

Annex III – Part III of L.N. 214 of 2015



PART III

Procedure for the submission and hearing of complaints.

30. Any candidate who feels aggrieved either by any decision of a procuring entity in relation to the procurement procedure, including any decision to disqualify and, or exclude a candidate from a procurement procedure, any decision to award a contract, and any inclusion of technical, economic or financial specification in the invitation to tender, contract documents or in any other document relating to such procedure, may, within ten (10) calendar days following the communication date or the date on which the decision was published by the procuring entity, file a complaint at the premises of the procuring entity, which shall deliver the complaint to the Secretary of the Board forthwith:

Complaint following a decision.

For the purposes of this regulation, "communication date" means the day on which the procuring entity communicates a decision by fax or electronic means to the candidates, or in the case where the candidates are not yet identified, the day on which the procuring entity communicates that decision by electronic means on its website.

31. The complaint referred to in regulation 30 shall only be valid if:

Validity of complaint.

(a) accompanied by a deposit in the amount specified by the procuring entity in the procurement procedure, or in the case of procurement procedures initiated prior to the promulgation of these regulations, in the notice issued by the procuring entity in terms of regulation 6:

Provided that in no case shall the deposit be less than one thousand and two hundred euro (€1,200) or more than fifty eight thousand euro (€58,000); and

(b) it sets out in detail the grounds for the complaint and is accompanied by all supporting documentation.

Standstill
period

32. The procuring entity shall be precluded from proceeding with the adjudication process and, or with the award of the contract, during the period of ten (10) calendar days allowed for the submission of complaints, and, if a complaint is eventually submitted, until the Board has issued a final decision in relation to any complaints.

Procedure.

33. The procedure to be followed in submitting and determining complaints shall be the following:

(a) Any decision by a procuring entity shall be made public at the office of the procuring entity and by electronic means.

If the decision of the procuring entity is:

(i) the disqualification, rejection or exclusion of a candidate, the procuring entity shall notify, by fax or electronic means, the candidate concerned setting out a summary of the relevant reasons relating to the rejection of the candidate;

(ii) the award of a contract, the procuring entity shall notify, by fax or electronic means, all candidates still in the procurement procedure of the proposed award and the basis for the award.

(b) Any candidate who feels aggrieved by the decision of the procuring entity must file a complaint within ten (10) calendar days in accordance with the provisions of regulation 30;

(c) The complaint duly filed in accordance with regulations 30 and 31 together with all supporting documentation shall be served on the recommended candidate, if any;

(d) The recommended candidate, in the case of a proposed contract award, shall have the right to file a reply to the complaint filed by the complainant within ten (10) calendar days from being notified with a copy of the complaint. The reply shall be served upon the complainant;

(e) The Chairperson shall appoint the public hearing at the earliest possible date after the expiry of the period allowed to candidates for the filing of complaints as set out in regulation 30 or, in the case of complaints from a proposed award, after the expiry of the period allowed to the recommended candidate as set out in regulation 33(d), as the case may be, and in any case not later than three (3) working days, and all public hearing sessions shall be concluded with urgency as from the date of the

first session;

(f) The decision of the Board shall be pronounced in public within three (3) working days after the holding of the final public hearing session and shall be published at the premises of the procuring entity:

Provided that if the Board is unable, for valid reasons, to deliver its decision within the stipulated period, the period shall be extended by a further period of three (3) working days.

(g) The procuring entity shall immediately transmit a copy of the decision of the Board to the complainant and the recommended candidate, if any.

34. In its review, and unless otherwise specified in these regulations, the Board shall consider a contract executed by the procuring entity with a candidate to be ineffective, and thus shall declare the contract as null from the date of the decision by the Board if:

Instances where a contract is declared to be null.

(a) notwithstanding that a complaint is lodged before the Board, the procuring entity concludes the contract before a final decision is given by the Board;

(b) the contract is concluded by the procuring entity before the expiry of the period allowed for the filing of complaints as provided for in regulation 30.