

GUYANA

No. 9. 2004

REGULATIONS

Made under

THE PROCUREMENT ACT 2003
(No. 8 of 2003)

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IN EXERCISE OF THE POWERS CONFERRED ON ME BY SECTION 61 OF THE PROCUREMENT ACT 2003, AND WITH THE ADVICE OF THE NATIONAL BOARD, I HEREBY MAKE THE FOLLOWING REGULATIONS: -

**PART I
GENERAL PROVISIONS**

Citation and commencement.

1. These Regulations may be cited as the Procurement Regulations 2004 and shall come into operation on 29th November, 2004.

Interpretation.

2. (1) In these Regulations, "Website" means the Internet Website to be created by the Administration under regulation 4.

(2) Words and phrases defined in the Act which are used in these Regulations have the meanings given to them under the Act.

Objective.

3. The objective of these Regulations is to ensure proper administration of the Act by adding specific instructions on the implementation of various provisions in the Act.

**PART II
PUBLICITY**

Publication of contract awards and other data.

4. (1) The Administration shall create an Internet Website for the purpose of giving publicity to contract awards and to otherwise disseminate information about public procurement.

(2) Within five days of dispatching notice concerning the award of any contract exceeding \$200,000. in value, the procuring entity shall provide a report to the Administration with the following information about the contract-

- (a) name of the procuring entity;
- (b) date of award;
- (c) name of the party to whom the contract was awarded;
- (d) object of the contract (short description and classification);
- (e) amount and currency of the contract;
- (f) procurement method used;
- (g) number of tenders, proposals or quotations received;
- (h) contract identification number/letter.

(3) Within two days of receiving any report of the type mentioned in the preceding paragraph, the Administration shall publish the information obtained on the Website.

(4) The information contained on the Website shall be freely available to the general public.

(5) The Administration shall devise a coding and classification system for goods, works and services acquired in public procurement with a view to enabling statistical data from the Website to be made available to interested officials and the general public.

(6) The Administration shall organise the Website in such a manner as to provide information on public procurement in general, including

business opportunities, and to facilitate access to standard forms and documents in use by the Government.

PART III THRESHOLD VALUES

Review by Tender
Boards.

5. Procuring entities shall submit contract award recommendations for review by the various Tender Boards with respect to contracts of the types and values set forth in Schedule 1.

Schedule 1.

Exceptions to
open tender.

6. The threshold values below which procurement methods other than open tendering may be used shall be as set forth in Schedule 2.

Schedule 2.

Adjustment of
threshold
values.

7. The Administration shall compile information obtained under regulation 4 and other relevant data demonstrating the workload of the various Tender Boards, and shall prepare an annual report to the Minister indicating the need, if any, to adjust the threshold values set forth in Schedules 1 and 2.

Schedules 1 and 2.

PART IV PROCUREMENT PROCEDURES

Forms of
documents for
procurement

8. Pending the establishment of the Public Procurement Commission, the National Board shall prepare and make available on the Website and through the dissemination of printed copies, free of charge to procuring entities, the following forms of documents for procurement-

- (a) standard bidding documents, including forms for invitations to tender, instructions to tenderers and general conditions of contract, for -
- (i) goods; and
 - (ii) works;
- (b) standard pre-qualification documents;
- (c) standard request for proposals for consulting services, including general conditions of contract;
- (d) guidelines for the preparation of specific provisions in documents of the kind referred to in sub-paragraphs (a) - (c), such as models for bid evaluation criteria;
- (e) forms for evaluation reports;
- (f) other forms of documents, as well as accompanying explanatory guidelines, in response to demand from procuring entities, suppliers or contractors.

9. (1) Tender security shall be required whenever the estimated value of the contract exceeds, in the case of contracts for goods and services (other than consulting services), \$3,000,000., and in the case of contracts for construction, \$15,000,000.

(2) Whenever tender security is required, the procuring entity shall determine, and specify in the invitation to tender, the amount in Guyana dollars in which the security shall be expressed, which amount shall correspond to not less than one and not more than two percent of the estimated value of the contract.

(3) Unless the National Board otherwise decides in response to a request from the procuring entity, the tender security shall be in the form of an on-demand guarantee by a bank or other reputable financial institution, which institution shall be independent of the tenderer.

PART V ADMINISTRATIVE REVIEW

Right to
complain.

10. (1) Any supplier or contractor who claims to have suffered, or who may suffer, loss or damage due to a breach of a duty imposed on a procuring entity by the Act, including any subsidiary legislation, may complain in accordance with the provisions of this Part.

(2) Notwithstanding the provisions of paragraph (1), a supplier or contractor is not permitted to complain against a decision taken by the Cabinet under section 54 of the Act.

(3) The following shall not constitute valid grounds for a complaint-

(a) a refusal by a procuring entity to short-list an applicant in response to an Expression of Interest under section 44 of the Act;

(b) a decision by a procuring entity to reject all tenders, proposals or quotations under section 40 of the Act.

