

THE GUYANA NATIONAL TENDER BOARD PROCEDURE MANUAL

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FOREWORD

Purpose of the Operations Manual

This operations manual has been developed to detail procedures that assist the National Board and their Secretariat (collectively known as NPTA) undertake their role as contracting authorities of procurement on behalf of the Government of Guyana. The manual applies to all Procuring Entities.

Who is the Operations Manual for?

The manual is intended for the staff of the NPTA Secretariat and Tender Board Members. A personal copy should be provided to each staff and board member upon joining the NPTA. The Manual is available in hard copy or electronically from the NB website.

How to Use this Manual

There are five significant procedures contained within this Manual. Most of the procedures are self-contained, although a few of them refer to other documents and systems.

When you are required to undertake a task you should:

- **Find the relevant procedure by referring to the Table of Contents;**
- **Read the procedure carefully;**
- **Clarify any doubtful areas with someone who is familiar with the task.**

The reader should also be familiar with the Procurement Act and Regulations, National Board Instructions, as these documents direct government procurement. Also this Manual should be read in conjunction with the Guyana Public Procurement Manual and the Standard Bidding Documents provided by NB. All these documents are available from the NB or from their website <http://nptaguyana.org/>.

Responsibility for Updating this Manual

This manual can only be updated upon approval of the National Board. The NPTA is responsible for ensuring this manual is kept up-to-date.

However, all Procuring Entities should provide feedback to the NB about errors and clarifications concerning the manual. Suggestions for amendment of this manual from those involved in the process of contract establishment and management are encouraged. Suggestions may be directed to:

National Board

Address

Telephone:

Fax:

Email:

The NPTA will issue amendments once approved by the National Board. The NPTA maintains a register of organisations and individuals that have received copies of the Manual, including contact details so that amendments and additions **can be issued in a timely manner.**

This Manual is available on the NB website <http://nptaguyana.org/> or a hardcopy can be mailed, upon request.

ROLES, RESPONSIBILITY

Relationships and Thresholds

The roles and responsibilities are described in the Procurement Act Part III. Figure A1 below indicates the relationship and delegated thresholds for each procurement entity.

The interaction and responsibilities between these approving/contracting authorities and Regional Tender Boards, District Tender Boards, and Ministerial, Departmental Agency Tender Boards and Public Bodies throughout the procurement process is described in the Table A1 below.

**** Table 1 – Roles and Responsibilities**

** needs to be completed

Role				
Establish need for Works, Goods and Services				
Develop Procurement Strategy				
Develop Bidding Documents and Specification				
Developing Selection Criteria				
Advertise				
Issuing Bidding Documents				
Open Tenders				
Evaluate Tenders				
Recommend Preferred				
Tenderer to Board				

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Roles of Entities Involved in Procurement

Public Procurement Commission

Article 212 w of the Constitution requires formation of a Public Procurement Commission with members to be appointed by the President and approved by the national assembly. Its role will be to monitor public procurement and the procedures in order to ensure that the procurement of goods, services and execution of works are conducted in a fair, equitable, transparent, competitive, and cost effective manner according to law and such policy guidelines as may be determined by the national assembly. The PPC has not yet been appointed.

National Cabinet

Cabinet - Reviews and approves the recommendation for award made by the National Board. The National Cabinet may reject the recommendation and ask for a reevaluation but may not itself award to another bidder.

National Board

NB - Receives, opens, evaluates, and decides the award for all procurements above the threshold amounts for the regions, ministries, etc. and in the case of those procurements valued above G\$ 15 million, sends the recommendation to the Minister of Finance who places it before the cabinet for its approval. The delegations to the regions, ministries etc., are stated in Appendix 1 of the Regulations.

Until such time as the PPC is created, the NB has been assigned the functions of the PPC by the Procurement Act. The functions are:

- a) making regulations governing procurement to carry out the provisions of this Act;
- b) determining the forms of documents for procurement including, but not limited to,
 - i) standard bidding documents;
 - ii) prequalification documents;
 - iii) contracts;
 - iv) evaluation forms; and
 - v) procurement manuals, guidelines, and procedures.
- c) organizing training seminars regarding procurement;
- d) reporting annually to the Minister on the effectiveness of the procurement process and recommending therein any amendment to this Act that may be necessary to improve the effectiveness of the procurement process;

- e) as provided in section 53, upon request, reviewing decisions by the procuring entities;
- f) adjudicating debarment proceedings.

