SENSITISATION SESSION: CHILDREN'S AUTHORITY OF TRINIDAD & TOBAGO

Presenters: Mr. Moonilal Lalchan
Ms. Maurissa Shari De La Rosa

Date: August 25th 2022

AGENDA

I. Introduction
II. The Public Procurement & Disposal of Public Property Act
III. The Amendments to the Act
IV. The Public Procurement and Disposal of Public Property Regulations
V. Procurement Methods & Procedures
VI. Procurement Process (Points to Note)
VII. Developing an Organisational Procurement Policy

OPR
THE OFFICE OF PROCUREMENT REGULATION

IMPACT OF CORRUPTION ON THE PUBLIC SECTOR

The Organisation for Economic Cooperation and Development (OECD), Foreign Bribery Report (2014) confirms that public procurement is one of the government activities most vulnerable to corruption, due to the volume of transactions and the financial interests at stake.

In their study, they discovered that **two-thirds** of foreign bribery cases occurred in sectors closely associated with contracts or licensing through public procurement.

10-30% of the investment in a publicly funded construction project may be lost due to mismanagement and corruption.

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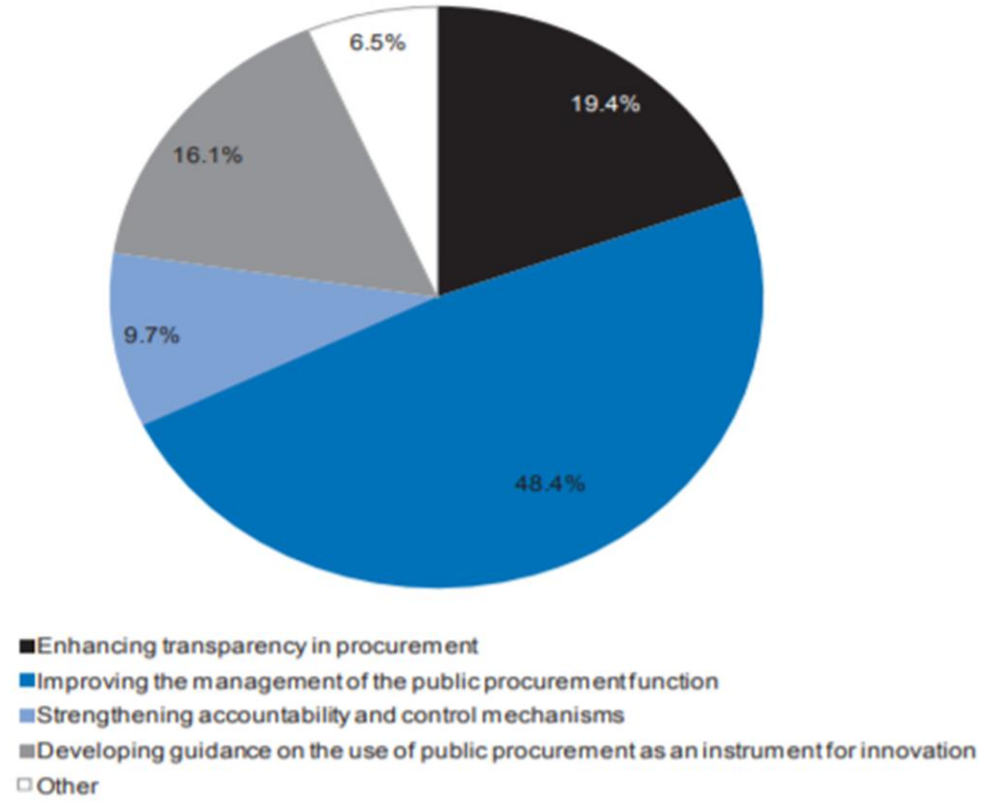
5,200,000,000

MITIGATING WASTE AND CORRUPTION IN PUBLIC PROCUREMENT

The European Commission estimates that EUR 120 billion are lost each year to corruption in the EU member countries. Studies suggest that up to 20-25% of the public contracts' value may be lost to corruption. However capacity and skills are insufficient to mitigate risks of waste and corruption.

The prominent weakness of procurement systems identified across respondent countries is the lack of adequate capability and management of the procurement function.

Figure 4.2. **The management of the procurement function: An area for improvement**



CORRUPTION IN THE PUBLIC SERVICE

The Honourable Prime Minister, in an address on public sector leadership for digital transformation to Permanent Secretaries, Heads of Department and administrators across the public service on January 31, 2022 indicated that once the public sector became digitalised, corruption would be much easier to track.

He stated that this would be “an assault on white collar criminal conduct, which currently flourishes with impunity, but which will wither if access is digitally controlled and recorded, and information in the form of evidence identifies who did what, where, when, how and under what authority.”

OPR
THE OFFICE OF PROCUREMENT REGULATION

THE PUBLIC PROCUREMENT & DISPOSAL OF PUBLIC PROPERTY ACT

ACT NO. 1 OF 2015

- "AN ACT to provide for public procurement, and for the retention and disposal of public property, in accordance with the principles of **good governance**, namely **accountability**, **transparency**, **integrity** and **value for money**, the establishment of the Office of Procurement Regulation, the repeal of the Central Tenders Board Act, Chap. 71:91 and related matters …"

WHO IS THE OPR?

The Office of Procurement Regulation ("the OPR") is established by the Public Procurement and Disposal of Public Property Act, 2015 as amended ("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. The Board was appointed on **January 12, 2018** and comprises ten members in accordance with Section 10 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."

PUBLIC BODY (SECTION 4 OF THE ACT)

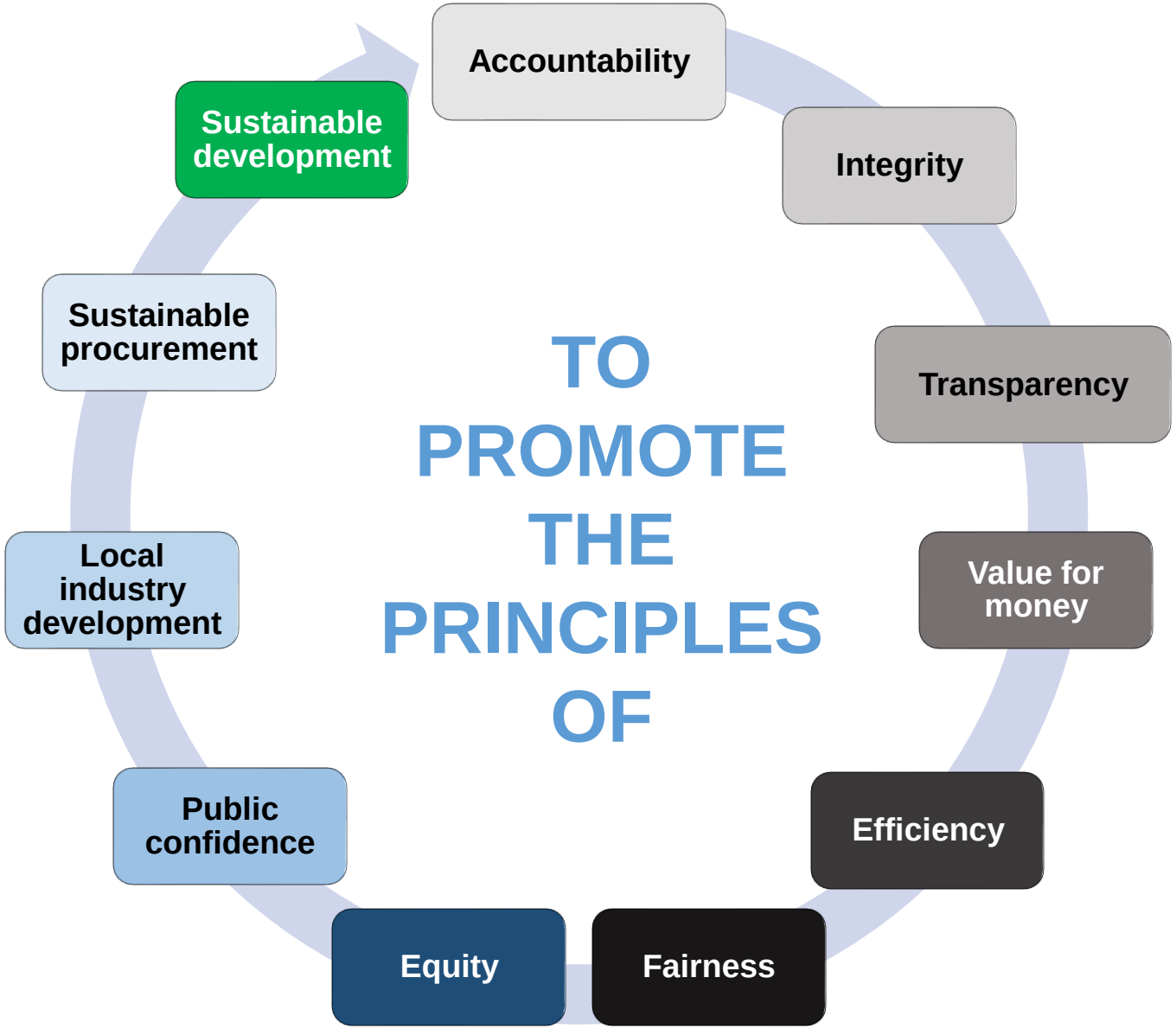
- The Office of the President
- The Parliament
- The Judiciary
- A Ministry or a department or division of a Ministry
- The Tobago House of Assembly, or a division of the Tobago House of Assembly
- A Municipal Corporation established under the Municipal Corporations Act
- A Regional Health Authority 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
- A body corporate or unincorporated entity using public money

