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GRENADA

STATUTORY RULES AND ORDERS NO. 31 OF 2015

THE MINISTER IN EXERCISE OF THE POWERS CONFERRED ON HIM BY SECTION 67 OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PROPERTY ACT NO. 39 OF 2014 MAKES THE FOLLOWING REGULATIONS—

(Gazetted 17th September, 2015).

1. Citation. These Regulations may be cited as the

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
PROPERTY (PUBLIC PROCUREMENT REVIEW COMMISSION)
REGULATIONS, 2015.

2. Definitions. In these Regulations—

“Act” means the Public Procurement and Disposal of Public Property Act, 2014;

“Board” means the Public Procurement Board established under section 6 of the Act;

“Chairperson” means the Chairperson of the Review Commission appointed under regulation 3.

“Chief Procurement Officer” means the director of the staff of the Board and secretary to the Board provided for under section 7 of the Act;

“Minister” means the Minister responsible for matters relating to procurement;

“Review Commission” means the Public Procurement Review Commission established under section 8 of the Act;

“Secretary” means the Secretary to the Review Commission.

3. Constitution of Review Commission. (1) Pursuant to section 25 of the Act, the Review Commission shall consist of a Chairperson and four other members, and shall include persons with a minimum of ten years experience in the disciplines of law, accounting, finance, procurement, economics, engineering and public administration appointed by the Governor-General.

(2) The names of the members of the Review Commission as first constituted, and every change in the membership thereafter, shall be published in the *Gazette*.

4. Tenure and revocation of appointment. (1) Subject to subregulation (2), a member of the Review Commission shall hold office for a period not exceeding three years and shall be eligible for re-appointment.

(2) The Governor-General may revoke a person's appointment as a member of the Review Commission, if the person—

- (a) is unable to perform the functions of his or her office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of an offence under—
 - (i) the Criminal Code, Chapter 72A;
 - (ii) the Prevention of Corruption Act, Chapter 252A; or
 - (iii) the Act or these Regulations,or an offence involving dishonesty; or
- (d) is absent from three consecutive sittings of the Review Commission without the permission of the Review Commission.

5. Vacation of office. A member of the Review Commission is taken to have vacated his or her post, if the member—

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- (a) resigns his or her position on the Review Commission by signed notice of resignation presented to the Governor-General; or
- (b) cannot continue as a member pursuant to regulation 4 (2).

6. Effect of vacancy of membership. Subject to applicable provisions in these Regulations, the validity of any proceedings of the Review Commission shall not be affected by any vacancy among the members of the Review Commission or by any defect in the appointment of a member of the Review Commission.

7. Filling of vacancies. (1) Subject to subregulation (2), where a member of the Review Commission vacates his or her office pursuant to regulation 5, the Governor-General shall appoint another person to be a member of the Review Commission.

(2) Where a person is appointed to fill a vacancy that has arisen under subregulation (1), that person shall hold office for the remainder of the term of the previous member and shall be eligible for re-appointment.

8. Remuneration of members of the Review Commission. The members of the Review Commission shall be paid such remuneration, fees and allowances as the Minister may determine.

9. Secretary. The Chief Procurement Officer shall appoint a Secretary to the Review Commission from among the staff of the Board, who shall provide administrative support to the Review Commission.

10. Oath of secrecy. Every member of the Review Commission shall—

- (a) have regard and deal with as secret and confidential, all information, books, records or documents relating to the functions of the Review Commission; and
- (b) before assuming office, subscribe to an oath of secrecy as may be prescribed.

11. Signing of documents and decisions. Every document made by and every decision of the Review Commission shall be signed by the Chairperson, or a member of the Review Commission authorised by the Chairperson to act in that behalf, or by the Secretary.

12. Meetings. (1) The Review Commission shall meet at such times as may be necessary or expedient for the proper carrying out of its functions and the meetings shall be held at such place and time and on such days as the Review Commission shall determine.

13. Sittings of the Review Commission for Requests for Review. (1) The Review Commission shall sit to hear and determine a request for review.

(2) The Chairperson shall preside at all sittings of the Review Commission.

(3) In the absence of the Chairperson, the Review Commission may designate one member to act as chairperson for the purpose of the sitting.

(4) The quorum at any sitting of the Review Commission shall be three members one of whom shall be the Chairperson or a member designated to act as a chairperson under subregulation (3).

(5) The decision of the Review Commission shall be by a majority of votes of the members present and the Chairperson shall have a casting vote in any case where the voting is equal.

(6) Minutes in proper form shall be kept of the proceedings of the Review Commission.

14. Procedures for Application of a Request for Review. (1) A request for review made under the Act shall—

- (a) state the reasons for the complaint, including any alleged breach of the Act or these Regulations;
- (b) be accompanied by such statements as the applicant considers necessary in support of its request;
- (c) be made within ten business days of—
 - (i) the occurrence of the breach complained of, where the request is made before the making of an award; or
 - (ii) a notification under section 44 (3) of the Act;

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- (d) be submitted in ten bound copies and one soft copy, pages of which shall be consecutively numbered; and
- (e) be accompanied by the fees set out in Part I of the Schedule to these Regulations, which shall not be refundable.

