



BENCHMARKING PUBLIC PROCUREMENT 2017

Filing a Complaint in country name

Dear Contributor,

On behalf of the World Bank Group, we would like to thank you for your participation to the *Benchmarking Public Procurement project*. The initiative is a global project that aims to measure transaction costs of complying with public procurement regulations globally. By highlighting existing good practices, the end goal of the project is to help governments in undertaking reforms to achieve better value from public procurement and in creating a more conducive environment for private sector suppliers.

For *Benchmarking Public Procurement 2017*, data will be collected in 189 countries and aggregated under two thematic areas.

The *Filing a Complaint* indicator covers the ease of challenging a public procurement tendering process tender through a complaint system.

We are honored to count on your expertise for *Benchmarking Public Procurement 2017*. We will acknowledge your contribution if you wish so. However, your responses will be held in strict confidentiality and will not be attributed directly to you or your organization.

While responding to the survey, please note that we use standardized questionnaires in all countries to allow us to compare responses. Therefore, some questions are not always directly applicable for your country. Please also provide your full contact information, so we can acknowledge your contribution.

Please complete and return the survey no later than **two weeks** from the date of receipt. Should you have any question or need assistance with the survey, please do not hesitate to contact us.

We would like to thank you again for your invaluable contribution to the work of the World Bank Group.

Kind regards,

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Definitions: for the purpose of this questionnaire, the terms below carry the following meaning:

- The “legal framework” encompasses all public procurement regulations, other legal texts of general application, judicial decisions and administrative rulings setting precedent in connection with national/federal public procurement.

“Time” is measured in calendar days; the minimum time for each procedure is 1 day. Time estimate should include wait time, if any, when no unofficial or unlawful payments or bribes are offered to accelerate the process.

“Cost” only includes official fees and charges. Cost exclude VAT. Cost does not include unofficial or unlawful payments or bribes. Professional fees (lawyers or other experts fees) are only included if the company is required to use such services by law.

Survey instructions

A standardized case study (blue box below) was drafted in order to facilitate cross-country assessment. Complete as many sections of the survey as you and/ or your colleagues feel qualified to fill out. Please provide your responses to the following sections taking into account the case study assumptions.

The rules applicable to the tendering process, from the needs assessment phase throughout the completion of the work is governed by the national/federal legal framework in your country. The answers that you provide should be accurate as of June 1st 2016.

- The company, BuildCo, is a privately and domestically-owned Limited Liability Company, which operates in business-city. BuildCo is a medium-sized company. It generates an annual turnover of currency turnover, equivalent to 100 times the GNI per capita in country name.
- Up to this day, BuildCo has never responded to a public call for tender in your country.
- The procuring entity is an **authority in business-city** that is planning to resurface a road in country name. To this end, the procuring entity initiates a public call for tender, following an **open and competitive procedure**. The scope of the **work**, as presented in the call for tender, concerns the resurfacing with asphalt of a flat two-lane road for a value of currency GNI percentage or currency 2millionsUSD, whichever value is the highest. It does not include any other work (such as site clearance, subsoil drainage or bridge work or further routine maintenance).
- The call for tender attracts 3 offers, including BuildCo’s. BuildCo’s offer is complete and includes all required documents. It provides a price quotation free from mistake on the part of BuildCo.

A. STRUCTURE OF THE COMPLAINTS MECHANISM

The following section aims to capture general information on the complaints’ regulatory framework in your country.

1. Are there specific provisions in country name on mechanisms to review and resolve bidders’ complaints?	
<input type="checkbox"/> Yes. Please provide the current relevant legal/regulatory text as well as a link to the website where the regulations can be accessed:	<input type="checkbox"/> No

2. Please select the option that best describes your country’s review mechanism:

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<input type="checkbox"/> Two stage review mechanism: first-stage review by procuring entity and appeal to court (judicial or administrative).
<input type="checkbox"/> Two stage review mechanism: first-stage review by an independent body (e.g. independent from the procuring entity) and appeal to court (judicial or administrative).
<input type="checkbox"/> Other. Please specify:
<input type="checkbox"/> N/A (No two stage review mechanism available)

3. Does the complaining party have a choice regarding the authority before which to file its complaint (e.g., the procuring entity itself, an independent administrative review body or a judicial court)?

<input type="checkbox"/> Yes [SKIP TO SECTION B]	<input type="checkbox"/> No
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3.1 If no choice is available, where should the complaining party file its complaint?

<input type="checkbox"/> The procuring entity
<input type="checkbox"/> Independent review body (including judicial or administrative court). Please specify:
<input type="checkbox"/> Other. Please specify:

4. Please provide any additional information or comment on the answers provided above and indicate which question(s) you are referring to.

B. COMPLAINTS BEFORE THE AWARDING OF THE CONTRACT

Section B. looks at the issue of filing a complaint to challenge the tender and bidding process before the award is granted (i.e. to contest the specifications of the tender documents or a flaw in the bidding process).

