

Aegis Governance Conference

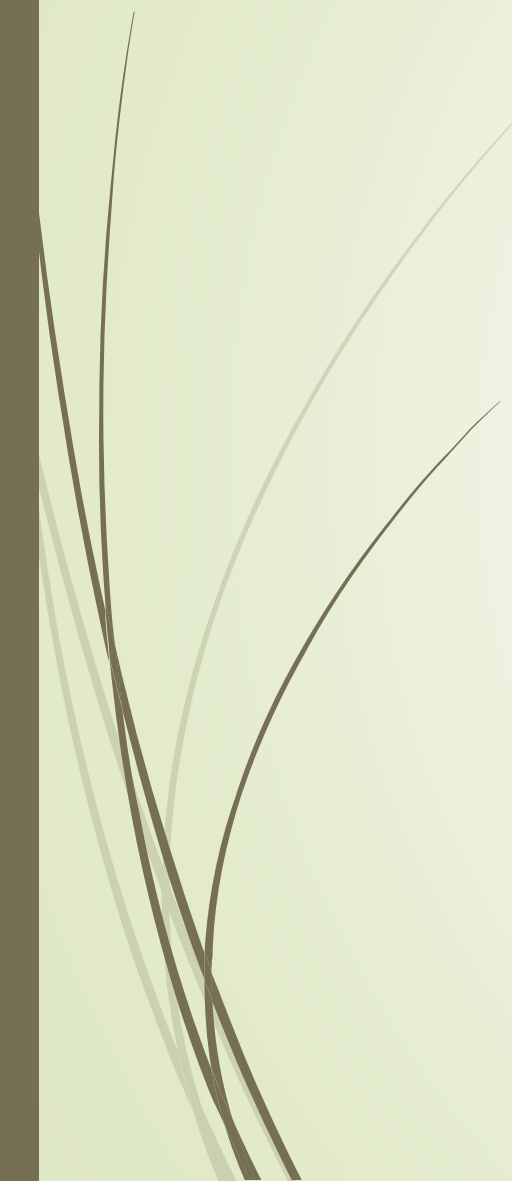


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Date: July 28, 2023



Discussion Points

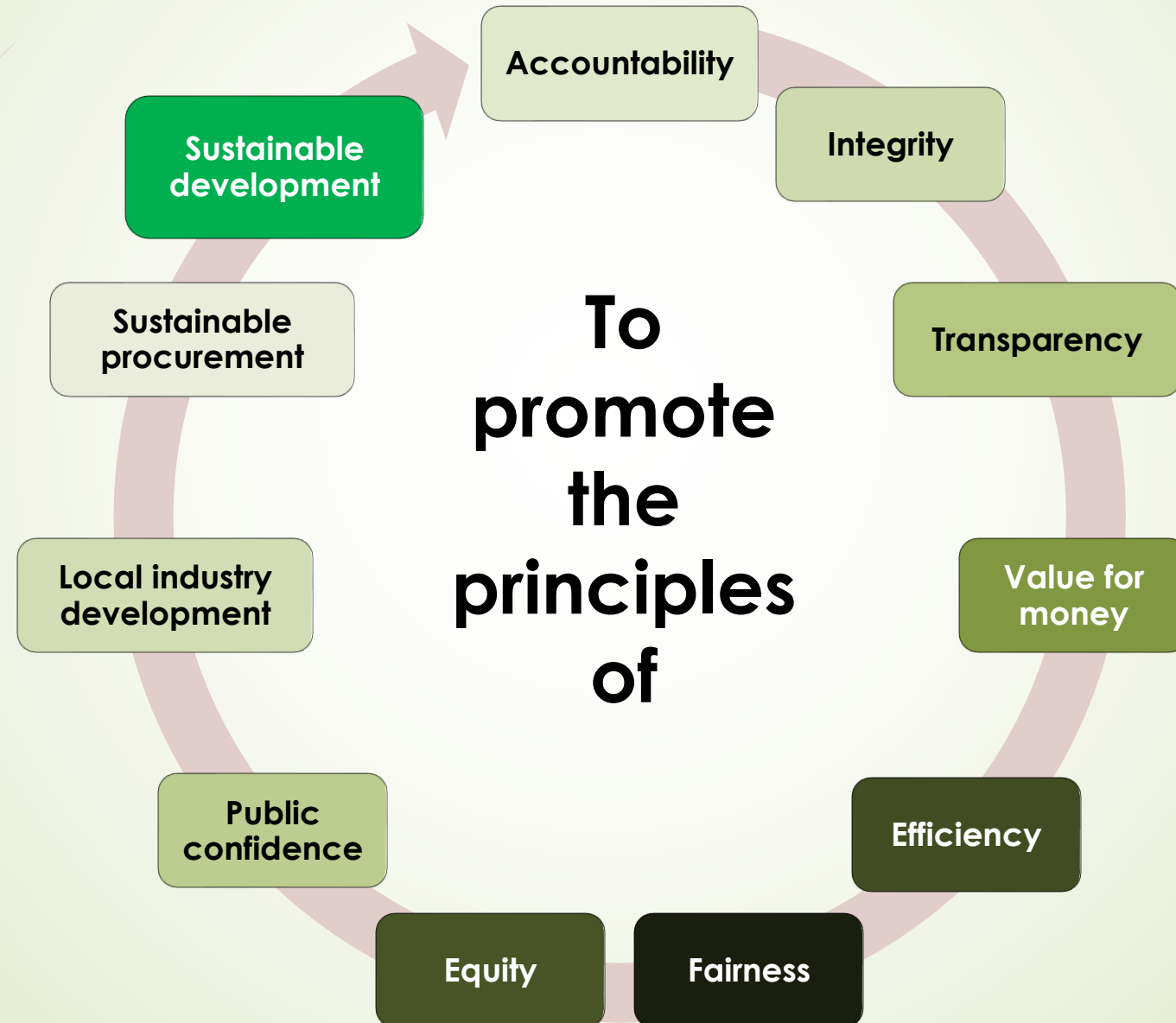
- The role the procurement act plays in promoting transparency, trust, and efficient business operations.
 - How procurement regulations drive compliance and reinforce the objectives of the new Companies Registry Online System (CROS)
 - Insights on the proposed amendment to the Procurement Act, its impact, and why it is necessary
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POTENTIAL IMPACT 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

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.

SECTION 13 FUNCTIONS OF THE OPR

a) Establish a comprehensive database of information on public procurement, including information on tenders received, the award and value of contracts, and such other information of public interest as the Office thinks fit

- This will result in more transparency for the public in terms of how contracts are awarded and to whom

SECTION 13 FUNCTIONS OF THE OPR

c) Issue and review guidelines in relation to public procurement and the retention and disposal of public property, including model guidelines for special guidelines under sections 30(1)(b) and 54(1)(b)

- Public bodies must now procure in a transparent manner as laid out in the procedures approved in their Handbooks and Guidelines and Special Guidelines

SECTION 13 FUNCTIONS OF THE OPR

(q) Prepare and maintain a database of pre-qualified contractors and suppliers

- Pre-qualification via the Procurement Depository rather than placing advertisements in the newspapers and conducting an exercise every 3 years guarantees efficiency and value for money
- There is equity as suppliers and contractors no longer have to pay to be pre-qualified to vie for public contracts and small and medium sized suppliers and contractors will be afforded greater opportunity to provide goods, works and services to public bodies

SECTION 13 FUNCTIONS OF THE OPR

(i) harmonize policies, systems and practices in relation to public procurement activities and the disposal of public property

- By publishing sector specific guidelines, the OPR can ensure that procurement activities are standardised
- A Handbook and Guideline on Retention and Disposal of Public Property have also been published on the website at <https://oprtd.org/retention-disposal-page/>
- The Regulations provide guidance on various methods of procurement and procedures for disposal
- This promotes equity and fairness in the procurement and disposal processes

SECTION 13 FUNCTIONS OF THE OPR

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

- The quarterly and annual reports to the Parliament on all contracts awarded, as required in Sections 24 and 37 of the Act, will allow the OPR to have an overview of the procurement activities of all public bodies
- The Annual Procurement Performance Report, which is due six (6) weeks after the end of the fiscal, is intended to collect information on the public body's performance against their Annual Procurement Plan
- These reports will ensure that efficiency and value for money are achieved during procurement activities and processes

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

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)**

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
- **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

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.

