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FRIDAY 21ST JUNE, 2019

REGULATIONS

Made Under

THE PROCUREMENT ACT

(Cap. 73:05)

**IN EXERCISE OF THE POWERS CONFERRED UPON ME BY SECTION 61 OF THE
PROCUREMENT ACT AND WITH THE ADVICE OF THE PUBLIC
PROCUREMENT COMMISSION, I MAKE THE FOLLOWING REGULATIONS:-**

ARRANGEMENT OF REGULATIONS

Regulation

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SCHEDULE

- Citation. 1. These Regulations may be cited as the Procurement (Suspension and Debarment) Regulations 2019.
- Interpretation. 2. (1) In these Regulations-
- Cap. 73:05 “Act” means the Procurement Act;
- “affiliate” means any business, organisation or any person that directly or indirectly-
- (a) controls or has the power to control the other, or
- (b) a third party in control or who has the power to control both;
- “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or the property of any person to influence the actions of that person;
- “collusive practice” means any arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person;
- “Commission” means the Public Procurement Commission established in accordance with article 212W of the Constitution;
- Cap. 1:01 “control” includes interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organised 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;
- “corrupt practice” means the offering, giving, receiving or soliciting directly or indirectly of anything of value to influence improperly the actions of another party;

“debarment” means a determination by the Commission that a supplier or contractor should be excluded from participating in procurement proceedings for a prescribed period of time;

“fraudulent practice” means any act or omission, including misrepresentation that knowingly misleads or attempts to mislead a person to obtain financial or other benefits, or to avoid an obligation;

“obstructive practice” means-

(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;

(b) threatening, harassing or intimidating any person to prevent the person from disclosing knowledge of matters relevant to an investigation or from pursuing the investigation; or

(c) acts intended to materially impede the exercise of inspection and audit rights;

“parties” means any supplier or contractor who is the subject of a debarment or suspension proceeding and includes the procuring entity or person who proposed the debarment or suspension;

“prohibited practice” means either a corrupt practice, fraudulent practice, coercive practice, collusive practice or an obstructive practice, or a combination of some or all of these practices;

“suspension” means a temporary prohibition from participating in public procurement proceedings while an investigation or debarment proceedings by the Commission is ongoing;

“Tribunal” means the Public Procurement Commission Tribunal established in accordance with article 212EE of the Constitution.

(2) Any other term or expression used in these Regulations and not defined under subregulation (1) shall have the same meaning as in the Act.

Grounds for
debarment.

3. (1) Subject to subregulation (2), the Commission may debar or suspend any supplier or contractor where it is proven that the supplier or contractor-

Schedule
Cap. 20:05

(a) committed any offence relating to procurement under any law;
(b) committed an obstructive or a prohibited practice;
(c) committed any of the specified offences in the Schedule under the Environmental Protection Act;

Cap. 10:11

(d) committed any offence under the Anti-Money Laundering and Countering the Financing of Terrorism Act;

Cap. 36:01
Cap. 98:01
Cap. 99:06

(e) committed a serious violation of fair employment laws including those under the Environmental Protection Act, National Insurance and Social Security Act, Labour Act and Occupational Safety and Health Act;

(f) defaulted on the tax obligations;

(g) breached a public procurement contract;

(h) supplied false information in the process of submitting a bid or prequalification application;

(i) colluded with a bidder or public official concerning the formulation of any part of the bidding documents;

(j) through coercion or connivance, interfered with the participation of competing bidders;

(k) has lost the right to do business or practise a profession as a result of a revoked or suspended licence.

(2) Any supplier or contractor who has been debarred from participating in the procurement process of another jurisdiction or an international organisation shall be automatically debarred from participating in a procurement process in Guyana by the Commission.

(3) The Commission may receive from any person information or evidence concerning possible grounds for debarment or suspension of supplier or contractor from the procurement process.

Factors to consider before debarment or suspension.

