



**The Federal Democratic Republic of Ethiopia
Public Procurement and Property Administration Agency**

MANUAL ON PUBLIC PROCUREMENT COMPLAINT PROCEDURE

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Manual on Public Procurement Complaint Procedure

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Section 1. GENERAL

1.1 Foreword

In the Federal Democratic Republic of Ethiopia basic legal act regulating questions related to the public procurement procedures, including those which refer to the legal protection measures is the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 (hereinafter called the Proclamation) that entered into force on the date of publication in the Federal Negarit Gazeta No. 60 on 9th day of September 2009.

Apart from the Proclamation, there is also the Federal Government Public Procurement Directive (hereinafter called the Directive) issued by the Minister of Finance and Economic Development (hereinafter called the Minister) that entered into force on 8th day of June 2010, which establishes the following procedures:

- (a) Procedure of reviewing complaints presented to the head of a Public Body and to the Board;
and
- (b) Procedure of reviewing reports submitted by public bodies to the Public Procurement and Property Administration Agency (hereinafter called the Agency) on misconduct of bidders and suppliers.

As regards the institutional set up of complaints on public procurement system in Ethiopia the basic provision in that regard is Chapter thirteen of the Proclamation and Directive's Parts X to XII.

These provisions establish the Board for Review and Resolution of Complaints (hereinafter called the Board) which is the body responsible for review and settlement of complaints on public procurement and property disposal and determine its competencies and organization.

The procedure of review of complaints is regulated by the Chapter fourteen of the Proclamation and Part XI of the Directive.

Legal protection procedure applies to all Federal Government procurement contracts governed by the Proclamation. Complaints may be lodged at all stages of the procurement procedure.

1.2 Background

The purpose of this Manual on Public Procurement Complaint Procedures (hereinafter called the Manual) is to assist the Federal Government of Ethiopia's public bodies, the Agency, and the Board to manage complaints with regard to proceedings of public procurement.

The Manual also includes necessary information for candidates or bidders about how to submit a complaint to the head of the public body or, if not resolved, to the Board against any act or omission of the public body in regard to a public procurement proceeding. It also includes procedures on submission and review of reports submitted by public bodies to the Agency concerning misconduct of bidders or suppliers in regard to the execution of public procurement, submitted to it by public bodies pursuant to article 76 of the Proclamation.

1.3 Context and Scope

This Manual takes account of the Proclamation's and Directive's provisions dealing with remedies that are designed to help ensure that the procurement that is not carried out fairly and transparently will be remedied through complaint procedure.

The purpose of the complaint procedure is to ensure that basic national public procurement principles and procedures stipulated in the Proclamation and Directive are observed and all decisions taken by the public body contrary to those principles and procedures may be reviewed effectively and at the stage when irregularities could be corrected or removed and possible damage could be still prevented.

1.3.1 Principles of the Legal Protection

Proclamation and Directive guarantee that complaint procedures respect the following fundamental principles:

- (a). The Complaint procedures are available (principle of *availability*);
- (b). Any actions taken during this procedure should be done within the limits determined by the Proclamation and Directive (principle of *legality*);
- (c). Complaint procedures do not limit access to those procedures for any eligible entity (candidate or bidder) and do not violate competition rules (principle of *non-discrimination*);
- (d). Compulsory Prior Review by the public body (principle of *additional procedure*);
- (e). Decisions taken by the public bodies must be reviewed effectively and, as rapidly as possible, to minimize disruption to procurement (principle of *effectiveness* and *rapidity*);
- (f). Submission an application for review to the contracting authority results in immediate suspension of the possibility to conclude the contract (principle of *suspension*);
- (g). During procedure of reviewing complaints all parties to this procedure should be given a chance to present their claims and arguments on which they base them to the impartial, non-biased and independent from all parties review body (*adversarial or contradictory nature of the procedure*). Such a body in Ethiopia is the Board which is described in more detail in Section 2.

1.3.2 Material Scope – What is Covered?¹

The Proclamation regulates all Federal Government public procurement procedures of all values, wherever public bodies and bidders conclude works, goods, services or consultancy services contracts. It deals also with the competences of the Public Procurement and Property Administration Agency, the body responsible for the public procurement system, and the Board for review and resolution of complaints as well as prescribes legal protection measures in the field of public procurement and property disposal.

Proclamation does not apply to contracts a public body enters into with another public body for the provision of goods, works, consultancy or other services at cost.

1.3.3 Personal Scope – Who is Covered?

According to the Article 2 of the Proclamation, which explains the meaning of the basic terms used in the Proclamation, the term *Public Body* covers any public body, which is partly or wholly financed by the Federal Government Budget, higher education institutions, and public institutions of like nature.

1.4 Definitions

For the purpose of this Manual the following words and expressions shall have the meanings hereby assigned to them:

"Bidder"	means a natural or juridical person submitting a bid;
"Board"	means an entity established under the Proclamation to review and decide on complaints from candidates, bidders or suppliers lodged in regard to the conduct of public procurements and disposal of property of the Federal Government;
"Candidate"	means a natural or juridical person invited to take part in public procurement or seeking to be invited;
"Complainant"	means bidder or candidate submitting a complaint;
"Secretariat"	refers to the office organized within the Agency for carrying out the functions associated with the organization and procedures of the Board, as set out in the Proclamation and Directive.

¹ Proclamation, Article 3;

Section 2. PARTIES TO THE COMPLAINT PROCEDURE

2.1 The Board for Review and Resolution of Complaints in Public Procurement and Property Disposal

2.1.1 Establishment of the Board²

The Board is established under the Proclamation to review and decide on complaints from candidates lodged in regard to the conduct of public procurements and disposal of property of the Federal Government.

The Board is accountable to the Minister.

2.1.2 Appointment of the Board Members and Terms of Service³

2.1.2.1 Board Members

The Minister shall appoint five persons representing the private business sector, the relevant public bodies, Agency, and public enterprises to serve as members of the Board for review and resolution of complaints lodged by candidates or bidders in public procurement. Board members shall be drawn from:-

1. The Ministry of Finance and Economic Development	Chairperson
2. The Chamber of Commerce	Member
3. Public bodies	Member
4. Public enterprises	Member
5. Public Procurement and Property Administration Agency	Member

Minister shall appoint one more member to be drawn from the Agency, who shall serve as secretary and expert advisor to the Board with no voting power.

Eligibility for membership of the Board shall be based on knowledge and experience in public procurement, good manner and ethical standing.

Minister shall determine the amount of allowance to be paid to the members of the Board and the mode of payment.

2.1.2.2 Term of Service

The term of service of members of the Board shall be three years. However, considering their suitability for the job in terms of their performance and their integrity, their term of service may be extended for another three years.

Any member of the Board failing to properly discharge his/her duty may be replaced at any time before his/her term of service expires.

2.1.2.3 Training of the Board Members

All members of the Board shall be required to undertake the specialized training organized by the Agency, after their appointment. Training for members of the Board shall be conducted as and when appointment is made by the Minister.

The Agency shall, in cooperation with the Chairman of the Board, organize a program of continuing training for the members of the Board in areas of relevance.

2.1.2.4 Decisions of the Board

² Proclamation, Article 70;

³ Proclamation, Article 71, Directive, Article 36;

The Board shall make decisions by consensus without prejudice to the possibility that decisions may also be made by vote if necessary. The chairman of the Board shall have a casting vote where a vote is tied.

2.1.2.5 Meetings of the Board⁴

- (a). Members of the Board shall meet once a week regularly. However, they may convene more than once a week if the complaints to be reviewed arise.
- (b). There shall be a quorum where the majority of members are present in a meeting.
- (c). The chairperson may represent a member to act on his behalf where he can not attend a meeting of the Board for good reason.

2.1.3 Board Membership

2.1.3.1 Resignation of Membership⁵

Any member of the Board, including the chair person, may resign from the Board at any time by tendering a letter of resignation to the Minister where the resignation is accepted by the Minister.

2.1.3.2 Termination of Membership⁶

The Minister may terminate membership of the Board of any member for any of the following reasons,

- (a). Where he can not continue to discharge his duty by reason of mental or preventive physical disability;
- (b). Where he is convicted of crime by a competent court; or
- (c). Where he is found to be involved in ethical or disciplinary misconduct.

2.1.4 Disclosing Conflict of Interest⁷

Every person appointed to the Board must be and must remain independent of the parties to the complaint procedure.

The members of the Board shall discharge their duties in a perfectly ethical manner. A member of the Board having any potential or actual conflict of interest with a procurement proceeding in respect of which complaint is lodged or related to the complainant shall disclose this fact to the Board and withdraw from any proceeding of the Board in which the complaint is considered.

