

PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT
(Cap. 42:08)

PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT)
REGULATIONS, 2009

(Published on 6th February, 2009)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Insertion of Part XIII to Cap. 42:08 (Sub. Leg.)

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 130 of the Public Procurement and Asset Disposal Act, the following Regulations are hereby made —

1. These Regulations may be cited as the Public Procurement and Asset Disposal (Amendment) Regulations, 2009. Citation

2. The Public Procurement and Asset Disposal Regulations are hereby amended by inserting immediately after Part XII, the following new Part — Insertion of Part XIII to Cap. 42:08 (Sub. Leg.)

“PART XIII – *Suspension and De-listing of Contractors*”

139. (1) There is hereby established a body to be known as the Suspension and De-listing Disciplinary Committee (hereinafter referred to as ‘the Disciplinary Committee’). Establishment of Suspension and De-listing Disciplinary Committee

(2) The composition of the Disciplinary Committee shall be as provided in a Notice published in the *Gazette*.

140. (1) The Disciplinary Committee shall meet at such times and at such places as the Chairperson may determine after consultation with the Board. Procedure at meetings

(2) The Chairperson shall give members at least seven days’ notice of any meeting of the Disciplinary Committee, except in an emergency or as directed by the Board.

(3) The quorum for a meeting of the Disciplinary Committee is half the number of its members.

(4) The Board may direct the Disciplinary Committee with respect to any aspect of its procedure.

141. (1) Any person with a financial or contractual interest in a contract under the Act may lodge a complaint of any incidence of non-compliance with the code of conduct or terms of the contract by a contractor who is party to such contract with the Board. Lodging of complaint

(2) The non-compliance with the code of conduct or terms of the contract complained of under subregulation (1) shall arise from circumstances relating to the implementation by the contractor of the terms of the contract in which the complainant has a financial or contractual interest.

(3) The complainant shall substantiate the complaint of non-compliance to the satisfaction of the Board.

(4) The Board shall, upon receipt of a complaint under subregulation (1), submit the complaint to the Disciplinary Committee to be investigated.

Complaint
by Board

142. Where the Board, in the execution of its functions under the Act, finds an instance of questionable conduct implying non-compliance with the code of conduct or terms of the contract by a contractor, the Board shall forward a complaint to the Disciplinary Committee to be investigated.

Consideration
of complaint
by
Disciplinary
Committee

143. (1) The Disciplinary Committee shall, upon receipt of a complaint submitted to it by the Board under regulation 141 (4) or 142 —

- (a) investigate the complaint received by making reference to —
 - (i) the requirements of the code of conduct or terms of the contract, and
 - (ii) the procuring or disposing entity concerned and its records and decisions on the matter, if any;
- (b) seek the advice of experts where necessary;
- (c) compare the acts of the contractor under enquiry with established practices of contractors in a similar field; and
- (d) conduct such further investigation as may be necessary for the making of an informed determination by the Disciplinary Committee on the matter.

(2) The Disciplinary Committee may, at any stage of the investigations, hold a hearing with the contractor under enquiry.

(3) The Disciplinary Committee shall, before the hearing under subregulation (2), furnish the contractor under enquiry, in writing, with the particulars of the complaint or allegations made against such contractor.

(4) The Disciplinary Committee shall give the contractor an opportunity to reply to the complaints or allegations made under subregulation (2).

(5) The Disciplinary Committee shall, after it has concluded its investigations and hearings and made its determination, forward its recommendations on the matter to the Board not later than 30 days after receipt of a complaint.

(6) A contractor required to appear before the Disciplinary Committee shall appear in person and not by means of legal representation.

Decision of
the Board

144. (1) The Board shall, on receipt of the recommendations of the Disciplinary Committee under regulation 143 (5), make a decision on the matter as follows —

- (a) find in favour of the complainant and impose any of the following orders, or combination thereof, against the contractor —
 - (i) reprimand the contractor formally in writing;
 - (ii) suspend the contractor for a specified period of time from participating in Government procurement and asset disposal;
 - (iii) suspend the contractor conditionally on terms, pending fulfilment by the contractor of the conditions of suspension imposed;
 - (iv) issue a remedial order, where the contractor shall be ordered to comply with remedial measures within a specified time, failing which the contractor shall be suspended for a specified period of time from participating in Government procurement and asset disposal; or
 - (v) de-list and remove the contractor from the register of contractors;or
- (b) find in favour of the contractor and dismiss a complaint.

(2) Where the Board orders that the contractor be de-listed under subregulation (1) (a) (v), the contractor shall submit to the Board, within seven days of receipt of the Board's decision, all Board certificates in the contractor's possession.

(3) The Board may require a contractor to make restitution of any proceeds or other benefits received by the contractor relating to a contract under enquiry, which proceeds or benefit the Board has proven that the contractor was not entitled to.

(4) The decision of the Board under this regulation shall be made within 30 days of receipt of the recommendations of the Disciplinary Committee under regulation 143 (5).

145. (1) The Board shall maintain an up-to-date register of suspended or de-listed contractors.

(2) The register shall be open to the public for examination”.

Register of
suspended
or de-listed
contractors

MADE this 21st day of January, 2009.

B. GAOLATHE,
*Minister of Finance and Development
Planning.*