B.1. First-stage review

- **The complaining party:** *Who has standing to file a complaint*

5. During the pre-award stage, do only actual bidders have standing to file a complaint?

<input type="checkbox"/> Yes [SKIP TO QUESTION 6]	<input type="checkbox"/> No
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5.1 Is the right to complain also granted to (Please select all applicable options):

<input type="checkbox"/> Potential bidders
<input type="checkbox"/> Trade organizations
<input type="checkbox"/> Civil society organizations
<input type="checkbox"/> Others. Please specify:

5.2 If so, is the process to file a complaint the same as for actual bidders?

<input type="checkbox"/> Yes	<input type="checkbox"/> No. Please specify: <i>Legal basis, if any:</i>
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6. Does the complaining party have to show that it will suffer a damage (loss of right, monetary damage, injury) as a result of the tender to be eligible to file a complaint?

<input type="checkbox"/> Yes. Please specify: <i>Legal basis, if any:</i>	<input type="checkbox"/> No
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7. Please provide any additional information or comment on the answers provided above and indicate which question(s) you are referring to:

- **Filing the complaint:** *The process before the first-stage review body*

8. Is there a cost to file a complaint before the first-stage review body?

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<input type="checkbox"/> Yes. Please specify the amount: <i>Legal basis, if any:</i>	<input type="checkbox"/> No
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9. If the first-stage review body is different from the procuring entity, is the complaining party required to notify the procuring entity of its complaint?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No [SKIP TO QUESTION 10]	<input type="checkbox"/> N/A [The first-stage review body is the procuring entity] [SKIP TO QUESTION 10]
9.1 Can the notification take place simultaneously to filing a complaint?		
<input type="checkbox"/> Yes [SKIP TO QUESTION 10]		<input type="checkbox"/> No
9.2 What is the time needed (calendar days) to complete the notification?		

10. Does the filing of a complaint lead to (please select the applicable option):		
Automatic suspension of the procurement process	Suspension if requested by the complaining party	No suspension of the procurement process
<input type="checkbox"/>	<input type="checkbox"/> Please specify:	<input type="checkbox"/> [SKIP TO QUESTION 13]
10.1. If the complaint leads to a suspension, how long is the duration of the suspension (in calendar days)? Please specify		

11. If the procurement process is suspended, are bidders notified?	
<input type="checkbox"/> Yes. Please specify: <i>Legal basis, if any:</i>	<input type="checkbox"/> No

12. Please provide any additional information or comment on the answers provided above and indicate which question(s) you are referring to:

- **The review process:** *How does the review take place once the complaint is filed*

13. If the review body is the procuring entity, is the complaint reviewed by the same people whose action is being challenged?		
<input type="checkbox"/> Yes [SKIP TO QUESTION 15]	<input type="checkbox"/> No [SKIP TO QUESTION 15]	<input type="checkbox"/> N/A. The first-stage review is <u>not</u> carried by the procuring entity

14. If the review body is <u>not</u> the procuring entity, is the procuring entity required to provide the first-stage review body with (please select all applicable options):			
A response to the complaint	Copies of relevant documents	No requirement on the procuring entity	N/A: The review body is the procuring entity.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. Are there mandatory training programs on complaints resolution for procuring agents involved in reviewing such complaints?	
<input type="checkbox"/> Yes. Please specify: <i>Legal basis, if any:</i>	<input type="checkbox"/> No

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16. How long does it take (calendar days) for the first-stage review body to render a decision since the filing of the complaint?

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17. Is there a legal time limit for the first-stage review body to render a decision?

Yes. *Legal basis, if any:* _____ No

18. What type of remedies is the first-stage review body entitled to grant to parties filing a complaint? (Please select all applicable options)

Remedy	Legally granted	Granted in practice
Modification of the tender documents	<input type="checkbox"/>	<input type="checkbox"/>
Payment of damages	<input type="checkbox"/>	<input type="checkbox"/>
Compensation of tendering costs incurred by a participant	<input type="checkbox"/>	<input type="checkbox"/>
Payment of attorneys' fees	<input type="checkbox"/>	<input type="checkbox"/>
Overtake in whole or in part an act or a decision of the procuring entity	<input type="checkbox"/>	<input type="checkbox"/>
Other remedies		

19. Where are decisions rendered by the first-stage review body published? (Please select all applicable options)

Online Procuring entity's bulletin board Official gazette
 Other. Please specify: _____ Decisions are not published

20. Please provide additional information indicating the question you are referring to

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B.2. SECOND-STAGE REVIEW

The section below measures the process of appealing the first-stage review body decisions. It also assesses the review process that takes place before the second-stage review body.

21. Does the legal framework stipulate conditions for an appeal of the first-stage review body's decisions?

Yes No [**SKIP TO SECTION C**]

22. What is the time limit, in calendar days, for the party to appeal the decision of the first-stage review body?

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23. Is there a cost to appeal the decision before the second-stage review body?