2.1.5 Board Member Appointment Challenge

The complainant or the public body concerned may challenge the participation of a member of the Board on the grounds of conflict of interest of the member. If a party wishes to challenge the participation of the Board member, he/she shall immediately apply in writing to the Secretariat in prescribed Form giving the reasons for the challenge.

If the Board agrees with the challenger on the merits of his challenge or learns that the member has conflict of interest with the procurement in question, the Board shall temporary relieve the member from his role in the Board until completion of complaint procedure.

2.1.6 Powers of the Board⁸

In the exercise of its functions, the Board shall have the following powers except making decisions in regard to selection of the successful bidder or entering into a contract.

⁴ Directive, Article 37;

⁵ Directive, Article 38;

⁶ Directive, Article 39;

⁷ Proclamation, Sub-article (4) of Article 72, Directive, Article 40;

⁸ Proclamation, Article 72, Directive, Article 41;

- (a). Order a public body or a candidate or a bidder to produce any document or record pertaining to a procurement in respect of which a complaint is lodged in which it is alleged that a public body or a candidate or a bidder has acted in contravention of the law or did not adhere to the prescribed procurement procedure or is involved in a conflict of interest or has committed an offence of corruption;
- (b). Suspend a procurement proceeding in writing until a decision is given on a complaint;
- (c). Seek professional assistance or require technical investigation report to be submitted to it by the Agency, governmental or non-governmental entities, or other experts in regard to a complaint;
- (d). Summon witnesses, examine witnesses and parties concerned on oath;
- (e). Order a public body to comply with any provision of the Proclamation or Directive in regard to a procurement proceeding;
- (f). Invalidate wholly or partially an act or decision of a public body which violates the law;
- (g). Reject a complaint where in its judgment such complaint is not valid;
- (h). Dismiss a complaint submitted to it later than five working days from the date in which the public body has responded to the complaint or a complaint which was not first submitted to the head of the public body.

2.1.7 Duties of the Board⁹

The Board shall discharge the following duties in exercising its functions:

- (a). Receive complaints from candidates or bidders;
- (b). Make sure that a complaint is submitted to it within five working days from the date on which the head of the public body has responded to the complaint at first instance or in the event that the head of the public body has not responded to the complaint in due time, such complaint is submitted to it within five working days following the tenth working day from the date in which the complaint was submitted to the head of the public body;
- (c). If the complaint is submitted to the Board in the appropriate manner and in due time, notify the public body in writing that a complaint is lodged against it and instruct that public body to submit documents pertaining to the procurement and its statement of response to the complaint and suspend the procurement proceeding until it decides on the complaint;
- (d). Follow up compliance of the public body to the instruction above;
- (e). Consider the issues of the complaint presented to it by the Secretariat in the form of summary and the statement of response by the public body concerned, in light of the documentary evidence of the procurement proceeding presented to it and give decision on the complaint in accordance with the provisions of the Proclamation, Directive and other relevant legal documents governing public procurement. The Board may give one of the following decisions¹⁰:
 - (i) That the procurement proceeding in respect of which complaint was lodged be rectified or terminated;
 - (ii) To dismiss the case where in its judgment the complaint is unfounded;
- (f). Transmit the decision to the parties concerned;
- (g). Report to the Minister on the tasks accomplished.

⁹ Directive, Article 42;

¹⁰ Proclamation, Sub-article (3) of Article 72;

2.2 The Secretariat of the Board

2.2.1 Organization of Secretariat

- (a). A permanent Secretariat has been organized within the Public Procurement and Property Administration Agency for carrying out the functions associated with the organization and procedures of the Board, as set out in the Proclamation, Directive, and this Manual.
- (b). It shall consist of full time public servants who will be given responsibility for carrying out the day to day functions.
- (c). The Secretariat's staff shall serve as secretary to the Board in the order of registration of complaints for review, presenting complaints to the Board in the form of summary, and as expert advisor to the Board with no voting power.

2.2.2 Functions of the Secretariat

The business of the Board and all clerical matters arising out of the conduct of complaint procedures under Proclamation, Directive, and this Manual shall be carried out by the Secretariat operated by the Agency. All complaints for review by the Board shall be addressed to the Secretariat at the Public Procurement and Property Administration Agency. All subsequent communications and defenses shall be addressed to the Secretariat.

The Secretariat shall be responsible for:

- (a). Receiving and keeping up to date the Register of Complaints for Review;
- (b). Maintaining the files of Complaints for Review and for keeping them fully up to date;
- (c). Organizing the work of the Board and carrying out of all clerical and logistical requirements of the procedure;
- (d). Informing the candidate and other parties of all arrangements made under the authority of the Board including, but not limited to, the composition of the Board, the form and manner of the procedure, the date of hearings, etc;
- (e). Analyzing Complaint and presenting Complaint to the Board in the form of summary;
- (f). Presenting to the Board Statement of response by the Public Body concerned;
- (g). Analyzing complete case and presenting to the Board its expert opinion;
- (h). Drawing up minutes of meetings of the Board and recording hearings, witness statements, and Board's Decision to the complaint;
- (i). Carrying out any other instruction of the Board related to the complaint review procedure;
- (j). Distributing the Decision of the Board to the to the complainant and the public body;
- (k). Ensuring the publication of the Decision of the Review Board, as prescribed;
- (l). Maintaining records of all procedures and Decisions;
- (m). Arranging payment to the Board members as prescribed; and
- (n). Maintaining, distributing free of charge and placing on the Agency website all forms to be used in the complaint review procedure.

2.2.3 The Register of Complaints for Review

The Register of Complaints for Review to be maintained by the Secretariat shall be the main instrument through which the complaint review procedure shall be organized and recorded. In particular:

- (a). The Register shall be maintained in paper form and the pages of the register shall be numbered in advance;

- (b). A copy of the Register may be kept in electronic form but the paper form shall be authentic;
- (c). The procedural documents in complaints referred to the Board, including documents lodged by the parties and documents served by the Secretariat, shall be entered in the Register and maintained in separate files opened for each complaint;
- (d). Entries in the Register shall be made chronologically in the sequence in which the documents to be registered are lodged and they shall be numbered consecutively;
- (e). When a complaint is registered, it shall be assigned a case reference number giving as serial number followed by a mention of the year. Complaints shall be referred to by their case reference numbers and this number shall be used to identify all subsequent registrations pertaining to that complaint;
- (f). Procedural documents shall be registered as soon as they are lodged at the Secretariat. Documents drawn up by the Board or by the Secretariat shall be registered on the day of issue;
- (g). The entry in the Register shall contain the information necessary for identifying the document and in particular it shall contain the date of registration, the reference number of the complaint to which it refers, the nature of the document, and the date of the document;
- (h). The registration number of every document shall be noted on its first page. A note of the registration shall be stamped on the original of every document.

2.2.4 Forms

The Forms to be used in the complaint review procedure include, but are not limited to the following Forms annexed to this Manual:

FORM NUMBER	DESCRIPTION
Form CR/01	Complaint for Review by the Public Body
Form CR/02	Confirmation of Receipt of the Complaint by the Public Body
Form CR/03	Decision of the Public Body on Complaint
Form CR/04	Complaint for Review by the Board
Form CR/05	Rejection of Complaint for Review by the Board
Form CR/06	Board's Notice to the Public Body to Reply on Complaint
Form CR/07	Reply of the Public Body
Form CR/08	Secretariat's Summary of Complaint Submitted to the Board
Form CR/09	Decision of the Board
Form CR/10	Secretariat Scrutiny Form
Form CR/11	Public Body's Report to the Agency on Misconduct of Candidates /Bidders / Suppliers

These Forms shall be supplemented or amended by the Agency as required. Any amended or supplemental Forms shall be made available in the same manner as the original Forms annexed hereto.

Copies of all relevant Forms to be used under these provisions shall be available for collection at the office of the Secretariat and shall also be placed on the Agency website. A copy of such Forms shall be sent to all interested parties upon request.

