

NEW PROCUREMENT FRAMEWORK

Procurement-related Complaints



PRIVATE SECTOR WEBINAR

Operations, Policy and Country Services
Standards, Procurement and Financial Management Department

Expectations

- This webinar is being hosted in Washington DC, with participants joining us from across the globe
- This webinar will take 90 minutes
- Materials will be delivered in two segments
- There will be opportunities to submit questions following each segment

Webinar etiquette



- only the presenters will speak during the webinar
- please mute your microphones to reduce noise interference



- we encourage you to submit questions at anytime, but especially during the designated question times
- please only submit questions that relate to the webinar topic
- we may not have time to answer all questions, but we will send you a full Q&A after the webinar



- to submit a question please use the Webex 'chat' facility
- participants in DC may also submit questions in writing on the form provided
- sorry, but we are not able to take verbal questions



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Overview: Procurement Framework, Bank's complaint review mechanism, other complaints

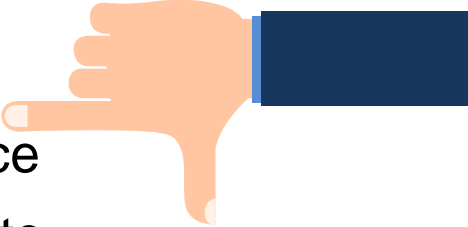



Impact of the Procurement Framework at the KEY STAGES IN PROCUREMENT

- This annotated diagram indicates where changes (resulting from the new Procurement Framework) impact on the key stages in procurement.
- It shows where the changes are most likely to happen. For some changes this can be at more than one stage.



New Procurement Framework features

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- Modern procurement practice
 - Risk-based and proportionate
 - Fit-for-purpose
 - Emphasis on value-for-money (VfM)
 - Offers more options to meet the clients' and private sector needs
 - Encourage the right companies to participate
 - Leads to enhanced development outcomes
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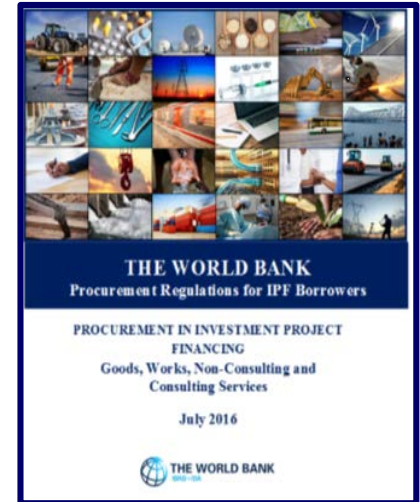
Greater focus on procurement planning

Project Procurement Strategy for Development (PPSD)

- New market analysis and procurement planning tool
- Risk-based approach
- Addresses how the procurement will support development and deliver best value for money (VfM)
- Forms the basis of the procurement plan
- Proportional to the risk, value and complexity of the procurement
- Short version for low-value, low-risk projects
- Simplified version for emergency situations
- Living document – can be updated periodically
- Electronic procurement planning and monitoring system (STEP)

Procurement Regulations for Borrowers

- In force from 1 July 2016
- Regulations replace the 'red' and 'green' guidelines
- Apply to goods, works, non-consulting and consulting services
- Key features:
 - ◆ Project Procurement Strategy for Development (PPSD)
 - ◆ Enhanced procurement procedures
 - ◆ Wider range of selection methods for G,W, Non-Consulting Services
 - ◆ Various market approach and options
 - ◆ Expanded use of Framework Agreements
 - ◆ Greater focus on contract management

