

Public Procurement
(Disqualification)
Regulations 2009

Last updated – 08 October 2012

Amendments to Public Procurement (Disqualification Regulations 2008)
(Amended as per G.N. No.169 of 2012)

Regulation 2A (Added)

THE PUBLIC PROCUREMENT ACT

Regulations made by the Procurement Policy Office under section 35 of the Public Procurement Act

1. These regulations may be cited as the Public Procurement (Disqualification) Regulations 2009.

2. In these regulations –

“Act” means the Public Procurement Act;

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

2A. In the absence of the Director, the functions of the Director under these regulations may be discharged, and his powers under these regulations may be exercised, by any member of the Policy Office appointed under section 4 (1) of the Act. *(amended as per G.N. No.169 of 2012)*

3. A supplier, contractor or consultant may be disqualified where –

- (a) a bid is submitted which contains inaccurate or inadequate information with a view to misleading a public body or the Board regarding the eligibility or responsiveness of its bid;
- (b) no bid security is required, and a bidder refuses to accept an award made to it and to enter into a contract with a public body;
- (c) in the performance of one or more contracts, the supplier, contractor or consultant has repeatedly failed to comply with the terms and conditions of the contract or the specifications, as the case may be;
- (d) he has committed a material breach of contract;
- (e) he has, without the prior written approval of the public body, unlawfully assigned or subcontracted any of his obligations under a contract.

- 4.** No public body shall –
- (a) solicit or accept bids, proposals or quotations from a suspended or disqualified bidder;
 - (b) consider bids, proposals or quotations submitted by a suspended or disqualified bidder prior to its suspension or disqualification.
- 5.** Any disqualification 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.
- 6.** (1) A proposal for disqualification may include a recommendation that the supplier, contractor or consultant be suspended from participating in procurement proceedings pending the completion of disqualification proceedings.
- (2) A proposal by a public body for the disqualification of a supplier, contractor or consultant shall be referred to the Director by means of a proposal for disqualification.
- 7.** A proposal for disqualification shall –
- (a) specify the name and address of the potential supplier, contractor or consultant;
 - (b) recommend the period of disqualification;
 - (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.
- 8.** (1) The Director may request from any source, information or evidence concerning possible grounds for disqualification of a potential supplier, contractor or consultant.
- (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.
- 9.** (1) Where the Director considers that there are grounds for disqualification, he shall issue to the supplier, contractor or consultant a notice of proposed disqualification.

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

10. A notice of proposed disqualification shall –

- (a) inform the supplier, contractor or consultant that disqualification is being considered;
- (b) specify the grounds for the proposed disqualification;
- (d) set out the facts constituting the grounds for the proposed disqualification;
- (e) state the period of the proposed disqualification;
- (f) inform the supplier, contractor or consultant of its right to make written representations and request for a hearing.

11. (1) A supplier, contractor or consultant may make representations in writing to the Director within 14 days of the receipt of the notice of proposed disqualification.

(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 disqualification.

12. (1) A supplier, contractor or consultant shall have a right to a hearing on the proposed disqualification provided that the bidder or supplier requests for a hearing, in writing, within the period specified in regulation 11.

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

(3) The Director shall notify, in writing, the supplier, contractor or consultant and the public body which proposes the disqualification of the time and place of the hearing.

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

(2) The Director shall determine the period under which a supplier, contractor or consultant shall be disqualified 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 supplier, contractor or consultant and the public body which proposes the disqualification.

15. (1) A supplier, contractor or consultant who has been disqualified may apply to the Director to terminate or modify the period of the disqualification.

(2) Subject to paragraph (3), an application under paragraph (1) shall be submitted, after the expiry of 6 months of the decision of disqualification.

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

(4) The applicant shall specify the reasons for terminating or modifying the disqualification, 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 disqualification requesting for comments and recommendation.

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

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

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

16. A decision of the Director in respect of a disqualification of a supplier, contractor or consultant shall be published in the *Gazette*.

17. (1) The Director shall maintain a register of disqualified suppliers, contractors or consultants into which shall be entered –

- (a) the name and address of every supplier, contractor or consultant under disqualification;
- (b) the grounds for disqualification of the supplier, contractor or consultant; and
- (c) the period under which the supplier, contractor or consultant is under disqualification.

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

18. These regulations shall come into operation on 15 November 2009.

Made by the Procurement Policy Office on 20 October 2009 and approved by the Minister on 23 October 2009.
