STAKEHOLDER ENGAGEMENT SESSION

SUPPLIERS AND CONTRACTORS

OPENING REMARKS

Ms. Beverly Khan

AGENDA

I. The Role and Obligations of Suppliers and Contractors in the Procurement System
   - Elements of Compliance

II. The Procurement Depository

III. Redress Functions (Complaints, Challenge and Ineligibility)

IV. Question and Answer Segment

THE ROLE AND OBLIGATION OF SUPPLIERS AND CONTRACTORS IN THE NEW PUBLIC PROCUREMENT SYSTEM

Mrs. Stasha Mahabir

THE PUBLIC PROCUREMENT & DISPOSAL OF PUBLIC PROPERTY ACT, 2015, AS AMENDED ("THE ACT")

"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 …"*

The Act came into ***full operation on April 26, 2023,*** *by way of* ***proclamation*** *of the remaining sections of the Act via* ***Legal Notice No. 106 of 2023.***

THE OPR

The OPR is a **regulatory body governed by an independent board.**

The functions of the OPR are listed in Section 13(1) of the Act.

Section 13(2)(a): In the exercise of its functions, the Office shall—

(a) 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; and

(b) 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.

PRE-QUALIFICATION AND PRE-SELECTION REGULATIONS

Regulation 3(1): A supplier or contractor shall register in the Procurement Depository and upload the required information and supporting documents to enable a procurement entity to determine whether or not it meets the criteria for pre-qualification.

Regulation 3(2): A supplier or contractor shall ensure that the information submitted in the Procurement Depository is complete and accurate.

Regulation 8: A procuring entity shall only invite suppliers or contractors who are pre-qualified in the Procurement Depository to participate in procurement proceedings.

ETHICAL CONDUCT IN PUBLIC PROCUREMENT

The OPR encourages the adoption of good practices in procurement by establishing minimum standards of ethical behaviour and conduct for suppliers or contractors and public bodies through the Ethical Code of Conduct for Public Bodies & Public Officers and for Suppliers & Contractors

PROFESSIONAL INTEGRITY

Suppliers or Contractors shall maintain the highest standards of integrity and professionalism in their operations and when engaging in business.

Suppliers or Contractors shall comply with professional standards of their industry or of any professional body of which they are members.

OBLIGATIONS OF SUPPLIERS AND CONTRACTORS

A Public Body shall request proof that suppliers or contractors:

Do not engage in forced or compulsory labour in all its forms

Provide a safe and healthy workplace setting and comply with the Occupational Safety and Health Act of Trinidad and Tobago

Do not evade or attempt to evade payment of taxes imposed in accordance with section 119 of the Income Tax Act

GIFTS, FAVOURS & OTHER BENEFITS

In accordance with Section 59 of the Act, 'Conduct influencing public officer':-

A supplier or contractor shall not approach, contact, unduly influence or exert pressure on any member of a committee or any other employee of a procuring entity to take a particular action which favours or tends to favour them, or in respect of any matter that is before that procuring entity or that is expected to come before that procuring entity.

No member, officer or employee of a public body shall accept a gratuity in any form, any offer of employment, service or any other thing of value as an inducement with respect to an act or decision of, or procedure followed by, the public body in connection with any procurement proceedings and a public body shall promptly reject a tender of any supplier or contractor who gives, agrees to give or offers directly or indirectly, any such inducement.

EXAMPLES OF GIFTS

Gifts and entertainment include for example:

- Favours
- Meals
- Attending Sporting, Social and Cultural Events
- Hospitality - Lodging or Accommodation
- Loans and Loan Guarantees
- Discounts or Favourable terms on any product or service
- Services
- Prizes
- Transportation
- Use of Vacation Facilities
- Shares or other securities or participation in share offerings
- Home Improvements
- Tickets to cultural, social or sporting events
- Gift Certificates

PROHIBITION AGAINST CORRUPT, FRAUDULENT, COERCIVE, COLLUSIVE AND UNETHICAL PRACTICES (CONT'D)

A supplier or contractor shall not:

- **misrepresent facts** in order to influence a procurement exercise, manipulate the tender process, or the execution of a contract to the detriment of a public body.

- **deliberately harm or threaten to harm**, either directly or indirectly, personnel of a public body or their property, to influence their participation in procurement proceedings, or to affect the execution of a contract.

- **engage in any obstructive practices** either by deliberately destroying, falsifying, altering or concealing evidence material to an investigation, or making false, statements to an inquiry, in order to materially impede an investigation.

SOME OFFENCES AND PENALTIES

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

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THE OFFICE OF PROCUREMENT REGULATION

INTEGRITY PAYS!

YOU DON'T HAVE TO CHEAT TO WIN

PROCUREMENT DEPOSITORY

Ms. Tyler – Marie Dann

RESPONSIBILITIES OF SUPPLIERS/CONTRACTORS

Regulation 3 of the Pre-qualification and Pre-Selection Regulations and Section 26 (1) of the Act.