The Regions, Ministries and Public Agencies

The Regions, Districts Ministries and Public Agencies, all referred to as Procurement Entities, are responsible for all the procurement in their respective organizations. In the case of procurements which are within their powers as indicated in the Procurement Act and Regulations, it would cover planning, preparing the pre qualification or bidding documents, advertising, distribution/sale of bidding documents, public bid opening, appointment of evaluation committee, review of report decision of award, issue of award, signing of formal contract and its supervision. Each PE has a tender board. All complaints are first received and reviewed by the PE.

Roles of Individuals Involved in Procurement

Minister of Finance

The Minister of Finance has overall responsibility for the Government's procurement function. In regards to these activities, the Minister of Finance has the following powers and roles:

- Establishes the National Board under Section 16 of the Public Procurement Act;
- Appoints the Chairperson of the NB;
- Shall, with the advice of the NB or the PPC, issue Regulations that may be necessary for administration of the Act.

Chairman, National Board

The role of the Chairman of the National Board is to do the following:

- Preside as Chairman of the National Board;
- Manage the day-to-day operations of the Secretariat;
- Convene and chair meetings in accordance with the Procurement Act;
- Action all decisions of the Board;
- Oversee the complaint handling procedures.

Role of Each Member

The role of each member of National Board is to:

- Review tender evaluations and other information submitted to the Board and assess their conformance with the law, and determine if Value for Money can be achieved;
- Where appropriate, provide comment on the tender evaluations, seek clarifications and review responses;
- Cast a vote on the acceptance, deferral or rejection of a tender evaluation submission;
- Review complaints and contribute to formal response to complainant.

Evaluation Committee

The Evaluation Committee (EC) is a team of specialists who evaluate tenders under the direction of a National Board.

The role of the EC is to carry out the tender evaluation in accordance with the Procurement Act and Regulations using the processes outlined in this Manual. In a practical sense this requires the EC to evaluate tenders according to the requirements of the bidding documents and previously defined evaluation criteria.

Bid Protest Committee

The Bid Protest Committee (BPC) is comprised of 3 members out of which one is appointed by the Minister of Finance, one by the business community and one by the Attorney General. Its central role is to review bidders' complaints above G\$ 15m. The BPC shall issue a decision within 15 days stating the remedies or awarding damages restricted to the cost incurred by the complainant in participation. The decision shall be final.

Public Officers (including Procurement Specialists)

The role of Public Officers in government procurement processes should be to make taxpayers money go further, in providing works, goods and services to the community. All public officers involved in the procurement process should ensure that Government of Guyana achieves "Value for Money" through fair, competitive, transparent and efficient processes.

Independence of Tender Boards

A Tender Board should be established within each Procuring Entity. However, all Tender Boards must be independent and operate impartially from their parent Agency; otherwise there is a conflict of interest. TBs are required to strictly conform to the procedures outlined in this Manual, to ensure independence and impartiality.

The roles of the Tender Board must not be confused with the roles of Procurement Units and procurement functions. Each unit has its own and individual tasks.

Public Tendering Process

The public tendering process is jointly carried out by a Procurement Unit and Tender Boards below the thresholds. Above threshold, the process involves the National Board. Both processes are required to be performed in an expedient manner. Delays in the approval process add significant cost to contracts and introduce opportunities for corruption. Contractors may add a surcharge to their tender if they consider that approvals will take a long time.

TENDER BOARDS MEETING

In accordance with Section III, Part V of the Procurement Act, all tenders are to be publicly opened by the appropriate Tender Board depending upon the value of the procurement. The respective Tender Boards shall open tenders for procurement whose estimated value is less than the limits published in schedule 1 of the Regulations. All other tenders shall be opened by the NPTB.

Before the Meeting

The National Procurement Tender Board (NPTB) shall meet at least once a week as prescribed in the Procurement Act. The Procuring Entities will determine when their Boards meet.

The Secretary to the Tender Board shall prepare an agenda of the activities for the session prior to the meeting, and insure that all members have a copy. Also the agenda should be posted in public places prior to the meeting.

Procuring Entities should consult with the NPTB before announcing the tender opening date by the NPTB, so as to eliminate possibilities of conflicts in the schedule of tender openings on any one date by different PEs.

Declarations

Any member, who believes they have a conflict of interest in relation to any item on the Agenda, must declare that conflict at the beginning of the meeting. In the event that the member is unsure of a conflict of interest, the members must vote on the perceived conflict of interest and the outcome shall be noted in the minutes.