PUBLIC MONEY
(SECTION 4 OF THE ACT)

“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.

OBJECTS OF THE ACT (SECTION 5)



FUNCTIONS OF THE OPR (SECTION 13 OF THE ACT)

Establish a comprehensive database of information on public procurement and tenders received, award and values of contracts

Set training standards, competence levels and certification requirements to promote best practice in procurement

Issue and review guidelines in relation to public procurement and the retention and disposal of public property

Prepare, update and issue model handbooks, incorporating standardised bidding documents, procedural forms and relevant documents

Approve, in respect of each procuring entity, special guidelines and handbooks in relation to public procurement and the retention and disposal of public property

FUNCTIONS OF THE OPR (CONT'D) (SECTION 13 OF THE ACT)

Promote the use of technology in public procurement and the retention and disposal of public property

Provide best practice advice in the conduct of procurement activities, including the promotion of electronic transactions

Harmonise policies, systems and practices in relation to public procurement activities and the disposal of public property

Review procurement practices and delivery systems on an annual basis to identify best practices

Determine, develop, introduce, maintain and update related system-wide databases and technology

Promote the awareness of public bodies and the public to issues relating to public procurement and disposal of public property

FUNCTIONS OF THE OPR (CONT'D) (SECTION 13 OF THE ACT)

Undertake research and surveys with respect to public procurement and disposal of public property

Act for, in the name and on behalf of the State to dispose of real property owned by the Government in such manner as the Government may consider appropriate and desirable

Create and publish standard form contracts for public procurement and disposal of public property

Prepare and maintain a database of pre-qualified contractors and suppliers

Prepare and maintain a list of pre-qualified mediators, arbitrators and experts for the purposes of alternative dispute resolution

Provide advice on best practice on the aggregation of the procurement or disposal of goods for the purpose of obtaining value for money

FUNCTIONS OF THE OPR (CONT'D) (SECTION 13 OF THE ACT)

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

ROLES AND RESPONSIBILITIES OF BOARD OF DIRECTORS

Section **99** of the Companies Act states:

(1) Every director and officer of a company shall in exercising his powers and discharging his duties—

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

ROLES AND RESPONSIBILITIES OF BOARD OF DIRECTORS

According to the Ministry of Finance State Enterprise Performance Monitoring Manual Section **2.2.6**:

a) The Board of Directors, under the Companies Act 1995, directs the management of the business and affairs of the Company.

b) The Board must not usurp the responsibilities of executive management by involving itself in day to day management issues. It is an organ of review, appraisal and appeal.

c) The Board of Directors of the Company performs a specific set of functions which is directed to meet the mission of the Company. Its main responsibility lies in planning, monitoring and controlling the activities of the Company to ensure the optimal utilization of its resources and the achievement of its corporate objectives.

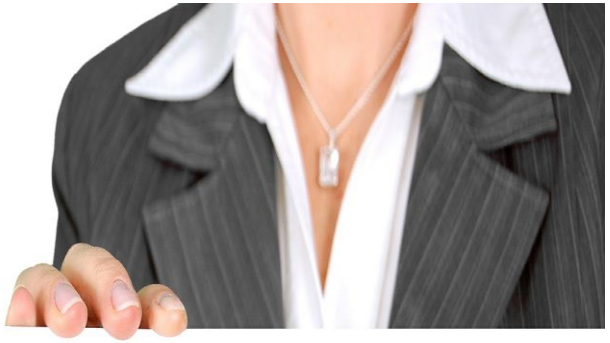
ROLES AND RESPONSIBILITIES OF BOARD OF DIRECTORS

d) The Board ensures that policies and business decisions taken at the Board level are implemented. It should ensure that the policies and objectives of the Company reflect the policy of GORTT and are well defined so as to rule out ambiguity.

e) The Board is thoroughly familiar with the Company and its various publics, in order to serve them effectively.

f) The Board further ensures that the Company is staffed by competent senior management personnel, sets standards and reviews managerial performance of such staff in the context of the Company's objectives.

ROLES AND RESPONSIBILITIES ACCOUNTING OFFICER/ EQUIVALENT



CHIEF EXECUTIVE OFFICER

The Financial Regulations of the Exchequer and Audit Act set out the accountabilities of Accounting Officers as follows:

S. 4 An accounting officer shall be responsible for ensuring— (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.

S. 5 All accounting officers are personally and pecuniarily responsible for— (a) the due performance of the financial duties of their departments; (b) the proper collection and custody of all public moneys receivable by them; and (c) for any accounts rendered by them or under their authority.

ROLES AND RESPONSIBILITIES ACCOUNTING OFFICER/ EQUIVALENT (CONT'D)

S. 6 An accounting officer is not absolved from his responsibility for complying or securing compliance with the Act, these Regulations and any instructions given to him, or by him within the scope of his authority, by reason of the responsibility of the Auditor General to check and report any shortcomings in connection with the public accounts or finances.

S. 7 No accounting officer shall be relieved from responsibility for an act which he is required by the Act, these Regulations or any instructions to perform, the performance of which he has delegated to an officer subordinate to him.

S. 11 The accounting officer shall be answerable to the Public Accounts Committee for the formal regularity and propriety of accounts of all the expenditure out of the votes for which he is responsible.

WHO IS RESPONSIBLE FOR PROCUREMENT?

S. 61(2) 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.

S. 61(3) 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.

THE PROCUREMENT AND DISPOSAL ADVISORY COMMITTEE ("PDAC")

Part IX of the Public Procurement and Disposal of Public Property (Procurement Methods and Procedures) (No. 2) Regulations, 2021 states that:

21. (1) A procuring entity shall establish a Procurement and Disposal Advisory Committee (hereinafter referred to as "the Committee".

(2) The Committee shall comprise –

- **(a)** Corporate Secretary/Head of Legal;
- **(b)** Head of Finance;
- **(c)** Subject Matter Expert;
- **(d)** such other members as may be necessary

(3) A member of the Committee may be sourced from another public body

(4) A Senior Officer shall be appointed as the Secretary to attend all meetings of the Committee but shall not be a member of the Committee.

THE PDAC (CONT'D)

(5) The Committee shall review reports, recommendations for contract award and procurement proceedings and property disposal files to determine –

(a) adherence to the Act and the Regulations;
(b) adherence to the Handbook and Guidelines;
(c) adherence to the approved procurement/disposal strategy; and
(d) achievement of the objects of the Act.

(6) Where Committee is of the opinion that there is not adherence or achievement as set out in sub-regulations (5), it shall recommend the appropriate action to the procurement officer with a written explanation providing reason for its decision.

(7) The Committee shall cause the written explanation to be forwarded to the Accounting Officer for noting.

THE PDAC (CONT'D)

(8) Where there is an agreement, the Committee shall give the Accounting Officer a written recommendation which must be accompanied by the procurement proceedings file and property disposal file.

