

**AFRICAN DEVELOPMENT BANK GROUP
GENERAL SERVICES AND PROCUREMENT DEPARTMENT**



**GUIDELINE
AWARD PROTEST PROCEDURE**

September 2015

AWARD PROTEST PROCEDURES

The Presidential Directive No. 05/2013 sets out the rules concerning corporate procurement activities of the African Development Bank (the “Bank”). Article 12, Chapter 30, of Presidential Directive 05/2013 (**see Annex A**) sets out the Award Protest Procedure. This procedure refers to a complaint from an unsuccessful bidder about the Bank’s competitive procurement process.

All bidders wishing to participate in a procurement opportunity with the Bank are encouraged to read Presidential Directive 05/2013.

In order to ensure protest notifications are receivable, this guide has been developed to explain the Award Protest Procedure. This guide has been designed in the form of frequently asked questions:

- What is the ‘award protest procedure’?
- Who is entitled to submit a protest?
- Are there any qualification criteria in order to submit a protest?
- Can I submit a protest if I do not meet the qualification criteria?
- Can I submit a protest about any aspect of the procurement process?
- How can I submit a protest?
- What information should I submit with my protest?
- Will the Bank consider a protest received after the timeline?
- What is the process to review and determine a protest?
- Is there an appeals procedure?
- How can I submit an appeal?
- What information should I submit with the appeal?
- What is the process to review and determine an appeal?
- Can I appeal against the decision of the appeal decision?

This guide includes a form of protest and form of appeal which must be used when submitting a complaint.

The Presidential Directive can be found on the Bank’s website: <http://www.afdb.org/en/about-us/corporate-procurement/>

Any questions on the Bank’s procurement process or award protest procedure should be directed to the contact point on the Bank’s website.

For the purposes of this guideline, a brief description of the different stages of the Bank's evaluation process is set out below:

- Eligibility – this refers to the origin of the supplier, goods and/or services. Goods, services, real estate and works procured by the Bank shall be produced in a member country and supplied by contractors from a member country of the Bank.
- Qualification – this refers to the pass/fail mandatory criteria. The qualification criteria is used to determine if a proposal meets the Bank's requirements.
- Technical Evaluation – this refers to the evaluation of goods, services, real estate or works offered and the bidder's technical approach. This is an assessment of how the bidder has demonstrated an understanding of the Bank's requirements.
- Financial Evaluation – this refers to the evaluation of all costs related aspects of the bidder's proposal.

FREQUENTLY ASKED QUESTIONS

1. What is the 'award protest procedure'?

The award protest procedure refers to a complaint from an unsuccessful bidder about a Bank's competitive procurement process.

2. Who is entitled to submit a protest?

A protest can **only** be submitted by a bidder who participated in the competitive procurement process but was deemed unsuccessful by the Bank.

3. Are there any qualification criteria in order to submit a protest?

Yes. The qualification criteria are set out below.

In order to submit a protest, the bidder must meet the following qualification criteria:

- The bidder participated in the procurement process by submitting a proposal;
- The Bank received the bidder's proposal by the closing date for receipt of proposals;
- The Bank has not cancelled the procurement process;
- The protest is received by the Bank within seven (7) calendar days of issuance of the Bank's regret letter or debriefing by the Bank.

See the qualification criteria flowchart (**Annex B**)

4. Can I submit a protest if I do not meet the qualification criteria?

No. The Bank will not consider a protest from a bidder who does not meet the qualification criteria.

5. Can I submit a protest about any aspect of the procurement process?

With the exception of the matters set out below, an unsuccessful bidder can submit a protest about any aspect of the procurement process, provided the bidder meets the qualification criteria.

A bidder cannot submit a protest on any of the following matters:

- Type of procurement method chosen by the Bank;
- Objective/purpose of the acquisition;
- The Bank's decision to cancel the procurement process.