Any member with a conflict of interest shall not contribute in any way to that Agenda item and must leave the Board room during its deliberation.

Determine who will Attend

All suppliers or contractors that have submitted tenders, or their representatives, may attend the opening of tenders.

Tender Boards Meeting

The secretary to the Tender Board will arrange the tenders in the order of withdrawals (with the corresponding tenders), modifications (with the corresponding tenders) and other tender envelopes. These will be opened in that order so that, where a tender has been withdrawn, the corresponding tender envelope can be set aside for return, and the modification and its corresponding tender are opened together and read out.

The Chairman of the Tender Board will call the opening session in order. Reading from the official agenda, he will speak out aloud the names, addresses, bid number, tender price, discounts, if any, availability of bid security, if one was requested, and any other condition or exception taken and spelled out in the covering letter of tender. If a black board is used the readout prices etc., shall be displayed.

No decision whatsoever of the completeness, acceptability or otherwise of any tender shall be taken or announced in the bid opening session. The rationale for this is the following. Errors may be made based on an incomplete reading or wrong interpretation of a bid, and a mistaken decision taken hastily in the presence of the bidders is awkward to correct later without losing credibility. Besides, the Tender Board opening committee has no access to expert legal opinion at the time of the bid opening.

Bid opening - Two Stage Bidding

In the first bid opening session the Tender Board shall merely announce the name of the bidders.

Thereafter, Procuring Entity/evaluators will hold discussions with each tenderer, modify bidding documents and invite only those who meet the specified criteria and whose bid is considered substantially responsive, to present their final technical and price bids by a specified deadline.

The Tender Board will publicly open the revised tenders utilizing the process described earlier.

Close of Meeting

Minutes of the opening session shall be prepared and mailed to all tenderers who have submitted the tenders irrespective of whether they attended the session.

APPOINTMENT OF EVALUATION COMMITTEE

In accordance with Section 17 (1), Part III of the Procurement Act, the National Board shall be responsible for exercising jurisdiction over tenders the value of which exceeds such an amount prescribed by regulations, appointing a pool of evaluators for such period as it may determine, and maintaining efficient record keeping and quality assurances systems.

Bid Evaluation Committee Qualifications

In order to examine and evaluate the bids, the PE/NPTA must appoint a Bid Evaluation Committee of three qualified members drawn from the pool of evaluators if one has been prepared, preferably persons who participated in the preparation of bidding documents.

In appointing the members of the Evaluation Committee, PEs/NPTA should take due consideration of the type of procurement being carried out. For example, where procurement is for textbooks, the Committee should consist of a representative of the Ministry of Education and a representative of teachers who are familiar with the curriculum for which the textbooks are being procured. For health sector projects such as pharmaceuticals, there should be a pharmacist and a doctor present, in order to ensure that the drugs have the required chemical composition and that they are suitable for the purpose for which they are being procured. In the case of large works such as construction of a major road, the Committee could consist of an independent consulting engineer, a second engineer and a technically capable representative of the PE. Where the contract involves the construction of buildings, an architect should be part of the committee. In the case of goods, the members will vary depending on whether procurement is for simple goods, such as pencils, or whether it is for complex goods, such as heavy machinery. The committee should include persons who are qualified and familiar with the technical capacity and capability of the required machinery.

The Bid Evaluation Committee is responsible for the examination, evaluation and comparison of the bids received and for the preparation of the Bid Evaluation Report, after the process is complete.

Preliminary Examination

The preliminary examination of bids determines whether the bids meet the general administrative requirements of the bidding documents. In particular, the Committee should examine bids for compliance with the requirements, using the bidding documents as the reference point.

The Bid should be signed properly, by a authorized person only:

- a) if a power of attorney was required whether it has been attached and is it generally in order;
- b) if a bid security was required has it been submitted and is it in an acceptable format, for right amount, currency and duration.

Clause 37 of the Procurement Act specifies that:

- a) "When the procuring entity requires suppliers or contractors submitting tenders to provide a tender security,
 - (i) the requirements shall apply equally to all such suppliers or contractors;
 - (ii) the solicitation documents may require that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring entity;
 - (iii) notwithstanding paragraph (ii) a tender shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in Guyana, if the tender security and the issuer otherwise conform to the requirements set forth in the solicitation documents."

Bid package should contain all required documents including supporting evidence of bidder eligibility and qualifications.

