

The logo for the Office of Procurement Regulation (OPR) features the letters 'OPR' in a large, blue, serif font. Below the letters, the full name 'THE OFFICE OF PROCUREMENT REGULATION' is written in a smaller, blue, sans-serif font. At the bottom of the logo, a horizontal bar contains the words 'ACCOUNTABILITY | INTEGRITY | TRANSPARENCY | VALUE FOR MONEY' in a very small, blue, sans-serif font.

OPR

THE OFFICE OF
PROCUREMENT REGULATION

ACCOUNTABILITY | INTEGRITY | TRANSPARENCY | VALUE FOR MONEY

Accountability

Integrity

Transparency

Value for Money

The Status of Public Procurement in Trinidad and Tobago

Presenter: Mr. Moonilal Lalchan

Date: December 1, 2022

IMPACT OF CORRUPTION ON THE PUBLIC SECTOR

The Organization 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.

POTENTIAL SAVINGS FROM PROPER MANAGEMENT OF PROCUREMENT

			13.60%		Savings Potential		
Year	USD GDP	TTD GDP	Procurement Spend	10%	20%	30%	
2008	28	190	26	3	5	8	
2010	19	130	18	2	4	5	
2012	26	175	24	2	5	7	
2014	28	188	26	3	5	8	
2016	22	152	21	2	4	6	
2018	24	162	22	2	4	7	
2020	21	145	20	2	4	6	
Average	24	163	22	2	4	7	

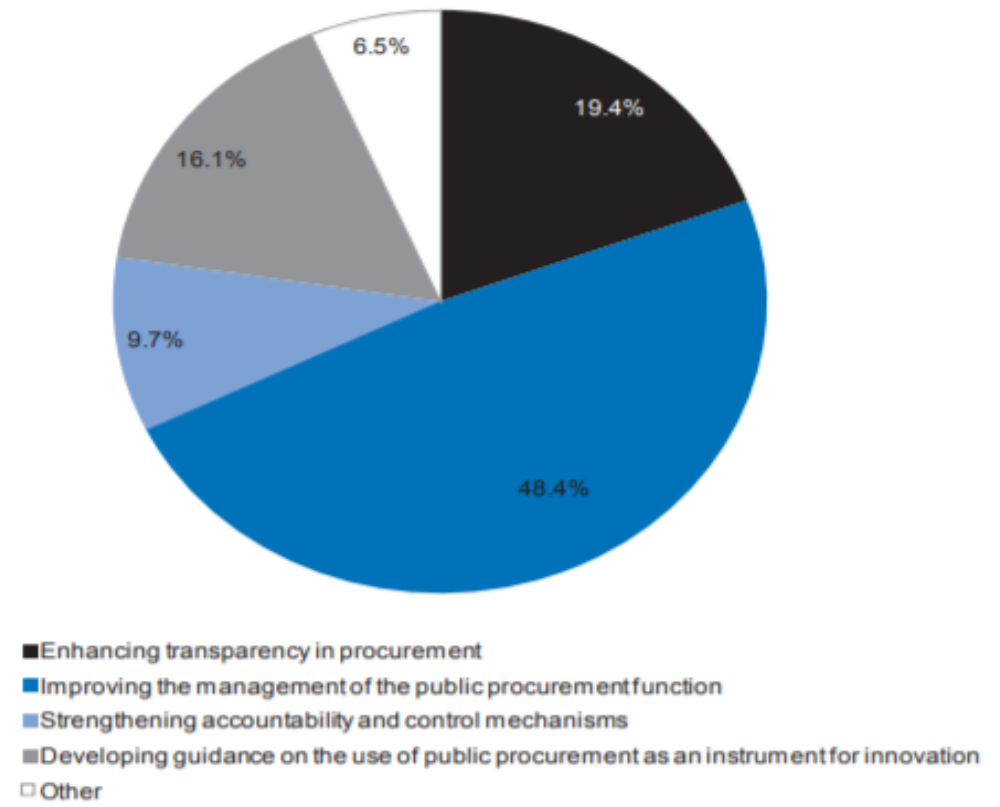
*all figures quoted represent billions of dollars