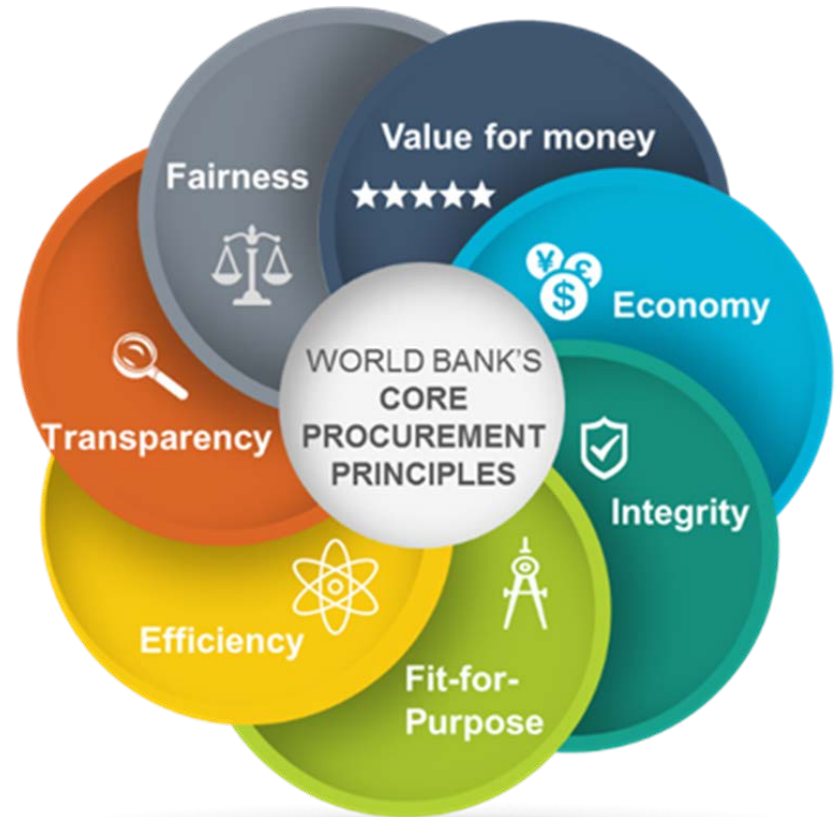


New Complaints Mechanism: Background and Rationale

- Retrospective
- Management commitments on complaints, among others (Board Paper):
 - Standstill, debriefing
 - Phased approach
 - Targeting international procurement
 - Transition towards greater use of national systems
 - Tracking/monitoring system

Regulatory Framework of procurement-related complaints

- Articles of Agreement [IBRD](#) & [IDA](#)
- [Policy](#): Core Procurement Principles & Governance
- [Directive](#): Section III.G
- [Procedure](#): Section III & Annex II
- [Procurement Regulations](#)
- Guidance [“How to Complain”](#)



Fulfilling Different Objectives

Articles of Agreement:

Ensuring that the **Bank's fiduciary function** is fulfilled, avoiding undue delays in and disruptions to the project implementation (**Development effectiveness**)

Procurement Vision:

“Procurement in IPF operations supports Borrowers to achieve **value for money** with **integrity** in delivering **sustainable development**”

Overview: Possible scenarios

Complaints may be handled under three (3) possible scenarios:

1. Use of national procurement procedures when approaching national market

Complaints to be handled in accordance with the borrower's national procurement complaints review procedures, as agreed by the Bank

2. Alternative Procurement Arrangements (APA)

Complaints to be handled in accordance with the applicable procedures, as agreed by the Bank

3. Complaints arising under contracts where Bank SPDs are required to use

Procurement Regulations (paragraphs 3.26-3.31 and Annex III) govern the handling of complaints related to contracts where Bank's SPDs are required to be used, or where no SPDs exist, documents and conditions of contract acceptable to the Bank

Overview: Complaints when Bank's SPDs are required to be used (group (3) of complaints)

- Seek to implement the overarching objectives noted above
- List 4 requirements for a complaint to be eligible for the review process set out in Annex III of the Procurement Regulations
- Describe the review process and set out timelines requirements
- Set out roles and responsibilities for complainants, borrowers and the Bank

