

*Statutory Instrument No. 61 of 2023*

**PUBLIC PROCUREMENT ACT**  
(Act No. 24 of 2021)

**PUBLIC PROCUREMENT (TRIBUNAL) REGULATIONS, 2023**  
(Published on 5th May, 2023)

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IN EXERCISE of the powers conferred on the Minister of Finance by section 150 of the Public Procurement Act, the following Regulations are hereby made —

PART I — *Preliminary*

- Citation 1. These Regulations may be cited as the Public Procurement (Tribunal) Regulations, 2023.
- Interpretation 2. In this Act, unless the context otherwise requires —  
“appeal” means any decision, matter, act or omission arising out of procurement proceedings by the procuring entity or Authority with respect to which an appeal is preferred; and “complaint” shall be construed accordingly;  
“applicant” means any person or entity who lodges an appeal before the Public Procurement Tribunal;  
“complainant” or “applicant” means any person or entity who lodges an appeal before the Public Procurement Tribunal;  
“costs” means any amount of money reasonably incurred in relation to a complaint or appeal or in defence of a complaint or appeal;  
“Registrar” means the Registrar of the Public Procurement Tribunal; and  
“respondent” means any person against whom an appeal has been lodged.
- Application 3. These Regulations shall apply in respect of complaints or appeals against any decision, act or omission of an Accounting Officer or the Authority in relation to —  
(a) a procurement process; or  
(b) the registration of contractors, declassification of information or disciplinary process.

PART II — *Complaint and Appeals procedure*

- Lodging of complaint or appeal 4. (1) A person may lodge with the Tribunal, a complaint or an appeal against a decision —  
(a) including a matter, act or omission of the Authority or an Accounting Officer; or  
(b) by a procuring entity of the Authority,  
and the Tribunal shall acknowledge receipt of the complaint or appeal within two days of receipt of such complaint or appeal.  
(2) A complaint or appeal under subregulation (1) shall be —  
(a) in Form A set out in Schedule 1;  
(b) filed with the Registrar of the Tribunal; and  
(c) made within 14 days from the date the complainant becomes aware or is notified of the decision, matter, act or omission giving rise to the complaint.  
(3) A complaint or appeal lodged in terms of subregulation (1) shall be accompanied by a non-refundable lodging fee and a complaint fee, which is refundable on success of a complaint or appeal, set out in Schedule 2.  
(4) The complaint or appeal under subregulation (1) shall contain the —  
(a) names and addresses of the parties;  
(b) statement of facts giving rise to the complaint or appeal; and  
(c) relief or remedy sought.

(5) The complaint or appeal made under subregulation (1) shall be lodged together with copies of —

- (a) the decision of the Accounting officer or the Authority, whichever is the source of the complaint;
- (b) the relevant set of bidding documents;
- (c) the bidding process set forth in the invitation to tender;
- (d) any document supporting the complaint or appeal that was submitted during the bidding process by the complainant; and
- (e) any other document pertinent to the case.

(6) The Tribunal may allow, after an application to do so is made —

- (a) a withdrawal of a complaint or appeal at any point before delivery of the decision; or
- (b) an agreement between the parties to a complaint or appeal, settling the matter.

(7) An application under subregulation (6) shall be supported by an affidavit providing reasons for the proposed withdrawal and shall embody a consent to pay costs by the applicant.

5. (1) The applicant shall, within seven days after receipt of an acknowledgment under regulation 4 (1), summon the respondent in terms of Form B set out in Schedule 1 to present his or her defence.

Service of  
complaint or  
appeal

(2) The summons in subregulation (1) shall be served on the respondent by way of —

- (a) personal delivery; or
- (b) registered mail with return receipt.

(3) The complainant may, where he or she experiences any difficulty in effecting service under subregulation (2) (a), make an application to the Tribunal for leave to effect substituted service and such application shall be supported by an affidavit deposing as to the efforts that have been made to effect service.

(4) The Tribunal may, upon hearing the application, order that substituted service be effected on the respondent by delivery of a copy of the summons in full view of the respondent or by advertisement in a local newspaper circulating in the area where the respondent had his or her last place of residence or place of business for two consecutive weeks.

6. (1) The respondent shall, within 14 days of receipt of the summons under regulation 5, present to the Tribunal —

Defence to  
complaint or  
appeal

- (a) an intention to defend in accordance with Form C set out in Schedule 1;
- (b) a defence in writing to the complaint or appeal,

and shall effect service of the documents under paragraph (a) and (b) on the applicant.

