

Part X of the Public Procurement Regulations

270. Any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Review Board, which shall contain in a very clear manner the reasons for their complaints.

271. The objection shall be filed within ten calendar days following the date on which the NGO has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period.

272. The communication to each tenderer or candidate concerned of the proposed award or of the cancellation of the call for tenders shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 242 or the reasons why the call for tenders is being cancelled after the lapse of the publication period, and by a precise statement of the exact standstill period.

273. The objection shall only be valid if accompanied by a deposit equivalent to 0.50 per cent of the estimated value set by the NGO of the whole tender or if the tender is divided into lots according to the estimated value of the tender set by the NGO for each lot submitted by the tenderer, provided that in no case shall the deposit be less than four hundred euro (€400) or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision.

274. The Secretary of the Review Board shall immediately notify the Director and/or the NGO as the case maybe that an objection had been filed with his authority thereby immediately suspending the award procedure.

275. The NGO involved, as the case may be, shall be precluded from concluding the contract during the period of ten calendar days allowed for the submission of appeals. The award process shall be completely suspended if an appeal is eventually submitted.

276. The procedure to be followed in submitting and determining appeals as well as the conditions under which such appeals may be filed shall be the following:

- (a) any decision by the General Contracts Committee or the Special Contracts Committee or by the NGO shall be made public by affixing it to the notice-board of the same NGO as the case may be or by uploading it on Government's e-procurement platform prior to the award of the contract if the call for tenders is administered by the NGO;
- (b) the appeal of the complainant shall also be affixed to the notice-board of the Review Board and shall be communicated by fax or by other electronic means to all participating tenderers;
- (c) the NGO and any interested party may, within ten calendar days from the day on which the appeal is affixed to the notice-board of the NGO and uploaded where applicable on the Government's e-procurement platform, file a written reply to the appeal. These replies shall also be affixed to the notice-board of the Review Board and where applicable it shall also be uploaded on the Government's e-procurement platform;

- (d) within three working days of the publication of the replies, the Secretary of the Review Board shall prepare a report (the Analysis Report) analysing the appeal and any reply to it. This report shall be circulated to the persons who file an appeal and to all parties who submitted a reply to the appeal;
- (e) after the preparatory process is duly completed, the Director or the Head of the NGO shall forward to the Chairman of the Review Board all documentation pertaining to the call for tenders in question including files, tenders submitted, copies of deposit receipts and any motivated letter;
- (f) The secretary of the board shall inform all the participants of the call for tenders, the NGO of the date or dates as the case maybe when the appeal will be heard;
- (g) When the oral hearing is concluded, the Public Contracts Review Board, if it does not deliver the decision on the same day, shall reserve decision for the earliest possible date to be fixed for the purpose, but not later than six weeks from the day of the oral hearing:
Provided that for serious and justified reasons expressed in writing by means of an order notified to all the parties, the Public Contracts Review board may postpone the judgment for a later period.
- (h) The secretary of the board shall keep a record of the grounds of each adjournment and of everything done in each sitting;
- (i) After evaluating all the evidence and after considering all submissions put forward by the parties, the Review Board shall decide whether to accede or reject the appeal.

-End of Section 2.-