CHALLENGE PROCEEDINGS- Suppliers & Contractors

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OVERVIEW

- Who are we at the Office of Procurement Regulation?
- Objectives of the Act
- What are Challenge Proceedings and the governing Laws and Rules?
- Who hears and determines Challenge Proceedings?
- Who can submit a Challenge?
- What can be Challenged?
- What are the timeframes for submitting an Application for Review?
- The Standstill Period and how to submit an Application for Review
- The 20-day Process for Challenge Proceedings Overview
- The 20-day Process for Challenge Proceedings Breakdown
- Can the Decision of the Hearing Panel be Appealed?

WHO ARE WE AT THE OFFICE OF PROCUREMENT REGULATION?

The Office of Procurement Regulation (the Office) is a body corporate established pursuant to an Act of Parliament, namely the *Public Procurement and Disposal of Public Property Act, 2015*, as amended (the Act). The Act aims to provide for public procurement, and for the retention and disposal of public property.

OBJECTIVES OF THE ACT

TO PROMOTE

The principles of accountability, integrity, transparency and value for money

Efficiency, fairness, equity and public confidence

Local industry development, sustainable procurement and sustainable development in public procurement and the disposal of public property

What are Challenge Proceedings?

Challenge Proceedings is the process by which a Supplier or Contractor ("Applicant") may apply to the Office for a review of a decision or action taken by a procuring entity ("the Respondent") in a procurement proceeding- s50(1)

The procedure is governed by:

- **Part V of The Public Procurement and Disposal of Public Property Act;**
- **The Public Procurement and Disposal of Public Property (Challenge Proceedings) Regulations 2021;**
- **The Hearing Rules and Procedure for Part V Challenge Proceedings; and**
- **The Electronic Hearing and Filing Rules for Part V Challenge Proceedings.**

Who can submit a Challenge?

Section 49(1) of the Act:

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.

Who hears and determines Challenge Proceedings?

The Hearing Panel hears and determines Challenge Proceedings. The Hearing Panel will comprise members of the Board and/ or Management of the Office of no less than three (3) and no more than five (5) members, selected by the Office for their competence in the specific area(s) of dispute. One of these members will be appointed to chair the hearing.

What can be challenged?

A decision or an action taken by a procuring entity in the procurement proceedings that is not in compliance with the Act.

Challenges can relate to:

- ❑ **Terms of pre-qualification OR decisions or actions taken by a procuring entity in pre-qualification proceedings**
- ❑ **Terms of preselection OR decisions or actions taken by a procuring entity in pre-selection proceedings**
- ❑ **Terms of solicitation**
- ❑ **Other decisions or actions taken by a procuring entity in procurement proceedings**

Key Definitions- section 4 of the Act

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

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

- Solicitation means an invitation to tender, present submissions or participate in request for proposals proceedings or an electronic reverse auction

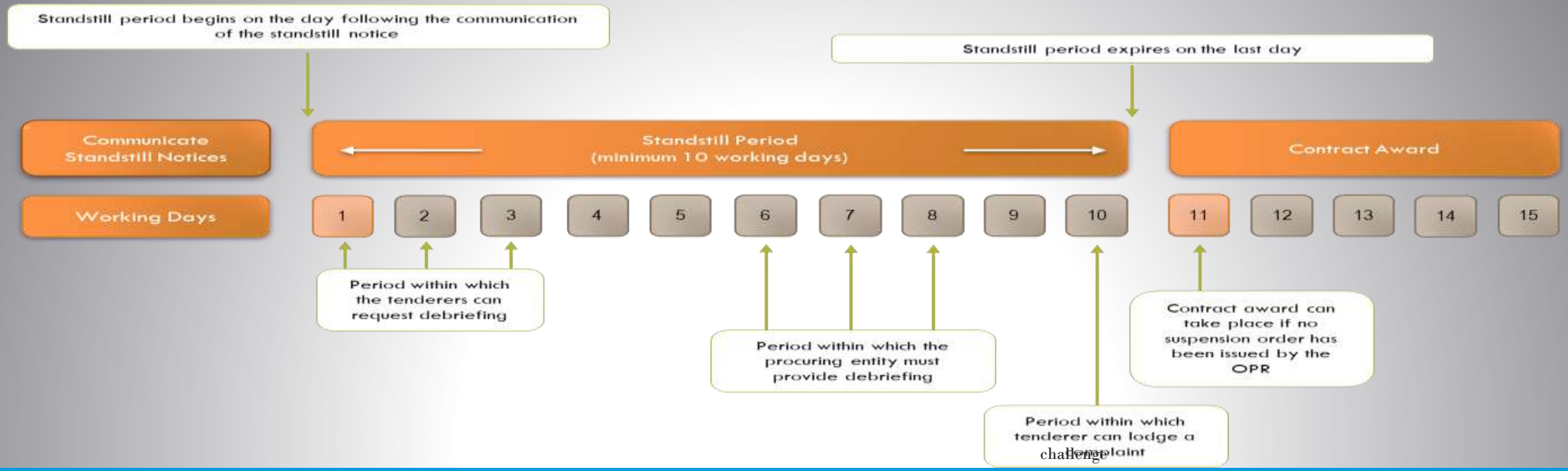
Time limits to submit an Application for Review (AFR)- section 50(2) of the Act

