

GUIDE TO SUPPLIER DEBRIEFING AND COMPLAINTS



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Ministry of Finance
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1.0 Introduction

1.1 This Guide has been developed as a procedural guide on how and when a de-briefing should be carried out if required and how complaints from unsuccessful bidders should be addressed to ensure transparency and accountability in the procurement process.

2.0 Scope

2.1 This Guide should be used by all staff of FPO and targeted Agencies to direct unsuccessful bidders intending to utilize any of the two processes (debriefing and complaints).

3.0 Purpose

3.1 The purpose of this guide is to:

- (i) Outline the processes and procedures to be conducted when unsuccessful bidders requests for de-briefing
- (ii) Outline the process and procedures on how complaints should be treated once received.

4.0 Supplier Debriefing

4.1 **Supplier Debriefing** is the act of informing suppliers, contractors or service providers that were not selected for a particular tender, of the reasons why they were not selected.

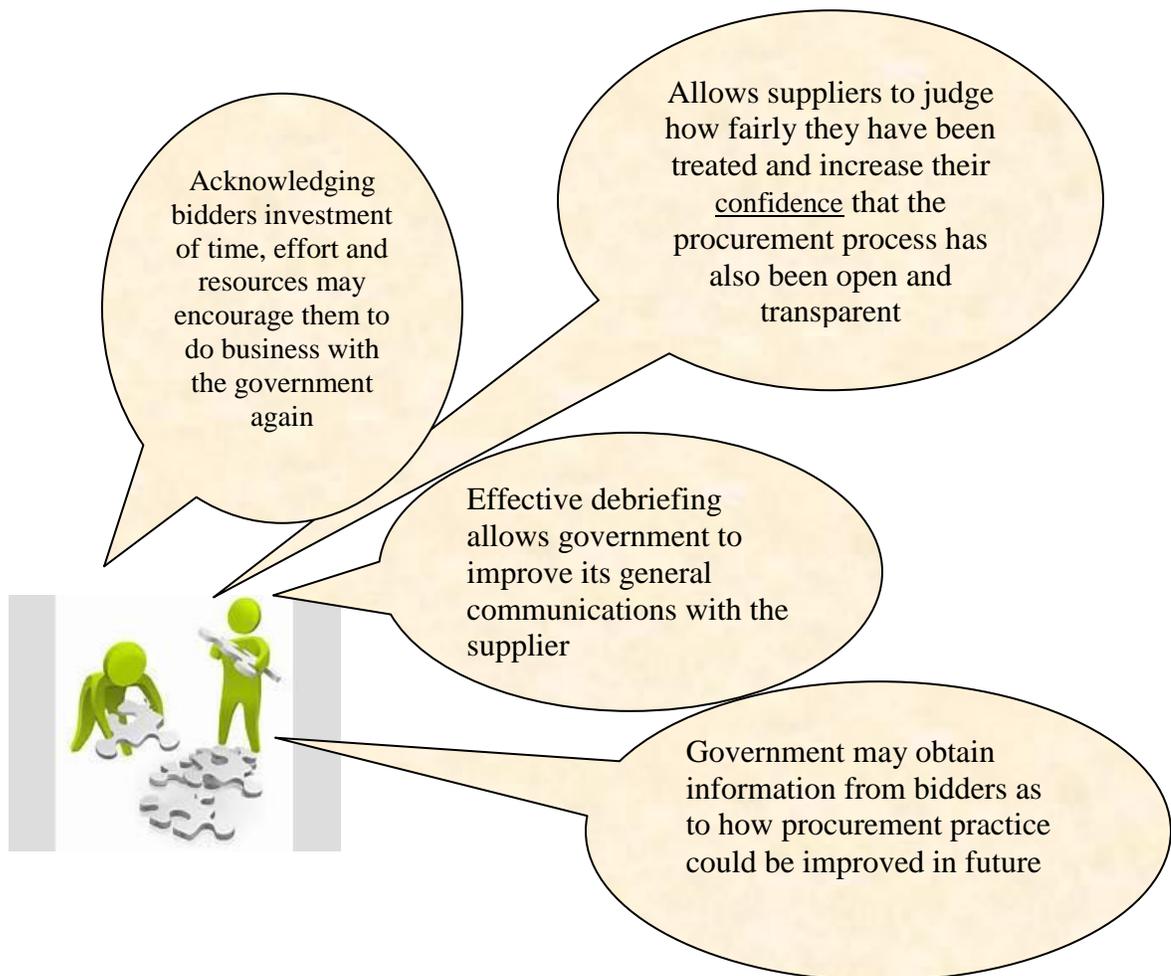
4.2 Section 46 of the Procurement Regulation 2010 allows the Director to provide pertinent information concerning the reasons for the rejection of a tender or the relative advantage of the tender that was accepted upon a **written request from an unsuccessful bidder**.

