

DRAFT

GOVERNMENT OF GUYANA

**REGULATIONS ON SUSPENSION AND DEBARMENT FROM PARTICIPATION IN
PUBLIC PROCUREMENT**

Made under

THE PROCUREMENT ACT CAP. 73:05

ARRANGEMENT OF REGULATIONS

PART I GENERAL PROVISIONS	
Citation and commencement	1. These Regulations may be cited as the Regulations on Suspension and Debarment from Participation in Public Procurement and shall come into operation on [...].
Interpretation	2. (1) In these regulations, “Act” means The Public Procurement Act Cap. 73:05 “Affiliates” is used in the sense that business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the supplier or contractor that was debarred, suspended or proposed for debarment. (FAR 9.403)

“Coercive practice” is impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party.

“Collusive practice” is any arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

“Corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

“Debarment” is a determination by the Public Procurement Commission that a supplier or contractor should be excluded from participating in procurement proceedings for a prescribed period of time.

“Fraudulent practice” is any act or omission, including misrepresentation that knowingly misleads or attempts to mislead a party to obtain financial or other benefit, or to avoid an obligation.

“Obstructive practice” is (a) deliberately destroying, falsifying, altering or concealing evidence material to an investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of inspection and audit rights.

“Prohibited practice(s)” means either of the following, a corrupt practice, a fraudulent practice, a coercive practice, a collusive practice, an obstructive practice, or a combination of some or all of these practices“

Public interest” is anything affecting the rights, health or finance of the public at large.

“Public Procurement Commission Tribunal” means the Public Procurement Commission Tribunal established in accordance with Article 212 EE of the Constitution of the Co-operative Republic of Guyana.

	<p>“Suspension” is a temporary prohibition for any party or potential party to participate in public procurement proceedings by a procuring entity while an investigation or the processing of a case by the Public Procurement Commission is ongoing.</p> <p>(2) Words and phrases defined in the Act which are used in these Regulations have the meanings given to them under the Act.</p>
Objectives and authority	<p>3. The objective of these Regulations is to ensure proper administration of the Act by adding specific instructions on the debarment proceedings referred to in section 17(2)(f) of the Act.</p> <p>4. The adoption of these Regulations is pursuant to sections 17(2)(f) and 61 of the Act and apply to the suspension and debarment of suppliers or contractors.</p>
<p>PART II</p> <p>GROUND AND PROCEDURES FOR DEBARMENT AND SUSPENSION</p>	
Grounds for debarment	<p>5. The serious nature of debarment requires that it be imposed only in the public interest. Debarment is discretionary and may be imposed only on the grounds referred to below:</p> <p>(1) any false information supplied in the process of submitting a bid; or prequalification application;</p> <p>(2) collusion between the bidders or a bidder and a public official concerning the formulation of any part of the bidding documents;</p> <p>(3) coercion or connivance to interfere with the participation of competing bidders;</p> <p>(4) misconduct relating to the submission of bids involving fraud, corruption, collusion, coercion or price fixing, or in the implementation of a procurement contract (e.g., intentional or negligent billing irregularities, submitting false or frivolous or exaggerated claims, documents, or records, falsification of claims, documents, or records;</p> <p>(5) conviction of a criminal offence, or a civil judgment, for commission of a criminal offence or fraud relating to obtaining or attempting to obtain, or performing, a procurement contract or subcontract;</p> <p>(6) (1) conviction of a crime related to business or professional activities, or other violation of law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of the Public Procurement Commission indicates that the supplier or contractor is unable to perform responsibly or which reflects a lack of integrity that could</p>

	<p>negatively impact or reflect upon Guyana, including but not limited to any of the offences listed in the Schedule of Offences.</p> <p>(2) Paragraph 6(1) does not apply where three years have expired since the date of conviction.</p> <p>(7) violation of the terms of a procurement contract or subcontract so serious as to justify debarment, including but not limited to –</p> <ol style="list-style-type: none"> a. Willful failure to perform in accordance with the terms of one or more contracts or subcontracts; b. A history of failure to perform one or more contracts or subcontracts; c. A history of unsatisfactory performance of one or more contracts or subcontracts; or d. A history of failure to comply with the Income Tax Act, the National Insurance and Social Security Act, the Environmental Protection Act, Occupational Safety and Health Act and the Labour Act; <p>or,</p> <p>(8) a loss or suspension of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question</p>
<p>Exercise of debarment authority of Public Procurement Commission</p>	<p>6. Pursuant to the Act, the Public Procurement Commission exercises the authority to adjudicate debarment. Apart from whether or not a procuring entity, or other entity, has brought an application for debarment, the Public Procurement Commission may seek or receive from any source information or evidence concerning possible grounds under these Regulations for debarment or suspension of a supplier or contractor.</p> <p>7. The presence of any grounds for debarment does not mean that in every such case debarment is necessarily applied. The seriousness of the supplier or contractor’s acts or omissions, and any remedial measures or mitigating factors, should be considered in making the debarment decision. Adjudication of debarment and suspension by the Public Procurement Commission shall be on the basis of what it determines to be in the State’s interest and for the protection of the public interest.</p> <p>8. When deciding whether to impose suspension or debarment when circumstances justifying such measures exist, the Public Procurement Commission may consider relevant factors such as:</p>

