

# General Guidelines



## STANDSTILL PERIOD



Prepared by: The Office of Procurement Regulation

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Developed in accordance with the Trinidad and Tobago Public Procurement and Disposal of Property Act Number 1 of 2015 (as amended) and the attendant Public Procurement Regulations

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## 1.0 PREAMBLE

### 1.1 Purpose of this Guideline

The Public Procurement and Disposal of Public Property Act 2015, as amended (“the Act”), introduces a new paradigm for procurement, retention and disposal of public property in Trinidad and Tobago. The Act provides for the implementation of a standstill period to allow suppliers/contractors the opportunity to be debriefed by the procuring entity prior to the award of contract. During the standstill period, unsuccessful suppliers and contractors can challenge the procuring entity’s decision to award the contract to another supplier or contractor.

The purpose of this general guideline is to provide public bodies involved in the procurement process with an understanding of the manner in which the standstill period is to be integrated into their procurement process. Suppliers and contractors can also gain an understanding of how they can among other things, request a further debriefing from the procuring entity, and subsequently request a review of the procuring entity’s procurement decisions by the Office of Procurement Regulation (OPR) via challenge proceedings in accordance with Section 50 (1) of the Act.

### LISTING OF PUBLIC BODIES

- The Office of the President
- Parliament
- The Judiciary
- A Ministry or a department or division of a Ministry
- The Trinidad House of Assembly (THA) or a division of the THA
- A municipal corporation
- A Regional Health Authority (RHA)
- A statutory body
- A State-controlled enterprise
- A service commission
- A body corporate or incorporate, established by the President, a Minister or another public authority, performing a function on behalf of the State
- A body corporate or incorporate that uses public money

### 1.2 Who Should Use this Guideline?

This guideline should be used by procurement officers or other professionals within the public body with the responsibility for planning and executing the procurement function. Suppliers and contractors will also find the information provided herein useful as it includes guidance in

respect of remedies available to unsuccessful suppliers and contractors in accordance with the Act.

### 1.3 How Should this Guideline be Used?

This guideline should be read in conjunction with the Act, the Procurement Regulations, the Comprehensive Handbook on Procurement, Retention and Disposal of Public Property and the related Guidelines.

### 1.4 How does this Guideline Link to the Act?

The adoption of the standstill period into the procurement cycle will facilitate the achievement of a number of key principles codified in the Act, including transparency, accountability, fairness, equity and public confidence.

The objects of the Act are to promote

- (a) the principles of accountability, integrity, transparency and value for money;
- (b) efficiency, fairness, equity and public confidence; and
- (c) local industry development, sustainable procurement and sustainable development in public procurement and the disposal of public property.

As stated in Section 5 (1)

## 2.0 INTRODUCTION

Sections 35(2), (3), (4), (5) and (6) of the Act provide for the introduction of a standstill period into the procurement proceedings. The “standstill period” is the period from the dispatch of a Notice of Decision to Award a contract as required by Section 35(2) of the Act, during which time a procuring entity cannot accept the successful submission, and suppliers or contractors can challenge the decision. The purpose of the standstill period is to allow a short delay between the identification of the successful submission and the award of the procurement contract or framework agreement so that any challenges to the proposed award can be dealt with, consequently avoiding the need for an annulment of a contract or framework agreement that has entered into force and the resultant additional complications and costs.

### 2.1 What is the Standstill Period?

The standstill period can be described as a short pause of no fewer than ten (10) working days and not more than fifteen (15) working days, in the first instance, in accordance with the guidelines issued by the OPR. The standstill period begins when the Notice of Decision to Award is issued to participating suppliers/contractors.

