



HEARING RULES AND PROCEDURE FOR PART V CHALLENGE PROCEEDINGS

In exercise of the powers conferred on it under the **Public Procurement and Disposal of Public Property Act, 2015** (as amended) and the **Public Procurement and Disposal of Public Property (Challenge Proceedings) Regulations, 2021** the Office of Procurement Regulation (hereinafter referred to as “the Office”) makes the following Rules in relation to Challenge Proceedings:

PART ONE

PRELIMINARY

Interpretation

1.1 Interpretation

“Act”	means the Public Procurement and Disposal of Public Property Act, 2015 (as amended);
“Accommodation”	means arrangements to be made to allow a differently abled individual to participate at the Hearing of the Challenge Proceedings;

“Applicant”	means the Supplier or Contractor who initiates proceedings under these Rules;
“Challenge Proceedings”	means proceedings brought by a supplier or contractor where it is alleged that— a) a procuring entity made a decision or took action that is not in compliance with the Act; and b) the supplier or contractor has suffered or is likely to suffer loss or injury because of the decision or action of the procuring entity;
“Document”	includes any device by means of which information is recorded or stored and any writing or material that is in electronic, audiotape or videotape form including but not limited to digital reproductions, photographs, maps, graphs, microfiche and any data or information recorded or stored by means of any device;
“Hearing”	includes any Hearing fixed for the consideration of an application for review pursuant to Section 49 and 50 of the Act or any other matter relative

thereto which is to be determined by the Hearing Panel;

“Hearing Panel”

means a Panel of Board members and Management of the Office of no less than three (3) and no more than five (5) members, who shall be selected by the Office of Procurement Regulation for their competence in the specific area(s) of dispute;

“Hearing Secretary”

means an officer of the Office who is authorised by the Procurement Regulator/Chairman to inter alia perform the duties of Hearing Secretary to the Challenge Proceedings;

“Interested Party”

means a supplier, contractor or procuring entity permitted to participate in Challenge Proceedings pursuant to **Section 51** of the Act;

“in writing” or
“written”

means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;

“Office”	means the Office of Procurement Regulation as established under Section 9 of the Act;
“Order”	means a determination or decision of the Hearing Panel made in Challenge Proceedings under these Rules which finally disposes of a matter before the Hearing Panel;
“Party”	includes a person, group of persons or organisation with an interest in the Challenge Proceedings pursuant to Section 49 and 51 of the Act and Regulation 4(c) of the Regulations;
“Particulars”	shall include-: (a) The grounds upon which any remedy or order is being sought or opposed in the Challenge Proceedings; and (b) A general statement of the material facts that the Party alleges in support of the position being taken by the Party in the Challenge Proceedings;
“Public Holiday”	means any public holiday or festival appointed or declared by the President under the Public Holidays and Festivals Act Chap. 19:05;

“Regulations”	means the Public Procurement and Disposal of Public Property (Challenge Proceedings) Regulations, 2021;
“Representative”	means an Attorney-at-Law or such other suitably qualified and experienced person which may include but is not limited to an engineer, quantity surveyor, valuator, agent or such person as shall be recognised by the Office for the purposes of representing a Party to the Challenge Proceedings pursuant to Regulation 7 of the Regulations;
“Respondent”	means the procuring entity against whom a decision or order is sought or in respect of whom a decision or order applies;
“Secretariat”	means the Administrative Review Secretariat of the Office which is responsible for the administration of all Hearings and processes related to Challenge Proceedings;
“Supplier” or “Contractor”	means any party or potential party to procurement Challenge Proceedings with a procuring entity.

PART TWO
THE OVERRIDING OBJECTIVE

- 2.1** The overriding objective of these Rules is to enable the Hearing Panel to deal with cases fairly and justly.
- 2.2** Dealing with a case fairly and justly includes: -
- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
 - (b) avoiding unnecessary formality and seeking flexibility in the Challenge Proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate in the Challenge Proceedings;
 - (d) using any special expertise of the Hearing Panel effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues to be determined in the Challenge Proceedings.

PART THREE
ADMINISTRATION

Application and Construction

- 3.1** These Rules shall apply to all Challenge Proceedings before the Office under **Part V** of the Act and are to be read in conjunction with the provisions of the Act and the Regulations which deal with Challenge Proceedings.
- 3.2** The Forms in the Appendices to these Rules must be used in the cases to which they apply.

3.3 The Hearing Panel may, by Order and on terms, extend or abridge any time period fixed by these Rules. The Hearing Panel shall not grant an extension of any time limit referred to in these Rules except in exceptional circumstances.

3.4 All Parties and their Representatives are bound by these Rules. Any Party may raise any issue of non-compliance with the Office. The Office shall deal with a breach of these Rules as it deems fit.

Communication with the Office

3.5 All communications with the Office and the Hearing Panel must be through the Secretariat and shall be in writing.

Computation of Time

3.6 In the computation of time under these Rules, except where a contrary intention appears:

(a) where the time limited by these Rules for the doing of anything expires or falls on a Saturday, Sunday or public holiday, the time extends to and the things may be done on the first following day that is not a Saturday, Sunday or a public holiday;

(b) where a period of time prescribed for the doing of anything does not exceed seven working days, Saturdays, Sundays or public holidays shall not be included in the computation of time.

