

Procedures and Practices for Conducting Bid Challenge Hearing

Introduction

This Appendix incorporates the procedures and practices adopted by the Panel of the Review Body on Bid Challenges (under the World Trade Organization Agreement on Government Procurement) (the Panel) so that consistency can be ensured. This Appendix should be read in conjunction with the “Rules of Operation of the Review Body on Bid Challenges (under the World Trade Organization Agreement on Government Procurement)” (the Rules).

Circumstances of Conducting Hearings

2. Hearing to a challenge may be convened upon the request of the complainant or the procuring entity, or if the Panel, on its own initiative, comes to the view that there is such a need based on the facts of the challenge. In the former case, the party concerned shall request the Panel in writing not later than 7 working days from the issue of the notification by the Secretariat of the establishment of the Panel. It shall also be stated in the written request as to whether the hearing should be conducted in private or public. A hearing shall be conducted in public only if there is a consensus amongst the parties concerned.

Notification to the Panel

3. The Chairman of a Panel shall fix a date for a hearing. The Secretariat should then notify the Panel in writing of the date, time and place of hearing and furnish a copy of each the following documents to the Panel at least 7 working days before the date of the hearing -

- (i) names of the complainant and the procuring entity concerned;
- (ii) names of members of the Panel serving at the hearing;
- (iii) a written summary of facts together with the relevant documents for the case to be heard by the Panel;
- (iv) a set of the Rules (if not yet been given before) which also contains the Proceedings of Bid Challenges Hearing lodged under Article XX (2) of the GPA (Annex).

Annex

4. Members will also be alerted in the notification letter that if they have a direct personal or pecuniary interest in any matter and are present at the hearing or Panel meeting at which the matter is the subject of consideration, they must, at the

hearing or the Panel meeting and as soon as possible after its commencement or as soon he discovers that he could have a conflict of interests in the course of discussion, disclose the nature of that interest and withdraw from the hearing or Panel meeting. A set of “Guidance Notes on the Possible and Potential Conflicts of Interest” (Appendix I) will be sent to the members together with the notification letter. If the quorum cannot be met after withdrawal of the member, the hearing or Panel meeting will be adjourned unless a replacement member can be identified immediately to continue with the hearing.

Notification to the Complainant and the Procuring Entity Concerned

5. The Secretariat will also notify the complainant and the procuring entity concerned in writing of the date, time and place of hearing and furnish a copy each of the documents as listed in para. 3(ii) to (iv) above to them at least 7 working days before the date of hearing.

6. The Secretariat should request the complainant and the procuring entity concerned to confirm the following in writing, not less than 5 working days before the date of hearing -

- (i) the language/dialect they intend to use at the hearing;
- (ii) whether the two parties are appearing in person or will be represented at the hearing. If any of them is to be represented he should submit an authorisation letter specifying the name and personal particulars of the person representing him (see rules governing representation at para. 13 to 14); and
- (iii) whether the two parties would call any witnesses¹ to attend the hearing. If so, the party/parties concerned should also give the name(s) and personal particulars of the witness(es) to the Secretariat.

7. Upon receipt of the complainant and the procuring entity’s confirmation on the issues listed at para. 6 above, the Secretariat will proceed with the necessary logistical arrangements for the hearing accordingly.

¹ The Review Panel may, by notice under the signature of the Chairman, call for witnesses to attend the hearing.

Change of Date of Hearing and Adjournment of Hearing

8. If the quorum of the Panel consisting of the Chairman and 2 members is not present within *half of an hour* after the time appointed for the hearing, the meeting shall stand adjourned and another date shall be fixed for the hearing.

9. The complainant and the procuring entity concerned would be advised to register at the reception counter 15 minutes before the hearing. If either party does not appear or is not represented at the hearing within *half of an hour* after the time appointed for the hearing, the Panel may proceed to hear and determine the challenge in the absence of the party concerned if satisfied that due notice has been given prior to the hearing according to the Rules, or adjourn the hearing on its own motion. In any case, a notice will be given to the parties concerned on the same day.

10. If for any reason (such as on grounds of conflict of interest, ill-health and/or other emergencies), any Panel member, including the Chairman is unable to serve/continue to serve at a hearing, the Trade and Industry Department may appoint a replacement member/Chairman where appropriate to continue the hearing, or a new Panel to hear the challenge afresh.

11. Hearings shall continue to be conducted when Tropical Cyclone Warning Signal No. 1 or No. 3 is hoisted or the "Amber" or "Red" Rainstorm Warning is announced.

12. Hearings shall, unless there are announcements made by the Secretariat in consultation with the Chairman, be postponed if Tropical Cyclone Warning Signal No. 8 or above is hoisted or if a "Black" Rainstorm Warning is announced by Government two hours before the appointed time of the hearings. If Tropical Cyclone Warning Signal No. 8 or above is hoisted or if a "Black" Rainstorm Warning is announced by Government while the hearing is in progress, the Chairman shall decide in consultation with parties attending the hearing whether to adjourn or continue with the hearing.

Representation at the Hearing

13. Both the complainant and the procuring entity concerned may request that they may be represented at the hearing by or together with their authorised representatives. Such representative may be a counsel or an agent.

14. The complainant and the procuring entity concerned should confirm with the Secretariat in writing not less than 5 working days before the date of hearing, as to whether they are appearing in person or will be represented at the hearing. In the case of the latter, they should submit an authorisation letter specifying the name and personal particulars of the person representing them. If subsequently either the

complainant and/or the procuring entity concerned wishes to request that an additional or different representative(s) be present at the hearing, explanations shall be provided, together with the particulars of the new representative(s), to the Secretariat at least 3 working days before the date of hearing. The procuring entity/the complainant will be informed of the representation of the other side 2 working days before the date of hearing.

Hearing to be in Public

15. With the consent of all parties concerned, the Panel may conduct a hearing in public. A public notice to notify details of the hearing shall be issued by the Secretariat at least 7 working days before the date of the hearing.

16. Applications for admittance as observers to the hearings may be made by advance booking or on the spot by any member of the public on a first-come-first-serve basis. A limit will be set on the number of observers taking into account the capacity of the venue.

Maintenance of Order

17. The Chairman may require any person to leave if that person wilfully disrupts or obstructs the proceedings of the hearing or otherwise misbehaves during a hearing, or if he does not comply with the hearing procedures.

Proceedings of Hearing

18. The Panel should follow the proceedings detailed at Annex for conducting the hearing. The hearing is not a court of law and proceeding should not be conducted with undue formality.

19. Circumstances leading to the adjournment of hearing are set out at para 8 to 12 above.

Record of Proceedings and the Report of the Panel

20. The proceedings will be recorded. Simultaneous interpretation service will be provided if required.

July 2006