#### Standstill Period

**A procuring entity shall set a standstill period which is not fewer than ten working days and not more than fifteen working days, in the first instance, in accordance with the guidelines issued by the Office. (Regulation 7 of the Public Procurement and Disposal of Public Property (Evaluation) Regulations, 2021)**

In the procurement cycle, the standstill period occurs before issuing the Notice of Acceptance to the successful bidder. See procurement cycle below:

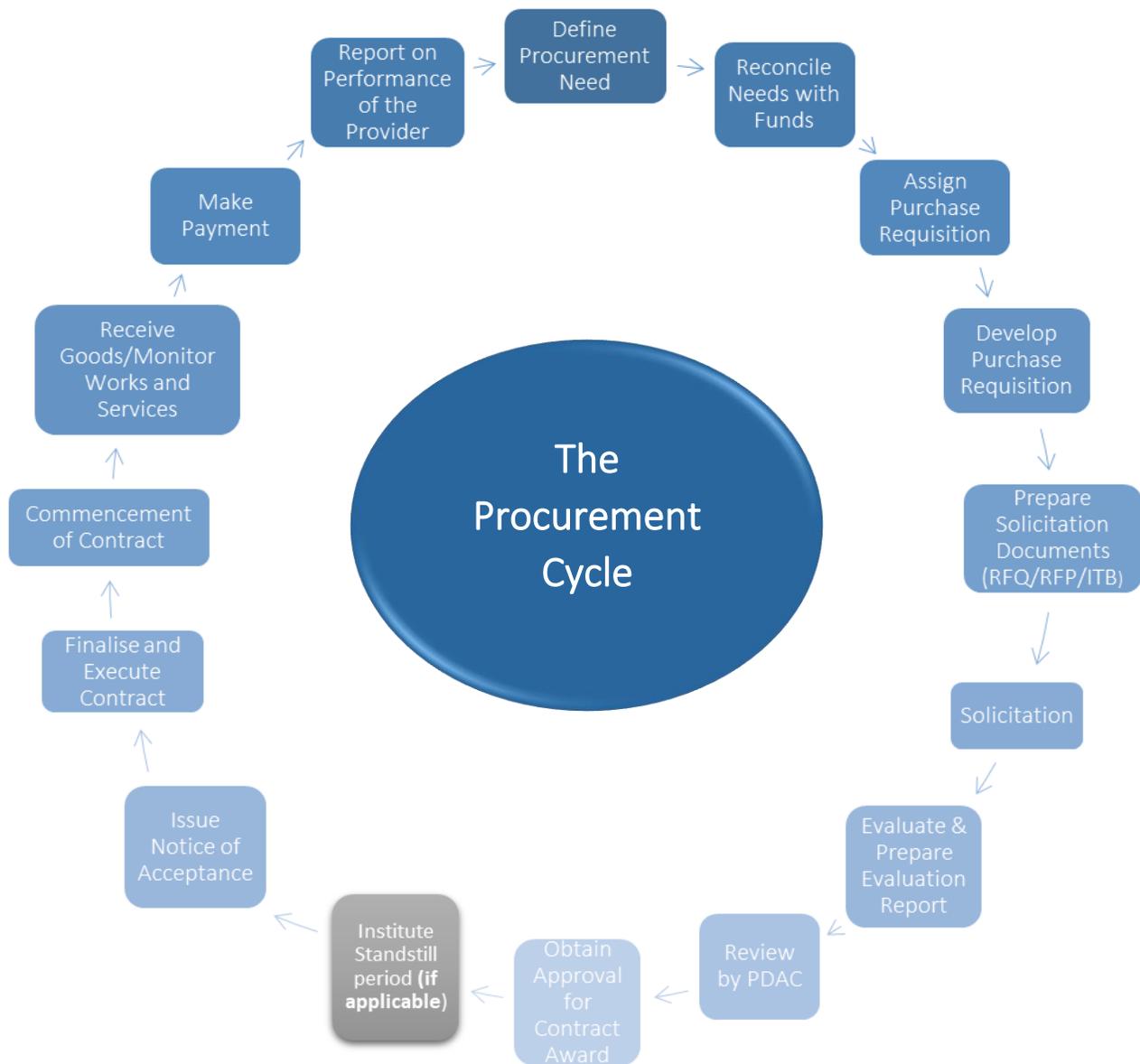


Figure 1: The Public Procurement Cycle

The standstill period provides the unsuccessful supplier/contractor with the opportunity to gather relevant information from the procuring entity on its decision to award the contract. Based on the information provided, a supplier/contractor can take the appropriate action to challenge the procuring entity’s decision in accordance with Section 49 of the Act. See PowerPoint presentations, available via <https://oprtd.org/2022-sessions/> entitled ‘Challenge Proceedings for Procuring Entities’ and ‘Challenge Proceedings for Suppliers and Contractors’ for additional guidance.

### Standstill Period

Where the standstill period is included in the procurement proceedings, a procuring entity SHALL NOT issue a Notice of Acceptance to the successful supplier or contractor before the end of the standstill period as illustrated in Section 3 below.

It should be noted that the procuring entity is not allowed to award the contract before the end of the standstill period as this may render the contract void and illegal.

## 2.2 Responsibilities of public bodies

To assist with promoting the principles of transparency, fairness and public confidence, the Act provides for the following:

1. **Publication of ‘Information on possible forthcoming procurement’** by each public body on an annual basis - Section 27 (1), (2) and (3). In that regard, the Annual Schedule of Planned Procurement Activities mandated by the OPR for publication by each public body contains key information on forthcoming procurements under the headings shown in the Table below:

**Table 1: Annual Schedule of Planned Procurement Activities Template**

No.	Project Number	Project Name	UNSPSC Code Level 3	Brief Description	Proposed date for Issue of Bidding Documents	Expected Delivery/ Completion Date	Estimated Project Duration (for works and services)	Procurement Method	Standstill period (if applicable) – No. of days	Contract Type