Overview: Other types of complaints

These are handled through the appropriate mechanisms existing within the Bank

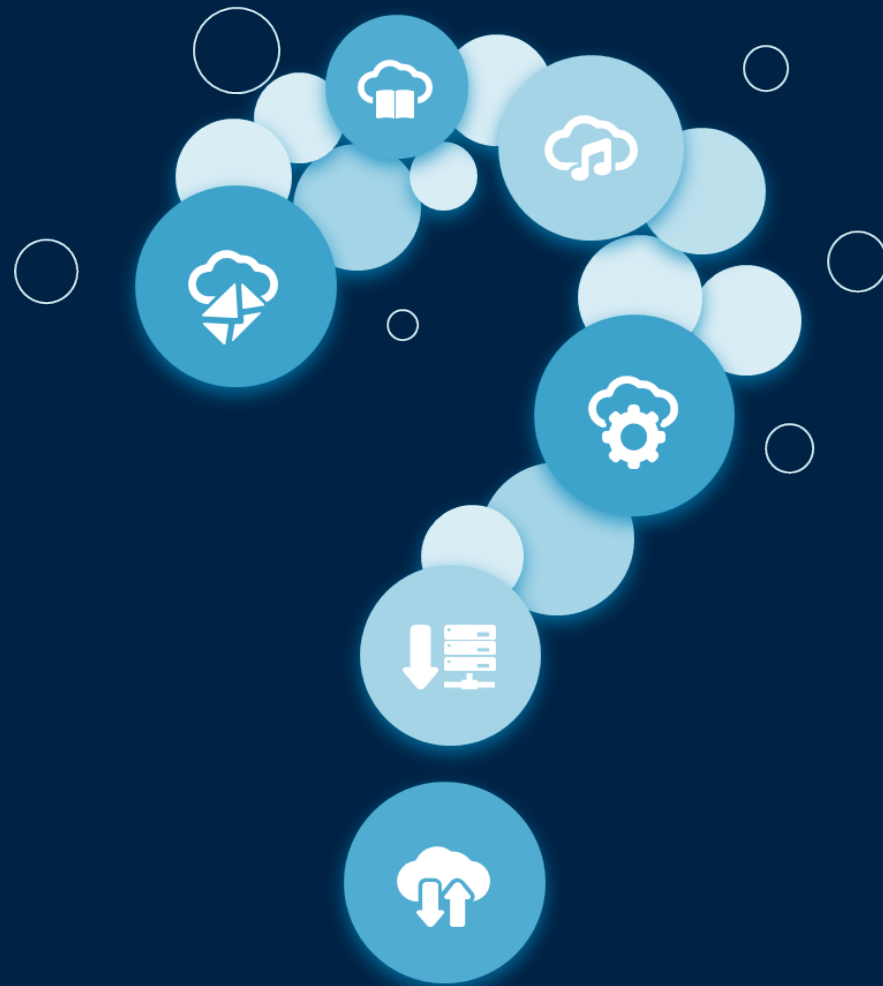
- GRM in OPCS, is a complaint mechanisms through which project affected people and communities may raise their concerns directly with Bank management, when they believe a Bank-funded project has caused them harm
- The Inspection Panel is an independent complaints mechanism for people and communities who believe that they have been, or are likely to be, adversely affected by a World Bank-funded project

Overview: Fraud and Corruption

- Any complaint that includes allegations of Sanctionable Practices (Fraud and Corruption) requires special treatment
- Irrespective of whether the contract is subject to prior or post review, the Bank shall apply due care and discretion on the extent of sharing information with the Borrower
- Complaints alleging Fraud and Corruption are reported to INT

References: Bank's [Anti-Corruption Guidelines](#) and [Sanctions Framework](#). See Annex IV to the Procurement Regulations

Questions?





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Complaints when the Bank's SPDs are required to be used



Four (4) essential requirements

1. Who can complain?

Complainant must be an 'interested party'

2. What can be challenged?

The circumstances giving rise to the complaint must be relevant to the procurement - there are 3 (three) relevant circumstances

3. When to complain?

Complaints must be filed in a 'timely manner' - Regulations set out the time limits that apply

4. What information to include?

Regulations prescribe the minimum information that must be included in the complaint for it to be considered

The four **ESSENTIALS**

1. Who can complain?

‘interested party’ means either:

- a potential participant in a procurement opportunity, or
- an actual participant

‘potential’ or ‘actual’ depends on:

- the stage that the procurement process has reached when the complaint arises
- what action, if any, the interested party has taken in relation to the procurement process

Example: potential participant

RFB advertised, and party is interested in submitting a bid, but has not yet done so

Example: actual participant

A firm that submitted a bid under RFB

The four **ESSENTIALS**

2. What can be challenged?

Regulations identify 3 circumstances that complaints may challenge:



What can be challenged? Examples

1. Procurement Documents

- Prequalification document
- Initial Selection document
- Request for Bids or Request for Proposals
- Addenda to any of the above documents

2. Decision to Exclude

- not qualifying in a Prequalification
- not being selected in an Initial Selection
- being eliminated from a multi-stage procurement process
- not passing the minimum technical qualifying mark in consulting services