(2) The respondent shall under subregulation (1) effect service by way of —

- (a) personal delivery to the applicant; or
- (b) registered mail with return receipt.

(3) The respondent may, where he or she experiences difficulty in effecting service under subregulation (2) (a), make an application to the Tribunal for leave to effect substituted service and such application shall be supported by an affidavit deposing as to the efforts that have been made to effect service.

(4) The Tribunal may, upon hearing the application, order that substituted service be effected on the applicant by delivery of a copy of the defence in full view of the applicant or by advertisement in a local newspaper circulating in the area where the applicant had his or her last place of residence or place of business.

(5) The respondent shall respond to the summons in writing, and such response shall —

- (a) be divided into paragraphs, numbered consecutively and each paragraph shall contain as nearly as may be, a separate allegation; and
- (b) contain a denial or admission to every allegation specifically or state that he or she has no knowledge concerning any allegation made:

Provided that any allegation not so dealt with in terms of this subregulation shall be taken to be admitted.

(6) The respondent shall, where he or she denies an allegation of fact, answer a point of substance and shall not be evasive.

(7) The Tribunal may require the complainant to prove any allegation not so dealt with under subregulation (5) so as to be proven otherwise than by such admission.

(8) Where a respondent fails to present a defence, the Tribunal shall deem the respondent to have waived his or her right to appear and participate in the proceedings, and the Tribunal shall proceed with the hearing *ex parte*.

(9) Notwithstanding the provisions of subregulation (5), the respondent may, within 14 days of delivery of a decision under regulation 16, make an application to rescind the decision of the Tribunal.

(10) An application made under subregulation (9) shall be supported by an affidavit showing sufficient cause why the respondent has failed to participate in the proceedings and shall provide his or her grounds of defence.

Reply to  
defence

7. (1) Upon receipt of the defence in terms of regulation 6 (1), the complainant may prepare and submit to the Tribunal, a reply within seven days or such a period that the Tribunal may determine, after receipt of such defence.

(2) The complainant shall, where he or she denies an allegation of fact, answer the point of substance and shall not be evasive.

Third party  
procedure

8. (1) Where a party to a complaint makes a claim —

- (a) against a person who is not a party to the complaint (hereinafter called a “third party”), such party is entitled in respect of any relief claimed against him or her, to a contribution or indemnification from such third party; or
- (b) that, the relief or remedy relating to the subject matter of the complaint is substantially the same as a relief or remedy claimed by the complainant, any question or issue in the complaint is substantially the same as a question or issue which has arisen or will arise between such party and the third party and should properly be determined not only as between the parties to the complaint but also as between such parties and the third party,

the party to the complainant may make an application to the Tribunal to present a notice (hereinafter referred to as a “third party notice”).

(2) An application under subregulation (1) shall be in writing and shall state the —

- (a) name and address of the third party;
- (b) nature of the claim made by the complainant;
- (c) stage which the proceedings in the complaint have reached; and
- (d) nature of the claim made by the applicant against the third party and its relation to the complainant’s claim against the applicant.

(3) Where —

- (a) an application under subregulation (1) is received;
- (b) the Tribunal is satisfied that the respondent’s claim against the third party is in respect of a matter referred to in subregulation (1); and

- (c) having regard to all the circumstances of the complaint, it is reasonable and proper for the Tribunal to grant leave to the respondent to present a third party notice,

the Tribunal shall grant leave to the respondent to present a third party notice and any other order it deems necessary.

(4) A third party notice under subsection (3) shall be in Form D set out in Schedule 1, and shall state the —

- (a) nature of the complainant's claim against the respondent;
- (b) nature of the respondent's claim against the third party;
- (c) relief claimed by the respondent against the third party;
- (d) period within which the third party may present his or her defence; and
- (e) consequences of the failure by the third party to present his or her defence within such period.

(5) The respondent shall serve the third party with the complainant's complaint and any other documents in accordance with the procedure under regulation 5 (2).

(6) Where a third party notice has been served, the third party shall, where he or she disputes the claim, present his or her defence in accordance with regulation 6 within 14 days of service of the notice.

