

AIC Decision on appeal #82

CASE NUMBER AI7336

MOZAMBIQUE CYCLONE IDAI AND KENNETH EMERGENCY RECOVERY AND RESILIENCE PROJECT (P171040) PROCUREMENT INFORMATION

(Decision dated May 26, 2021)

Summary of Decision

- The Access to Information Committee (“AIC”) notes that a portion of the requested information is publicly available, namely the brochures produced under the project and relevant project documents; additionally, contract award information is also publicly available, although it was not specifically requested. The AIC upholds the Bank’s decision to deny public access to the restricted portion of the requested information, namely the request for quotations document, the bids, the evaluation of quotations, the notification of the winning bidder, and final contract.
- ***Violation of Policy.*** The information contained in the request for quotation, the bids, the evaluation of quotations, and the notification of the winning bidder, reflects the Bank’s deliberations with the member country and/or third parties and information provided to the Bank in confidence; the final contract is restricted by the Bank’s prerogative to restrict access. For this reason, the AIC found that access to the restricted portion of the requested information is properly and reasonably restricted by the *Deliberative Information and Information Provided by Member Countries or Third Parties in Confidence* exceptions under the AI Policy (i.e., request for quotation, the bids, the evaluation of quotations, and the notification of the winning bidder) and by the Bank’s prerogative to restrict access (i.e., the final contract) and, thus, there is no violation of policy. Based on the above, the AIC upholds the Bank’s decision to deny public access to the restricted portion of requested information.
- ***Public Interest.*** The AIC dismisses the public interest portion of the appeal because the requested information is restricted by the *Information Provided by Member Countries and Third Parties in Confidence* exception under the AI Policy (in addition to the *Deliberative Information* exception) or the Bank’s prerogative to restrict access, neither of which is eligible for consideration on a public interest ground. For this reason, the AIC dismisses this portion of the appeal for appealing a matter that the AIC does not have authority to consider.

The Decision

Facts

1. On January 4, 2021, the World Bank (“Bank”) received a public access request (“Request”) seeking access to:

... all of the following please:

- 1) the original tender or Request for Quotations document
- 2) an example of the brochures produced under this contract, and the amount of brochures produced
- 3) the bids, including the amounts, submitted by UNITY DESIGNER (501708) and SECRIGRAFIA AFRICA (501723)
- 4) the final contract itself signed with the awarded bidder CAM PRODUCOES (501714)
- 5) any relevant project documents including but not limited to the project appraisal document and any other project preparation documents (for instance, to understand the intended recipients of the brochures).

related to the [Mozambique: Cyclone Idai & Kenneth Emergency Recovery and Resilience Project](#) (“Project”). (“Requested Information”)

2. The Bank consulted the responsible business unit to locate the Requested Information.

3. On March 17, 2021, the Bank replied to the Request. The Bank provided access to the three types of brochures produced under the Project, as well as to the Project’s Project Appraisal Document (“PAD”), Project Paper, and several other Project related documents routinely disclosed including, and not limited to, procurement plans, implementation status and results reports, and certain environmental and social information.¹ The Bank denied access to the remaining portion

¹ The Bank’s denial of access dated March 17, 2021:

- (a) provided the links to the three types of brochures produced under the Project:
<http://pubdocs.worldbank.org/en/368201615588149859/Mozambique-P171040-INAS-Brochures-samples-related-to-the-cyclone-Idai-and-Kenneth-Emergency-Recovery-and-Resilience-Project.pdf>
<http://pubdocs.worldbank.org/en/883571615588147772/Mozambique-P171040-INAS-Brochures-samples.pdf>
<http://pubdocs.worldbank.org/en/815851615588151148/Mozambique-P171040-INAS-Brochures-samples-related-to-the-cyclone-Idai-and-Kenneth-Emergency-Recovery-and-Resilience-Project.pdf>
- (b) stated, in relevant part:
(...)
Project Information Document (PAD) for the Mozambique - Cyclone Idai and Kenneth **Emergency Recovery and Resilience Project** (P171040)
<http://documents1.worldbank.org/curated/en/763461570154496796/pdf/Mozambique-Cyclone-Idai-and-Kenneth-Emergency-Recovery-and-Resilience-Project.pdf>

of the Request, i.e., the request for quotation, the bids, and the final contract, on the basis that this information is restricted from public access by either the *Deliberative Information* exception or the Bank’s prerogative to restrict access under the Bank’s Policy on Access to Information (“[AI Policy](#)”).