2.3 The Public Body

In exercising its functions, the public body shall have the following powers and duties concerning complaint review procedure:

- (a). Establish, maintain and keep up to date the Register of Complaints received for review, as stipulated in Paragraph 2.23;
- (b). Maintain the files of complaints received and keep them fully up to date;
- (c). Endeavor to resolve the complaint amicably by mutual agreement
- (d). Suspend a bid proceeding if it ascertains that a complaint is presented to the head of the Public Body in regard to a bid proceeding. The Public Body conducting bid proceedings shall wait for seven working days after disclosing the result of the bid evaluation or after responding to a complaint to give bidders time to present complaint, if any, against the conduct of the bid proceeding or against the decision of the Public Body on such complaint.
- (e). Record the receipt of the complaint in the Register of Complaints and assign it a case reference number for registration.
- (f). Open a file for storage of all documents relating to the Complaint.
- (g). Verify whether the complaint is in prescribed Form and in conformity with the provisions of the Proclamation and Directive.
- (h). Ask the bidder or candidate to supplement a Complaint, if required.
- (i). If any Complaint is found not to be in conformity with the provisions of the Proclamation and Directive it shall be rejected and returned in prescribed Form to the complainant as soon as practicable together with a statement of the reasons for rejection.
- (j). Decide on the complaint in writing within ten (10) working days from the date of submission of the complaint pursuant to article 74/3 of the Proclamation
- (k). Present and prove in Decision all facts and circumstances on the basis of which the public body took or omitted to take decisions concerning individual rights of participants of public procurement procedure which are subject of complaint procedure.
- (l). Send to the complainant a copy of the decision within 5 working days from the date in which the decision was made.
- (m). Within five (5) working days submit to the Board the Statement of Response together with the record of the procurement proceeding in respect of which complaint was lodged and copies of any relevant documentary evidence and suspend the procurement proceeding and any other further action until the Board decides on the complaint.
- (n). Continue procurement procedure in a manner conforming to the Board's Decision, Proclamation and Directive.
- (o). When it believes that any candidate or supplier participating in a public procurement has violated the provisions of the law governing the procurement in which it is involved, has refused to sign a contract with the public body, has committed fraud or has provided falsified documents, has committed an act of connivance or corruption or it has sustained damage on account of failure by a supplier to perform his/its obligation under a contract public body has to submit report on that matter to the Agency.

2.4 The Public Procurement and Property Administration Agency

In the exercise of its functions, the Public Procurement and Property Administration Agency shall have the following powers and duties concerning complaint review procedure:

- (a). The Public Procurement and Property Administration Agency shall serve as the Secretariat to the Board.
- (b). The one member of the Board shall be drawn from the Agency
- (c). The Agency shall provide the Board with office facility and technical assistance.
- (d). The Agency shall provide the specialized training to all members of the Board after their appointment.
- (e). The Agency shall, in cooperation with the Chairman of the Board, organize a program of continuing training for the members of the Board in areas of relevance.
- (f). The Agency shall place on its website all forms to be used in the complaint review procedure.
- (g). The Agency shall supplement or amend all forms to be used in the complaint review procedure, as required.
- (h). The Agency shall place on its website a summary of each Board's Decision which shall include the basic facts, reasoning and findings of the Board.
- (i). The expenditure towards meeting all the expenses of the Board and Secretariat of the Board shall be met from the Agency's Budget and governed by such applicable budget and payment procedures that can ensure the independence of the functioning of the Board.
- (j). The Agency shall review and pass decisions on reports of misconduct of bidders or suppliers in regard to the execution of public procurement, submitted to it by public bodies pursuant to Article 76 of the Proclamation and Article 48 of the Directive.

Section 3. PROCEDURE FOR SUBMISSION OF COMPLAINT FOR REVIEW

3.1 Who May Submit a Complaint?

A candidate or a bidder who claims to be aggrieved or is likely to be aggrieved on account of a Public Body inviting a bid not complying with the provisions of the Proclamation or Directive in conducting a bid proceeding may submit, in the first instance, a complaint in accordance with the procedures set forth herein to the head of the Public Body or to the Secretariat of the Board to have the bid proceeding reviewed or investigated, if not satisfied with the Public Body's decision or if its decision is not issued within 10 days after submission of complaint¹¹.

Accordingly, eligible to submit a complaint are bidders in the procurement procedure as well as candidates who have a legal interest in being awarded the contract or who suffered or may suffer damages resulting from the alleged infringements of their rights.

In other words, the Proclamation and Directive ensure protection of rights not only of the bidders that participated in the public procurement procedure, but also natural or juridical persons that would be interested in taking part in the procurement procedure and being awarded the contract, but due to some actions or failure to take an action by the public body they have been prevented from application for a contract in the public procurement procedure.

Examples of candidate/bidder/supplier eligible to submit a complaint:

- Candidate that could not participate in public procurement procedure because of discriminatory requirements concerning capacity to perform the contract or discriminatory description of the subject-matter of the contract;
- Candidate unfairly excluded from participation in the procurement procedure;

The three different types of participants in the complaint procedure are as follows:

- (a). **Active party** to the procedure, which is the entity at whose request the complaint procedure is launched (bidder eligible to submit a complaint);
- (b). **Passive party**, against which a complaint procedure is conducted (public body);
- (c). **Interested party**, who is entitled to participate in the procedure to protect its rights or legal interests (any candidate which has a legal interest in being awarded the contract).

3.2 When Complaint May Not be Lodged?

Complaint may not be lodged in respect of the following matters¹²:

- (a). The selection of procurement method carried out in accordance with the conditions established in the proclamation;
- (b). The selection of bidders for procurement to be made by means of restricted tendering or request for quotation or on the evaluation criteria set forth in the bidding document beforehand;
- (c). The preference given to Domestic Providers pursuant to Article 25 of the Proclamation and article 16.20/1 of the Directive;
- (d). Decisions given to reject bids, bid documents or price quotation pursuant to Article 30 of the Proclamation;
- (e). No complaint presented to the head of a public body after 5 working days have elapsed from the date on which the public body disclosed the result of a bid evaluation, or no

¹¹ Proclamation, Sub-article (1) of Article 73; Directive, Article 43;

¹² Proclamation, Sub-article (2) of Article 73; Directive, Article 44;

complaint presented to the Board after 5 working days have elapsed from the date on which the public body responded to the complaint shall be accepted;

- (f). No complaint shall be accepted after a contract was signed, provided that such contract was signed after seven working days from the result of the bid evaluation being disclosed as provided in sub article 46.3 of the Proclamation and article 45.1 (a) of the Directive.

3.3 What Can be Subject to the Complaint Procedure?

Subject of the complaint procedure may be all decisions, actions or failure to take an action by the public body which was obliged to take the action according to the Proclamation or Directive, provided that it constitutes infringement of the public procurement procedures required by Proclamation or Directive or infringement of rights of bidders or candidates.

It means in practice that subject to the review procedure may be not only incorrect decision or action of the public body, but also the lack of action when the public body is obliged to take this action. It means also that the review procedure may concern the actions and decisions taken during the contract award procedure as well as before launching the procedure, provided that they violate rights of bidders or candidates as a result of breaching of any of the rules determined in the Proclamation or Directive.

The subject of the complaint procedure should be understood as broadly as possible in order to prevent any possible violation of rights of interested parties and violation of basic principles of public procurement such as transparency, equal treatment, non-discrimination, and competition rules.

Examples of actions which could be subject to the complaint procedure are the following:

- Division of the contract into lots after publication of Invitation to Bid in order to avoid the obligation to apply the proper public procurement procedure;
- Incorrect or discriminatory description of the subject-matter of the procurement procedure;
- Discriminatory requirements concerning candidates interested in participation in the procedure;
- Decisions concerning exclusion from the procedure or rejection of the bid; and
- Contract award decisions.

3.4 Contents of Complaint

A complaint should include the following information:

- (a). Information on the bidder or candidate (the first and last name, company name or title, address of habitual residence, registered office, telephone and facsimile number);
- (b). Information on the representative or agent with a power of attorney;
- (c). The name, company name and registered office of the public body;
- (d). The number and date of the Invitation to Bid and information concerning the contract award notice;
- (e). The number and date of the contract award decision, the cancellation decision or other decisions made by the public body;
- (f). Other information concerning actions, failures to act or procedures of the public body which are the subject of the complaint procedure, information concerning the subject-matter of procurement, and the procurement reference number, a description of the state of facts;
- (g). A description of the infringements and an explanation;
- (h). The proposed evidence;

- (i). The claim for remedy;
- (j). The claim for the compensation of procedural costs; and
- (k). The signature of the authorized person and seal.

If a complaint does not contain minimum required information specified above the public body should ask the bidder or candidate to supplement a complaint and it should set up the time limit for it. If the bidder or candidate does not supplement required information his complaint will be dismissed as irregular, unless its content allows further procedure and the complaint contains the claim for remedy.

Bidders or candidates who do not have their registered office in the territory of the Federal Democratic Republic of Ethiopia should designate an agent with a power of attorney or an agent for the service of documents within the territory of the Federal Democratic Republic of Ethiopia or provide for a different way of service of documents, which shall not result in the stalling of the procedure.