3. Decision to award a contract

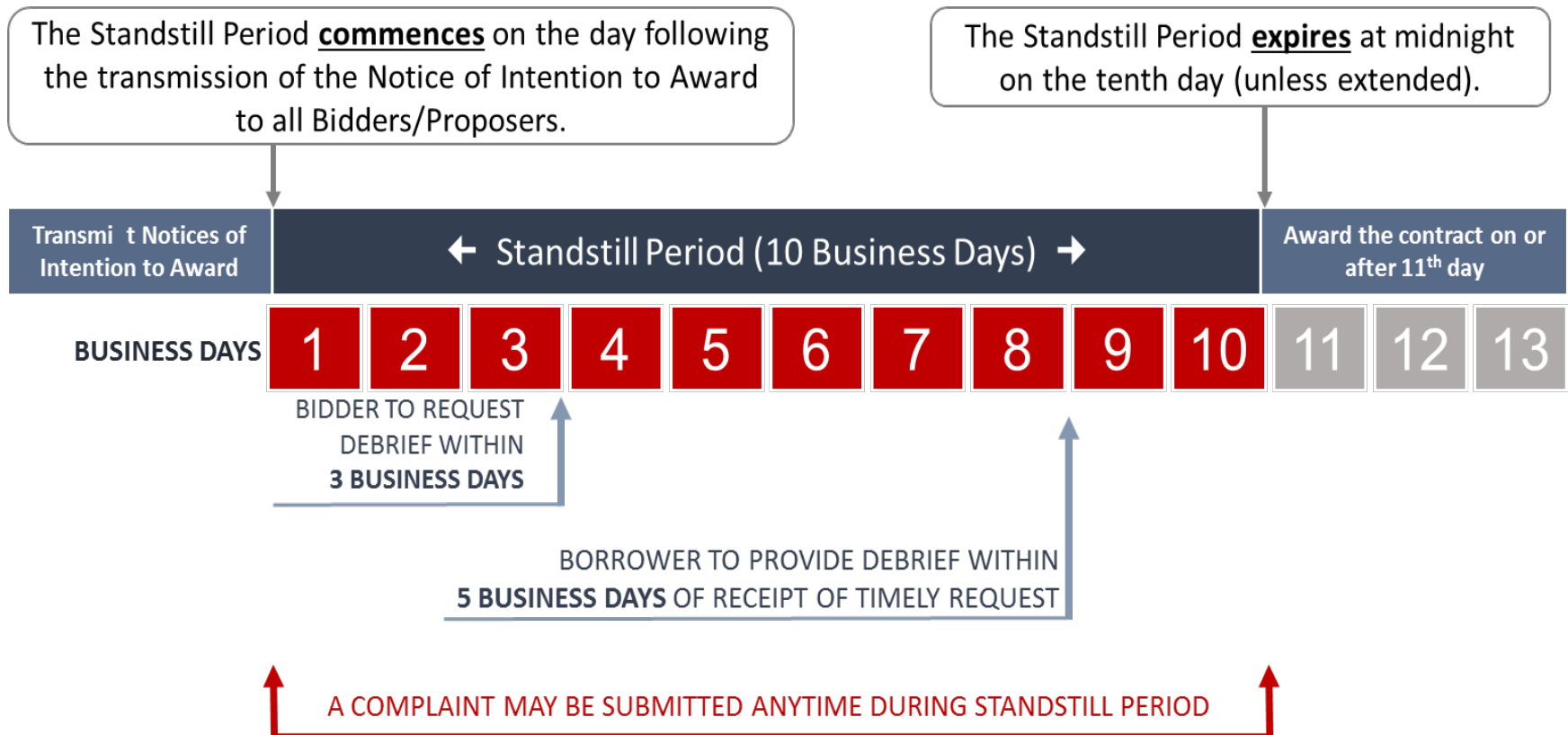
The four **ESSENTIALS**

3. When to complain?

In a timely manner: “Timely” depends on what is being challenged

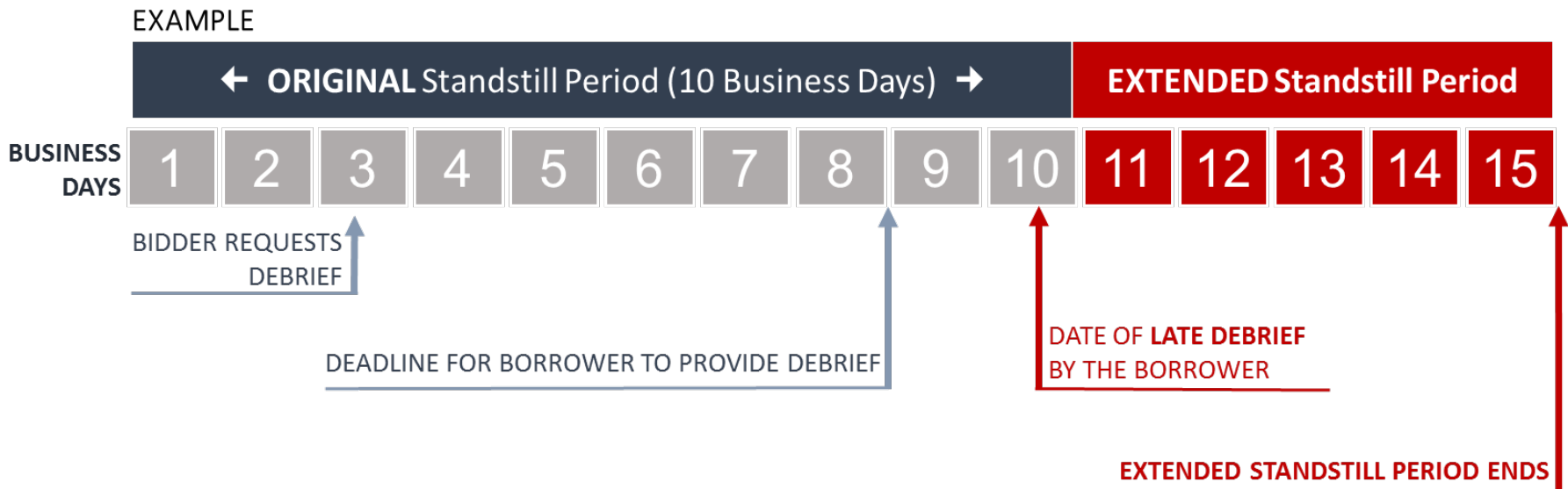


Standstill period timeline



Extended standstill period

- Bidder/Proposer submits request for a debriefing