4. On March 25, 2021, the secretariat to the AIC received an application (“Application”) appealing the Bank’s denial of access to the Requested Information. The Application challenged the Bank’s decision based on a “violation of the AI Policy” and that there is a “public interest” case to override certain AI Policy exceptions that may restrict access to the Requested Information.

5. On March 26, 2021, the AIC, through its secretariat (“AIC Secretariat”), consulted the responsible business units to seek its views on the Requested Information in light of the appeal.

6. On April 19, 2021, the business unit provided its views on the Requested Information in light of the appeal. Although, in the business unit’s views, not part of the Request or the Requested Information, for completion of the record, the business unit also located the:

- (a) [contract award notice](#) disclosed by the member country, which provides information on bid prices, names of the bidders, name and amount of the awarded bidder, and the date and duration of the contract; and
- (b) evaluation of quotations and the notification of the winning bidder, both restricted by the *Deliberative Information* and *Information Provided by Member Countries or Third Parties in Confidence* exceptions under the AI Policy.

7. On April 28, 2021, the AIC discussed the Application at its regular meeting.

Findings and Related Decisions

8. In reviewing the Application in accordance with the AI Policy, the AIC considered:

- (a) the Request;
- (b) the Bank’s initial denial of access to the Requested Information;

Project Paper <http://documents1.worldbank.org/curated/en/426961601776820364/pdf/Mozambique-Cyclone-Idai-and-Kenneth-Emergency-Recovery-and-Resilience-Project-Additional-Financing.pdf>

To find the *other documents* disclosed regarding the project P171040, please follow the link below:
<https://projects.worldbank.org/en/projects-operations/document-detail/P171040>

Please be informed that the procurement process of this project is conducted according to the World Bank Procurement Regulations. You may download the regulations here:

<http://pubdocs.worldbank.org/en/178331533065871195/Procurement-Regulations.pdf>

- (c) publicly available information responsive to the Request;
- (d) the Application;
- (e) inputs from the relevant business units;
- (f) the nature of the Requested Information;
- (g) the AI Policy's *Deliberative Information and Information Provided by Member Countries or Third Parties in Confidence* exceptions; and
- (h) any precedent decision(s) by the AIC regarding information similar in nature to any portion of the Requested Information;
- (i) the Bank's exercise of its prerogative to restrict access to information.

Preliminary Matters

Overcoming the Bank's lack of initial denial of access

9. The AIC has authority to consider appeals after the Bank has denied access to information (*see* AI Policy, at Section III.B.8.(a) and (b).i). The Bank's initial decision to deny public access to the Requested Information was solely based on the documents initially located by the business unit during the request phase and exclusively limited to what was listed in the Request. However, during the consultations for the appeal phase, the business unit identified three additional pieces of information, one publicly available and two restricted from public access; although, in the business unit's views, these three additional pieces of information were not responsive to the Request (*see* para. 6 above). Despite the technical finding that there was no Bank denial of access to two of such additional documents located by the business unit during the appeal phase, the business unit's views clearly indicated that the outcome would have been the same (i.e., denial) had those documents been remitted back to the request phase for consideration and been actually considered then. Based on the above, for the sake of economy and efficiency and for completion of the record, the AIC decided to rectify the Bank's initial denial of access to consider it as including the additional two documents restricted from public access located by the business unit during the appeal phase, i.e., the evaluation of quotations and the notification of the winning bidder, both restricted by the *Deliberative Information and Information Provided by Member Countries or Third Parties in Confidence* exceptions under the AI Policy.

“Violation of the AI Policy”

10. Pursuant to the AI Policy, the Bank allows access to any information in its possession that is not on a list of exceptions (*see* AI Policy, at Section III.B.1). A requester who is denied public access to information by the Bank may file an appeal if the requester is able to establish a *prima facie* case that the Bank has violated the AI Policy by improperly or unreasonably restricting access to information that it would normally disclose under the AI Policy (*see* AI Policy, at Section III.B.8.(a).i).