3.5 Evidence

During the complaint procedure, parties have to present all facts on which they base their request, their decisions, actions or lack of actions. All facts they claim should be supported by presentation of proper evidence.

The role of public body in the complaint procedure is to present and prove all facts and circumstances, on the basis of which it took or omitted to take decisions concerning individual rights of participants of public procurement procedure which are subject of complaint procedure. On the other hand the complainant should prove or indicate reasonable facts justifying submission of complaint and all infringements of the procurement procedure or violations of the Proclamation or Directive referred in the complaint he/she is aware of.

3.6 Method of Submission of Complaint

A complaint against any act or omission by the public body should be, in the first instance, addressed to and lodged with the public body. Bidder or candidate may lodge it in writing, in person or send it by registered mail.

3.7 Timing of Complaint Procedure

The date of submission of the complaint is:

- (a). The ***date of submission of registered letter*** at the post office when a complaint is lodged by using post, or
- (b). The ***date of receipt of a complaint by the public body***, if a complaint is delivered in person. In such a case public body should issue to the complainant receipt confirmation with indication of the time of receipt by the public body.

When the public body refuses to issue a confirmation, the complaint shall be deemed as lodged in good time, unless the public body proves otherwise.

The overall complaint procedure shall have the following timing:

ACTION	TIME FRAME	PRECONDITION
Submission of complaint to the public body	5 working days ¹³	<ul style="list-style-type: none"> • From the date when candidate became aware of or should have been aware of the reason giving rise to the complaint. • From the date when public body disclosed the result of a bid evaluation.

¹³ Proclamation, Sub-article (2) of Article 74;

ACTION	TIME FRAME	PRECONDITION
The public body's written decision on the complaint	10 working days ¹⁴	From the date of submission of the complaint by the complainant.
Submission of complaint to the Board	5 working days ¹⁵	From the date of notification in writing of the decision of the head of the Public Body on that complaint if the complainant is not satisfied by the decision.
The Board's written decision on the complaint	15 working days ¹⁶	From the date of receiving complaint by the complainant.

3.8 Consequences of Submission of Complaint

The most significant consequence of lodging a complaint is the suspension of the procurement proceedings¹⁷.

In accordance with Article 16.27.7 of the Directive public bodies are prohibited from signing a contract before the expiry of a period of seven working days from the date bidders are notified of the result of their bid or of any complaint against the bid proceeding. This term is counted from the date of the receipt of a notification of award. Complaints submitted against an award decision prevent signing of a contract for all groups or lots of the subject-matter of procurement.

A public body's procurement unit shall suspend a bid proceeding if it ascertains that a complaint is presented to the head of the public body in regard to a bid proceeding within five (5) working days from the date bidder or candidate became aware of or should have been aware of the reason giving rise to the grievance until the head of the public body gives decision on the complaint.

Any decision made by a public body in regard to a procurement proceeding and the reasons on which the decision was based shall be kept as part of the record of that procurement proceeding.

It should be pointed out that the time period before which it is not possible to sign and perform contract does not start at the date of lodging a complaint but earlier, at the day of the receipt of an individual notification concerning the award of contract. Suspension lasts until the expiry of the standstill period discussed above or until the end of the complaint procedure if a complaint has been lodged. Such provisions allow bidders or candidates concerned to lodge a complaint and defend their rights at the stage when irregularities could still be rectified or removed. It prevents situations when candidate would lose the possibility to be awarded the contract.

3.9 Conciliation and Mutual Agreement

One of the provisions provided by the Proclamation is that the complainant and the public body shall endeavor to resolve the dispute amicably (*conciliation*) by mutual agreement¹⁸.

Parties of the complaint procedure may reach mutual agreement during the complaint procedure conducted in the first instance, before review by the Board. In that case, settlement shall be approved by the head of the public body and provided that it is not contrary to the provisions of the Proclamation and the rules of public morality or legal interests of third parties (*settlement*).

¹⁴ Proclamation, Sub-article (3) of Article 74;

¹⁵ Proclamation, Sub-article (4) of Article 74;

¹⁶ Proclamation, Sub-article (4) of Article 75;

¹⁷ Proclamation, Sub-article (3) of Article 74; Directive, Article 46;

¹⁸ Proclamation, Sub-article (3) of Article 74;

Section 4. CONDUCT OF COMPLAINT PROCESS

Complaint review procedure consists of two levels of administrative legal protection. In the first instance a candidate who seeks the protection of his rights may submit a complaint against an act or omission by the public body within five (5) working days from the date when candidate became aware of or should have been aware of the reason giving rise to the complaint. The complaint has to be addressed to the head of the public body concerned.

In the second instance, if complainant is not satisfied with the decision of the head of the public body candidate is entitled to submit a complaint to the Board within five (5) working days from the date of notification in writing of the decision of the head of the Public Body on that complaint.

4.1 Review of Complaints by the Public Body

4.1.1 Lodging a Complaint

According to the Article 74 of the Proclamation the complaint procedure starts with a complaint lodged with the public body.

Complaints must be submitted before expiry of the period of five (5) working days counting from the date of:

- (a). the contract award notice (if the complaint concerns the information, actions, procedures and failures to act referred to in the notice);
- (b). the public opening of bids (if the complaint concerns the actions, procedures, failures to act relating to the procurement documents and the procedure of opening bids, and in case the bids were not publicly opened);
- (c). the receipt of a decision concerning an individual right arising from public procurement and relating to the procedure of examination and evaluation of the bids and contract award;
- (d). the complainant becoming aware or should have been aware that the public procurement procedure was conducted contrary to the Proclamation or Directive.

Complainants should take into account that if they fail to lodge a complaint due to previous conditions, they lose the right to apply for a review to the Board in a later phase of the procedure.

A complaint shall be submitted with the following documents:

- (a). A completed Complaint for Review in prescribed Form;
- (b). Copies of any documentary evidence relied upon in support of the claim set out in the complaint; and
- (c). Where the request is made by an agent of the candidate, an appropriate power of attorney.

A complaint should include the following information:

- (d). Information on the bidder or candidate (the first and last name, company name or title, address of habitual residence, registered office);
- (e). Information on the representative or agent with a power of attorney;
- (f). The name, company name and registered office of the public body;
- (g). The number and date of the Invitation to Bid and information concerning the contract award notice;
- (h). The number and date of the contract award decision, the cancellation decision or other decisions made by the public body;

- (i). Other information concerning actions, failures to act or procedures of the public body which are the subject of the complaint procedure, information concerning the subject-matter of procurement, and the procurement reference number, a description of the state of facts;
- (j). A description of the infringements and an explanation;
- (k). The proposed evidence;
- (l). The claim for remedy;
- (m). The claim for the compensation of procedural costs; and
- (n). The signature of the authorized person and seal.

4.1.2 Results of Lodging a Complaint

After a complaint has been lodged, the public body is barred from conclusion of contract. Thus the public body must not:

- (a). sign a public contract, or
- (b). proceed with its performance.

4.1.3 Powers of the Public Body Concerning Complaints

If a complaint, in opinion of the public body, is partially or completely founded, the public body may:

- (a). rectify the action;
- (b). undertake an action;
- (c). place the existing decision on contract award out of force and replace it by another one;
- (d). annul the public procurement procedure (and notify the participants) within a period of *10 days* from the receipt of the complaint.

Public body shall review procurement proceeding in respect of which a complaint is lodged only in accordance with the Proclamation, Directive and the bidding document.

4.1.4 Deciding on Complaints

Unless the complaint is resolved by mutual agreement of the candidate or bidder that submitted it and the public body conducting the procurement, the head of the public body shall give decision on the complaint in writing within ten (10) working days from the date of submission of the complaint pursuant to Article 74/3 of the Proclamation.

The public body shall send to the complainant a copy of the decision within 5 working days from the date in which the decision was made.

Any decision made by a public body in regard to a procurement proceeding and the reasons on which the decision was based shall be kept as part of the record of that procurement proceeding.

4.1.5 Procedure with Bids Submitted in Two Envelopes

When bidders are required to submit technical and financial proposals in two separate envelopes the following procedure will be applied:

- (a). The public body shall communicate the result of the technical evaluation in writing to all bidders at the same time.
- (b). The public body shall indicate in the letter in which it discloses the result of the technical evaluation to each bidder that any bidder claiming that the technical evaluation has not been conducted in conformity with the Proclamation, Directive or the bidding document has the right to present his complaint to the head of the public body within five (5) working days of being notified of the result.

