THE OFFICE OF PROCUREMENT REGULATION

integrity
transparency
accountability
value for money

The Institute of Internal Auditors

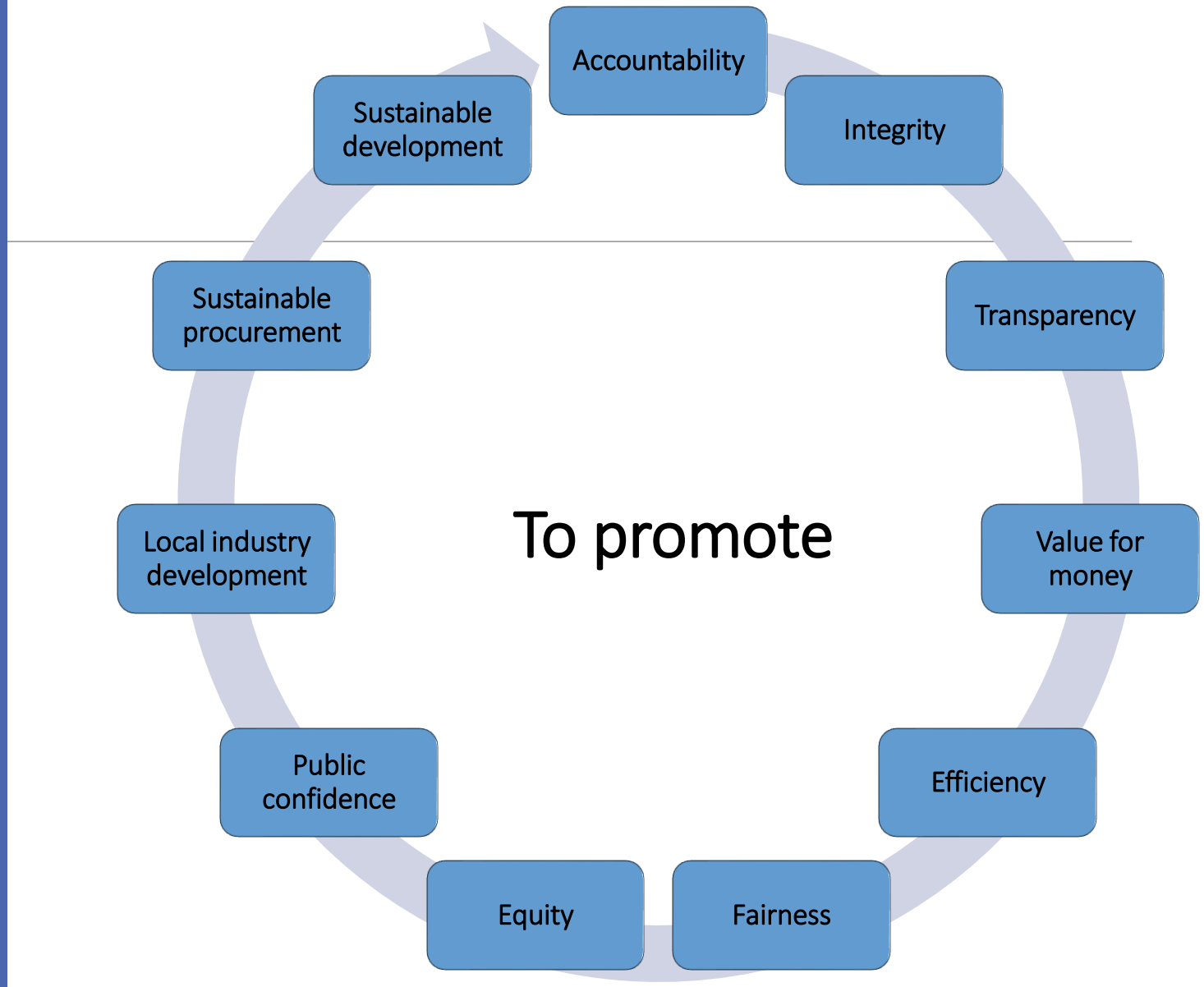
8th November, 2018

WHAT IS THE OPR?

