

THE PUBLIC PROCUREMENT ACT 2006

Regulations made by the Minister under section 61 of the Public Procurement Act 2006

1. These regulations may be cited as the Public Procurement (Suspension and Debarment) Regulations 2008.

2. In these regulations –

“Act” means the Public Procurement Act 2006;

“Director” means the Director of the Procurement Policy Office.

3. Effect of suspension or debarment

No public body shall –

- (a) solicit or accept bids, proposals or quotations from a suspended or debarred bidder; or
- (b) consider bids, proposals or quotations submitted by a suspended or debarred bidder or supplier prior to its suspension or debarment.

4. Effect on existing contracts

Any suspension or debarment of a potential bidder or supplier under these regulations shall not affect any existing contract entered into between the bidder or supplier and a public body.

5. Proposal by a public body for suspension or debarment of a potential bidder, supplier or consultant

(1) A proposal by a public body for the debarment of a potential bidder or supplier shall be referred to the Director by means of a proposal for debarment.

(2) A proposal for debarment may include a recommendation that the potential bidder or supplier be suspended from participating in procurement pending the completion of debarment proceedings.

6. Contents of proposal for debarment

A proposal for debarment shall -

- (a) specify the name and address of the potential bidder or supplier;
- (b) recommend the period of debarment;
- (c) specify the grounds for the proposed action;
- (d) be accompanied by a factual record from the public body, which shall include all evidence and information in the possession of, or known to the public body, relating to the proposed action.

7. Inquiries by Policy Office

(1) The Director may request from any source, information or evidence concerning possible grounds for suspension or debarment of a potential bidder or supplier.

(2) A public body which is requested to submit information under paragraph (1) shall provide the information or document which is in its possession within one month following the request made.

8. Issuance of notice of proposed debarment

(1) Where the Director considers that there are grounds for debarment, he shall issue to the bidder or supplier a notice of proposed debarment.

(2) The Director shall send a copy of the notice of proposed debarment to the public body which proposed the debarment.

9. Contents of notice of proposed debarment

A notice of proposed debarment shall -

- (a) inform the bidder or supplier that debarment is being considered;
- (b) inform the bidder or supplier as to whether suspension is contemplated pending the completion of debarment proceedings;
- (c) specify the grounds for the proposed debarment and, if applicable, the suspension;
- (d) set out the facts constituting the grounds for the proposed debarment and, if applicable, the suspension;

- (e) state the period of the proposed debarment;
- (f) inform the bidder or supplier of its right to make written representations and request for a hearing.

10. Response by bidder or supplier

(1) A bidder or supplier may make representations in writing to the Director within 14 days of the receipt of the notice of proposed debarment.

(2) Any representation made under paragraph (1) shall contain a certificate, signed by the bidder or supplier, that the information contained therein is true to the best of his knowledge.

(3) The Director shall, within 7 days of the receipt of the representation, send a copy to the public body which proposed the debarment.

11. Suspension pending completion of the debarment proceedings

(1) On receipt of the representation made under regulation 10, the Director may decide as to whether the bidder or supplier may be suspended from participating in procurement proceedings pending the completion of debarment proceedings.

(2) Where the Director decides to suspend the bidder or supplier under paragraph (1), the Director may decide to terminate the suspension where he considers that the basis for the suspension, pursuant to subsection (1), no longer exists.

(3) Any decision of the Director under paragraph (1) shall remain in effect until -

- (a) a decision on the proposed debarment pursuant to section 14 is taken;
- (b) the expiration of the time specified in regulation 14(1); or
- (c) a decision of the Director under paragraph (2) terminating the suspension,

whichever is earlier.

(4) The Director shall send a copy of his decision under paragraph (1) to the bidder or supplier and to the public body which proposed the debarment.

12. Hearing on debarment

(1) The bidder or supplier shall have a right to a hearing on the proposed debarment and, where it has been suspended, to challenge his suspension, provided that the bidder or supplier requests for a hearing, in writing, within the time specified in regulation 10.

(2) A hearing under paragraph (1) shall take place within 10 days of the submission by the bidder or supplier of his request.

(3) The Director shall notify, in writing, the bidder or supplier and the public body which proposed the debarment of the time and place of the hearing.

13. Procedures at hearing

The Director shall make a record of the hearing, which shall include all documents and evidence submitted at the hearing and a transcript of any testimony given during the hearing.

14. Decision on debarment

(1) The Director shall decide on the proposed debarment within 50 days of the issue of a notice of proposed debarment.

(2) The Director shall determine the period under which the bidder or supplier shall be debarred from participating in procurement proceedings.

(3) The decision of the Director shall be recorded in writing and shall include a summary of the findings of fact and the reasons for decision.

(4) The Director shall forthwith send a copy of his decision under paragraph (1) to the bidder or supplier and the public body which proposed the debarment.

15. Application to modify or terminate debarment

(1) A bidder or supplier who has been debarred may apply to the Director to terminate, or modify the period of, the debarment.

(2) An application under paragraph (1) shall be submitted, subject to paragraph (3), after the expiry of 6 months of the decision of debarment.

(3) The Director shall not consider an application under paragraph (1) where the bidder or supplier is under debarment following a previous decision of debarment by the Director.

(4) The applicant shall specify the reasons for modifying or terminating the debarment, and submit any evidence in support of his application.

(5) (a) On receipt of an application under paragraph (1), the Director shall send a copy of the application to the public body which proposed the debarment requesting for comments and recommendations from that public body.

(b) The public body shall submit its comments and recommendations within 14 days of the receipt of the copy of the application.

(6) The Director shall decide upon the application within 14 days of the receipt of the comments and recommendations of the public body.

(7) The Director shall notify in writing the bidder or supplier and the public body of his decision.

16. Disclosure of the decision

A decision of the Director in respect of a debarment or suspension of a bidder or supplier, as the case may be, shall be published in the *Gazette*.

17. Register of debarred and suspended bidders or suppliers

(1) The Director shall maintain a register of all suspended or debarred bidders which shall -

- (a) specify the name and address of every bidder or supplier under suspension or debarment;
- (b) set out the grounds for debarment or suspension, as the case may be, of the bidder or supplier; and
- (c) specify the period under which the bidder or supplier is on debarment or suspension, as the case may be.

(2) The register shall at all times during office hours be made available to the public.

18. These regulations shall come into operation on

Made by the Minister on on the recommendation of the Policy Office.