MITIGATING WASTE AND CORRUPTION IN PUBLIC PROCUREMENT

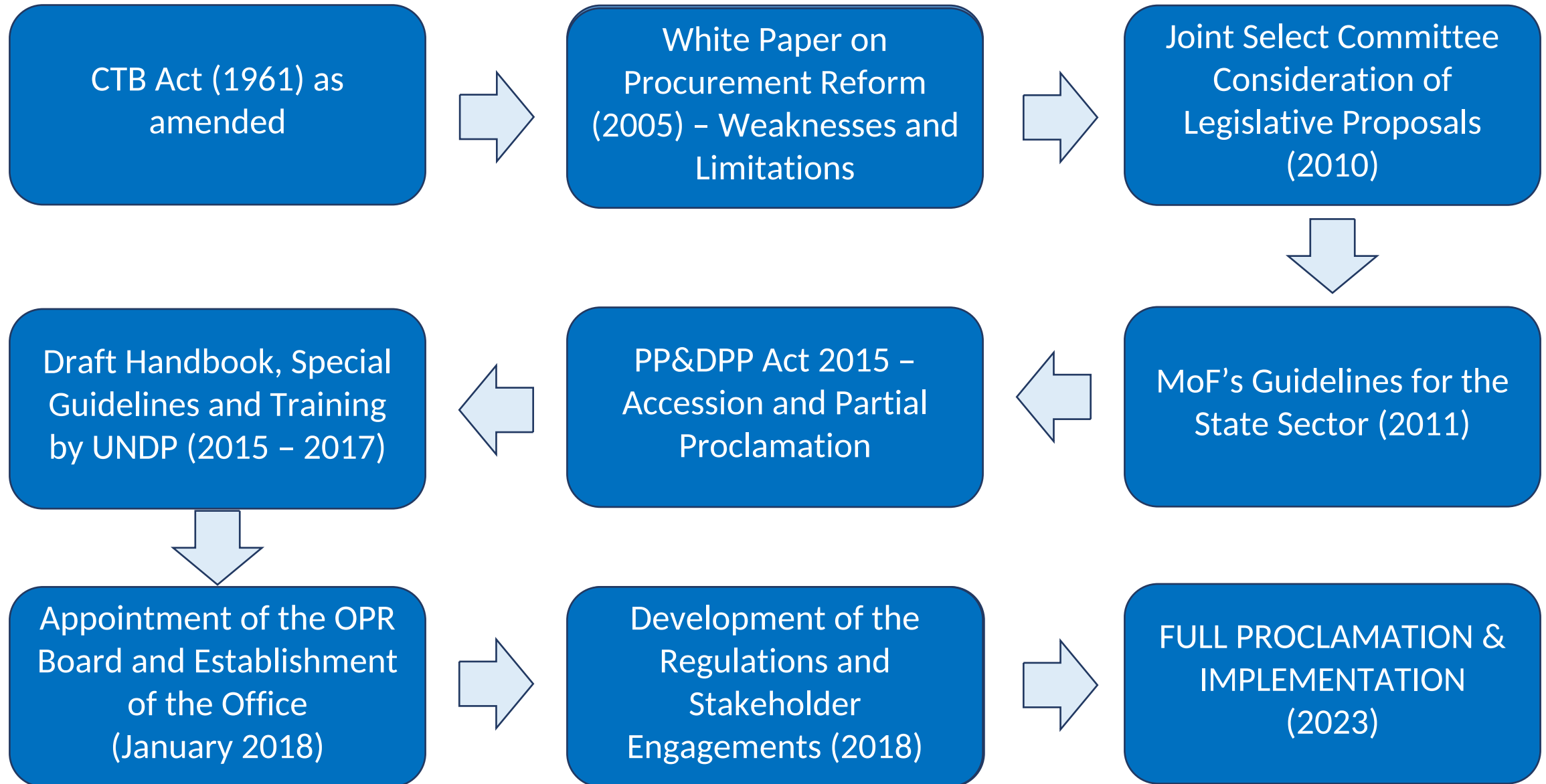
The European Commission estimates that EUR 120 billion are lost each year to corruption in the EU member countries. Studies suggest that up to 20-25% of the public contracts' value may be lost to corruption. However capacity and skills are insufficient to mitigate risks of waste and corruption.

