



MINISTRY
OF
HEALTH

**STANDARD OPERATING PROCEDURES FOR PROCUREMENT COMPLAINTS
MECHANISMS**

**A BLENDED VERSION OF APPEALS & COMPLAINTS UNDER PUBLIC PROCUREMENT
ACT, 2003 (ACT 663) AND PROCUREMENT-RELATED
COMPLAINTS, FOR IPF BORROWERS**

WORLD BANK FUNDED

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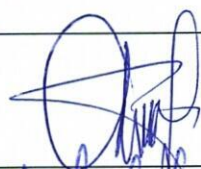

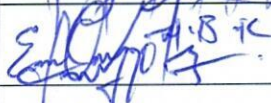


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PURPOSE

The Ghana Public Procurement Act, Act 663 Act 2003 as amended as well as the World Bank Procurement Regulations have set out how procurement complaints are to be treated. The treatment is covered by the appropriate procurement rules and procedures applicable to the circumstances of the procurement. Under the World Bank Procurement Regulations there are three possible scenarios of procurement complaints which are:

1. Complaints arising in connection with contracts where the Bank's Standard Procurement Documents (SPDs) are required to be used. Complaints that arise in connection with contracts where the Bank's SPDs are required to be used are called 'procurement-related complaints. This guidance focuses solely on these types of complaints.
2. Complaints arising in connection with contracts under an Alternative Procurement Arrangement (APA). The Procurement Regulations paragraph 2.4 describes APAs. In such cases, the Bank may rely on, and apply, the procurement rules and procedures of (whichever of the following options is appropriate):
 - a) the multilateral or bilateral agency or organization taking the leading role in the procurement activity; or
 - b) the Borrower's agency or entity executing the procurement.
3. Complaints arising in connection with contracts subject to national procurement procedures. A procurement complaint arising in connection with a contract subject to national procurement is subject to a different set of rules and procedures. The Procurement Regulations paragraphs 5.3 to 5.6 describe national procurement procedures. A Borrower is required to have an effective complaints mechanism in order to be able to use its own procedures for national open competitive procurement financed by the Bank.

This Procurement Complaints Mechanism is being prepared in line with requirements under scenarios 3 as detailed above. This procurement guidance offers an overview of the Appeals & Complaints under Public Procurement ACT, 2003 (ACT 663) blended with the World Bank's (Bank) complaints review mechanism. This guidance explains the key concepts and outlines the process for filing and reviewing complaints that arise in connection with contracts subject to national procurement procedures.

THE APPEALS AND COMPLAINTS PROCESS –

AN OPPORTUNITY FOR REDRESS IN GHANA'S PUBLIC PROCUREMENT PROCESS

As a complementary part of Government's efforts to improve public procurement, administrative review provided under the Public Procurement Act, 2003 (Act 663) is a dispute resolution process, an alternative to judicial decisions dedicated to procurement in order to promote effective and timely resolution of bid protests, and to minimize the cost of litigation.

The relevant review rules are unique in that bidders may challenge procurement decisions at any stage of procurement, i.e. either before or after a contract is in force. This is reinforced by Ghana's mandatory standstill period between contract award and commencement, to provide the bidder reasonable opportunity for an award to be set aside.

The Authority is apprised of various complaints by aggrieved tenderers, including issues on procurement malpractice, artificial shortage and exorbitant cost of tender documents, late release of information on tender outcomes resulting in undue delays in the release of bid securities. Such infractions ultimately affect the growth and development of the procurement process, breeds mistrust, loss of confidence and apathy.

The PPA's administrative review process is an important recourse system which provides opportunity for bidders and other stakeholders to challenge procurement decisions and verify the fairness and integrity of Ghana's public procurement process. It also gives the regulatory authority (PPA) the platform to monitor activities of public procurement officials, enforce compliance and correct improper actions in order to promote integrity and prevent corruption in public procurement.