1	RFP# 003/2019-2020	Supply and Delivery of Computer Equipment	43211500	Supply and Delivery of 80 Laptops and Desktops	Nov-19	Sep-20	N/A	Open Bidding	10	Fixed term contract

2. **Publication of notices of cancellation of procurement activities** - Section 33 (4). In accordance with the Act, public bodies are required to publish notices of cancellation of procurement activities in the same manner and place in which the original information regarding the procurement proceedings was published.
3. **Prompt publication of contracts awarded, and framework agreements established** – Section 36 (1) and (2).

Information to be provided include the following:

- a) the name of any supplier or contractor with whom the procurement contract or framework agreement was entered into,
- b) the goods or services to be supplied, the works to be effected, and
- c) in the case of procurement contracts,
  - i. the date of the award of the contract and
  - ii. the contract price.

### 2.3 Remedies Available to Suppliers and Contractors Under the Act

The Act also provides for a number of remedies that can be applied by aggrieved suppliers and contractors as follows:

No.	Reference	Breach	Remedy	Timeframe
1.	S. 27	Failure to publish or provide Annual Schedule of Planned Procurement Activities	Complaint to the OPR, Investigation by the OPR	No time limit
2.	S. 36 (1) (2)	Failure to promptly publish notice of awards	Complaint to the Procurement Regulator	No time limit
3.	S. 50 (2) (a)	Terms of solicitation, pre-qualification or pre-selection established by a procuring entity	Application for review by the OPR	Prior to the deadline for presenting submissions
4.	S. 50 (2) (a)	Decisions or actions taken by a procuring entity in pre-qualification or pre-selection proceedings	Application for review by the OPR	Prior to the deadline for presenting submissions
5.	S. 50 (2) (b) (i)	Other decisions or actions taken by a procuring entity in the procurement proceedings	Application for review by the OPR	Within the Standstill period as depicted in <b>Figure 2</b> below.
6.	S. 50 (2) (b) (ii)	Other decisions or actions taken by a procuring entity in the procurement proceedings	Application for review by the OPR	If 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.