(9) A member of the Committee shall disclose his interest and not take part in the proceedings of the Committee where he –

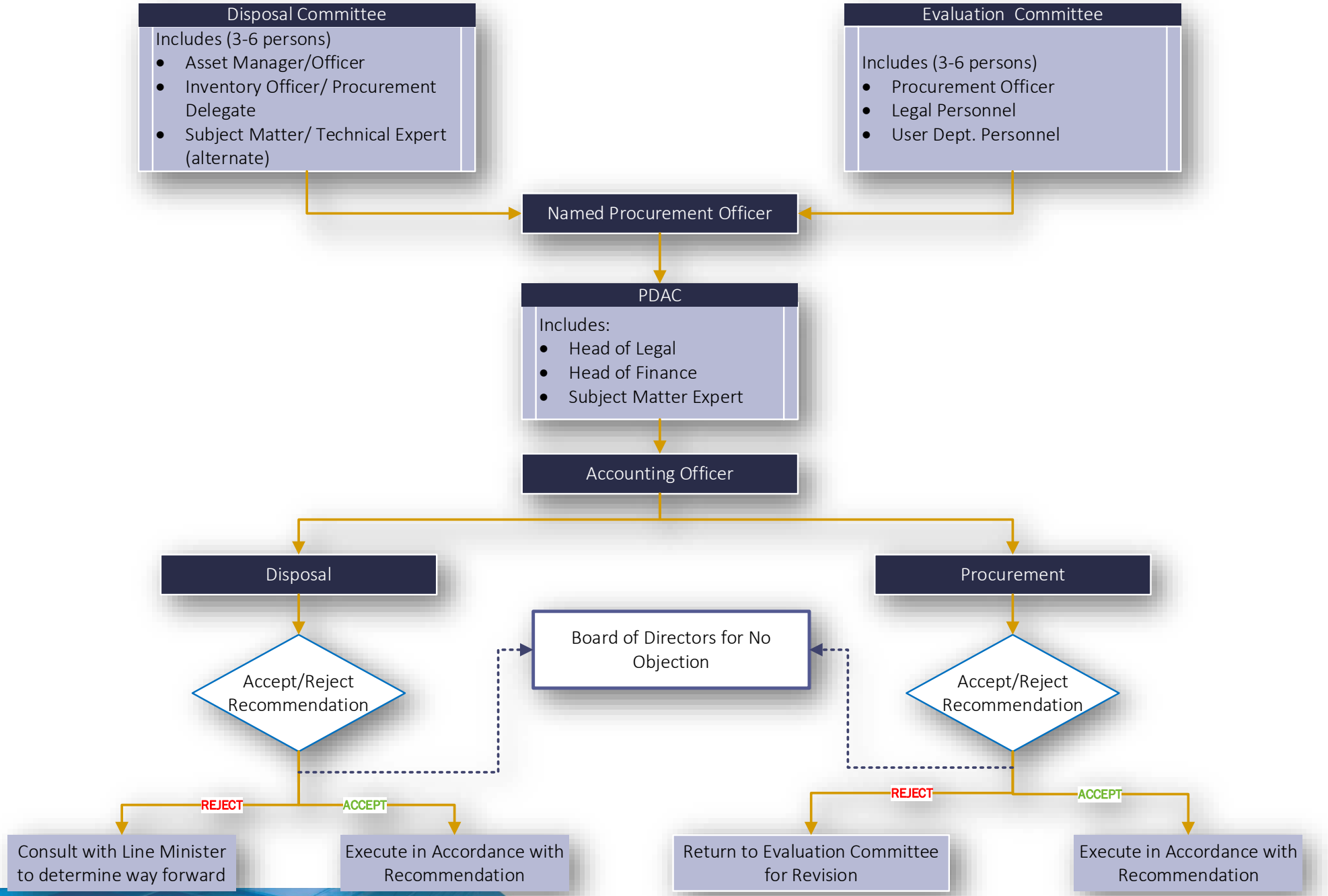
(a) is a member, director or shareholder of a company or other body corporate;

(b) is a proprietor of or partner in a firm, or partnership;

(c) is employed by or is otherwise a party to a contract for services;

(d) has a financial interest in or relationship with someone;

(e) is a relative of an individual, being reviewed by the Committee.


Disposal Committee
Includes (3-6 persons)
Asset Manager/Officer
Inventory Officer/ Procurement Delegate
Subject Matter/ Technical Expert (alternate)
Evaluation Committee
Includes (3-6 persons)
Procurement Officer
Legal Personnel
User Dept. Personnel
Named Procurement Officer
PDAC
Includes:
Head of Legal
Head of Finance
Subject Matter Expert
Accounting Officer
Disposal
Procurement
Board of Directors for No Objection
Accept/Reject Recommendation
Accept/Reject Recommendation
REJECT
ACCEPT
REJECT
ACCEPT
Consult with Line Minister to determine way forward
Execute in Accordance with Recommendation
Return to Evaluation Committee for Revision
Execute in Accordance with Recommendation

ILLEGALITY OF PROCUREMENT OR DISPOSAL

S. 6(1) Any procurement of goods, works or services or retention or disposal of public property that is not done in accordance with this Act and any procurement contract or agreement that is not entered into in accordance with this Act shall be void and illegal

S. 13(2)(a) In the exercise of its functions, the Office shall act expeditiously and take such other steps as it thinks fit in order to minimize any negative economic impact arising out of the performance of its functions

INFORMATION ON FORTHCOMING PROCUREMENT

HIGHLIGHTS FROM THE ACT

- A procuring entity shall— (a) no later than six (6) weeks after the approval of the National Budget, publish on its website or in any other electronic format, information regarding all planned procurement activities for the following twelve months; (b) update the information referred to in paragraph (a) as necessary; and (c) provide a printed copy of the information referred to in paragraph (a) upon request and payment of the prescribed fee – **Section 27 (1)**

- Where the information referred to in subsection (1) is unavailable or not forthcoming, a complaint may be made to the Office which shall conduct an investigation in accordance with section 41, and if justified, grant an extension of time or issue such direction as it thinks fit – **Section 27 (2)**

PROCUREMENT DEPOSITORY
HIGHLIGHTS FROM THE ACT

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 – Section 26 (1)

The Procurement Depository shall be accessible by the public for viewing – Section 26 (2)

A supplier or contractor who submits information to the Procurement Depository shall be responsible for ensuring its accuracy – Section 26 (3)

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 – Section 26 (4)

PRE-QUALIFICATION AND PRE-SELECTION

- **S. 4 Pre-qualification**: the procedure to identify, prior to solicitation, suppliers or contractors who are qualified

- **S. 4 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

- The OPR's Guidelines on Pre-qualification and Pre-selection can be downloaded from https://oprtt.org/handbooks-and-guidelines/

- The OPR's Procurement Depository can be accessed via https://depository.oprtt.org

PRE-QUALIFICATION
HIGHLIGHTS FROM THE ACT

A procuring entity shall ensure that suppliers and contractors – Section 29 (1)

(a) have the legal capacity to enter into the procurement contract;

(b) are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended and they are not the subject of legal proceedings for any of the foregoing;

(c) have not, and their directors or officers have not, been convicted of any criminal offence; per Amendment Act No. 27 of 2020

(c) have not been convicted within the past ten years of corruption or fraud related offences locally or internationally-

(i) as individuals; or

(ii) as directors or officers of a company.

PRE-QUALIFICATION – (CONT'D)
HIGHLIGHTS FROM THE ACT

- Section 29 (1) A procuring entity shall ensure that suppliers or contractors -

  (d) have fulfilled their obligations to pay all required taxes and contributions in Trinidad and Tobago;

  (e) have the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and personnel to perform the procurement contract; and

  (f) meet relevant industry standards.

