

Access to Information Appeals Board Decision

Case Number AI7336-A

Documents concerning Mozambique-Cyclone Idai & Kenneth Emergency Recovery and Resilience Project (P171040)

Decision Dated January 14, 2022

Decision of the AI Appeals Board

1. The Access to Information Appeals Board (the AI Appeals Board or AIAB) has reviewed the application for appeal in this case and decided to admit the application in its entirety and to agree in part with the decision of the Access to Information Committee (the "AIC") to deny some of the requested information in its entirety, while releasing information outlined in the Appendix, for the reasons set out below.

Background of Initial Request and Appeal to AIC

2. The initial request and much of the subsequent correspondence between the requester and the Bank is set out in the [AIC decision of May 26, 2021](#), which is available on the Bank's website. Nevertheless, we summarize here the correspondence that preceded this appeal.
3. On January 4, 2021, the World Bank received a public access request seeking access to:
 - i. the original tender or Request for Quotations document.
 - ii. an example of the brochures produced under this contract, and the number of brochures produced.
 - iii. the bids, including the amounts, submitted by UNITY DESIGNER (501708) and SECRIGRAFIA AFRICA (501723);
 - iv. the final contract itself signed with the awarded bidder CAM PRODUCOES (501714);
 - v. 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.
4. On March 17, 2021, 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.
5. The Bank denied access to the remaining portion of the request – 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").

6. On March 25, 2021, the AIC received an application appealing the Bank's denial of access to the Requested Information 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. The Bank then located:
 - i. 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
 - ii. evaluation of quotations; and
 - iii. the notification of the winning bidder.
7. The Bank determined that these documents were all restricted by the Deliberative Information and Information Provided by Member Countries or Third Parties in Confidence exceptions under the AI Policy.
8. On April 28, 2021, the AIC heard the case and determined that they could 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 of which they found were restricted by the Deliberative Information and Information Provided by Member Countries or Third Parties in Confidence exceptions under the AI Policy.
9. 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; and (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).
10. With respect to interpreting the policy, the AIC determined that the request for quotation, the bids, the evaluation of quotations, and the notification of the winning bidder, reflect the Bank's deliberations with the member country that result from the Bank's supervision in Bank-financed projects and that the information is, therefore, deliberative in nature.
11. Additionally, the Bank found that 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. The AIC also 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 AIC found that there was an error in denying access to the information solely based on one of the AI Policy exceptions (i.e., Deliberative Information exception), but that this was harmless because the information remains restricted from public access.
12. The AIC referred to a number of previous precedents and found that the final contract itself contains 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, and thus the Bank correctly used the Bank's prerogative to restrict access under the AI Policy.

Arguments on appeal to AIAB

13. In the requester's appeal letter to the AIAB on the 29th of July 2021, the requester suggested that it was not clear how the disclosure of a mere request for quotations could harm competitiveness of procurement processes. The requester noted that "the request for quotation was presumably already public at some point in the past. If it was never public, then why was this the case? Why were these three companies the only three invited to bid? Limiting the number of potential bidders ought to only increase the onus on the bank to disclose the request for quotation."
14. Secondly, the requester indicated that the refusal to disclose the bids and evaluation of quotations makes it impossible to know why the bank paid roughly \$10 USD per brochure, noting that MZN 38,025,000 went solely to producing 60,000 brochures.

Admission of the Appeal

15. The Bank's AI Policy, Sec. III.B.8(b) sets out a two-stage appeal process. At the second appeals stage, the AIAB must look at whether the appeal is timely; establishes 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 Policy" (i.e., that it provides sufficient information that would reasonably support the appeal that the Bank violated the Policy by improperly or unreasonably restricting access to information that it would normally disclose under the Policy); and involves a matter that the AIAB "has authority to consider." [See also AIAB Operating Procedures, Sec. III.A.2(a)-(c)].
16. On the issue of timeliness, the secretariat to the AIAB has provided the following useful guidance:
 - i. The AIC decision on the appeal under Case No. AI7336 was made on May 26, 2021, but was only issued to the requester on June 1, 2021. The appeal by the requester was made on July 29, 2021. AIC decisions on the appeals are made at the AIC meetings. In this case, the decision to endorse the draft decision on the appeal was made at the AIC meeting held on May 26, 2021.
 - ii. The date the AIC endorses the decision on the appeal is the date of the decision recorded on the appeal. In this case, the appeal states "Decision dated May 26, 2021" to reflect the AIC meeting when the AIC made its decision on the appeal.
 - iii. Pursuant to the AIC Operating Procedures, once the AIC decides on the appeal, the AIC Secretariat notifies External and Corporate relations and the responsible business unit and gives them a three-day notice period before the decision on the appeal is issued to the requester and posted online. The issuance of the decision on the appeal as endorsed by the AIC is embargoed during this time.
 - iv. The decision on the appeal is issued to the requester and posted online **after the three-day notice period**. In this case, due to the Memorial Day holiday on May 31, the decision was issued to requester and posted online on June 1, 2021.
 - v. **The date when the requester receives the AIC decision is the date that starts the clock for the requester to file an appeal before the AIAB.** In this case, the requester received the decision on the appeal on June 1, 2021. The 60 calendar days to file an appeal