PART FOUR

POWERS OF THE HEARING PANEL

Appointment of Members to the Hearing Panel

4.1 The Office shall appoint members to-

(a) sit on a Hearing Panel;

- (b) preside over case Management conferences under Part 7 of these Rules;
and
- (c) hear and determine Challenge Proceedings in accordance with the Act,
Regulations and these Rules.

Composition of the Hearing Panel

4.2 A Hearing Panel shall be comprised of Board members and Management of the Office of no less than three (3) members and no more than five (5) members, who shall be selected by the Office for their competence in the specific area(s) of dispute.

4.3 The Office shall appoint a Member of the Hearing Panel to chair a Hearing conducted pursuant to Part V (Challenge Proceedings) of the Act.

Conflict of Interest

4.4 Upon appointment to the Hearing Panel each member shall disclose any facts or circumstances known to them that might call into question their impartiality or independence in the matter, in the eyes of a well informed and fair-minded observer. If any such facts or circumstances arise thereafter, the member shall provide an updated declaration to the parties.

4.5 A member of the Hearing Panel shall be considered to have a conflict of interest where that member is not in compliance with the *Code of Conduct for Adjudicative Panels*.

4.6 No member of the Hearing Panel who has a conflict of interest in a Challenge Proceeding shall participate in that proceeding until the conflict of interest is resolved.

4.7 No member of a Hearing Panel shall use his membership to influence or seek

to influence the decision of another member in order to further the private interests of that member.

Powers of the Hearing Panel

- 4.8** The Hearing Panel may regulate its own procedure and shall conduct the Hearing fairly having regard to the principles contained in the overriding objective.
- 4.9** The Hearing Panel may exercise any of its powers under these Rules on its own initiative or at the request of a Party.
- 4.10** The Hearing Panel may issue general or specific procedural directions at any time, including before or during any Challenge Proceedings.
- 4.11** The Hearing Panel may waive or vary any of these Rules in respect of any Challenge Proceedings if it is of the opinion that to do so would be in the public interest or would be otherwise advisable to secure the just and expeditious determination of the matters in issue.
- 4.12** No proceedings or step taken in the proceedings, document or order in the Challenge Proceedings is invalid by reason only of a defect or other irregularity in form.

PART FIVE

FILING, SERVICE AND REPRESENTATION

Filing and Service of documents

- 5.1** A document required to be filed under these Rules shall be filed by electronic

transmission to the Secretariat in accordance with the rules on electronic filing as prescribed by the Office.

5.2 The Hearing Panel may, if it considers that it is justified in the circumstances, allow paper filing at the Secretariat or any other place designated by the Office.

5.3 Documents filed by electronic transmission shall constitute the original for the purpose of the Challenge Proceeding.

5.4 Documents are to be filed between the hours of 8:00 a.m. to 4:00p.m., Mondays to Fridays except on public holidays, unless otherwise directed by the Hearing Panel.

5.5 A Party who files or serves a document shall include with it the following information:

- (a) the Party's name, address, telephone number and e-mail address;
- (b) the intituling of the Challenge Proceedings to which the document relates and the case reference number;
- (c) if the Party has a Representative, the name, address, telephone number, and e-mail address of the Representative; and
- (d) in the case of serving a document, the name and address of the Party or Representative to be served.

5.6 A document required under these Rules to be served may be effected by-

- (a) personal delivery;
- (b) electronic mail; or
- (b) such other means as the Hearing Panel may approve in writing, on the Party being served or his place of business or his Representative on record.

5.7 An address for service given by a Party must be within the jurisdiction of the Republic of Trinidad and Tobago.

5.8 A Party who seeks to serve a document by electronic mail should first seek to clarify with the Party who is to be served (“the recipient”):

- (a) whether there are any limitations to the recipient’s agreement to accept service by such means; and
- (b) the format in which documents are to be sent; and
- (c) the maximum size of attachments that may be received.

5.9 A document that is served by electronic mail must be accompanied by an electronic message setting out:

- (a) the sender’s name, address, telephone number, and email addresses;
- (b) the name of the person to be served;
- (c) the title or description of the document transmitted; and
- (d) the name, telephone number and email address of a person to contact if transmission problems occur.

Proof of Service

5.10 When a document is filed, service must be confirmed by the filing of a Confirmation of Service (**Form 1**) by the Party that served the document.

Representation

5.11 In Challenge Proceedings before the Hearing Panel, a Party may appear on his own behalf or appoint someone to act as his Representative.

5.12 When an individual first appears on his own behalf in Challenge Proceedings before the Hearing Panel, the individual shall file or otherwise state on the record and keep current during the proceedings, his address, telephone number and e-mail address.