	<ul style="list-style-type: none"> (a) Whether the supplier or contractor had established conduct standards and control systems in place at the time that the actions in question occurred; (b) Whether the supplier or contractor itself brought the actions in question to the attention of the relevant authorities in a timely manner and conducted an internal investigation the results of which were brought to the attention of the relevant authorities; (c) The degree of cooperation on the part of the supplier or contractor with investigations and judicial or administrative proceedings carried out in connection with the conduct in question; (d) The remedial measures that the supplier or contractor has implemented or has agreed to implement; (e) The supplier or contractor's acceptance of liability to pay any civil, criminal or administrative liability and to give full restitution for any losses suffered and costs incurred by the Government as a consequence of the actions in question; (f) Whether the supplier or contractor has taken appropriate disciplinary measures against the individuals involved in the actions in question. <p>9. The presence of any mitigating factors or remedial measures such as those above in regulation 8 does not necessarily mean that debarment is unwarranted. The burden of demonstrating to the satisfaction of the Public Procurement Commission the existence of any such mitigating factors, and that debarment is unwarranted, is on the supplier or contractor whose debarment or suspension is being considered by the Public Procurement Commission.</p>
Debarment application	<p>10. An application for the proposed debarment of a supplier or contractor may be submitted by a procuring entity or by a competitive supplier or contractor to the Public Procurement Commission. The application shall identify the supplier or contractor that is the subject of the application, state in detail the grounds on which the proposed debarment is being sought, the factual record and evidence necessary to support the application, and an indication of whether suspension is sought pending adjudication of the debarment application.</p>
Notice of proposed debarment	<p>11. A decision by the Public Procurement Commission to exclude a supplier or contractor from participation in a procurement proceeding may only be taken after written notice to the supplier or contractor of the proposed exclusion and of the grounds</p>

	<p>therefor. A copy of the notice shall be provided by the Public Procurement Commission to the procuring entity, or other entity, or official that brought the debarment application to the Public Procurement Commission.</p> <p>12. Following receipt of an application for debarment, the Public Procurement Commission shall issue a Notice of Proposed Debarment to the concerned supplier or contractor. The notice shall inform the supplier or contractor of the:</p> <ul style="list-style-type: none"> (a) application to debar the supplier or contractor that has been submitted to the Public Procurement Commission; (b) basic facts and grounds for debarment cited in the application, and the transactions in question, in sufficient detail to put the supplier or contractors on notice of the conduct, transactions and grounds on which the proposed debarment is based; (c) supplier's or contractor's right, within 30 days of receipt of the notice, to present information and argument in opposition to the proposed debarment, and to request a hearing; (d) procedures applicable to adjudication of the debarment application by the Public Procurement Commission ; and (e) potential effects of a debarment or suspension order that the Public Procurement Commission may issue as a result of the application.
Response of supplier or contractor	<p>13. The response of the supplier or contractor shall include a certification of the truthfulness of the response signed by an authorized officer of the supplier or contractor.</p> <p>14. The Public Procurement Commission shall provide a copy of the response to the procuring entity, or other entity, that brought the application for debarment.</p>
Decision making procedure	<p>15. In debarment applications based on a criminal conviction or civil judgment, or in which there is not a genuine dispute over material facts as determined by the Public Procurement Commission , the Public Procurement Commission shall make a decision on the basis of all the information in the administrative record, including any submission made by the supplier or contractor.</p> <p>16. In debarment applications in which there are disputed material facts, the Public Procurement Commission shall hold a hearing, if requested by the supplier or contractor, to gather facts from the supplier or contractor and from the applicant or other relevant parties. The Notice of the hearing, including the time and place of</p>