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-

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.

INELIGIBILITY LIST

- **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; **(up to ten years)**
- (b) is found to be indulging in corrupt or fraudulent practices **(10 Years)** ; or
- (c) is convicted of an offence under this Act (**10 Years**).

Sec. 7 -2023 Amendments

- (6) This Act shall not apply to the following services provided to public bodies or State-controlled Enterprises—
 - (a) legal services;
 - (b) debt financing services for the national budget;
 - (c) accounting and auditing services
 - (d) medical emergency or other scheduled medical services; or
 - (e) **such other services as the Minister may, by Order, determine.**
- (7) An Order under subsection (5) shall be subject to affirmative resolution of Parliament.

- Section 7 of the Act is amended— (a) in subsection (6) by deleting paragraph (e) and substituting the following: **“(e) such other services as the Minister may, on the recommendation of the Office or upon the initiative of the Minister with the agreement of the Office, by Order, determine.”**; (b) in subsection (7) by— (i) deleting the words “(5)” and substituting the words **“(6)(e)”**; and (ii) deleting the word **“affirmative”** and substituting the word **“negative”**. 4. The Act is amended by inserting after section 58

Sec. 7 -2023 Amendments

- (6) This Act shall not apply to the following services provided to public bodies or State-controlled Enterprises—
 - (a) legal services;
 - (b) debt financing services for the national budget;
 - (c) accounting and auditing services
 - (d) medical emergency or other scheduled medical services; or
 - (e) **such other services as the Minister may, on the recommendation of the Office or upon the initiative of the Minister with the agreement of the Office, by Order, determine.**
- (7) An Order under subsection **(6 e)** shall be subject to **negative** resolution of Parliament.
- **The Act is amended by inserting after section 58, the following new section: 58A. Subject to regulations made under section 63, the procurement of goods and services up to one million dollars are exempt from the procurement requirements under this Act.”**

Sec. 63 -2023 Amendments

- 63. (1) The Minister may, on the recommendation of the Office, make regulations to give effect to the provisions of this Act, including regulations with respect to—
- (1) “The Minister may, on the recommendation of the Office **or upon the initiative of the Minister with the agreement of the Office**, make regulations to give effect to the provisions of this Act, including regulations with respect to—”;
- a. the conduct of challenge proceedings under Part V; and
- b. the addition to, or removal from, an ineligibility list under section 58.
- c. **the procedures for the procurement of goods and services up to one million dollars under section 58A.”;**
- (2) Regulations made under this section may provide that the contravention of any regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of one million dollars and imprisonment for five years.
- (3) Regulations made under this section shall be subject to **affirmative** resolution of Parliament.
 - by deleting the word “**affirmative**” and substituting the word “**negative**”; and
- (c) **by inserting after subsection (3), the following new subsection: “**
- (4) **Regulations made under section 63(1)(c) shall provide for the contracts awarded to be reported to the Office.”**

Sec. 63 -2023 Amendments

- 63. (1) “The Minister may, on the recommendation of the Office **or upon the initiative of the Minister with the agreement of the Office**, make regulations to give effect to the provisions of this Act, including regulations with respect to—”;
 - a. the conduct of challenge proceedings under Part V; and
 - b. the addition to, or removal from, an ineligibility list under section 58.
 - c. the procedures for the procurement of goods and services up to one million dollars under section 58A.”;
- (2) Regulations made under this section may provide that the contravention of any regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of one million dollars and imprisonment for five years.
- (3) Regulations made under this section shall be subject to **negative** resolution of Parliament.
- (4) Regulations made under section 63(1)(c) shall provide **for the contracts awarded to be reported to the Office.**”

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



Thank you for your kind attention!

I would be happy to answer any questions.