- 5.13** A Party appearing in person may appoint a Representative by filing with the Secretariat and serving on every Party to the Challenge Proceedings, a Notice of Appointment (**Form 2**) which shall indicate the name, address, telephone number and e-mail address of the Representative.
- 5.14** When a person first appears as a Representative or a Party in Challenge Proceedings before the Hearing Panel, that person shall file or otherwise state on the record, and keep current during the proceedings, his address, telephone number and e-mail address, and the name, address, telephone number and e-mail address of the Party being represented.
- 5.15** A Party who is represented by a Representative may change same by filing with the Secretariat and serving on every Party to the Challenge Proceedings, a Notice of Change of Representative (**Form 3**) which shall indicate the name, address, telephone number and e-mail address of the new Representative.
- 5.16** A Party who is represented by a Representative may subsequently elect to act in person by filing and serving on the Office and every Party to the Challenge proceedings the Notice of Intention to Act in Person (**Form 4**) which shall indicate the person's name, address, telephone number and e-mail address.

Withdrawal of Representative

- 5.17** A Representative for a Party in proceedings may withdraw from acting on behalf of a Party only with the leave of the Hearing Panel.
- 5.18** Notice of the application seeking leave to withdraw as the Representative (**Form 5**) must be filed and served on every party to the Challenge proceedings and shall state all facts material to a determination of the

application (without disclosing any attorney/client communication in which attorney/client privilege has not been waived, if applicable) and the reasons why leave should be given.

Interpreter

- 5.19** Where a Party, Representative or witness does not understand the language or languages in which an examination at a Hearing is to be conducted, the Party on whose behalf that person appears shall provide an Interpreter at that Party's own cost.
- 5.20** A Party to the Challenge Proceedings must notify the Hearing Panel as soon as possible, and in any event no later than at the case management conference, if that Party, their Representative or witness requires an Interpreter (**Form 6**).
- 5.21** An interpreter shall be competent and independent. The Party providing the Interpreter shall present his qualifications to the Secretariat at least two (2) working days prior to the Hearing, for the Hearing Panel to assess whether he is fit and proper to assist in the Challenge Proceedings.
- 5.22** Where an interpreter is required under Rule 5.20, before the witness is called, the interpreter shall take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and the witness' answers.

Accommodation required for differently abled individuals

- 5.23** A Party shall notify the Secretariat as early as possible, and in any event not later than at the case management conference, of any needs of the Party or Interested Party or his Representative or witnesses that may require accommodation (**Form 7**).

PART SIX
COMMENCEMENT OF CHALLENGE PROCEEDINGS

Application for Review

6.1 Challenge Proceedings shall be commenced by filing with the Secretariat and serving on the Respondent, a completed application for review (**Form 8**) clearly setting out the grounds for review, copies of any documentary evidence relied upon by the Applicant and the relief(s) requested.

6.2 The application for review must be filed within the time limit specified in **Section 50(2)** of the Act.

6.3 Where the application for review is filed by an agent of the Applicant, an appropriate power of attorney must accompany the application for review.

6.4 Where the Applicant is a company, an extract of the Minutes certified by the relevant personnel under resolution and seal of the Board must accompany the application for review.

Notification

6.5 Within seven (7) days of receipt of an application for review, the Hearing Secretary shall notify the Respondent and all qualified suppliers and contractors of same. Such notification can include publication on the Office's website.

Reply

6.6 Within three (3) working days of the receipt of the notification referred to in Rule 6.5, the Respondent shall file the following documents with the Secretariat and serve on the Applicant:

- (a) a written reply to the application for review prepared and signed by the Accounting Officer or its equivalent in a public body (**Form 9**);
- (b) copies of any documentary evidence relied upon in support of the Respondent's Reply; and
- (c) any other documents referred to in the application for review in the possession of the Respondent but not available to the Applicant.

6.7 Where the Respondent fails to submit a reply within the stipulated timeframe, the Hearing Panel can:-

- (a) proceed to deliberate on the application for review in accordance with **Regulation 9(4)** of the Regulations; and
- (b) make any other decision or order it considers appropriate in the circumstances.

Application to Participate

6.8 In accordance with **Section 51** of the Act, any supplier or contractor participating in the procurement proceedings to which the application for review relates or any public body whose interests are or could be affected by the application for review, shall have the right to participate in the Challenge Proceedings as an Interested Party by filing with the Secretariat and serving on the other Parties, an application to participate (**Form 10**) within two (2) working days of the issuance of the notice of the application for review referred to in Rule 6.5.

6.9 Within three (3) working days of receipt of the application to participate, the Hearing Panel shall determine whether the Interested Party has sufficient interest entitling participation and the terms and conditions, if any, of that participation. The Hearing Secretary shall promptly notify all the Parties and the Interested Party of the inclusion of the Interested Party in the

Challenge Proceedings.

Suspension of Procurement Proceedings

6.10 Within three (3) working days of the application for review, the Hearing Panel shall convene to consider whether or not the procurement proceedings or the performance of a procurement contract or the operation of a framework agreement should be suspended in accordance with **Sections 50(4) and (7)** of the Act.

6.11 Within seven (7) days of receiving an application for review the Hearing Panel shall notify the Respondent and all qualified suppliers and contractors of reasons for its decision on suspension pursuant to **Sections 50(4) and (6)** of the Act.