4.3 Issues that may be discussed at debriefings should focus on areas where the unsuccessful bidder obtain lower ranking in comparison to

the tender that was accepted and may include and not limited to the following:

- performance with respect to the evaluation criteria and;
- strengths and weaknesses of the offer

4.4 Supplier Debriefing Advantages

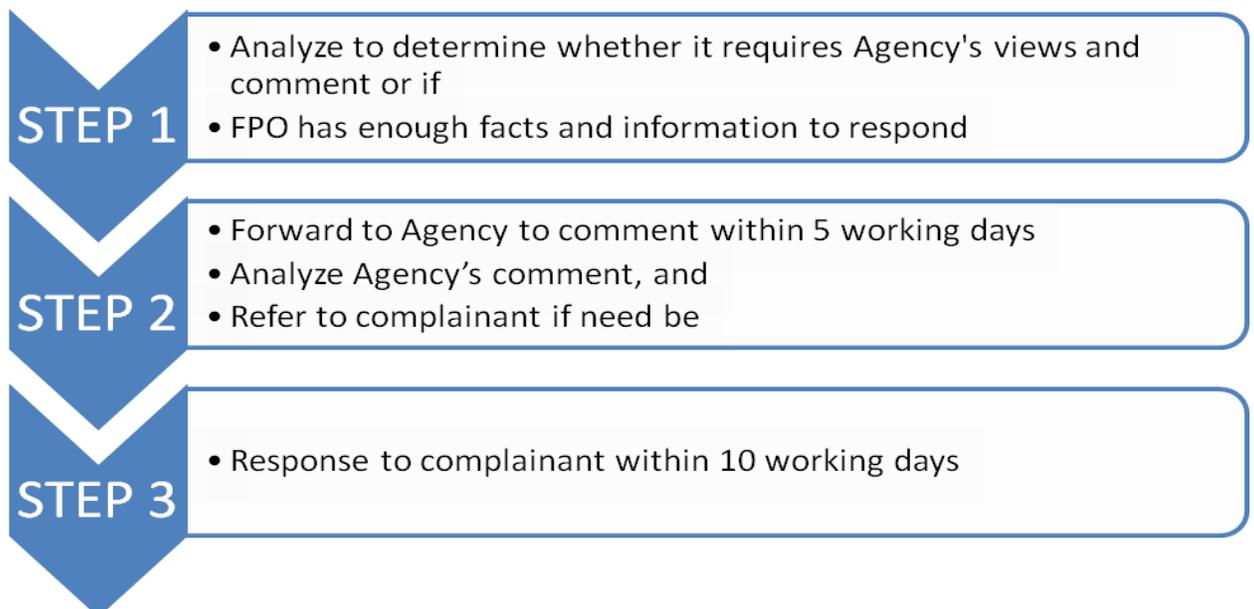


5.0 Procedure for Debriefing

- 5.1 The unsuccessful bidder must submit a written request for debriefing within ten (10) working days after receiving the Advice Letter from the Government Tender Board (FPO).
- 5.2 Within five (5) working days of the receipt of the request, FPO shall arrange for the debriefing session and notify the bidder and the Agency accordingly.
- 5.3 Records of issues discussed and agreements/disagreements reached should be properly minuted and copies kept for future reference.
- 5.4 In the event the unsuccessful bidder is not satisfied with the outcome of the debriefing conducted the bidder should be advised of the review procedures outlined under Part 6 - Review Procedures of the Procurement Regulation 2010.

