daniel Gordon, an academic and (as a senior government official) a leader in developing effective bid challenge procedures. Part V makes a closer assessment of the Bank's complaints procedure against the MAPS benchmarks, and compares the Bank's complaints process to those at the EBRD and the EIB. Part VI offers conclusions, including how the Bank's complaints procedure might be improved so that it can meet international benchmarks for an effective process, recognizing that the Bank's complaints procedure is uniquely not part of a government procurement system, but instead a complement to borrower governments' procurement systems.

II. What Is a “Bid Challenge” Procedure?

Before delving into the Bank's complaints procedure, it is worth taking a moment to understand what a successful bid challenge system is, both in its overall aims and general format. Although bid challenge systems are not uniform internationally, many share common features, as the United Nations Commission on International Trade Law (UNCITRAL) recognized in framing its Model Law on Public Procurement.¹⁴ Bid challenge systems typically will confront similar issues (such as corruption or unlawful procurement), and are shaped by common administrative imperatives (such as a desire to investigate complaints thoroughly versus the need to run an efficient procurement system).¹⁵

¹⁴ U.N. Comm'n on Int'l Trade L. (UNCITRAL), *Model Law on Public Procurement*, ch. VIII (2014), available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2011-model-law-on-public-procurement-e.pdf>.

¹⁵ UNCITRAL, *Guide to Enactment of the UNCITRAL Model Law on Public Procurement* 295 (2014), available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/guide-enactment-model-law-public-procurement-e.pdf>; see, e.g., Collin D. Swan, *Lessons from Across the Pond: Comparable Approaches to Balancing Contractual Efficiency and Accountability in the U.S. Bid Protest and European Procurement Review Systems*, 43 Pub. Cont. L.J. 29 (2013), available at <https://ssrn.com/abstract=2750124>.

Taken in its essence, a bid challenge is “a complaint by a would-be contractor regarding the formation stage of the procurement process.”¹⁶ Challenges can be brought by complainants *before award*, contesting issues that arise prior to the award of a contract (such as solicitation errors), or *after award*, typically disputing the award of a contract to the awardee(s) over the complainant.¹⁷ Pre-award challenges are generally brought by prospective bidders; post-award challenges are commonly brought by “disappointed bidders” that lost the award. Most procurement systems recognize the right of a bidder (and sometimes others) to file a bid complaint, and many procurement rules regimes internationally recognize this right.¹⁸

III. Overview of the World Bank's Complaints Procedure

Because bid challenges are so widely used around the world, including by governments that borrow from the World Bank to fund procurement, a practical question arose: how should the Bank coordinate with its borrowers when a vendor challenges a procurement decision on a Bank-financed project? The Bank's complaints procedure evolved as a response to that question.¹⁹

The Procurement Guidelines which governed Bank-financed procurements for decades contemplated bidder complaints but provided little guidance.²⁰ Then in 2015 the Bank's Board of Executive Directors approved the creation of a new procurement framework, implementing reforms and changes aimed at “increasing flexibility and achiev[ing] value for money with integrity.”²¹ The new procurement

¹⁶ Keith M. Lusby, *Improving The Effectiveness of State Bid Protest Forums: Going Above and Beyond the Agreement on Government Procurement and Adopting The ABA's Model Procurement Code*, 43 Pub. Cont. L.J. 57, 60 (2013).

¹⁷ Daniel I. Gordon, *supra* note 13, at 2.

¹⁸ See, e.g., Ian Hargreaves, *supra* note 9; John Cibinic, Jr., Ralph C. Nash, Jr., Christopher R. Yukins & Nathaniel E. Castellano, *Formation of Government Contracts*, ch. 15 (5th ed. 2023) (discussing U.S. bid protest system). For ongoing reform efforts in the U.S. bid protest system, see, e.g., *House Government Oversight Subcommittee: Bid Protest Reform*, <https://publicprocurementinternational.com/2025/07/28/house-government-oversight-subcommittee-bid-protest-reform/> (collecting resources).

¹⁹ For a detailed review of the World Bank's complaints procedures, including under the prior *Procurement Guidelines* and the Bank's post-July 2016 Procurement Regulations, see Sope Williams-Elegbe, *supra* note 4, ch. 11; see also World Bank, *Procurement-related Complaints* (Jan. 2017), available at <https://thedocs.worldbank.org/en/doc/975671478891365829-0290022017/original/GuidanceProcurementrelatedComplaints.pdf>.

²⁰ See, e.g., World Bank, *Guidelines: Procurement of Goods, Works, and Non-Consulting Services Under IBRD Loans and IDA Credits & Grants by World Bank Borrowers*, App. 3 (2011, rev. 2014), available at <https://thedocs.worldbank.org/en/doc/492221459454433323-0290022014/original/ProcurementGuidelinesEnglishJuly2014.pdf>.

²¹ Collin Swan & Sati Harutyunyan, *Multilateral Development Banks in an Era of Procurement Reform: How Larger Development Goals Are Shaping Revamped Approaches to Procurement*, 58 Gov't Contractor 111 (Apr. 6, 2016).

framework, which took effect in 2016, marked a major overhaul of procurement processes on Bank-financed projects, but left the bid complaints process largely in the hands of the borrower nations.²² The Bank's current complaints process imposes limits on complaints regarding Bank-financed procurement: generally speaking, a bidder may complain only through the Bank's approved complaints procedure with the Bank's borrower, and may not turn to alternative forums (such as national courts) which might be available under other circumstances in the borrower nation.²³ By excluding other forms of relief, the Bank's complaints procedure forces challengers (generally disappointed bidders) to pass through a complaints process which, while run by a borrower agency, is overseen exclusively by the Bank.²⁴

This section will review the Bank's current procedure for parties seeking to bring complaints, including what a complaining vendor must show to establish standing, potential grounds for a complaint, and what a complaining party should expect in a proceeding. This synopsis will conclude with an analysis of the Bank's role at each stage of the complaints process and the general influence the Bank can have over a complaint proceeding.

a. Establishing Standing and Subject-Matter Jurisdiction

The primary instrument which defines the Bank's procurement-complaints procedure is The World Bank: *Procurement Regulations for IPF Borrowers*.²⁵ Annex III to the Bank's Procurement Regulations details procedures for handling and administering all vendor complaints on Bank-financed projects which have used the Bank's standard procurement documents.²⁶ Under this framework, the Bank identifies three grounds for "interested parties" (e.g., an actual bidder, consultant or applicant) to establish both standing and subject-matter jurisdiction in filing

²² See Christopher Yukins & Sope Williams-Elegbe, *The World Bank's Procurement Framework: An Assessment of Aid Effectiveness*, GWU Law School Public Law Research Paper No. 2018-37 (2018), at 6, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3237807.

²³ *But cf.* Sope Williams-Elegbe, *supra* note 4, at 287 (noting that the Bank's 2016 procurement reforms broadened available remedies, such as the rights of excluded vendors to bring a challenge under the Bank's procedures).