9. (1) Where a third party has presented a defence, the Tribunal may —

Direction

- (a) fix a date for the giving of directions; and
- (b) on such date, if satisfied that there is a proper question to be heard as to the liability of the third party in respect of the claim made against him or her by the respondent,

order the question of such liability to be heard in such manner, at or after the hearing of the complaint, as the Tribunal may direct.

(2) Where the Tribunal is not satisfied that there is a proper question to be heard under subregulation (1), the Tribunal shall dismiss the application and may order costs against the party presenting a third party notice.

10. (1) Where a third party —

Award against third party in default

- (a) is in default in presenting his or her defence within the time specified under regulation 8 (6); or
- (b) having presented a defence, is in default in appearing on the date fixed for the giving of directions,

the party presenting a third party notice may apply *ex parte* to the Tribunal for an award against the third party in respect of any contribution, indemnity or relief claimed in the notice.

(2) The Tribunal may, on application by a party in terms of subregulation (1), issue an award against the third party in respect of any contribution, indemnity or relief claimed in the third party notice.

11. Where two or more complaints or appeals, arising from the same procurement process are instituted, the Tribunal may consolidate the matters and handle them as one matter.

Consolidation of complaints or appeals

12. (1) A party to any proceedings under these Regulations may, upon providing sufficient cause, apply in writing to the Tribunal to amend a complaint, defence or reply, within 14 days prior to the hearing of the complaint, defence or reply:

Amendment to complaint and defence

Provided that the other party to the proceedings shall be afforded an opportunity to make a response prior to the hearing.

(2) Any party to the proceedings shall, upon being allowed to amend a complaint, defence or a reply, amend such a complaint, defence or reply within seven days or such a period that the Tribunal may determine.

### PART III — *Hearing Procedure*

Hearing

**13.** (1) The hearing proceedings undertaken by the Tribunal shall be quasi-judicial in nature.

(2) The Tribunal shall, prior to a hearing, issue a summons in Form E set out in Schedule 1 to each party to the proceedings.

(3) The parties to the complaint shall appear in person during the hearing.

(4) The Tribunal may, during the hearing require —

(a) any person to produce any information the Tribunal considers relevant;

(b) the attendance of any person to give evidence; and

(c) any person to produce any document that may be in his or her custody.

(5) The evidence tendered by each party during the hearing shall be either under oath or affirmation.

(6) For the purpose of this regulation, “hearing” means all processes required for the Tribunal’s determination, including —

(a) oral and written submissions made by any party;

(b) evidence adduced by each party either oral or written; or

(c) virtual appearance.

Non-  
appearance of  
party

**14.** (1) The Tribunal may, where either party without lawful excuse fails to attend to a hearing, enter such orders as are just, including but not limited to the following —

(a) an order rescheduling the hearing;

(b) an order dismissing a complaint or entering final judgement; or

(c) an order requiring the non-compliant party to pay the opposing party’s costs caused by the non-compliance.

(2) Where a respondent fails to appear when a complaint is called for hearing, and upon an application by a complainant, the Tribunal may issue an order for *ex parte* proof of the claim made by the complainant.

Interim order

**15.** (1) The Tribunal may, where it deems it to be in the interest of a procurement complained of under these Regulations, suspend the procurement process of the particular project for a period not exceeding 30 days.

(2) The Tribunal may suspend a project under subregulation (1) where —

(a) the Accounting Officer has not made an award of the bid; or

(b) a letter has not been issued to the successful bidder indicating the commencement of the contract.

(3) Notwithstanding the provisions of subregulation (2), the Tribunal may suspend a procurement project where an aggrieved party has through an application, adduced sufficient evidence to demonstrate that the execution of such a contract —

(a) may cause substantial loss to public revenue; or

(b) will prejudicially affect the public interest.

Decision of  
Tribunal

**16.** (1) The Tribunal shall, within 21 days after conclusion of a hearing of the complaint or appeal —

(a) uphold a decision of the Accounting officer and dismiss the complaint;

(b) set aside the decision of the Accounting officer and order the procuring entity to —

- (i) remit the proceedings to the procuring entity to be re-heard,
  - (ii) suspend the procurement process, or
  - (iii) cancel the procurement process; or
  - (c) provide for such other relief as may be deemed reasonable and necessary.
- (2) The Tribunal shall, where an allegation of fraud or bias is proved, order any person found guilty by the Tribunal of the fraud or bias to be excluded from the procurement process.
- (3) The Tribunal shall notify a complainant in writing, of its decision made in terms of this regulation, not later than three days after the decision is made.
- (4) A decision of the Tribunal shall be published by notice in the *Gazette*.