4. (1) When deciding whether to debar or suspend a person, the Commission shall consider the following relevant factors-
- (a) whether the supplier or contractor had established standards of conduct and internal control systems in place at the time that the action in question occurred;
 - (b) whether the supplier or contractor brought the actions in question to the attention of the procuring entity in a timely manner;
 - (c) whether the supplier or contractor conducted an internal investigation into the circumstances surrounding the case for debarment and, if so, made the results of the investigation available to the National Board, the Commission or law enforcement;
 - (d) whether the supplier or contractor has fully cooperated with investigations and judicial or administrative proceedings carried out in connection with the action in question;
 - (e) whether the supplier or contractor has implemented or agreed to implement any remedial measures;
 - (f) whether the supplier or contractor has accepted liability and agreed to comply with any civil, criminal or administrative

sanction and to give full restitution for any losses suffered and costs incurred by the procuring entity as a result of the action in question;

(g) whether the supplier or contractor has taken appropriate disciplinary measures against the individuals involved in the action in question.

(2) The burden of demonstrating that debarment is not necessary based on the factors in subregulation (1) is on the supplier or contractor.

Proposal for debarment.

5. (1) A proposal for the debarment of a supplier or contractor may be submitted to the Commission by a procuring entity or any other person.

(2) The request shall be in writing and shall-

- (a) identify the supplier or contractor and any affiliate of the supplier or contractor that is the subject of the application;
- (b) state the grounds on which the applicant is seeking debarment;
- (c) contain the factual record and evidence to support the application; and
- (d) indicate whether suspension is sought pending adjudication of the debarment application.

Notice of proposed debarment.

6. (1) Where the Commission considers that there are grounds for debarment, the Commission shall issue to the supplier or contractor a notice of proposed debarment.

(2) A notice of proposed debarment shall inform the supplier or contractor of-

- (a) the proposal to debar the supplier or contractor;

- (b) the facts and the grounds for the proposed debarment and if applicable, the suspension;
- (c) whether suspension is contemplated pending the completion of debarment proceedings;
- (d) the supplier's or contractor's right, within 30 days of receipt of the notice, to make written representations and to request a hearing;
- (e) the procedures applicable to suspension and debarment; and
- (f) the effect of a debarment or suspension order of the Commission.

(3) The Commission shall serve on the procuring entity or person who proposed the debarment a copy of the notice referred to in subregulation (1).

Response of
the supplier or
contractor.

7. (1) A supplier or contractor may respond in writing to the Commission within 30 days of the receipt of the notice of proposed debarment and may request a hearing before the Commission.

(2) Any response made under subregulation (1) shall contain a certificate, signed by the supplier or contractor that the information contained in the response is true to the best of the knowledge of the supplier or contractor.

(3) The Commission shall, within 7 days of the receipt of the response, send a copy of the response to the procuring entity or person that proposed the debarment.

Suspension
pending
completion of

8. (1) On receipt of a response from the supplier or contractor, the Commission may decide whether the supplier or contractor may be

debarment
proceedings.

suspended from participating in the procurement process pending the completion of debarment proceedings.

(2) The Commission may decide at any time to terminate the suspension if the grounds for the suspension no longer exist.

(3) The supplier or contractor has a right to request a hearing to challenge the suspension and if granted, the hearing shall be held promptly in accordance with the procedures set out in these Regulations.

(4) 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 be heard.

(5) Bids, proposals or sealed quotations shall not be solicited, accepted or considered during the suspension, if submitted prior to the debarment proceedings by the supplier or contractor.

(6) Any decision of the Commission to suspend a supplier or contractor shall remain in effect until-

- (a) a decision on the proposed debarment pursuant to regulation 11 is taken;
- (b) the expiration of the time specified in regulation 11(1); or
- (c) a decision of the Commission under subregulation (2) terminating the suspension, whichever is earlier.

(7) The Commission shall send a copy of the decision under subregulation (1) to the supplier or contractor and to the procuring entity or person who proposed the debarment.

Hearing on
debarment.

9. (1) Where the supplier or contractor requests a hearing on the proposed debarment, a hearing shall take place within 10 days of the request for hearing.

(2) The Commission shall give written notice to the supplier or contractor and the procuring entity or the person which proposed the debarment of the time and place for the hearing.

(3) The hearing shall be conducted in a formal manner and in particular the following procedures shall apply -

- (a) the parties shall have the right to be represented by an Attorney-at-law and to have an opportunity to present arguments and evidence;
- (b) the hearing shall be recorded and all evidence presented shall be preserved; and
- (c) the parties and any witness shall testify under oath or by affirmation and may be cross-examined.

Record of
process.