Yes. Please specify the amount: _____ No
Legal basis, if any: _____

24. Is the procurement process suspended during the appeals proceedings? :

Yes [**SKIP TO QUESTION 25**] No

24.1 If the procurement process is not suspended, is there one or more additional step(s) that

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trigger a suspension of the procurement process?	
<input type="checkbox"/> Yes. Please specify those steps:	<input type="checkbox"/> No

25. How long does it take (calendar days) for the second-stage review body to render a decision since the filing of the appeal?

26. Is there a time limit (calendar days) during which the second-stage review body must issue a decision?	
<input type="checkbox"/> Yes. Please specify: <i>Legal basis, if any:</i>	<input type="checkbox"/> No

27. What type of remedies is the second-stage review body entitled to grant to parties making an appeal? <i>(Please select all applicable options)</i>		
Remedy	Legally granted	Granted in practice
Modification of the tender documents	A	<input type="checkbox"/>
Payment of damages	<input type="checkbox"/>	<input type="checkbox"/>
Compensation of tendering costs incurred by a participant	<input type="checkbox"/>	<input type="checkbox"/>
Payment of attorneys' fees	<input type="checkbox"/>	<input type="checkbox"/>
Overturn in whole or in part an act or a decision of the procuring entity	<input type="checkbox"/>	<input type="checkbox"/>
Other remedies		

28. Where are decisions rendered by the second-stage review body published?
<input type="checkbox"/> Online <input type="checkbox"/> Procuring entity's bulletin board <input type="checkbox"/> Official gazette <input type="checkbox"/> Other. Please specify: <input type="checkbox"/> Decisions are not published

29. Please provide additional information indicating the question you are referring to

C. POST-AWARD COMPLAINTS

Section C. will assess the issue of filing a complaint following the award decision, but before the implementation of the contract.

30. Is the complaints process during the pre-award and post-award stages the same?
<input type="checkbox"/> Yes [SKIP TO QUESTION 31] <input type="checkbox"/> No
30.1 What are the main differences of the complaints process between pre-award and post-award stages? Please check the boxes for all options that apply:
<input type="checkbox"/> The parties who have standing to file a complaint (e.g. only those who submitted a bid, any interested party, etc.). Please specify: <input type="checkbox"/> The two-stage review mechanism. Please specify: <input type="checkbox"/> The legal time limits to file a complaint. Please specify: <input type="checkbox"/> The legal time limits for the rendering of decisions. Please specify: <input type="checkbox"/> The type of remedies available (e.g. annulment of contract award). Please specify: <input type="checkbox"/> The grounds for filing a complaint. Please specify: <input type="checkbox"/> The suspension of proceedings. Please specify:

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Other. Please specify: _____

31. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?

Yes No [SKIP TO SECTION D]

31.1 Please specify the time period in calendar days:

31.2 Is this standstill period mandated in the legal framework?

Yes. *Legal basis, if any* No

31.3 Is the standstill period set out in the notice of intention to award?

Yes No

32. Please provide additional information indicating the question you are referring to

D. ADDITIONAL INFORMATION

33. Are you aware of any reforms (in practice or in laws and regulations) related to complaint mechanisms that took place in 2015, are ongoing and/or planned to be adopted BEFORE June 1, 2016?:

Yes. Please describe: _____ No

34. In your opinion, what is the biggest impediment that firms face concerning the complaint review system when they participate in public calls for tender?

35. Please describe your expertise in public procurement, specifying how many procurement-related complaints (if any) did you or your firm handle in the past 2 years.

Thank you very much for participating in this project and completing the survey. We greatly appreciate your contribution!

Please note that your contact information will be published, so that we can recognize the contributors who participated in this survey. However, none of your responses will be attributed directly to you or your organization. Please check the information you do not want us to publish. We do not publish mobile phone numbers.

Primary Contributor Information: Please check the box next to information you **do not** want us to **publish**.

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Do not publish <input type="checkbox"/>	Title (Mr., Ms., Dr.)	[]
	First name	[]
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<i>Never published</i>	Position (<i>e.g. manager, associate, partner</i>)	[]

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Zip/postal code	[]	Country	[]

Additional Contributor(s): If there are more people whom you would like us to acknowledge, kindly send us an e-mail.

Name	Occupation	Email	Phone	Address
[title] [first name] [last name]	[firm] [position] [profession]	[]	[phone] [mobile]	[street] [state/province] [city/country]
[title] [first name] [last name]	[firm] [position] [profession]	[]	[phone] [mobile]	[street] [state/province] [city/country]
[title] [first name] [last name]	[firm] [position] [profession]	[]	[phone] [mobile]	[street] [state/province] [city/country]

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Referrals: Please help us expand our list of contributors by referring us to other public procurement experts in the private sector (lawyers, academics, public officials, etc.) who could respond to the Bidding for a Public Procurement Tender questionnaire.

First name	Last name	Position	Firm	Address	Phone	E-mail
[]	[]	[]	[]	[]	[]	[]
[]	[]	[]	[]	[]	[]	[]



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