GUIDE TO CHALLENGE PROCEDURES

Government Procurement Services
Government of Montserrat

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Table of Contents

Document Information and Revisions 2
Table of Contents 3
List of Acronyms 4
PART A: INTRODUCTION 5
1 Introduction 6
1.1 Purpose of guide 6
1.2 Legal framework 6
1.3 Application 6
PART B: OVERVIEW OF CHALLENGE PROCEDURES 7
2 Overview of Challenge Procedures 8
2.1 What are challenge procedures? 8
2.2 Challenge procedures and the standstill period 9
2.3 Who has the right to challenge? 9
2.4 What can be challenged? 9
2.5 Responsibility for considering challenges 9
PART C: COMPLAINT TO THE ACCOUNTING OFFICER 10
3 Complaint to the accounting officer 11
3.1 Submission of complaint 11
3.2 Time periods for submitting a complaint 11
3.3 Decision on complaint 11
PART D: APPEAL TO THE INDEPENDENT ADJUDICATOR 13
4 Appeal to the Independent Adjudicator 14
4.1 Right to appeal 14
4.2 Submission of appeal 14
4.3 Time periods for submitting an appeal 14
4.4 Appeal procedure and decision 15
4.5 Remedies 17

List of Acronyms

Acronym	Definition
GOM	Government of Montserrat
GPS	Government Procurement Services
PE	Procuring Entity

PART A: INTRODUCTION

1 Introduction

1.1 Purpose of guide

This guide is designed to provide public officers with easy-to-follow guidance on how challenge procedures work.

Suppliers have the right to challenge procurement actions and decisions by procuring entities (PEs) which they believe break public procurement rules.

There is a strict process for the submission and review of challenges. This guide explains the different stages of a challenge process and how it affects the procurement process.

1.2 Legal framework

Public procurement in Montserrat is governed by:

- the Public Procurement Act 2025 (the “Act”); and
- the Public Procurement Regulations 2025 (the “Regulations”).

This guide is issued by Government Procurement Services (GPS) under section 10 of the Act to provide PEs with the necessary guidance and direction to understand challenge procedures and manage impacts on the procurement process.

GPS has issued separate guides which provide an overview of the public procurement system, guidance on procurement planning, all methods of procurement and contract award and management.

GPS has also adopted standard tender documents, contract forms and other procurement forms and templates. The use of these documents is mandatory and this guide provides advice on which documents should be used for challenge procedures.

The Act and Regulations can be downloaded from https://tenders.gov.ms/publications. All other documents are available from GPS by emailing procurement@gov.ms.

In the event of any discrepancies, the Act and Regulations take precedence over this guide and the standard documents. Any queries or suggestions for updates to this guide or the standard documents should be addressed to the Head of GPS.

1.3 Application

The Act, Regulations and this guide apply to all PEs, including ministries, departments, units and subdivisions of the Government of Montserrat (GOM) that engage in procurement.

Government owned entities are required to follow this guide, unless they have their own procurement rules or regulations, approved by the Cabinet on the recommendation of the Public Procurement Board.

For guidance on donor funded procurement and exemptions to the Act, refer to the Guide to the Public Procurement System.

PART B: OVERVIEW OF CHALLENGE PROCEDURES

2 Overview of Challenge Procedures

2.1 What are challenge procedures?

Challenge procedures allow tenderers to challenge procurement actions and decisions by PEs which they believe are not compliant with the Act and Regulations. This helps to build private sector confidence in public procurement and to achieve procurement objectives of fairness, transparency and integrity.

References and templates:

- Sections 41-44 of the Public Procurement Act 2025
- Regulations 47-50 of the Public Procurement Regulations 2025
- Complaint submission form
- Complaint decision template
- Appeal submission form
- Appeal decision template
- GPS Register of complaints and appeals

There are two stages to challenge procedures:

- in the first stage, a supplier may submit a **complaint to the accounting officer** of a PE;
- if the supplier is not satisfied with the accounting officer's response, the supplier may submit an **appeal to the Independent Adjudicator**.

Further information on each stage is given in sections 3 and 4.

Any challenge must be submitted and considered BEFORE a contract is awarded. This allows GOM to correct any non-compliance before a contractual commitment is made to a supplier.

Do not award a contract when a challenge has been submitted!

Once a complaint or appeal has been submitted, procurement is normally suspended. You must not take any step that would bring a contract or framework agreement into force.

Exceptions are:

- if the complaint is submitted after the deadline for complaints; or
- where it is in the overriding public interest to enter into a contract and this has been authorised by the Independent Adjudicator.

You may award a contract once the accounting officer's or Independent Adjudicator's decision has been issued in response to a complaint or appeal.