10. The Commission shall make a record of the debarment process which shall include the-

- (a) documents submitted to the Commission relating to the proposal for debarment;
- (b) notices sent by the Commission relating to the debarment;
- (c) evidence submitted at the hearing and a transcript of any testimony given during the hearing; and
- (d) decision and submissions to the Commission.

Debarment
decision.

11. (1) The Commission shall decide on the proposed debarment within 60 days of the issue of a notice of proposed debarment and this period may only be extended when necessary and only for an additional 7 days.

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

(3) The decision of the Commission shall be in writing and shall include a summary of the facts and the reasons for the decision.

(4) The Commission shall within a reasonable time send a copy of the decision referred to in subregulation (1) to the parties.

Debarment
period.

12. (1) The debarment period shall be for a minimum of one year but not more than 10 years.

(2) A supplier or contractor may apply in writing to the Commission for a reduction in the duration of the debarment period, or its termination, for any of the following reasons, which shall be described in detail in the application-

(a) newly discovered material evidence or documentable error in the findings of the Commission's decision;

(b) reversal of the conviction or judgment on which the debarment is based and where the conviction or judgment was based on an admission of conduct that was the cause for debarment, the Commission shall determine whether such admitted conduct negatively affects the responsibility of the supplier or contractor;

- (c) *bona fide* change in ownership or control of the supplier or contractor.;
- (d) disciplinary action has been taken against all persons responsible for the acts giving rise to the debarment;
- (e) remedial action has been taken designed to prevent a recurrence of the acts giving rise to the debarment;
- (f) that the past conduct of the debarred supplier or contractor does not indicate a pattern or history of similar acts;
- (g) any other factor, including those under regulation 4, which in the judgment of the Commission, removes the conditions giving rise to the conduct that led to the debarment.

Effect of
suspension or
debarment.

13. (1) A debarment decision takes effect upon issuance of the written decision, and stays in effect until reduced or terminated by the Commission under regulation 12 (2) or is set aside by a court or the Tribunal or until the expiration of the debarment period.

(2) No procuring entity shall-

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

(3) Any suspension or debarment of a potential bidder or supplier under these Regulations shall not affect any existing contract entered into between the supplier or contractor and the procuring entity.

Scope of
debarment.

14. The Commission may extend the debarment or suspension order to any affiliate of the supplier or contractor provided that any affiliate to which the order is to be extended is given advance written notice and

an opportunity to respond to the proposed debarment or suspension in accordance with these Regulations.

- Appeal. 15. A supplier or contractor that has been debarred or suspended may appeal to the Tribunal.
- Publication of decision. 16. The decision of the Commission in respect of a debarment or suspension of a supplier or contractor, as the case may be, shall be published on the website of the Commission, the National Board and in a newspaper of widespread daily circulation.
- Register of debarred and suspended suppliers and contractors. 17. (1) The Commission shall maintain a public register of all suspended or debarred suppliers and contractors which shall-
- (a) specify the name and addresses of every supplier or contractor under suspension or debarment;
 - (b) set out the grounds for debarment or suspension, as the case may be, of the supplier or contractor; and
 - (c) specify the period under which the supplier or contractor is on debarment or suspension.
- (2) The register shall be published on the website of the Commission and the National Board.
- (3) The register shall be continuously updated, and suppliers and contractors whose debarment or suspension term has expired shall be removed from the register.
- Restrictions on subcontracting. 18. (1) No supplier or contractor shall subcontract with any supplier or contractor that is subject to a debarment or suspension order.

(2) No procuring entity shall give consent to any subcontract with a supplier or contractor that is subject to a debarment or suspension order.

(3) Every supplier and contractor participating in the procurement process shall declare to the procuring entity whether the supplier or contractor has subcontracted with another supplier or contractor that is the subject of a debarment or suspension order.

(4) Any supplier or contractor that contravenes subregulation (1) shall be disqualified from the bidding process.

SCHEDULE (r. 3)**Offences under the Environmental Protection Act, Cap 20:05**

1. Contravention of a condition contained in any enforcement notice under section 33(1) (a).
2. Failure to give information under section 33(1) (b).
3. Failure to comply with the requirements of section 36(6) and (7)
4. Obstruction, assault or hindering of authorised person in the execution of his duty under section 38.
5. Damage to the environment under section 39.

Made this ^{20th} day of June 2019



Hon. Winston Jordan, MP
Minister of Finance