- (c). A bidder who can prove that the decision given by the head of the public body on the complaint lodged by him concerning the conduct of the technical evaluation is not in conformity with the Proclamation, Directive or the bidding document may present his complaint to the Board within five (5) working days of being notified of the decision.
- (d). A public body may open the envelopes containing the financial proposals after five (5) working days from the date of notification of the result of the technical evaluation to the bidders if there is no complaint lodged.
- (e). A public body, in its written letter of notification to the unsuccessful bidders, must advise unsuccessful bidders on their right to submit the complaint to the public body against the result of the evaluation within five working days from the date or receipt of notification.

However, if a complaint is presented to the Board in due time against the decision of the head of the public body on the complaint previously lodged by a bidder concerning the technical evaluation, the public body shall keep the envelopes containing the financial proposals unopened until the Board gives its final decision on the case.

4.2 Review of Complaints by the Board

4.2.1 Lodging a Complaint

A bidder may submit a complaint to the Secretariat of the Board within five (5) working days of notification in writing of the decision of the head of the public body on that complaint if the bidder is not satisfied by the decision of the head of the public body or where the head of the public body does not give decision on such complaint within ten (10) working days as provided in article 74.3 of the Proclamation, within five days following the last day on which decision should have been given by the public body. A complaint submitted to the Secretariat of the Board after such date may not be entertained.

A bidder lodging a complaint to the Secretariat of the Board shall attach to the application of his complaint a copy of the letter of the complaint submitted to the head of the Public Body and a copy of the decision of the Public Body on the complaint if such decision was given by the Public Body and other relevant documents.

4.2.2 Receipt and Registration of Complaint

The Secretariat shall record the receipt of the complaint in the Register of Complaints for Review and assign it a case reference number for registration.

The Secretariat shall issue to the complainant receipt confirmation with indication of the time of receipt by the Board.

The Secretariat shall assign a Clerk for the procedure of the Complaint and open a file for storage of all documents relating to the Complaint.

4.2.3 Scrutiny

The Secretariat shall immediately verify that the Complaint is in prescribed Form and in conformity with the provisions of the Proclamation, Directive, bidding document and this Manual. In particular, it shall verify that copies of any documentary evidence relied upon in support of the claim set out in the Complaint are attached and that where the Complaint is made by an agent of the complainant, an appropriate power of attorney is attached.

Any Complaint found not to be in the prescribed Form and not to be in conformity with the provisions of Proclamation and Directive shall be rejected and returned in prescribed Form to the complainant as soon as practicable together with a statement of the reasons for rejection.

A Complaint found to be in order after scrutiny shall be admitted for review by the Board.

4.2.4 Results of Lodging a Complaint

On receipt of the bidder's complaint, the Secretariat of the Board shall send a notice to the public body informing the public body that a complaint is lodged against it, and instructing it to submit within five (5) working days its statement of response together with the record of the procurement proceeding in respect of which complaint was lodged and to suspend the procurement proceeding until the Board decides on the complaint. Such Board's notice automatically suspends further action by the public body until the Board has settled the matter.

The Board shall, before taking any decision regarding a complaint, notify relevant bodies of the complaint and shall take into account information and arguments received from such bodies and from the public body.

The public body against which the complaint is lodged has to send its reply and the documents in connection with the complaint to the Secretariat of the Board within five (5) working days from the date of notification.

4.2.5 Response of the Public Body

Within five (5) working days of the receipt of the notification from the Secretariat of the Board, the public body shall submit to the Secretariat a written Statement of Response in prescribed Form together with copies of any documentary evidence relied upon in support of the Response and suspend the procurement proceeding until the Board decides on the complaint.

Where the public body fails to submit the Response within the specified time limit, the Board shall, if it is satisfied that the Complaint was duly served on the public body and the public body has failed to submit the Response without good cause, have power to proceed with its deliberations on the basis of the evidence before it as if such proceedings had been conducted in the presence of all parties.

The failure to submit the Response within the specified period shall not prevent the conduct of the procedure of the Board and the public body will remain bound by any Decision of the Board as well as by any award on costs recommended by the Board.

4.2.6 Powers of the Board Concerning Complaints

The Board shall review the complaint against the bidding document issued by the public body, the bid document submitted by the complainant to the public body in response to the invitation to bid, the bid evaluation report and other documents relevant to the procurement in respect of which the complaint was lodged and decide on the complaint in accordance with the Proclamation and Directive.

4.2.7 Complaint Review Process

4.2.7.1 Commencement of Complaint Review Process

- (a). The Secretariat shall register the commencement of the complaint review procedure in the Register of Complaints for Review.
- (b). The Secretariat shall register all documents attached to the Complaint, assigning a sequential registration number to each document.
- (c). The Board shall, taking into account the nature of the case defined in the terms of reference, determine the time and place of its meetings and any hearing it intends to hold. In particular, determinations shall be made and communicated to the parties in respect of:
 - (i) additional evidence and witnesses to be called;
 - (ii) the decision on whether or not to hold a hearing;
 - (iii) the place, date and time of hearing, if any; and
 - (iv) the manner of the procedure.

- (d). When no hearing is requested by the complainant, the Board may, if satisfied that it can reach a definitive opinion on the basis of the terms of reference and without hearing the parties, proceed with review of the documents on record for determination and issue of its Decision in the absence of a hearing.
- (e). If a hearing is requested by the complainant, or if the Board determines to conduct a hearing even if no request for hearing is made by the complainant, the Secretariat shall in accordance with the instructions issued by the Board issue notice of hearing to both parties ensuring that all parties have been provided with copies of the Complaint and public body's Decision. In determining the manner of procedure and time of the hearing, the Board shall give sufficient consideration to preventing the delay of the proceedings.

4.2.7.2 Representation

A party may appear in person or may be represented by such other person as shall be recognized by the Board as suitable for the purposes of such representation.

4.2.7.3 Hearing

- (a). The hearing shall take place in the manner provided for by the Board.
- (b). If one of the parties, despite having received notice of the hearing, fails to appear, the Board, if it is satisfied that the notice was received and the party is absent without good cause, shall proceed with the proceedings which shall be deemed to have been conducted in the presence of all parties.
- (c). The hearing shall be closed to the public except that, with the consent of the Board, persons having a justifiable interest in the proceedings may be admitted.
- (d). The Board shall, for each meeting or hearing, keep minutes recording the time, place and the names of those attending the meeting or hearing together with a summary record of the proceedings.

4.2.7.4 Evidence

- (a). All relevant documentary evidence relied upon by the parties in support of their claims and decisions shall be admitted to the Board in the form of attachments of the prescribed Form.
- (b). Subsequent documentary evidence shall be admitted only where, in the opinion of the Board, it is relevant and only with its consent.
- (c). During the hearing, any party may submit oral evidence in support of its own contentions by way of the voluntary appearance of witnesses.
- (d). The Board may, at its discretion, request the submission of further documentary evidence from the parties or request the presence of other witnesses or expert witnesses.

4.2.7.5 Assistance to the Board

- (a). The Secretariat shall carry out the instructions of the Board in respect of the arrangements and conduct of the procedure including, but not limited to:
 - (i) acting as liaison and point of communication between the parties and the Board;
 - (ii) making logistical arrangements;
 - (iii) communicating to the parties the Decisions of the Board in respect of the time and place of hearings, if any, of the manner of conducting the procedure and of any other instructions of the Board;
 - (iv) taking and keeping minutes of all meetings or hearings of the Board, which shall be signed by the Chairman of the Board;
 - (v) transmitting the Decision of the Board to all parties; and

- (vi) registering all Forms, documents, instructions and Decisions of the procedure in the Register.
- (b). All proceedings and communication should remain confidential till the notification of the Decision.

4.2.8 Deciding on Complaints

In accordance with Article 75 of the Proclamation, the Board is entitled to issue Decision concerning complaint procedure.

During complaint procedure the Board is entitled to:

- (a). Discontinue the complaint procedure because the complaint is withdrawn by complainant;
- (b). Dismiss the complaint due to:
 - (i) **Non – venue;**
 - (ii) **Impermissibility;**
 - (iii) **Untimeliness,** and
 - (iv) The fact that it was lodged by unauthorized person;
- (c). Reject the complaint due to it being ill-founded;
- (d). Annul in whole or in part an unlawful act or decision by the public body (procedure or action);
- (e). Annul the whole procedure if an irregularity was committed in the public procurement procedure which warrants annulment under the provisions of Proclamation and Directive;
- (f). Prohibit the public body from acting or deciding unlawfully;
- (g). Order the public body to proceed in a manner conforming to the Proclamation and Directive other than a decision to award or conclude the contract.