6.12 The Respondent may, at the time of submitting its written reply, request that the Hearing Panel authorise it to award a procurement contract or enter into a framework agreement in accordance with the grounds set out in **Regulation 9(5)** of the Regulations. This request must be supported by evidence showing that:

- (a) a delay in awarding the procurement contract or entering the framework agreement would be contrary to the public interest; or
- (b) such other consideration which would justify awarding the procurement contract or entering the framework agreement while the Office conducts its review.

PART SEVEN

CASE MANAGEMENT CONFERENCE

7.1 The Hearing Panel may direct the Parties to the Challenge Proceedings to

attend a case management conference.

- 7.2 At least one case management conference shall be held before the commencement of a Hearing except where: –
- (a) the emergency nature of the Challenge Proceedings would make a case management conference inappropriate; or
 - (b) the Hearing Panel otherwise directs.

7.3 A case management conference shall be presided over by the Hearing Panel.

Notice of Case Management Conference

7.4 The Hearing Secretary shall give notice of any case management conference to the Parties and to such other persons as the Hearing Panel may direct.

- 7.5 The notice of case management conference shall include: -
- (a) the date, time, place and purpose of the case management conference;
 - (b) whether the Parties themselves are required to attend and
 - (i) if so, that they may be accompanied by a Representative; or
 - (ii) if not, that they may be represented by a Representative who has the authority to make agreements and give undertakings on their behalf with respect to the matters to be addressed at the case management conference;
 - (c) a statement that if a Party does not attend (themselves or through a Representative, as the case may be), the presiding member of the Hearing Panel may proceed in the absence of that Party; and
 - (d) a statement that binding orders may be made by the presiding member of the Hearing Panel with respect to the conduct of the Challenge Proceedings at the case management conference.

Hearing Panel's general power of case management

7.6 The general rule is that at a case management conference, the presiding member of the Hearing Panel may, after giving the Parties an opportunity to make representations, make such orders with respect to the conduct of the Challenge Proceedings as he sees fit including but not limited to the following matters:

- (a) simplification or clarification of the issues in the Challenge Proceedings;
- (b) disclosure of documents;
- (c) facts or evidence that may be agreed upon;
- (d) witness statements and/ or witness summaries;
- (e) expert evidence;
- (f) identifying any evidentiary issues;
- (g) identifying any preliminary objections;
- (h) skeletal submissions in relation to the grounds of review
- (i) scheduling the Hearing;
- (j) the date and time by which any steps in the Challenge Proceedings are to be taken or commenced;
- (k) resolution of any or all of the issues in the Challenge Proceedings; and
- (l) the Hearing of arguments orally or by written submissions or a combination of both

7.7 The Hearing Panel may dismiss an application for review where it is of the opinion that:

- (a) the application for review is manifestly without merit;
- (b) the application for review was not filed within the time limits prescribed in **Section 50(2)** of the Act; or
- (c) the Applicant has not demonstrated sufficient standing by way of either a pecuniary or otherwise economic interest in the procurement proceedings in accordance with **Regulation 4(c)** of the Regulations.

7.8 All agreements, undertakings and orders made or given at a case management conference shall be recorded in an Order prepared under the direction of the presiding member of the Hearing Panel and circulated to the Parties.

7.9 Orders, agreements and undertakings made at the case management conference govern the conduct of the Challenge Proceedings and are binding upon the Parties to the proceedings unless otherwise ordered by the Hearing Panel.

Consolidation of Applications for Review

7.10 Where two or more applications for review are instituted arising from the same procurement proceedings, the Hearing Panel may consolidate the applications and hear them as if they were one application for review, as the circumstances and considerations of fairness permit.

PART EIGHT

DISCLOSURE

Duty of Disclosure

8.1 At the time of filing the application for review in the case of the Applicant, or the Reply in the case of the Respondent, or application to participate in the case of the Interested Party, each Party is required to disclose all documents which are required to prove the case put forward by that Party. This duty of disclosure continues until the conclusion of the Challenge Proceedings.

Redacted documents

8.2 Where a Party is concerned that a document on which it wishes to rely may contain information that falls within the categories specified in **Section 52** of

the Act, that Party may produce a redacted version of the document to the Hearing Panel provided that there is compliance with any confidentiality procedures that may be set out by the Office.

8.3 Notwithstanding Rule 8.2, the Hearing Panel may require the Respondent to provide effective access to all documents in its possession relating to the procurement proceedings in a manner appropriate to the circumstances in accordance with **Section 50(5)** of the Act.

Disclosure Order

8.4 At any stage in the Challenge Proceedings, the Hearing Panel may order: -

- (a) that a Party provide to another Party and to the Hearing Panel such documents as the Hearing Panel considers necessary for a full and satisfactory understanding of the subject of the proceedings; and
- (b) that any other disclosure required under this Part be made by a Party, within such time and on such conditions as may be specified by the Hearing Panel.

Consequence of failure to disclose documents

8.5 A Party that fails to make disclosure of a document in accordance with this Part may not refer to the document or introduce it in evidence at the Hearing without leave of the Hearing Panel, which may be granted on such conditions as the Hearing Panel considers just.

PART NINE

EVIDENCE

Evidentiary requirements

9.1 The Challenge Proceedings shall be conducted in accordance with the evidentiary requirements set out in **Regulation 14** of the Regulations.