11. The AI Policy states that the Bank “does not provide access to documents that contain or refer to information listed in subparagraphs (a) through (j)” of the AI Policy, which set out the AI Policy’s list of exceptions (*see* AI Policy, at Section III.B.2). Section III.B.2.(g) of the AI Policy, under the *Information Provided by Member Countries or Third Parties in Confidence* exception, provides that the Bank does not provide access to information provided to the Bank by a member country or a third party on the understanding of confidentiality, without the express permission of that member country or third party. Section III.B.2.(i) of the AI Policy, under the *Deliberative Information* exception, recognizes that, to facilitate and safeguard the free and candid exchange of ideas for the purpose of preserving the integrity of the deliberative processes, while the Bank makes publicly available the decisions, results, and agreement that result from its deliberative process, the Bank does not provide access to information prepared for, or exchanged during the course of, (a) its deliberations with member countries or other entities with which the Bank cooperates, and/or (b) its own internal deliberations (*see* AI Policy, at Section III.B.2.(i).i and ii). Safeguarding the deliberative process is also one of the AI Policy’s five guiding principles (*see* AI Policy, at Section III.A.1).

12. Notwithstanding the broad intent of the AI Policy in maximizing access to information, under exceptional circumstances, the Bank reserves its right to restrict access to information that it would normally disclose if it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure (*see* AI Policy, at Section III.B.1 and Section IV.2).

13. A requester who is denied public access to information by the Bank may file an appeal if the requester is able to establish a *prima facie* case that the Bank has violated the AI Policy by improperly or unreasonably restricting access to information that it would normally disclose under the AI Policy (*see* AI Policy, at Section III.B.8.(a).i). Appeals challenging the Bank’s exercise of prerogative to restrict access are considered by the AIC, whose decisions in the cases are final (*see* [Bank Directive/Procedure on Access to Information Policy](#), at Section III.B.5.b.ii).

14. In this case, the AIC found that:

- (a) there was no “original tender” under the Project, only a request for quotation;
- (b) the three types of brochures produced under the Project are publicly available (*see* para. 3 above, and footnote 1 of this Decision). The Bank, however, omitted in its denial “the amount of brochures produced”. A total of 60.000 brochures were produced under the Project, i.e., 20.000 for each of the three types of brochure;
- (c) relevant Project documents including but not limited to the PAD and other Project preparation documents are publicly available and the links to access such documents were provided to the requester in the Bank’s denial (*see* para. 3 above, and footnote 1 of this Decision).

15. With respect to:

- (a) the request for quotation, the bids, the evaluation of quotations, and the notification of the winning bidder, the AIC found that these documents reflect the Bank’s deliberations with the member country that result from the Bank’s supervision in Bank financed projects. The AIC found that such information is deliberative in nature. Additionally, all these documents also contain information provided to the Bank in confidence whose disclosure could adversely impact the competitiveness of procurement processes in Bank financed projects. Finally, the AIC found that, given the sensitivity of the deliberative information involved, the Bank did not seek the member country/borrower’s views on the possible disclosure of such information. The Bank did not do so because even if the member country/borrower was to agree to disclose this information, the Bank would not agree to disclose it, rendering the override of the *Information Provided by Member Countries or Third Parties in Confidence* ineffective as the *Deliberative Information* exception still restricts the information in question. Lastly, the AIC recognizes that the *Information Provided by Member Countries or Third Parties in Confidence* exception was omitted from the Bank’s denial. Nevertheless, the error in denying access to the information solely based on one of the AI Policy exceptions (i.e., *Deliberative Information* exception) is harmless because the information remains restricted from public access; and
- (b) the “final contract itself”, the AIC found that, as in previous cases decided by the AIC involving similar information:
 - (...) procurement contracts under Bank financed projects contain details whose disclosure could negatively impact competition under projects financed by the Bank, increase costs, and prevent the Bank from ensuring

