



## **ELECTRONIC FILING AND HEARING RULES 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:

The objective of these rules is to provide clear guidance to the Hearing Panel, Parties, Representatives and other stakeholders as to the procedure to be adopted for the filing of documents and in the conduct of hearings by electronic means, as well as to establish:

- a. Mechanisms that promote the use of technology and the dispensation of fairness by electronic means, consistent with provisions of the Hearing Rules for Part V Challenge Proceedings;
- b. A uniform and reliable approach to hearings by electronic means and the methodology for the arrangement and conduct of such hearings;
- c. A feasible and workable alternative to in-person hearings which may be utilised both in the course of normal operations as well as in times of crisis.

### **EFFECTIVE DATES**

The following Rules shall take effect from ..... and continue until further notice or otherwise replaced.

DEFINITIONS

1. For the purposes of these Rules:

- “designated officer”* means the assigned contact person authorised by the Hearing Panel to perform such duties;
- “e-filing platform”* (in the case of filing of documents) includes any email address, website, software or electronic programme in use for the time being for the purpose of facilitating the filing of documents and operated by technology under the management of the Office
- “electronic means”* (in the case of hearings) includes by teleconference, video-link, internet link, or any other means of instant communication between the Hearing Panel and the Parties, facilitated by the use of technology under management of the Office
- “electronic signature”* has the meaning prescribed in the Electronic Transactions Act Chap. 22:05
- “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”* is the Panel of Board members and Management of the Office which will determine Challenge Proceedings
- “Office”* means the Office of Procurement Regulation as

established under **Section 9** of the Public Procurement and Public Property Act, 2015 as amended

### FILING OF DOCUMENTS

2. Except where provided in any Rule, all documents which are required to be filed during Challenge Proceedings must be submitted through the Office's e-filing platform.
3. When filing documents via the e-filing platform, all instructions provided for the proper and efficient use of the e-filing platform must be adhered to.
4. In exceptional cases where permission is given for the manual filing of a document at the Office, the words "Manually Filed" must be marked at the top right-hand corner of the document.
5. The filing Party shall be responsible for the accuracy and completeness of any document uploaded to the e-filing platform.
6. Each document to be filed on the e-filing platform shall:
  - a) be in PDF format only;
  - b) be appropriately labelled;
  - c) include the correct case number in the subject line of the email to the Office, where the document is filed in relation to an existing matter through the email e-filing platform utilised by the Office;
  - d) be scanned and uploaded as a complete, singular document. The general rule is that annexures and exhibits to which that document refers must be included in the single upload;
  - e) be legible, properly paginated and organised to enable perusal without difficulty;
  - f) be scanned right-side up and not otherwise than in the order and orientation the document is to be read; and
  - g) bear all necessary signatures as required.

7. Where a document inclusive of annexures is scanned as a singular document and is unable to be uploaded on the Office's e-filing platform due to its size, the document may be separated into parts, labelled accordingly and uploaded for example, Application for Review Part 1 of 4, etc.
8. Where a document is not a text document, it shall be scanned or placed in a Word document and converted to PDF format before uploading to the e-filing platform.
9. The filing Party shall retain the original version of any document converted into electronic form for filing on the e-filing platform and shall make same available for inspection if required by the Hearing Panel.
10. Subsequent to a document being filed by electronic means, the filing Party shall receive a confirmation email, via the email address provided at the time of filing:
  - a) acknowledging receipt of the filing Party's email;
  - b) stating the case number that is assigned to the matter, which **must** be inserted in the subject line of future emails when further documents are to be submitted via the e-filing platform;
  - c) informing that a subsequent email will be sent attaching the stamped document.
11. Every filed document shall bear the stamp of the Office indicating the date the document is deemed to be filed.
12. Where a filing Party experiences a technical and/or connectivity issue while filing, this must be immediately reported via the contact information and method provided by the Office.
13. Documents filed by electronic means may be signed using an electronic signature.

#### TIME OF FILING

14. A document submitted via the e-filing platform shall be deemed to be filed within the

meaning of these Rules at the date when it is received by the Office within regular business hours of 8:00 a.m. to 4:00 p.m., save and except where the Office authorises filing outside of regular business hours.