List of Witnesses

9.2 Each Party shall list on the application for review, reply or application to participate, as the case may be, the names of all the witnesses he intends to call to testify on his behalf at the Hearing.

9.3 The Hearing Panel may require that a witness give testimony under oath or affirmation at the Hearing.

Witness Statements

9.4 Each Party shall file with the Secretariat and serve on the other Party, a statement of evidence of any witness upon which he intends to rely and such statement must be signed by the witness.

9.5 A witness statement shall:-

- (a) provide the name, address and occupation of the witness;
- (b) be dated;
- (c) be signed by the intended witness;
- (d) so far as reasonably practicable, be in the intended witness's own words;
- (e) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document;
- (f) not include any matters of information or belief which are not admissible and, where admissible, must state the source of such information or belief of any matters of information or belief; and
- (g) include a statement by the intended witness that he believes the statements of fact in it to be true.

Witness Summaries

9.6 Where a Party is unable to obtain a witness statement from a person he

intends to call as a witness at the Hearing, that Party shall file with the Secretariat and serve on the other Party, an explanation as to why it is not possible to obtain a witness statement and a summary of the evidence which would otherwise be included in a witness statement.

9.7 A witness summary must be filed and served within the period in which a witness statement would have had to be filed and served.

Consequences of failure to file and serve witness statements, witness summaries

9.8 A Party who fails to provide a witness statement or a witness summary in accordance with this Part may not call the person as a witness without the leave of the Hearing Panel, which may be granted on such conditions as the Hearing Panel considers just.

9.9 A witness may not testify to material matters that were not disclosed in the witness statement or statement of evidence without leave of the Hearing Panel, which may be granted on such conditions as the Hearing Panel considers just.

Exclusion of Witness

9.10 The Hearing Panel may at its discretion, order that a witness be excluded from the Hearing until called to give evidence. An order for exclusion will not generally be made against a Party to the proceedings.

Party appointed Expert Witness

9.11 Expert evidence must be restricted to that which is reasonably required to resolve the Challenge Proceedings justly and in accordance with the overriding objective.

9.12 An expert witness must provide independent assistance to the Hearing Panel by way of objective unbiased opinion in relation to matters within his expertise and must follow the guidelines contained at **Schedule I** of these Rules. The expert shall state in his evidence or report that he acknowledges and undertakes the duties set out in **Schedule I** of these Rules.

9.13 No Party may call an expert witness or file a report by an expert without leave of the Hearing Panel.

9.14 The general rule is that the Party who intends to call an expert to give evidence at a Hearing or file a report by an expert, shall file with the Secretariat and serve on the other Party an application for leave to do so (**Form 11**) at least two (2) working days prior to the case management conference and shall state:-

- (a) the name, address and qualifications of the expert;
- (b) the issue on which the expert will be giving evidence;
- (c) the justification for the expert evidence;
- (d) substance of the expert's evidence; and
- (e) a list of the documents, if any, to which the expert will refer.

9.15 A Party who fails to comply with Rule 9.14 may not call the expert witness or file the expert's report, as the case may be, without leave of the Hearing Panel, which may be granted on such conditions as the Hearing Panel considers just.

Panel appointed Expert

9.16 The Hearing Panel may appoint one or more experts to report in writing on specific issues in the Challenge Proceedings as identified by the Hearing Panel.

9.17 The report of the Panel appointed expert(s) shall be submitted to the Hearing Secretary within the time period stipulated by the Hearing Panel. The

Hearing Secretary shall forthwith provide same to the Hearing Panel and copies to each Party.

9.18 As a general rule, the Hearing Panel may order the Panel appointed expert to attend the Hearing at which the Parties shall have a reasonable opportunity to question the said expert on the report and to present witnesses in order to testify on relevant issues arising from the report.

9.19 The Office shall bear the costs of the engagement of a Panel appointed expert.

PART TEN

CONDUCT OF THE HEARING

Sittings of the Hearing Panel

10.1 All Hearings shall be open to the public and the guidelines set out in **Schedule II** must be followed except in the cases set out in **Section 52** of the Act.

10.2 Hearings may be conducted:

- (a) in person at Level 19, Tower D, International Waterfront Centre, 1A Wrightson Road, Port of Spain or at such other place as the Office directs;
- (b) by electronic Hearing, in accordance with the rules on electronic Hearings as prescribed by the Office;
- (c) by written Hearing in accordance with Part 11; or
- (d) any combination of (a) to (c),

on dates and times determined by the Hearing Panel.

Dates and Times of Hearing

10.3 In determining the order and time of the Hearing, the Hearing Panel shall give sufficient consideration to the need to act expeditiously so as not to cause

undue delay in the disposition of the Challenge Proceedings.

10.4 Notice of the date, time and location of the Hearing shall be issued to each Party to the Challenge Proceedings and published on the Office's website two (2) working days before the date appointed for the Hearing.

10.5 If a person to whom the notice is given does not attend in person or through a Representative, the Hearing may continue in the absence of that person.