1) Register in the Procurement Depository

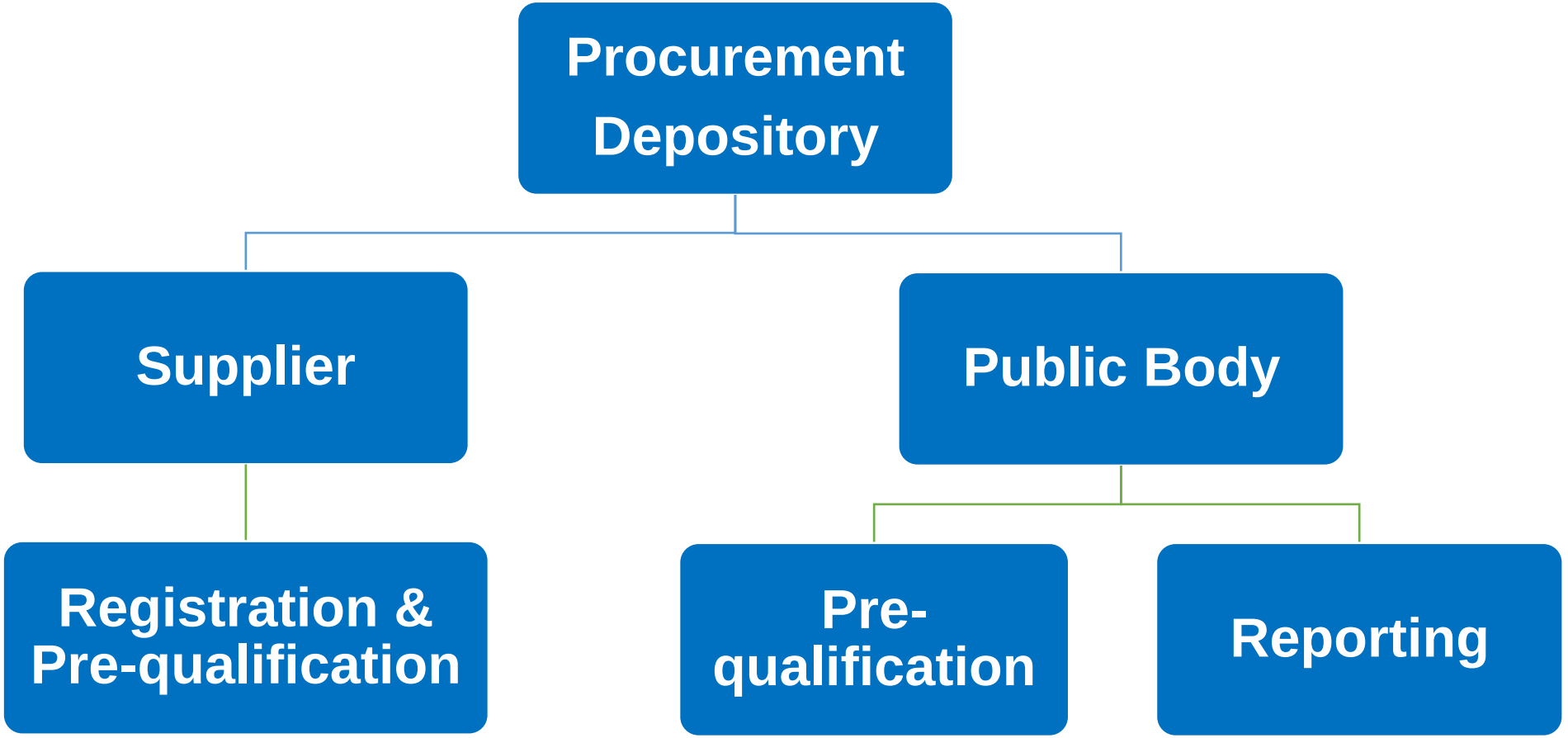
2) Upload the information related to qualification and experience

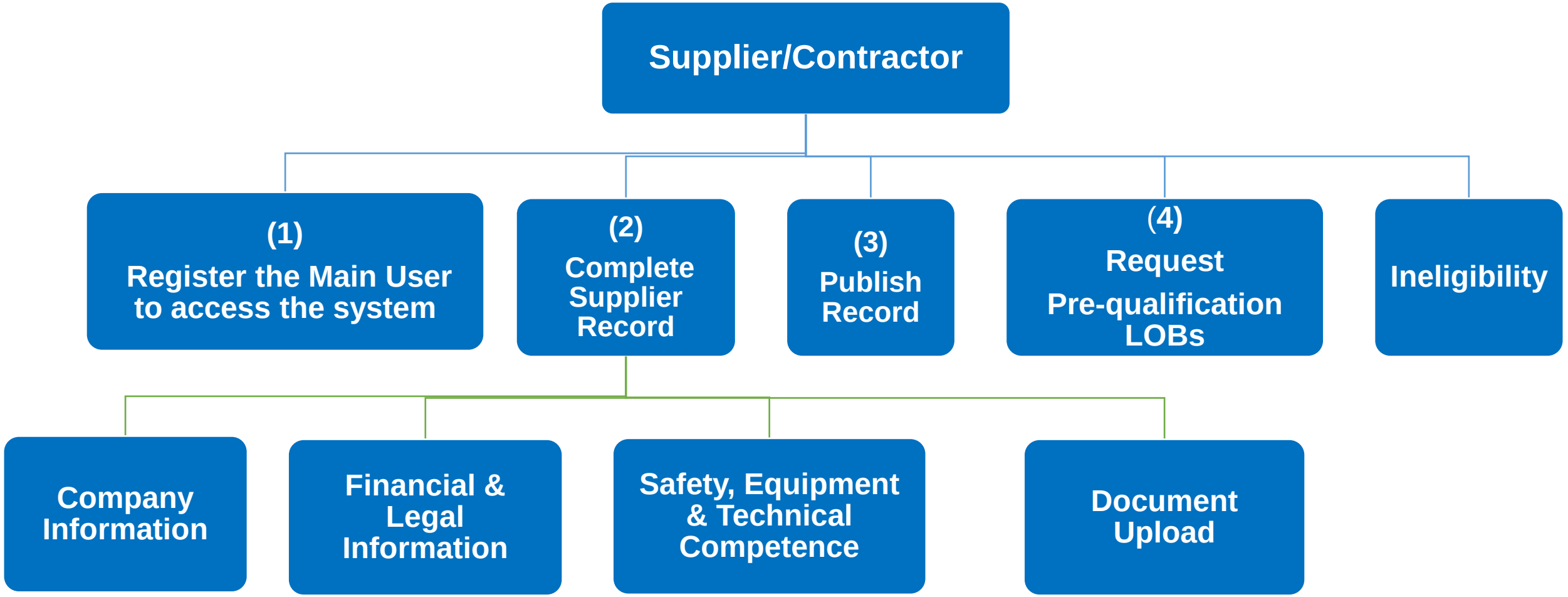
3) Ensure that the information is complete and accurate