- Borrower decides for justifiable reasons to provide debriefing outside of 5 Business Day timeframe
- Standstill Period extended to 5 Business Days after the debriefing takes place (or if multiple debriefings, 5 Business Days after the last debriefing)



Regulations describe the minimum information to be included:

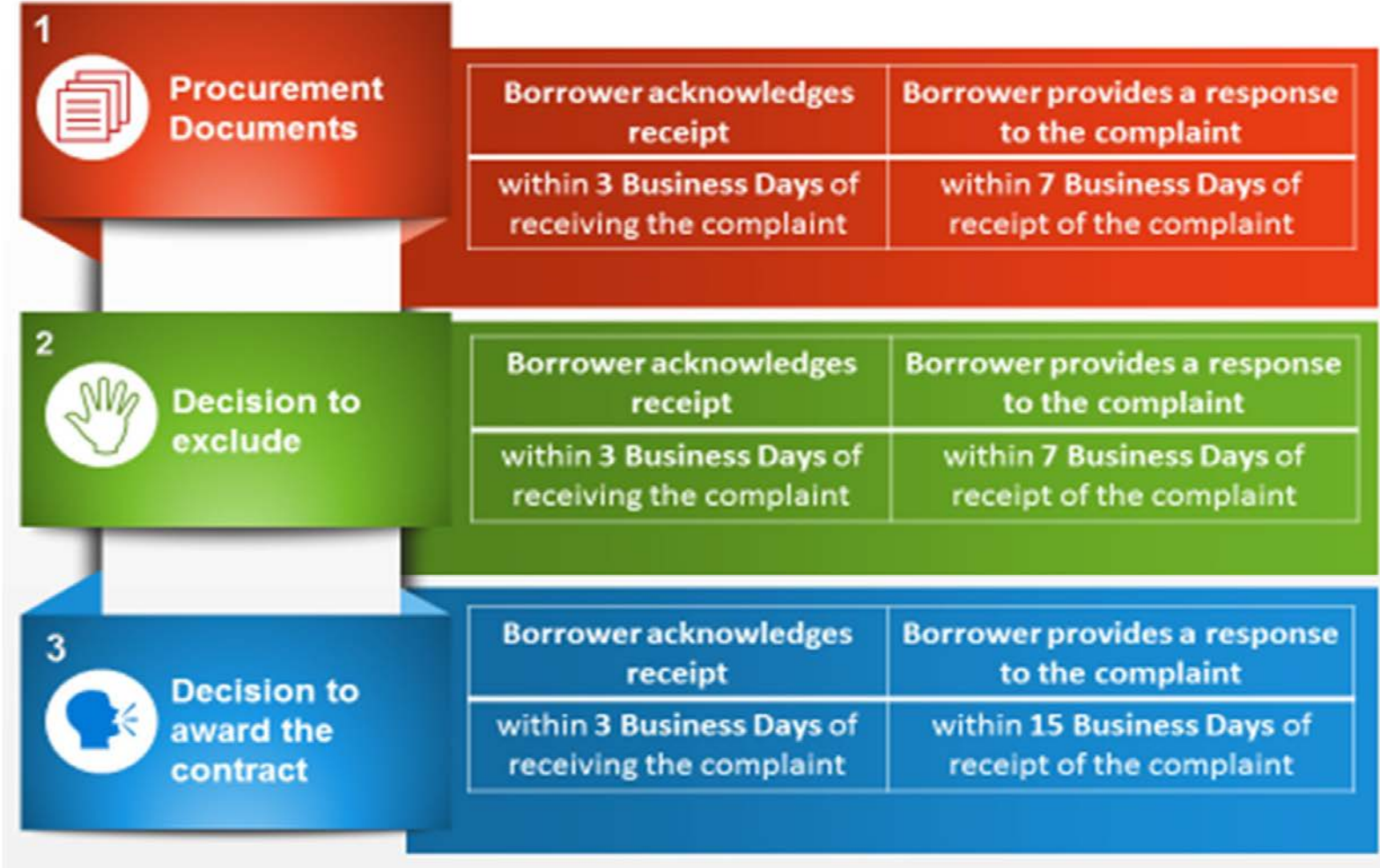
- the identity of the complainant
- contact details and address
- interest in making the complaint
- identify the procurement activity
- details of any previous communications
- nature of complaint and perceived adverse impact on the complaining party
- state the alleged inconsistency with or violation of the applicable procurement rules