Balanced with other good governance imperatives such as ensuring efficient management of public resources or providing guarantees for fair competition, the PPA believes that a clearly regulated process to facilitate the exposure of non-compliance or administrative wrongdoing is important in ensuring transparency, accountability and control.

As statutorily mandated, the PPA has successfully inaugurated a 7-member Appeals & Complaints Panel comprising legal and procurement experts from both the public and private sectors to consider and resolve complaints.

We hope that this brochure will educate readers on the review process and remedies that can be awarded when a procurement process is not conducted in an appropriate manner or when procurement rules are violated.

INTRODUCTION

Part VII of the Public Procurement Act, 2003 (Act 663) gives aggrieved Suppliers, Contractors & Consultants the opportunity to seek Administrative Review when dissatisfied with a procurement process or decision.

QUALIFICATION

Procurement-related complaints that arise in connection with contracts where the Bank's SPDs are required to be used are addressed in detail under Annex III of Procurement Regulations.

There are four essential requirements that must be met by the party who wishes to make a procurement-related complaint (Annex II).

These are:

- a) Who can complain? The party seeking to make the complaint must be eligible to make the complaint. Under the Procurement Regulations only an 'interested party' is eligible to make the procurement-related complaint.
- b) In what circumstances? The circumstances giving rise to the complaint must be relevant to the procurement. The Procurement Regulations describe the three relevant circumstances that may give rise to procurement-related complaints.
- c) When to make the complaint? Procurement-related complaints must be made in a timely manner. The Procurement Regulations set the time limits that apply to making this type of complaint.
- d) What information must be included? The procurement-related complaint must contain all of the required information (content) described in the Procurement Regulations. This must be provided at the time of making this type of complaint.

Who can complain?

For procurements where the Bank's SPDs are required to be used, only an 'interested party' may make a procurement-related complaint. An 'interested party' means either: a) a potential participant in a procurement opportunity, or b) an actual participant (Supplier, Contractor, Consultant). Whether an

interested party is a potential or actual participant will depend on the stage that the procurement process has reached when the procurement-related complaint arises and what action, if any, the interested party has taken. The following table describes examples of “interested party”.

INTERESTED PARTY	DESCRIPTION
A potential participant	This is a firm/individual that is interested in participating in the procurement opportunity but has not yet submitted a response to the procurement opportunity. For example: - a potential Applicant, Bidder, Proposer or Consultant that is interested in submitting an application, bid or proposal, in a Prequalification, Initial Selection, Request for Bids/request for proposals process but has not yet done so
An actual participant	This is a firm/individual that has submitted an application/bid/proposal in response to a contract opportunity. For example: - an Applicant that has submitted an Application to Prequalify, be Initially Selected, or - a Bidder, Proposer or Consultant that has submitted a Bid or Proposal

COMPLAINTS PROCEDURE

Do you have a grievance or complaint about a procurement process or decision?

A Supplier, Contractor or Consultant complaining of any of the following is entitled to seek Administrative Review, described in Steps 1 to 3 below:-

1. Unfair treatment in the solicitation or evaluation of Tenders
2. Unfair treatment in the award of contracts

3. Loss or injury due to a breach of duty imposed under Act 663
4. Challenge to Procurement Documents (In this circumstance, the complainant may seek to challenge the terms of the Procurement Documents. This means that the complainant has a concern or issue in relation to, for example, one of the following documents:
 - a) Prequalification document;
 - b) Initial Selection document;
 - c) Request for Bids or Request for Proposals; and /or an addendum to any of the above documents.
5. Challenge the decision to exclude prior to contract award (In this circumstance, the complainant may seek to challenge the Borrower's decision to exclude it from a procurement process, prior to the contract award decision being made. Examples include:
 - a) not qualifying in a Prequalification;
 - b) not being selected in an Initial Selection; and
 - c) being eliminated from a multi-stage procurement process.
6. Challenge the decision to award the contract (In this circumstance, the complainant may seek to challenge the Borrower's decision to award the contract. This procurement-related complaint can only be made after the complainant has received the Borrower's Notification of Intention to Award the contract.