**Table 2: Remedies provided for suppliers and contract in the Act**

### 2.4 Why is the Standstill Period Used?

The effective application of the standstill period will contribute towards the achievement of the principles cited in the objects of the Act, as follows:

- a. Increased **efficiency** by mitigating the risk that a project may be halted or may suffer a long delay after the contract has been awarded because of bidding-related complaints.
- b. **Value for money** achieved by reducing the risk of project delays or failure and expensive re-work, due to bid challenges.
- c. Improved **fairness** and **equity** by ensuring that all suppliers/contractors are given the same opportunities and equal access to information on the procurement process.
- d. Improved **transparency** by providing a credible mechanism for addressing bidding-related complaints.
- e. Improved **public confidence** that leads to greater levels of competition by suppliers/contractors in the procurement process.

The standstill period is useful because:

- a) It provides an aggrieved supplier or contractor with an opportunity to address its procurement related concerns prior to an award of contract,
- b) Its strict timeframe and procedures protect the public body from the risk of having its contracts rendered null and void via Challenge Proceedings conducted by the OPR, after they have been awarded.

## 2.5 When to Use the Standstill Period?

The standstill period is to be used during open and limited procurement procedures (see details in the **General Guidelines: Procurement Methods and Procedures**) for contracts and framework agreements, as follows:

- a) Mandatory application for procurements identified in the public body's Annual Procurement Plan as high-risk and high value (strategic quadrant), and low-risk and high value (leverage quadrant)
- b) Discretionary for procurements identified in the Annual Procurement Plan as high-risk and low-value (bottleneck quadrant).

The application of the standstill period shall be approved by the Accounting Officer or Board of Directors, as may be applicable, and shall be published in the Annual Schedule of Planned Procurement Activities.

## 2.6 Exceptions to the Applicability of the Standstill Period

Exceptions of the inclusion of the standstill period in the procurement proceedings include the following:

- a. During the first stage of a two-stage bidding process;
- b. During the technical evaluation of a two-envelope bidding process;
- c. For a pre-qualification process;

- d. Where the procuring entity determines that the award of contract is of “*urgent public interest*”;
- e. Where single or sole source procurement is used;
- f. When only one supplier/contractor submits a bid in response to an open or limited invitation to bid, or
- g. For procurements determined in the Annual Procurement Plan as low-risk and low value (Routine quadrant).

#### Urgent public interest

Urgent public interest considerations refer to issues that can negatively affect the rights of the citizens of Trinidad and Tobago, e.g. the collapse of a bridge which will hinder the free movement of citizens to and from their homes. In that regard, urgent public interest considerations can be applied to the procurement of a short-term solution such as the installation of a temporary bridge, while the details of a long-term solution are being worked out

### 3.0 PROCEDURES FOR THE STANDSTILL PERIOD

Upon the procuring entity's approval of the evaluation committee's recommendation to award the contract to, or to enter into a framework agreement with, the successful supplier/contractor, the procuring entity shall inform all suppliers/contractors (**both successful and unsuccessful**) in writing of its decision to award a contract to the successful supplier/contractor by issuing a Notice of Decision to Award.

## **NOTE!**

***Under Section 35, notices are dispatched when they are promptly and properly addressed or otherwise directed and transmitted to the supplier or contractor or conveyed to an appropriate authority for transmission to the supplier or contractor by any reliable means specified in accordance with the Regulations.***

The Notice of Decision to Award provides suppliers/contractors with a debriefing on the award decision. It shall contain a clear statement(s) of the reason(s) for the award decision, and shall include, but may not be limited to, the following:

- a. The name and address of the supplier/contractor to which the contract will be awarded;
- b. The contract price;
- c. The duration of the standstill period, as provided in the solicitation document;
- d. The expiry date of the standstill period;
- e. On the basis of the procurement method used,
  - o The evaluation criteria and scoring system published in the solicitation document,
  - o the score achieved for each criterion and sub-criterion, and the total score achieved by the successful supplier/contractor,
  - o The score achieved for each criterion and sub-criterion, and the total score, achieved BY THE SPECIFIC BIDDER TO WHOM THE NOTICE OF DECISION OF AWARD IS BEING ISSUED.
- f. A statement of the reason(s) why the supplier or contractor's bid or proposal was unsuccessful.

