

PART VII
DISPUTES SETTLEMENT

77-(1) There is hereby established in the Ministry of Finance, the Public Procurement Appeals Authority.

(2) The Third Schedule to this Act shall have effect regarding the composition, appointment and procedures of the Members of the Public Procurement Appeals Authority.

78. The Public Procurement Appeals Authority shall entertain appeals against tender boards, clarify the issues in dispute between the parties and shall endeavour to bring about agreement between the parties upon mutually acceptable terms, and the parties shall co-operate in good faith with the Public Procurement Appeals Authority in order to enable it to carry out its functions and they shall be bound by its decisions.

79.-(1) Subject to sub-section (2) of this section, any supplier, contractor or consultant who claims to have suffered or that may suffer any loss or injury as a result of a breach of a duty imposed on a procuring entity or an approving authority by this Act may seek a review in accordance with sections 81 and 82 of this Act, provided that the application for a review is received by the procuring entity or

approving authority within twenty-eight days of the supplier, contractor or consultant becoming aware of the circumstances giving rise to the complaint or when the supplier, contractor or consultant should have become aware of those circumstances

(2) The review referred to in subsection (1) of this section shall not apply to

- (a) the selection of a method of procurement or in the case of services the choice of a selecting procedure;
- (b) the limitation of procurement proceedings on the basis of nationality in accordance with section 49 of this Act or in accordance with the prescribed Regulations;
- (c) a decision by the procuring entity to reject all tenders pursuant to section 54 of this Act;
- (d) failure to cite this Act, Regulations made under this Act or any other law relating to the procurement proceedings;
- (e) in the case of services, a refusal by the procuring entity to respond to an expression of interest in participating in request for proposals proceedings.

Settlement
of
Complaints
or disputes
by procuring
entities and
approving
authorities

80.-(1) Complaints or disputes between procuring entities and suppliers, contractors or consultants which arise in respect of procurement proceedings and awards of contracts and which cannot be resolved by mutual agreement shall be reviewed and decided upon a written decision by the Accounting Officer, Chief Executive of a Procuring Entity, unless the procurement has been reviewed and approved by an approving authority, in which case that approving authority shall review and decide on the dispute and give reasons for its decision in writing.

(2) The head of the procuring entity or of the approving authority shall not entertain a complaint or dispute unless it is submitted within twenty eight days from the date the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or dispute or when that supplier, contractor or consultant should have become aware of those circumstances, whichever is earlier.

(3) The head of a procuring entity or of the approving authority shall not entertain a complaint or dispute or continue to entertain a complaint or dispute after the procurement contract has entered into force.

(4) Unless the complaint or dispute is resolved by mutual agreement of the supplier, contractor or consultant that submitted it and the procuring entity, the head of the procuring entity or of the approving authority shall, within thirty days after the submission of the complaint or dispute deliver a written decision which shall

- (a) state the reasons for the decision; and
- (b) if the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken.

(5) Where the head of the procuring entity or of the approving authority does not issue a decision within the time specified in subsection (4), the supplier, contractor or consultant submitting the complaint or dispute or the procuring entity shall be entitled immediately thereafter to institute proceedings under section 81, 82, or 85 and upon such institution of such proceedings, the competence of the head of the procuring entity or of the approving authority to entertain the complaint or dispute shall cease.

(6) The decision of the procuring entity or approving authority shall be final unless the supplier, contractor or consultant applies for administrative review by the Authority except for complaints or disputes made against the Public Procurement Regulatory Authority which shall be submitted to the Public Procurement Appeals Authority in accordance with section 81.

Adminis-
trative
Review

81.-(1) A supplier, contractor or consultant who is aggrieved by the decision of a procuring entity or an approving authority may refer the matter to the Authority for review and administrative decision.

- (2) Where
 - (a) the Accounting Officer does not make a decision within the period specified in sub - section 80(6); or

- (b) the tenderer is not satisfied with the decision of the Accounting Officer,

the tenderer may make a complaint to the Authority within fourteen working days from the date of communication of the decision by the Accounting Officer.

(3) The Authority shall within thirty days after the, submission of the complaint or dispute deliver a written decision which shall

- (a) state the reasons for the decision; and
- (b) if the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken.

(4) The decision of the Authority shall be final unless an action is commenced under section 82 of this Act.

Review by
the Public
Procurement
Appeals
Authority

82.-(1) Complaints or disputes not amicably settled by the Authority shall be referred to the Public Procurement Appeals Authority.