Correction of Arithmetic Errors

Bids should be checked carefully for arithmetic errors; the procedure for applying correction is usually set out in the bidding documents. The PE should correct all arithmetic errors accordingly and notify each bidder of the detailed changes and ask the bidder to confirm the corrections. If a bidder refuses to accept such a correction, his bid should be rejected and excluded from further consideration.

Determination of Substantial Responsiveness

After the above step and elimination of bids which are unsigned, incomplete, not accompanied by the requisite bid security, each bid should be examined for its responsiveness to the commercial and technical requirements. In the bidding documents and the attached technical specifications, there are numerous requirements, some of which are mandatory, some desirable and others purely cosmetic having no real value.

Often, bidders submit bids that deviate from these requirements.. Deviations include exceptions, exclusions, qualifications, conditions, stated assumptions, alternative proposals and changes to stated requirements. The deviations may either be material or non-material. A bid with a material deviation would be clearly non responsive not requiring any further consideration, where as a bid with minor or non- material deviation, may still be treated as a substantially responsive bid requiring further consideration and evaluation.

Material deviations are those which:

- a) affect the scope and quality or performance of the equipment offered; OR
- b) limit the purchaser's/employer's rights or bidders obligations; OR
- c) affect unfairly the competitive position of other bidders.

The following deviation(s) in a bid would be treated as a 'material deviation' and the bid excluded from further consideration:

- a) A bid which is valid only for a shorter period than that specified in the bidding document;
- b) A bid subject to price adjustment in response to an invitation for fixed prices;
- c) A bid offering delivery of goods or time period of completion longer than the range specified in bidding document;
- d) A bid with unacceptable alternative payment schedule;
- e) A bid with unacceptable technical requirements;
- f) Bids expressing deviations, objections or reservations to critical provisions such as Applicable Law, Taxes and Duties, Performance Security, Warranty, Force Majeure, Limitation of Liability (that is those which cannot be quantified monetarily).

The following examples are considered to be non-material deviations and would be permissible in a "substantially-responsive" bid:

- a) Commercial Aspects
 - (iv) a bid offering delivery at a date slightly different from that indicated in the bid invitation, unless it is later than an absolute

- cut-off date that is clearly stated as such in the bidding documents;
- (v) a bid with a fixed price in response to bidding documents calling for bidders to submit;
- (vi) prices subject to price adjustment;
- (vii) a bid requesting changes in the coefficient of the price adjustment formula specified in the bidding document or seeking a ceiling for the price adjustment;
- (viii) a bid having minor deviations in payment terms.

b) Technical Aspects

- (ix) a bid offering alternative goods that are equal or superior in specifications and performance; or a bid which meets all performance criteria of a plant, but not dimensional provisions that do not affect performance or the utility for the purpose intended; or a bid which offers goods with minor deviations from the technical specifications which do not affect the suitability of the goods for the intended use.

Quantification of Omissions and Deviations

In many cases, bidders will present bids that deviate from bidding document requirements, either accidentally or deliberately because they believe they gain a competitive edge as a result. Regardless of the reason, such omissions and deviations should be quantified in money terms whenever possible, to permit fair comparison with other bids.

In the case of omission of one or a few essential items from a bid, rather than rejecting the bid in its entirety, a surrogate price for these items may be obtained from printed parts and price lists, if available, or from the quoted prices of other bidders. In the latter case, a price representing the average of several (excluding very high or very low bids) other bidders for the corresponding item should be used rather than the lowest or highest figure.

The bid document is the authoritative source for determining whether various kinds of deviations are acceptable in a particular case. If it does not specifically rule out or set limits on commercial deviations, these can be evaluated on present value calculations.

Specifications and Bid Data Sheets should indicate if technical deviations are acceptable and, if so, what criteria and procedures would be used for their evaluation.

At the end of this exercise, the PE/Evaluation Committee will be left with legally valid, substantially responsive bids for detailed evaluation.

Section 55 of the Guyana Procurement Act also specifies similarly that during evaluation all information to be kept confidential and any violation of this is punishable with fine/disqualification/imprisonment, etc., as detailed therein.

Conversion to Common Currency

If bids are expressed in different currencies the first step is to bring all bids to a common base. The common currency should normally be the G\$ and the exchange rates are the selling rates for the different currencies in G\$, as of the date of the bid opening.