4) Request pre-qualification

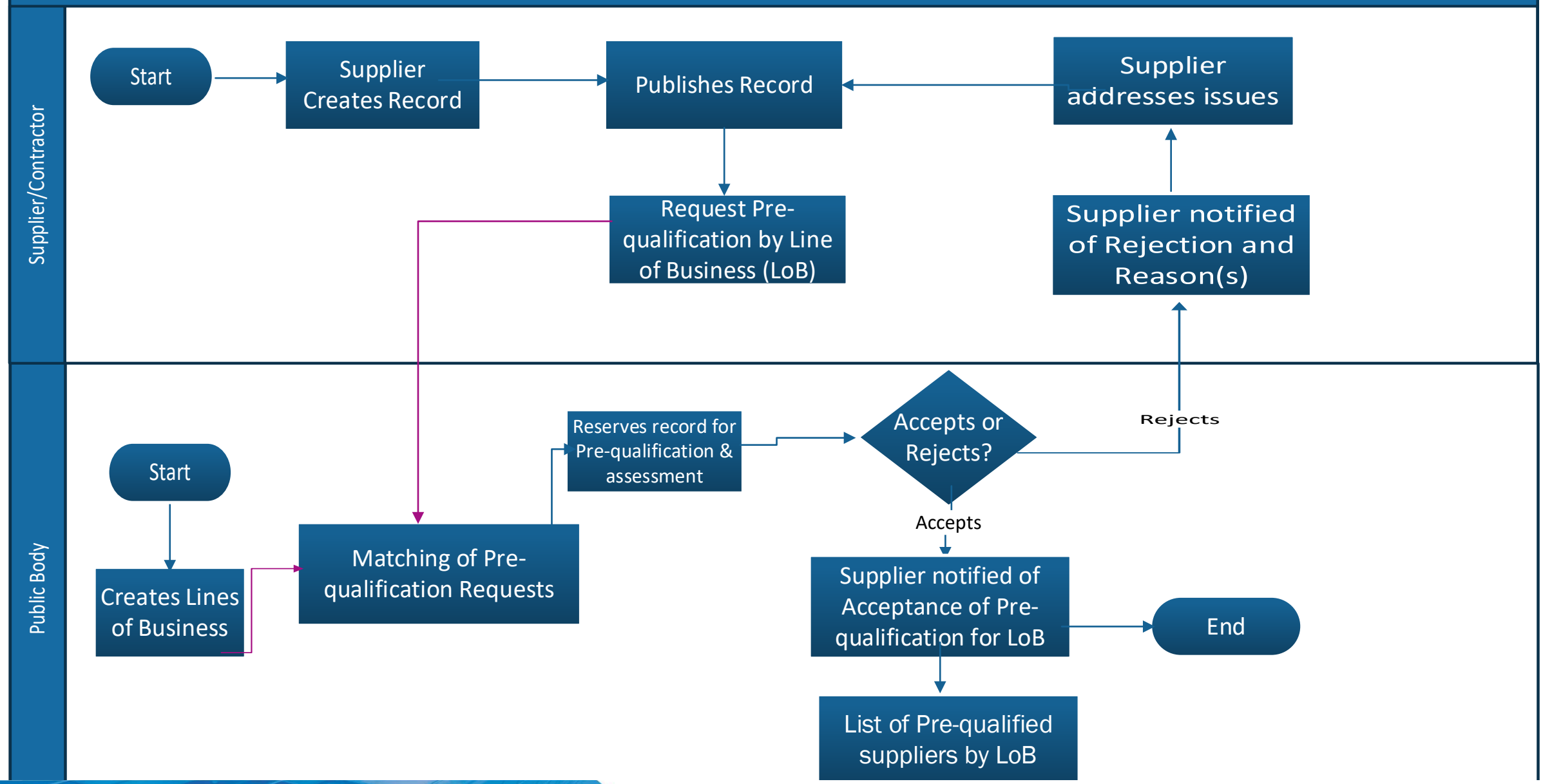
THE PROCUREMENT DEPOSITORY

The system will manage, capture and report information as described in Sections 13, 24, 26, 29 and 58 of the Act.




Supplier/Contractor
(1)
Register the Main User to access the system
(2)
Complete Supplier Record
(3)
Publish Record
(4)
Request
Pre-qualification LOBs
Ineligibility
Company Information
Financial & Legal Information
Safety, Equipment & Technical Competence
Document Upload

Pre-qualification Process



BENEFITS TO SUPPLIERS/CONTRACTORS

Registration as a supplier or contractor on the OPR's Procurement Depository:

1. Supplier is visible to over 300 public bodies in Trinidad & Tobago.

2. Provides the supplier with the opportunity to work with public bodies that may have excluded them in the past, due to a lack of awareness of their existence or interest.

KEY ISSUES FROM SUPPLIERS/CONTRACTORS

1. Granularity of UNSPSC

2. Unable to locate their Line of Business

3. Many users cannot reset their password or access the system because they have forgotten the answers to their security questions

4. The process for uploading and assigning documents is not clear
   - Public Bodies therefore not seeing the documents which are uploaded.
     - **Step 1** → Upload Document
     - **Step 2** → Assign document to Document Type
     - **Step 3** → Select the assigned document in the relevant section

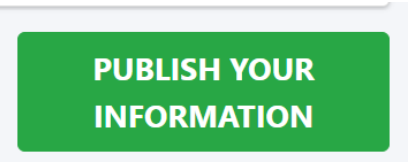
   - Refer to pages 29 - 33 of the Procurement Depository User Guide

KEY ISSUES FROM PUBLIC BODIES & SUPPLIERS/CONTRACTORS (CONT'D)

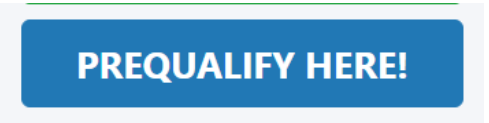
5. Supplier is not visible to Public Bodies. Reasons why this may occur:

i. Public Body did not create line of business

ii. The supplier has not published the information i.e. has not clicked on button



