
	<b>Botswana Power Corporation</b>	
	<b>PROCEDURE FOR SUSPENSION AND DELISTING OF CONTRACTORS</b>	
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## 1. INTRODUCTION

During its meeting of the 26<sup>TH</sup> August 2011, the BPC Board of Directors approved the inclusion of Suspension and Delisting of Contractors under the Power and Authority of both the Executive and Board Procurement and Tender Committees, as an Addendum to Chapter 11 and Chapter 12 of the Tender Regulations.

## 2. BRIEF BACKGROUND

The Corporation realises the need for a Regulation that outlines the punitive measures that should be taken against contractors who engage in mediocre or poor performance including dishonourable business practices.

There have been instances where contractors have been found to have engaged in dishonest practices during tender implementation. While the Corporation often resolves on measures to be taken against the perpetrators, such actions have in most cases been hampered by lack of stipulated punitive measures within the Tender Regulations.

## 3. SCOPE

The Scope of this document is to set out guidelines and procedures to be followed leading to the Suspension and Delisting of Contractors.

## 4. OBJECTIVES

The objective of these procedures is ensure performance of contractors/suppliers during implementation of projects in line with the powers and authority of both the Executive and Board Procurement and Tender Committees.

## 5. APPLICATION

These Procedures apply to all BPC Contractors/Suppliers, all BPC Business Units as well as all BPC stakeholders.

## 6. RESPONSIBILITY

**6.1 Chief Executive Officer:** Appoints members of the Suspension and Delisting Committee whose mandate will be to investigate complaints lodged before the Committee and make appropriate recommendations to either the Executive Procurement and Tender Committee or the Board Procurement and Tender Committee as to a proper and informed decision to be taken against a contractor, including appropriate penalties to be imposed

**6.2 Chief Financial Officer:** Being the custodian of the Centralised Supply Chain Management and Procurement processes, the Chief Financial Officer shall execute effective implementation of these procedures by enforcing controls as well as monitoring adherence to the requirements of the Regulations. The Corporate Finance Business Unit shall be responsible for all aspects of the process and is empowered to set business rules and practices, through effective consultation.

**6.3 Heads of Business Units:** The Heads of Business Units shall monitor the performance of contractors and bring to the attention of the Suspension and Delisting Committee any instances



of mediocre or poor performance including dishonourable business practices by contractors engaged by the Corporation in projects falling under the auspices of their respective Business Units. Furthermore, the Business Unit Managers must adequately inform their staff on the Tender Regulations and must ensure that they are sufficiently trained and developed to implement this Procedure.

- 6.4 **Contractors/Suppliers:** Contractors and Suppliers shall execute all projects within the agreed scope and within the set project timelines. Failure to comply with the terms of the project implementation agreement shall render the contractor or supplier liable to disciplinary action, which may include suspension or delisting from participating in BPC projects.
- 6.5 **Stakeholders:** As a requirement, stakeholders have the responsibility of monitoring the performance of the Corporation more especially in relation to project management. They should ensure that the Corporation is adequately resourced, and that those involved in managing and implementing projects are empowered to compel performance by contractors.

## 7 SUSPENSION AND DELISTING OF CONTRACTORS

### 7.1 Establishment of the Suspension and Delisting Committee

- 7.1.1 The Chief Executive Officer shall establish the Suspension and Delisting Committee whose mandate will be to investigate complaints lodged before the Committee and make appropriate recommendations (as applicable) to either the Exco Procurement and Tender Committee or the Board Procurement and Tender Committee as to a proper and informed decision to be taken against a contractor, including appropriate penalties to be imposed if any.
- 7.1.2 The Committee shall compose three members of the Executive Management, one of whom shall be the Chairperson, with the Supply Chain Manager serving as the Secretary to the Committee. The Secretary shall have no voting rights. The Committee shall reserve the right to co-opt the services of relevant expert advisors to assist in its deliberations.

### 7.2 Lodging of a complaint against a Contractor

- 7.2.1 Any Business Unit with a financial or contractual interest in a contract or the terms of a contract in which the contractor is a party, can lodge a complaint under this Chapter of the Regulations.
- 7.2.2 Complaints shall be lodged to the Committee and shall be addressed to the Corporation Secretary. Due to the serious nature of the suspension and delisting process, complaints shall be made through the Head of the Business Unit or any other officer of such senior ranking who has been duly authorized by the Chief Executive Officer.
- 7.2.3 All complaints made to the Committee must be accompanied by a factual brief which should include an objective circumstances and background of the complaint, as well as any attempts that were made to resolve the matter. The specific allegations made against



the contractor shall be highlighted including areas of non compliance to the code of the terms of the contract. All relevant documentary evidence must be attached.