²⁴ See Christopher Yukins & Sope Williams-Elegbe, *supra* note 22, at 14. The European Investment Bank has a parallel but very different process for handling what it calls "Procurement Complaints." Under the EIB *Guide to Procurement for Projects Financed by the EIB*, Annex 7, available at https://www.eib.org/attachments/lucalli/20240132_guide_to_procurement_for_projects_financed_by_the_eib_en.pdf, a complaint may be made to the EIB regarding the EIB's handling of a procurement, and the EIB will review the complaint and issue a "substantiated response."

²⁵ World Bank, *The World Bank: Procurement Regulations for IPF Borrowers* (Procurement Regulations) (Feb. 2025), available at <https://documents1.worldbank.org/curated/en/099120102072534901/pdf/SECBOS-a43bff5f-35cb-48e0-9609-10773aaa8d12.pdf>.

²⁶ *Id.*

a complaint with a borrower to challenge the award of a procurement contract on a Bank-financed project:

1. Issues with the contents of the borrower's selection documents, such as issues in prequalification documents, initial selections documents, and requests for proposal documents.
2. An incorrect or unfair exclusion of a party from the procurement process before the contract has been awarded; and/or
3. A concern regarding the borrower's decision to award the contract to another party after the unsuccessful party has been notified of the borrower's intent to award.²⁷

Tied to each independent ground above, once a borrower's notification of intention to award is transmitted to interested parties, a ten (10) day "standstill period" is imposed – a period during which the award cannot proceed -- to give interested parties an opportunity to submit a complaint, if appropriate.²⁸

Under this system, the Bank's parameters for an interested party's standing to complain aligns with traditional approaches to bid challenges, but is narrower than some government systems which allow a much broader array of parties (including, for example, affected labor unions) to bring bid challenges as part of their procurement regimes.²⁹

b. What Forum Is the Complaint Filed In?

Under the Bank's complaints system, if an interested party seeks to file a procurement-related complaint, the complainant must file the complaint directly with the borrower, which agrees (as part of accepting the Bank's standard loan agreement) to address all complaints received in a prompt, fair manner.³⁰

The World Bank's process thus assigns the complaint to the purchasing agency itself.³¹ Allowing a purchasing agency to review a bidder's complaint matches common practices internationally, such as under the UN Commission on International Trade Law ("UNCITRAL") Model Law on Public Procurement, which

²⁷ *Id.* Annex III, sec. 2, para. 2.1(a)-(c).

²⁸ *Id.* sec. 5, paras. 5.78-5.79.

²⁹ See generally Ian Hargreaves, *supra* note 9.

³⁰ See *Procurement Regulations*, *supra* note 25, App. III, para. 3.1; World Bank, *Request for Bids – Goods* 42 (Oct. 2017), <https://documents1.worldbank.org/curated/en/530971552635731014/pdf/135309-WP-PUBLIC-Goods.pdf> (detailing in the instructions for bidders that Annex III of the Procurement Regulations applies and thus that complaints must be filed with the borrower).

³¹ In contrast, under the EBRD's directive on *Procurement Reviews and Complaints*, *supra* note 11, a procurement complaint is reviewed and determined by the EBRD's Procurement Complaints Committee. *Id.* § 5.5.

allows a vendor to bring a challenge to the purchasing agency first.³² The U.S. Federal Acquisition Regulation (“FAR”) similarly allows a vendor to bring a challenge directly to the agency, known as an “agency-level bid protest.”³³ But both the UNCITRAL model law and the U.S. system also allow for protests to be brought at an independent forum—in the U.S. system, this is the Government Accountability Office (“GAO”), or in a judicial forum (in the United States, this is the U.S. Court of Federal Claims).³⁴ Thus, both the UNCITRAL model law and the U.S. system—and many other systems, such as across the European Union³⁵—allow challenges to be brought in: (a) an agency, (b) an independent agency forum, or (c) a court.

The Bank’s complaints submission process, in contrast, allows for a complaint only to the borrower agency—sharply reducing the vendor’s ability to receive objective review, and shutting off the vendor’s access to other bid challenge forums (such as an independent reviewing agency or court) in the borrower nation, even if the borrower nation’s laws would normally allow alternative channels of review.³⁶

While the Bank’s rules leave the borrowing agency with sole authority to resolve a complaint, the Bank itself continues to hold substantial authority over the procurement, including a complaint. Besides the “no objection” authority discussed below, the Bank still retains the right to take “[a]ppropriate actions and exercise legal remedies” after an award and during the complaint procedure if the challenge leads to material changes in the contract’s terms and conditions.³⁷ This right leaves the Bank with a powerful device to shape procurement methods and outcomes at critical junctures throughout the acquisition process.³⁸

c. Filing Deadlines for a Complaint

The deadline for filing a bid complaint, while formal, also reflects the Bank’s continuing authority over a financed procurement. The deadline to file a complaint with the Borrower will depend on the type of challenge an interested party brings:

³² UNCITRAL, *supra* note 14, art. 66.

³³ FAR 33.103.

³⁴ See FAR 33.103-33.105.

³⁵ See, e.g., Council Directive 89/665, art. 2(3), 1989 O.J. (395) 1.

³⁶ A bid protest system which allows recourse only to the procuring agency – and not to an independent agency and/or the courts – is not favored. See, e.g., U.N. Off. on Drugs and Crime, *United Nations Convention Against Corruption*, art. 9, para. 1(d) (2004), https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (calling for parties to establish an “effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies”).

³⁷ *Procurement Regulations*, *supra* note 25, App. III, para. 3.26.

³⁸ Christopher R. Yukins & Sope Williams-Elegbe, *The World Bank’s Procurement Framework: An Assessment of Aid Effectiveness, in Public Procurement and Aid Effectiveness: A Roadmap Under Construction* (Annamaria La Chimia & Peter Trepte eds., 2019), discussion draft available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3237807.

1. Complaints challenging the Borrower's selection documents should be filed with the borrower either: (a) at least ten business days before the deadline to submit a proposal, bid, or application; or (b) at least five business days after the Borrower has issued amended terms.³⁹
2. Complaints challenging a Borrower's decision to exclude an interested party from the procurement should be submitted to the Borrower within ten business days from the Borrower's transmission of the notice to exclude.⁴⁰
3. Complaints challenging the Borrower's decision to award a contract *after* the Notice to Award has been issued, or if an intention or notification to award the contract is clear, requires the Borrower to submit their complaint within the Standstill Period identified in the procurement.⁴¹

Under the World Bank's rules, both the complaining vendor (which must meet the deadlines outlined above) and the reviewing agency (which must address the complaint in a "reasonable" time period, to avoid delays in the procurement process) are subject to time constraints.⁴² The Bank, however, is not similarly constrained in the time it may take to review and approve of a resolution of a complaint.⁴³

d. Processing of a Complaint

Once a complaint is received, the borrower must confirm receipt of the interested party's challenge within three to seven business days, and must respond to the filed complaint within one to two weeks.⁴⁴ All other complaints that do not fall under the purview of Annex III (the main set of rules covering procurement-related complaints) are to be primarily handled by the borrower in accordance with the complaint review rules and procedures as agreed by the Bank.⁴⁵ If an allegation of *fraud* or *corruption* comprises part of the complaint, the borrower and the Bank may need to take additional steps beyond the normal review procedure.⁴⁶

When conducting a review of an interested party's complaint, the borrower's

³⁹ *Procurement Regulations*, *supra* note 25, Ann. III, para. 3.1(a).