The Board shall issue its decision in writing to the complainant and the public body within fifteen (15) working days of receiving the Complaint.

The Decision of the Board shall be confined to the issues raised in the Complaint and public body's decision.

The Decision shall be decided by a majority of the Board and shall be formulated in accordance with prescribed Form.

The Secretariat of the Board shall immediately send copies of the decision of the Board to the complainant and the public body.

Decisions of the Board are final and enforceable.

4.2.9 Board Meeting Minutes

Actions taken at the Board meeting at which the subject-matter of a particular complaint is discussed should be recorded in the form of minutes. The minutes have to include:

- (a). the name of the Board and its members;
- (b). the date and hour at which the action was taken;
- (c). an indication of the subject-matter of the complaint;
- (d). information on the attending parties.

The minutes should also include the essential information on the action, and in the case of a hearing, statements made by the parties and the decision reached at the hearing.

The minutes should be signed by all members of the Board, the attending parties and their attorneys.

The minutes are an integral part of the case file.

4.2.10 Publicity of the Board's Decisions

- (a). The Secretariat shall produce a summary of each Decision which shall include the basic facts, reasoning and findings of the Board.
- (b). The Secretariat shall publish such a summary on the website of the Agency.
- (c). The Secretariat shall maintain copies of the full text of each Decision and make it available to interested parties on request.

4.3 Review of complaints on misconduct of candidates and suppliers

- (a). Any public body which can prove that any candidate or supplier participating in a public procurement has violated the provisions of the law governing the procurement in which it is involved, has refused to sign a contract with the public body, has committed fraud or has provided falsified documents, has committed an act of connivance or corruption or it has sustained damage on account of failure by a supplier to perform his/its obligation under a contract may notify the matter in writing to the Agency on that candidate or supplier.
- (b). In submitting a complaint on misconduct of candidate or supplier to the Agency, a public body has to state clearly the nature of the default in that complaint and attach to that complaint copies of the documents of the procurement proceeding to which the complaint relates, and other relevant documents to the case under consideration.
- (c). Upon receipt of the complaint the Agency shall notify in writing the candidate or supplier against whom a complaint on misconduct has been lodged, to submit within 5 (five) working days, a statement of response to that complaint together with supporting documents, stating briefly the content of the complaint and follow up the candidates or suppliers compliance with the notification.
- (d). Where the Agency finds it appropriate to the resolution of the complaint it may require person concerned with the matter to appear in person and give evidence or seek professional assistance from any appropriate body.
- (e). The Agency shall review the complaint presented to it by the public body against the statement of response of the candidate or supplier, in light of the evidence presented to it by both parties and give decision on the complaint in accordance with the Proclamation, Directive, the bidding document and the procurement contract, and shall communicate the decision in writing to the public body and the candidate or the supplier as the case may be, and if necessary, to other entities concerned, within 15 (fifteen) working days of the receipt of the complaint.
- (f). The decision to be rendered by the Agency in accordance with subparagraph (e) above may be one of the following:
 - (i) Suspend for a definite or indefinite period the candidate or supplier which it finds to be a at fault from participation in any public procurement;
 - (ii) Give a written warning; or
 - (iii) Dismiss the complaint.
- (g). The penalty to be imposed on a candidate or supplier by a decision of the Agency pursuant to article 76.5 of the Proclamation shall be one of the penalties prescribed in Article 48.5(1), (2) and (3) of the Directive and this Manual, as follows:
 - (i) If it is proved that a candidate or supplier has committed one of the acts listed below with an intention to distort or alter the bid evaluation result or during the contract administration, he/it may be suspended from the supplier's list for a period not less than two years or for an indefinite period, so that he/it may not participate in any public procurement for the period for which the suspension lasts.

- ✓ Where it is proved that he/it has committed an act of corruption i.e. giving to an employee in what ever position engaged in public procurement, anything of monetary value in the form of bribe or inducement.
 - ✓ Where it is discovered that he/it has committed an act of fraud i.e. providing falsified or invalid documents or where he/it is found to have participated in a public procurement while a suspension against him is in force or where it is discovered that he/it has supplied goods, rendered services or delivered works of an inferior quality to that required under a contract by employing deceitful practice to make it look like genuine or it conforms to stated requirements.
 - ✓ Where it is proved that he/it has connived at an act of price fixing with certain candidates to deprive the public body and the other bidders of the benefit of fair competition.
 - ✓ Where it is proved that a supplier has delivered goods, services, works or consultancy services of a kind or quality that are not in conformity with the schedule of requirements under a contract in connivance with employees or officials of the public body.
 - ✓ Where it is proved that he has inflicted or has threatened to inflict physical or bodily injury on/or used coercive action against a procurement staff or authority of the public body.
 - ✓ Where it is discovered that he/it has committed another act entailing suspension from the suppliers list within two years from the date on which the suspension previously imposed upon him by the Agency for certain misconduct in connection with the execution of public procurement came to an end.
- (ii) The following acts committed by a candidate or supplier shall entail suspension from the suppliers list for a period of 6 months up to two years depending on the gravity of the fault, so that the candidate or the supplier may not participate in any public procurement for that period.
- ✓ Where a supplier under a contract with a public body fails to complete the delivery of goods, services, works or consultancy services under that contract, and on account of such failure of the supplier, the public body suffers direct or consequential loss or damage or such failure retards or disrupts the operation of the public body.
 - ✓ Whereupon receipt of written notification of award as a successful bidder, a bidder fails or refuses to sign a contract with a public body and in exercising another option to acquire the required objects of procurement from another supplier, the public body sustains loss or such failure or refusal of the bidder retards or disrupts the operation of the public body.
 - ✓ Where he/it omits another act entailing warning pursuant to Article 48.5.3 of the Directive and paragraph below, within 3 years from the time when he/it received warning for the first such omission.
- (iii) Any candidate or supplier omitting any of the following acts shall be warned in writing.
- ✓ Where a supplier fails to deliver goods, services, works or consultancy services under a contract on the agreed time and such delay retards or disrupts the operation of the public body.
 - ✓ Where he/it refuses to provide a pro-forma invoice to any public body intending to procure a required object.
- (iv) Any action taken by the Agency against a candidate or supplier pursuant to article 48.5(1) and 48.5(2) of the Directive and subparagraphs (i) and (ii) above, shall be communicated to all public bodies of the federal government, to higher education and training institutions of the federal government situated in the regions, and to Finance and Economic Development bureaus of regions and city administrations. Such actions shall also be posted on the Agency's website.

- (v) Without prejudice to any action that may be taken by the Agency on a supplier or candidate, public bodies shall be entitled to seek compensation for any damage or loss they have sustained on account of an act or omission by a supplier or bidder in connection with any procurement in accordance with the contract or the law.

Section 5. ANNEXES

5.1 FORM CR-01: Complaint for Review by the Public Body

Place and Date		
Reference Number:		
TO:		
	Attn.: The Head of	
	Ethiopia	
SUBJECT:	Complaint for Review by the Public Body	
Complainant Contact Information		
Name		
Auth. Person		
P.O. Box:		
Street Address:		
Kebele		
Town/City:		
Post Code:		
Country:		
Telephone:		
Facsimile:		
Representative Agent ¹⁹		
Details of Procurement Procedure		
Procurement Reference Number:		
Invitation to Bid	Date of Advertisement:	
	Advertised in Media	
Deadline for Bid Submission:		
Bid Opening Took Place	Date:	
	Time:	
Contract Award Decision ²⁰ :	Date:	
	Number:	
Contract Award Notice:	Date:	
	Number:	

¹⁹ Bidders or candidates who do not have their registered office in the territory of the Federal Democratic Republic of Ethiopia should designate an agent with a power of attorney or an agent for the service of documents within the territory of the Federal Democratic Republic of Ethiopia or provide for a different way of service of documents, which shall not result in the stalling of the procedure. Complainant must provide a copy of the document authorizing the representation ("power of attorney");

²⁰ It might also be Cancellation Decision or other decisions made by the public body;

I. The Basis of the Complaint	
(i) The following provisions of the Public Procurement Proclamation and Directive and other related instruments have been violated:	
(ii) The violation came to our knowledge on:	
(iii) The review is to be made by the public body of the following:	
II. Claim - State the Claim or Corrective Measures to be Made	
This Complaint is Claim for:	<input type="checkbox"/> Annulment or modification of actions and/or decisions;
	<input type="checkbox"/> Re-bidding;
	<input type="checkbox"/> Other
III. Evidence	
The Claim is accompanied by:	<input type="checkbox"/> A copy of the Invitation to Bid;
	<input type="checkbox"/> A copy of the Bidding Documents;
	<input type="checkbox"/> A copy of the Contract Award Notice;
	<input type="checkbox"/> A copy of the Contract Document;
	<input type="checkbox"/> Other relevant documents and evidence
IV. Signature of Authorized Officer	
Name of Authorized Person:	
Title:	
Signature:	