before the AIAB starts to count on June 1, 2021. Thus, the requester had until July 31, 2021, to file an appeal before the AIAB.

- i. The appeal before the AIAB was filed on July 29, 2021, within the 60 calendar day period to file an appeal before the AIAB.

16. We therefore find that the requester was timely in making their appeal.

17. The AIC decided to deny access to documents that fall within the ambit of the requested information on the basis that to do so does not constitute a violation of the AI Policy and, moreover, that the justification for denying access is the deliberative information and the information provided in confidence exceptions. We do, therefore, have authority to hear the appeal in relation to documents for which these exceptions have been utilized but not the information that has been withheld on the basis of the Bank's prerogative to restrict, on which we have no jurisdiction.

18. In relation to whether the appeal reveals a *prima facie* case that the Bank has violated the policy, we note that the requester's response was primarily to question the decision of the Bank. However, we follow previous decisions of the AIAB in finding that the principle of procedural fairness requires that a broad and purposive approach be taken to the right to appeal. It was not, surely, the intention of the drafters of the AI Policy to make it unduly burdensome for requesters to use the appeal process. It should not require legal representation or legal arguments. A lay person should be able to say "I don't like this decision and I want to use my right to appeal" – the ordinary meaning of the words in the AI Policy means that this is sufficient to find a *prima facie* case. We believe this was the requester's intention in this case as well.

AI Appeals Board Reasoning

19. This case is determined based on two exceptions: Deliberative Information; and Information Provided by Member Countries or Third Parties in Confidence.

20. The AI Policy states in relation to Deliberative information in Section III.B.2(i) that

(i) "**Deliberative Information.** The Bank, like any institution or group, needs space to consider and debate, away from public scrutiny. It generally operates by consensus, and it needs room to develop that consensus. During the process it seeks, and takes into account, the input of many stakeholders; but it must preserve the integrity of its deliberative processes by facilitating and safeguarding the free and candid exchange of ideas. Therefore, while the Bank makes publicly available the decisions, results, and agreements that result from its deliberative processes, it does not provide access to the following information:

- i. Information (including e-mail, notes, letters, memoranda, draft reports, or other documents) prepared for, or exchanged during the course of, its deliberations with member countries or other entities with which the Bank cooperates.

ii. Information (including e-mail, notes, letters, memoranda, draft reports or other documents) prepared for, or exchanged during the course of, its own internal deliberations, (...)"

21. The AI Policy states in relation to Information Provided by Member Countries or Third Parties in Confidence exception in Section III.B.2(g) that:
 - (i) Information provided by Member in Confidence. The Bank has an obligation to protect information that it receives in confidence. Thus, 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.
22. The Bank Business Unit found that two of the documents in the appeal were covered by the deliberative exception while the AIC claimed that both exceptions (Deliberative and third party in confidence) applied to the Original tender or Request of Quotations document and the bids, including the amounts, submitted by Unity Designer (501708) and Secrigrafia Africa (501723), the Evaluation report and the Notification of contract award.
23. In fulfilling our mandate, the AI Appeals Board must read and apply the AI Policy as it is written, using the ordinary meaning of the words (see AIAB Operating Procedures, Sec. III.A.1).
24. In ascertaining the applicability of the exceptions in relation to two of the documents – the *Invitation to Bid/ request for quotation* and *List of bids from the suppliers* – we reviewed the information contained in both documents against the information provided publicly on the Bank’s website and sought to ascertain whether there was clear evidence that the information was provided under the understanding of confidentiality or whether the fact that the information was made public by the member country rendered any original confidentiality moot.
25. In ascertaining the applicability of this exception in terms of both the *Invitation to Bid/ request for quotation*, and *List of bids from the suppliers*, we have found that both documents were held confidentially by the Bank as part of the post contract review, and not all information in the documents was made public on the World Bank website. We find that these two documents were provided under the understanding of confidentiality because both the request for quotation and the list contained sensitive supplier-related financial information. There was also no evidence of release of all of the information contained in these documents, even though the amounts of the final bids are available on the [Bank website](#) .
26. In relation to the *Evaluation of bids* and the *Notification of contract award*, the AIC applied both the deliberative exception and the third party in confidence exception. In ascertaining the applicability of the exceptions, we note that the Bank should apply the exceptions narrowly. In this regard we follow the approach taken by the AI Appeals Board previously (the “[CBI Report](#)” case) where the AIAB made it clear in regard to the deliberative exception that:

“...the deliberative exception must be narrowly construed. It cannot simply be used to withhold any information which has been the subject of internal discussion by staff of the Bank at whatever level.” (Paragraph 19 of AIAB Decision AI5197, *CBI Report*, dated October 17, 2018).

27. The *Evaluation of bids* and *Notification of contract award* were shared to the Bank as part of a post contract review after the decision was already taken on the choice of supplier by the Government of Mozambique. In applying the AI policy to both documents, we have determined that they do not meet the criteria to be deliberative information. Firstly, the documents do not contain any information which constitutes a deliberation by the Bank with a member country or other entity with which the Bank cooperates or any of its own internal deliberations about the review of the contract. Secondly, the information in the evaluation and the notification of contract were both clearly decisional – that is to say, the information contained in both documents reflected the final decision as to who would be awarded the contract. In the case of the evaluation, it was the decision that was recorded by the bid evaluation committee in Mozambique. Indeed, the evaluation of bids is clearly decisional as it states the bid price that was chosen and the reasoning for choice of this bid. In the case of the contract notification, it was Notification of Contract Award to all the bidders of the winner of the contract.
28. In a previous case (“[Tanzanian Statistics Act](#)”), the AIAB held that: “Information that is factual and/or purely transactional, and that does not reveal the substance of the deliberation ... is not exempt. ... Information that is actually a reflection of the decision or outcome of the deliberation (which is ‘decisional’ rather than ‘deliberative’) and therefore not exempt.” (paragraph 43 of the AIAB Decision, Case No. AI6479-A, *All documents concerning amendments to the Tanzanian Statistics Act*, May 4, 2021). The fact that both documents may have been discussed as part of a post-contract review within the Bank is not sufficient for it to be regarded as deliberative. The document itself must contain deliberative information. Deliberative information must facilitate debate, away from public scrutiny; room to develop consensus; and the safeguarding of the free and candid exchange of ideas.
29. This takes us to the second exception applied, namely ‘Information provided in Confidence’; to uphold the determination of the Bank and AIC we must also analyze whether this exception was properly applied to both documents. The AIAB concludes that the information contained in the evaluation of the bids and the notification of contract does not retain a character of confidentiality that would be required to maintain the exception. The member country has already provided disclosure of the contract award by notice OP00125019 (dated April 12, 2021), which provides information on bid prices, the names of the bidders, the name and amount of the awarded bidder, and the date and duration of the contract (see: <https://projects.worldbank.org/en/projects-operations/procurement-detail/OP00125019>). The information made available in the public notice is the same as that in the report of the evaluation of the bids and the notification of contract award. In this case, therefore, we find that any confidentiality in that particular information has been waived by the member country or is rendered moot by the public disclosure.

Findings of the AIAB

30. Accordingly, we find that the Bank has violated the AI Policy in part and that the information specified and set out in the Appendix attached to this Decision should be disclosed.

31. The AI Appeals Board’s decision is final.

APPENDIX

AI Policy Exception applied by Bank		Document name	AIAB Decision
1	Deliberative & Client / Third Party Confidence (official use only)	Geng 003 - Invitation to Bid/ request for quotation	Third party in Confidence exception properly applied
2	Deliberative & Client / Third Party Confidence (official use only)	Geng001 List of bids from the suppliers	Third party in Confidence exception properly applied
3	Deliberative & Client / Third Party Confidence (official use only)	Geng 002 – Evaluation report	Violation of AI Policy - Release.
4	Deliberative & Client / Third Party Confidence (official use only)	Geng 004 – Notification of Contract Award	Violation of AI Policy - Release.