- Where the Challenge relates to the terms of pre-qualification, pre-selection, solicitation, or decisions or actions taken by a procuring entity in pre-qualification or pre-selection proceedings, the deadline to file this Challenge is before the deadline for presenting submissions

- Where the Challenge relates to other decisions or actions taken by a procuring entity in procurement proceedings the deadline to file this challenge depends on whether or not a standstill period was applied by the procuring entity:

  - If a standstill period was applied, the deadline to file this Challenge is within the standstill period

  - If a standstill period was not applied, the deadline to file this Challenge is within seven (7) working days after the publication of the notice of the decision or action that was taken by the procuring entity.



What is a Standstill Period

The standstill period is a short pause of at least ten (10) to fifteen (15) working days which begins when the Notice of Decision to Award is issued to suppliers or contractors who have participated in the procurement proceedings.

THE STANDSTILL PERIOD

THE 20 DAY PROCESS FOR CHALLENGE PROCEEDINGS-OVERVIEW

DAYS 1-3

- Application for Review (AFR) Submitted
- Procuring Entity Notified of Review
- Publication of Notice of AFR

DAYS 4-6

- Decision on Suspension
- Reply by Respondent
- Request for Authorisation
- Notice of appointment of representatives

DAYS 8-9

- Notice of Case Management Conference (CMC)
- Application for leave to call Expert Witnesses

DAY 11

- CMC
- Notice for Interpreter
- Notice for Accommodation

DAYS 12-13

- Notice of CMC directions and Hearing date
- Qualifications of Interpreter Witness Statements, Expert Evidence, Skeletal Submissions

DAYS 15-16

- Hearing
- Application for costs

DAY 20

- Decision
- Suspension Lifted

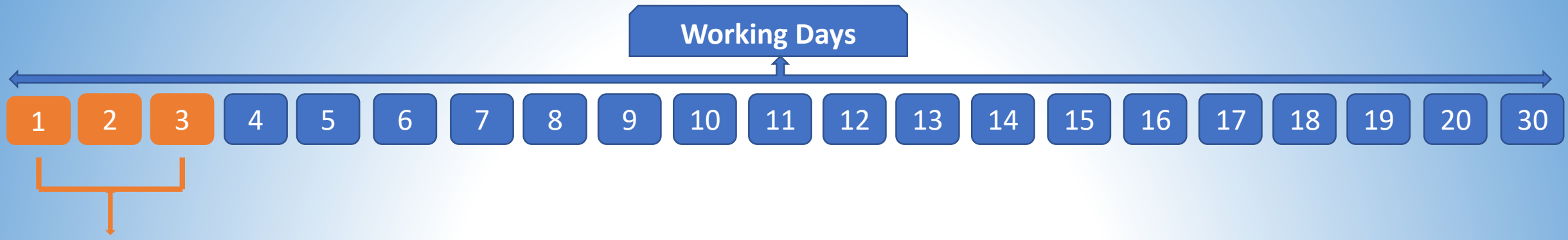
DAY 30

- Written Reasons
- Record of Hearing

General Points to Note

- For the purposes of this presentation, only the days requiring action by the Parties involved and the main actions of the Office are highlighted in the 20 Challenge Proceedings process.
- On days not specifically highlighted in the following slides:
  - the Office will continue its internal preparations and deliberations for the successful completion of the Challenge Proceedings process within the statutorily mandated 20 day period.
  - The Parties can continue with their internal preparations for the advancement of their respective cases.

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN



Supplier or contractor (the Applicant) initiates Challenge process.

Publication of Notice of Application for Review within three (3) days of receipt.

Notification to Procuring Entity (the Respondent).

File and Serve completed (Form 8)- Application for Review, via email to challenge@opr.org.tt

The Office will publish a Notice of the Application for Review in two (2) daily newspapers and on its website

The Procuring Entity will be notified directly by the Office of the Application for review.