- 7.2.4 In the event of there being more than one incident of non-compliance alleged, each of the specific allegations shall be addressed separately.
- 7.2.5 The provisions of any specific law, contract terms or policy that has been violated must be disclosed.

### **7.3 Responsibilities of the Committee**

- 7.3.1 The primary responsibility of the Committee is to investigate allegations laid against the contractor. In doing so, the Committee may seek and call for documentary evidence which may be in the form of records of the procurement activity in question or any decisions made on the matter.
- 7.3.2 The Complainant shall at all times cooperate fully with the Committee, and act with promptitude to all instructions and requests from the Committee.
- 7.3.3 After receipt of a complaint, the Committee shall notify the contractor in writing of the complaint as well as the particular grounds of the allegations against such contractor, and of the investigations that have been instituted against such contractor. The Contractor shall be invited to respond to the Committee in writing to the allegations within the set time limits.
- 7.3.4 The Committee may hold a formal hearing with the Contractor at any stage during the course of the investigations. Legal representation before the Committee shall be prohibited. Contractors requested to appear before the Committee shall appear in person. Both parties shall be allowed a maximum of three witnesses
- 7.3.5 The Committee may, if it deems fit, call upon any staff member of the Corporation involved in the matter to make oral representation in order to provide any clarification on any issue before the Committee or to reply to the defence raised by the Contractor. It is the responsibility of the Head of the Business Unit to ensure such staff members are released and made available to the Committee.
- 7.3.6 The Committee shall uphold the principles of confidentiality, fairness and transparency as well as ethical business practices.



## **7.4 Compliance with the Decisions of the Committee**

- 7.4.1 Decisions of the Committee in respect of the suspension and delisting process must be complied with by both the Contractor and the Business Unit in question. In addition, decisions of the Committee must be observed by all Business Units, Contractors intending to do business with the Corporation as well as by the Corporation's tender approval authorities.
- 7.4.2 In the exercise of its powers under these Tender Regulations, the Suspension and Delisting Committee shall make recommendations to the following committees:
- i) Exco Procurement and Tender Committee for delisting and suspension of non-contractual suppliers.
  - ii) Board Procurement and Tender Committee for delisting and suspension of pre-qualified contractors/consultants and service providers
- 7.4.3 The Exco Procurement and Tender Committee may in consideration of a recommendation from the Suspension and Delisting Committee impose any of the following measures against a Contractor:
- i) Reprimand the Contractor in writing.
  - ii) Suspend the Contractor from participating in any of the Corporations tenders for a period not exceeding twelve (12) months.
  - iii) Conditionally suspend the Contractor on terms.
  - iv) Issuance of a remedial order.
  - v) Delist the Contractor.
  - vi) Find in favour of the Contractor and dismiss the complaint.
- 7.4.4 Contractors shall be advised of the right to appeal to the Board Procurement and Tender Committee within 14 days, if they consider the decision to be unsatisfactory.
- 7.4.4 Board Procurement and Tender Committee (BPTC) may in consideration of a recommendation from the Suspension and Delisting Committee impose any of the following measures against a Contractor:
- i) Reprimand the Contractor in writing.



- ii) Suspend the Contractor from participating in any of the Corporations tenders for a period not exceeding twelve (12) months.
- iii) Conditionally suspend the Contractor on terms.
- iv) Issuance of a remedial order.
- v) Delist the Contractor.
- vi) Find in favour of the Contractor and dismiss the complaint.

**7.5** Where the Exco Procurement and Tender Committee or the Board Procurement and Tender Committee has suspended a Contractor either conditionally or on terms or for a specified period without any conditions, or to delist the contractor, efforts shall be made by the relevant Business Unit to inform all other parties or stakeholders who may have a contractual or financial interest in the project, of the decision relating to the Contractor in question

## **8 IMPLEMENTATION DATE**

This Policy shall be implemented effective from the 1<sup>st</sup> November 2011.

## **9. REVIEW OF IMPLEMENTATION GUIDELINES**

The Supply Chain Department shall regularly conduct workshops for Business Units members with the view to enhancing their knowledge on the requirements of the revised Tender Regulations and the review of the guidelines and policies.

## **10. MONITORING AND REVIEWING**

The Chief Financial Officer shall submit a report to the EPTC at the end of each financial year, detailing the number of complaints brought before the Suspension and Delisting Committee, as well as the decisions of the Board Procurement and Tender Committee.

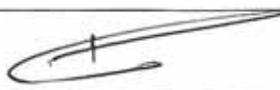
## **11. DOCUMENTATION CONTROL**

### **a. Related Documents**


This procedure must be read in conjunction with the following documents:

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Addendum to Tender Regulations (Chapters 11 and 12)		July 2011	3

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