⁴⁰ *Id.* para. 3.1(b).

⁴¹ *Id.* para. 3.1(c).

⁴² *Id.* para. 2.6.

⁴³ *See id.*

⁴⁴ *Id.* para. 3.1(a)-(c).

⁴⁵ *Id.* sec. III, para. 3.31. The summary guide published by the World Bank says, with regard to choice of law in a bid complaint, that a complaining party should identify the "violation and inconsistency, and the relevant section, paragraph or appendix of the Procurement Document, and/or Procurement Regulation that is allegedly been violated or with which there is inconsistency." *Procurement-related Complaints*, *supra* note 19, at 12.

⁴⁶ *Procurement Regulations*, *supra* note 25, para. 3.32.

response must be “timely and meaningful” and must address the following key elements: (a) a statement of issues; (b) the facts and evidence relevant to the complaint; (c) the borrower’s decision and the basis for the decision; (d) an analysis of the decision; and (e) a conclusion, which explains both the complaint’s resolution and any next steps to be taken.⁴⁷ The Bank’s regulations do not provide for publication of the response.

Throughout the Bank’s complaints process, the borrower must ensure that it maintains complete records of documents during the procurement process (*e.g.*, debriefings), as well as the complaint and documents pertaining to the complaint’s resolution.⁴⁸ There is no requirement that the relevant documents from the administrative record be produced to the complaining party, or that the borrower respond to any questions put by the complainant.⁴⁹

While the borrower agency must, per the Bank’s rules, provide at least some transparency (in its reasoned decision) and an orderly process, the Bank’s own review of the complaint is not similarly constrained. As noted, the rules impose no limitations on the Bank’s authority to “take appropriate actions and exercise legal remedies” at any time during the complaints process.⁵⁰ These corrective actions can occur after the Bank approves a borrower’s decision related to a complaint if the Bank finds that the borrower provided inaccurate or incomplete information, or if the contract’s terms and conditions have been substantially modified.⁵¹

e. The Bank’s Unique Role

The World Bank’s rules do make clear the Bank’s sweeping authority in its monitoring of Bank-financed procurements.⁵² If the procurement is subject to prior review,⁵³ the Bank must coordinate with the borrower to ensure any agreed-upon risk-reduction measures are undertaken in a timely fashion.⁵⁴ Additionally, for high-dollar procurements, the Bank may assign senior staff to advise and expedite procurement-related complaints.⁵⁵

As part of the Bank’s internal processes – not covered by the formal complaints

⁴⁷ *Id.* para. 3.6(a)–(e).

⁴⁸ *Id.* para. 3.7(e).

⁴⁹ *See id.* sec. 3.

⁵⁰ *Id.* para. 3.26.

⁵¹ *See id.*

⁵² Christopher Yukins & Sope Williams-Elegbe, *supra* note 22, at 14; *see also Procurement Regulations*, *supra* note 25, Ann. III, para. 3.9(a)–(c).

⁵³ The Bank will conduct a prior review of any procurement activity that it considers to be “high value and/or high risk,” which the Bank will consistently assess throughout the procurement’s life cycle. Prior review procedures are specified in a contract’s Procurement Plan. *See Procurement Regulations*, *supra* note 25, paras. 3.4–3.9.

⁵⁴ *Id.* para. 3.9(b).

⁵⁵ Christopher Yukins & Sope Williams-Elegbe, *supra* note 22, at 15.

procedures – there may be significant internal review at the Bank, for example if a vendor enlists the support of a World Bank Executive Director (“ED”) which represents its country.⁵⁶ The World Bank’s Board of Governors appoints 25 EDs to carry-out high-level policymaking at the Bank, which includes creating policies on procurement.⁵⁷ Five of the EDs are appointed directly by the Bank’s five largest shareholders, while the remaining 20 are elected by groups of states that they will represent.⁵⁸ The EDs therefore serve as another, more informal but potentially quite powerful mechanism for a complainant to ensure that its concerns will be heard.⁵⁹

The Bank’s current procurement framework leaves the complaints review process largely in the hands of the borrower agency, but retains critical oversight authorities in the Bank.⁶⁰ If a borrower intends (despite a complaint) to proceed with award of a contract, the borrower agency must provide the Bank with a sufficiently detailed justification.⁶¹ The Bank will then review the information provided by the borrower and in effect approve the procurement contract by issuing a “no objection” letter.⁶²

If a complaint is denied by the borrower and the complaining party remains dissatisfied, the complainant may request a formal debriefing with Bank officials through the Bank’s Accredited Practice Manager.⁶³ This debriefing is not designed to provide a complaining party with point-by-point comparisons of its bid and bids from the awardee or other competitors, nor is it intended to inform the party of the Bank’s role in the procurement.⁶⁴ Instead, the Bank’s debriefing merely affords the complainant an additional opportunity to air any remaining grievances with the procurement process.

In sum, in the Bank’s complaints process:

- A vendor’s ability to bring a complaint under the Bank’s procurement framework is limited in scope. That complaint must be brought to the borrower agency.

⁵⁶ See *Procurement Regulations*, *supra* note 25, Ann. III, para. 5.96; see also Marta De Castro Meireles, *The World Bank Procurement Regulations: A Critical Analysis of the Enforcement Mechanism and of the Application of Secondary Policies in Financed Projects* (Feb. 2006) (Ph.D. dissertation, University of Nottingham), pp. 97-98, available at <https://repository.nottingham.ac.uk/entities/publication/261d7485-bab8-49c5-a5d2-38e8797832df>.

⁵⁷ See generally World Bank, *Organization*, <http://www.worldbank.org/en/about/leadership>.

⁵⁸ See generally World Bank, *Organization, Board of Directors*, <https://www.worldbank.org/en/about/leadership/directors>.

⁵⁹ See Marta De Castro Meireles, *supra* note 56, at 97.

⁶⁰ Christopher Yukins & Sope Williams-Elegbe, *supra* note 22, at 15.

⁶¹ *Procurement Regulations*, *supra* note 25, Ann. III, para. 3.3.

⁶² See *id.* at Annex II, sec. 3, para 3.3; see also Christopher Yukins & Sope Williams-Elegbe, *supra* note 22, at 4.

⁶³ See *Procurement Regulations*, *supra* note 25, sec. 5, para. 5.96.