Form 8: Application for Review – Rule 6.1

..... (Name of Applicant)	..... (Name of Representative)
..... (Name of Organisation)	..... (Name of Organisation, if any)
..... (Mailing Address)	..... (Mailing Address)
..... (Business Address, if different)	..... (Business Address, if different)
..... (Phone)	..... (Phone)
..... (Email)	..... (Email)

REPUBLIC OF TRINIDAD AND TOBAGO

BEFORE THE OFFICE OF PROCUREMENT REGULATION

CP

In the matter of .....

(Name of Applicant-Supplier/Contractor)

AND

.....

(Name of Respondent-Procuring Entity)

APPLICATION FOR REVIEW

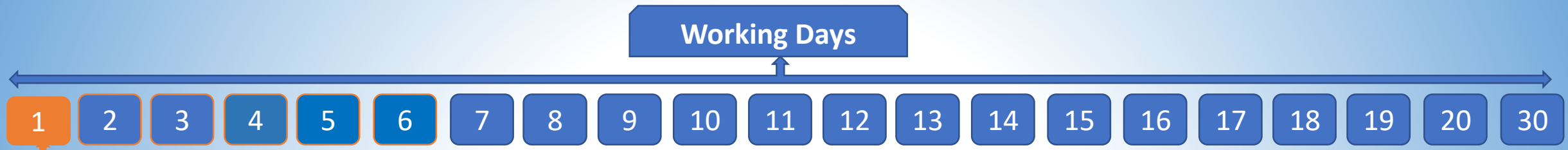
1. The Applicant, ... (full name), of .....(full business address of Applicant) having been dissatisfied with the following decision(s)/ action(s) of ..... (full name of Respondent) of ..... (full business address of Respondent)
   a. (State decision or action No. 1 being challenged and date of same)
      .....
      .....
      .....
      .....
   b. (State decision or action No. 2 being challenged and date of same)
      .....

      .....
      .....
   c. (State decision or action No. 3 being challenged and date of same)
      .....
      .....
      .....
      .....
   d. (State decision or action No. 4 being challenged and date of same)
      .....
      .....
      .....
      .....

the particulars of which are stated in paragraph 2, hereby applies to the Office of Procurement Regulation for a review of the said decision(s)/ action(s) on the grounds set out in paragraph 3 and will at the Hearing seek the reliefs set out in paragraph 4.

2. (a) The facts concerning the decision(s)/action(s) being reviewed are as follows:
   .....
   .....
   .....

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN

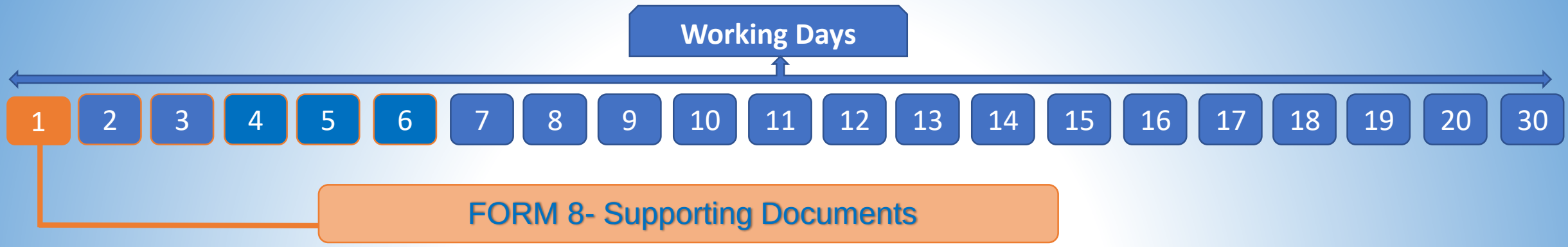


Form 8: Application for Review

Form 8 is the Application for Review which must be completed, signed and submitted via email to the Office at challenge@opr.org.tt The supplier or contractor must provide details of the contention including:

- Each decision or action being challenged
- The facts surrounding each decision or action
- The grounds or basis for the Office to review the decision or action taken by the procuring entity i.e., the non-compliance or breach being alleged
- The remedies being sought from the Office- section 50(10) of the Act
- The witnesses to be presented in support of the supplier or contractor's application for review at the Hearing of the matter
- The efforts taken to resolve the issue directly with the procuring entity

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN



- ✓ Invitation to bid
- ✓ Request for proposal/quotation
- ✓ Invitation for pre-qualification or pre-selection
- ✓ Notice of Intention of Award issued by the procuring entity
- ✓ Bid submitted by the Applicant
- ✓ Request for Clarification received from the Applicant and response
- ✓ Correspondence between the Applicant and the PE in relation to efforts taken to resolve the issue directly with the PE
- ✓ Emails, correspondence or other documents relevant to the decision or action being challenged

NOTE: Failure to attach any relevant documents can result in the inability of the Applicant to rely on these at the Hearing

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN

Working Days

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 30

Other relevant forms

Form 1 – Confirmation of Service.