The Office of Procurement Regulation (the "OPR") is established by the Procurement and Disposal of Public Property Act, 2015 (the "Act"). It is a regulatory body governed by an independent board appointed by the President of Trinidad and Tobago after consultation with the Prime Minister and the Leader of the Opposition and may comprise no less than eight and no more than eleven members in accordance with Sections 10 and 11 of the Act.

The independence of the OPR is made clear in Section 13(2)(b) of the Act which states that the OPR shall, "not be subject to the direction or control of any other person or authority in the performance of its functions, but shall be accountable to the Parliament."

OBJECTS OF THE ACT



THE FUNCTIONS OF THE OPR

Establish a comprehensive database of tenders and awarded contracts

Set training standards, competence levels and certification requirements

Issue guidelines on the retention and disposal of public property

Prepare model handbooks with standardized bidding documents

THE FUNCTIONS OF THE OPR

Advise on best practice

Promote public awareness

Promote the use of technology in procurement and disposal

Harmonize policies, systems and practices

THE FUNCTIONS OF THE OPR
Audit & Investigate

Audit and review the system of procurement and disposal of public property to ensure compliance with the objectives of the Act

Investigate, on our own initiative or upon complaint from any party involved in public procurement or disposal of public property or any member of the public, any alleged or suspected breach of this Act

PUBLIC BODY

- The Office of the President
- The Parliament
- The Judiciary
- A Ministry or a department or division of a Ministry
- The Tobago House of Assembly, or a division of the Tobago House of Assembly
- A Municipal Corporation established under the Municipal Corporations Act
- A Regional Health Authority established under the Regional Health Authorities Act
- A statutory body, responsibility for which is assigned to a Minister of Government
- A State-controlled enterprise
- A Service Commission established under the Constitution or other written law

PUBLIC MONEY

"Public money" means money that is—

(a) received or receivable by a public body;

(b) raised by an instrument from which it can be reasonably inferred that the State accepts ultimate liability in the case of default;

(c) spent or committed for future expenditure, by a public body;

(d) distributed by a public body to a person;

(e) raised in accordance with a written law, for a public purpose; or

(f) appropriated by Parliament.

OTHER DEFINITIONS

Bid rigging: collusion between persons for the purpose of manipulating the proceedings

Local content: the local value added to goods, works or services measured as the amount of money or percentage of each dollar of expenditure remaining in Trinidad and Tobago after the production of the good or the performance of the work or service

Local industry development: includes those activities that serve to enhance local capacity and competitiveness by involvement and participation of local persons, firms and capital market and knowledge transfer during the conduct of the programme of goods, works or services that are being procured

OTHER DEFINITIONS (cont'd)

Pre-qualification: the procedure to identify, prior to solicitation, suppliers or contractors who are qualified

Pre-selection: the procedure to identify, prior to solicitation, a limited number of suppliers or contractors who best meet the qualification criteria for the procurement concerned

Private party: an individual, a body corporate or an unincorporated entity, other than a public body

PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

includes an arrangement between a public body and a private party under which—

(a) the private party undertakes to perform a public function or provide a service on behalf of the public body;

(b) the private party receives a benefit for performing the function or providing the service, either by way of—

(i) compensation from a public fund;

(ii) charges or fees collected by the private party from the users of a service provided to them; or

(iii) a combination of such compensation and such charges or fees;

(c) the private party is generally liable for the risks arising from the performance of the function or the provision of the service depending on the terms of the arrangement.

CHALLENGE PROCEEDINGS

A supplier or contractor may bring challenge proceedings where it is alleged that—

(a) a procuring entity made a decision or took action that is not in compliance with this Act; and

(b) the supplier or contractor has suffered or is likely to suffer loss or injury because of the decision or action of the procuring entity.