- Any requirement established pursuant to this section shall be set out in the pre-qualification or pre-selection documents, if any, and in the solicitation documents and shall apply equally to all suppliers or contractors – Section 29 (3)

STANDSTILL PERIOD
HIGHLIGHTS FROM THE ACT

"Standstill period" means the period from the dispatch of a notice as required by section 35(2), during which a procuring entity cannot accept the successful submission and suppliers or contractors can challenge the decision so notified – Section 4

A procuring entity shall promptly notify each supplier or contractor who presented submissions of its decision to accept the successful submission at the end of the standstill period – Section 35 (2)

Subsection (2) shall not apply to awards of procurement contracts where a procuring entity determines that urgent public interest considerations require the procurement to proceed without a standstill period – Section 35 (4)

RETENTION AND DISPOSAL
HIGHLIGHTS FROM THE ACT

- Disposal of public property includes the transfer without value, sale, lease, concession, or other alienation of property that is owned by a public body – Section 4

- Public property means real or personal property owned by a public body – Section 4

- A public body shall comply with:

a) Such general guidelines in relation to the retention and disposal of stores and equipment of a public body as the Office may issue;

b) Such special guidelines in relation to the retention and disposal of stores and equipment of a public body as the office may approve for that public body

CHALLENGE PROCEEDINGS
HIGHLIGHTS FROM THE ACT

- A supplier or contractor may bring challenge proceedings where it is alleged that—
  - a procuring entity made a decision or took action that is not in compliance with this Act; and
  - the supplier or contractor has suffered or is likely to suffer loss or injury because of the decision or action of the procuring entity – Section 49 (1)
- A supplier or contractor may apply to the Office for review of a decision, or an action taken by a procuring entity in the procurement proceedings – Section 50 (1)

CHALLENGE PROCEEDINGS (CONT'D)
HIGHLIGHTS FROM THE ACT

- Applications for review shall be submitted to the Office in writing within the following time periods: (Section 50 (2))

a) applications for review of the terms of solicitation, prequalification or pre-selection or of decisions or actions taken by a procuring entity in pre-qualification or pre-selection proceedings, prior to the deadline for presenting submissions; or

b) applications for review of other decisions or actions taken by a procuring entity in the procurement proceedings—

(i) within the standstill period applied pursuant to section 35(2); or

(ii) where no standstill period has been applied, within seven working days after the publication of the notice of the decision or action that is taken in accordance with this Act.

- Within three (3) 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 – Section 50 (3)

CHALLENGE PROCEEDINGS (CONT'D)
HIGHLIGHTS FROM THE ACT

- The Office may, within three (3) 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

a) 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 – Section 50 (4)

INELIGIBILITY LIST
HIGHLIGHTS FROM THE ACT

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.

S. 58(3) 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

S. 58(5) A supplier or contractor shall be accorded an adequate opportunity to be heard and to make representation before he is added to the ineligibility list pursuant to this section.

INELIGIBILITY LIST
HIGHLIGHTS FROM THE ACT

S.58(1) "**supplier or contractor**" includes any person who is a director, manager, senior officer, partner or other similar officer or any person who purports to act in such a capacity.

"**senior officer**" means a managing director, chief executive officer, chief operating officer, deputy managing director, president, vice-president, secretary, treasurer, chief financial officer, financial controller, general manager, deputy general manager, corporate secretary, chief accountant, chief auditor, chief investment officer, chief compliance officer or chief risk officer

SPECIFIC IMPACT OF ACT ON PUBLIC BODIES

- Removal of the Central Tenders Board –public bodies now have to carry out all procurement and disposal activities – Section 64
- Named Procurement Officer (“NPO”) – Section 61 (2)
- Establishment of Disposal Committee (“DC”) – Section 55
- Establishment of Procurement and Disposal Advisory Committees (“PDAC”) - Part V of the Regulations)
- Development of Annual Procurement Plans (“APPs”) – Section 27
- Approved Procurement Handbooks and Special Guidelines – Section 30
- Implementation of Internal Control Frameworks for Public Procurement

OFFENCES AND PENALTIES

Section	Offence	Specified Penalty
14 (2)	**Failure to comply** with a direction by the OPR issued under the Act to ensure compliance with the Act (public body or person)	$100,000
17 (2)	Failure of a member of the Board (OPR) or a Committee constituted by the Board (knowingly or willfully) **to disclose an interest**	$500,000 & 1 Year Imprisonment
31	Splitting of Procurement	$500,000 & 1 Year Imprisonment
39	Failure of procuring entity to comply with requirements with respect to confidentiality of information	$500,000 & 1 Year Imprisonment
40	Victimisation	$500,000 & 1 Year Imprisonment
41	Failure of a person to report instances of collusion	$500,000 & 1 Year Imprisonment
41 (4)	False report to the Office	$500,000 & 1 Year Imprisonment
46	Concealing or destroying information required for an investigation	$5Million and 10 Years Imprisonment
52	Failure to comply with requirements with respect to confidentiality in challenge proceedings	$500,000 & 1 Year Imprisonment

OFFENCES AND PENALTIES (CONT'D)

Section	Offence	Specified Penalty
59 (10)	Conduct influencing public officer (**bribery, conflicts of interest, corrupt, fraudulent, collusive, coercive or obstructive practices**)	$1Million & 5 Years Imprisonment
60 (1)	**Bid-rigging**, influencing procurement proceedings	$5Million and 10 Years Imprisonment
60 (2)	**Altering a procurement document** to influence the outcome of the procurement proceedings	$2Million and 7 Years Imprisonment
63 (2)	**Contravention of a regulation made by the Minister** on the recommendation of the OPR (challenge proceedings, ineligibility list)	Up to $1Million & 5 Years Imprisonment

OPR
The Office of Procurement Regulation

AMENDMENTS TO THE ACT

AMENDMENTS TO THE ACT

- The Public Procurement and Disposal of Public Property (PPDPP) Amendment Act, 2016 (Act No. 5 of 2016) provides for the establishment of the Public Procurement Review Board. This Board provides the opportunity for those affected by decisions of the Office of Procurement Regulation to have those decisions reviewed.

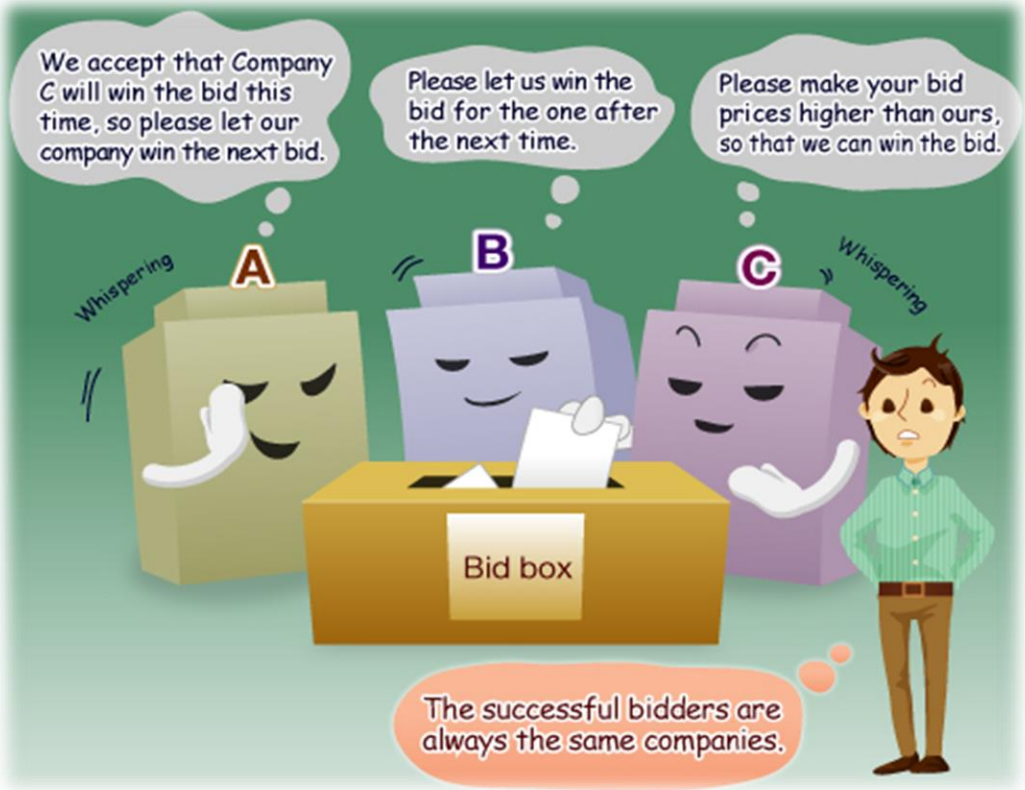
- The PPDPP Amendment Act, 2017 (Act No. 3 of 2017) provides for a reduction in the term of office of the Regulator and other members of the Board appointed under the Act to govern the Office of Procurement Regulation.

- The PPDPP Amendment Act, 2020 (Act No. 27 of 2020) provides for seven (7) amendments.