<p>Suspension</p>	<p>21. The notice referred to in regulation 12 shall inform the supplier or contractor if a determination has been made to suspend the supplier or contractor for the period of time that it takes to complete an investigation into possible debarment, if the Public Procurement Commission finds that there might be grounds for debarment and a suspension is in the public interest. That period may not exceed 30 days, subject to one extension of 30 days.</p> <p>22. The supplier or contractor has a right to request a hearing to challenge the suspension .If granted, the hearing shall be held promptly in accordance with the procedures referred to in regulation 16.</p> <p>23. The suspension takes effect upon issuance of a written decision to suspend, which may only be issued after the supplier or contractor has had an opportunity to request and obtain the hearing referred to in regulation 12(c). During the suspension, bids, proposals or sealed quotations shall not be solicited, accepted or considered if submitted prior to the debarment proceedings by the supplier or contractor. The suspension ends upon the expiry of the period referred to in regulation 17, the issuance of a debarment decision, or upon notice from the Procuring Entity, whichever comes first.</p> <p>24. At any time during the debarment proceedings, the Public Procurement Commission may decide to lift the suspension if it finds that the grounds for the suspension no longer exist.</p>
<p>Debarment decision</p> <p>Continuity of Debarment Proceedings</p>	<p>25. The decision of the Public Procurement Commission shall be in writing and shall contain a summary of the findings of fact and other circumstances on which the Public Procurement Commission based its decision.</p> <p>26. A debarment decision takes effect upon issuance of the written decision, and stays in effect until quashed on an application for judicial review in accordance with Section 3(1) of the Judicial Review Act No. 23 of 2010 and the Rules of Court or is set aside by the Public Procurement Commission Tribunal, or until the expiry date of the debarment period.</p> <p>(a) where the complainant or the respondent to a proceeding dies or is adjudged insolvent or, in the case of a company, is being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other</p>

	<p>legal representative of the party or by or against the assignee, receiver or liquidator, as the case may be.</p>
Debarment period	<p>27. The debarment period shall be for a minimum of one (1) year but not more than five (5) years.</p> <p>28. A supplier or contractor may apply in writing to the Public Procurement Commission for a reduction in the duration of the debarment period, or its waiver, for any of the following reasons, which must be described in detail in the application:</p> <ul style="list-style-type: none"> (a) Newly discovered material evidence or documentable error in the findings of the Public Procurement Commission 's decision; (b) Reversal of the conviction or judgment on which the debarment is based; if the conviction or judgment was based on an admission of conduct that was the cause for debarment, the Public Procurement Commission shall determine whether such admitted conduct negatively affects the responsibility of the supplier or contractor; (c) Bona fide change in ownership and/or control of the supplier or contractor, or other mitigating factors sufficient, in the judgment of the Public Procurement Commission, to remove the conditions giving rise to the conduct that led to the debarment. In addition to the mitigating factors mentioned in regulation 8, mitigating factors may include, without limitation, disciplinary action against all persons responsible for the acts giving rise to the debarment; remedial action designed to prevent a recurrence of the acts giving rise to the debarment; or a determination by the Public Procurement Commission that the past conduct of the supplier or contractor does not indicate a pattern or history of similar acts.
<p>PART III</p> <p>NOTICE AND EFFECT OF DEBARMENT AND SUSPENSION</p>	
Notice of debarment	<p>29. If the Public Procurement Commission decides to impose debarment, the supplier or contractor or any authorized affiliate shall be given prompt notice. The notice of debarment shall contain the following information:</p> <ul style="list-style-type: none"> (a) Reference to the relevant notice of proposed debarment; (b) A specific statement of the grounds for the debarment;

	<p>(c) The period of and scope of the debarment (including the identity of any affiliates covered by the order, and the effective dates);</p> <p>(d) Explanation of the supplier or contractor’s right to file an appeal against the debarment to the Public Procurement Commission Tribunal.</p> <p>30. A copy of the notice shall also be sent to the Procuring Entity or other entity or official that brought the application.</p> <p>31. If debarment is not ordered, the Public Procurement Commission shall promptly notify the supplier or contractor and any affiliate involved.</p>
<p>Scope of debarment or suspension order</p>	<p>32. A debarment or suspension order applies to all departments, divisions and other organizational elements of the supplier or contractor, unless the Public Procurement Commission specifically provides otherwise in its decision.</p> <p>33. The Public Procurement Commission may extend the debarment or suspension order to affiliates of the supplier or contractor provided that any such affiliates to which the order is to be extended are given advance written notice and an opportunity to respond to the proposed debarment or suspension.</p> <p>34. Unless otherwise expressly stated in the order by the Public Procurement Commission, a debarment or suspension order applies throughout the public procurement system.</p> <p>35. Upon written application by an affected procuring entity, the Public Procurement Commission may suspend a debarment for a specific contract. The application should set forth the facts and provide documentation sufficient in the judgment of the Public Procurement Commission to establish that:</p> <ul style="list-style-type: none"> (a) the public health, safety or welfare requires the goods or services of the debarred supplier or contractor, or that it is otherwise in the public interest to use the goods or services of the supplier or contractor; or (b) the procuring entity is unable to acquire the goods or services at a comparable price and quality, or in sufficient quantity from other sources
<p>Implementation of existing contracts</p>	<p>36. Despite the debarment or suspension of a supplier or contractor, or proposal for debarment, procuring entities may continue to implement contracts or subcontracts in existence at the time of</p>