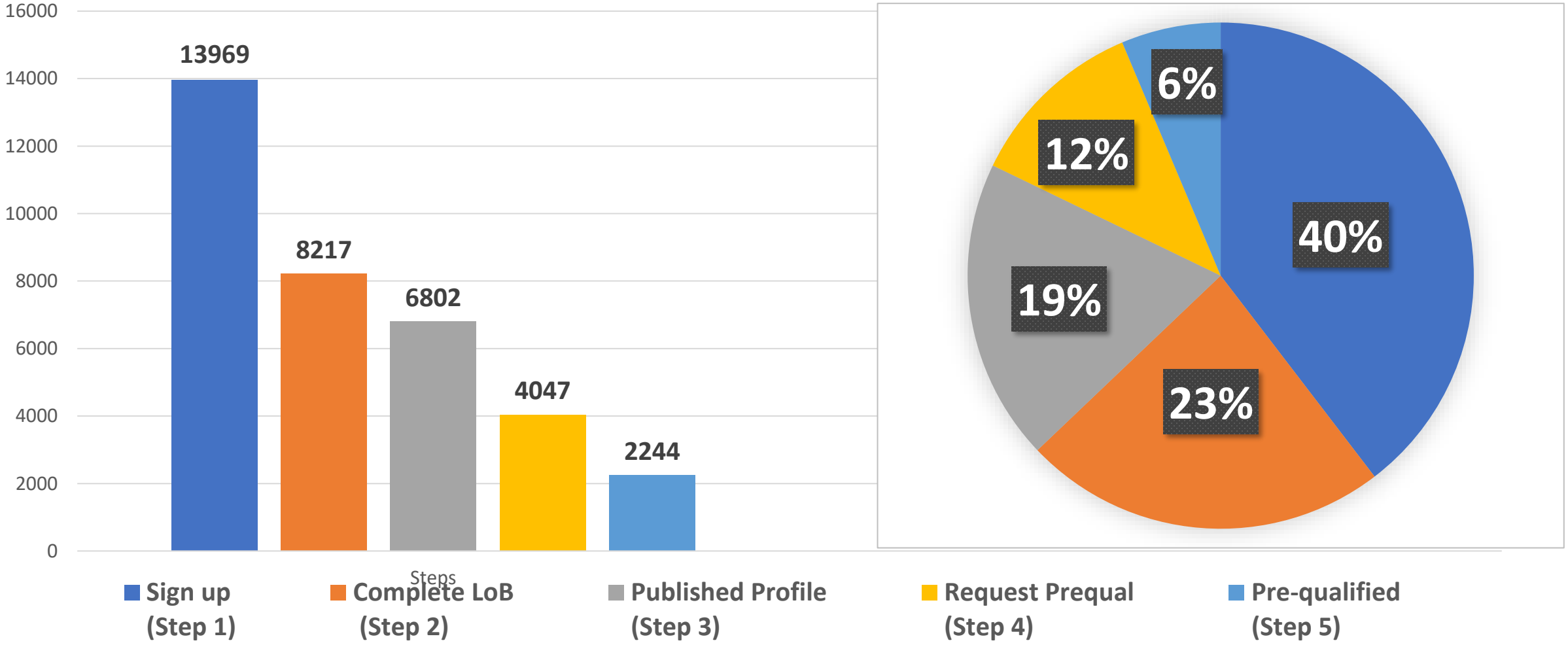
iii. The supplier did not request pre-qualification for the line of business



iv. The supplier clicked on the "Publish your Information" button after they requested Pre-Qualification. This action moves all pre-qualification requests from the "Pending" tab to the "For Resubmission" Tab.

KEY ISSUES FROM PUBLIC BODIES & SUPPLIERS/CONTRACTORS (CONT'D)

5. Suppliers not completing the process to advance to the pre-qualification stage



KEY ISSUES FROM SUPPLIERS/CONTRACTORS (CONT'D)

7. Time for the Public Body to Pre-qualify lines of business can vary from 1 day to a few weeks/months.

UPCOMING CHANGES

CHANGES TO SYSTEM

1. Change Lines of Business from Level 4 to Level 2
   - Historical data migrated to Level 2

2. Move from pre-qualification to registration system
   - Dependent on changes to regulations relating to pre-qualification and pre-selection

3. Simplified Procurement Depository

NEXT STEPS

1. Complete the steps to pre-qualification until change to legislation

2. Review the Depository page for access to useful resources
   - Depository: https://depository.oprtt.org
   - OPR's Website: www.oprtt.org

KEY LINKS

1. Depository: https://depository.oprtt.org

2. OPR's Website: www.oprtt.org
   - Resources → The Act, Regulations, Handbooks & Guidelines
   - Portals → Procurement Depository Training Documents, Templates, Policies

3. Support: support@opr.org.tt

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REDRESS FUNCTION

Ms. Sanchel Ferreira

PART IV- COMPLAINTS

A complaint is formal written statement of an allegation that **bid rigging** or another form of collusion, an **irregularity in procurement proceedings** or a **breach of the Act** has occurred.