15. Filing of a request for review. (1) Every request for review shall be filed with the Secretary, upon payment of the requisite fees.

(2) The Secretary shall acknowledge filing of a request for review.

16. Notification of a request for review. (1) The Secretary shall, not later than five business days after a request for review has been filed, serve a copy thereof on the chief accountable officer of the procuring entity or the Chief Procurement Officer, as the case may be.

(2) Every copy of request for review served to a procuring entity or to the Chief Procurement Officer pursuant to subregulation (1) shall be accompanied by a notification of the pending review and the suspension of the procurement proceedings of the procuring entity.

(3) Not later than five business days after receipt of a notification of a request for review pursuant to subregulation (1) or such lesser period as may be stated by the Secretary in a particular case, the procuring entity or the Chief Procurement Officer shall submit to the Secretary a written memorandum of response to the reasons for the request together with such documents as the Secretary may specify.

(4) The Secretary shall, within ten business days of the filing of the request, notify every other party to the review of the filing, and the parties may at their own expense obtain copies of the request for review.

(5) The Secretary shall give reasonable notice of the date fixed for hearing to all parties to the review.

17. Filing of Preliminary Objection. (1) A party notified under regulation 16 may file a preliminary objection to the hearing of the request for review to the Secretary not later than five business days from the date of notification.

(2) A preliminary objection filed under subregulation (1) shall set out the grounds upon which the preliminary objection is based, and shall be served on the applicant at least three business days before the hearing.

(3) The applicant may file a reply to the preliminary objection before commencement of the hearing of the request.

(4) The Review Commission shall hear the preliminary objection and make a determination whether to uphold or dismiss the same, and shall record the reasons for the determination.

(5) Where the Review Commission dismisses the preliminary objection, it shall soon thereafter proceed to hear the request for review as scheduled.

(6) The fees chargeable for filing a preliminary objection shall be as set out in Part II of the Schedule to these Regulations.

18. Hearings. (1) The Secretary shall, at least three business days before the date set for the hearing, invite the members of the Review Commission to attend the hearing.

(2) An invitation under subregulation (1) shall set out the time, date, and place at which the hearing shall take place.

(3) The business of the Review Commission shall be transacted between 8.00 a.m. and 4.00 p.m. on business days, unless otherwise agreed to by the Secretary.

(4) Where a member of the Review Commission has a direct or indirect interest in any matter before the Review Commission, he or she shall declare his or her interest in the matter and shall not participate in the hearing or decision-making process of the Review Commission in relation to that particular matter.

(5) Any party to a request filed under regulation 15 shall, at the hearing thereof, be entitled to be represented by an advocate or any other person of his or her own choice.

(6) Where on the day set for the hearing of a review for which due notification has been given—

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- (a) the applicant appears and the procuring entity fails to appear, the hearing of the request for review shall proceed in the absence of the procuring entity;
- (b) the procuring entity appears and the applicant does not appear, the request for review shall be dismissed;
- (c) the applicant and the procuring entity fail to appear, the request for review shall be dismissed,

unless the Review Commission deems it fit to adjourn the hearing.

(7) At the hearing of the request for review, unless decided otherwise by the Review Commission, the applicant shall be given the first opportunity to present the case in support of the request and the procuring entity shall be given an opportunity to reply thereto.

(8) Where two or more requests for review are instituted arising from the same tender or procurement procedure, the Review Commission may consolidate the requests and hear the requests together as one request for review.

(9) A request for review may be withdrawn at any time before or during the hearing by notice in writing to the Secretary signed by the applicant and, upon such notice being received, the request for review shall be deemed to have been withdrawn.

(10) When a request for review is withdrawn, the Secretary shall forthwith inform the Review Commission and all parties to the review of the withdrawal.

(11) Every hearing of review proceedings shall be open to every party to the review.

(12) The Review Commission may, at the hearing of the request, exclude any person from the hearing whom it deems is unruly or interruptive or to otherwise conduct himself or herself in an unreasonable manner.

(13) The Review Commission may engage an expert to assist it in proceedings in which it feels it lacks the necessary expertise, but the opinion of the expert shall not be binding on the Review Commission.

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(14) The Review Commission shall not be bound to observe the rules of evidence in the hearing of a request under these Regulations.

19. Orders of the Review Commission. An order of the Review Commission certified by both the Chairperson and the Secretary to be a true copy thereof shall in any legal proceedings be prima facie evidence of the issuance of that order.

20. Communications. All communications to the Review Commission relating to matters pending before the Review Commission shall be through the Secretary.

SCHEDULE

PART I

Fees for filing a request for review	\$500.00
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PART II

Fees for filing a preliminary objection	\$500.00
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Made by the Minister this 15th day of September, 2015.

KEITH MITCHELL

Minister responsible for matters relating to procurement.

GRENADA

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