6.0 Complaints Process

- 6.1 All written complaints received by FPO should be treated in accordance with the steps outlined below:



- 6.2 All written complaints must be acknowledged within three (3) working days after receipt of the letter of complaint and must be investigated fairly, impartially and promptly.
- 6.3 In the event the complainant is not satisfied with the response he/she should be advised of the review procedures outlined under Part 6 of the Procurement Regulation 2010.
- 6.4 Agencies must ensure that the initiation of a complaints process does not prejudice a supplier's or a potential supplier's participation in future procurement process.

7.0 Review Procedure

- 7.1 Part 6 of the Procurement Regulation 2010 outlines the review procedures that a supplier may wish to take if he or she claims to have suffered or may suffer a loss due to breach of duty imposed by the procuring Ministry.
- 7.2 The supplier must be advised of the four circumstances that are NOT subject to review which are outlined in Regulation 49 (2) of the Procurement Regulation 2010 and are as follows:
 - (i) Method of procurement selected
 - (ii) Choice of selection criteria
 - (iii) Withdrawal of tender; and
 - (iv) Decision taken to reject all tenders, proposals or quotations.
- 7.3 It must be made known to the Supplier that the complaint must be made within Twenty (20) working days from the date the bidder is made aware of the circumstances giving rise to the complaint and that the complaint must be made before a contract has been entered into with the successful bidder.

7.4 In the event the complainant is not satisfied with the written decision or the written decision has not been given within the Thirty (30) days mandated in the Regulation he/she may and can instigate legal proceedings under Regulation 51 if the bidder so wishes and in such cases the review process by the Permanent Secretary ceases.

8.0 Review of Guide

8.1 This guide will be reviewed as and when required.

APPENDIX

PROCUREMENT REGULATIONS 2010

Part 6 - REVIEW PROCEDURES

Right to Review

49- (1) Any supplier or contractor who claims to have suffered, or may suffer from loss or injury due to breach of the duty imposed by the procuring Ministry or Department, Fiji Procurement Office or the Board may seek review in accordance with this part of the Regulations.

(2) The following may not be subject to the review as provided in sub regulation (1) above -

- (i) The method of procurement selected:
- (ii) The choice of selection criteria
- (iii) The withdrawal of the tender under Regulation 47
- (iv) A decision taken to reject all tenders, proposals or quotations

Review by the Permanent Secretary for Finance

50 - (1) Unless a procurement contract has already entered into force, a complaint shall in the first instance, be submitted in writing to the Permanent Secretary for Finance.

(2) The Permanent Secretary for Finance shall not entertain a complaint, unless it is submitted within 20 working days from when the supplier or contractor submitting it became aware of the circumstances giving rise to the complaint or of when that supplier or contractor should have become aware of those circumstances, whichever is earlier.

(3) The Permanent Secretary for Finance shall not entertain a complaint, or continue to entertain a complaint, after the procurement

contract has entered into force. In such circumstances, the aggrieved party shall seek redress under Regulation 51

(4) Unless the complaint is resolved by mutual agreement of the supplier or the contractor that submitted it, the Permanent Secretary for Finance shall within 30 days of the submission of the complaint, issue a written decision.

(5) The written decision shall –

- a) State the reasons for the decision; and
- b) If the complaint is upheld in the whole or in part, state the corrective measures that are to be taken.

(6) If the Permanent Secretary for Finance does not issue a decision within the time specified in sub-regulation (4), the supplier or contractor submitting the complaint is entitled immediately therefore to institute proceedings under Regulation 51.

(7) Upon the institution of such proceedings, the competence of the Permanent Secretary for Finance to entertain the complaint ceases.

(8) The decision of the Permanent Secretary for Finance shall unless proceedings are instituted under Regulation 51

Judicial Review

51. If a supplier or contractor is dissatisfied with the decision of the Permanent Secretary for Finance or the procurement contract has being entered into force, the supplier or contractor has the right to instigate court proceedings.

