



Form 10: Application to Participate

Instructional Guide

Form 10 must be completed by the following persons who seek to join ongoing Challenge Proceedings in accordance with section 51 of the Public Procurement and Disposal of Public Property Act 2015, as amended (“the Act”):

- i. A Supplier/ Contractor participating in the procurement proceedings under review; or
- ii. A Public Body whose interests are or could be affected by an Application for Review.

This Form relates to persons who wish to join as an Interested Party to an existing matter under review. An Interested Party will be allowed to participate by way of presenting evidence and submissions in relation to the decision/actions and corresponding grounds for review and reliefs/ remedies sought by the Applicant in the Application for Review.

An Interested Party is **not** entitled to challenge decisions/actions other than those listed by the Applicant or put forward his own reliefs/ remedies or seek to recover costs in the Challenge Proceedings which he has joined. A Supplier/ Contractor who wishes to:

- raise grounds of review other than those put forward by the Applicant in his application for review;
- challenge different decisions/actions of the Respondent arising from the same procurement proceedings; or
- seek other reliefs/ remedies and costs from the Respondent,

is invited to complete and submit Form 8 within the timeframes stipulated in section 52 of the Act that is,

- (a) where the application for review is in relation to the terms of solicitation, pre-qualification or pre-selection or decisions or actions taken by a procuring entity in pre-qualification or pre-selection proceedings- submit Form 8 before the deadline for presenting submissions; or
- (b) where the application for review is in relation to other decisions or actions taken by a procuring entity in the procurement proceedings- submit Form 8 within the standstill period or, if there is no standstill period, within seven (7) working days after the

publication of the notice of the decision or action that is taken in accordance with the Act.

This Form 10 must be filed and served on every Party to the Challenge Proceedings. Form 1: Confirmation of Service must therefore be filed after this Form has been served.

Below is a list of the information that must be stated in each paragraph of Form 10.

ITEM 1

1. State the full name of the Interested Party;
2. State the full address of the Interested Party.

ITEM 2 (a)

1. State the basis/ grounds on which the Interested Party wishes to join the ongoing Challenge Proceedings. The Interested Party must also state its position in relation to the grounds for review and any other material matters contained in the Applicant's application for review.

ITEM 2(b)

1. This section is to be completed only where the Interested Party is a Supplier or Contractor;
2. State whether the Interested Party is a participant in the procurement proceedings which are the subject of the ongoing Challenge Proceedings;
3. State how the reliefs sought by the Applicant can affect the Interested Party.

ITEM 2 (c)

1. This section is to be completed only where the Interested Party is a Public Body;
2. State how the Interested Party's interests are or could be affected by the Applicant's application for review.

ITEM 3

1. State the names of all the witnesses intended to appear on the Interested Party's behalf at the Hearing of the Challenge Proceedings. This is a requirement under Rule 9.1 of the Hearing Rules and Procedures for Part V Challenge Proceedings.

ITEM 4

1. State if a Representative will act on behalf of the Interested Party at the Challenge Proceedings. A Representative can be an Attorney-at-Law, engineer, quantity surveyor,

valuator, agent or a person recognised by the Hearing Panel for the purposes of representing a Party to the Challenge Proceedings;

2. If a Representative will be utilised, Form 2- Notice of Appointment of Representative must be completed and submitted along with this Form.

ITEM 5

1. Indicate which documents are attached in support of this Application to Participate;
2. Where the Interested Party is a company, an extract of Minutes certified by relevant personnel under resolution and seal of the Board must be submitted;
3. Where an agent is appointed to act as a Representative on behalf of the Interested Party, a power of attorney must be submitted;
4. Rule 8.1 of the Hearing Rules and Procedures for Part V Challenge Proceedings requires the Interested Party to disclose, at the time of the filing of the Application to Participate, all documents which are required to prove his case. Failure to do so may result in the inability of the Interested Party to refer to the document or introduce it at the Hearing of the Challenge Proceedings without the permission of the Hearing Panel;

ITEM 6

1. State whether any document on which the Applicant wishes to rely contains information that falls within the categories specified in section 52 of the Act;
2. If there are redacted documents to be relied upon:
 - a. state the name or a description of the document;
 - b. identify the portion of the document redacted by reference to the page number(s) and paragraph number(s) (if numbered) or line number(s) (if paragraphs are not numbered);
 - c. state the basis/ grounds for the redaction of the documents listed. These grounds are listed at section 52 of the Act, i.e. where the disclosure of the redacted information would:
 - i. impair the protection of essential security interests of the State;
 - ii. be contrary to law;
 - iii. impede law enforcement;
 - iv. prejudice the legitimate commercial interests of Suppliers or Contractors; or
 - v. impede fair competition.
 - d. repeat the above steps if there are multiple redacted documents being provided.

CERTIFICATE OF TRUTH

1. This certification that the contents of the Form are true and accurate must be signed and dated by the Interested Party or an employee of the Interested Party who has the capacity to give such certification.