Within three days of receiving an application for review the Office shall publish a notice of the application in at least two newspapers in daily circulation in Trinidad and Tobago and on its website or any other electronic format.

CHALLENGE PROCEEDINGS

The Office may, within three days of the receipt of an application for review—

(a) Order the suspension of the procurement proceedings at any time before the entry into force of the procurement contract; or

(b) Order the suspension of the performance of a procurement contract or the operation of a framework agreement that has entered into force, if and for as long as it finds such a suspension necessary to protect the interests of the applicant.

PROCUREMENT DEPOSITORY

- The Office shall establish a database, to be known as “the Procurement Depository”, to which suppliers or contractors can submit information with respect to, among other things, their qualifications and experience.
- The Procurement Depository shall be accessible by the public for viewing.
- A supplier or contractor who submits information to the Procurement Depository shall be responsible for ensuring its accuracy.
- In conducting its due diligence, pursuant to section 29(1)(e), a procuring entity may require a supplier or contractor who has submitted information to the Procurement Depository to confirm the accuracy of the information submitted.

INELIGIBILITY LIST

- The ineligibility list is a list of suppliers or contractors who shall not participate in procurement proceedings. Where a supplier or contractor is added to the ineligibility list, the fact of this addition shall be published and communicated to all public bodies.
- The Office may add a supplier or contractor to the ineligibility list where the supplier or contractor-

  (a) consistently fails to provide satisfactory performance

  (b) is found to be indulging in corrupt or fraudulent practices; or

  (c) is convicted of an offence under this Act
- The Regulations will contain more detailed information regarding addition and removal of suppliers or contractors on the list.

WHO IS RESPONSIBLE FOR PROCUREMENT?

- Any person who contravenes a section referred to in the First Column of Schedule 1 commits an offence and is liable on conviction to the penalty specified in the Third Column of that Schedule.
- For the purpose of this Act, a public body shall have a procurement officer who shall be responsible for public procurement and the disposal of public property for that body and shall notify the Office, in writing, of the name and designation of its procurement officer.
- A reference in this Act to the commission of an offence by a public body shall be construed as a reference to the commission of the offence by the procurement officer referred to in subsection (2) or an officer who purports to act in such capacity, if it is proved that—

  (a) the offence was committed with his direct consent or connivance; or

  (b) he, with knowledge, did not exercise reasonable diligence to prevent the commission of the offence.

LETTER FROM THE MINISTRY OF FINANCE

By letter dated September 12, 2017, the Permanent Secretary in the Ministry of Finance stated

"In accordance with the draft handbook developed by the UNDP the responsibility for procurement and disposal lies with the Chief Executive Officer (CEO) or other designated official of the organisation. It is to be noted that there will be no involvement of the Board of Directors in approving contracts, except for approving the overarching policy on procurement. As such, the CEO is answerable to the Office of Procurement Legislation (sic) in respect of matters relating to procurement and the disposal of property of State Enterprises."

LETTER FROM THE MINISTRY OF FINANCE (cont'd)

"However, the By-laws/Articles of Association/Memorandum of Association of some State Enterprises may require the involvement of the Board of Directors and/ or Shareholders in the approval of contracts, and this practice would be contrary to the principles prescribed in the handbook.

In preparation for the implementation of the Public Procurement and Disposal of Public Property Act, 2015, your cooperation is required to advise on whether your company's By-laws /Articles of Association/Memorandum of Association or governing legislation may be in conflict with the new legislation and may require amendment. This information should be submitted to me by September 20, 2017."