	<p>the debarment or suspension, unless the contract has been terminated pursuant to the termination clause of the contract.</p> <p>37. However, procuring entities shall not place orders under a framework agreement with such a supplier or contractor beyond any minimum level of order to which an entity is committed under the agreement, or place any orders under an optional framework agreement with that supplier or contractor, or extend the quantity or duration of an existing contract with the supplier or contractor.</p>
Restrictions on subcontracting	<p>38. Suppliers and contractors shall refrain from subcontracting with suppliers and contractors that are subject to a debarment or suspension order.</p> <p>39. Procuring entities shall refrain from giving their consent to subcontracts with suppliers or contractors that have been debarred or are suspended.</p>
Reduction or termination of debarment period by Public Procurement Commission	<p>40. Following the expiry of 6 months of the debarment period, or 6 months after the preceding application for reduction or termination, the Public Procurement Commission may entertain applications to reduce or terminate the debarment period upon the debarred supplier or contractor’s request, supported by documentation, for the following reasons:</p> <ul style="list-style-type: none"> (a) Newly discovered material evidence not necessarily time-barred by the six month rule; (b) Reversal of the conviction or civil judgment upon which the debarment was based; (c) A good faith change in ownership or management; (d) Elimination of other causes for which the debarment was imposed. <p>41. The procuring entity or other entity that brought the application to debar shall be provided a copy of the application of the supplier or contractor for reduction or termination and shall be given an opportunity to comment on the application.</p> <p>42. The supplier or contractor may request a hearing on the application, which, if granted by the Public Procurement Commission, shall be conducted in accordance with Regulation 19.</p>
Appeal	<p>43. A supplier or contractor that has been debarred may appeal that debarment to the Public Procurement Commission Tribunal.</p>

<p>PART IV Transparency</p>	
Publication of decision	<p>44. The decision of the Public Procurement Commission to debar shall be promptly published on a website of free access where Government procurement opportunities are displayed and also on the website of the Public Procurement Commission. The decision to debar shall be made available to the general public through publication in a newspaper of wide circulation.</p>
Excluded Parties Registry	<p>45. The Public Procurement Commission shall maintain a registry of suppliers and contracts that are subject to debarment or suspension (hereinafter referred to as the “Excluded Parties Registry” or “the Registry”).</p> <p>46. The names and addresses of parties that have been debarred, or are under a suspension order, or that have been proposed for debarment, the name of the procuring entity that initiated the debarment action, and the ground therefore shall be promptly inscribed in the Registry.</p> <p>47. The Registry shall be published and accessible to the general public on a website of free access where government opportunities are displayed and on the website of the Public Procurement Commission.</p> <p>48. Procuring entities are not permitted to solicit bids or applications to prequalify from, or award contracts to, or consent to any subcontract with, any supplier or contractor appearing on the Registry. Following the opening of bids (or the opening of applications for prequalification), the procuring entity shall check the Registry to ensure that bidders are not listed in the Registry.</p> <p>49. The registry shall be continuously updated, and suppliers and contractors whose debarment or suspension term has expired shall be promptly removed from the Registry.</p>
Record of debarment proceeding	<p>50. A record of each debarment proceeding shall be prepared, describing in sufficient detail all of the steps of the debarment proceeding; documents generated in the course of the proceeding</p>

	<p>shall be preserved in accordance with applicable archiving rules and procedures.</p> <p>51. The supplier or contractor in question shall have the right to review and obtain copies of the evidence, documents and other contents of the record, subject to</p> <p>(a) The protection of commercially privileged information;</p> <p>(b) A determination by the Public Procurement Commission that confidentiality considerations apply to any part of the record in order to protect the public safety and/or safety of a person.</p>
<p>PART V</p> <p>OTHER PROVISIONS</p>	
Notices	52. All notices to be sent to suppliers or contractors and any affiliate pursuant to these Regulations shall be sent by registered mail, return receipt requested.
Effective date	53. These Regulations take effect on [....].