6. How can I submit a protest?

The protest must be submitted as follows:

- In writing within seven (7) calendar days of issuance of the Bank's regret letter or debriefing by the Bank.
- The protest must be sent to: corporateprocurementcomplaints@afdb.org for the attention of the Director, General Services and Procurement Department.

- Or the protest may be sent by post to the following address:
Director, General Services and Procurement Department (CGSP)
Banque Africaine de Développement
Plateau Avenue Jean-Paul II
Immeuble CCIA
01 B.P 1387
Abidjan 01
COTE D'IVOIRE

It is the responsibility of the bidder to ensure the Bank receives the protest within seven (7) calendar days of issuance of the Bank's regret letter or debriefing by the Bank.

The Bank will not consider a protest received after seven (7) calendar days of issuance of the Bank's regret letter or debriefing by the Bank.

See the protest award procedure flowchart (**Annex C**)

7. What information should I submit with my protest?

The protest must include the following information:

- a) Name, postal address, telephone number, fax number (if applicable) and email address;
- b) Tender reference;
- c) A detailed statement of grounds for the protest
- d) Explanation on how the bidder was prejudiced; and
- e) Copies of relevant documents supporting the statement

A form of protest (Annex D) has been provided. A bidder wishing to submit a protest should complete and sign the form of protest and return it within seven (7) calendar days of issuance of the Bank's regret or debriefing by the Bank.

The Bank will review the protest based on the information provided in the form of protest.

The Bank will not consider a protest from a bidder who does not meet the qualification criteria.

8. Will the Bank consider a protest received after the timeline?

No. The Bank will not consider a protest received after seven (7) calendar days of issuance of the Bank's regret letter or debriefing by the Bank.

9. What is the process to review and determine a protest?

The bidder will receive a written acknowledgement from the Bank within five (5) working days of receipt of the form of protest.

The Director, General Services and Procurement Department, shall, in consultation with the Legal Department, review the protest.

The Director, General Services and Procurement Department will notify the bidder of the decision.

10. Is there an appeals procedure?

Yes. There is an appeals procedure.

If the protestor is unsatisfied with the decision of the Director, General Services and Procurement Department, the protestor may submit an appeal to the Bank's Vice-President, Corporate Services.

11. How can I submit an appeal?

The appeal must be submitted as follows:

- In writing within seven (7) working days of issuance of the decision on the protest.
- The appeal must be sent to: corporateprocurementappeals@afdb.org for the attention of the Vice-President, Corporate Services.
- Or the appeal may be sent by post to the following address:
Vice-President, Corporate Services (CSVP)
Banque Africaine de Développement
Plateau Avenue Jean-Paul II
Immeuble CCIA
01 B.P 1387
Abidjan 01
COTE D'IVOIRE

It is the responsibility of the bidder to ensure the Bank receives the appeal within seven (7) working days of issuance of the Bank's protest decision.

The Bank will not consider an appeal received after seven (7) working days of issuance of the Bank's protest decision.

12. What information should I submit with the appeal?

The appellant should set out the grounds for the appeal.

A form of appeal has been provided (**Annex E**). A bidder wishing to submit an appeal should complete and sign the form of appeal and return the form within seven (7) working days of issuance of the Bank's protest decision.

The Bank will review the appeal based on the information provided in the form of appeal.

The Bank will not consider an appeal received after seven (7) working days of issuance of the Bank's protest decision.

13. What is the process to review and determine an appeal?

The Vice-President, Corporate Services shall examine the appeal in consultation with the Bank's Director of Procurement and Fiduciary Services Department.

The Vice-President, Corporate Services will notify the bidder of the decision.

14. Can I appeal against the decision of the Vice-President, Corporate Services?

No. The decision of the Vice-President, Corporate Services, is final and conclusive.