OFFENCES AND PENALTIES

Section	Offence	Specified Penalty
31	Splitting of procurement	Summary Conviction—$500,000 and imprisonment for one (1) year
39	Failure of procuring entity to comply with requirements with respect to the confidentiality of information	Summary Conviction—$500,000 and imprisonment for one (1) year
40	Victimisation	Summary Conviction—$500,000 and imprisonment for one (1) year
41	Failure of a person to report instances of collusion	Summary Conviction—$500,000 and imprisonment for one (1) year
46	Concealing or destroying information required for an investigation	Conviction on Indictment— $5 Million and ten (10) years imprisonment
52	Failure to comply with requirements with respect to confidentiality in challenge proceedings	Summary Conviction—$500,000 and imprisonment for one (1) year

ROAD AHEAD: FULL PROCLAMATION

- The Procurement Board is responsible for ensuring that the OPR is positioned to fulfill its mandates and exercise its authority in accordance with the Act.
- Workshop completed during 26 – 28 September, 2018 in Trinidad and 19th October, 2018 in Tobago involving all stakeholders
- Final draft of Handbook and Guidelines in progress based on workshop feedback
- Work being completed on Regulations to support the Act following workshop
- The Ministry of Finance is responsible for ensuring that public procuring entities are prepared to comply with the Act in the areas of manpower, operational restructuring and training and capacity development.
- Public/private training institutions may be heavily relied on to develop programmes to provide the relevant training and certification and/or amend existing programmes to treat with the Act.

THE ACT AND PROCURING ENTITIES

CORPORATE GOVERNANCE

- ***Corporate Governance*** involves "the policies, processes, and structures used by organizations to direct and control its activities, achieve its objectives, and protect the interests of its diverse stakeholder groups in a manner consistent with appropriate ethical standards." {Corporate Governance Handbook: Legal Standards And Board Practices}
- Once viewed as a peripheral support activity public procurement is now recognised as one of the central elements of good governance (Davy, 2003) **and** is a fundamental and integral part of the governance and public financial system (OECD, 2005).
- Public procurement has moved from simply a mechanistic, administrative and bureaucratic function towards a strategic activity used to support and deliver government objectives.

SPECIFIC IMPACTS OF THE ACT ON PROCURING ENTITIES

- Removal of the Central Tenders Board - Ministries now have to carry-out all procurement activities
- Named Chief Procuring Officer
- Establishment of Procurement and Disposal Advisory Committees
- Annual Procurement Plans
- Adhere to approved Procurement Handbooks and Special Guidelines
- Implementation of Internal Control Frameworks for Public Procurement to achieve procurement goals and to provide a framework of accountability for procurement related activities.
- Development and management of efficient filing systems that ensure that procurement, disposal and contract management records are maintained and readily available as required by Internal Audit and to the OPR.
- Reporting to Accounting Officer and the OPR

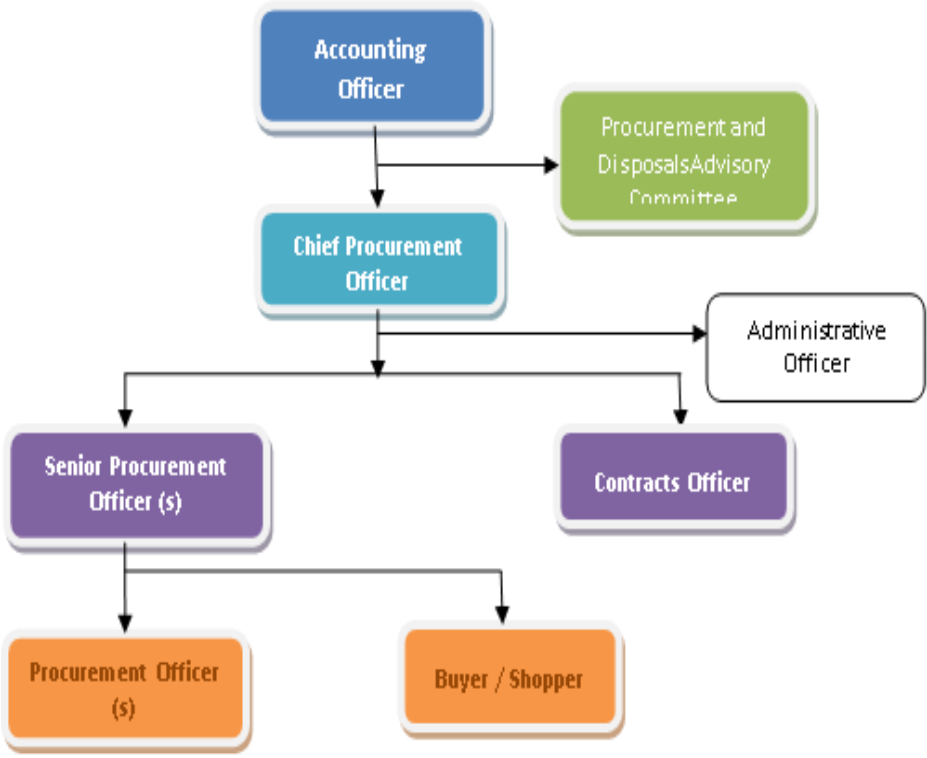
ENABLING ENVIRONMENT
(based on the COSO (Treadway Commission) 17 principles for internal control)