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



RECAPPING THE JOURNEY OF PUBLIC PROCUREMENT REFORM



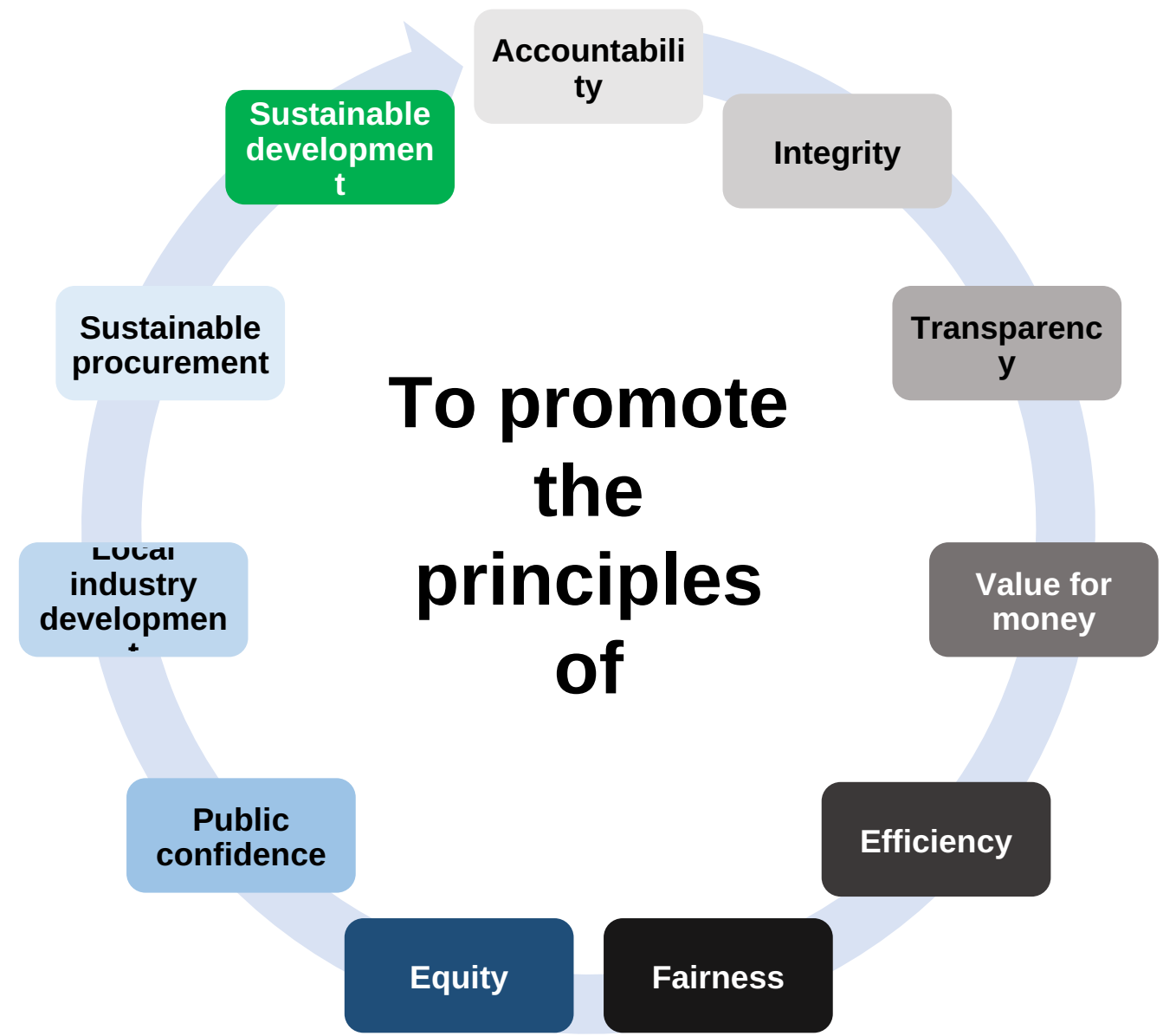
WHAT IS THE OPR?