10.6 The Hearing Panel may adjourn and/or reschedule any date for any Hearing or application or the completion of any tasks and shall notify all Parties and their Representatives affected by the postponement of the new date.

10.7 The Hearing Panel shall conduct the Hearing of the Challenge Proceedings as detailed below: -

(a) Applicant's Presentation

10.8 (a) The Applicant or his Representative(s) to present the case.

(b) The Applicant and/or his Representative(s) to call his witnesses one by one and produce documentary evidence (if any) and examine the witnesses separately.

(c) The Respondent and/or his Representative(s) to cross-examine and put questions to the Applicant's witnesses.

(d) The Interested Party, if any, to cross examine and put questions to the Applicant's witness

(e) The Applicant and/or his Representative(s) to re-examine the witness (if necessary).

(f) The Hearing Panel may question the witness(es) at any point in time

during the presence of the witness at the Hearing.

(g) To repeat steps (b) to (f) if there is more than one witness.

(a) Respondent's Presentation

10.9 (a) The Respondent or his Representative(s) to present the case.

(b) The Respondent and/or his Representative(s) to call his witnesses one by one and produce documentary evidence (if any) and examine the witnesses separately.

(c) The Applicant and/or his Representative(s) to cross-examine and put questions to the Respondent's witness.

(d) The Interested Party, if any, to cross examine and put questions to the Respondent's witness.

(e) The Respondent and/or his representative(s) to re-examine the witness (if necessary).

(f) The Hearing Panel may question the witness(es) at any point in time during the presence of the witness at the Hearing.

(g) To repeat steps (b) to (f) if there is more than one witness.

(b) Interested Party's Presentation

10.10 (a) The Interested Party or his Representative to present the case.

(b) The Interested Party to call his witnesses one by one and produce documentary evidence (if any) and examine the witnesses separately.

(c) The Applicant and/or his Representative(s) to cross-examine and put questions to the Interested Party's witness.

(d) The Respondent and/or his Representative(s) to cross-examine and put questions to the Interested Party's witness.

(e) The Interested Party to re-examine the witness (if necessary).

(f) The Hearing Panel may question the witness(es) at any point in time during the presence of the witness at the Hearing.

(g) To repeat steps (b) to (f) if there is more than one witness.

Conclusion of the Hearing

10.11 At the conclusion of all the presentations, each Party shall be allowed to make oral closing submissions to the Hearing Panel in the following order:-

- (a) Applicant;
- (b) Respondent;
- (c) Interested Party.

Expedited Hearing

10.12 An expedited Hearing may be held on short notice and Parties shall agree on the procedure to be followed.

10.13 The Hearing Panel shall waive or vary requirements in these Rules, including abridging time periods, in order to allow for an expedited Hearing of a matter.

10.14 Where the Parties do not reach agreement on the procedure to be followed for the conduct of an expedited Hearing, the Hearing Panel shall give such directions for the conduct of the Challenge Proceedings as it deems fit.

PART ELEVEN
WRITTEN HEARINGS

General

11.1 Nothing in this Part precludes the Hearing Panel at the Hearing or at the case management conference from directing that written submissions be filed in respect of a matter arising in a Hearing, and, if the Hearing Panel so directs, the Parties may also be given an opportunity to make oral submissions on the

matter.

11.2 The Hearing Panel may limit the time for the making of oral submissions.

Power of Hearing Panel to conduct Written Hearing

11.3 The Hearing Panel may conduct any Challenge Proceedings or part of the Challenge Proceedings by means of a written Hearing in cases falling within the categories set out in **Section 52** of the Act.

11.4 In deciding whether to hold a written Hearing, the Panel may take into account any factors it considers relevant, which may include: -

- (a) the suitability of a written Hearing format considering the subject matter of the Hearing, including the extent to which matters are in dispute;
- (b) whether the nature of the evidence is appropriate for a written Hearing, including whether credibility is an issue and the extent to which the facts are in dispute;
- (c) the extent to which the matters in dispute are questions of law;
- (d) the convenience of the Parties;
- (e) the cost, efficiency and timeliness of the Challenge Proceedings;
- (f) avoidance of undue delay;
- (g) ensuring a fair and understandable process;
- (h) the desirability or necessity of public participation or public access to the Hearing Panel's process; and
- (i) any other consideration affecting the fulfilment of the Hearing Panel's statutory mandate.

11.5 The Hearing Panel will not hold a written Hearing if a Party satisfies the Panel that there is good reason for not doing so.

11.6 The Hearing Panel shall issue directions on the filing and serving of documents

necessary for the conduct of the written Hearing.

Oral Examination

11.7 In a written Hearing, the Hearing Panel may consider oral examination.

11.8 If a Party requests **(Form 12)**, the Hearing Panel may order that a Party present a witness to be examined or cross-examined upon such conditions as the Hearing Panel directs.

Converting from oral to written Hearing or vice versa

11.9 The Hearing Panel may: -

- (a) continue a written Hearing as an oral Hearing; and
- (b) continue an oral Hearing as a written Hearing.

11.10 If the Hearing Panel decides to convert a written Hearing into an oral Hearing, it shall notify the Parties of its decision and may supply directions as to the holding of that Hearing and any procedures set down in these Rules for such a Hearing shall apply.