When Form 8 and supporting documents are submitted to the Office, the filed version bearing the stamp of the Office must be served on the procuring entity (the Respondent). Once served, Form 1 - Confirmation of Service must be submitted to the Office.

Form 2- Notice of Appointment of Representative- Reg. 7

Form 1: Confirmation of Service – Rule 5.10

REPUBLIC OF TRINIDAD AND TOBAGO

BEFORE THE OFFICE OF PROCUREMENT REGULATION

CP

In the matter of

(Name of Applicant-Supplier/ Contractor)

AND

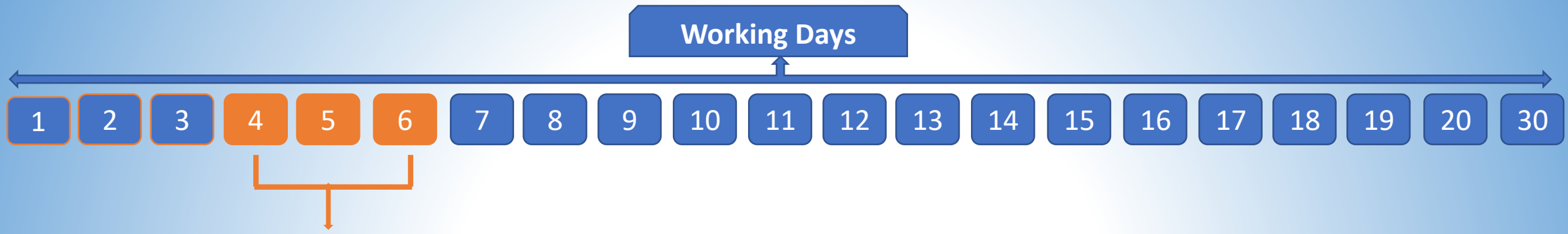
(Name of Respondent-Procuring Entity)

CONFIRMATION OF SERVICE

1. I, (full name) of (full business address), (occupation) hereby state that the contents of this Confirmation of Service Form are true and accurate to the best of my knowledge, information and belief.

2. I hereby state that on behalf of the Applicant/ Respondent, I served on (full name of Applicant/Respondent), in the manner set out at paragraph 3 the (name of document served) which was filed on behalf of (full name of Party on whose behalf the document was filed) on day of 20

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN



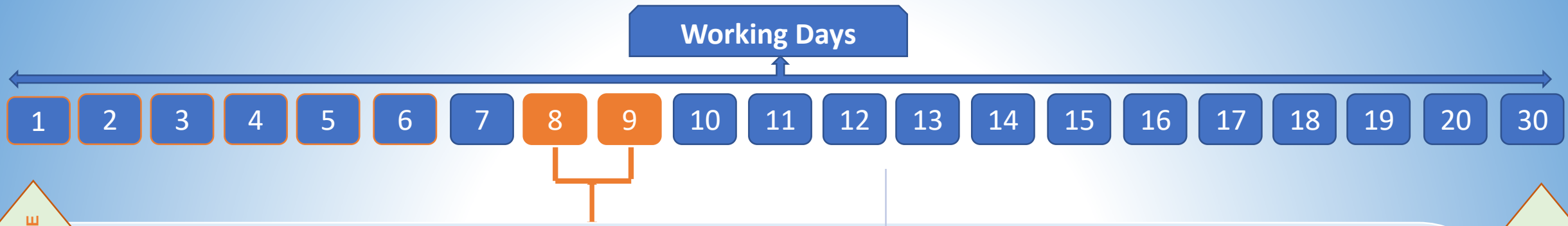
Receipt of Notification of Decision on Suspension pursuant to section 50 (4) of Act.

Receipt of dismissal decision with reasons- Reg 4.