⁶⁴ See *id.*

- The complaints process is similar to agency-level bid challenges under national procurement systems, but without access to the courts or independent review agencies – even if the borrower nation’s laws normally would allow access to alternative forums.
- The Bank’s complaints process affords the complaining party little (if any) access to the administrative record, except insofar as the borrower agency references portions of the administrative record – the portions the agency deems “relevant” – in its response to the complaint.
- While the purchasing agency (the borrower) nominally runs the complaints process, the Bank’s continuing oversight and review of the agency’s decision leaves ultimate authority with the Bank.
- For the applicable law, the complaints process will look to the standard documents and the *Procurement Regulations* of the Bank – not to the laws of the borrower nation.
- Throughout the complaints process, including after the Bank issues a no-objection letter, the Bank may take any corrective action it deems appropriate.
- Although both the vendor and the borrower are subject to time constraints intended to keep the procurement process from being disrupted, the Bank’s ultimate authority to delay – or to postpone forever – its approval of the complaints process gives the Bank enormous practical control over the complaints process and its outcome.
- While the borrower is to provide a written response to the bidder’s complaint, nothing in the Bank’s *Procurement Regulations* requires that the response be published.

Before assessing the Bank’s process against international standards, to give depth and meaning to that assessment the next section will identify the key elements of an effective complaints process. The analysis casts the gaps in the Bank’s complaint process into high relief, and makes it easier (in the succeeding analysis) to identify possible solutions by applying international best practices.

IV. Key Elements of Effective Bid Complaints Procedures

In a landmark article, Daniel Gordon (an internationally recognized procurement expert and academic, previously a leading figure in the U.S. government’s bid challenge system, and the head of the Office of Federal Procurement Policy in

the Obama administration)⁶⁵ sought to identify the critical elements that help define effective bid challenge systems in most modern-day procurement regimes. These elements, when assessed against the Bank's bid complaints process, help highlight problems in the Bank's approach.

a. Where in the government is the protest forum located?

Generally, a protest forum is placed in one of three places inside a government: (a) the contracting agency, (b) an independent administrative entity, and/or (c) a court.⁶⁶ As noted, the Bank's complaints process leaves review in the borrower agency, and bars access to an independent agency or a court, even if the laws of the borrower normally allow access to those alternative forums.

Leaving a challenge with the purchasing agency typically allows for a quicker decision, but the purchasing agency often lacks independence and impartiality.⁶⁷ To allow for a fairer (and more credible) decision, an agency could shift authority to decide the challenge to more senior official(s) who were not involved with the challenged procurement decision, or could allow an aggrieved party to appeal to another venue (a court or an independent reviewing agency, for example) if the aggrieved party is dissatisfied with the agency's initial decision.⁶⁸ In the case of complaints regarding World Bank procurements, as is discussed below, the answer

⁶⁵ World Trade Organization, *Professor Daniel Gordon*, https://www.wto.org/english/tratop_e/gproc_e/symp092015_e/daniel_gordon_e.htm.

⁶⁶ Daniel I. Gordon, *supra* note 13, at 6; UNCITRAL Model Law, *supra* note 14, arts. 66–67; FAR 33.103-33.105; Council Directive 89/665, art. 2, 1989 O.J. (395) 1; Christopher Yukins, *Stepping Stones to Reform: Making Agency-Level Bid Protests Effective for Agencies and Bidders by Building on Best Practices from Across the Federal Government*, 50 Pub. Cont. L.J. 197 (May 1, 2020), *available in draft at* <https://www.acus.gov/sites/default/files/documents/Agency%20Bid%20Protests%20Report.pdf>.

⁶⁷ See Daniel I. Gordon, *supra* note 13, at 6; Marta de Castro Meireles, *supra* note 56, at 3 (“The Bank’s policy, which ... is to leave complaints to be addressed under the enforcement mechanism available in the borrower’s national system, seems inadequate to guarantee that the Bank’s objectives of economy, efficiency, transparency and development will be achieved.”).

⁶⁸ See Daniel I. Gordon, *supra* note 13, at 6.

may lie in shifting the complaints function to the Bank itself,⁶⁹ as the EIB⁷⁰ and the EBRD⁷¹ have done in their respective complaints systems.

b. How broad is the forum's jurisdiction?

A forum's jurisdiction could broadly cover all levels of government, all agencies within one level of government, or both.⁷² Alternatively, a forum could be limited to only procurement-related complaints.⁷³ Although overly broad jurisdiction can pose issues for forums deciding challenges, a bid challenge forum which has the authority to accommodate complaints from across the procurement process can make it easier to ensure uniform decisions, enhance the expertise of decisionmakers in the forum, boost the forum's reputation for responsibly deciding challenges, and imbue the system with transparency.⁷⁴

c. Who has standing to protest?

Vendors claiming they should have won a procurement award likely should be allowed to bring a protest challenge before a forum to avoid any due process concerns.⁷⁵ However, limiting protests to those next in line for award may prove to be a waste of government resources, for it can mean litigating the merits of the protest to ascertain standing.⁷⁶ Alternatively, opening the system to permit protests by any party that believes the agency acted improperly would strengthen

⁶⁹ See, e.g., Marta De Castro Meireles, *supra* note 56, at 111 (“[O]ne option is to set a formal review mechanism whereby bidders and other interested parties could bring complaints and worries during the procurement procedure. Although this alternative would still bring about more work for the Bank personnel, it would diminish the number of contracts to be reviewed as the Bank would know which procedures were more likely to have suffered irregularities. Moreover, if the procedures were reviewed before the contract was awarded, the effects of irregularities could be avoided ...”).

⁷⁰ See EIB, *supra* note 12, Annex 7, para. C (“Complaints submitted after the Bank has provided its non-objection to the contract award and during the standstill period are reviewed by the Procurement Complaints Committee, which reviews the Bank’s position on whether to confirm or withdraw its non-objection. The Bank suspends its non-objection until the Procurement Complaints Committee has completed its review. The Bank’s decision will be taken within 30 calendar days of the complaint being submitted. In complex cases this deadline may be extended to up to 60 calendar days.”).

⁷¹ See EBRD, *supra* note 11, para. 5.5 (“Within the [EBRD], the PCC [Procurement Complaints Committee] is responsible for reviewing and determining the Bank’s position in relation to complaints arising from procurements governed by the Procurement Policies and Rules... . After submission of the Procurement Complaint, the PCC will consider and decide on complaints... . [I]f the PCC determines that the procurement process has not been materially carried out by the Client in accordance with the agreed procedures, the Procurement Complaint will be upheld.”).

⁷² See Daniel I. Gordon, *supra* note 13, at 7-8.

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.* at 8-9.

⁷⁶ See *id.*

the integrity of a given procurement system and hold accountable those agencies that have acted improperly, but at the risk of causing severe disruption across the procurement system.⁷⁷

d. What are the time limits at the forum?

Generosity in timelines for vendors to file protests, restricted only by reasonableness, would allow the system to hear a vendor's protest and ensure defects in the procurement system could be heard, which would boost accountability and transparency.⁷⁸ This flexibility must be weighed against the reality that overly generous timelines can lead to costly delays for a procurement (with the agency incurring significant costs), and can make finding a solution harder to do long-term.⁷⁹

e. What evidence does the forum have before reaching its decisions?