SECTION 41

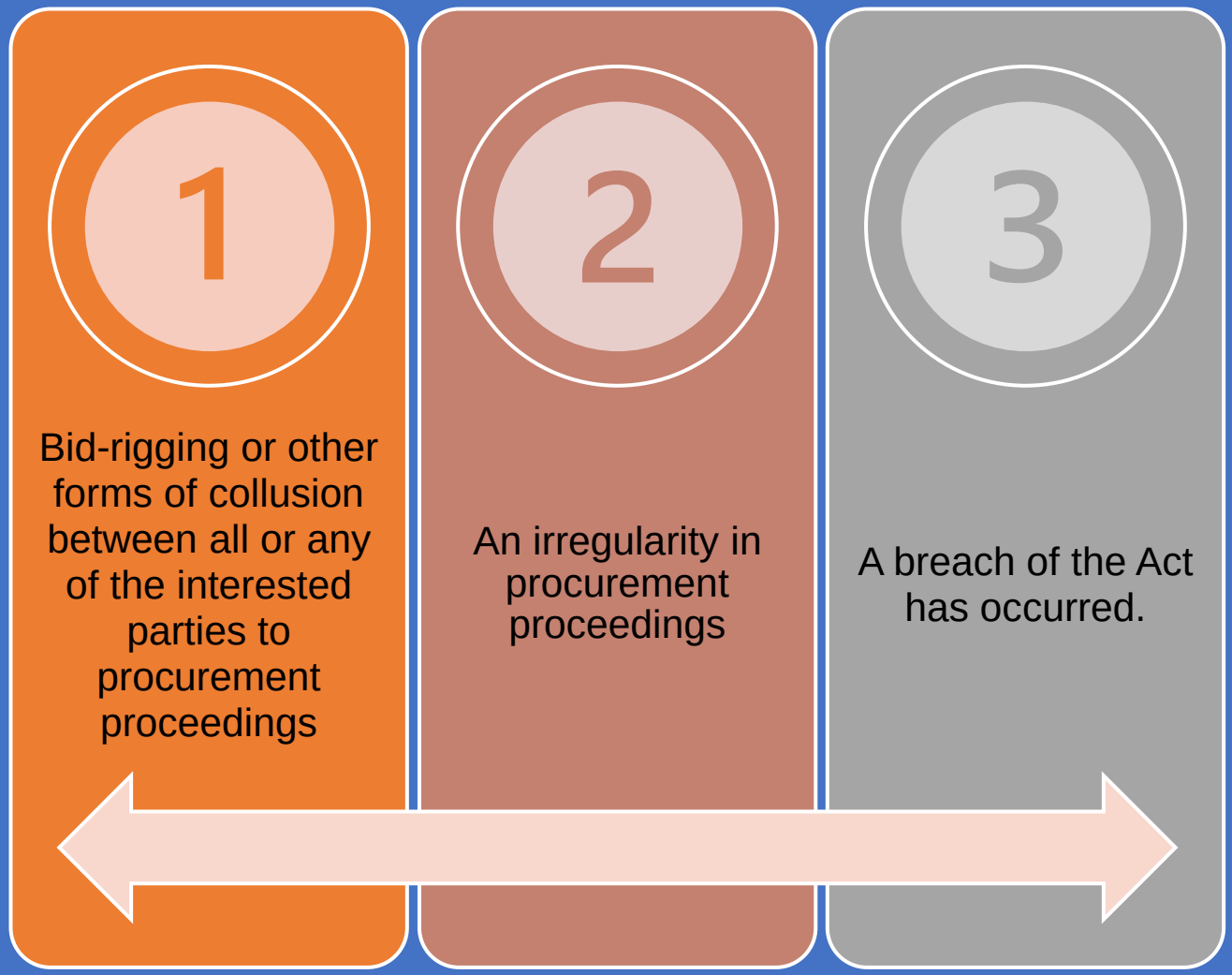
WHO CAN MAKE A COMPLAINT?

Any member of the public may make a complaint.

The OPR may also, on its own initiative, consider, enquire into or investigate any alleged breaches of the Act.

SECTION 41 (2)

WHAT CAN I COMPLAIN ABOUT?



HOW TO FILE A COMPLAINT- COMPLAINT FORM

- ONLINE
- MAIL-IN/ POST
- WALK-IN

YOUR NAME

MAILING ADDRESS

TELEPHONE CONTACT DETAILS

EMAIL ADDRESS

INFORMATION ABOUT THE SUBJECT OF THE COMPLAINT

PARTICULARS OF THE COMPLAINT

SUPPORTING DOCUMENTS

A FEW TIPS…

Consult	Provide	Use	Be	Provide	Ensure	Cooperate
Consult Guidance Notes before completing the Form	Provide adequate supporting documents where possible	Use clear and concise language	Be specific: use dates, times, locations, and names as far as possible	Provide the names of persons or witnesses who can provide evidence of the allegations made	Ensure that you provide up to date contact information so that you can be contacted by the OPR if necessary	Cooperate with the authorised officers of the OPR, when called upon

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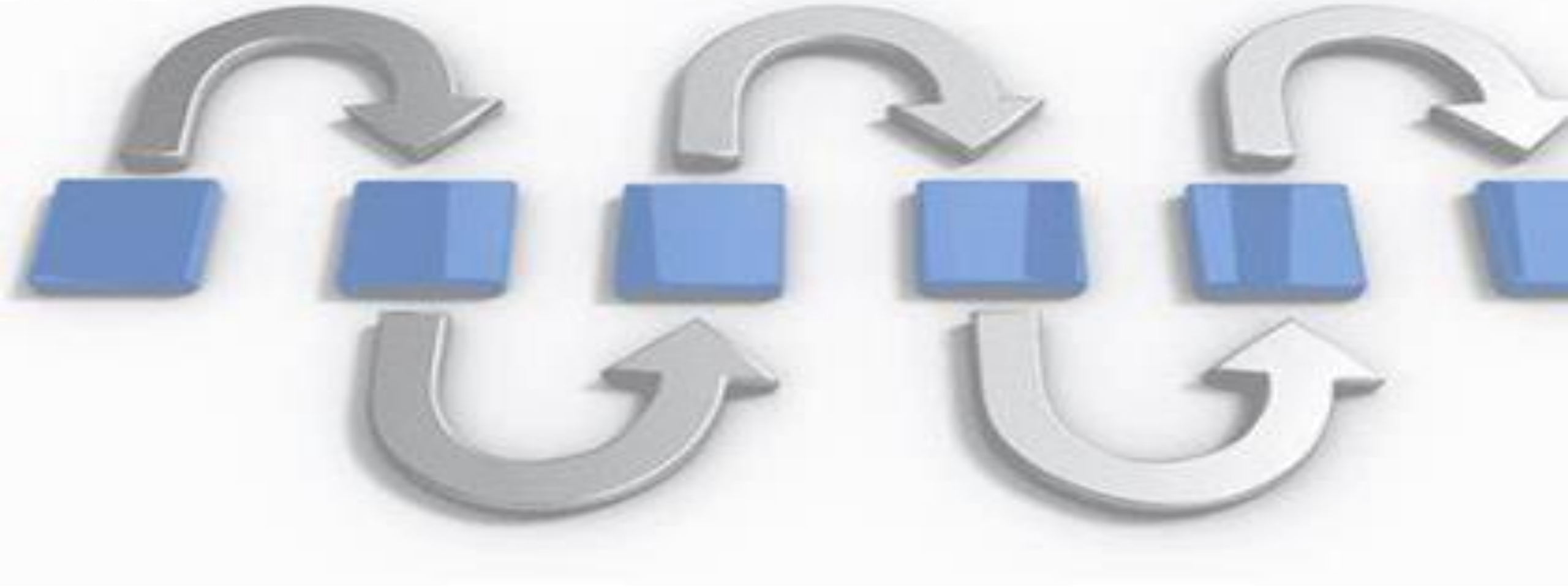