15. For the avoidance of doubt, a document uploaded to the e-filing platform outside of regular business hours, on a weekend or public holiday, is deemed to be filed on the next business day.
16. For the purpose of determining whether a document was filed within the regular business hours of the Office, the date the document is recorded as having been received on the Office stamp will be used to determine same.
17. A party or representative filing by electronic means is responsible for observing any applicable deadlines and shall endeavour to afford sufficient and/or reasonable time for uploading documents and processing by the Office, taking into account any circumstances which may exist at a particular time.

#### **NON-COMPLIANCE WITH FILING REQUIREMENTS**

18. Any document that does not meet the requirements and is not in substantial compliance with any measure contained herein or the Hearing Rules and Procedures for Part V Challenge Proceedings, shall not be processed and shall not be deemed to be filed unless otherwise directed by the relevant Hearing Panel. Any such direction shall be communicated to the filing Party via email.
19. A document shall not be deemed to have been completed for filing if same does not contain the appropriate signature of the filing party or their representative.

### **E-MAIL ADDRESS AND TELEPHONE NUMBER**

20. The primary e-mail address and telephone number provided by a representative or party in a filing form shall be utilised for the arrangement and conduct of hearings by electronic means. Every representative and party is responsible for the accuracy of the information provided.

### **NOTIFICATION TO PARTIES**

21. Where the Hearing Panel fixes a hearing of a matter by electronic means, the designated officer shall notify the representatives and parties of:
- a. the date and time of hearing;
  - b. the specific electronic means to be utilised;
  - c. the telephone number and/ or email address for the designated officer;
  - d. the telephone numbers and/ or email addresses provided by the Parties to the matter;  
and
  - e. any other pertinent information to enable access and/ or communication via the specific electronic means (including login information, instructions or details on transmission of any web link which may be necessary).
22. Every representative or party shall provide such further information requested by the Hearing Panel necessary for arranging the hearing within the time period provided by the Office.

### **HEARINGS TO BE CONDUCTED BY ELECTRONIC MEANS**

23. The following categories of hearings may be conducted by electronic means.
- a. Direct Hearings - including, case management conferences, hearings,
  - b. Delivery of Decisions; and/or;

- c. Any other hearings which the Hearing Panel deems appropriate for hearing by electronic means.
- 24. The Hearing Panel may, at its own discretion or upon the application of a party, consider and/ or fix a hearing of a matter to take place by electronic means.
- 25. All matters will be heard at pre-scheduled appointed times. In any case in which a hearing or any part of a hearing is to be conducted in-person, it will be scheduled by appointment.

#### **ARRANGEMENT OF HEARINGS BY ELECTRONIC MEANS**

- 26. Where a hearing is to take place by electronic means, it shall be conducted by pre-approved electronic means used and supported by the Office.
- 27. A hearing by electronic means shall be conducted as if the representatives and/or parties are physically present in a Hearing Room.
- 28. For hearings involving a video-link, the technical setup and operating systems should be kept as simple as possible. Hardware shall generally include a laptop or desktop connected to and/ or equipped with a camera and microphone. The camera must be positioned so that the representative or party is facing the Hearing Panel and where evidence is being taken, so that the Hearing Panel has a clear and unobstructed view of the entire room.
- 29. Where a laptop or desktop computer is not being used, the device must be stationary and must support the specific electronic means identified by the Office.
- 30. For hearings involving use of the internet, every representative or party must ensure access to a reliable internet connection (20 Mbps minimum download and upload speed) so that connectivity remains throughout the hearing. It is preferable that an Ethernet cable connection and not Wi-Fi be utilised.