When a forum cannot gather and provide the relevant administrative record to the protestor, the awardee and other interested parties, that shortcoming inhibits a forum's ability to review a challenge and detracts from the forum's overall transparency and perceived legitimacy.⁸⁰ While sharing the administrative record with the protestor and other interested competitors may increase the burden on a procuring agency,⁸¹ it is standard practice to share the record in challenge proceedings. Under Articles 68 and 69 of the UNCITRAL Model Law on Public Procurement, for example, the "participants in challenge proceedings" have the right to "seek access to the record of the challenge proceedings," subject to normal confidentiality protections which forbid the release of information that could "impair the protection of essential security interests of the State, would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the suppliers or contractors or would impede fair competition."⁸²

⁷⁷ *See id.*

⁷⁸ *Id.* at 10.

⁷⁹ *See id.*

⁸⁰ *Id.* at 12.

⁸¹ *See id.*

⁸² *See* UNCITRAL, *supra* note 14, at art. 68-69.

f. Is the procurement put “on hold” during the protest process?

Providing a brief stay of the procurement (often called a “standstill”⁸³ period) pending a bid challenge provides vital relief to a challenging vendor, for if the contract is allowed to proceed despite the challenge, the protestor may have little incentive to file a bid challenge and bring a problem to light. If the stay is of reasonably limited duration – in the U.S. federal system, for example, a GAO protest stays a procurement for 100 days or less⁸⁴ – it is possible to prevent undue burdens due to delays in a procurement.⁸⁵ The period of suspension can be set on a case-by-case basis or set by a default rule, automatically.⁸⁶

g. How difficult is it for a protestor to win?

A critical question is whether a forum, to remain effective, will be able to focus on only meritorious challenges, and then what standard of review it will apply – in other words, how difficult it will be for a challenger to prevail. A forum which applies too lax a standard may be overwhelmed by frivolous challenges; conversely, however, a bid challenge forum which routinely rejects (or overlooks) meritorious challenges may quickly lose legitimacy (and thus efficacy).

Often a remedies forum will subject challenges to initial screening, to cull frivolous or unfounded challenges.⁸⁷ If a challenge survives that initial review, a central issue during the merits assessment will be the level of deference afforded to the contracting agency: a balance must be struck between meaningful, probing review and the need to honor the procuring agency’s independent decision making.⁸⁸ Even if there has been an error in the procurement process, the challenge may be sustained only if the protestor was prejudiced by the agency’s improper actions during the procurement.⁸⁹ This may not mean that the protester has to show that it would have won the procurement; it may be enough for the challenger to show that it was competitively harmed by the agency’s actions.⁹⁰

⁸³ See, e.g., EU Remedies Directive 2007/66/EC, Art. 2a (“A contract may not be concluded following the decision to award a contract ... before the expiry of a period of at least 10 calendar days”).

⁸⁴ See, e.g., 4 C.F.R. §§ 21.6, 21.9; Gov’t Accountability Off., *Bid Protests at GAO: A Descriptive Guide* 14 (May 2018), <https://www.gao.gov/assets/gao-18-510sp.pdf>.

⁸⁵ See Daniel I. Gordon, *supra* note 13, at 13-15.

⁸⁶ See *id.*

⁸⁷ See, e.g., 4 C.F.R. § 21.5.

⁸⁸ Daniel I. Gordon, *supra* note 13, at 15.

⁸⁹ See *id.*

⁹⁰ See *id.*

h. What power does the forum have to provide meaningful relief, if it finds that the protest is justified?

If ruling in the protestor's favor, a forum should possess capacity to give relief, and provide multiple forms of relief (e.g., direct award of the contested contract or lost profits, or direct that the complaining party be granted another opportunity to compete for the contract).⁹¹ The forum also must consider, if applicable, the potential for an appeal of the forum's decision to a higher body;⁹² if an appeal is made, interim measures to preserve the status quo may be needed.

i. Are bid protest decisions published?

Daniel Gordon also addressed the importance of publishing decisions in bid complaints processes. Publishing decisions, he noted, "may be of little interest to the individual protesters, [but] is important to those concerned about good government, including in the press."⁹³ In some systems, he pointed out, "a protest system can ... help clarify and even shape procurement law through published case law. Even where the protest forum lacks the power to mold procurement law, published decisions can at least alert those who do have that power to aspects of the law that need improvement."⁹⁴

Daniel Gordon's core goal in laying out the points above – the critical elements of an effective bid challenge system – was to describe a procurement complaint procedure that can strike a balance between *accountability* and *efficiency*, one that is workable when applied to a government's unique circumstances but which will not sacrifice the integrity of the procurement system.⁹⁵ Having identified those basic building blocks of a bid challenge system, we can turn next to the elements, outlined below, which will make a bid challenge system effective.

⁹¹ See *id.* at 17.

⁹² See *id.*

⁹³ See *id.* at 4; see also Marta De Castro Meireles, *supra* note 56, at 127 ("Probably the greatest advantage of a formal complaint mechanism is the transparency it will bring to procurement decisions. Under a transparent system, parties not only understand and rely on the rules that are being applied, but also are reassured throughout the process that such rules are indeed being followed. Decisions taken under such a system are made public and justified. ... In summary, the establishment of a formal complaint mechanism provides a clear, transparent and fair way of dealing with all the concerns presented by interested parties. Issues of corruption, for example, can be openly addressed and resolved. Moreover, an effective enforcement mechanism will not only identify and punish any malpractice, but will also function as a deterrent to breaches as the perpetrators will be aware of the possibility of being exposed.").

⁹⁴ Daniel I. Gordon, *supra* note 13, at 4 note 10.

⁹⁵ *Id.* at 17–18.

V. Elements of an Effective Bid Complaints System

Many international instruments, including the UNCITRAL Model Law on Public Procurement, call for the creation of an effective bid remedies system.⁹⁶ So, too, do the World Bank's *Procurement Regulations*.⁹⁷ In analyzing whether a bid remedy system is effective, commentators and practitioners have pointed to a number of criteria, many of which intersect with one another, to determine effectiveness. The analysis below will identify the internationally recognized benchmarks to frame an examination of the Bank's system.

a. What Is the Role of an Effective Bid Complaint System?

The first step to gauging effectiveness is to identify the purpose and role of a bid complaint system. Generally, an effective bid complaint system serves two concurrent roles: (a) it provides disappointed bidders with a forum to address their grievances and so helps to encourage their participation in future bidding (the forum serves a competitive purpose, in other words); and (b) a bid complaint system highlights failures in the procurement system (the challenges serve a management purpose, and the challengers (protestors) are a sort of "whistleblower").⁹⁸ Ultimately, balancing these roles will depend on a government's specific circumstances, such as heightened concerns over corruption, the willingness of bidders to protest, the independence and efficiency of forums assigned to hear challenges, and other factors.⁹⁹

⁹⁶ UNCITRAL Model Law, *supra* note 14; WTO, Agreement on Government Procurement, Mar. 30, 2012, WTO Doc. GPA/113, at 9; U.N. Off. on Drugs and Crime, *United Nations Convention Against Corruption*, art. 9, para. 1 (2004), https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁹⁷ See *Procurement Regulations*, *supra* note 25, sec. V, para. 5.4(h).