17. (1) A party aggrieved by the decision of the Tribunal under these Regulations may within 30 days of the decision of the Tribunal, lodge an appeal with the High Court. Appeal

(2) Notwithstanding the provisions of subregulation (1), where an appeal brought in terms of subsection (1) is against Government, such party shall act in accordance with section 138 of the Act.

#### PART IV — *General Provisions*

18. (1) Subject to the provisions of these Regulations, the Tribunal may regulate its own proceedings. Meetings of Tribunal

(2) The Tribunal shall hold its first meeting on such a date and at such a place as the Minister may fix and thereafter the Tribunal shall hold meetings at least once in every three months, and other such meetings as are necessary for the efficient performance and exercise of its functions.

(3) There shall preside at any meeting of the Tribunal —

(a) the President; or

(b) in the absence of the President, the Vice-President.

(4) The quorum at any meeting of the Tribunal shall be a simple majority of the members.

(5) A decision of the Tribunal on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the member presiding shall have a casting vote in addition to that member's deliberative vote.

(6) The Tribunal may invite any person whose presence it deems necessary to attend and participate in the deliberations of a meeting of the Tribunal, but such person shall have no voting right.

(7) A decision of the Tribunal shall be recorded and where there is a dissenting decision, the dissenting decision shall be recorded and the reasons shall be recorded in the minutes of the proceedings.

19. The Tribunal may refer or report any aspect of its decision on any complaint or appeal to the Attorney General, the Directorate on Corruption and Economic Crime or any other authority for further action, where applicable. Referral of decision

20. (1) The Tribunal shall establish a register where a copy of all its decisions shall be kept. Register

(2) A person may examine and request to read any decision in the register without the payment of any fee.

(3) A person may make a copy of a decision in the register on payment of a fee set out in Schedule 2.

**Fine**

**21.** The Tribunal may order a complainant against whom liability has been established in a hearing, to pay such fine as the Tribunal may deem appropriate.

**Taxation of costs**

**22.** (1) Where a party has been awarded costs and wishes to recover the costs, he or she shall lodge a bill of cost for taxation, and the Registrar shall tax such bill.

(2) The Tribunal shall award costs only in relation to travelling, accommodation and filing of documents.

(3) Notwithstanding the provisions of subregulation (1), the bill of costs shall be filed with the Tribunal in writing, which shall include copies of the relevant evidence including payment vouchers, receipts or invoices.

**Offences and penalties**

**23.** (1) Any person who knowingly submits to the Tribunal any information or document that is false commits an offence and is liable to fine not exceeding P500 000 or to imprisonment for a term not exceeding five years, or to both.

(2) Any person who fails to comply with any order of the Tribunal under these Regulations commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding five years, or to both.

SCHEDULES

SCHEDULE 1

Form A  
(*regulation 4 (2)*)

COMPLAINT /APPEAL FORM

1. Details of the Complainant:

Name of Complainant Company or firm: \_\_\_\_\_

Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

City/Town/Village: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Mobile telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

2. Details of procuring entity

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Procurement number: \_\_\_\_\_

Description of project or goods being tendered:

\_\_\_\_\_  
\_\_\_\_\_

Approximate value of tender: \_\_\_\_\_

Tendering timetable –

when tenders were invited: \_\_\_\_\_

Closing date for tender: \_\_\_\_\_

Date contract awarded (if applicable): \_\_\_\_\_

3. Description of complaint and statement of what complainant thinks would be a reasonable solution to the complaint:

\_\_\_\_\_  
\_\_\_\_\_

4. Documents submitted in support of complaint:

\_\_\_\_\_  
\_\_\_\_\_

Signed by

\_\_\_\_\_

Signature of  
Complainant

Company date stamp:

Done under my hand at.....this.....day of.....year.....

Commissioner of Oaths..... Date stamp

For official use only

<p>Received by : _____ (Registrar of Public Procurement Tribunal)</p> <p>Public Procurement Tribunal Date Stamp:</p> <p>_____</p>
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Form B  
(regulation 5 (1))

SUMMONS

Complaint Number.....