Evaluation of Bids on the Basis of Price Only

In the procurement of simple commodities, semi-finished raw materials and goods, where all offers are of similar and comparable quality or performance, and where delivery is the same for all bidders, price alone is an appropriate deciding factor. If all prices are for delivery at the same point, e.g. project site, the bid offering the lowest quoted price should be selected for award.

Price Adjustment

If the PE has invited bids on prices subject to price adjustment, the PE should specify the price adjustment formula, which will apply to all bidders uniformly, in the bidding document. The Bid Evaluation Committee should compare the bids only on the basis of the base price, excluding the price adjustment during performance of the contract, since any computation of probable increase or decrease in labor and material cost would be speculative.

Delivery Schedules

For purposes of bid evaluation, the estimated time of arrival of goods should be calculated for each bid after allowing for reasonable international and inland transportation time. The Bid Evaluation Committee will then treat the Bid resulting in such arrival time as the base and a delivery "adjustment" will be calculated for other bids by applying a percentage, specified in the bidding documents of the EXW/CIF/CIP price for each week of delay beyond the base, and the Committee will add this to the bid price for evaluation.

Evaluation on the Basis of Life Cycle Cost

Life cycle cost is the assessment of the initial acquisition cost plus the follow-on ownership cost to determine the total cost during the life of a plant or equipment. In the procurement of plant or equipment in which the follow-on cost of operation

and maintenance are substantial, a minor difference in the initial purchase price between two competing bids can easily be overcome by the difference in follow-on cost. In these cases, it is most appropriate for the Purchaser/PE to evaluate bids on the basis of life cycle cost.

Evaluation of Bids for Works Contracts

As in the case of evaluation of bids for procurement of goods, evaluation of works contracts begin with a determination of the following basic issues:

- a) Is the bid complete and properly signed?
- b) Has a power of attorney been submitted if one was required?
- c) Is the bid accompanied by a bid security in the amount and validity as prescribed (Please see Section 37 of the Procurement Act)?
- d) Is the bid submitted in the required form, where necessary; and
- e) Does it comply with all the specific mandatory requirements of the bidding documents?

The Bid evaluation committee/PE proceeds to evaluate the prices offered for the contract once the bids are determined as substantially responsive. Depending on the kind of works contract being procured, the lowest evaluated bidder is determined and contract is awarded.

Evaluation of Deviations in Bids for Works Contracts

The first stage in evaluation is to decide whether the deviations in a bid are so material as to be unacceptable, and therefore are grounds for rejecting the bid. Fairness to the other bidders is a prime consideration. A bidder's deviation which, in itself or by its withdrawal or rectification, would seriously affect the competitive position of other bidders unless they were given the same opportunity, would normally constitute grounds for rejection of the entire bid.

Clear unambiguous bidding documents prepared by experienced staff of the PE result in fewer qualified bidders. Pre-bid conferences during the bidding period should also be used to clarify any serious ambiguities and discrepancies in the documents.

The details and implications of any deviations which are not explicit should be clarified by the PE/Evaluation Committee in writing with respective bidders without change in the substance or price of the bids. (After clarification the implication of a deviation may be such as to justify rejection of the bid as non-responsive.) Each deviation having financial or economic implications should be quantified independently by the Bid Evaluation Committee and expressed in its expected monetary cost to the Procuring Entity

Arithmetical Corrections

In works contracts the procedure for correction of arithmetical errors is clearly given in the bidding documents. In the priced bill of quantities, the quantities should be the same as stated in the bidding documents. The total bid price for each item should be the product of that quantity and the quoted unit price. If there is a discrepancy, the quoted unit price shall govern in the recalculation. Prices spelled out in words shall take precedence over those expressed in numbers in case of differences. There are exceptions to these standard rules. Sometimes the decimal point is misplaced in the unit rate itself. If this is obvious, it should be corrected as per procedure stated in the bidding documents.

Extension of Bid Validity

Where there is a delay in bid evaluation, the PE may request bidders to extend the period of validity of their bids. Bidders may refuse to grant an extension of validity without forfeiting their bid security. In case they agree to extend the validity as requested, the bid security shall also be extended by a corresponding number of days.

Rejection of All Bids

A Tender Board may reject all tenders at any time prior to the acceptance of a tender. The Board shall communicate to all suppliers or contractors that submitted a tender the grounds for its rejection of all tenders.

Recommendation for Award and Evaluation Report

After the completion of the evaluation process and qualification test, the Evaluation Committee should prepare a bid evaluation report in the prescribed format setting out the process by which the committee evaluated the bids. The NPTA has published Standard Bid Evaluation Report Format for goods/works.