THE COMPLAINT PROCESS

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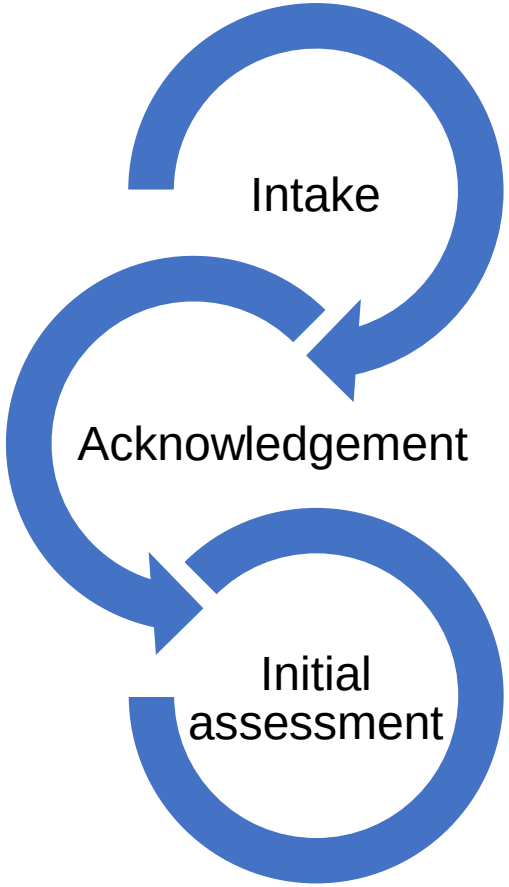
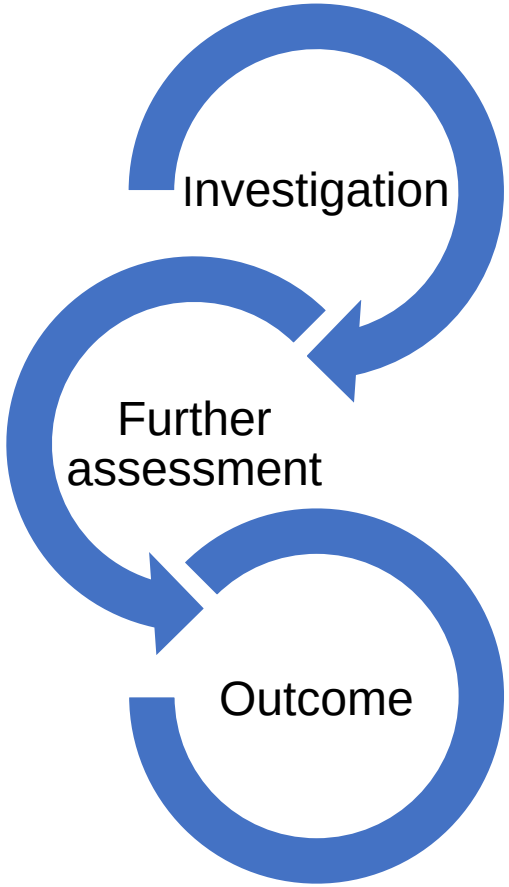




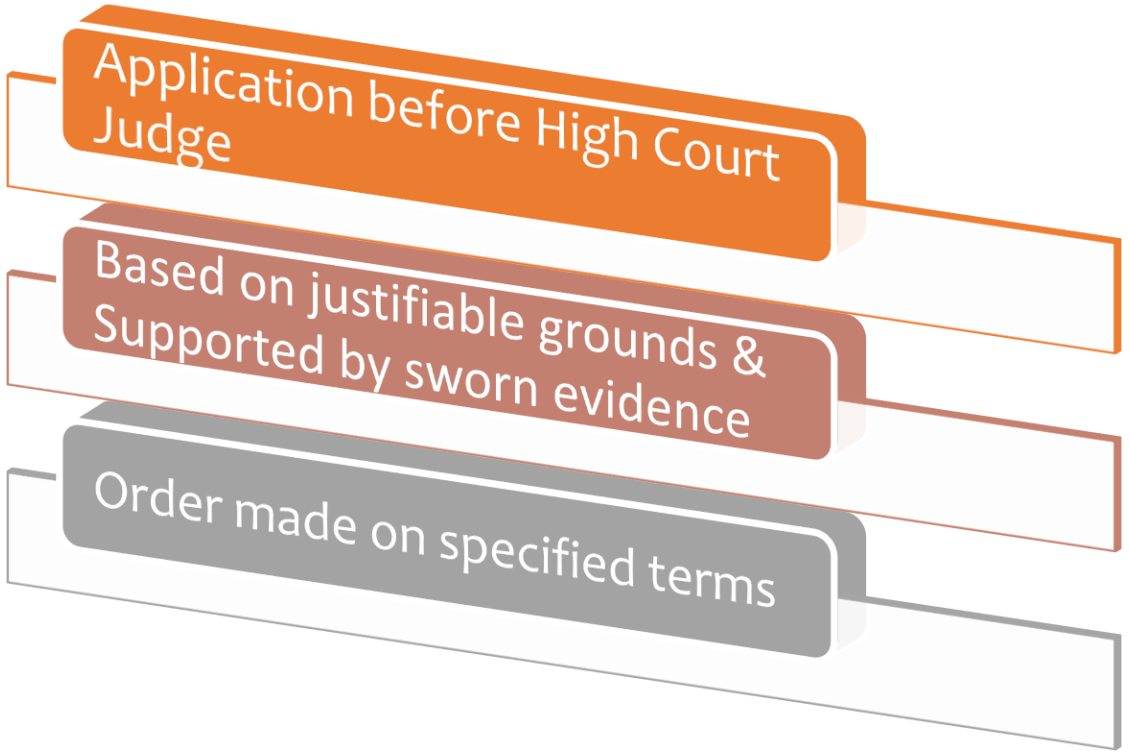
INVESTIGATION BY AUDIT & INVESTIGATIONS DEPARTMENT

- ✓ Investigation plan
- ✓ Evidence
- ✓ Interviews
- ✓ Site visits
- ✓ Entry and seizure
- ✓ Investigation report

A CLOSER LOOK AT OPR'S POWERS…

Section 42- order to compel a person to appear to give information

Section 43- order to enter premises



OUTCOMES AFTER AN INVESTIGATION

No further action

Correspondence to parties

Notice of adverse report and opportunity to be heard

Report to the Director of Public Prosecutions

OPR'S WHISTLEBLOWING PLATFORM- SPEAKUP

- ✓OPR's **Whistleblowing Platform–** managed by an external third party.
- ✓Influenced by the status of the OPR as a designated authority in the Whistleblower Protection Bill, 2018.
- ✓OPR can receive and investigate reports of improper conduct or illegal conduct within the Office, or any breach or suspected breach of law or regulations that may fall within the areas of responsibility of the Office.