1. .... - COMPLAINANT/APPELANT
2. .... - RESPONDENT

**SUMMONS TO FILE A DEFENCE**

**TAKE NOTICE** that..... (“the complainant”) of address .....  
..... has lodged a complaint or appeal against you with the Public Procurement  
Tribunal (“the Tribunal”), details of which are attached herewith.

**PURSUANT** to regulation 5 of the Public Procurement (Tribunal) Regulations, you are  
required to submit to the Tribunal, within 14 days from the date of this notice, a written reply  
to the complaint together with all relevant documents you will rely upon in support of your  
defence. A copy of the reply shall be served to the complainant.

**TAKE FURTHER NOTICE** that failure to submit a reply within the stipulated period will  
imply that you have waived your right to be heard and the Tribunal shall proceed to determine  
the matter in your absence.

GIVEN under seal of the Tribunal this..... day of ..... 20.....

.....  
**REGISTRAR OF PUBLIC PROCUREMENT TRIBUNAL**

**COPY TO BE SERVED UPON:**

.....  
.....  
.....  
.....

**RECEIVED BY:**

.....  
.....  
.....  
.....

Form C  
(regulation 6 (1))

INTENTION TO DEFEND

Complaint Number.....

1. .... - COMPLAINANT/APPELANT
2. .... - RESPONDENT

**TAKE NOTICE** that the Respondent intends to defend this matter.

**TAKE FURTHER NOTICE** that the grounds on which the Respondent intends to rely upon are as follows;

.....  
.....  
.....  
.....  
.....  
.....

DATED at .....this .....day of .....20.....

Address: .....

To: Complainant: .....  
Address: .....  
.....

And to: The Registrar  
Address: .....  
.....

Form D  
(regulation 8 (4))

THIRD PARTY NOTICE

Complaint Number.....

1. .... - COMPLAINANT/APPELANT
2. .... - RESPONDENT
3. .... - THIRD PARTY

**TO THE ABOVE-NAMED THIRD PARTY:**

**TAKE NOTICE** that the above-named complainant has commenced proceedings against the above-named respondent for the relief set out in a summons, a copy of which is herewith served on you.

The above-named respondent claims a contribution or indemnification (or such other grounds as may be sufficient to justify a third-party notice) on the grounds set forth in the annexure hereto.

If you dispute those grounds or if you dispute the claim of the complainant against the respondent, you may give notice of your intention to defend within 14 days. Such notice shall be in writing and filed with the Tribunal, and a copy thereof served on the above-named respondent at the address set out at the foot of this notice.

DATED at .....this.....day of .....20.....

Address: .....

To: Complainant: .....  
Address: .....  
.....

And to: Respondent: .....  
Address: .....  
.....

Form E  
(regulation 13 (2))

SUMMONS TO APPEAR

Complaint Number: ...../20.....

1. .... - COMPLAINANT  
2. .... - RESPONDENT

**NOTICE OF DATE OF HEARING**

**TAKE NOTICE** that the above complaint has been fixed for hearing on the .....  
day of ..... 20..... At.....hours before the Tribunal.

**YOU ARE** hereby required to appear in person without fail, and submit to the other party and  
the Tribunal all evidence you intend to rely on in defending your case before .....  
day of .....20..... You may also wish to bring witnesses if any.

**GIVEN** under the seal of the Tribunal this .....day of .....20.....

.....  
**REGISTRAR OF PUBLIC PROCUREMENT TRIBUNAL**

**COPY TO BE SERVED UPON:**

.....  
.....  
.....  
.....

**RECEIVED BY:**

.....  
.....  
.....  
.....

SCHEDULE 2

*(regulations 4 (3) and 19 (3))*

Fees

	<i>Fee</i>	
Lodging of complaint or appeal Complaint	P500	
	Complaint's financial bid submission	Percentage to be paid of complaints financial bid submission (%)
	P10 million and below	0.5
	Between P10 million and P50	0.75
	P50 million	1
	Except that in no case shall the complaint fee paid be less than P5 000 or more than P5 000 00 and where there is no tendered total sum, the applicable complaint fee shall be based on the procuring entity's budget for the project, but still applying the financial thresholds and percentages.	
Copy of Tribunal decision per page	P3	
Attendance of court/per hour	P100	

MADE this 24th day of April, 2023.

PEGGY O. SERAME,  
*Minister of Finance.*