This report covers among other things:

- a) Key dates and steps in the bidding process;
- b) Bid prices, corrections, discounts and currency conversions;
- c) Additions, adjustments and price deviations;
- d) Domestic preference if any;
- e) Technical evaluations if any;
- f) Post-qualification results;
- g) Names of bidders rejected and reasons for rejection of bids; and
- h) The proposed contract award.

Award and Signing of the Contract

Once the Evaluation Committee has evaluated the bids and made a determination on the lowest evaluated responsive bid, and a decision has been made about the award, the PE should:

- a) Request and obtain the competent authority's approval prior to awarding the contract;
- b) Not negotiate the award with the successful bidder;
- c) Not require the selected bidder to provide performance in excess of that specified in the Bidding Documents;
- d) After approval is received, send notification of the award, a contract form, and a performance security form (indicating the amount of security) to the successful Bidder within the validity of the bid;
- e) Request the supplier to return the signed contract together with the required performance security within the time specified in the bidding documents;
- f) Notify unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security; and
- g) Send a copy of the award in the prescribed format to the NPTA within 2 days, for publication on the NPTA website.

If the successful Bidder fails to return the signed contract or provide the required Performance security, the PE may require forfeiture of the Bidder's Bid Security; and proceed to offer the contract to the second lowest evaluated Bidder, provided that he is capable of performing satisfactorily.

FILE MANAGEMENT

Purpose of File Management

The NPTA requires good filing systems, with complete documentation in order to ensure that:

- The tendering process proceeds correctly;
- The contract can be properly implemented and administered;
- Documentation is readily available in case of a dispute;
- The tendering and contracting process is transparent and able to be independently audited.

General Approach

The Tender Board must maintain a separate file for each item of procurement in which it is involved. These files will be stored in lockable, fireproof cabinets. Each file will be recorded in a register stating the:

- File number;

- Date of creation of the file;
- Description of the procurement; and
- Name of the Officer responsible for managing the procurement.

This register may be maintained electronically or in a book with numbered pages.

Files that are required for immediate use by the TB will be kept on site, in a fireproof filing cabinet, in file number order. Files that are not generally required will be archived in a storage facility. They are to be able to be retrieved within 24 hours of a requirement being notified.

Each file is to contain all of the relevant documents pertaining to the procurement process and contract.

Responsibilities

The Chairman of the TB is ultimately responsible to ensure that all documentation is correctly filed and archived.

Responsibility for maintenance of the filing system is best viewed in two parts:

- Maintenance of the overall filing system, and
- Updating of individual files.

Maintenance of the Overall Filing System

The Registry Officer is responsible for ensuring that an overall filing system is in place.

These duties include:

- Maintenance of a sequential register of files;
- Issuing file numbers for each individual procurement;
- Ensuring that there is sufficient lockable storage space for each file to be kept;
- Archiving of files that are not required for immediate use.

Maintenance of Individual Files

The PE/NPTA is responsible for nominating a specific Officer to manage each specific procurement and contract.

Documents to be Retained on Each File

Each file must contain a complete set of documents pertaining to the procurement process and contract established. As the procurement progresses the file must be updated to include the set of documents relevant to the stage at

which the procurement has progressed. All documents must be on the file once the contract has been signed.

Table 2 below outlines the documents that are required to be kept on each file.

Table 2 - Document Required on Each File

Document	To be filed	Comment
Copies of the bidding documents	Before the advertisement is placed	
Advertisement	Within X day of advertisement appearing in newspaper	Photocopy advertisement, including name and date of newspaper
Tender opening Summary	Within X days of Opening Tenders	Refer standard format
Copy of each companies offer	Within X days of Opening Tenders	Including any letters of clarification
Evaluation Report		Including any supplementary reports
Minutes of Board decision	Within X days of a Board decision being made	
Letter of Acceptance	Within X days of a Board decision being made	
Tender Board's decision	Within X days of a Board decision being made	
Letter to Unsuccessful Tenderers	Within X days of Board decision being made	
Contract Agreement	Within X week of the contract being signed	

Temporary Removal of a File from the System

From time to time people may need to remove a file from the system in order to work with that file. This person will normally be the Officer responsible for the contract. When a person other than the responsible Officer requires use of a file, then a card must be placed into the filing system, in the location where the file is normally kept, identifying:

- Name of the person who took the file;
- Phone number of the person who took the file;
- Date on which the file was taken.