KEY FEATURES OF THE AMENDMENT ACT, 2020

First feature	Definition of Bid Rigging
Second feature	Section 7
Third feature	Disposal of Public Property
Fourth feature	Due Diligence – Criminal Offences
Fifth feature	Time of Decision of Review of Action by Entity
Sixth feature	Conduct of Influencing Public Officer
Seventh feature	Options Available to Public Officers

BID RIGGING



- **The definition was changed from:**

S4 “collusion between persons for the purpose of manipulating the proceedings”

To:

S4 “collusive price-fixing and anti-competitive behaviour which is designed to unfairly influence the outcome of a competitive tender process in favour of one or more bidders”

SECTION 7 (2)

- The following wording (in red) was deleted:

S7 (2) To the extent that this Act conflicts with an obligation of the State under or arising out of the following:

(a) a treaty or other form of agreement to which Trinidad and Tobago is a party with one or more States or entity within a State;

(b) an agreement entered into by the Government of Trinidad and Tobago with an international financing institution;

(c) an agreement for technical or other cooperation between the Government of Trinidad and Tobago and the Government of a foreign State,

the requirements of the treaty or agreement shall prevail [except that the procurement of goods, works or services shall be governed by this Act and shall promote the socio-economic policies of Trinidad and Tobago and shall adhere to the objects of this Act.]

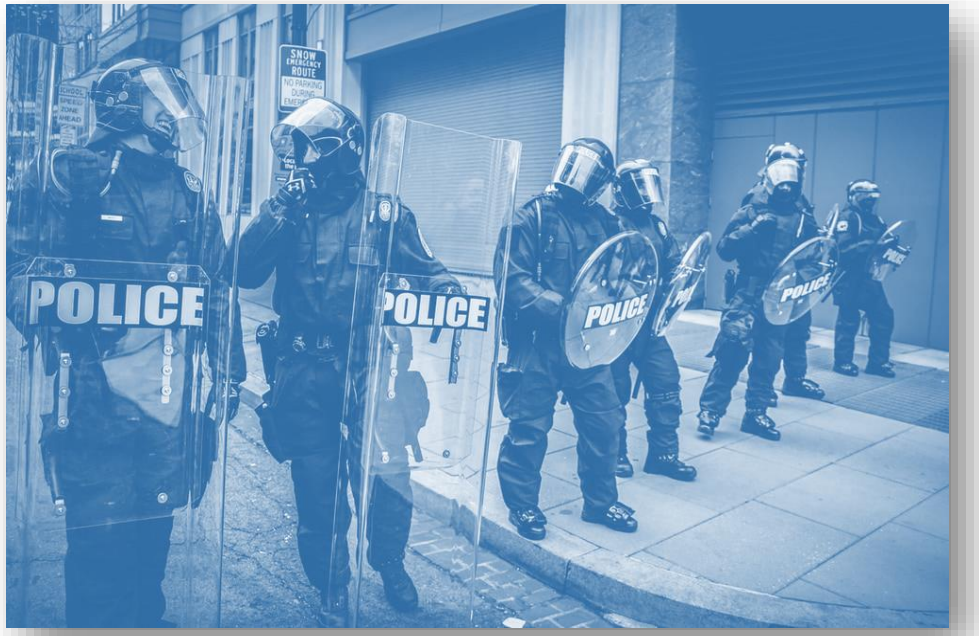
(3) A procuring entity engaged in procurement proceedings relating to a treaty or agreement referred to in subsection (2)(a) shall comply with section 29 and submit a report on such compliance to the Office.

(4) The Office shall, within twenty-one days of receiving a report under subsection (3), forward a copy of the report to the Speaker of the House of Representatives who shall cause the report to be laid in Parliament at the earliest opportunity.

SECTION 7: NATIONAL SECURITY EXEMPTION

- "S7 (3) A procuring entity engaged in procurement proceedings relating to a treaty or agreement referred to in subsection (2)(a) shall comply with section 29 and submit a report on such compliance to the Office"

The above subsection no longer applies to reports related to National Security



SECTION 7:
DISAPPLICABILTY OF THE ACT

The Act shall **no longer** apply to:

- Legal services;
- Debt financing services for the national budget;
- Accounting and auditing services;
- Medical emergency or other scheduled medical services; or
- Such other services as the Minister may, by Order, determine

The Minister shall submit to the Office annual guidelines which outline the circumstances under which exempted services in subsection (6) may be procured

DISPOSAL OF PUBLIC PROPERTY

The Act shall no longer provide for the Office to:

S13 (1) (o) act for, in the name and on behalf of the State to dispose of real property owned by the Government in such manner as the Government may consider appropriate and desirable

DUE DILIGENCE CRIMINAL OFFENCES

- S29 (1) (c) of the Act is amended by deleting paragraph (c) and substituting the following:

Formerly:

(c) have not, and their directors or officers have not, been convicted of any criminal offence;

Presently:

(c) have not been convicted within the past ten years of corruption or fraud related offences locally or internationally-

(i) as individuals; or

(ii) as directors or officers of a company.

TIME OF DECISION AFTER REVIEW OF ACTION TAKEN BY PROCURING ENTITY

- The Office shall now give all its decisions in **thirty** days S50:

(12) The Office shall give all its decisions and actions taken in writing and shall, no more than **twenty** working days after the making of its decision, provide written reasons for the decision and action taken and they shall promptly be made part of the record of the procurement proceedings, together with the application received by the Office under this section.

CONDUCT OF INFLUENCING A PUBLIC OFFICER

Relative is now defined to include a Common Law Relationship

59 (1) (a) For the purposes of subsection (1), “relative” means a spouse, cohabitant within the meaning of the Cohabitational Relationships Act, father, mother, brother, sister, son or daughter”

THE PUBLIC PROCUREMENT & DISPOSAL OF PUBLIC PROPERTY REGULATIONS & ROAD TO FULL PROCLAMATION

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY REGULATIONS

- The ten (10) individual Regulations to operationalise the Public Procurement and Disposal of Public Property Act were approved in the House of Representatives on 14th January, 2022 and in the Senate on 8th February, 2022

- 10 different documents can be downloaded from our website at https://oprtt.org/regulations-laid-in-parliament/

HIGHLIGHTS OF THE REGULATIONS

- **The PPDPP (Participation in Procurement) Regulations, 2021**
  - Domestic preference
  - Margin of domestic preference
  - Participation of joint ventures and other consortia
  - Procurement Depository
- **The PPDPP (Pre-qualification and Pre-selection) Regulations, 2021**
  - Clarification of pre-qualification documents
  - Invitation for pre-selection
  - Assessment for pre-selection
  - Pre-selection scoring criteria

HIGHLIGHTS OF THE REGULATIONS

- **The PPDPP (Procurement Methods and Procedures) Regulations, 2021**
  - Strategic procurement
  - Thresholds
  - Open bidding
  - Limited bidding
  - Request for quotations
  - Procedures for single source selection
  - Framework Agreements
  - Electronic reverse auction
  - Procurement and Disposal Advisory Committee
  - Technical specifications

HIGHLIGHTS OF THE REGULATIONS

- **The PPDPP (Evaluation) Regulations, 2021**
  - Evaluation criteria
  - Price factors
  - Non-price factor
  - Standstill period
- **The PPDPP (Procurement of Consultants) Regulations, 2021**
  - Submission of proposals
  - Evaluation procedure
- **The PPDPP (Record of Proceedings) Regulations, 2021**
  - Requirement to keep a record
  - Content of record
  - Reporting

HIGHLIGHTS OF THE REGULATIONS

- **The PPDPP (Retention of Public Property and Disposal of Personal Property) Regulations, 2021**
  - Risk-based approach to retention of public property
  - Disposal to public employees
- **The PPDPP (Challenge Proceedings) Regulations, 2021**
  - Procedure for review
- **The PPDPP (Ineligibility Proceedings) Regulations, 2021**
  - Hearings and evidence
  - Ineligibility sanction
- **The PPDPP (Miscellaneous) Regulations, 2021**
  - Committee Members

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PROCUREMENT METHODS & PROCEDURES

BIDDING BASED PROCUREMENT METHODS

- Open bidding
- Limited bidding
- Two-stage bidding
- Framework agreements

RFP BASED PROCUREMENT METHODS

- RFPs without negotiation
- RFPs with dialogue
- RFPs with consecutive negotiations

OTHER PROCUREMENT METHODS

- RFQs
- Competitive negotiations
- Single-source procurements
- Sole source procurements

FACTORS TO CONSIDER WHEN SELECTING A PROCUREMENT METHOD

- The organisation's mandate and business needs
- The characteristics of the item(s) to be procured
- The market situation
- The degree to which the procurement is urgent
- The appropriate level of technology required to carry out the procurement
- The procurement method and/or technique that would be most suitable for
  a. simple low-value items that are easily obtainable
  b. more specialised or complex procurements
- The capacity (professional judgment, experience and skill) of the procurement officer to select and to successfully operate complex procuring methods, while ensuring that abuse and corruption are not introduced into the processes