11.11 A Party who objects to a Hearing being held as a written Hearing shall file and serve a notice of objection **(Form 13)** within three (3) working days after receiving notice of the written Hearing.

11.12 If a Party objects to a written Hearing and the Hearing Panel is satisfied that there is good reason for not holding a written Hearing, the Hearing Panel shall provide a notice of an oral Hearing.

PART TWELVE
DISCONTINUANCE OR WITHDRAWAL

12.1 A Party may discontinue or withdraw the whole or any part of the Challenge Proceedings with the leave of the Hearing Panel.

12.2 A discontinuance or withdrawal shall be made by filing an application for leave **(Form 14)** with the Secretariat and serving on every Party to the Challenge Proceedings, stating the extent of the discontinuance or withdrawal.

PART THIRTEEN
COSTS

13.1 An Applicant may make an application for compensation for costs pursuant to **Section 50(10)(g)** of the Act **(Form 15)**, no later than at the Hearing.

13.2 An Applicant shall not be entitled to recover costs of or incidental to any Challenge Proceedings from the Respondent, except under an order of the Hearing Panel, and such costs shall be on an assessed basis.

13.3 Where an application for costs is made, both the Applicant and the Respondent shall be given a reasonable opportunity to make submissions to the Hearing Panel.

13.4 At the conclusion of the Hearing, the Hearing Panel may consider the following matters in order to determine the application for costs:-

- (a) whether the Respondent should pay reasonable costs incurred by the Applicant related to the submission of the application for review;
- (b) where the subject matter of the challenge proceedings relate to a

- submission made in response to pre-qualification, pre-selection or solicitation, whether the Respondent should pay the costs incurred by the Applicant in preparing that submission;
- (c) whether both the costs identified at (a) and (b) should be paid by the Respondent to the Applicant;
 - (d) any representations as to the time that was reasonably spent in preparing the submission and/ or making the application for review as well as preparing for and attending the Hearing;
 - (e) the quantum of costs that is fair, reasonable and proportionate in all the circumstances; and
 - (f) when such costs should be paid.

PART FOURTEEN

CONCLUSION OF THE CHALLENGE PROCEEDINGS

Conclusion of Challenge Proceedings and Decision of Hearing Panel

- 14.1** The Hearing Panel shall, when satisfied that all contentions and evidence of the Parties have been submitted in accordance with these Rules, deliberate on the issues raised and evidence presented in the Challenge Proceedings and make a decision in accordance with the provisions of **Section 50(10)** of the Act.
- 14.2** The decision of the Hearing Panel shall be confined to the issues raised by the application for review and the written reply.
- 14.3** The Secretariat shall immediately notify all Parties of the decision in accordance with the provisions of **Section 50(11)** of the Act.
- 14.4** The written reasons for the decision shall be formulated in accordance with the provisions of **Section 50(12)** of the Act.

Record of the Hearing

14.5 The Office shall, for each Hearing, take and keep minutes or ensure that such are taken and kept stating the time, place and the names of those attending together with a record of the Hearing.

14.6 Parties to the respective Challenge Proceedings shall have access to copies of the record of the Hearing within ten (10) working days of the Hearing.

14.7 Any request for access to the record of Hearing (**Form 16**) must be made in writing to the Hearing Secretary and on notice to the other Party to the Challenge Proceedings.

14.8 The Office may provide the record of the Hearing in one of the following formats:

- (a) an audio file; or
- (b) an electronic link to the video of the Hearing, if available.

Correction of Errors

14.9 The Hearing Panel may at any time correct a typographical error, error of calculation, or other similar error made in a decision without prior notice to the Parties.

14.10 Any such correction as stated in Rule 14.9 shall be recorded, kept on file and communicated to the Parties as soon as the correction is made.

Right to Review by Public Procurement Review Board

14.11 The Parties or any other person who is entitled to be given an opportunity to make representations under **Section 50(1)** or **51(1)** of the Act may request the Public Procurement Review Board to review the Order or

decision of the Hearing Panel made under **Section 50(4)** or **50(10)** of the Act.

**PART FIFTEEN
AMENDMENT TO THE RULES**

15.1 These Rules may be amended and new Rules may be added if the Office considers it advisable to do so in order to fulfil its mandate and to ensure that the Challenge Proceedings are conducted fairly, thoroughly and with appropriate transparency.

MADE by the OFFICE this day of 2022

.....