In this way, if someone else requires the file whilst it is out, they will know who to contact to obtain the file.

File Archiving

Archiving is the term given to storing of files, when they are no longer required for day-today use. The life cycle of a contract begins with an Procuring Entity identifying a need to purchase works, goods or services. It includes forming a contract, and then implementation of the contract by the Procuring Entity and Contractor.

It is important to have details of contracts that are likely to be required either by the TB, Procuring Entity, and Auditor Office readily available. This means that these files should be kept within the TB office, in safe storage. Other contract files that are unlikely to be required may be kept off-site. This will minimize the requirement for storage space within the TB offices.

COMPLAINT HANDLING

Purpose of Complaint Handling Process

An efficient system to address complaints and protests from prospective and actual bidders and consultants, as well as from professional bodies and the public, is a fundamental requirement for a good public procurement system for achieving transparency. An efficient and fair system would contribute to perception of integrity and consequent trust in the public procurement system.

For this reason Section 53 of the Procurement Act has outlined a process and mandated creation of an independent authority to review complaints if a contract has already been awarded, or the review by the Procurement Entity is not completed within the prescribed time limit, or if completed, the complainant is not satisfied with the response of the Procuring Entity. Sections 12 to 15 of the Regulations have further elaborated these procedures in detail.

The current steps in the Guyana process are the following:

- 1) A complainant must submit his complaint within 5 days of learning about the grounds for the complaint or should have become aware of it.
- 2) The PE must review any complaint received and expeditiously and respond within 5 working days of receipt of the complaint.
- 3) If response according to the above is not received timely or the complainant is not satisfied with the response, he may appeal to the Bid

- Protest Committee (BPC). In the case of a complaint after a contract is awarded, the complainant may go directly complain to the BPC.
- 4) NPTA may provide logistic and secretarial support to the BPC but shall not get involved in the review of the complaint.
 - 5) Any complaint to the BPC shall be accompanied by a registration fee of 2% of the estimated value of the procurement.
 - 6) BPC may request PE to suspend the procurement proceeding, but the PE in special cases may not do so in public interest.
 - 7) BPC must complete review within 20 working days.
 - 8) BPC may:
 - a) reject the complaint;
 - b) instruct both parties to act differently according the Act/Regulations;
 - c) prohibit the PE from acting unlawfully;
 - d) annul the whole proceedings unless a legally valid contract has come to being;
 - e) award compensation to the complainant to the extent of costs incurred by it;
 - f) order procurement proceeding to be terminated.
 - 9) The decision of the BPC shall not be subject to any further administrative review.
 - 10) Once the complaint has been finally dealt with, record of the proceedings are open to public to view.

Notwithstanding anything said above, a procurement award or decision approved by the Cabinet shall not be subject to review.

Administrative Review

The procedure for administrative review of complaints and protests and the reference to the Procurement Act and the Regulations is explained below.

Any potential or actual bidder, supplier, contractor, or a consultant who claims to have suffered, or may suffer, loss or damage due to a breach of duty imposed on a Procurement Entity by the Procurement Act 2003 and the Procurement Regulations 2004, including any subsidiary legislation, may complain or protest in accordance with Sections 52, 53 & 54 of the Procurement Act 2003 and Clauses 10 to 15 of Procurement Regulations, as per procedures described below.

A complaint or protest shall not be entertained and shall be rejected in the following cases:

- a) The decision complained or protested against, is taken by the Cabinet (Council of Ministers) – Clause 10 (2) of Regulations;
- b) The exclusion of a consulting firm in a short list of consultants to be invited to submit proposals - Clause 10 (3-(a)) of Regulations;
- c) A decision by the Procuring Entity to reject all bids, or quotations or proposals - Clause 10 (3 (b)) of Regulations;
- d) A complaint or protest submitted later than 7 working days from the date the complainant became aware or should have become aware of the circumstances leading to the complaint or protest - Clause 10 (6) of Regulations.

If a contract has not yet been signed, the complaint or protest shall in the first instance be submitted to the concerned Procuring Entity, viz. ministry, region or district head, within 7 working days of the complainant becoming aware of the circumstances leading to the complaint/ protest - Clauses 10 (4) & 11 of Regulations.

Procuring Entity Responsibility

The Procuring Entity shall review the complaint on merits and give a decision within 5 working days of receiving the complaint - Clause 11 (1) of Regulations.