⁹⁸ See, e.g., Erik A. Troff, *The United States Agency-level Bid Protest Mechanism: A Model for Bid Challenge Procedures in Developing Nations*, 57 Air Force L. Rev. 113; Christopher Yukins & David Drabkin, *DoD Bid Protests*, at 8 (Acquisition Innovation Research Center, Oct. 2022), https://document.acqirc.org/technical_reports/reports/1685973275.WRT-1049.7_REPORT_0511.pdf; *Bid Protest Reform: Understanding the Problem, Before the Subcommittee on Gov't Operations of the Comm. on Oversight and Gov't Reform*, 119th Cong., 1st Sess. 2–3 (2025) (statement of Christopher Yukins); Marta De Castro Meireles, *supra* note 56, at 125 ("Allowing suppliers to bring complaints within the Bank's system can still have several advantages. The settlement of concerns brought by suppliers might bring clarity to the interpretation of the Guidelines. Clear rules improve confidence of suppliers when bidding, and eventually might lead to greater competition and the conclusion of better contracts. In this context, the intervention of private parties in the procurement process could lead to a more efficient procurement, in which best value for money is often achieved. Moreover, private parties can alert the Bank about breaches that could be happening in the procedure ...").

⁹⁹ Daniel I. Gordon, *supra* note 13.

b. The World Bank's Complaints Procedure vs. International Standards

As noted above, the Bank's existing complaints procedure nominally grants the Bank only a "monitoring" role in any bid challenge brought under the Bank's rules.¹⁰⁰ The Bank's rules suggest that the Bank stands apart from any challenge, as the borrowing (and procuring) agency takes first responsibility for handling the challenge. In practice, however, as the discussion above reflects, Bank officials play an ongoing and direct role in bid challenges brought under the Bank's rules, and the Bank's monitoring role under its own rules essentially overrides the borrowing nation's local bid challenge procedures. This, in turn, means that our analysis can fairly focus on the Bank's own procedures. Evaluating the efficacy of the Bank's complaints procedures requires a direct comparison of the Bank's procedures with international standards for the elements needed to make a bid complaint system effective. The standards that will be utilized below derive from the Methodology for Assessing Procurement Systems (MAPS), an internationally developed and globally respected set of standards for effective procurement systems.¹⁰¹

¹⁰⁰ *Procurement Regulations*, *supra* note 25, sec. 3, para. 3.9(a)-(c).

¹⁰¹ Methodology for Assessing Procurement Systems (MAPS), p. 59, § 13(b) (2018), <https://www.mapsinitiative.org/methodology/MAPS-methodology-for-assessing-procurement-systems.pdf>.

c. MAPS Criteria for an Effective Bid Challenge System

The MAPS assessment system, originally developed as a joint initiative between the World Bank and the OECD,¹⁰² sets forth carefully wrought standards for a modern public procurement system.¹⁰³ Considered by many to be the “gold standard” to assess effective procurement systems, the MAPS tool is utilized by the World Bank and countries worldwide.¹⁰⁴ The MAPS tool reviews many elements of a procurement system; among other things, the MAPS assessment tool provides an intuitive way to assess a bid challenge process, as part of a broader public procurement system.

In assessing effectiveness, the MAPS assessment criteria evaluate (among other things) the level of autonomy a bid challenge forum¹⁰⁵ has from the broader procurement system.¹⁰⁶ The MAPS criteria look to whether a bid challenge forum:

- (a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions;
- (b) does not charge fees that inhibit access by concerned parties;

¹⁰² The World Bank itself played an important role in developing MAPS. As a 2019 report from the World Bank noted:

Strengthening public procurement systems is central to achieving concrete and sustainable results and to build effective institutions. The Methodology for Assessing Procurement Systems (MAPS) was initially developed in 2003/2004 by the World Bank and the OECD, as a contribution to the collective efforts of many stakeholders to assess and improve public procurement systems by providing a common tool to analyze information on its key aspects. In the past, MAPS has been widely used, mainly by developing countries and institutional partners alike, to assess the quality and effectiveness of their public procurement systems and, based on the identified strengths and weaknesses, to develop reform strategies and implementation plans. These reforms typically focused on creating the foundation for a well-functioning public procurement system by establishing legal, regulatory, and institutional frameworks.

Following a general consensus to create a universal instrument to assess public procurement worldwide, the MAPS methodology was revised in 2015–2018 by a wide group of stakeholders. The revision process was organized by the Stakeholder Group on the Revision of the MAPS, coordinated by the OECD as the informal secretariat. The updated core methodology is now available ...

It is estimated that the multilateral development banks alone would conduct approximately 20 to 25 MAPS assessments per year on average.

World Bank, *Methodology for Assessing Procurement Systems: Establishing a Governance Structure and Secretariat*, at 1-2 (Feb. 20, 2019), available at <https://documents1.worldbank.org/curated/en/728371550701255605/txt/Project-Information-Documents-PID-Methodology-for-Assessing-Procurement-Systems-Establishing-a-Governance-Structure-and-Secretariat-P169553.txt>.

¹⁰³ *Methodology for Assessing Procurement Systems*, *supra* note 102, at 1.

¹⁰⁴ U.S. Gov’t Accountability Off., *World Bank Procurement: Risk Monitoring Can be Enhanced as U.S. Businesses Face Challenges Competing* 15 (2024), <https://www.gao.gov/assets/gao-24-106718.pdf>.

¹⁰⁵ The MAPS Report often references that the effectiveness criterion must apply to an “appeals body,” but it does not say that the “appeals body” must be a court. *See* *Methodology for Assessing Procurement Systems* (MAPS), *supra* note 101.

¹⁰⁶ MAPS, *supra* note 101, at 59, sec. 13(b).

- (c) follows procedures for receipt and resolution of complaints that are clearly defined and publicly available;
- (d) exercises its legal authority to suspend procurement proceedings and impose remedies;
- (e) issues decisions within the time frame specified in the law/regulations;
- (f) issues decisions that are binding on all parties; and
- (g) is adequately resourced and staffed to fulfil its functions.¹⁰⁷

Each criterion helps in the assessment of whether a bid challenge forum is effective, i.e., whether it can efficiently and capably enforce any remedy imposed, and it can ensure its decisions are free from interference or potential conflicts of interest, all to preserve a procurement system's integrity.¹⁰⁸ While the MAPS criteria do not capture all the best practices identified, they are a very useful foundation for reform.

VI. Analysis of the World Bank's Complaints Procedure Utilizing the MAPS Criteria

Although the World Bank's 2016 procurement framework reformed the Bank's procedures for handling procurement-related complaints, the revised structure – because it was designed for a bank, not a government – did not address all the aspects of an effective bid complaints forum, such as damages that might be owed disappointed bidders.¹⁰⁹ But the Bank's 2016 reforms also did not resolve many of the deficiencies in the Bank's complaints system that had been pointed out for decades.¹¹⁰ By using the MAPS criteria to assess the Bank's complaints procedures, these gaps and shortcomings in the Bank's process can be highlighted, and the analysis offers a way forward for reform by the Bank of its complaints process. That, in turn, should ensure more robust competition in future Bank-financed procurements, and should make the complaints process a more effective means of identifying failures in Bank-financed procurements. It is critical to note that, when applied to the Bank's procurement framework, several criteria from the MAPS methodology overlap with others, which the analysis below will reflect.