2.2 Challenge procedures and the standstill period

Challenge procedures are designed to work with the standstill period, which is required for most procurement processes. Once an award decision has been made, all tenderers are informed of the award decision through the notice of intention to award. The issue of this notice starts the ten-day standstill period, during which no contract award is made. This gives tenderers the opportunity to request a debriefing and/or to submit a complaint to the PE, before a contract is awarded.

You can avoid unnecessary complaints by explaining the reasons why a tender was unsuccessful in the notice of intention to award, and in any debriefing requested. Where a tenderer still believes that there has been a breach of the Act, they are able to submit a complaint before a contract award is made.

➔ See the **Guide to Contract Award and Management** for guidance on contract award procedures, including the notice of intention to award, standstill period and debriefing tenderers.

2.3 Who has the right to challenge?

Any supplier has the right to challenge a decision or action of a PE which:

- they believe is not compliant with the Act; and
- has caused or will cause them to suffer loss or injury.

Loss or injury might include losing potential business as a result of procurement procedures not being followed correctly. To be able to show loss or injury, a challenge will need to come from a tenderer or who is participating in, or could have participated in, a procurement process.

2.4 What can be challenged?

Suppliers are **not** permitted to challenge a decision to cancel procurement or to reject all tenders for a particular procurement. Any other procurement decision or action may be challenged.

Suppliers have the right to submit a challenge at any stage of the procurement process and regardless of whether there is a standstill period or not.

2.5 Responsibility for considering challenges

Responsibility for reviewing challenges and issuing a decision depends on the stage of the challenge procedures:

- in the first stage, the **accounting officer** is required to either solve the matter by mutual agreement with the supplier or issue a formal, written decision to the supplier;
- in the second stage, if the supplier decides to submit an appeal against the accounting officer's decision, the **Independent Adjudicator** is required to issue a written decision.

PART C: COMPLAINT TO THE ACCOUNTING OFFICER

3 Complaint to the accounting officer

3.1 Submission of complaint

Any supplier submitting a complaint must:

- use the **complaint submission form**;
- identify in the complaint the specific act or omission alleged to breach the Act;
- submit it to the accounting officer of the PE; and
- submit it within the time periods below.

References and templates:

- Sections 41-43 of the Public Procurement Act 2025
- Regulations 10 and 13 of the Public Procurement Regulations 2025
- Complaint submission form
- Complaint decision template
- GPS Register of complaints and appeals

3.2 Time periods for submitting a complaint

The latest times for submitting a complaint are:

- five days after the supplier became aware of, or should have become aware of, the circumstances giving rise to the complaint, whichever is earlier; and
- in any event by the end of the ten-day standstill period where a standstill period applies.

The notice of intention to award issued at the start of the standstill will state the end date of the standstill period and inform tenderers of the timescales for submitting a complaint.

In other cases, determining the end of the five days will depend on the nature of the complaint and what it relates to. For example, if the supplier is challenging information in a tender document, the time should normally be calculated from when the supplier received or downloaded the document.

3.3 Decision on complaint

The accounting officer may dismiss a complaint where:

- it is submitted late; or
- it does not identify the act or omission which breaches the Act.

In all other cases, the accounting officer must review the complaint. Within 14 days, the accounting officer must either:

- resolve the matter by mutual agreement with the supplier; or
- issue a written decision on the complaint.

Remember to suspend procurement while the complaint is reviewed!

Until the accounting officer has issued his or her decision, you must not take any step that would bring a contract or framework agreement into force.

If contract award is urgent, request authorisation from the Independent Adjudicator to enter into the contract. You must explain why it is in the overriding public interest to proceed with the contract immediately. Contact the Head of GPS to make a request to the Independent Adjudicator.

If the matter is resolved by mutual agreement, it is good practice to write to the supplier to confirm this, to avoid any misunderstanding.

If a written decision is issued, it must:

- use the **complaint decision template**;
- state whether the complaint is upheld, partially upheld or rejected;
- if upheld or partially upheld, state the corrective action to be taken by the PE;
- state the reasons for the decision; and
- be signed by the accounting officer.

PART D: APPEAL TO THE INDEPENDENT ADJUDICATOR

4 Appeal to the Independent Adjudicator

4.1 Right to appeal

A supplier may submit an appeal to the Independent Adjudicator where:

- the accounting officer does not issue a written decision within 14 days of receipt of the original complaint; or
- the supplier is not satisfied with the decision.