5.2 FORM CR-02: Confirmation of Receipt of the Complaint by the Public Body

Place and Date		
Reference Number:		
TO:		
	Attn.:	
SUBJECT:	Confirmation of the Receipt of Complaint	
<p>Dear Sir/Madam,</p> <p>It is hereby confirmed that a complaint concerning the public procurement procedure reference number , advertised on , in concerning</p> <p>has been lodged to</p>		
on	Date:	
	Time:	
Subject of the Complaint		
Public Body Contact Information		
Name		
Auth. Person		
P.O. Box:		
Street Address:		
Kebele (District)		
Town/City:		
Post Code:		
Country:		
Telephone:		
Facsimile:		
Signature of Authorized Person		
Name of the Authorized Person to receive Complaint on behalf of the Head of the Public Body:		
Title:		
Signature:		

5.3 FORM CR 03: Decision of the Public Body on Complaint

Place and Date	
Reference Number:	
TO:	
	Attn.:
SUBJECT:	Decision on Complaint
Details of Procurement Procedure	
Case Reference Number	
Procurement Reference Number:	
Subject of the Procurement Procedure:	
Decision	
Signature of Authorized Person	
Name of Head of the Public Body:	
Title:	
Signature:	
Annexes:	

5.4 FORM CR-04: Complaint for Review by the Board

Place and Date		
Reference Number:		
TO:		
	Ethiopia	
SUBJECT:	Complaint for Review by the Board	
Complainant Contact Information		
Name		
Auth. Person		
P.O. Box:		
Street Address:		
Kebele (District)		
Town/City:		
Post Code:		
Country:		
Telephone:		
Facsimile:		
Representative Agent ²¹		
Public Body Toward Whom the Complaint is Made		
Name		
Auth. Person		
P.O. Box:		
Street Address:		
Kebele (District)		
Town/City:		
Post Code:		
Country:		
Telephone:		
Facsimile:		
Details of Procurement Procedure		
Procurement Reference Number:		
Invitation to Bid	Date of Advertisement:	
	Advertised in Media	
Deadline for Bid Submission:		

²¹ Bidders or candidates who do not have their registered office in the territory of the Federal Democratic Republic of Ethiopia should designate an agent with a power of attorney or an agent for the service of documents within the territory of the Federal Democratic Republic of Ethiopia or provide for a different way of service of documents, which shall not result in the stalling of the procedure. Complainant must provide a copy of the document authorizing the representation ("power of attorney");

Bid Opening Took Place	Date:	
	Time:	
Contract Award Decision ²² :	Date:	
	Number:	
Contract Award Notice:	Date:	
	Number:	
I. The Basis of the Complaint		
(i) The violation came to our knowledge on:		
(ii) It is alleged that the has breached the following provisions of the Public Procurement Proclamation and Directive and other related instruments:		
(iii) The essence of the allegation is the following:		
II. Claim for the Corrective Measures		
This Complaint is Claim for the following corrective measures:	<input type="checkbox"/>	Annulment or modification of actions and/or decisions;
	<input type="checkbox"/>	Re-bidding;
	<input type="checkbox"/>	Other
Request for Hearing (if any)	<input type="checkbox"/>	The Complainant requests for a Hearing.
	<input type="checkbox"/>	The Complainant considers that a Hearing is not necessary
A Complaint was lodged to the public body directly on:		
III. Evidence		
The Claim is accompanied by:	<input type="checkbox"/>	A copy of the Invitation to Bid;
	<input type="checkbox"/>	A copy of the Bidding Documents;
	<input type="checkbox"/>	A copy of the Contract Award Notice;
	<input type="checkbox"/>	A copy of the Contract Document;
	<input type="checkbox"/>	Other relevant documents and evidence
IV. Statement of Adherence		
I/we hereby declare that the above information is true and accurate to the best of my/our knowledge and belief and that I/we accept the Proclamation and Directive in their entirety and undertake to carry out the Decision of the Board faithfully and without delay.		
V. Signature of Authorized Officer		
Name of Authorized Person:		
Title:		
Signature:		
Attachments:		
1. Copy of the Complaint submitted to the head of the Public Body;		
2. Copy of the Decision of the Public Body on the Complaint.		

²² It might also be Cancellation Decision or other decisions made by the public body;

5.5 FORM CR-05: Rejection of Complaint for Review by the Board

Case Reference No.:		
Place and Date of Issue:		
FROM:		
TO:		
SUBJECT:	Rejection of Complaint for Review	
Please refer to the following Complaint for Review submitted by you:		
Date of Submission:		
Public Body:		
Procurement Reference Number:		
Brief Description of Procurement:		
In case of your Complaint the following legal conditions have not been satisfied:		
(i)	<input type="checkbox"/>	Complaint is not submitted to the head of the Public Body in the first instance (Article 74.1 of the Proclamation).
(ii)	<input type="checkbox"/>	Complaint is not submitted to the Board within five working days following the tenth working day from the date in which the Complaint was submitted to the head of the Public Body and the head of the Public Body has not responded to the complaint in due time (Article 74.3 of the Proclamation).
(iii)	<input type="checkbox"/>	Complaint is not submitted to the Board within five working days from the date on which the head of the Public Body has responded to the Complaint at first instance (Article 74.3 of the Proclamation)..
(iv)	<input type="checkbox"/>	Copy of the letter of the Complaint submitted to the head of the Public Body is not attached to the Complaint (Article 47(b) of the Directive).
(v)	<input type="checkbox"/>	Copy of the Decision of the Public Body on the Complaint, if such Decision was given by the Public Body, and other relevant documents are not attached to the Complaint (Article 47(b) of the Directive).
(vi)	<input type="checkbox"/>	Complaint lodged against Public Enterprise.
(vii)	<input type="checkbox"/>	Complaint lodged against procurement proceedings which have already been approved by the World Bank.
(viii)	<input type="checkbox"/>	Complaint lodged against Regional States and Addis Ababa and Dire Dawa city administrations.
As a consequence, your Complaint is hereby rejected.		
Signature of Chairman		
Name of Chairman:		
Title:		
Signature:		

5.6 FORM CR-06: Board's Notice to the Public Body to Reply on Complaint

Case Reference No.:	
Place and Date of Issue:	
FROM:	
	Ethiopia
TO:	
	Ethiopia
SUBJECT:	Notice Seeking Reply of the Public Body
<p>Please find attached a copy of the verified Complaint for Review, submitted by the Complainant to the Board in respect of the procurement indicated therein. The basis of the claim is also set out in the Complaint.</p> <p>You are requested to complete and return the attached Form CR-07 within five (5) working days of the date of receipt this Notice.</p> <p>Please indicate what evidence, if any, you propose to submit in support of your Reply and enclose copies.</p>	
Signature of Chairman	
Name of Chairman:	
Title:	
Signature:	

5.7 FORM CR-07: Reply of the Public Body

Case Reference No.:		
Place and Date of Issue:		
TO:		
	Ethiopia	
SUBJECT:	Reply to the Board's Notice	
Public Body Contact Information		
Name		
Auth. Person		
P.O. Box:		
Street Address:		
Kebele (District)		
Town/City:		
Post Code:		
Country:	Ethiopia	
Telephone:		
Facsimile:		
Details of Procurement Procedure		
Procurement Reference Number:		
Invitation to Bid	Date of Advertisement:	
	Advertised in Media	
Contract Award Notice:	Date:	
	Number:	
Contract Award Decision ²³ :	Date:	
	Number:	
Deadline for Bid Submission:		
Bid Opening Took Place	Date:	
	Time:	
Complaint for Review pertaining to the procurement submitted to the Public Body, if any		
Was a Complaint for Review submitted by the Complainant (candidate or bidder) to the Public Body?	Yes: <input type="checkbox"/> No: <input type="checkbox"/>	
If yes, give date of submission:		
Was a decision taken by the Public Body and conveyed to the Complainant?	Yes: <input type="checkbox"/> No: <input type="checkbox"/>	
If yes, give date of submission:		

²³ It might also be Cancellation Decision or other decisions made by the public body;