¹⁰⁷ *Id.* at 59, sec. 13(b)(a)–(g) (2018).

¹⁰⁸ *See id.*

¹⁰⁹ Christopher Yukins & Sope Williams-Elegbe, *supra* note 22, at 14.

¹¹⁰ *See, e.g.,* Sope Williams, *The Debarment of Corrupt Contractors from World Bank-Financed Contracts*, 36 Pub. Cont. L.J. 277, 294 (2007); Bernard Malmendier, *The Liability of International Development Banks in Procurement Proceedings: The Example of the International Bank for Reconstruction and Development (IBRD), the European Bank for Reconstruction and Development (EBRD) and the Inter-American Development Bank (IADB)*, 2010 Pub. Proc. L. Rev. 135, 138-39; Peter Trepte, *All Change at the World Bank? The New Procurement Framework*, 2016 Pub. Proc. L. Rev. 121, 149.

a. The Bank's Involvement in Procurement Transactions and Award Decisions

As previously mentioned, the Bank's role in the award process for Bank-financed contracts allows the Bank's officials the authority to oversee virtually every step of the procurement, including the ultimate award decision by a borrower to a prospective vendor.¹¹¹ In this regard, because the procuring agency needs a "no objection" letter" from the Bank, generally any contracts to be awarded by a borrower cannot begin performance until the Bank approves.¹¹²

Additionally, when a disappointed vendor submits a complaint for a contract that was subject to prior review during the award phase, the challenged agency must provide all relevant information to the Bank for the Bank's review and cannot move forward until this review is complete.¹¹³ As part of the Bank's review, the borrower agency is to consult with the Bank on any remedial steps the borrower must take; if necessary, the borrower may be required to accelerate the procurement process to avoid delays.¹¹⁴

The Bank's role at each stage of the procurement process, including in post-award challenges, means that in practice the borrower agency does not have autonomy in Bank-financed procurements (or in challenges brought under those procurements). Since an undisputed goal of any effective bid challenge framework is to provide independent, objective relief to disappointed vendors,¹¹⁵ the Bank's hand in the bid complaints process may diminish the perceived fairness of these procedures. Requiring Bank approval undermines the complaints process because any relief will need to accommodate the Bank's own concerns, which may not coincide with the core purposes of a bid challenge system to (1) foster fair competition, and (2) to raise "red flags" of mismanagement. In other words, while the borrower may be willing to take corrective action to assure bidders of fair competition in its own market, or to resolve internal management failures, the Bank's goals may be very different – and the Bank retains the authority to insist that its goals take precedence.

These types of concerns have echoed among U.S. businesses that have competed for contract awards funded by the Bank. A 2024 U.S. Government Accountability Office (GAO) report noted that four entities that filed bid complaints before the

¹¹¹ See *Procurement Regulations*, *supra* note 25, Ann. III, para. 3.3; see also Christopher Yukins & Sope Williams-Elegbe, *supra* note 22, at 13.

¹¹² See *Procurement Regulations*, *supra* note 25, Ann. III, para. 3.3.

¹¹³ See *id.*, paras. 3.2-3.5.

¹¹⁴ See *id.*

¹¹⁵ Eric Andrew Troff, *supra* note 98.

Bank argued that the complaints process “[w]as not transparent or fair.”¹¹⁶ The U.S. businesses termed the Bank’s procedures “cumbersome.” Other vendors that elected not to file a formal complaint instead had to reach out to other offices in the Bank (e.g., the Bank’s Integrity Vice Presidency) to address their concerns.¹¹⁷ For these reasons, multiple U.S. contractors informed GAO that they likely would not submit bids on future Bank-financed procurements, based on their experiences with the Bank’s complaints procedure.¹¹⁸

b. The Bank’s Divergence From “Clearly Defined, Publicly Available” Procurement Procedures

The problem is exacerbated because the Bank’s complaints procedure leaves the responsibility to handle all complaints with the borrower agency, without the constraints and safeguards normally imposed by the borrower’s procurement laws.¹¹⁹ Thus:

- A bidder complaint subject to the Bank’s complaints process will be heard only by the purchasing agency (an “agency-level bid protest,” in U.S. terms¹²⁰). Unlike bidders that complain to the EBRD, bidders in the World Bank complaints process are without mandatory recourse to review by more senior officials who were not involved in the procurement,¹²¹ to an independent administrative agency or to the courts – avenues of review which normally are available to bid challengers under international best practices.¹²²

¹¹⁶ U.S. Government Accountability Office, *supra* note 104, at 32. According to the GAO report, improvements to the Bank’s integrity measures (including complaints) were expected by the end of the Bank’s fiscal year 2025 (i.e., June 30, 2025). *Id.* at 19. No reforms to the Bank’s procurement complaints procedures had been announced by that date, however. The GAO plays two roles in the U.S. procurement system: it hears bid challenges, and it serves as the U.S. government’s supreme audit institution.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 33.

¹¹⁹ See Procurement Regulations, *supra* note 25, Ann. III, paras. 3.27-3.32; see also Christopher Yukins & Sope Williams-Elegbe, *supra* note 22, at 13.

¹²⁰ FAR 33.103; 48 C.F.R. § 33.103.

¹²¹ Under the EBRD complaints procedures, for example, the Procurement Complaints Committee is made up of the following senior officials from the EBRD:

Director, Chief Counsel, Banking Operations (Chair)
Director, Corporate Debt, Banking Portfolio (Alternate Chair)
Managing Director (MD), Central Asia, Banking, and
Director, Investigations, Office of the Chief Compliance Officer (OCCO).

EBRD, Terms of Reference: Procurement Complaints Committee (March 2023), *available at* https://www.ebrd.com/content/dam/ebrd_dxp/assets/pdfs/project-procurement/pccs-term-of-reference-and-composition/PCC-TORs-March-2023.pdf.

¹²² See UNCITRAL, *supra* note 14, arts. 66–67.

- The purchasing agency will control the administrative record to be provided to the complaining vendor – and may opt not to provide any of that record to the challenging party.¹²³ This conflicts with, for example, the GAO’s requirement that agencies produce all relevant documents to the protesting party, and with other domestic and international practices favoring free disclosure of the administrative record to the challenging party.¹²⁴
- The Bank’s ongoing review of the complaints that have been submitted through the Bank’s complaints process means, as noted, that the standards applied and the deciding agency’s conclusion may be colored by the Bank’s own imperatives.¹²⁵
- Although a complaint under the Bank’s procedures is to be completed in a “timely” manner,¹²⁶ the Bank’s *Procurement Regulations* do not specify what qualifies as “timely” for informing disappointed vendors of the Borrower’s decisions and actions during the complaints process.¹²⁷ That delay can be worsened by the Bank’s consultation with the borrower.¹²⁸ This type of delay runs contrary to international best practices, such as the MAPS recommendation to issue decisions within specified timeframes, the time limits imposed

¹²³ See *Procurement Regulations*, *supra* note 25, Ann. III, sec. 3, para. 3.7. For a discussion of legal barriers to accessing relevant records, see Marta De Castro Meireles, *supra* note 56, at 128-131.