**Care must be taken to ensure that information on other supplier's confidential or proprietary information, including cost breakdown, trade secrets, manufacturing processes and techniques, or other confidential business or financial information, is not disclosed.**

- g. Guidance on how to request a further debriefing and/or submit an Application for Review to the OPR during the Standstill Period, as set out in the solicitation documents.

### 3.1 Calculating the Duration of the Standstill Period

The duration of the standstill period is calculated based on the form of communication the procuring entity intends to use to transmit the standstill notice to the supplier/contractors. A ten (10) day standstill period is to be used if the notice is to be dispatched via email, and fifteen (15) days where the notice will be sent via letter mail or reliable courier.

The standstill period begins at one minute after midnight on the day of dispatch of the Notification of Decision to Award and ends at midnight on either the tenth (10<sup>th</sup>) working day after the notice is communicated electronically or the fifteenth (15<sup>th</sup>) working day from the date of sending the notice via letter mail or a reliable courier.

A worked example of the information provided in **Figure 2** below is presented in **Table 3** hereunder:

No.	Item	Date
1.	Issue Notice of Decision to Award electronically	March 22, 2022
2.	Working days (1-3 of standstill period)	March 23-25, 2022
3.	Weekend	March 26-27, 2022
4.	Working days (4-5 of standstill period)	March 28-29, 2022
5.	Public holiday	March 30, 2022
6.	Working days (6-7 of standstill period)	March 31-April 1, 2022
7.	Weekend	April 2-3, 2022
8.	Working days (8-10 of standstill period)	April 4-6, 2022
9.	Standstill period ends at midnight	April 6, 2022
10.	Award contract	April 7, 2022