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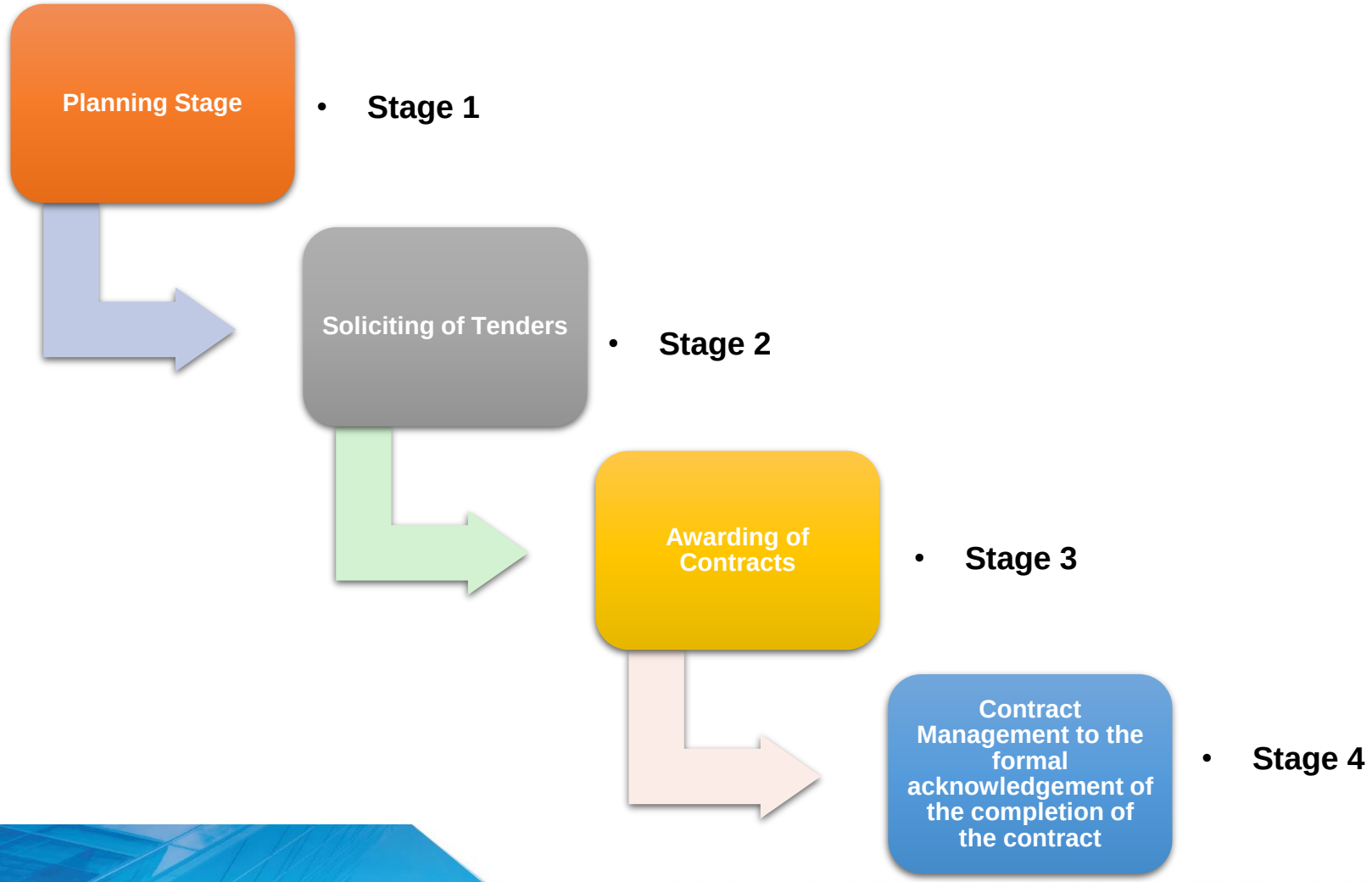
THE PROCUREMENT PROCESS: POINTS TO NOTE

STAGES IN THE PROCUREMENT PROCEEDINGS

Procurement proceedings is broadly defined in Section 4 of the Act as including the following four stages:



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STAGE 1

Planning

TWO LEVELS OF PROCUREMENT PLANNING

Strategic Level

- Output
  - Annual Procurement Plan
  - Annual Schedule of Planned Procurement Activities

Operational Level

- Procurement Strategy Development Form
- Procurement Details
- Evaluation Criteria
- Evaluation Methodology
- Contract Management Strategies

ANNUAL PROCUREMENT PLAN

- The Annual Procurement Plan (the Plan) is prepared by the ‘named’ Procurement Officer, approved by the Accounting Officer, and subsequently transmitted to the Office for its review and noting, within six (6) weeks of the approval of the National Budget - **Section 27**

- The Annual Procurement Plan presents a strategy through which a public body can manage its procurement-related risks and opportunities in support of the delivery of its organisation mandate and strategy.

- Framing the Annual Procurement Plan involves identifying the linkages between procurement and the public body’s programmatic goals and objectives. It is based on review of the mandate and strategy and an analysis of its procurement portfolio, function and capacity.

THE ANNUAL PROCUREMENT PLAN

The annual procurement plan will cover a 12-month period and will:

- identify all items to be procured for the upcoming financial year
- analyse the items (market and risk)

The analysis of the items will assist with determining the most appropriate:

- procurement strategy
- procurement method and
- contract management strategy for achieving the objects of the Act.

ANNUAL SCHEDULE OF PLANNED PROCUREMENT ACTIVITIES

27. (1) A procuring entity shall—

(a) no later than six weeks after the approval of the National Budget, publish on its website or in any other electronic format, information regarding all planned procurement activities for the following twelve months;

(b) update the information referred to in paragraph *(a)* as necessary; and

(c) provide a printed copy of the information referred to in paragraph *(a)* upon request and payment of the prescribed fee.

ANNUAL SCHEDULE OF PLANNED PROCUREMENT ACTIVITIES

- The Annual Procurement Plan is NOT the schedule of anticipated procurement actions to be undertaken during a period.

- The Annual Schedule of Procurement Activities) flows from the Annual Procurement Plan and will be attached as an Appendix to the Plan.

No.	Project Number	Project Name	UNSPSC Code Level 3	Brief Description	Proposed date for Issue of Bidding Documents	Expected Delivery/ Completion Date	Estimated Project Duration (for works and services)	Procurement Method	Standstill period (if applicable) – No. of days	Contract Type
1	RFP# 003/2019-2020	Supply and Delivery of Computer Equipment	43211500	Supply and Delivery of 80 Laptops and Desktops	Nov-19	Sep-20	N/A	Open Bidding	10	Fixed price contract

WHAT IS A PROCUREMENT STRATEGY?

A procurement strategy is a detailed plan for ensuring the timely supply of goods, services and works that are critical to an organisation's ability to meet its core business objective and should ideally be aligned with the organisational corporate procurement strategy

The procurement strategy identifies the best way to satisfy the needs of the end-user by obtaining the most advantageous pricing and contractual conditions through a competitive process

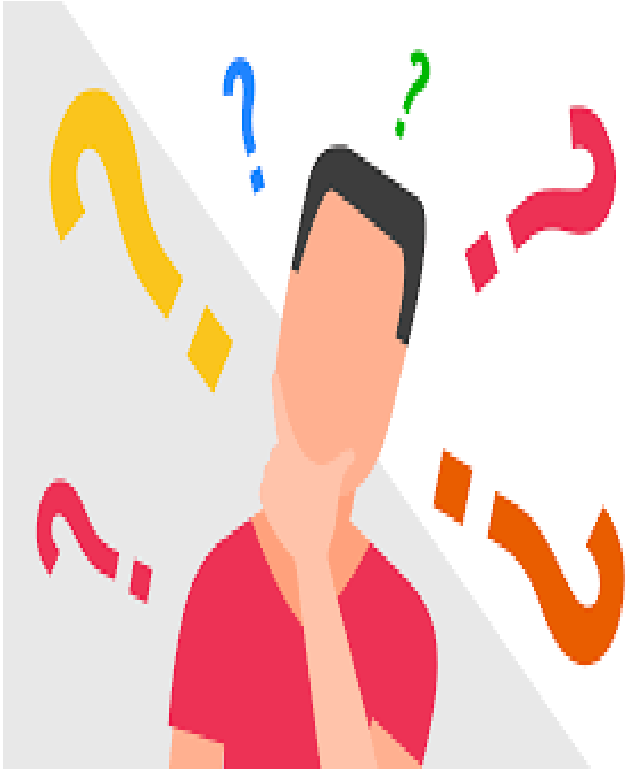
(UN Procurement Practitioner’s Handbook, 2017)

WHAT TO CONSIDER WHEN DEVELOPING THE PROCUREMENT STRATEGY?