The following are not subject to review:

- The Entity's selection of a method of procurement or procedure
- The time limits of procurement procedures
- Decision by a procurement entity to reject a tender, proposal, offer or quotation if the tender documents pre-disclosed grounds for rejection.

STEP 1

REVIEW BY PROCUREMENT ENTITY

A Complainant must first seek review at the Entity level, either before or after contract award.

The Head of Entity may but is not bound to entertain a procurement complaint when the contract is already in force, and in case of the latter, must issue a written decision with reasons to justify this choice.

A Complainant must submit a timely written complaint to the Head of Entity clearly stating the complaint and the claim.

What happens when the contract has been awarded?

It's not too late if the contract for that tender has already been awarded; a complaint can still be lodged with the Head of Entity.

Prepare to file a complaint

Read Sections 78-82 of the Public Procurement Act, 2003 (Act 663) as amended.

- Seek advice from the Entity Procurement Unit
- Seek advice from the Entity Legal Department/Unit

Seek advice from the Legal & Public Affairs Directorate of the Public Procurement Authority

Procedure— Filing Complaint at Procurement Entity Level

Write to the Head of that institution (Entity Head) with the following information:

- Particulars of Complainant – name, address, phone number, email (if any), contact person to receive communication & other notices.
- Clear & detailed statement of the grounds of complaint, state times & dates, how you have been adversely affected, remedy or relief sought.
- Attach all relevant tender documents & background information.

Process & Decision by Head of Entity

- Notify participating Suppliers, Contractors or Consultants of the submission of a complaint within fourteen (14) working days of the date of the complaint.
- The complaint must be resolved by mutual agreement between the Complainant & the Procurement Entity.
- In deciding the case, the Head of Entity may in consultation with the Public Procurement Authority, suspend the contract or the entire procurement process to facilitate investigations.
- The Head of Entity must issue a written decision within twenty-one (21) days of date of complaint stating reasons for decision & corrective measures to be taken.
- If no decision is made within the 21-days limit above, commence proceedings for Administrative Review by written request to the Public Procurement Authority.

STEP 2

ADMINISTRATIVE REVIEW (PPA)

When to seek Administrative Review

Seek Administrative Review directly at the Public Procurement Authority within twenty-one (21) days of any of the following: -

- Awareness of the complaint (if the contract is already in force);
- Date of decision by the Head of Entity not to entertain the complaint for reason of contract award.;
- The complaint submitted at the Entity level is not resolved within twenty-one (21) days;
- Dissatisfaction with and/or adversely affected by the written decision of the Head of Entity.

Formal Request for Administrative Review

Write to the Chief Executive of the Public Procurement Authority with the following details:-

- Particulars of Complainant – name, address, phone number, email (if any), contact person to receive communication & other notices;
- A clear & detailed statement of the grounds of complaint, with times & dates;
- State how you have been adversely affected, remedy or relief sought;
- Attach all relevant tender documents & background information

Process & Decision by Public Procurement Authority

The Public Procurement Authority will notify affected Parties of the submission of a complaint & its contents within fourteen (14) days of submission.

It may suspend the procurement process or contract between seven (7) to thirty (30) days while considering the complaint.

A team of seven (7) legal & procurement experts forming the **Appeals & Complaints Panel of the Public Procurement Authority** will consider the complaint.

The complaint is considered based on written submissions. A hearing may be convened to hear evidence of relevant parties, as necessary.

Final Decision

Final decision on the matter lies with the governing Board of the Public Procurement Authority.

The Public Procurement Authority will endeavour to resolve complaints and give a ruling within twenty-one (21) days of receipt of the complaint, depending on the sufficiency of documentation received and complexity of the case.