31. For *inter partes* hearings, representatives or parties must contact each other prior to the time of the hearing and test the acoustics and connectivity with each other. Once proper connectivity is established between the parties, the designated officer should be notified via email, whereupon the designated officer may give instructions to the parties on any further testing which may be required.
32. Every representative or party should join the hearing at least fifteen (15) minutes before it is due to start in order to confirm that there are no connectivity issues.
33. Any technical and/or connectivity issues must be immediately reported to the designated officer and confirmed to them as soon as is practicable by email correspondence copied to all other parties to the matter.
34. Full names must be entered when joining a hearing to ensure proper identification to the Hearing Panel and others participating in the Hearing.
35. Every representative or party shall be present upon premises that are private, well lit, in a quiet location away from noise or distractions and conducive to good acoustics.
36. Representatives and parties are encouraged to pause in the event something goes wrong (for example, where a participant drops offline or some connection fails), until it is resolved. It may be necessary to repeat a point or a question.
37. Microphones should be muted when not addressing the Hearing Panel.
38. Representatives and parties should be aware that sometimes the camera/video will be turned off and the sound muted by default when admitted entry into the hearing.
39. Representatives and parties should be aware of the protocol for a breakdown in communication during the Hearing and ensure that they have provided up to date contact information for all parties to the proceedings prior to the hearing. In the event of such a breakdown, the affected party shall contact the Office immediately.



## CONDUCT OF HEARINGS

40. Every representative and party must be prepared for a hearing by electronic means in advance of the time fixed. This may include ensuring the availability of documents, persons, equipment, information technology support or otherwise, as well as ensuring the proper functioning of all hardware.
41. Prior to the commencement of and, when necessary, during the electronic hearing questions will be asked of all participants as to their capacity to hear and to see the proceedings.
42. Every representative and/or party shall be seated and must be attired in a professional manner.
43. Every representative and/or party participating in the hearing orally must speak clearly and directly into the microphone/receiver, but not too quickly in the event that a time lag arises. The rustling or handling of papers near microphones/receivers should be minimised or eliminated. Microphones/receivers should be kept clear of papers, books or other material and should not be covered in any way. Background noise must be avoided where possible. Use of headsets and in-ear headphones is permissible and can assist with sound quality.
44. Every person participating in a hearing which involves a video-link must look directly into the camera where applicable, and generally conduct themselves in a civil and respectful manner.
45. Every representative and/or party should make it clear when they have finished dealing with a point.
46. Save for where the Hearing Panel gives express permission, a representative and/or party should not move out of the range of a camera or microphone while a hearing is in progress. If during the course of the Hearing any Party to the proceeding has to leave the

room, leave of the Hearing Panel must be obtained and all microphones and cameras should be turned off until resumption.

47. If a member of the Hearing Panel wishes to interject; the member may say “Excuse me” and hold up a hand.
48. Representatives and parties should desist from interrupting speakers. In the event any interjection is necessary, Representatives and Parties should use the ‘Raise Hand’ option or any other suitable means such as making an indication in the chat facility or they should say “Excuse me” and hold up a hand.
49. In the event that the connection is lost or in any way interrupted during a hearing by electronic means, the Representatives and/or Parties must immediately notify the designated officer stating the precise time and second at which such connectivity was either lost or interrupted. This must be confirmed as soon as is practicable by email correspondence to the designated officer and copied to all other parties to the matter.
50. Where these Rules are silent on any issue, the Hearing Panel may give directions or make any Order, which is necessary and just in the circumstances, for the purpose of the due conduct of a hearing by electronic means.
51. Every representative and party shall ensure that the volume on devices is not on the highest setting as this is likely to cause feedback when speaking.

#### **USE OF DOCUMENTS**

52. Representatives and/ or parties should have software applications such as Acrobat DC or PDF Expert to enable the marking up of bundles. Representatives and Parties are advised to keep a clean duplicate of the bundle, so that there is a clean bundle in addition to the marked-up bundle. This is to enable the sharing of a clean copy should the Hearing Panel ask for the documents to be shared electronically.
53. Representatives and/ or parties should use an agreed index of the electronic bundle so

that it can be easily referred to between relevant Parties by section, page and paragraph number.