References and templates:

- Section 44 of the Public Procurement Act 2025
- Regulations 47-50 of the Public Procurement Regulations 2025
- Appeal submission form
- Appeal decision template
- GPS Register of complaints and appeals

4.2 Submission of appeal

Any supplier submitting an appeal must:

- use the **appeal submission form**;
- identify in the appeal the specific act or omission alleged to breach the Act;
- state the grounds for the appeal, whether the accounting officer has issued a decision and, if so, why the supplier is dissatisfied with it;
- submit it to the Independent Adjudicator through the Secretariat provided by the Head of GPS; and
- submit it within the time periods below.

4.3 Time periods for submitting an appeal

The latest times for submitting an appeal are:

- ten days after receipt of the accounting officer's decision on the complaint; or
- ten days after the accounting officer should have issued a decision.

Who is the Independent Adjudicator?

The Independent Adjudicator is a legally qualified individual, appointed by the Financial Secretary in consultation with the Attorney General.

The Independent Adjudicator is responsible for reviewing appeals from suppliers, hearing all evidence and making a written decision. He or she may request expert advice from other persons, but remains responsible for the review and decision.

The Head of GPS provides a Secretariat and other support to the Independent Adjudicator. Any appeal must be submitted to the Independent Adjudicator through the Secretariat maintained by the Head of GPS.

The Independent Adjudicator also reviews the debarment of a supplier where requested by the supplier or where the debarment is permanent.

4.4 Appeal procedure and decision

An appeal may be disallowed where:

- it is submitted late; or
- it does not identify the act or omission which breaches the Act.

In all other cases, an appeal procedure is commenced. The appeal procedure is a formal, legal process than review of the complaint by the accounting officer. The Independent Adjudicator may hold a hearing and any person has the right to be represented by a lawyer.

Remember to suspend procurement while the appeal is reviewed!

Once you are notified of an appeal, you must not take any step that would bring a contract or framework agreement into force.

The suspension ends after you are notified of the Independent Adjudicator's decision.

If contract award is urgent, request authorisation from the Independent Adjudicator to enter into the contract. You must explain why it is in the overriding public interest to proceed with the contract immediately. Contact the Head of GPS to make a request to the Independent Adjudicator.

In addition to the supplier and the PE, the following parties have the right to participate in the appeal proceedings:

- any other supplier participating in the procurement proceedings to which the appeal relates; and
- any governmental authority whose interests are or may be affected

A supplier that does not participate in the appeal proceedings may not subsequently submit a challenge on the same matter.

The steps taken following receipt of an appeal, as well as the person responsible and timescales, are shown in the table below:

Step	Person responsible	Timescales
Record receipt of the appeal and assign a case reference number. Notify the PE.	Secretariat	Immediately
Submit a reply to the Secretariat. *If the PE fails to submit a reply, the appeal procedure may still proceed.*	PE	Within five working days
Collate all relevant documents into a case file and submit this to the Independent Adjudicator. Notify all suppliers participating in the procurement proceedings to which the appeal relates and any governmental authority whose interests are or may be affected.	Secretariat	As soon as possible
Appeal procedure commences.		Next working day
Determine whether a hearing will be held, as well as when, where and the manner of the hearing.	Independent Adjudicator	As soon as possible
Communicate details of any hearing to the parties.	Secretariat	As soon as possible
Hold hearing *If one of the parties fails to appear at the hearing, the Independent Adjudicator may decide to proceed.*	Independent Adjudicator	As notified
Keep minutes at any hearing	Secretariat	As notified
Deliver written decision to the Secretariat	Independent Adjudicator	Within 15 working days of commencement *With additional time of up to ten working days if required*
Notify all parties of the decision	Secretariat	As soon as possible

The Independent Adjudicator's decision must:

- use the **appeal decision template**;
- state whether the appeal is upheld, partially upheld or rejected;
- state any remedies ordered;
- state the reasons for the decision; and
- be signed by the Independent Adjudicator.

The Independent Adjudicator's decision is binding, but any party has the right to bring a claim before the High Court.

4.5 Remedies

The Independent Adjudicator may order any of the following remedies:

- prohibit the PE entity from acting or deciding in an unlawful manner or following an incorrect procedure;
- annul, in whole or in part, any unlawful act or decision of a PE other than the decision to award a contract;
- require the PE to revise any annulled act or decision in a manner consistent with the Act;
- terminate the procurement procedure and order a new procedure to be commenced;
- where a contract has been concluded unlawfully, award compensation to be paid by the PE to the aggrieved supplier amounting at least to the cost of tender preparation.

A contract award cannot be annulled

The Independent Adjudicator cannot cancel a contract award which has already been made. This is why procurement is normally suspended while a complaint or appear is reviewed.

Where a contract has been awarded unlawfully, the Independent Adjudicator can order the PE pay compensation to a supplier.