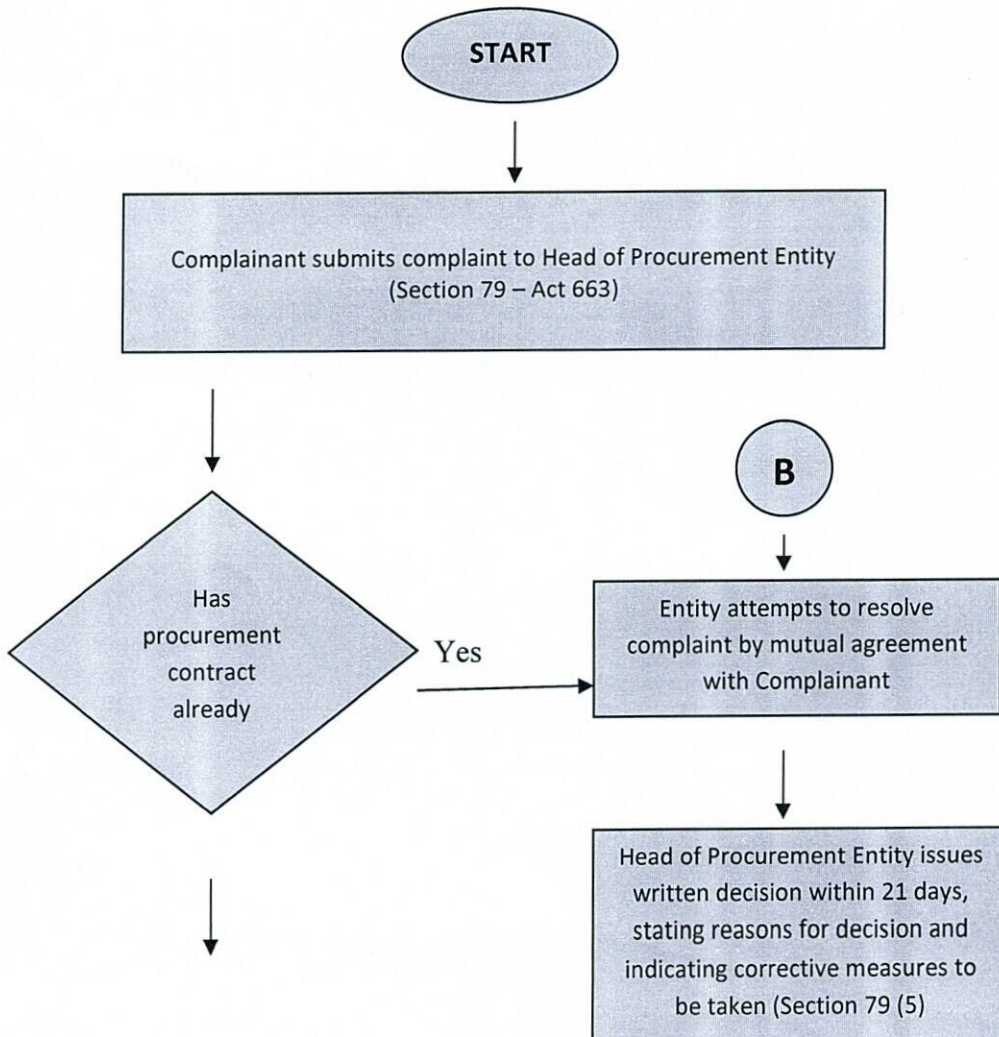
Remedies

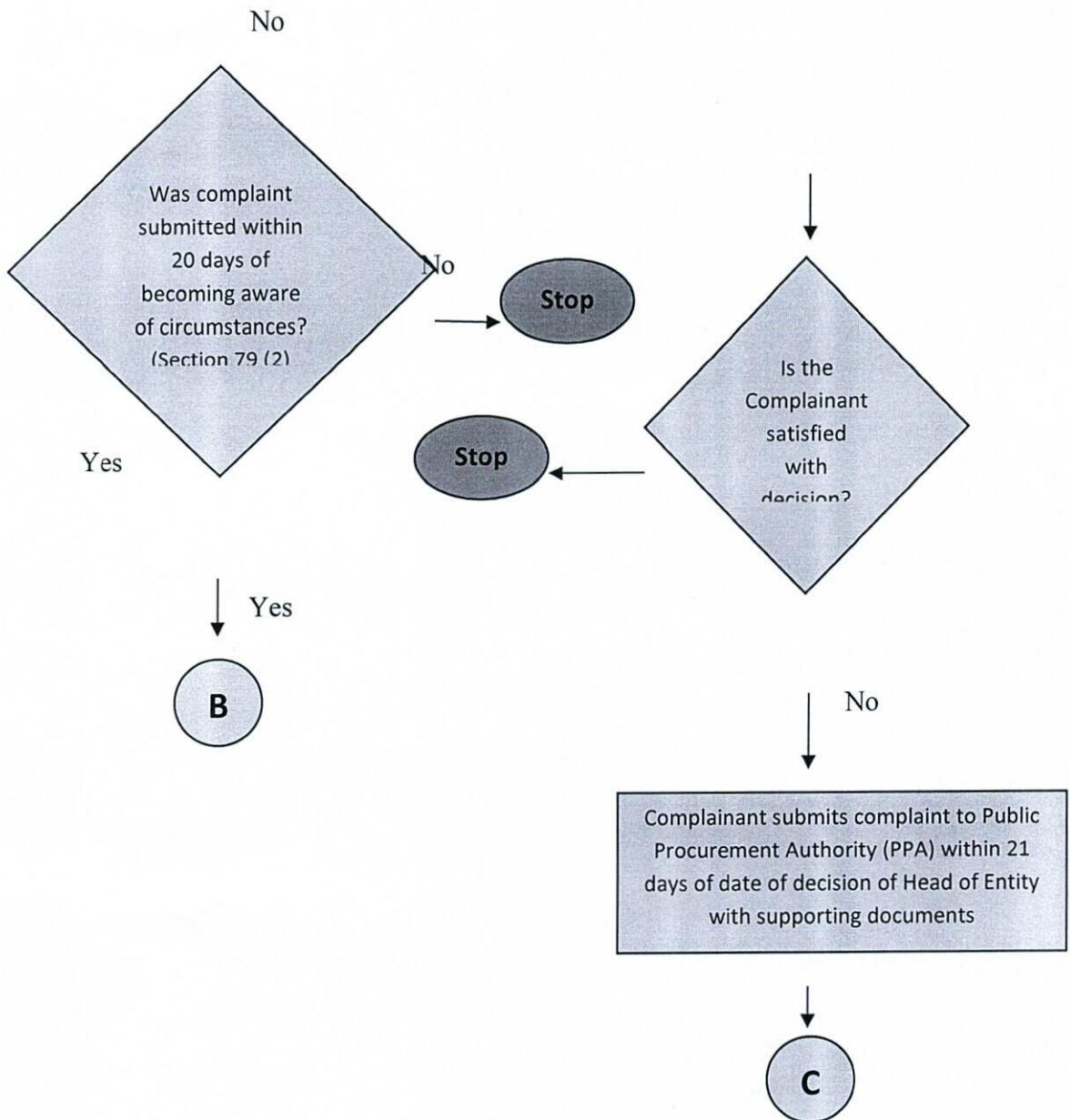
- The Public Procurement Authority has the power to grant the following remedies or reliefs, among others:-
- Cancel an illegal act or decision wholly or partially;
- Reverse an illegal decision by the procurement entity or substitute with the PPA's decision;
- Order compensation for reasonable costs incurred (in connection with the procurement process);
- Order termination of the procurement proceedings.

Will the decision be made public?