54. Representatives and/ or parties should seek to minimise the size of bundles to avoid the splitting of documents.
55. Representatives and/ or parties are encouraged to use hyperlinks in submissions.
56. If a representative and/or party wishes to refer to a document not already in the possession of the Hearing Panel by using a 'share screen ' option on a computer, the representative and/or party must have the document open on his/her laptop/ desktop and obtain the permission of the Hearing Panel before sharing screens with the Hearing Panel and with every other representative and/or party to the proceedings.
57. Representatives and parties are to be aware that if they unexpectedly need to share a document that is not in the electronic bundle, but which cannot be made visible to all observers by sharing on screen, a determination will be made by the Hearing Panel on the means and medium to be used.

#### **PREPARATION AND REMOTE ADVOCACY**

58. Representatives and/or parties are encouraged to write a detailed script of submissions and cross-examination questions to promote efficiency of the Hearing.
59. Questions to witnesses should be clear and succinct.
60. Representatives and/or parties are advised to formulate written arguments to provide a clear road-map of the key issues and how they intend to approach them.

#### **TAKING OF VIVA VOCE EVIDENCE IN HEARINGS BY ELECTRONIC MEANS**

61. Every representative and party shall ensure that witnesses are arranged in order as if it were an in-person hearing.

62. Witnesses must not communicate with third parties while they are giving evidence and should not consult documents without the permission of the Hearing Panel.
63. For the purposes of taking evidence, parties and witnesses may be asked to identify anyone who is in the room with them and to show a panoramic view of the room before they begin.
64. Every representative and/or party shall manage issues relating to third parties such as interpreters or intermediaries who may be required to assist the Hearing Panel and/or Parties. Issues regarding discreet and separate channels of communication ought to be resolved in advance of hearing. Where third parties are used to assist witnesses, this adds to the possibility of participants speaking over one another. Third parties should therefore be reminded of speaking protocols where necessary.
65. In managing hearings by electronic means, the Hearing Panel may direct a witness to give evidence from a specific location and by specific means, including from the Office.
66. *Viva voce* evidence may be taken in person at the Office where the Hearing Panel deems it necessary in the interest of fairness to require the physical presence of the witness. Such circumstances include:-
  - a. where hard copies of documents or physical exhibits must be tendered in evidence by a witness and there is no agreement between the parties as to the tendering of same electronically, or
  - b. where the witness has no available means to appear electronically.
67. Any witness required to give *viva voce* evidence in person shall be heard at pre-scheduled times, save and except for urgent matters that may arise. The Hearing Panel shall schedule times for in-person *viva voce* hearings to ensure that there is no congregating of persons and will provide persons with the scheduled time for their appearance.
68. All other parties to a matter where a witness is required to give *viva voce* evidence in person need not appear in-person or in the same room or at the same location unless

directed by the Hearing Panel.

69. Each witness is required to comply with the sanitisation policies of the Office.

### **CONFIDENTIALITY**

70. Save for where the Hearing Panel gives its express permission, the only persons allowed in any room where a Hearing by electronic means is being conducted are the representatives, the parties and any necessary support persons approved by the Hearing Panel to be in attendance at the virtual hearing. Witnesses will be placed in virtual waiting rooms until they are called upon to present their evidence.

71. A hearing by electronic means shall not be recorded by any representative and/or party to the proceedings or by any third Party not being a designated officer.

72. Proceedings held in camera must not be broadcasted, recorded or reported by a representative or a party in any manner. Representatives and/or parties may be required to give undertakings to the Hearing Panel in this regard.

73. Hearings by electronic means (other than in camera hearings) may be streamed on the Office's electronic platforms.

74. Parties are advised to ensure that they turn off or close any communication media that is not related to the hearing in progress such as Facebook etc.

### **NON-COMPLIANCE WITH REQUIREMENTS FOR HEARINGS BY ELECTRONIC MEANS**

75. The Hearing Panel may terminate a hearing by electronic means at any time in the event of any non-compliance with any Rule contained herein or where it is otherwise necessary to preserve fairness in the matter.

**GENERAL**

76. These Rules may be amended and/ or new Rules may be added as the Office deems fit.

**MADE** by the OFFICE this                    day of                    2022

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**Mr. Moonilal Lalchan**  
**Procurement Regulator**