

## **Existence of an independent administrative procurement complaints system**

1. A bidder, whose tender or proposal has been rejected may submit a written protest to the procuring entity **(Sec. 52 [1] of the Act)**. If the procurement proceedings have already led to an effective contract, the complainant may complain directly to the Bid Protest Committee in accordance with the procedure set out in Regulation 12.
2. The protest must be submitted within five (5) business days following publication of the contract award decision **(Sec. 52 [3] of the Act)**.
3. If the protest is not reviewed by the procuring entity within five (5) business days from the date of the protest's submission, the bidder may submit a request for review to the National Board (NB), in the absence of the Public Procurement Commission **(Sec. 53 [1] of the Act)**.
4. The NB/Administration shall conduct bid protest reviews through an independent, three (3) person Bid Protest Committee (BPC) comprising:
  - one member appointed by the Minister of Finance;
  - one by the Association appearing to the Minister to represent contractors; and
  - one by the Attorney General.

### **(Sec.54 [4] of the Act/Sec.12 [1] of the Regulations)**

5. The members of the BPC shall be appointed from among professionals who are particularly competent in the field of procurement **(Sec. 53 [4] of the Act)**.
6. The Bid Protest Committee shall proceed urgently with the review of the complaint and shall make every effort to reach its award decision within ten (10) working days from receipt of the complaint **(Sec. 13[8] of Reg.)**.
7. The BPC shall issue a written decision within 15 business days of the conclusion of the review, stating the reasons for the decision and the remedies granted, if any. **Final award is suspended during this period (Sec. 53 [5] of the Act)**.
8. The suspension referred to above, and detailed in the Regulations, shall not apply if a procuring entity certifies that public interest considerations require the procurement to proceed. The certification, which shall state the grounds for the finding that such considerations exist and which shall be made part of the record of the procurement proceedings, is not open to complaint and review. **(Sec. 14 [1] and [3]of the Reg.)**.
9. This decision of the BPC shall be final and immediately binding upon the procuring entity **(Sec. 53 [6] of the Act)**.

## **Steps in the Review Process**

- 1) A bidder, whose tender or proposal has been rejected may submit a written protest to the procuring entity (**Sec. 52 [1] of the Act**). If the procurement proceedings have already led to an effective contract, the complainant may complain directly to the Bid Protest Committee in accordance with the procedure set out in Regulation 12.
- 2) Whenever a complaint is submitted to a procuring entity, the entity shall consider the subject matter of the complaint and decide whether to reject the complaint or to implement any corrective action in order to bring the procurement proceedings in conformity with the Act. Within five (5) working days of receipt of the complaint, the procuring entity shall issue a written decision to the complainant, stating the reasons for the rejection of the complaint or advising on the corrective action that has been taken. (**Sec.11[1] of the Reg.**)
- 3) If the complainant is not satisfied with the decision of the procuring entity, or if the procuring entity fails to issue its decision within five (5) working days, and the complainant wishes to pursue its complaint, it must within three (3) working days seek review by the Bid Protest Committee. (**Sec.11[2] of the Reg.**)
- 4) The Complaint shall be accompanied by the registration fee determined by the Administration and published on the Website (**Sec.13[2] of the Reg.**).
- 5) A copy of the complaint shall be sent simultaneously by the complainant to the procuring entity concerned (**Sec.13[3] of the Reg.**).
- 6) The complaint shall contain:-
  - a) an identification of the procuring entity and the procurement proceedings against which the complaint is directed;
  - b) a succinct description concerning the alleged breach by the procuring entity of the Act and the remedy sought from the Bid Protest Committee; and
  - c) a statement verifying that the registration fee required according to paragraph (2) has been deposited with the Administration and that a copy of the complaint has been sent to the procuring entity.(**Sec.13[4] of the Reg.**)
- 7) Upon receipt of the complaint and the registration fee the Administration shall pass over the complaint to the Chairperson of the Bid Protest Committee. At the same time, the Administration shall advise the complainant and the procuring entity concerned of the action it has taken (**Sec.13[5] of the Reg.**).
- 8) Promptly after receiving the complaint, the chairperson of the Bid Protest Committee shall cause the Committee to meet. The Bid Protest Committee conduct its review proceedings in accordance with the Regulations and with such detailed procedural rules as the Committee decides in the interest of giving a fair hearing to parties concerned, while at the same time observing the need for urgency(**Sec.13[6] of the Reg.**).
- 9) The Committee shall make every effort to reach its award decision within ten (10) working days from receipt of the complaint (**Sec.13[8] of the Reg.**).

- 10) Unless it dismisses the complaint as being frivolous, in which case the complainant may lose the registration fee, the Bid Protest 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.

**(Sec.13[7] of the Reg.)**

- 11) The award of the Committee shall be communicated in writing within fifteen (15) days to the complainant, copied to the Administration and the procuring entity, stating the reasons for the decision and any remedies granted. **(Sec.53 [5] of the Act/Sec.13[8] of the Reg.)**
- 12) The award of the Bid Protest Committee shall not be open to administrative review **(Sec.13[9] of the Reg.)**.
- 13) Once the complainant has been finally dealt with by the Bid Protest 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 its 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 **(Sec.13[10] of the Reg.)**.

**NB: The timely submission of a complaint under Regulation 11 suspends the procurement proceedings until such time as either-**

- (a) the complaint is settled amicably between the complainant and the procuring entity concerned ;*
- (b) the complainant fails to submit its complaint to the Bid Protest Committee within the time period stated in Regulation 11, paragraph (2) (i.e within three [3] working days);*
- (c) the complaint is dismissed or rejected by the Bid Protest Committee;*
- (d) the decision of the Bid Protest Committee has been announced and the procuring entity has been taken any corrective action ordered by the Bid Protest Committee;*
- (e) the Bid Protest Committee decides for some other reason to lift the suspension.*

**(Sec.14[1] of the Reg.)**