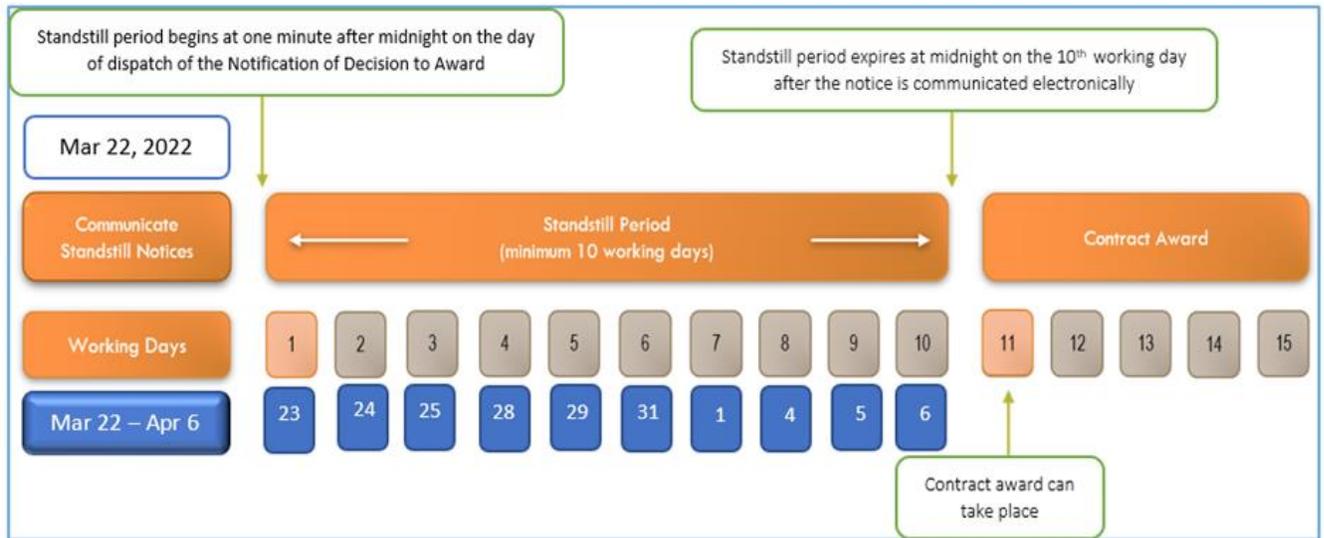
**Table 3: Standstill Period Example**

The procuring entity shall ensure that its administrative processes are not so complex that it is unable to provide its further debriefing within the stipulated timeframe. In exceptional cases, where the public body is unable to provide the response within the stipulated timeframe, the standstill period shall be extended by five (5) working days from the date on which the additional debriefing was provided.

However, responses provided by the procuring entity in response to a written request for further debriefing received outside of the specified timeframe within the standstill period, will not affect the duration of the standstill period.

### 3.2 Standstill Period with No Delays from Additional Debriefing Session

**Figure 2** below illustrates the procedures to be followed during the standstill period where the award of contract is not delayed by the procuring entity’s inability to address additional debriefing requests or queries submitted by the supplier or contractor within the stipulated timeframe within the standstill period.



**Figure 2:** Standstill Period with No Delays from Additional Debriefing – Worked Example

### 3.3 Standstill Period with Additional Debriefing

Following the issuance of the Notice of Decision to Award, an unsuccessful supplier/contractor may request from the procuring entity additional debriefing on the procurement process and outcome.

Where the supplier/contractor determines that it wishes to have further debriefing during a 10-day standstill period, its written request must be made to the procuring entity within three (3) working days from the electronic dispatch of the Notice of Decision to Award the contract to the successful supplier/contractor.

**Figure 3** below illustrates the timing of activities within the standstill period where a written request(s) for additional debriefing is received by the public body, and where the supplier or contractor can submit an Application for Review regarding the public body’s procurement actions or decisions, to the OPR.