HOW TO MAKE A COMPLAINT USING SPEAKUP ANONYMOUSLY OR NOT!

Call the hotline @**224-5707**

Online – www.oprtt.org

In Writing

All information provided is confidential

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REDRESS FUNCTIONS

Mr. Dustin Serrette

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CHALLENGE PROCEEDINGS

WHAT ARE CHALLENGE PROCEEDINGS?

Challenge Proceedings is the process by which a Supplier or Contractor ("the 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.

Key legislative and procedural documents:

- The Public Procurement and Disposal of Public Property Act 2015, as amended
- The Public Procurement and Disposal of Public Property (Challenge Proceedings) Regulations, 2021
- Hearing Rules and Procedures for Part V Challenge Proceedings
- Electronic Hearing and Filing Rules for Challenge Proceedings

HOW TO SUBMIT A CHALLENGE

Form 8 is the Application for Review which must be completed and signed

- **"Rules and Procedures"** icon on Challenge Tab of OPR's website

Supporting Documents

- **Regulation 8(1)**
- **"Rules and Procedures"** icon on Challenge Tab of OPR's website

Form 2 is required where a representative is appointed

Email to challenge@opr.org.tt

WHEN SUBMIT AN APPLICATION FOR REVIEW

- Where the Challenge relates to the terms of solicitation, pre-qualification, pre-selection, or of 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.

THE 20 DAY PROCESS FOR CHALLENGE PROCEEDINGS-OVERVIEW

DAYS 1-3

- Application for Review (AFR) Form 8 submitted by Applicant
- Procuring Entity Notified of AFR by OPR
- Publication of Notice of AFR by OPR
- OPR to decide whether to suspend

DAYS 4-6

- Reply submitted by Respondent
- Request for Authorisation can be submitted by Respondent

DAYS 8-9

- Notice of Case Management Conference (CMC) issued by OPR
- Application for leave to call Expert Witnesses to be submitted to by Parties

DAY 11

- CMC
- Notice for Interpreter to be submitted by Parties
- Notice for Accommodation to be submitted by Parties

DAYS 12-13

- Notice of CMC directions and Hearing date issued by OPR
- Qualifications of Interpreter Witness Statements, Expert Evidence, Skeletal Submissions to be submitted by Parties

DAYS 15-16

- Hearing
- Application for costs to be submitted by Applicant

DAY 20

- Decision issued by OPR
- Suspension (if any) lifted

WHAT ARE INELIGIBILITY PROCEEDINGS?

It is the process by which a **supplier** or **contractor** or **senior officer** who has engaged in **prohibited conduct** is placed on an **ineligibility list** which has the effect of excluding them from participating in public procurement proceedings.

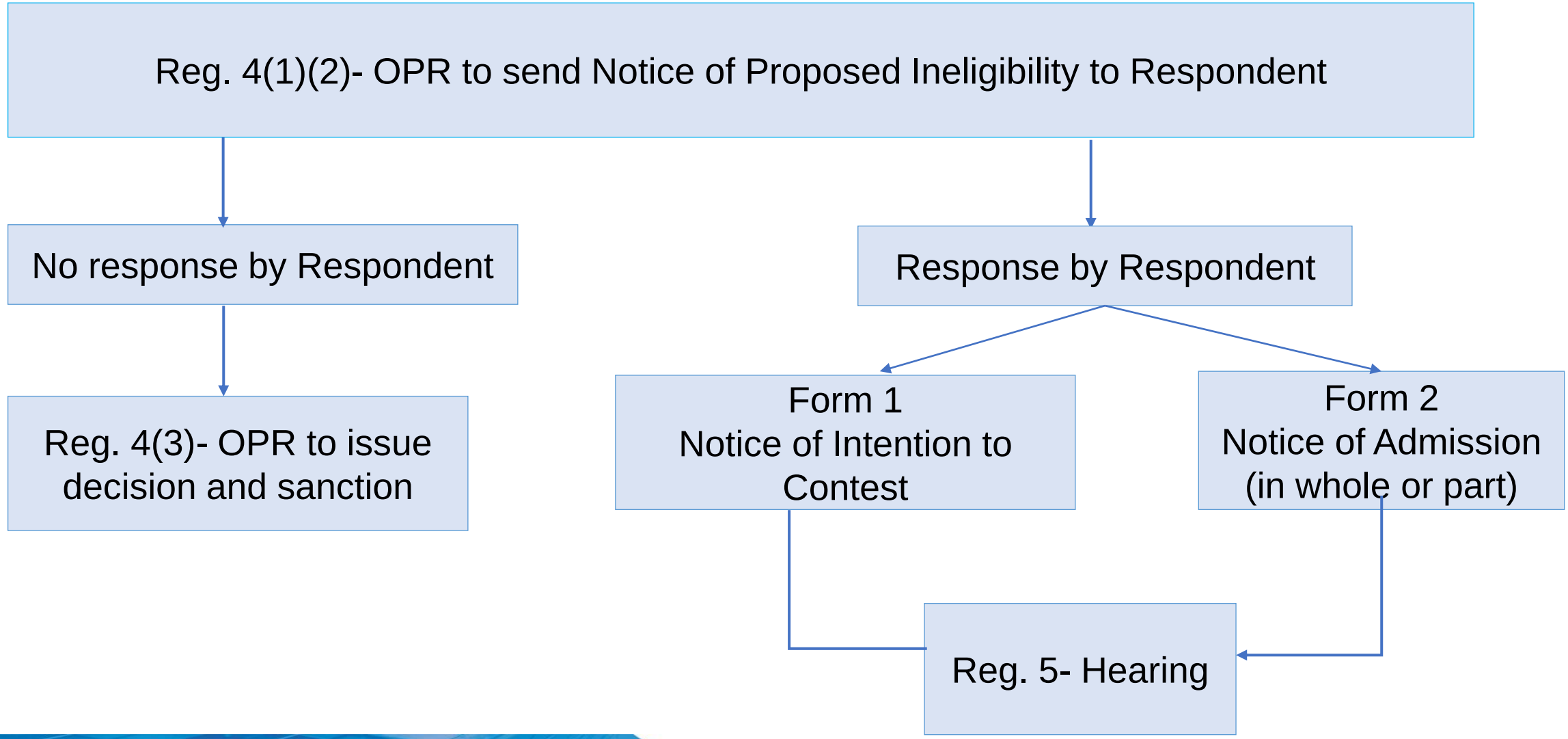
Key legislative and procedural documents:

- The Public Procurement and Disposal of Public Property Act 2015, as amended
- The Public Procurement and Disposal of Public Property (Ineligibility Proceedings) Regulations, 2021
- Hearing Rules and Procedures for Ineligibility Proceedings
- Electronic Hearing and Filing Rules for Ineligibility Proceedings

WHAT FALLS UNDER "PROHIBITED CONDUCT"?

Section	Prohibited Conduct
58 (3)	• consistently failing to provide satisfactory performance • indulging in corrupt or fraudulent practices, or • conviction of an offence under the Act.
59 (7)	• offering an inducement or any corrupt, fraudulent, collusive, coercive or obstructive practice in relation to a tender or proposal.

What should a Respondent do when they receive a Notice of Proposed Ineligibility?



What are the Ineligibility Sanctions?

- **Letter of Reprimand-** imposed where it is the Respondent's first offence and its conduct is relatively minor or there are sufficient compelling mitigating factors

- **Conditional non-debarment-** This requires the Respondent to comply with certain conditions set out by the OPR within a set period of time, not longer than six (6) months.

- **Declaration of Ineligibility-** being placed on the Ineligibility List for a period of one (1) to ten (10) years

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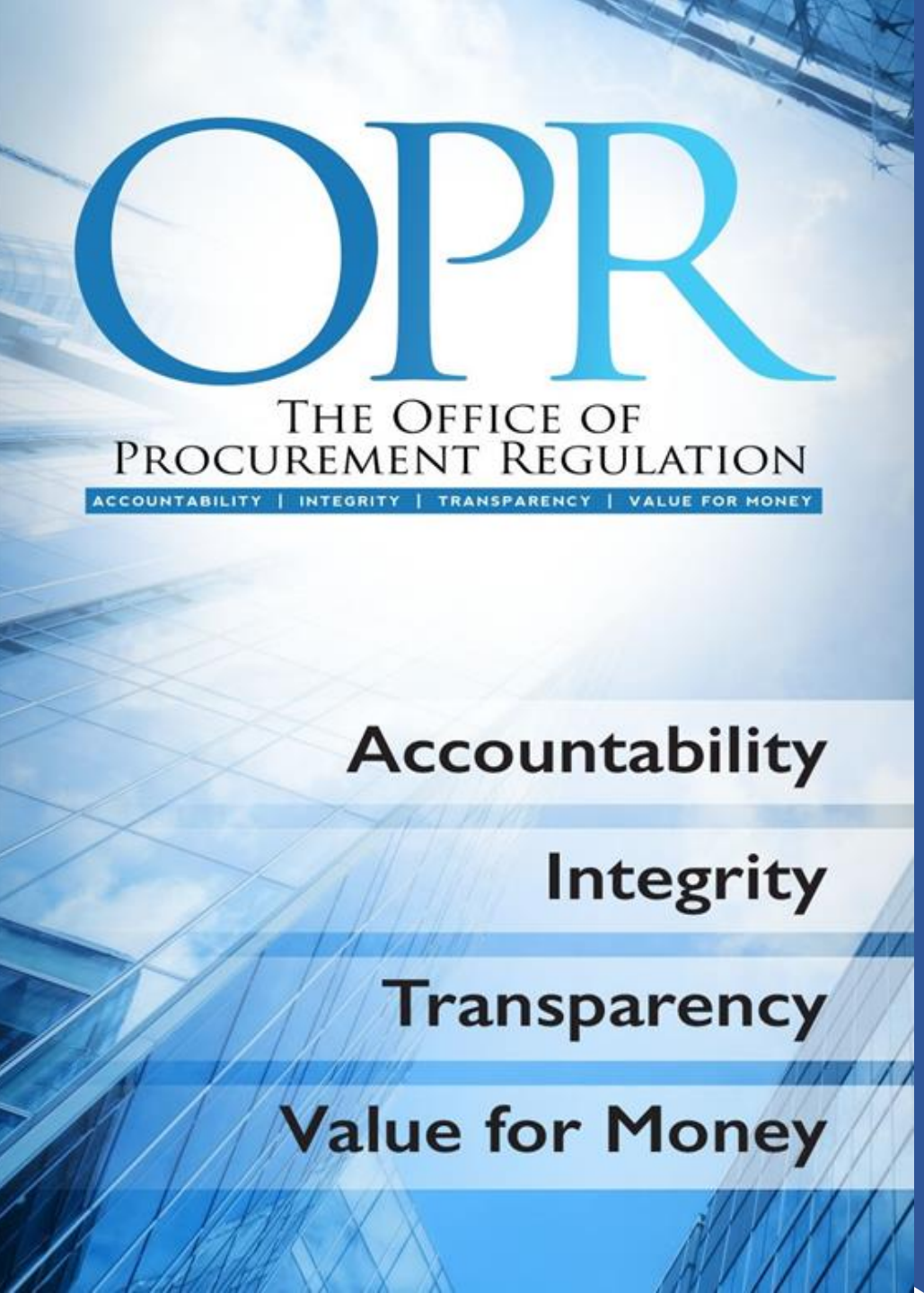
FOR MORE INFORMATION

- Visit the Challenge tab on our website at www.oprtt.org
- Visit the Ineligibility tab on our website at www.oprtt.org
- Call us at (868) 627-4OPR (4677) or (868) 226-4OPR (4677)
- E-mail us at secretariat@opr.org.tt



THANK YOU FOR YOUR KIND ATTENTION!

We are happy to answer any questions you may have.

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International Waterfront Centre,
1A Wrightson Road, Port of Spain
Tel: 1 868 627 4677 or 1 868 226 4677
Website: www.oprtt.org