Respondent must file and serve its Reply (Form 9) with all supporting documents and may include therein a Request for Authorization)- Reg. 9

Application to Participate (Form 10)- section 51(1) of Act

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN



DETAILS OF NOTICE OF CASE MANAGEMENT CONFERENCE

- **Receipt of Notice of Case Management Conference stating:**

✓ the date, time, place and purpose of the CMC
✓ whether Parties are required to attend in person
✓ that they may be represented by a Representative who has the authority to make agreements and give undertakings on their behalf
✓ a statement that if a Party does not attend (themselves or via a Representative), the presiding member of the Hearing Panel may proceed in their absence
✓ a statement that binding orders would be made by the Hearing Panel with respect to the conduct of the Challenge Proceedings

ADDITIONAL ACTIONS

- **Receipt of Decision on Authorisation Request**
- **Receipt of decision on Joinder of Interested Parties**
- **Deadline for filing of Application to call Expert Witness**

Form 11: Application for leave to call expert evidence -Rule 9.14

..... (Name of Applicant/Respondent)	..... (Name of Representative)
..... (Name of Organisation)	..... (Name of Organisation, if any)
..... (Mailing Address)	..... (Mailing Address)
..... (Business Address, if different)	..... (Business Address, if different)
..... (Phone)	..... (Phone)
..... (Email)	..... (Email)

REPUBLIC OF TRINIDAD AND TOBAGO

BEFORE THE OFFICE OF PROCUREMENT REGULATION

CP

In the matter of .....

(Name of Applicant-Supplier/Contractor)

AND

.....

(Name of Respondent-Procuring Entity)

APPLICATION FOR LEAVE TO CALL EXPERT EVIDENCE

1. The Applicant/ Respondent, ... (full name Applicant/ Respondent) of .... (full address of Applicant/ Respondent) hereby applies for leave to call the expert evidence listed at paragraph 2 on the grounds set out in paragraph 3.

2. The particulars of the expert(s) for which leave is sought to call in the above-named Challenge Proceedings are as follows:-

   Expert 1
   Name of expert
   .....
   Address of expert
   .....
   .....
   Qualifications
   .....

.....
.....
Issue on which the expert will provide evidence
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Substance of the expert's evidence
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.....

List of documents, if any, to which the expert will refer

i. .....
.....

ii. .....
.....

iii. .....
.....

iv. .....
.....

Expert 2
Name of expert
.....
Address of expert
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.....
Qualifications

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Issue on which the expert will provide evidence
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Substance of the expert's evidence
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.....

List of documents, if any, to which the expert will refer

i. .....
.....

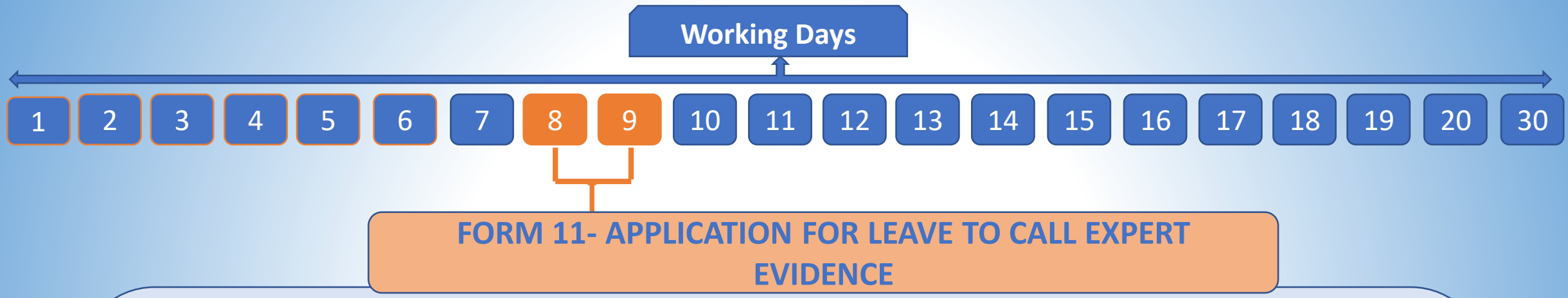
ii. .....
.....

iii. .....
.....

iv. .....
.....

Expert 3
Name of expert
.....
Address of expert
.....
.....

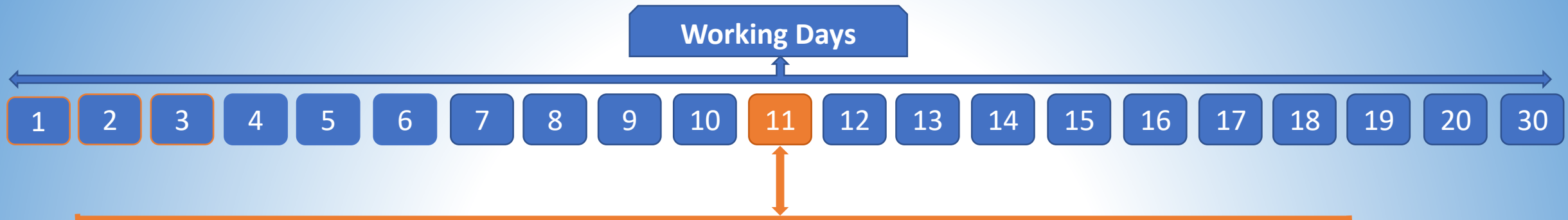
CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN



Details that must be provided include:

- Name, address and qualifications of proposed expert
- Issue on which the expert will provide evidence
- Substance (summary of the relevant points) of the expert's evidence
- List of documents to which the expert will refer
- Grounds for this application for leave (permission) to call expert witness.