Control Environment	Risk Assessment	Control Activities	Information and Communication	Monitoring
• Standards, processes and structures that provide the basis for implementing internal control throughout the procuring entity (e.g. integrity and ethical values, governance and oversight functions; delegation of authority)	• A dynamic and iterative process of identifying, analyzing and assessing risks to the achievement of the procurement objectives. • Risks include strategic, reputational, operational and financial.	• The actions established through policies, procedures, guidelines and directives that help ensure management's directives to mitigate risks to the achievement of procurement objectives are carried out.	• The continual iterative process of providing, sharing and obtaining relevant information from internal and external sources to support the functioning of other components of internal control.	• Ongoing monitoring and specific reviews to review the procurement and disposal activities to enable corrective action in a timely manner.

FIVE (5) INTERRELATED COMPONENTS THAT CONTRIBUTE TOWARDS ACCOUNTABILITY

OPERATIONAL FRAMEWORK OF INTERNAL CONTROL FOR PROCUREMENT

- The Operational Framework of Internal Control for Procurement is required to facilitate public procuring entities to achieve their goals and to provide a framework of accountability for their procurement related activities
- This Framework is incorporated into the Handbook as customised by the procuring entity.
- Outlines the functional roles, relationships, responsibilities and accountabilities as required for the effective management of the procurement function consistent with the obligations and accountabilities of Accounting Officers



INTERNAL CONTROL FOR PROCUREMENT KEY CONTROL POINTS

- An Annual Procurement Plan based on a risk assessment of the categories of goods and services to be procured which identifies the relevant objectives, strategies, organization, systems, policies and procedures and capabilities to be applied to the procurement effort;
- Significant procurement or disposal strategies based on a documented analysis of the requirement, the relevant supply market and the stakeholders' needs and issues through which associated action is directed;
- Contract management plans that form part of a significant procurement or disposal strategy;
- Documentation of simplified strategies for low risk/ low value procurement.
- Monitoring is achieved through an annual procurement performance report, monthly reports by the Chief Procurement Officer and contract delivery progress and close-out reporting.

RISK MANAGEMENT

- In contrast to the traditional approach, the modern approach to public procurement management addresses the risks and complexities inherent in the procurement portfolio to achieve policy objectives in accordance with the expected standards.
- Optimising organisational procurement effort through risk management contributes substantially to achieving accountability, integrity, transparency and value for money.
- Conversely the maladministration of overall procurement effort results in inefficiency and ineffectiveness as well as leaving the procuring entity exposed to the various risks including fraud and corruption.
- Risks are identified and managed through the Annual Procurement Plan and in transactional procurement and disposal strategies.