Submitting a complaint

- SPDs provide instructions to bidders/proposers on how, where and when to file a complain
- Form of Notification of Intention to Award provides among others instructions on how to file a complaint challenging award
- Complaints must be submitted to the borrower
- This is the entity and the official designated for that purpose in the respective Procurement Document
- If sent to the Bank, the complaint will be forwarded to the borrower promptly
- Must be submitted in writing (preferably by the quickest means available to be able to meet the timelines). E.g.
 - ♦ Email, fax, or
 - ♦ borrower's e-procurement system, if applicable

Borrower's response

If complaint meets all 4 requirements the borrower will manage it within these timelines:



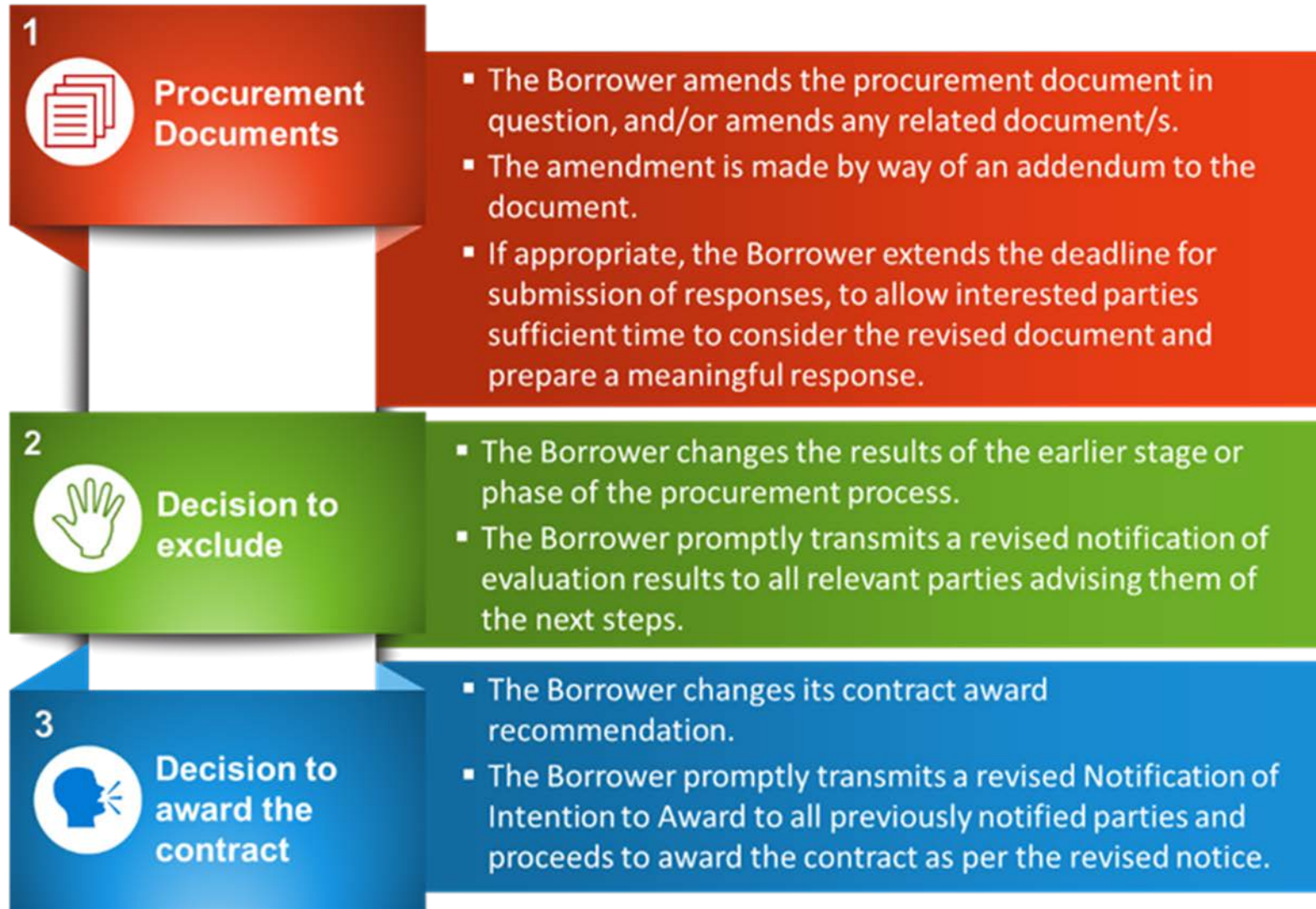
Borrower's response (cont.)

Borrower must provide sufficient information in its response. As a minimum, the response shall include:

- statement of issue/s
- statement of facts and evidence
- the decision and the basis for the decision
- an explanation of the basis for the decision
- conclusion: statement of the resolution of the complaint and a statement of the next steps, if any

Actions by borrower if complaint is upheld

Borrower's actions if complaint is upheld include:



Complaints Where the Contract is Subject to the Bank's Prior Review

For contracts subject to Prior Review, the borrower:

- Promptly informs the Bank of a received complaint
- Provides all information and documentation pertaining to the complaint, and
- A draft response once it is available

If the complaint results in:

- Modification of the procurement documents,
- Borrower's changing its decision to exclude a bidder/proposer prior to award
- Borrower's changing its contract award recommendation

the borrower shall take any of the above actions upon receiving the Bank's confirmation of satisfactory resolution of complaint

- The borrower shall not proceed with the next phase of the procurement process or with the award of contract, without having received the Bank's confirmation of satisfactory resolution of complaint