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN

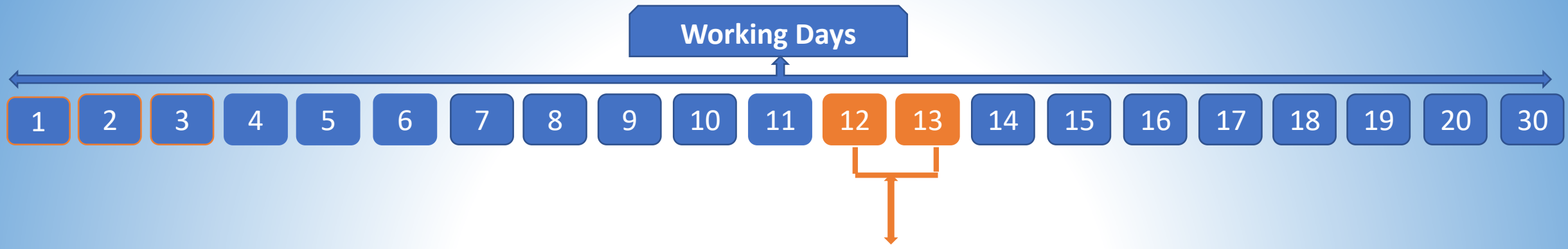


Attendance at CMC by Parties/ Representatives during which the Hearing Panel can give directions/ make orders with respect to the Proceedings and hear and determine preliminary matters.

Parties must inform Office if the assistance of an interpreter is required **(Form 6)**. Arrangements to retain and utilise the services of an Interpreter is to be borne by the notifying Party.

Parties must inform the Office if accommodation is required for differently abled persons to attend the Hearing **(Form 7).**

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN

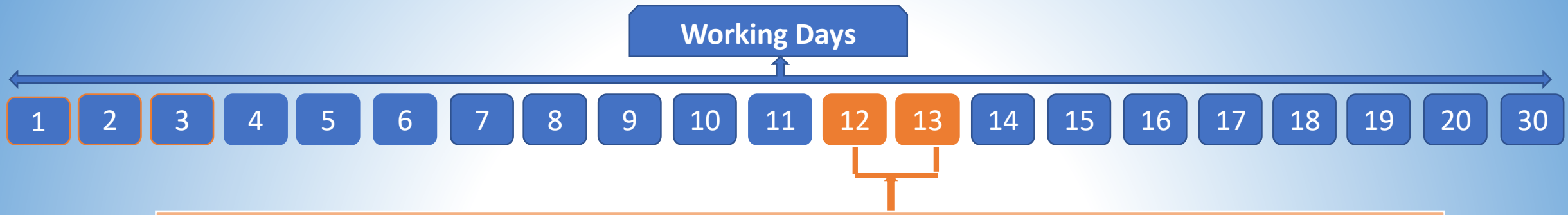


The Office would provide Notice of the directions/orders made at the CMC as well as provide the date, time and place of the Hearing to all the Parties.

The Party requiring the assistance of an Interpreter must submit the qualifications of the chosen Interpreter to the Office.

All Parties must file and serve their respective witness statements, expert evidence (if applicable) and skeletal submissions.

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN

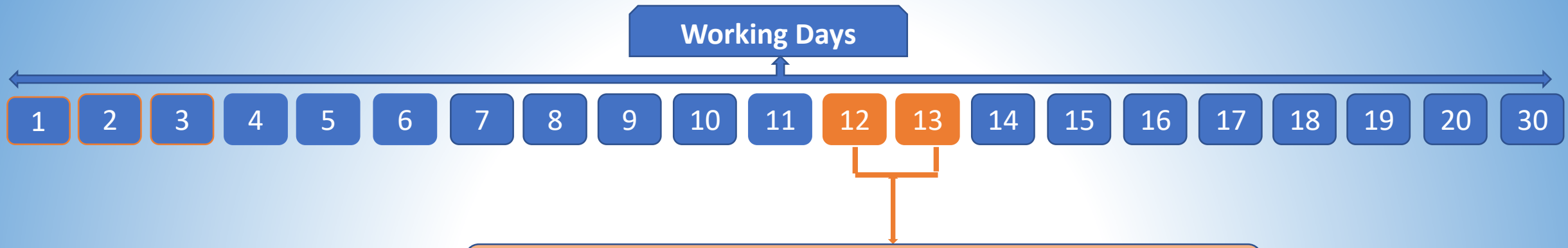


WITNESS STATEMENTS

Details that must be provided include:

Account of the facts in support of the claims contained in the Application for Review	Supporting documents referred to by the witness	Statement that the matters set out are within the witness' own knowledge except where otherwise indicated	Statement that the contents are true and correct

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN



Skeletal submissions

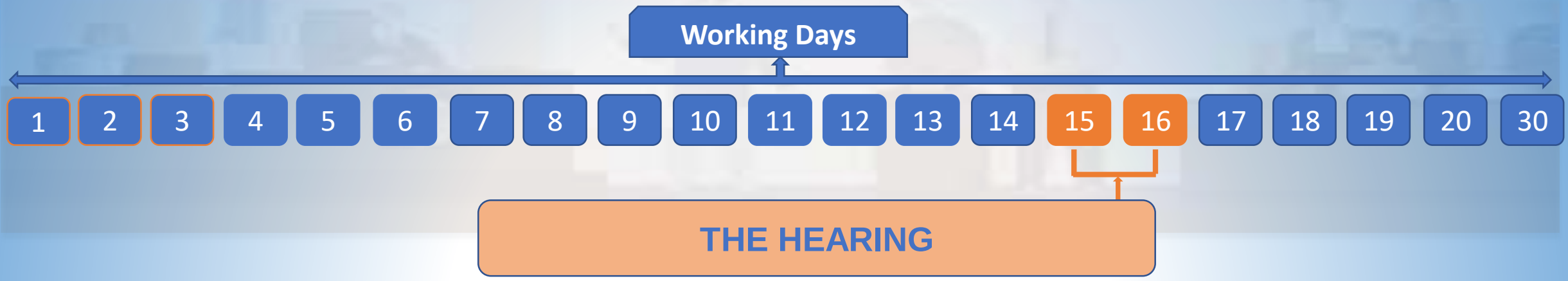
Details that must be provided include:

- Summary of arguments in support of the responses in the Application for Review in relation to the allegations that:

  ➓the procuring entity made a decision or took action that is not in compliance with the Act; and

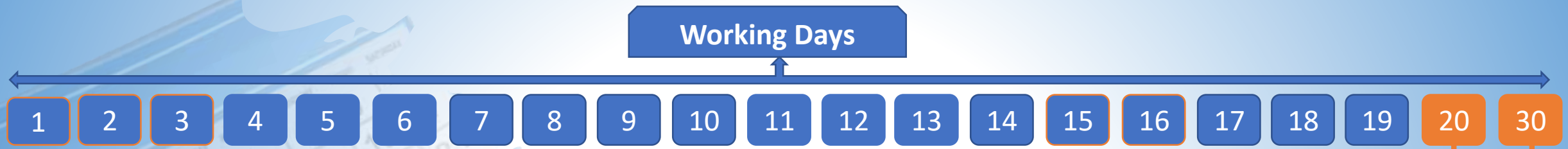
  ➓the supplier or contractor has suffered or is likely to suffer loss or injury because of the decision or action of the procuring entity

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN



- The Hearing will be public (except where a section 52 circumstance applies)
- All Parties **must** attend the Hearing.
- The Hearing Panel **can** continue with the Hearing in a Party's absence where it is satisfied that the notification of the Hearing was received and the Party is absent without good cause.
- Each Party will present its case and call witnesses who can be questioned by the other Parties and the Hearing Panel.
- Each Party will make oral closing submissions to the Hearing Panel.
- The Applicant can make an **Application for Costs (Form 15).** If such an application is made, the Respondent will be given an opportunity to make representations on same.

CHALLENGE PROCEEDINGS- 20 DAYS BREAKDOWN



Decision

The Office will inform the Parties of its Decision. Any order for suspension in force will be lifted at this time.

Note that written reasons for the Decision will be provided no later than 30 days after the Decision.

Record of Hearing

Parties can apply for the **Record of the Hearing (Form 16)** which will be in the form of an electronic copy.

CAN THE DECISION OF THE HEARING PANEL BE APPEALED?

