

THE RULES OF THE BID PROTEST COMMITTEE

(made under Regulation 13 (6) of the Procurement Regulations)

1. Citation

These Rules may be cited as the Bid Protest Committee Rules 2016.

2. Interpretation

In these Rules-

“complainant” means the person bringing the claim;

“Committee” means the Bid Protest Committee as constituted under section 54 of the Procurement Act, Cap 73:05;

“respondent” means the person against whom the claim is made.

3. Overriding Objective

(1) The overriding objective of these Rules is to enable the Bid Protest Committee to deal with issues fairly and justly and includes —

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

(2) In order to give effect to the overriding objective of these rules the Committee may-

- (a) lengthen or shorten any time limit in these Rules;
- (b) add or remove a party;
- (c) allow any filing to be amended;
- (d) determine and direct the order in which issues in a proceeding, including issues considered by a party or the parties to be preliminary, will be considered and determined;
- (e) define and narrow the issues in order to decide a complaint;
- (f) make or cause to be made an examination of records or other inquiries, as it considers necessary;
- (g) determine and direct the order in which evidence will be presented;
- (h) permit a party to give a narrative before questioning commences;
- (i) question any party or witness;
- (j) limit the evidence or submissions on any issue;
- (k) require a party or other person to produce any document, information or thing and to provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form;

- (l) make any such further order as are necessary to give effect to an order or direction under these Rules.

4. Powers of the Committee

- (a) The Committee may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective.
- (b) These rules do not restrict that general power and the Committee shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence.
- (c) The Committee is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

5. Irregularities and non-compliance

- (1) Non-compliance with any provision of these Rules does not of itself render void the proceedings or any step taken in the proceedings.
- (2) In the case of non-compliance, the Committee may take such action as it considers just, which may include all or any of the following—
 - (a) may decide not to deal with a complaint that is not filed in compliance with these Rules;
 - (b) waiving or varying the requirement;
 - (c) striking out the claim or the response, in whole or in part;
 - (d) barring or restricting a party's participation in the proceedings.

6. Time

- (1) Where an order of the Committee refers to a number of days, the reference is to calendar days.
- (2) Where an action is to be done within a specified number of days, the days are counted by excluding the first day and including the last day.
- (3) When the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.
- (4) The Committee may on its own initiative or on application of a party extend or shorten any time limit specified in these Rules or in any decision whether or not (in the case of an extension) time has expired.

7. Setting dates in a proceeding

The Committee may schedule hearing dates, or other dates in a proceeding, with or without consultation with the parties, as the Committee considers appropriate.

8. Form of Complaint

- (1) The complaint shall include the following particulars-
 - (a) the names and contact details of the parties;
 - (b) a statement of the facts supporting the claim;
 - (c) the points at issue;
 - (d) the relief or remedy sought; and
 - (e) the legal grounds or arguments supporting the claim.
- (2) A copy of any contract or other legal instrument out of or in relation to which the dispute arises shall be annexed to the complaint.
- (3) The complaint shall, as far as possible, be accompanied by all documents and other evidence relied upon by the complainant, or contain references to them.
- (4) The respondent shall communicate its response in writing to the complainant and the Committee within five days of receipt of the claim.
- (5) The response of the respondent shall, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.
- (6) A complainant who has commenced a civil proceeding in a court seeking an order with respect to any of the allegations in the complaint shall include a copy of the statement of claim with the complaint.
- (7) Upon receiving a complaint, the Committee shall determine whether it complies sufficiently with these Rules to allow it to be processed.
- (8) A complaint not sufficiently complete may be-
 - (a) sent back to the complainant with an explanation as to how the complaint is incomplete;
 - (b) re-submitted not later than five days after the date that the complaint was sent back; and
 - (c) closed as not accepted pursuant to Rule 5 (2) (a), if it is not completed.

9. Written representations

The Committee shall consider any written representations from a party, including a party who does not propose to attend the hearing, if they are delivered to the Committee and to all other parties not less than five days before the hearing.

10. Non-attendance at hearing

- (1) Where a party has been notified of a hearing and fails to attend, the Committee may-
 - (a) proceed in the party's absence;
 - (b) determine that the party is not entitled to further notice of the proceedings;
 - (c) determine that the party is not entitled to present evidence or make submissions to the Committee;
 - (d) decide the complaint solely on the materials before it;
 - (e) dismiss the claim; or
 - (f) take any other action it considers appropriate.
- (2) The Committee, before making a decision under paragraph (1), shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

11. Procedure

- (1) As soon as practicable after receiving the complaint, and after inviting the Parties to express their views in writing the Committee may decide to hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument.
- (2) At the hearing the Committee may ask questions of any party or person appearing at the hearing.
- (3) The Committee at any time, after inviting the parties to express their views, extend or shorten any period of time prescribed under these Rules or agreed by the parties.
- (4) All communications to the Committee by one party shall be communicated by that party to all other parties and such communications shall be made at the same time, except as otherwise permitted by the Committee.
- (5) The Committee may, at the request of any party, allow one or more third persons to be joined in the protest proceedings as a party unless the Committee finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties.