RISK MANAGEMENT DIMENSIONS

1. The Organisational Management of Procurement:
   - Identification of the procurement portfolio including the nature and relative value of the categories of goods and services being procured
   - The risks attached to each category in the context of: the organisational need, the relevant market as well as in the stakeholder needs and issues
   - Alignment of objectives, strategies, organisation, systems, policies and procedures and capabilities to manage risks and opportunities inherent in the procurement portfolio
2. Management of Individual Procurement Actions:
   - Identification and analysis of the requirement,
   - Planning and strategy development,
   - Specifications development,
   - Market research and strategy for approaching the market,
   - Solicitation, evaluation, negotiation, contract development, contract formation,
   - Contract management, performance monitoring and reporting.

INTERNAL AUDIT
& THE NEW PROCUREMENT FRAMEWORK

AUDITING THE PROCUREMENT FUNCTION

OPR

14. (1) In the performance of its functions, the Office may— (a) *monitor the procurement of goods, works and services, and the disposal of public property, by public bodies to ensure compliance with this Act;* (b) *conduct audits and periodic inspections of public bodies to ensure compliance with this Act;* (c) *issue directions to public bodies to ensure compliance with this Act;*

Public Procurement Act, 2015

13[4] Each accounting unit shall have a check staff and an independent internal audit section. Exchequer and Audit Act, (Chap 69:01)

Accounting Officers are accountable to the Parliament for ensuring that: *(a) that the financial business of the State for which he is responsible is properly conducted; and (b) that public funds entrusted to his care are properly safe-guarded and are applied only to the purposes intended by Parliament.* Financial Regulation 4