The **Public Procurement Review Board (PPRB)** is an independent Board that reviews the Hearing Panel's order with respect to suspension or final decision: **sections 51A- L**

The parties or any other person who has an interest in the order or decision may request a review

Appeal of decision cont'd

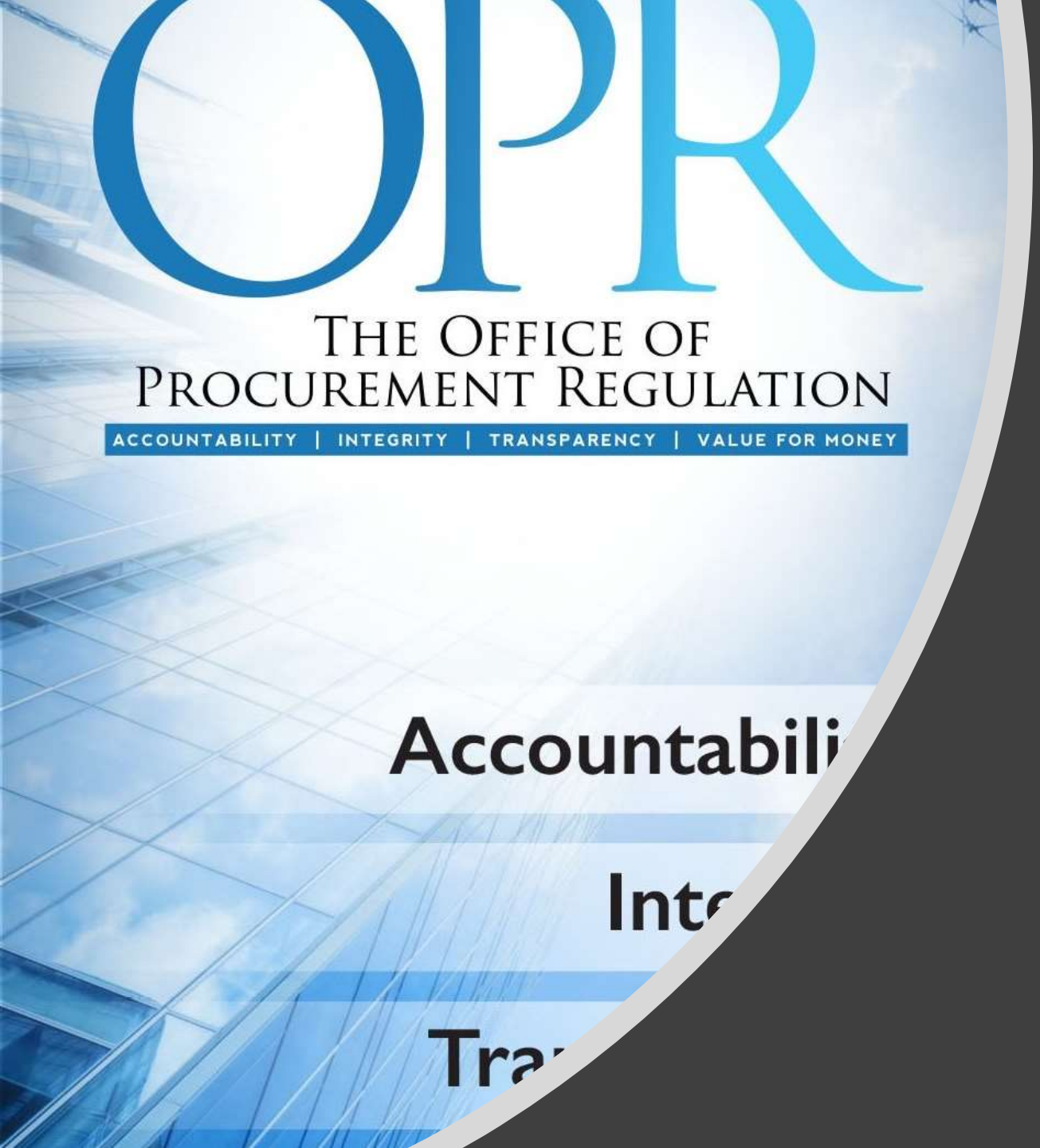
A request for review by the PPRB must be made within 21 days of receiving the order or decision.

Within 21 days of receiving a request for review, the PPRB shall convene to conduct a review. The review must be completed within 28 days.

Following the completion of a review, the PPRB may:

- confirm, vary or overturn the decision of the Hearing Panel; and
- order the payment of costs as between parties to the review.

A party may subsequently appeal against the decision of the PPRB to the High Court within 28 days of the delivery of the decision.



Thank you for your kind attention!

I would be happy to answer any questions.

Level 19, Tower D, Port of Spain International Waterfront Centre,

1A Wrightson Road, Port of Spain

Tel: 1 868 627 4677 or 1 868

Website: www.oprtt.org