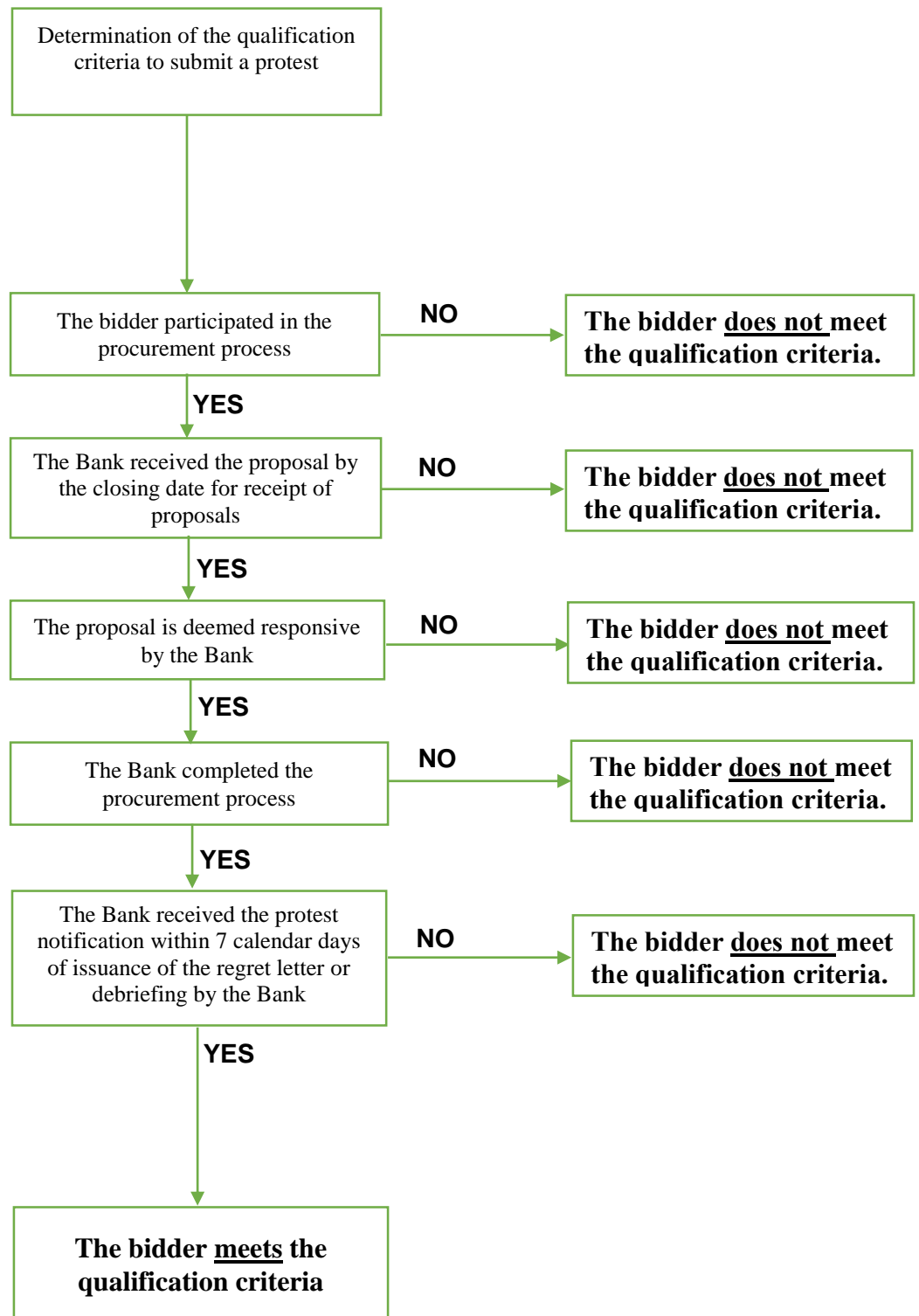
PRESIDENTIAL DIRECTIVE 05/2013 CONCERNING THE CORPORATE PROCUREMENT ACTIVITIES OF THE AFRICAN DEVELOPMENT BANK