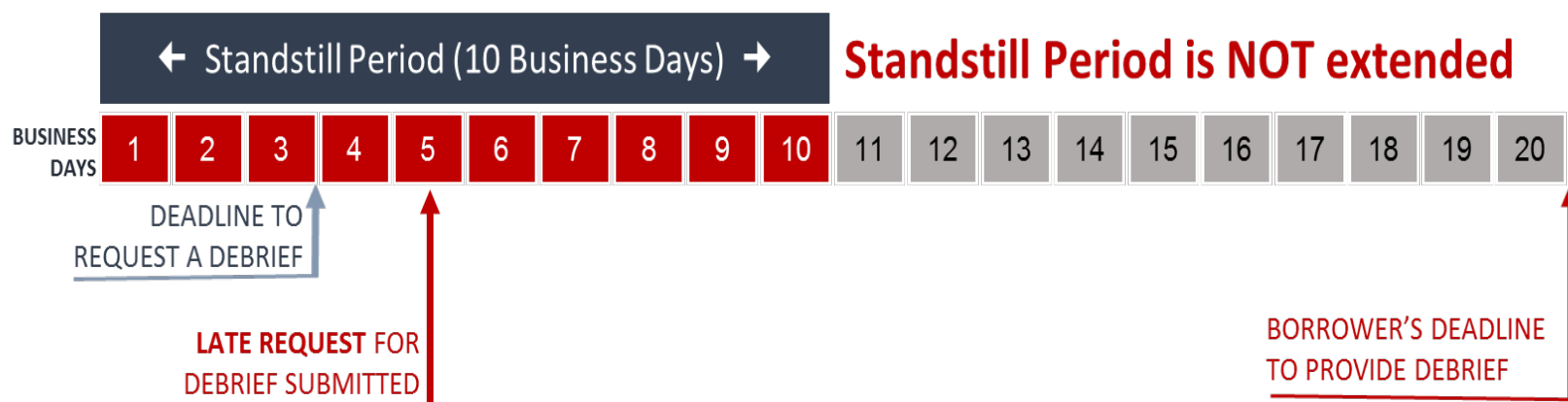
Debriefing by the Borrower

- An unsuccessful Bidder/Proposer/Consultant has three (3) Business Days to make a written request to the borrower for a debriefing
- Borrower shall provide a debriefing to all unsuccessful Bidders/Proposers/ Consultants whose request is received within the above deadline, within five (5) Business Days:
 - ◆ unless the Borrower decides, for justifiable reasons, to provide the debriefing outside this timeframe
 - ◆ In that case, the Standstill Period shall automatically be extended until five (5) Business Days after such debriefing is provided
- If more than one debriefing is so delayed, the Standstill Period shall not end earlier than five (5) Business Days after the last debriefing takes place

Debriefing by the Borrower (cont'd)

- Borrower shall promptly inform, by the quickest means available, all Bidders/Proposers/Consultants of the extended Standstill Period
- For contracts subject to prior review, the Borrower shall simultaneously send the information on the extended Standstill Period to the Bank

EXAMPLE



Debriefing by the Borrower (cont'd)

- In case of requests for debriefing received by the borrower later than the three (3) Business Day deadline, the borrower should provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of Contract Award Notice
- Requests for debriefing received outside the three (3) Business Day deadline shall not lead to an extension of the Standstill Period
- Debriefing shall repeat the information contained in the Notification of Intention to Award, and respond to any related question(s) from the unsuccessful Bidder/Proposer/Consultant

Debriefing by the Borrower (cont'd)

- Debriefing shall not include:
 - ◆ point-by-point comparisons with another Bidder's/Proposer's/Consultant's bid/proposal
 - ◆ information that is confidential or commercially sensitive to other bidders
- A written summary of each debriefing shall be included in the official procurement records, and copied to the Bank for contracts subject to prior review

Debriefing by the Bank

- After publication of the Contract Award Notice, a Bidder/Proposer/Consultant who has not received satisfactory explanation from the borrower may request a meeting with the Bank
- Such request is to be addressed to APM for the borrower's country, who will arrange a meeting at the appropriate level and with relevant staff
- The purpose of such meeting is not to discuss the Bids/Proposals of competitors or the Bank's position that has been conveyed to the borrower

Complainant's roles and responsibilities

- Comply with the complaints submission process described in the Regulations
- Be familiar with the Procurement Document (e.g. RFB or RFP) and Regulations and understand the rules governing the procurement process
- Make a timely request for a debriefing, if one is desired
- Submit the complaint within the permitted timeframe and to the borrower
- Ensure the complaint is specific i.e.:
 - ◆ explains the issues or concerns
 - ◆ identifies the alleged violation (e.g. of the Procurement Regulations, or Procurement Document process)

NB: The Bank has prepared a Guidance to Complainants posted in the World Bank's website.

Borrower's roles and responsibilities

- Provide timely and sufficient information to the complainant
- Promptly acknowledge complaints received
- Resolve complaints promptly and fairly
- Preserve other parties' confidential information
- Maintain records of the complaint
- Where contract is subject to prior review:
 - ◆ promptly inform the Bank of the complaint and provide copies of all relevant documents and information, including a draft response to the complaint
 - ◆ consult with the Bank promptly and forthrightly throughout the complaint review and resolution process

Bank's roles and responsibilities

- Ensure that a complaint addressed to the Bank is forwarded promptly to the Borrower for review and resolution
- Prior review: timely consideration of any action proposed by the Borrower including:
 - ◆ conduct and content of debriefing
 - ◆ denial of a complaint
 - ◆ taking action to correct the impropriety

Questions?