- (6) No complaint that is within the jurisdiction of the Committee shall be finally disposed of without affording the parties an opportunity to make oral submissions in accordance with these Rules.
- (7) A complaint shall not be disposed of without written reasons.
- (8) The location of in-person hearings shall be determined by the Committee.

12. Recording of Proceedings

The Committee does not normally record or transcribe verbatim its proceedings and where a hearing is recorded the recording shall not form part of the Committee's record of proceedings.

13. Public Proceedings

- (1) The Committee's hearings are not open to the public, except where the Committee determines otherwise.
- (2) The Committee may make an order to protect the confidentiality of any person or sensitive information where it considers it appropriate to do so.

14. Deferral of complaint

- (1) The Committee may defer consideration of a complaint, on such terms as it may determine, on its own initiative, at the request of a complainant, or at the request of any party.
- (2) A complainant may file a complaint with the Committee and at the same time, ask the Committee to defer consideration of the complaint if there are other legal proceedings dealing with the subject-matter of the complaint.
- (3) Where a complaint is filed with a request for deferral, the complainant shall include the following additional information with the complaint-
 - (a) identifying information about the other legal proceeding dealing with the subject matter of the complaint; and
 - (b) a copy of the document that commenced the other legal proceeding.
- (4) The Committee may not defer consideration of a complaint without first giving all parties, and any affected persons or organisation identified in the complaint or response, an opportunity to make submissions on the request for deferral.
- (5) A complaint may also be deferred where a hearing into the complaint has commenced upon application by any of the parties to a complaint for such a deferral.

- (6) Where a complainant wants the Committee to proceed with a complaint that was deferred pending completion of another legal proceeding, the complainant shall make a request in writing to the Committee no later than ten days after the completion of the other proceedings.
- (7) In all circumstances it shall be in the discretion of the Committee whether to defer the complaint and where a complaint has been so deferred whether to commence hearing of the complaint.

15. Waiver of right to object

A failure by any party to object promptly to any non-compliance with these Rules shall be deemed to be a waiver of the right of such party to make such objection, unless such party can show that, under the circumstances, its failure to object was justified.

16. Withdrawal of claim

- (1) At any time before the conclusion of the hearing a complainant may withdraw his or her protest.
- (2) Where a complainant informs the Committee either in writing or in the course of a hearing, that a claim or part of it, is withdrawn, the claim or part of it comes to an end.
- (3) Where a claim or part of it has been withdrawn under this Rule, the Committee shall issue a decision dismissing it.

17. Awards of the Bid Protest Committee

- (1) Unless it dismisses the complaint as being frivolous, in which case the complainant may lose the registration fee, the Committee may grant any of the following remedies-
 - (a) reject the complaint, stating its reasons and advising the procuring entity to continue with the procurement process;
 - (b) state the rules or principles that govern the subject matter of the complaint and instruct both parties to act accordingly;
 - (c) prohibit the procuring entity from acting or deciding unlawfully or from following an unlawful procedure;
 - (d) annul in whole or in part an unlawful act or decision by the procuring entity, other than any act or decision bringing the procurement Contract into force;

- (e) order the procuring entity to compensate the complainant for any reasonable costs incurred by the complainant as a result of an unlawful act or decision of, or procedure followed by, the procuring entity;
- (f) order that the procurement proceedings be terminated.

18. Form and Effect of Award

- (1) The Committee may make separate awards on different issues.
- (2) All awards shall be made in writing and shall be final and binding on the procuring entity.
- (3) The award of the Committee shall not be open to administrative review.
- (4) The award of the Committee shall be communicated in writing to the complainant, copied to the Administration and the procuring entity, stating the reasons for the decision and any remedies granted.
- (5) Once the complaint has been finally dealt with by the Committee, the complaint and the award shall be promptly made available by the Administration for inspection to the general public, provided, however, that no information shall be disclosed if disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

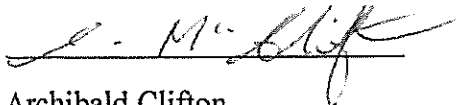
19. Confidentiality of Documents Disclosed under these Rules

Parties and their representatives shall not use documents obtained under these Rules for any purpose other than in the proceeding before the Committee.

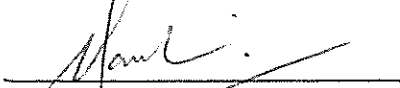
Made this day of September, 2016.



Joann Bond
Chairman



Archibald Clifton
Member



Colin Sawh
Member

