



Form 8: Application for Review

Instructional Guide

Form 8 must be completed by a Supplier or Contractor who seeks to review the decision or action of a Procuring Entity in accordance with sections 49 and 50 of the Public Procurement and Disposal of Public Property Act 2015, as amended (“the Act”).

It is important that this application for review is submitted within the timeframe set out in section 50(2) 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- this Form must be submitted 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- this Form must be submitted 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 must be filed and served on the Respondent Procuring Entity. 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 8.

ITEM 1

1. State the full name of the Applicant i.e. the Supplier or Contractor;
2. State the full address of the Applicant;
3. State the full name of the Respondent, i.e. the Procuring Entity whose decision/ action is being challenged;

4. State the full address of the Respondent;
5. The Applicant can challenge multiple decisions or actions taken by the Respondent during a specified procurement proceeding. State each decision/ action that is being challenged and the date each was given/ done.

ITEM 2 (a)

1. State all relevant facts/ background information relating to the decision(s)/ action(s) which is being challenged. Documents which are referenced in this item are to be attached to this Form and listed at Item 10.

ITEM 2(b)

1. This section is to be completed only where the review is in relation to the terms of solicitation, pre-qualification or pre-selection; or in relation to the decisions or actions taken by a Respondent in pre-qualification or pre-selection proceedings. This is related to the requirement of section 50(2) (a) of the Act;
2. State the type of solicitation solicitation/ pre-qualification/ pre-selection documents e.g. request for quotation, request for proposal, invitation to tender. If pre-qualification was undertaken by the Respondent through the Procurement Depository database, this should be stated;
3. State the reference number/ tender number if known;
4. Provide a description of the goods/works/services being procured by the Respondent in the procurement proceedings in question;
5. State the date of issuance of the solicitation/ pre-qualification/ pre-selection documents;
6. State the deadline date indicated in the solicitation/ pre-qualification/ pre-selection documents for the presentation of submissions.

ITEM 2 (c)

1. This section is to be completed only where the review is in relation to a decision(s) or action(s) taken by the Respondent in a procurement proceeding other than those falling under item 2(b) above. This is connected to the requirement of section 50(2) (a) of the Act and is usually a challenge to the award of a contract;
2. State the name or title of the proposed contract which is to be awarded by the Respondent;
3. State the reference number/ tender number of the contract, if known;
4. State whether a standstill period was specified in the solicitation documents and if so, what was the period stated;
5. State whether the date of the decision/ action/ Notification of Intention of Award which was issued by the Respondent
6. State whether a standstill period was specified in the decision/ action/ Notification of intention to award the contract to a particular Supplier/Contractor and if so, what was the period stated.

ITEM 3

1. State each basis/ ground for the review sought in relation to each decision/action that is challenged as listed at item 1 above. The Applicant should clearly detail the elements required under section 49 of the Act that is,
 - a. what decision or action the Respondent made or took which is not in compliance with the Act, and
 - b. how the Applicant has suffered or is likely to suffer loss or injury because of the Respondent's decision or action.

ITEM 4 (a)

1. Specify the appropriate reliefs/ remedies which the Applicant wishes the Hearing Panel to consider ordering at the end of the Challenge Proceedings. These reliefs must be in keeping with the actions that can be taken by the Hearing Panel in accordance with section 50(10) of the Act.

ITEM 4(b)

1. Where the Applicant prepared a bid in relation to the procurement proceeding under review, the Applicant must indicate whether costs were incurred for the preparation of that bid, and if so, the amount of money spent. Proof of the expenses incurred must be attached to this Form and listed at Item 11.

ITEM 5

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

ITEM 6

1. If known, state whether there are existing Challenge Proceedings relating to the same procurement proceedings and any details relative to those proceedings (e.g. the name of the Applicant in those proceedings, the case number).

ITEM 7

1. State whether the Applicant raised its concerns with the Respondent prior to submitting this Application for Review to the Office of Procurement Regulation;
2. State details of the enquiries made with the Respondent and the outcome, such as whether an oral or written complaint was made/ on what date/ to whom/ whether the Respondent made contact with the Applicant or held a meeting/ what documents were sent to the Respondent and or received from the Respondent/ what was the

Respondent's final response. Documents which are referenced in this section are to be attached to this Form and listed at Item 11.

ITEM 8

1. State the contact information for the contact person in the Respondent's organisation who the Secretariat can liaise with to progress the Challenge Proceedings.

ITEM 9

1. State if a Representative will act on behalf of the Applicant 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 10

1. Indicate which documents are attached in support of this Application for Review;
2. Where the Applicant is a company, the Public Procurement and Disposal of Public Property (Challenge Proceedings) Regulations, 2021 requires an extract of Minutes certified by relevant personnel under resolution and seal of the Board to be submitted;
3. Where an agent is appointed to act as a Representative on behalf of the Applicant, the Public Procurement and Disposal of Public Property (Challenge Proceedings) Regulations, 2021 requires a power of attorney to be submitted;
4. Rule 8.1 of the Hearing Rules for Part V Challenge Proceedings requires the Applicant to disclose, at the time of the filing of the Application for Review, all documents which are required to prove his case. Failure to do so may result in the inability of the Applicant to refer to the document or introduce it at the Hearing of the Challenge Proceedings without the permission of the Hearing Panel.

ITEM 11

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 Applicant or an employee of the Applicant who has the capacity to give such certification.