(4) If the procurement proceedings have not led to an effective contract, the complainant shall-

(a) in the first instance, submit its complaint for consideration by the procuring entity in accordance with regulation 11; and

(b) where the complainant is dissatisfied with the entity's response to the complaint, or fails to receive a response from the entity within the time limit mentioned under regulation 11, paragraph (1), the complainant may complain to the Bid Protest Committee in accordance with the procedure set out in regulation 12.

(5) 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.

(6) Complaints under paragraphs 4(a) and 5 shall be submitted within seven working days of when the complainant became aware of the circumstances giving rise to the complaint or when it should have become aware of those circumstances, whichever is earlier.

11. (1) 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 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.

(2) If the complainant is not satisfied with the decision of the procuring entity, or if the procuring entity fails to issue its decision within the period stated in paragraph (1), and the complainant wishes to pursue its

Complaints to
the procuring
entity.

complaint, it must within three working days seek review by the Bid Protest Committee in accordance with the procedure set out in regulation 13.

Bid Protest
Committee.

12. (1) The Administration shall establish a Bid Protest Committee to deal with alleged breaches of the Act by procuring entities.

(2) The Bid Protest Committee shall consist of three persons nominated in accordance with section 53(4) of the Act. The Administration may request the nomination of one or more personal deputies for each member of the Bid Protest Committee. The member nominated by the Attorney General shall act as Chairperson of the Committee.

Procedure for
review by the
Bid Protest
Committee.

13. (1) If a supplier or contractor wishes to seek review by the Bid Protest Committee of any decision, act or omission by a procuring entity, it shall submit its complaint in writing to the Administration within the period stated in regulation 11, paragraph (2).

(2) The complaint shall be accompanied by the registration fee determined by the Administration and published on the Website.

(3) A copy of the complaint shall be sent simultaneously by the complainant to the procuring entity concerned.

(4) 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.

(5) 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.

(6) Promptly after receiving the complaint, the Chairperson of the Bid Protest Committee shall cause the Committee to meet. The Bid Protest Committee shall conduct its review proceedings in accordance with these 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 referred to in paragraph (8).

(7) 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.

(8) 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 working days from receipt of the complaint. 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.

(9) The award of the Bid Protest Committee shall not be open to administrative review.

(10) Once the complaint 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

werty. /

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.

14. (1) 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);
- (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 taken any corrective action ordered by the Bid Protest Committee;
- (e) the Bid Protest Committee decides for some other reason to lift the suspension.

(2) Upon the Administration receiving a complaint from a complainant seeking review by the Bid Protest Committee, and the Administration having been satisfied that the fee has been properly provided, the Administration shall remind the procuring entity to continue the suspension until it may be lifted on any of the grounds set out in paragraph (1).

(3) The suspension provided for by paragraph (1) 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 a part of the record of the procurement proceedings, is not open to complaint and review in accordance with the provisions of this Part.

(4) Any decision by a procuring entity or by the Bid Protest Committee in response to a complaint, and the grounds and circumstances thereof, shall be made part of the record of the procurement proceedings.

15. The Administration shall not be involved in the resolution of a complaint but shall provide logistic support to the Bid Protest Committee in the discharge of its functions.

Support provided
by the
administration to
the Bid Protest
Committee.

Regs. 5 and 7

SCHEDULE 1

THRESHOLDS FOR REVIEW BY TENDER BOARDS

Procuring entities shall submit award recommendations for review by the various Tender Boards with respect to contracts of the following types and values-

Type of Board	Type of Contract	Contract value (in G.\$m)
(a) National	All types	All contracts exceeding the maxima for other boards
(b) Regional	Goods and services (other than consulting)	0.25 - 6.0
	Construction	0.6 - 9.0
	Consulting services	0.4 - 0.5
(c) Ministerial/ Departmental/ Agency	Goods and services (other than consulting)	0.25 - 0.6
	Construction	0.6 - 1.0
	Consulting services	0.4 - 0.5
(d) Ministry of Public Works and Communications	Goods and services (other than consulting)	1.0 - 4.0
	Construction	1.0 - 8.0
	Consulting services	1.0 - 3.0

(e) Ministry of Agriculture Goods and services 1.0 – 4.0

(other than consulting)

Construction 1.0 – 8.0

Consulting services 1.0 – 3.0

1500-2000 million
annual

(less but can
still have with
H&T)

Contract award decisions below the stated values are the responsibility of the procuring entity and shall be taken in the manner determined by the Head of the Procuring Entity.

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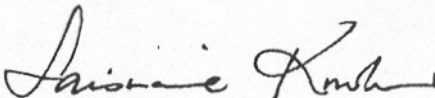
Regs. 6 and 7

SCHEDULE 2

EXCEPTIONS TO OPEN TENDERING

1. The threshold foreseen in section 26(1)(b) of the Act for use of the restricted tendering method of procurement shall be \$1,000,000. in the case of contracts for goods and services (other than consulting services) and \$5,000,000. in the case of contracts for construction.
2. The threshold foreseen in section 27(1) of the Act for use of the request for quotations method of procurement shall be \$800,000.
3. The threshold foreseen in section 29 of the Act for use of the community based method of procurement shall be \$1,500,000.

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Made this 25th. day of November, 2004.

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Minister of Finance.