



**Form 9: Reply**  
**Instructional Guide**

Form 9 must be completed by the Accounting Officer or equivalent in a Procuring Entity which has been named as a Respondent by a Supplier/ Contractor in an Application for Review.

The Reply must be filed within three (3) working days of the receipt of the notification of the filing of the Application for Review. Failure to submit a Reply within the specified period will not prevent the conduct of the review and the Respondent will remain bound by any decision made by the Office of Procurement Regulation, in accordance with Regulation 9(2) of the Public Procurement and Disposal of Public Property (Challenge Proceedings) Regulations, 2021.

This Form must be filed and served on the Applicant. 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 9.

**ITEM 1**

1. State the full name of the Respondent;
2. State the full address of the Respondent;
3. State the full name of the Applicant, i.e. the Supplier/ Contractor who filed the Application for Review;
4. State the full address of the Applicant.

**ITEM 2 (a)**

1. State all relevant facts/ background information relating to the decision/ action which is being challenged. Documents which are referenced in this section are to be attached to this Form and listed at Item 11.

**ITEM 2(b)**

1. This section is to be completed only where the Application for Review is in relation to the terms of solicitation, pre-qualification or pre-selection; or in relation to the

decisions or actions taken by the Procuring Entity in pre-qualification or pre-selection proceedings;

2. State whether the information provided by the Applicant at item 2(b) of the Application for Review is correct. If no, state the Respondent's version of the details relative to the items listed at item 2(b) of the Application for Review. For ease of reference, item 2(b) of the Application for Review related to:
  - a. the type of solicitation/ pre-qualification/ pre-selection documents issued
  - b. the reference number/ tender number
  - c. the description of the goods/works/services being procured
  - d. the date of issuance of the solicitation/ pre-qualification/ pre-selection documents
  - e. the deadline indicated in the solicitation/ pre-qualification/ pre-selection documents for presenting submissions

#### ITEM 2 (c)

1. This section is to be completed only where the Application for 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 whether the information provided by the Applicant in section 2(c) of the Application for Review is correct. If no, state the Respondent's version of the details relative to the items listed in section 2(c) of the Application for Review. For ease of reference, item 2(c) of the Application for Review related to:
  - a. the proposed contract which is to be awarded by the Respondent
  - b. the reference number/ tender number of the contract
  - c. whether a standstill period was specified in the solicitation documents and if so, what was the period stated
  - d. the date of the decision/ action/ Notification of Intention of Award which was issued by the Respondent
  - e. whether a standstill period was specified in the decision/ action/ Notification of Intention of Award and if so, what was the period stated

#### ITEM 3

1. State the reply/ defence to each ground for the review for each decision stated at item 3 of the Application for Review.

#### ITEM 4

1. State any fact or matter which the Respondent wishes to bring to the attention of the Hearing Panel when considering the reliefs/ remedies sought by the Applicant.

ITEM 5

1. State the names of all the witnesses intended to appear on the Respondent'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. State whether the Respondent is aware of existing Challenge Proceedings relating to the procurement proceedings under challenge and if so, any details known in relation 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 the date the Application for Review was filed with the Secretariat;
2. State details of the enquiries made by the Applicant and the outcome. Provide a response to the statements made by the Applicant in the corresponding item 8 of the Application for Review. 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 whom the Secretariat can liaise with to progress the Challenge Proceedings.

ITEM 9

1. State if a Representative will act on behalf of the Respondent at the Challenge Proceedings. A Representative can be an Attorney-at-Law, engineer, quantity surveyor, valuator, agent or a person recognised by the Office of Procurement Regulation 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 Reply;
2. The Public Procurement and Disposal of Public Property (Challenge Proceedings) Regulations, 2021 requires the Respondent to provide documents referred to in the Application for Review which are in the Respondent's possession but not available to the Applicant;

3. Rule 8.1 of the Hearing Rules for Part V Challenge Proceedings require the Respondent to disclose, at the time of the filing of the Reply, all documents which are required to prove his case. Failure to do so may result in the inability of the Respondent 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 Respondent 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 Accounting Officer or equivalent in the Respondent Procuring Entity.