the economy and efficiency necessary in the use of its funds.² Procurement contracts issued under Bank financed projects are documents owned by Borrower countries and reflect the agreements between Borrower countries and their respective contracting parties; the Bank is not a party nor a signatory of such contracts. Nevertheless, and as previously decided by the AIC in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, *Case No. AI6929, Kenya Supplier Contracts*, dated November 24, 2020, *Case No. AI7183, West and Central Africa Air Transport Safety and Security Project for Burkina Faso, Cameroon, Guinea, And Mali (P083751)*, dated November 24, 2020, and *Case No. AI7157, Cameroon Transport Project*, dated December 3, 2020, the Bank has an interest in restricting public access to contractual information resulting from procurement processes carried out in Bank-financed projects. Such interest is to enable the Bank to fulfill its mandate under its Articles of Agreement, i.e., make arrangements to ensure the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency (*see [Articles of Agreement](#)*, at Article III, Section 5(b)).³ As in such precedents decided by the AIC:

(...) [b]ecause (a) the AI Policy exceptions are insufficient to ensure the protection of the Bank's interests in procurement processes carried out under Bank financed projects, and (b) disclosing the Requested Information is likely to cause harm to the Bank's interests in the procurement process that outweighs the benefits of disclosure, as well as to the interests of contractors who are parties to those contracts, *there are exceptional circumstances that justify the business unit's decision to exercise the Bank's prerogative to restrict access to the Requested Information.* (emphasis added).⁴ (*see [AIC Decision on appeal #81](#)*, Case Number AI7128, Systematic Tracking of Exchanges in Procurement (STEP) (Decision dated April 28, 2021), at para. 29)

² See AIC's decisions in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, *Case No. AI6929, Kenya Supplier Contracts*, dated November 24, 2020, and *Case No. AI7183, West and Central Africa Air Transport Safety and Security Project for Burkina Faso, Cameroon, Guinea, And Mali (P083751)*, dated November 24, 2020.

³ See also [World Bank Procurement Regulations for IPF Borrowers](#), at Section I, para. 1.2, and at Annex II, para. 1.

⁴ See AIC's decisions in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, at para. 30.

16. Based on the above, the AIC finds that the Bank properly and reasonably restricted access to the portion of the Requested Information that is restricted by the *Deliberative Information* and *Information Provided by Member Countries or Third Parties in Confidence* exceptions, and by the Bank's prerogative to restrict access under the AI Policy. For this reason, the AIC upholds the Bank's decision to deny public access to the restricted portion of the Requested Information. The AIC also found that, notwithstanding this restriction to the "final contract itself", contract award information is public.

17. As noted in paragraph 13 above, the AIC decision is final on appeals challenging the Bank's denial of access based on the Bank's prerogative to restrict access. With respect to the portion of the Requested Information restricted from public access based on an AI Policy exception, i.e., access to the request for quotations, the bids, the evaluation of quotations, and the notification of the winning bidder, the requester can appeal to the Access to Information Appeals Board (*see* AI Policy, at Section III.B.8.(b).ii). The link to appeal such portion of the Requested Information is sent to requesters by separate communication.

"Public Interest" case

18. Pursuant to the AI Policy, a requester who is denied public access to information by the Bank may file an appeal on a "public interest" basis if the requester is able to make a public interest case to override certain AI Policy exceptions that restrict the information (*see* AI Policy, at Section III.B.8.(a).ii). Public interest appeals are limited to information restricted by the *Corporate Administrative Matters*, *Deliberative Information*, and/or *Financial Information* (other than banking and billing information) exceptions (*see id.*).

19. In this case, the AIC found that the information that remains restricted from public access is so restricted either by the *Information Provided by Member Countries or Third Parties in Confidence* exception (in addition to the *Deliberative Information* exception) or the Bank's prerogative to restrict access. Neither the *Information Provided by Member Countries or Third Parties in Confidence* exception or the Bank's prerogative to restrict access is eligible for consideration under public interest ground. For this reason, the AIC dismisses the public interest portion of the Application because it appeals a matter that the AIC does not have authority to consider (*see* AI Directive/Procedure, at Section III.D.1.a.(iii)).

20. Under the AI Policy, for appeals that assert a public interest case to override an AI Policy exception, the decision of the AIC is final (*see* AI Policy, at Section III.B.8.(b).i.).