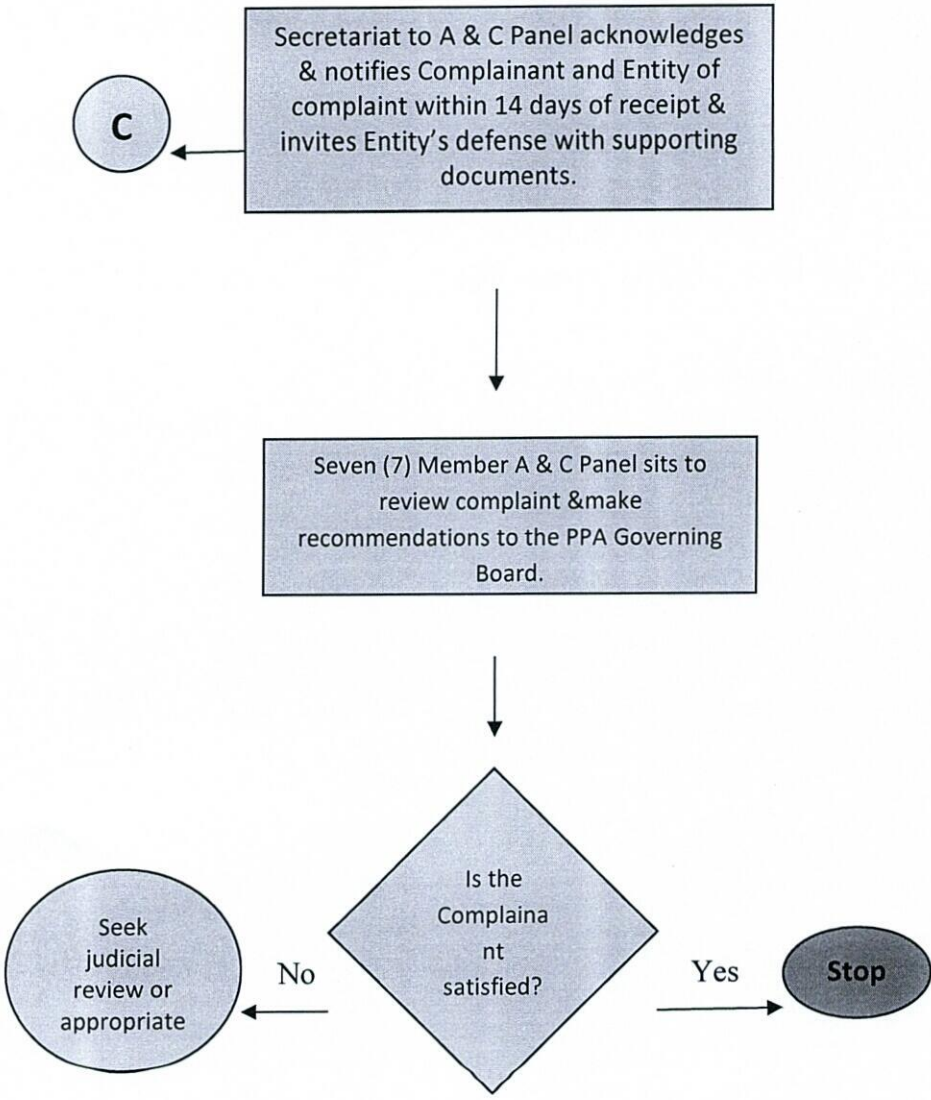
Yes, the PPA may publish decided cases on the PPA website and/or in the Public Procurement Bulletin.

ADMINISTRATIVE REVIEW PROCESS





ADMINISTRATIVE REVIEW PROCESS (contd.)



REFERENCE DOCUMENTS

1. World Bank Procurement Guidance - Procurement-related Complaints (How to Complain), January 26, 2017, Second Edition
2. Ghana Public Procurement Authority - Appeals & Complaints Under Public Procurement Act, 2003 (Act 663). The Appeals and Complaints Process –An Opportunity for Redress in Ghana’s Public Procurement Process