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 initial Board was appointed on **January 12, 2018** and currently 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.”**

OBJECTS OF THE ACT (SECTION 5)



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.

FUNCTIONS OF THE OPR (Section 13 of the Act)

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 - 44

Approve special guidelines and handbooks

FUNCTIONS OF THE OPR (Section 13 of the Act)

Create and publish
standard form contracts
for procurement and
disposal

Promote the use of
technology in
procurement and disposal

Introduce and maintain
system-wide databases
and technology

Prepare and maintain a
database of pre-qualified
contractors and suppliers
- 1375 registered

Prepare and maintain a
list of pre-qualified
mediators, arbitrators and
experts

FUNCTIONS OF THE OPR (Section 13 of the Act)

Provide best practice advice in the conduct of procurement activities, including the promotion of electronic transactions – 1122 responses

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 (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

FUNCTIONS OF THE OPR (Section 13 of the Act)

Harmonize policies,
systems and practices in
procurement and disposal

Review practices and
delivery systems on an
annual basis

Promote the awareness
of public bodies and the
public – 336 sessions

**Undertake research
and surveys with
respect to
procurement and
disposal**

**Act for the State to
dispose of real property**

SPECIFIC IMPACT OF ACT

- Removal of the Central Tenders Board – public bodies now have to carry out all procurement and disposal activities **(S. 64 of the Act)**
 - Named Procurement Officer (“NPO”) **(S. 61(2) of the Act)**
 - Establishment of Disposal Committee (“DC”) **(S. 55 of the Act)**
 - Establishment of Procurement and Disposal Advisory Committees (“PDAC”) **(Regulation 21 of the Public Procurement and Disposal of Public Property (Procurement Methods and Procedures) Regulations, 2021)**
 - Development of Annual Procurement Plans (“APPs”) **(S. 27 of the Act)**
 - Approved Procurement Handbooks and Special Guidelines **(S. 30 of the Act)**
 - Implementation of Internal Control Frameworks for Public Procurement
 - Development and management of efficient filing systems **(Regulation 3 of the Record of Procurement Proceedings Regulations, 2021)**
- NPO reports directly to Accounting Officer and to the OPR

ANNUAL PROCUREMENT

PLAN

- The Annual Procurement Plan is prepared by the “named” Procurement Officer, approved by the Accounting Officer, and subsequently transmitted to the OPR for its review and noting, within six (6) weeks of the approval of the National Budget
- 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

THRESHOLDS

The Public Procurement and Disposal of Public Property (Procurement Methods and Procedures) Regulations, 2021 provide guidance on establishing thresholds for various methods and levels of procurement as well as framework agreements

Regulation 4(1) The Office may, by guidelines, establish different thresholds to be used for different methods of procurement

Regulation 4(2) A procuring entity may establish specific threshold values in special guidelines and handbooks

Regulation 17(1) A procuring entity may establish a framework agreement if it is of the opinion that—

- (a) the need for the goods, works or services, is expected to arise on a repetitive basis during a given period of time; or
- (b) the need for goods, works or services, due to their nature, may arise on an urgent basis during a given period of time.