When developing the Procurement Strategy consider:

- The results of market research and the analysis of requirements contained in the requisition ;
- The organisation's procurement policy and procedures (Approved Handbook and Guidelines); delegations of authority and financial thresholds; as well as internal clearance/approval procedures and corresponding administrative time frames; and
- Whether there are already arrangements and/or contracts for the same or significantly similar requirements in place in your organisation.

(UN Procurement Practitioner's Handbook, 2017)



PROCUREMENT STRATEGY DEVELOPMENT

As part of operational procurement planning the procurement strategy must be developed the form includes:

- Demand Analysis
- Stakeholder Analysis
- Market Analysis
- Procurement Strategy Options
- Preferred Procurement Strategy Recommendation
- Implementation Plans

DEVELOPING REQUIREMENTS

Your requirements can take the form of:

- Specifications for goods or equipment;
- Terms of reference (TOR) for services; or
- Statement of work (SOW) for works.

Requirements specify:

- What is needed
- Why it is needed (the purpose)
- When it is needed (Timing of Delivery),
- Where the need must be delivered
- Quality standards and Key Performance Indicators

(UN Procurement Practitioner's Handbook, 2017)

Note: The requirement definition should be linked to the objectives and timelines in the procurement plan and should not be developed in isolation.

SPECIFICATION TYPES

Specifications may be developed as one or a combination of the following types:

- **Functional** - Concentrates on the function or purpose of the product.
- **Performance** - Describes what is to be achieved rather than providing a fixed description of how it should be done.
- **Technical** - Defines exact design and details of a good. Technical specifications may also take a long time to create due to their detailed and complex nature.

(UN Procurement Practitioner's Handbook, 2017)

Note: Standards are a common way of establishing the quality requirements of a product. Refer to international standards, for example ISO standards, if possible when developing technical specifications.

KEY POINTS TO NOTE WHEN DEVELOPING SPECIFICATIONS

1

Language should be clear and simple

2

Do not over specify or under specify your requirements

3

Avoid using brand names or brand specific references

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STAGE 2

Solicitation of Tenders

TYPES OF SOLICITATION DOCUMENTS

- Request for Quotation (RFQ)
- Requests for Proposals (RFP)
- Invitation to Bid (ITB)
- Expression of Interest (EOI)
- Request for Information (RFI)

CONTENTS OF THE BIDDING DOCUMENTS

- The nature and timeframe of the procurement
- The required qualifications of suppliers or contractors and the documents required to satisfy the requirements
- Information on site visits and pre - bid meetings
- Instructions for the preparation and submission of tenders (Deadline for submission, Place & Time for Opening of Submissions)

CONTENTS OF THE BIDDING DOCUMENTS (CONT'D)

- The components to be reflected in the price (Currency, Exchange Rate and applicable taxes)
- The criterion and methodology for the evaluation of submissions
- The limitation of participation in the procurement proceedings (if applicable)

CONTENTS OF THE BIDDING DOCUMENTS (CONT'D)

Grouping of goods, works or services into lots and packages
Whether alternatives to the technical or contractual specifications would be considered
The required validity period of bids
The number and acceptable form of a submission, performance or other security
The terms and conditions of the contract to be awarded

KEY POINTS TO NOTE WHEN SOLICITING OF TENDERS

- The Solicitation document should define the evaluation process in summary form and specify the categories on which bids or proposals will be evaluated indicating the weight assigned for each factor.

- Explain the criteria that can or will result in the rejection of an offer and state the relative importance of each major evaluation criteria.

- Specify the evaluation criteria, sub-criteria, scoring system and methodology to guide the bidder in the preparation of its bid or proposal.

- Create a “level playing field” all potential suppliers or contractors must receive the same information at the same time.The solicitation document should be issued and distributed simultaneously to all suppliers or contractors, either by mail, courier, or email or be made available electronically on the Internet, in case of open tender.

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STAGE 3

Awarding of Contracts

THE EVALUATION PROCESS

- Evaluation is a process that enables the selection of the bid that best satisfies the requirements of the procuring entity while ensuring compliance with the objects of the Act.
- It involves the assessment of the nature, value and significance of the goods, works or services being procured.
- A procuring entity shall select the successful submission based on the evaluation criteria and methodology specified in its bidding document – Regulation 3(1)
- A procuring entity's evaluation criteria and methodology shall be appropriate to the type, nature, market conditions, and complexity of the goods, works or services being procured – **Regulation 3(2)**

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EVALUATION COMMITTEE

SELECTING AN EVALUATION COMMITTEE

Typically, an evaluation committee should comprise three to six persons. Evaluation committee members must possess experience in the following areas:

- Technical knowledge of the subject matter being procured;
- Applicable law;
- The procurement process;
- Commercial acumen; and
- In-house technology

SEEKING CLARIFICATION DURING PRELIMINARY EVALUATION

During the evaluation of submissions deemed compliant, the procuring entity:

- May seek clarification in writing from any bidder to facilitate evaluation;
- Shall neither ask nor permit any bidder to change the price or any other aspect of the bid when providing the requested clarification; and
- Shall reject any bidder and forfeit its bid security if a bidder amends its bid in any manner.

THE EVALUATION REPORT

- Typical contents of an evaluation report include:
  - Introduction
  - Background
  - Evaluation of Bids
  - Recommendation for Award of Contract

- The evaluation report is then signed by the members of the evaluation committee and approval by the designated approver.

APPROVAL OF THE EVALUATION REPORT

- Low-Risk and Low-Value Procurement: NPO
- High-Risk and High-Value Procurement:
  - Procurement and Disposal Advisory Committee (PDAC); and
  - Accounting Officer

AWARD OF CONTRACT

Standstill Period

- The Act defines the standstill period as the period from the dispatch of a notice as required by section 35(2), during which a procuring entity cannot accept the successful submission and suppliers, or contractors can challenge the decision so notified.

Notification of Award of Contract

- Upon fulfilment of the requirements of the standstill period, where applicable, the Notification of Award shall be made to the successful bidder.

KEY POINTS TO NOTE IN THE EVALUATION

The Contract Award decision must be objective and be based on disclosed criteria

The decision making process must be fair, transparent and auditable

The public body should demonstrate best value in the tender process

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Stage 4

Contract Management to the Formal Acknowledgement of the Completion of the Contract

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CONTRACT MANAGEMENT TO COMPLETION OF THE CONTRACT

Contract Management ensures that all parties to a contract fully meet their respective obligations through monitoring and documenting performance

It protects the parties and ensures that the required performance standards are met. It is a mechanism to identify problems and establish solutions in a collaborative manner