PROCURING ENTITIES

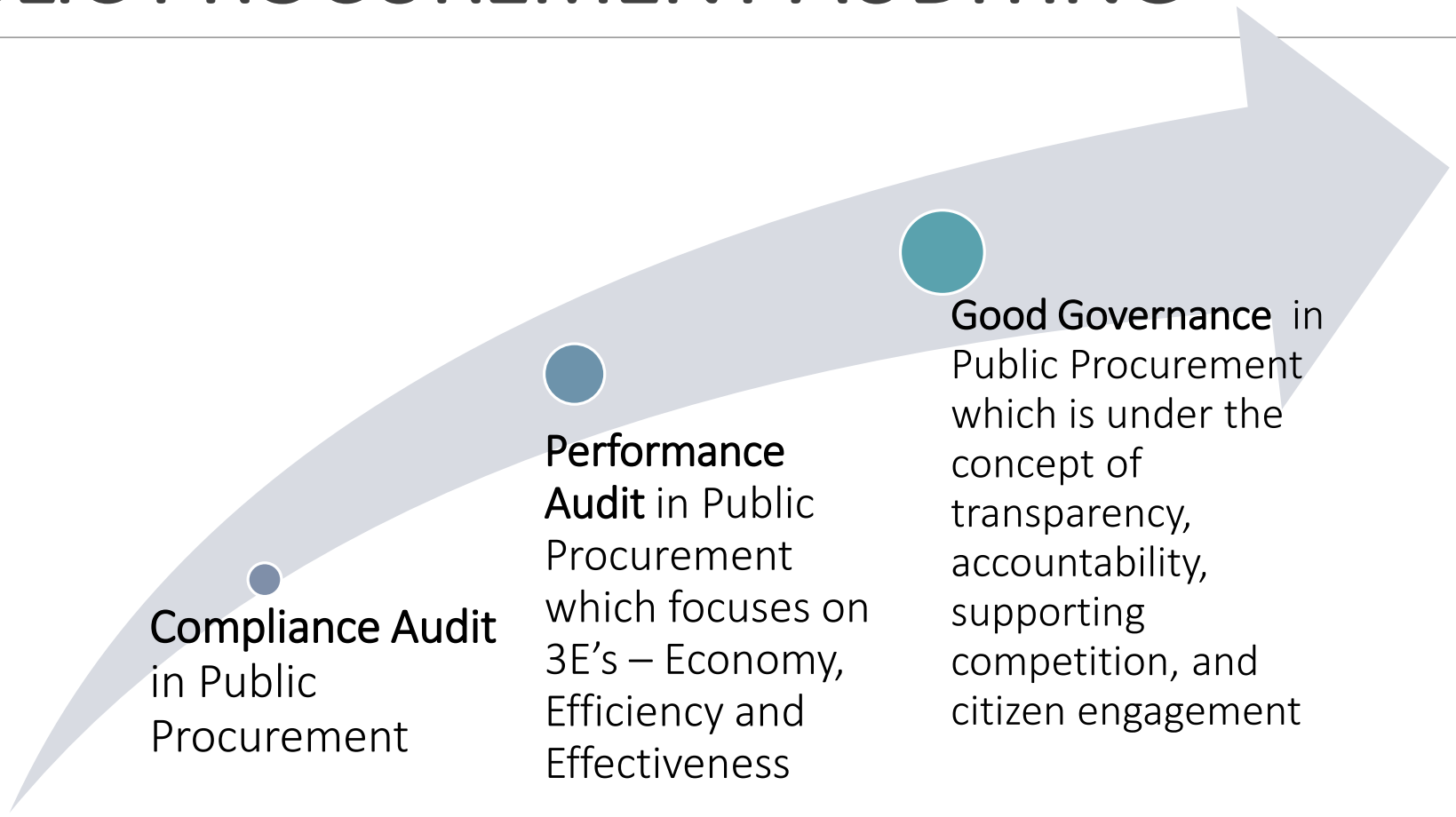
INTERNAL AUDITING

"Internal Auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations."

It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes"

{Institute of Internal Auditors Global}

SYSTEM-WIDE APPROACH IN PUBLIC PROCUREMENT AUDITING



Source: Office of the Auditor General of Thailand

NEW OBLIGATIONS OF THE PROCURING ENTITY

All Procuring entities must:

- Have access to an effective Internal Audit function to test internal controls relevant to procurement, identify deficiencies and recommend remediation of any weaknesses on an ongoing basis.
- Have implemented their Internal Control Framework for procurement
- Comply with— *(a) such general guidelines in relation to public procurement as the Office may issue; (b) such special guidelines in relation to public procurement as the Office may approve for that procuring entity;"* (Section 30 [1])
- Implement an efficient filing system that ensures that procurement, disposal and contract management records are maintained and readily available when required for submission to Internal Audit and to the OPR
- Submit quarterly Internal Audit reports (testing procurement controls) to the Accounting Officer

FUNCTIONS OF INTERNAL AUDIT DEPARTMENTS

- Ongoing testing and monitoring of the procurement system and of individual procurement actions to ascertain whether the components of internal control are present, functioning and adequate
- Perform test on risk assessment and risk management - to determine sufficiency of control mechanisms aimed at minimization of risks inherent in the system
- Make recommendations for remediation of any weaknesses and report on the status of remedial actions that were undertaken base on past recommendations
- Ensure that procurement undertaken using funds entrusted to an Accounting Officer are applied for the purposes intended by the Parliament pursuant to the Exchequer and Audit Act,(Chap 69.01), the Financial Regulations and in compliance with the Act.
- Provides insight on compliance with the Act, Regulations, Handbooks and Guidelines and produce recommendations to the management of the procuring entity based on the findings.

The Accounting Officer of a procuring entity and the OPR has the right at any time to make enquiries and to have access to the internal audit reports

INTERNAL AUDIT DEPARTMENT AND THE OPR

- The Internal Audit Department will be one of the conduits between procuring entities and the OPR to ensure compliance and operationalization of the new Procurement Framework
- Cooperate with the OPR by providing requested reports and information in a timely manner
- Internal Auditors should to be trained in best practice in procurement compliance monitoring

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Thank you!

Questions?