CHALLENGE PROCEEDINGS

S. 49(1) 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.

S. 50(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.

CHALLENGE PROCEEDINGS

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

- (a) applications for review of the terms of solicitation, pre-qualification 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—

CHALLENGE 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.

S. 50(3) 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.

CHALLENGE PROCEEDINGS

s. **50(4)** 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

(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.

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
- **Regulation 8 of the Public Procurement and Disposal of Public Property (Pre-Qualification and Pre-Selection) Regulations, 2021** mandates that “a procuring entity shall only invite suppliers or contractors who are pre-qualified in the Procurement Depository to participate in procurement proceedings.

PROCUREMENT DEPOSITORY

S. 26(1) 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.

S. 26(2) The Procurement Depository **shall be accessible by the public for viewing.**

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

S. 26(4) 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.

PRE-QUALIFICATION

S. 29(1) A procuring entity shall ensure that suppliers and contractors —

(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

S. 29(1)(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.

S. 29(3) 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.

OUTSTANDING AREAS FOR FULL PROCLAMATION

- The annual guidelines which shall be submitted to the Office by the Minister of Finance, which outline the circumstances under which the exempted services listed in Section 7(6) of the Act may be procured, as per Amendment Act No. 27 of 2020
- Appointment of the Public Procurement Review Board referred to in S. 51A. The Minister also has to make Regulations with respect to staffing, remuneration, funding and other operational matters of the Review Board
- The Regulations to be made by the Minister of Finance in respect of the disposal of State Lands or real property owned by the Government, State-controlled Enterprises or statutory bodies

SCHEDULE 1 (SECTION 61): OFFENCES AND PENALTIES

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
Section	Offence	Specified Penalty
31	Splitting of Procurement	Summary Conviction - \$500,000 and One Year
39	Breach of confidentiality	Summary Conviction - \$500,000 and One Year
40	Victimisation	Summary Conviction - \$500,000 and One Year
41	Failure to report collusion	Summary Conviction - \$500,000 and One Year
46	Concealing/ destroying information required for an investigation	Conviction on Indictment - \$5.0M and Ten Years
52	Failure to comply with requirements wrt confidentiality in challenge proceedings	Summary Conviction - \$500,000 and One Year



SCHEDULE 1 (SECTION 61): 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)	Summary Conviction - \$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	Summary Conviction - \$500,000 and One Year
41 (4)	False report to the Office	Conviction - \$500,000 and One Year
59 (10)	Conduct influencing public officer (bribery, conflicts of interest, corrupt, fraudulent, collusive, coercive or obstructive practices)	Conviction - \$1.0M and Five Years
60 (1)	Bid-rigging, influencing procurement proceedings	Conviction - \$5.0M and Ten Years
60 (2)	Altering a procurement document to influence the outcome of the procurement proceedings	\$2.0M and Seven Years
63 (2)	Contravention of a regulation made by the Minister on the recommendation of the OPR (challenge proceedings, ineligibility list)	≤ \$1.0M and Five Years

ROAD TO FULL

PROCLAMATION

- The OPR has completed 95% of its recruitment thus far
- The database solution has been rolled out to suppliers, contractors and public bodies and can be accessed via <https://depository.oprtt.org>
- Handbooks and Guidelines have been finalised and continue to be uploaded on to the Resource Centre tab of our website at <https://oprtt.org/handbooks-and-guidelines/>
- The OPR's first Stewardship Report for the period 2018-2020 was submitted to Parliament and has been uploaded on our website
- A response to the Public Accounts Committee was submitted on November 29, 2021. The OPR appeared before them on January 12, 2022
- A 2019 Report of the Parliamentary Joint Select Committee on Finance and Legal Affairs ("JSC") is available on the Parliament website. The OPR appeared before the JSC for a follow up inquiry on November 18, 2022

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**Thank you for your kind
attention!**

**We would be happy to
answer any questions.**

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