Provide summary of the decision on the Complaint for Review submitted to the Public Body.		
I. Reply to the Allegation in the Complaint for Review		
II. Claim		
The Reply is Claim for:	<input type="checkbox"/>	Dismissal of the Complaint for Review
	<input type="checkbox"/>	Any other action
Request for Hearing (if any)	<input type="checkbox"/>	The Public Body requests for a Hearing.
	<input type="checkbox"/>	The Public Body considers that a Hearing is not necessary
A complaint was made to the public body directly on:		
III. Evidence		
The Claim is accompanied by :	<input type="checkbox"/>	A copy of the Invitation to Bid;
	<input type="checkbox"/>	A copy of the Bidding Documents;
	<input type="checkbox"/>	A copy of the Contract Award Notice;
	<input type="checkbox"/>	A copy of the Contract Document;
	<input type="checkbox"/>	Other evidence
IV. Statement of Adherence		
I/we hereby declare that the above information is true and accurate to the best of my/our knowledge and belief and that I/we accept the Proclamation and Directive in their entirety and undertake to carry out the Decision of the Board faithfully and without delay.		
V. Signature of the Public Body's Authorized Officer		
Name of Authorized Person:		
Title:		
Signature:		

5.8 FORM CR-08: Secretariat's Summary of Complaint Submitted to the Board

Place and Date		
Case Reference No.:		
TO:		
	Addis Ababa	
	Ethiopia	
SUBJECT:	Secretariat's Summary on Complaint Submitted to the Board by Candidate / Bidder / Supplier	
Candidate/Bidder/Supplier's (Complainant) Contact Information		
Name		
Auth. Person		
P.O. Box:		
Street Address:		
Kebele (District)		
Town/City:		
Post Code:		
Country:		
Telephone:		
Facsimile:		
Public Body Toward Whom the Complaint is Made		
Name		
Auth. Person		
P.O. Box:		
Street Address:		
Kebele (District)		
Town/City:		
Post Code:		
Country:	Ethiopia	
Telephone:		
Facsimile:		
Date of submission of Complaint to the Public Body		
Date of Public Body's Reply to the Complaint		
Date of submission of Complaint to the Board		
Details of Procurement Procedure		
Procurement Reference Number:		
Invitation to Bid	Date of Advertisement:	
	Advertised in Media	
Deadline for Bid Submission:		

Bid Opening Took Place	Date:	
	Time:	
Contract Award Decision ²⁴ :	Date:	
	Number:	
Contract Award Notice:	Date:	
	Number:	
I. The Summary of the Complaint		
Brief Description of Procurement:		
Details of Complaint:		
Details of the Public Body's Decision on the Complaint:		
II. Submitted Documentation		
The Complaint is accompanied by:	<input type="checkbox"/>	Copy of the Complaint submitted to the head of the Public Body;
	<input type="checkbox"/>	Copy of the Decision of the Public Body on the Complaint.
	<input type="checkbox"/>	A copy of the Invitation to Bid;
	<input type="checkbox"/>	A copy of the Bidding Documents;
	<input type="checkbox"/>	A copy of the Contract Award Notice;
	<input type="checkbox"/>	A copy of the Contract Document;
	<input type="checkbox"/>	Other relevant documents and evidence
III. Summary of the Case		
IV. Secretariat's Recommendation		
V. Signature of the Secretariat's Authorized Officer		
Name of Authorized Person:		
Title:		
Signature:		

²⁴ It might also be Cancellation Decision or other decisions made by the public body;

5.9 FORM CR-09: Decision of the Board

Case Reference No.:			
Place and Date of Issue:			
SUBJECT:	Decision on the Complaint		
Pursuant to Articles 72 and 75 of the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 this Board for Review and Resolution of Complaints, comprised of the following members:			
	Title	Name and Surname	Institution
1.	Chairman		
2.	Member		
3.	Member		
4.	Member		
5.	Member		
has completed the process of review of the Complaint for procurement procedure that has been under dispute of the following parties:			
Complainant			
Public Body			
Procurement Reference Number			
Contract Award Decision ²⁵ :		Date:	
		Number:	
Date of submission of Complaint to the Public Body			
Date of Public Body's Reply to the Complaint			
Date of submission of Complaint to the Board			
Date of Board's Notice to the Public Body to Reply on Complaint			
Date of Public Body's Reply to the Board's Notice			

²⁵ It may also be Cancellation Decision or other decisions made by the public body;

Brief Description of Procurement:			
Details of Complaint:			
Details of the Public Body's Reply to Complaint:			
<p>Having conducted the review after hearing the evidence of all parties in an equal and fair manner and having concluded the proceedings and otherwise complied with the provisions of the Proclamation, Directive, Manual on Procurement Complaint Procedure, and other relevant legal documents governing public procurement, the Board hereby delivers the following Decision:</p>			
<ul style="list-style-type: none"> 			
Certification of Decision by the Board Members			
	Title	Name and Surname	Signature
1.	Chairman		
2.	Member		
3.	Member		
4.	Member		
5.	Member		
Annexes:			

5.10 FORM CR-10: Secretariat Scrutiny Form

FOR OFFICIAL USE ONLY:		
VERIFICATION:		
1. Complaint received in correct form	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
2. Power of attorney enclosed, where appropriate	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
3. Copy of the Complaint submitted to the head of the Public Body enclosed	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
4. Copy of the Decision of the Public Body on the Complaint enclosed.	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
5. Evidence enclosed	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
VERIFIED BY:	Signature:	
	Name:	
	Date:	
ACTION:		
1. Record receipt and assign case reference number	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
2. If not in compliance with the provisions of the Proclamation, recommend for rejection	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
3. If not verified to be in conformity, return to Complainant with reasons for non-conformity	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
4. Where verified:	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
i. Admit for review to the Board.	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
ii. Issue Notice to the Public Body along with the Form for Reply of the Public Body.	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
ACTION TAKEN BY:	Signature:	
	Name:	
	Date:	

5.11 FORM CR-11: Public Body's Report to the Agency on Misconduct of Candidates/Bidders/Suppliers

Place and Date		
Reference Number:		
TO:		
	Ethiopia	
SUBJECT:	Report on misconduct of candidates/bidders/suppliers in regard to the execution of public procurement	
Public Body's (Complainant) Contact Information		
Name		
Auth. Person		
P.O. Box:		
Street Address:		
Kebele (District)		
Town/City:		
Post Code:		
Country:		
Telephone:		
Facsimile:		
Candidate/Bidder/Supplier Toward Whom the Complaint is Made		
Name		
Auth. Person		
P.O. Box:		
Street Address:		
Kebele (District)		
Town/City:		
Post Code:		
Country:		
Telephone:		
Facsimile:		
Details of Procurement Procedure		
Procurement Reference Number:		
Invitation to Bid	Date of Advertisement:	
	Advertised in Media	
Deadline for Bid Submission:		

Bid Opening Took Place	Date:	
	Time:	
Contract Award Decision ²⁶ :	Date:	
	Number:	
Contract Award Notice:	Date:	
	Number:	
VI. The Basis of the Complaint		
(i) It is alleged that the [insert name of Candidate/Bidder/Supplier] has committed the following : <input type="checkbox"/> Violated the provisions of the law governing the procurement in which it is involved; <input type="checkbox"/> Has refused to sign a contract with the Public Body; <input type="checkbox"/> Has committed fraud; <input type="checkbox"/> Has provided falsified documents; <input type="checkbox"/> Has committed an act of connivance or corruption; <input type="checkbox"/> Has sustained damage on account of its failure to perform its obligation under a contract. <input type="checkbox"/> Other reasons: .		
(ii)]		
(iii) The violation came to our knowledge on:		
(iv) The nature of the allegation is the following:		
VII. Claim		
This Complaint is Claim for:	<input type="checkbox"/>	Suspend for definite or indefinite period the candidate / bidder / supplier;
	<input type="checkbox"/>	Give a written warning;
Request for Hearing (if any)	<input type="checkbox"/>	The Public Body requests for a Hearing.
	<input type="checkbox"/>	The Public Body considers that a Hearing is not necessary
VIII. Evidence		
The Claim is accompanied by:	<input type="checkbox"/>	A copy of the Invitation to Bid;
	<input type="checkbox"/>	A copy of the Bidding Documents;
	<input type="checkbox"/>	A copy of the Contract Award Notice;
	<input type="checkbox"/>	A copy of the Contract Document;
	<input type="checkbox"/>	Other relevant documents and evidence
IX. Statement of Adherence		
I/we hereby declare that the above information is true and accurate to the best of my/our knowledge and belief and that I/we accept the Proclamation and Directive in their entirety and undertake to carry out the Decision of the Board faithfully and without delay.		
X. Signature of the Public Body's Authorized Officer		
Name of Authorized Person:		
Title:		
Signature:		

²⁶ It might also be Cancellation Decision or other decisions made by the public body;