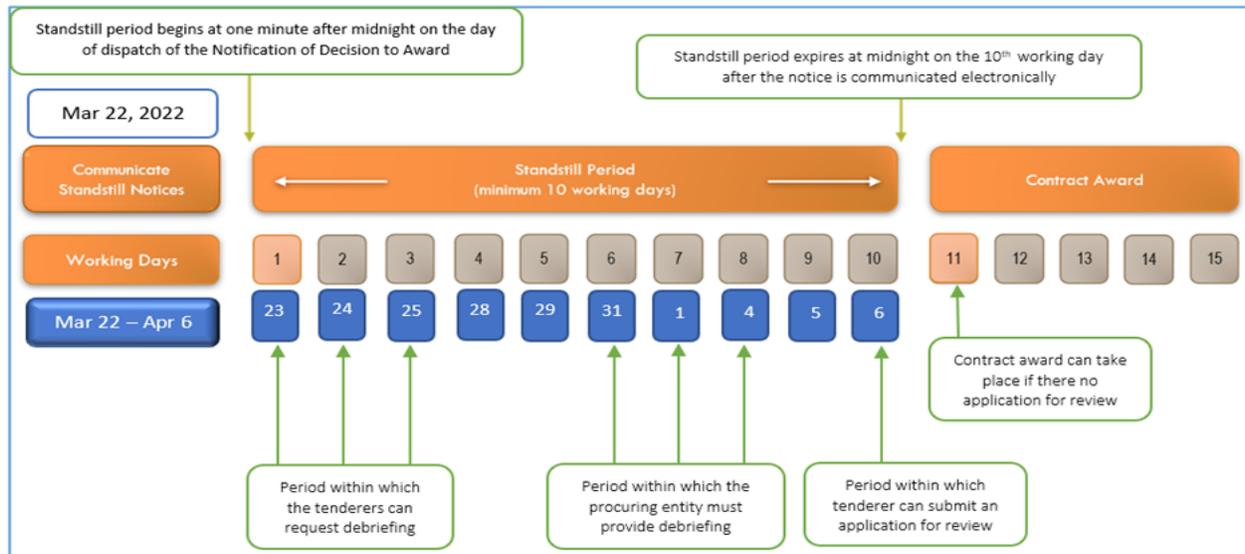


Figure 3: Standstill Period when Additional Debriefing has been Requested

### 3.4 Guidance on Providing Additional Debriefing During a 10-day Standstill Period

As shown in Figure 3 above, further debriefing can be provided to unsuccessful suppliers or contractors by the procuring entity during the standstill period. For a standstill period of 10 days, the debriefing would be provided between the 6<sup>th</sup> and 8<sup>th</sup> days. The procuring entity may facilitate the debriefing orally in a face-to-face meeting, or in writing.

The debriefing exercise should not be used as an opportunity for the procuring entity to disclose commercially and/or technically sensitive information from the proposal of the successful or any other bidder. Discussion with unsuccessful bidders may include, a reiteration of the information already provided in the Notice of Decision to Award, along with the following additional information:

- a) The procuring entity’s requirements as outlined in the solicitation documents;
- b) The procurement, including the evaluation process;
- c) The strengths and weaknesses of the proposal submitted by the unsuccessful party(ies), as it relates to the procuring entity’s requirements.

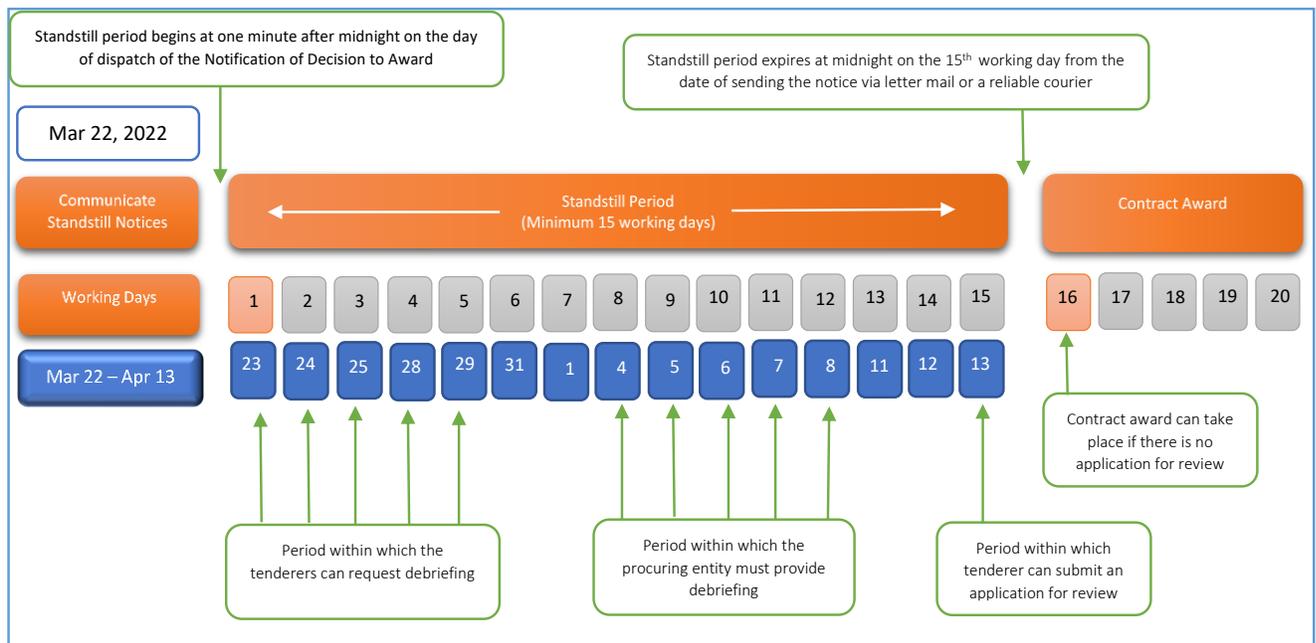
A written summary of each debriefing session shall be included in the procurement records, and copied to the OPR, within five (5) business days from the end of the standstill period, for its noting.

