

PPADB CIRCULAR NO: 3 OF 2010

Ref: TBG 142 II (46) Exch

22 March 2010

Permanent Secretary to the President,
All Permanent Secretaries,
The Commander - BDF
The Commissioner of Police
Attorney-General
Auditor General
The Registrar of the High Court of Botswana
The President Industrial Court
The Director General Directorate on Intelligence and Security
The Director General Government Implementation and Coordination Office
The Director, Directorate on Corruption and Economic Crime
The Ombudsman
Clerk of the National Assembly
The Secretary, Independent Electoral Commission
All District Commissioners
All Chairpersons, Ministerial Tender Committees

PROCEDURES FOR SUSPENSION OR DELISTING OF CONTRACTORS.

Kindly refer to the subject at caption.

The legal and regulatory framework of the PPAD Act provides for the registration and regulation of contractors through the code of conduct for contractors registered with the Board and further possible suspension and/de-listing of contractors who are engaged in tenders to execute Works, Services and/or Supplies contracts for the Government of Botswana, and who are alleged to have engaged in certain wrongful behavior in the execution of those contracts such delinquent contractors are to be dealt with under the specific provisions of the Act.

The De-listing of a contractor results in removal of such contractor from the register whilst suspension of a contractor results in such a party being ineligible to participate in Government tenders for a specified period of time.

All Accounting Officers are hereby urged to submit to the Board for appropriate action complaints they may have for either suspension or delisting of those contractors who they consider to have violated the Code of Conduct or transgressed Terms of Contract. It is expected that such complaints should be based on substantiated reports relating to either acts of non-compliance with the Code of Conduct or breach of Terms of Contract by contractors who have been awarded contracts to execute for Government.

The process is designed to be a fair, transparent and rational way to investigate and evaluate allegations of malpractice in Government projects which have been awarded by PPADB or its competent committees.

The applicable provisions of the PPAD Act and the Regulations as read together with the Code of Conduct do not condone, let alone encourage mediocre or poor performance by contractors but are rather intended to support the promotion of discipline anchored on a culture of professionalism, a commitment to perform to the highest technical standards, competence, proficiency and ethical behavior, as well as contractual and financial discipline amongst contractors registered with

the Board, and all in all, compliance with the law. It has become necessary that the applicable provisions of the Act and Regulations should be invoked where it is justifiable in law and if it is in the public interest to do so.

I wish to exhort the cooperation of all the Accounting Officers to collaborate with the Board on this matter with a view to sending a strong and clear –cut signal to the contracting community that the Board shall not hesitate to consider for De-listing and Suspension of contractors who engage in dishonorable business practices and shall impose appropriate sanctions where it is considered appropriate to do so. In the same vein, contractors should be notified that there is no room for mediocre performers or truant contractors under this public procurement and asset disposal regime managed by PPADB. Contractors that are found to have committed fraud, corruption, or have engaged in general acts of unprofessional conduct will be considered to be in breach of the Contractors Code of Conduct and the Board shall take punitive action against such parties. Similarly those contractors who breach their contractual obligations under the Terms of Contract in connection with their performance under the contract awarded by PPADB should expect to be dealt with severely by the Board.

Statutory Instrument No. 52 of 2009 titled “PUBLIC PROCUREMENT AND ASSET DISPOSAL (SUSPENSION AND DE-LISTING OF CONTRACTORS) REGULATIONS, 2009, clearly sets out the procedures to be followed in addressing complaints lodged with the Board seeking measures to be taken against contractors who it is alleged are contravening either the Code of Conduct or the Terms and Conditions of Contract or are generally underperforming in the execution of contracts entered into with Government.

The steps to be taken by the complainant (i.e. a Ministry in this case) and the PPADB are set out in the PPAD Regulations which are reproduced hereunder

for your fuller appreciation and prompt action as necessary as well as for your ease of reference:

1. Regulation 4(1)- Any person with a financial or contractual interest in a contract under the Act may lodge a complaint of any incidence of non-compliance with the code of conduct or terms of the contract by a contractor who is party to such contract with the Board;
2. Regulation 4(2)- The non-compliance with the code of conduct or terms of the contract complained of under sub-regulation (1) shall arise from circumstances relating to the implementation by the contractor of the terms of the contract in which the complainant has a financial or contractual interest;
3. Regulation 4(3)- The complainant shall substantiate the complaint of non-compliance to the satisfaction of the Board;
4. Regulation 4(4) - The Board shall, upon receipt of a complaint under subregulation (1), submit the complaint to the Disciplinary Committee to be investigated.
5. Regulation 4(5) – Where the Board, in the execution of its functions under the Act, finds an instance of questionable conduct implying non-compliance with the code of conduct or terms of contract by a contractor, the Board shall forward a complaint to the Disciplinary Committee to be investigated.
6. Regulation 6(5) - The Disciplinary Committee shall, upon conclusion of its investigations forward its recommendations to the Board not later than 30 days after receipt of the complaint.
7. Regulation 7(1) - The Board shall, on receipt of the recommendations of the Disciplinary Committee under Regulation 6(5), make a decision on the matter as follows-
 - (a) find in favour of the complainant and impose any of the following orders

- (i) reprimand the contractor formally in writing;
 - (ii) suspend the contractor for a specified period of time from participating in Government procurement and asset disposal;
 - (iii) suspend the contractor conditionally on terms, pending fulfillment by the contractor of the conditions of suspension imposed;
 - (iv) issue a remedial order where the contractor shall be ordered to comply with remedial measures within a specified time, failing which the contractor shall be suspended for a specified period of time from participating in Government procurement and asset disposal; or
 - (v) de-list and remove contractor from the register of contractors, or
- (b) find in favour of the contractor and dismiss the complaint.-

8. Regulation 7(4) - The decision of the Board under this regulation shall be made within 30 days of receipt of the recommendations of the Disciplinary Committee under Regulation 6(5).

Kindly be informed that the Suspension and De-Listing Disciplinary Committee has been established by the Board in accordance with Regulation 2 (1) which provides for the establishment of the "Disciplinary Committee" and its composition comprises senior representatives from Attorney General's Chambers (one), Directorate on Corruption and Economic Crime(one), and the Public Procurement And Asset Disposal Board (three). PPADB is providing the secretariat.

Please be advised that to date, the Board has not received any complaints from Accounting Officers for its consideration under the provisions of Statutory instrument no. 52 of 2009 relating to possible suspension or delisting of contractors based on contravention of the Code of Conduct or transgression of the Terms of Contract. Addressees are therefore urged to promptly act in terms of the said Statutory instrument where considered necessary.

Addressees are further advised that a complaint for investigation leading to possible Suspension or De-Listing made in terms of Regulation 4(1), 4(2) and 4(3) above shall be without prejudice to any other contractual remedy available to the Procuring entity; and the Procuring entity shall be entitled to follow the procedure set out in the contract for termination of the contract.

Kindly be advised accordingly and I trust that you will be similarly guided.

Executive Chairman - PPADB
Armando V. Lionjanga

Cc: Senior Private Secretary to HE
Attention: Coln. Masilo