(2) A supplier, contractor or consultant entitled under section 79 to seek review may submit a complaint or dispute to the Public Procurement Appeals Authority

- (a) if the complaint or dispute cannot be submitted or entertained under section 80 or 81 because of entry into force of the procurement contract and provided that the complaint or dispute is submitted within fourteen days from the date when the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or dispute or the time when that supplier, contractor or consultant should have become aware of those circumstances;
- (b) if the head of the procuring entity does not entertain the complaint or dispute because the procurement contract has entered into force, provided that the complaint or dispute is submitted within fourteen days after the delivery of the decision not to entertain the complaint or dispute;

- (c) pursuant to subsection 80(5) provided that the complaint or dispute is submitted within fourteen days after the expiry of the period referred to in subsection (4) of section 80, or
- (d) if the supplier, contractor or consultant claims to be adversely effected by a decision of the head of the procuring entity or of the approving authority under section 81 provided that the complaint or dispute is submitted within fourteen days after the delivery of the decision.

(3) Upon receipt of a complaint or dispute, the Public Procurement Appeals Authority shall give notice of the complaint or dispute to the procuring entity or the approving authority.

(4) The Public Procurement Appeals Authority may, unless it dismisses the complaint or dispute, recommend one or more of the following remedies:

- (a) declare the legal rules or principles that govern the subject matter;
- (b) prohibit the procuring entity from acting or deciding unlawfully or from following an unlawful procedure;
- (c) require the procuring entity that has acted or proceeded in an unlawful manner, or reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
- (d) annul in whole or in part an unlawful act or decision of the procuring entity or approving authority other than any act or decision bringing the procurement contract into force;
- (e) revise an unlawful decision by the procuring entity or substitute its own decision for such a decision, other than any decision bringing the procurement contract into force;
- (f) require the payment of compensation for any reasonable costs incurred by the supplier, contractor or consultant submitting the complaint or dispute as a result of an unlawful act, decision or procedure followed by the procuring entity or approving authority; or

(g) order that the procurement proceedings be terminated.

(5) The Public Procurement Appeals Authority shall, within thirty days, issue a written decision concerning the complaint or dispute stating the reasons for the decision and the remedies granted, if any.

(6) The decision of the Public Procurement Appeals Authority shall be final unless an action is commenced under section 85 of this Act.

Certain
rules
applicable
to review
proceed-
ings

83.-(1) After the submission of a complaint or dispute under sections 80, 81 or 82, the head of the procuring entity or of the approving authority or the Public Procurement Appeals Authority, as the case may be, shall notify all suppliers, contractors or consultants participating in the procurement proceedings to which the complaint or dispute relates, of the submission of the complaint or dispute and of its substance.

(2) Any supplier, contractor or consultant or any Government authority whose interests are or could be affected by the review proceedings, shall have a right to participate in the review proceedings and a supplier, contractor or consultant who fails to participate in the review proceedings and supplier, contractor or consultant who fails to participate in the review proceedings shall be barred from subsequently making the same claim.

(3) A copy of the decision of the head of the procuring entity or of the approving authority or of the Public Procurement Appeals Authority, as the case may be, shall be furnished within five days after the delivery of the decision, to the supplier, contractor or consultant submitting the complaint or dispute to the procuring entity and to any other supplier, contractor or consultant or Government authority who participated in the review proceedings and in addition, after the decision has been delivered, the complaint or dispute and the decision shall be made available for inspection by the general public, provided however that, no information shall be disclosed if its disclosure would

- (i) be contrary to law;
- (ii) impede law enforcement;
- (iii) not be in the public interest;
- (iv) prejudice legitimate commercial interest of parties; or inhibit fair competition.
- (v)

Suspension of
procurement
proceed-
ings

84.-(1) The timely submission of a complaint or dispute under sections 80, 81 and 82 shall suspend the procurement proceedings for a period of seven days, provided the complaint or dispute is not

frivolous and contains a declaration the contents of which, if proven, demonstrate that the supplier, contractor or consultant will suffer irreparable injury in the absence of a suspension and shows that it is probable that the complaint or dispute will succeed and the granting of the suspension would not cause disproportionate harm to the procuring entity or to the suppliers, contractors or consultants.

(2) Where the procuring contract enters into force, the submission of a complaint or dispute under section 81 shall suspend the performance of the procurement contract for a period of seven days provided the complaint or dispute meets the requirement set forth in subsection (1).

(3) The head of the procuring entity or of the approving authority or the Public Procurement Appeals Authority may extend the suspension provided for in subsection (1) and the Public Procurement Appeals Authority may extend the suspension provided for in subsection (2) in order to preserve the rights of the supplier, contractor or consultant submitting the complaint or dispute or commencing the action pending the disposition of the review proceedings, provided that the total period of suspension shall not exceed thirty days.

(4) The suspension provided for by this section shall not apply if the procuring entity certifies that urgent public interest considerations require the procurement to proceed and the certification, shall state the grounds for such findings and shall be conclusive with respect to all levels of review except judicial review.

(5) Any decision by the procuring entity under this section and the grounds and circumstances for it shall be made part of the record of the procurement proceedings.

Judicial
Review

85. The Court of competent jurisdiction shall have Jurisdiction over actions pursuant to section 79 and petitions for judicial review of decisions made by bodies or failure of those bodies to make a decision within the prescribed time-limit, pursuant to sections 80, 82 and 83.