Mr. Moonilal Lalchan
Procurement Regulator

SCHEDULE I

GUIDELINES FOR TECHNICAL AND EXPERT WITNESSES

- (1) The Hearing Panel expects the technical and/or expert witness to provide it with assistance by way of qualified, relevant opinions and accurate information in relation to matters within his expertise. Objectivity and impartiality are necessary to assist the Hearing Panel in its decision.
- (2) Evidence that is influenced by the special interests of a party may be received and considered, but the Hearing Panel may give this evidence little or no weight.
- (3) The expert witness should express an opinion to the Hearing Panel only when the opinion is based on adequate knowledge and sound conviction. The expert witness should be reluctant to accept an assignment to provide evidence for use by the Hearing Panel if the terms of reference of the assignment do not allow the expert witness to carry out the investigations and obtain the information necessary to provide such an opinion. An expert witness who accepts an assignment under these circumstances, should advise the Hearing Panel of the limitations that the terms of reference placed on his ability to provide the information necessary to assist the Hearing Panel in making a sound decision or to give informed opinions.
- (4) Technical and expert evidence should be and should be seen to be, the independent product of the expert witness, uninfluenced as to form and content by the exigencies of Challenge Proceedings, the particular dispute before the Hearing Panel, and the interests of the witness' client.
- (5) The expert witness must never assume the role of advocate for a party. Argument and advocacy should be left to the Representatives presenting the Party 's case. This does not preclude the vigorous advancement of strongly held scientific or other professional

opinions or prevent a duly qualified witness who is also a party, from advancing technical and opinion evidence.

- (6) The expert witness has a duty to change his opinion where circumstances, such as the receipt of new information, require it. If at any time before the Hearing Panel issues its final decision, the witness changes his view on a material matter for any reason, particularly after having read the reports or listened to the evidence of witnesses for other Parties, the change in information and/or opinion should be communicated to the Hearing Panel and the other Parties without delay. Where reports or documents prepared by the witness contain errors or information which has changed, this must be promptly identified.
- (7) The expert witness must not change his opinion or change or withhold information to suit the position taken by the Party that has retained or employed him.
- (8) In preparing reports to be used by the witness' employer or client in determining the issues to be raised and the employer or client's position on those issues and for use as evidence, and in testifying before the Hearing Panel, the witness has the following duties of disclosure:-
 - (a) It is the responsibility of the witness to make fair and full disclosure.
 - (b) The witness should make it clear when a particular question or issue falls outside his or her expertise.
 - (c) To be useful, the opinion and evidence must provide enough clear information on assumptions, procedures used, and conclusions drawn to allow comprehension of the report as it stands, and permit fair and efficient cross-examination.
 - (d) When the witness is providing an opinion or giving evidence on an issue or problem area for which there are differences of professional or scientific opinion, he has an obligation to make such differences clearly known to the Hearing Panel and all

Parties. The witness should make reasonable efforts to be fully informed of those differences.

- (e) The witness should state all the material facts and assumptions upon which his opinion is based. He should not omit to consider and acknowledge material facts which could detract from the opinion. Where the facts are in dispute, the Hearing Panel expects that the witness will give his view of the facts and the proof relied upon before giving the opinion.
- (f) Where the opinion and evidence are based on information contained in other documents, detailed references should be provided in any report prepared by the expert, and copies of those documents must be attached to the said report.
- (g) Parties and their respective Representatives questioning their own witnesses are required by the Hearing Rules to ask questions designed to elicit the information required by these guidelines. However, the witness is expected to disclose to the Hearing Panel and to all other Parties all significant information and opinions, and errors, shortcomings and limiting factors even if no one has asked for them.
- (h) The weight to be given to the evidence of technical and expert witnesses will be affected by the demeanour of the witness. The witness should give direct answers to questions and should not be evasive while giving testimony, even though the answers may appear to be detrimental to the case of the witness' client or employer. Any effort to avoid answering direct questions could adversely affect the weight assigned to the witness' evidence on the issue or the evidence as a whole.

(9) When giving an opinion, the witness should state and explain the degree of certainty of the opinion or the level of probability that it is correct. The degree of uncertainty and the reasons for uncertainty should be candidly acknowledged. Uncertainties and assumptions inherent in measurements should be clearly identified. The level of confidence or the sensitivity to error must be given.

(10) In preparing reports and giving testimony, the witness should take into account that the Hearing process is a public process in which reports and testimony must be understood by Parties who may not have any significant technical knowledge. Therefore, the language and writing style should be simple and direct and scientific or technical terms and concepts should be explained, where possible, in clear, simple language.

(11) During his testimony, the expert witness should not be called upon to review fundamental techniques in a painstaking step-by-step fashion, and to read correspondence and other reports line-by-line and page-by-page, unless it is clear that the purpose of such elaboration warrants this expenditure of time.

SCHEDULE II

GUIDELINES FOR ATTENDANCE AT HEARINGS

- (1) Hearings shall be open to the public, including members of the media unless the Hearing Panel, acting in accordance with **Section 52** of the Act, determines that the Hearing should not be open to the public.
- (2) Nothing in these Rules limits the authority of the Hearing Panel to exclude members of the public where the public interest so requires.
- (3) Members of the public will be subject to the direction of the presiding member of the Hearing Panel at the Hearing.
- (4) Media personnel may engage in any activity associated with their coverage of a Hearing which is open to the public provided that they do not disrupt the Hearing.
- (5) Disruptive activities include, but are not limited to:
 - (a) interviews of Parties in the Hearing room while the Hearing is in session or nearby so as to disturb the Hearing;
 - (b) electronic flash for still photography; and
 - (c) any other behaviour which disrupts or detracts from the process of the Hearing.

APPENDIX TO
HEARING RULES AND PROCEDURES
PART V CHALLENGE PROCEEDINGS

PRESCRIBED FORMS