Contract monitoring allows for control over variations and dispute resolution

KEY POINTS TO NOTE IN CONTRACT MANAGEMENT

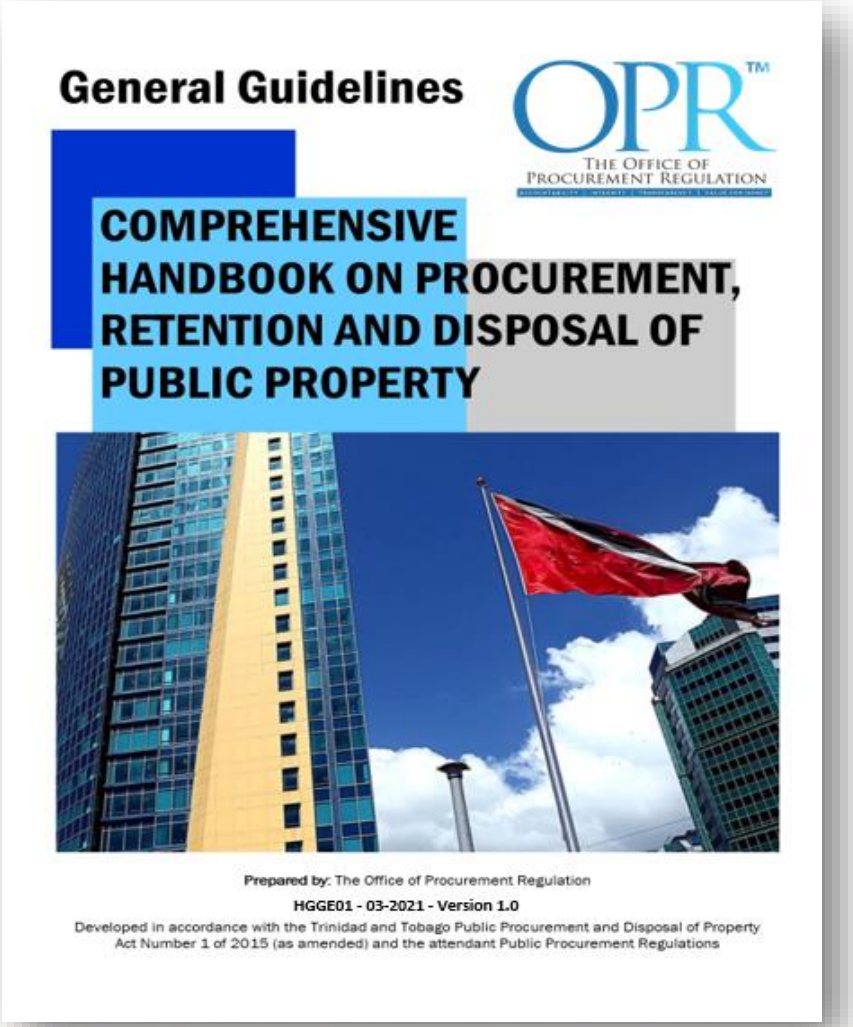
- Develop a Contract Management Plan to be agreed upon by both parties
- Delegate a Contract Manager preferably a subject matter expert
- KPIs are important to measure performance, they should be fit for purpose and easy to support by evidence and reported on a periodic basis.
- Supplier/Contractor performance appraisal is to be done throughout the contract management process
- Maintain a contract management file with all relevant documents

DEVELOPING AN ORGANISATIONAL PROCUREMENT POLICY

THE COMPREHENSIVE HANDBOOK ON PROCUREMENT, RETENTION AND DISPOSAL OF PUBLIC PROPERTY

- The Comprehensive Handbook developed by the OPR incorporates all elements of Procurement, Retention and Disposal of Public Property, in summary format and references the relevant general guidelines in relation to specific topics.

- This document serves as the base document for developing your internal procurement policy.



KEY ASPECTS TO INCLUDE WHEN DEVELOPING AN ORGANISATIONAL PROCUREMENT POLICY

- Introduction
- Purpose (Objects of the Act, Regulatory & Operational Framework)
- Roles & Responsibilities of Procurement Stakeholders
- Organisational Structure for Procurement
- Delegated Levels of Authority
- Code of Conduct
- Segregation of Duties in the Procurement Process

KEY ASPECTS TO INCLUDE WHEN DEVELOPING AN ORGANISATIONAL PROCUREMENT POLICY (CONT'D)

Strategic Level

- Annual Procurement Planning

Operational Level

- Procurement Procedures: Planning, Soliciting of Tenders, Awarding of Contracts and Contract Management to the formal acknowledgement of completion of contract

- Include procedures for: Emergency Procurement for e.g., framework agreement; Variations; Forms/Templates to be utilised at the various stages

N.B: It is good practice to develop a process map

THE IMPORTANCE OF POLICIES AND PROCEDURES

The following are a few positive outcomes of following policies and procedures:

Consistent Processes & Structures

- Policies and procedures keep operations from devolving into complete chaos
- When your staff is following policies and procedures, your organisation will use time and resources more efficiently. You'll be able to grow and achieve your goals as an organisation

Better Quality Service

- When employees follow procedures, they perform tasks correctly and provide consistent customer service
- This enhances the quality of your organisation's products and services. And, in turn, improves your company's reputation

A Safer Workplace

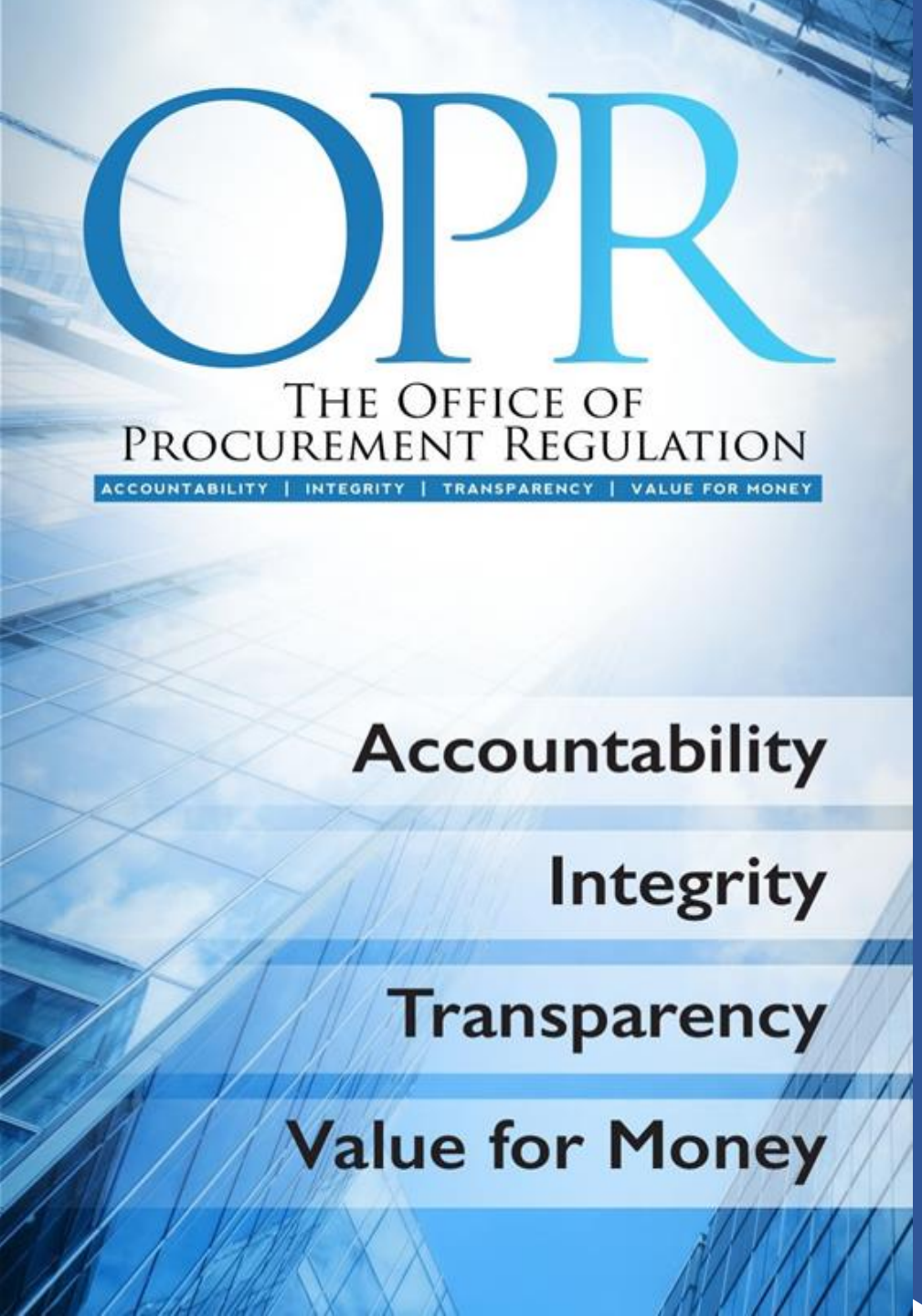
- When your staff is following policies and procedures, workplace accidents and incidents are less likely to occur
- This reduces liability risks for your organisation and limits interruptions in operations

Source: "Following Policies and Procedures and Why It's Important", December 2020

STEPS TOWARDS COMPLIANCE WITH INTERNAL PROCUREMENT POLICIES

To ensure your staff follows through on compliance with your Internal Procurement Policies:

- Make Policy Manuals Accessible
- Implement Training
- Test Employee Comprehension
- Encourage Accountability
- Regularly Review Policies and Procedures



Thank you for your kind attention!

We are happy to answer any questions you may have.

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