If the complainant is NOT satisfied with the decision of the entity, or does NOT receive any response within the time specified, he/she may appeal the decision to the Bid Protest Committee within three working days of receiving, or failing to receive within the prescribed period, the response from the entity - Clauses 10 (4) & 12 of Regulations.

If a procurement contract has already been signed, the complaint/protest may be submitted directly to the Bid Protest Committee within 7 working days of the date on which the complainant became aware or should have become aware of the circumstances leading to the complaint or protest. Simultaneously, a copy of the complaint/protest shall be sent to the Procuring entity - Clause 10 (5) of Regulations.

Registration of Complaint

The appeal or complaint submitted to the Bid Protest Committee shall be accompanied by a registration fee equivalent to 2% of the actual or estimated value of the procurement, subject however to a maximum of G\$ 2 million - Clause 13 (2) of Regulations.

The complaint shall contain:

- a) Identification of the Procuring Entity and the relevant procurement proceedings;
- b) A description of the alleged breach by the Procuring Entity and the remedy sought; and
- c) A registration fee payment receipt –Clause 13 (4) of Regulations.

The complainant shall send a copy of this simultaneously to the Procuring Entity concerned. The Procuring Entity shall then furnish the complete procurement proceedings with their comment on the complaint to the Bid Protest Committee, advising the complainant of the action taken - Clause 13 (3 &5) of Regulations.

Bid Protest Committee

The Bid Protest Committee shall consist of three members nominated in accordance with Section 53 (4) of the Act. The members will be nominated one each by the (i) Minister, (ii) Association appearing to the Minister to represent Contractors and (iii) Attorney General. The Administration may request the nomination of one or more deputies for each member. The member nominated by the Attorney General shall act as the Chairman of the Committee.

The Bid Protest Committee shall review the complaint or protest along with the procurement proceedings/comments of the Procuring Entity and may:

- a) Reject the complaint/protest giving reasons for its decision. If the complaint is also declared frivolous, the registration fee shall be forfeited.
- b) Instruct both parties, i.e. the complainant and Procuring Entity, on the rules and policies that apply to the issue raised and direct them to proceed accordingly;
- d) Prohibit the Procurement Entity from proceeding or deciding the issue unlawfully;
- e) Annul any unlawful decision of the Procuring Entity unless a contract has been signed;
- d) Order the Procurement Entity to pay compensation to the complainant for the costs incurred in the bid preparation and participation; and
- e) Order the Entity to terminate the procurement proceedings - Clause 13 (7) of Regulations.

During the period of consideration of a complaint/protest, the procurement proceedings shall be suspended from the time the complaint is received to the time a final decision is issued by the Procurement Entity or the Bid Protest Committee. However, the procuring entity may decide not to suspend the procurement proceedings in the public interest, but record its reasons for such a decision. The Bid Protest Committee also may decide to remove the suspension if, in its opinion, the public interest warrants such action.

The Bid Protest Committee shall make every effort to reach its decision within 15 business days from the date of the complaint - Section 53 (5) of the Act.

Every Procuring Entity shall maintain a register of complaints in which all information such as date of receipt of complaint, date of reply, date of submission of appeal to BPC, etc., shall be recorded. NTB shall forward any complaint received by it to the PE for further action. NTB shall itself keep all records related to the BPC for which it shall function as secretariat.

CONFLICT OF INTEREST

Purpose

In accordance with Section 60 (1), Part III of the Procurement Act: “It shall be the duty of a member of a body who is in any way, whether directly or indirectly, interested in any deliberations of that Body regarding the bidding process, to declare the nature of his interest at a meeting of the Body”.

“Conflict of Interest” Defined

A conflict of interest arises where the private interest of a Tender Board member, a member of its support staff, a member of a Tender Evaluation Committee or any other person involved in the procurement process:

- Conflicts, or
- Might reasonably be thought to conflict, or
- Has the potential to conflict, with the duties of this person in the performance of their role.

Responsibility of Tender Board Members

In accordance with Section 60 (2), Part III of the Procurement Act, a Tender Board member shall:

- a) Make declaration of the conflict of interest at the earliest possible time to full board.

- b) Shall not take part in any deliberations or decision by the Tender Board with respect to the contract, *and*
- c) Shall vacate the Board room during deliberations in relation to the matter for which the conflict of interest arises.

The declaration should be noted in the formal minutes of the meeting.

Annexes:

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