XII. Dispute Resolution

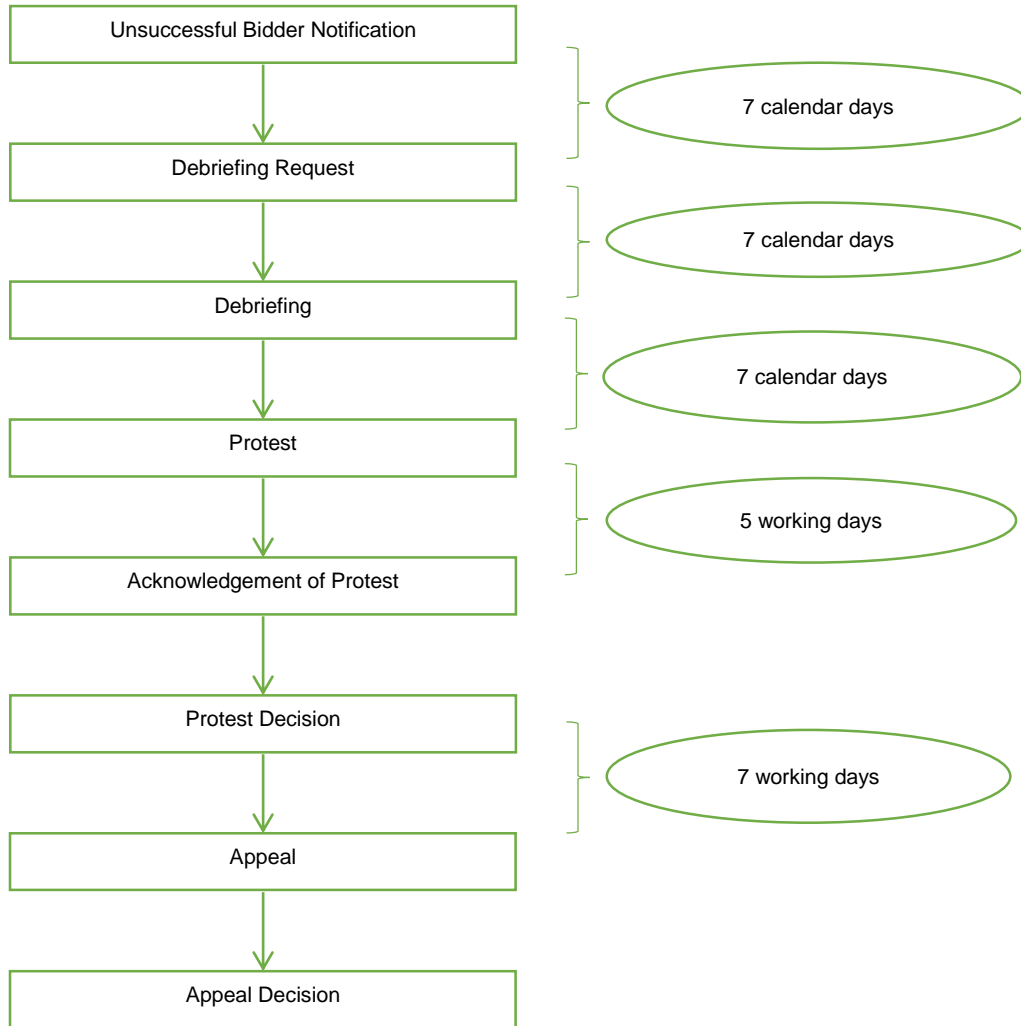
30. Award Protest Procedures

- 30.1 Award protest procedures are available only to Bidders who participated in the competitive procurement process and who were not awarded a contract.
- 30.2 Award protest procedures are not available to Vendors who did not participate in the procurement process; non-responsive or late submissions; or cancellation of the procurement process by the Bank.
- 30.3 The Bank's response to all protests, regardless of who they are addressed to, will be prepared and executed by the General Services and Procurement Department.
- 30.4 An unsuccessful Bidder who wishes to protest an award must inform the Director of the General Services and Procurement Department in writing within seven (7) days (the "Notice Period") from receipt of the Bank's regret letter or the Bank's debriefing referred to in paragraph 26.2, whichever is earlier. Protest notifications must include the following information:
- a) The protestors name, postal address, telephone number, fax number and email address ;
 - b) The Bank tender reference
 - c) A detailed statement of grounds for the protest and an explanation on how the protestor was prejudiced; and
 - d) Copies of relevant documents supporting the protestor's statement.
- 30.5 Protest notifications submitted after the Notice Period or that do not indicate a basis for the protest will not be considered.
- 30.6 Upon receipt of a written protest from an unsuccessful Bidder, the Director of General Services and Procurement Department shall, after consultation with the General Counsel and Legal Services Department:
- a) Provide the protestor with a written acknowledgement within five (5) working days;
 - b) Initiate a review of the protestor's allegations; and
 - c) Following the conclusion of the review, notify the protestor in writing of the decision and the basis which it was made.
- 30.7 The decision of the Director of General Services and Procurement Department will be final and conclusive unless, within seven (7) working days from the date of receipt of the decision, the protestor files a written appeal to the Vice President, Corporate Services. The Vice-President Corporate Services will examine the appeal after consultation with the Director of Procurement and Fiduciary Services Department. The determination by the Vice-President, Corporate Services will be final and conclusive.

DETERMINATION OF THE QUALIFICATION CRITERIA FLOW CHART



PROTEST AWARD PROCEDURE FLOW CHART



FORM OF PROTEST¹

PROTESTOR		
NAME:		
Postal address:		
Email address:	Telephone number:	Fax number:
Name of authorized representative:		

CHALLENGED PROCUREMENT
Title of Procurement:
Tender Reference Number:

PROTEST
Date of receipt of the Bank's regret letter or debriefing:
Detailed statement of grounds for the protest:
Explanation on how the protestor was prejudiced:

¹ Please use additional sheets if necessary.

List of documents supporting the statement of grounds²:

Name:

Signature:

Date:

The form of protest must be sent to:

- corporateprocurementcomplaints@afdb.org for the attention of the Director, General Services and Procurement Department; or
- By post to the following address:
Director, General Services and Procurement Department (CGSP)
Banque Africaine de Développement
Plateau Avenue Jean-Paul II
Immeuble CCIA
01 B.P 1387
Abidjan 01
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It is the responsibility of the bidder to ensure the Bank receives the protest notification within seven (7) calendar days of issuance of the Bank's regret letter or debriefing by the Bank.

The Bank will not consider a protest notification received after seven (7) calendar days of issuance of the Bank's regret letter or debriefing by the Bank.

The Bank will review the protest based on the information provided in the form of protest.

² Please attach supporting documentation to the form of protest.

FORM OF APPEAL³

APPELLANT		
NAME:		
Postal address:		
Email address:	Telephone number:	Fax number:
Name of authorized representative:		

CHALLENGED PROCUREMENT
Title of Procurement:
Tender Reference Number:
Protest decision reference number and date:

APPEAL
Date of receipt by the appellant of the protest decision:
Reasons for appealing the protest decision:

³ Please use additional sheets if necessary.

List of supporting documentation⁴:

Name:

Signature:

Date:

The form of appeal must be sent to:

- corporateprocurementappeals@afdb.org for the attention of the Vice-President, Corporate Services; or
- By post to the following address:
Vice-President, Corporate Services (CSVP)
Banque Africaine de Développement
Plateau Avenue Jean-Paul II
Immeuble CCIA
01 B.P 1387
Abidjan 01
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It is the responsibility of the bidder to ensure the Bank receives the appeal notification within seven (7) working days of issuance of the Bank's protest decision.

The Bank will not consider an appeal notification received after seven (7) working days of issuance of the Bank's protest decision.

The Bank will review the appeal based on the information provided in the form of appeal.

⁴ Please attach supporting documentation to the form of appeal.