¹²⁴ FAR 33.104(a)(3)(ii); see UNCITRAL, *supra* note 14, arts. 68–69. In the U.S. government, the procuring agency is required to produce all relevant documents from the administrative record to the challenger in proceedings before the GAO (the independent agency which hears bid challenges), see 4 C.F.R. § 21.3, and the rules of the U.S. Court of Federal Claims, Appendix C, similarly require the agency in a bid protest to produce a broad array of enumerated materials from the administrative record. In the foreseeable future, as “open contracting” becomes the norm in procurement systems, the challenging party may have access to most of a procurement’s administrative record anyway, as any member of the public would. For resources on “open contracting” – an emerging approach in international procurement, which presumes that all procurement data will be publicly available and accessible – see *GW Law Webinar Series 2025: Open Contracting Around the Globe*, <https://publicprocurementinternational.com/summer-webinar-series-open-contracting-around-the-globe/>.

¹²⁵ Independent review is a recognized international best practice. See, e.g., See UNCITRAL, *supra* note 14, art. 67; U.N. Off. on Drugs and Crime, *United Nations Convention Against Corruption*, art. 9, para. 1 (2004); EU Council Directive 89/665, art. 2(8), 1989 O.J. (395) 1.

¹²⁶ See *Procurement Regulations*, *supra* note 25, Ann. III, para. 3.6.

¹²⁷ See *id.* para. 3.7(a)-(c).

¹²⁸ See *id.*

on decisions in the EIB complaints process,¹²⁹ and the GAO's emphasis on a fast-moving process within a 100-day statutory deadline.¹³⁰

- No appeal will be available from the purchasing agency's decision, if adverse, though it is normal international best practices to offer an appeals mechanism, exemplified by UNCITRAL's provision that would allow a disappointed bidder to "appeal any decision."¹³¹
- Decisions issued under the Bank's complaints process are not published, unlike the EBRD and the EIB, which regularly publish information on bid complaints. The EBRD publishes summaries of its decisions,¹³² and the EIB publishes summaries of the kinds of complaints received and resolved.¹³³

The World Bank's complaints process thus falls short when measured against international benchmarks.¹³⁴ Many authorities, including the MAPS standards, help define the elements of an effective complaints process, and the Bank's complaints process consistently fail to meet those benchmarks – though much of this could be remedied through relatively modest reforms.¹³⁵

¹²⁹ Under the EIB's procedures there is a time limit to the EIB's review. If a complaint is submitted after the EIB has provided its non-objection to a contract award (a non-objection which will be suspended during the period of review) and during the post-award "standstill" period, the complaint will be reviewed by the EIB Procurement Complaints Committee and the EIB's decision "will be taken within 30 calendar days of the complaint being submitted," though in "complex cases this deadline may be extended to up to 60 calendar days." *EIB Guide to procurement for projects financed by the EIB*, supra note 11, Annex 7, para. C.

¹³⁰ See MAPS, supra note 101, at 59, sec. 13(b)(e) (2018); 4 C.F.R. § 21.9.

¹³¹ See UNCITRAL, supra note 14, art. 64; U.N. Off. on Drugs and Crime, *United Nations Convention Against Corruption*, art. 9, para. 1 (2004); WTO, *Agreement on Government Procurement*, Mar. 30, 2012, WTO Doc. GPA/113, at 43.

¹³² EBRD, *Annual Review: Procurement Activities Under the Procurement Policies and Rules*, Annex 3.2, Summary of Complaints (2024), available at https://www.ebrd.com/content/dam/ebrd_dxp/assets/pdfs/project-procurement/reports/annual-reports/apr_2024.pdf.

¹³³ EIB, *Annual Report of the Procurement Complaints Activity and the Procurement Complaints Committee of the European Investment Bank 2025*, at 4-8 (2026), available at <https://www.eib.org/en/readonline-publications/20260084-annual-report-procurement-2025>. While the summaries and statistics published by the EIB disclose the kinds of issues being presented through the complaints process, the EIB's failure to publish even summaries of its decisions means that the procurement community cannot discern what direction the EIB is likely to take in future cases under its procurement rules – a core purpose of publication of bid challenge decisions, as noted above. See supra notes 94–96 and accompanying text.

¹³⁴ Daniel I. Gordon, supra note 13, at 18–19.

¹³⁵ See *id.*; see also Keith M. Lusby, *Improving The Effectiveness Of State Bid Protest Forums: Going Above And Beyond The Agreement On Government Procurement And Adopting The ABA's Model Procurement Code*, 43 Pub. Cont. L.J. 57, 60 (2013); Eric Andrew Troff, *The U.S. Agency-Level Bid Protest Mechanism: A Model for Bid Challenge Procedures in Developing Nations* (Aug. 2005) (LLM thesis, The George Washington University Law School).

VII. Conclusion

The Bank's 2015–2016 reform of its procurement framework and bid complaints processes marked a critical step in improving the Bank's overall procurement procedures.¹³⁶ The reform signaled a clear shift in the Bank's approach to funded procurement.¹³⁷ But the reform of the Bank's procurement framework was only the first step—additional steps, including improvements to the Bank's complaints process, will be needed to make the Bank's procurement framework as strong as possible. To align the Bank's bid complaints process with international best practices, for the reasons set forth above the Bank may wish to consider the following reforms:

- **Independent Review:** Allow a vendor independent review (by appeal or otherwise) before an independent body (perhaps within the Bank itself, as the EIB and EBRD do) or a court – not just review by the purchasing agency, which may have serious conflicts of interest when asked to review its own actions.
- **Access to the Administrative Record:** Afford vendors access to the administrative record, to allow a fair assessment of the claimed agency errors.
- **Set Deadlines:** Apply fixed timelines for decision to avoid unnecessary delay, both to the project and to the parties involved.
- **Transparent Process:** Afford transparency in the Bank's review of the complaints process, to ensure the confidence of the complaining party – and the public – in the process.
- **Publish Decisions:** Ensure that decisions on bidder complaints are made in writing upon reasoned grounds and an available record, and made publicly, to reinforce public confidence in the Bank's (and the borrowers') decisions, and to provide guidance for future procurements.

These reforms could help make the Bank's complaints process more reliable and so encourage competition in Bank-financed projects,¹³⁸ improve procurement outcomes and reinforce public confidence in procurement done with World Bank financing.

¹³⁶ See World Bank, *supra* note 2.

¹³⁷ See, e.g., Peter Trepte, *supra* note 110, at 134.

¹³⁸ See generally Matteo Amerigo de Laurentiis, *To Bid or Not to Bid? Contractor Incentives in World Bank-Funded Civil Works*, 55 Pub. Cont. L.J. 535 (2026).