### 3.5 Guidance on Providing Additional Debriefing During a 15-day Standstill Period

Where the supplier/contractor determines that it wishes to have further debriefing during a 15-day standstill period, its written request must be made to the procuring entity within five

(5) working days from dispatch of the Notice of Decision to Award the contract via letter mail or a reliable courier, to the successful supplier/contractor.

**Figure 4** below, shows debriefing to unsuccessful suppliers or contractors by the procuring entity during a 15-day standstill period. The debriefing would be provided between the 8<sup>th</sup> and 12<sup>th</sup> days. The procuring entity may facilitate the debriefing orally in a face-to-face meeting, or in writing (electronically or via letter mail) where the procuring entity will have 7 days from the day of receipt of the request to provide a response.



**Figure 4:** Debriefing during the 15-day Standstill Period

### 3.6 Conclusion of the standstill period

The Notification of Award letter cannot be issued to the successful supplier/contractor until, at the earliest, the eleventh (11<sup>th</sup>) day as depicted in **Figure 2** above, where no late debriefing occurs. Once an application for review has not been made by an unsuccessful bidder to the OPR, by the 10<sup>th</sup> or 15<sup>th</sup> day of the standstill period, the procuring entity can proceed with awarding the contract to the successful supplier/contractor, unless the OPR orders otherwise in accordance with Section 35 (6) of the Act.

### 3.7 Publication of the Notice of Award

Upon execution of the contract or framework agreement by the procuring entity and the successful supplier/contractor, the procuring entity shall promptly publish a notice of the

award on its website or other electronic format in accordance with the Section 36(1) of the Act.

The details of the notice of the award shall specify the following:

- a. The name of the successful supplier or contractor;
- b. The goods, or services to be supplied, or the works to be effected;
- c. In the case of procurement contracts,
  - a. the date of the award of the contract and the contract price, and
  - b. the expected delivery or contract completion dates
- d. In the case of framework agreements,
  - a. the date of the award and the contract price, and
  - b. the period of the framework agreement.

### 3.8 Application for Review to the OPR

If during the standstill period, an application for review of a decision or action by the public body has been lodged with the OPR by an unsuccessful bidder in accordance with Section 50 (b) (i), the procuring entity shall not proceed with the contract award, until such approval to proceed has been granted by the OPR.

For detailed information on any Challenge Proceedings that may arise as a result of the unsuccessful bidder's Application for Review to the OPR, see PowerPoint presentations, available via <https://oprtd.org/2022-sessions/> entitled 'Challenge Proceedings for Procuring Entities' and 'Challenge Proceedings for Suppliers and Contractors' for additional guidance.

### 3.9 Request for Debriefing outside of the Standstill Period

If an unsuccessful supplier/contractor submits a written request for a further debriefing from the procuring entity, outside of the timeframe stipulated within the standstill period, one shall be provided within ten (10) working days from the conclusion of the standstill period. This further debriefing shall be conducted in accordance with the guidance provided in Section 3.2 above, and shall have no effect on the duration of the standstill period.

## REFERENCES

2015, Public Procurement and Disposal of Public Property Act 2015, as amended, Available at: <http://www.ttparliament.org/publications.php?selectedYear=2015&activeTab=0&mid=29&filterBy=Go>

2018, Standstill Period, Guidance Note on Procurement, Asian Development Bank

2021, The Public Procurement and Disposal of Public Property (Evaluation) Regulations

2021, Defense and Security Public Contracts Regulations Chapter 17: Standstill Period, Contract Award and Voluntary Transparency Notices