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Fifth Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

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 PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
PROPERTY (NO. 2) BILL, 2014

Explanatory Note

(These notes form no part of the Bill but are intended only
to indicate its general purport)

The Bill seeks to provide for public procurement and the disposal of public property in accordance with the principles of good governance, namely accountability, integrity, transparency, and value for money and the establishment of the Office of Procurement Regulation.

PART I

PRELIMINARY

Clause 1 of the Bill cites the short title.

Clause 2 provides for the commencement of the Act, for which this is the Bill, by Proclamation.

Clause 3 declares the Act for which this is the Bill to have effect even though inconsistent with the Constitution.

Clause 4 defines certain words and phrases used in the Bill.

Clause 5 states the objects of the Bill.

Clause 6 stipulates the illegality of acts not done in accordance with the Act for which this is the Bill.

Clause 7 states the circumstances to which the Act for which this is the Bill will apply.

Clause 8 provides that the Act for which this is the Bill binds the State.

PART II

THE OFFICE OF PROCUREMENT REGULATION

Clause 9 provides for the establishment and incorporation of the Office of Procurement Regulation.

Clause 10 provides for the appointment and composition of the Board of the Office.

Clause 11 provides for the tenure of office of members of the Board.

Clause 12 empowers the President to remove a member of the Board from office in certain stated circumstances.

Clause 13 states the functions of the Office of Procurement Regulation.

Clause 14 provides for the powers of the Office of Procurement Regulation.

Clause 15 provides for matters relating to meetings of the Board.

Clause 16 provides for the appointment of committees by the Board.

Clause 17 requires members of the Board or a committee to disclose any interest they may have in a matter that is being considered by the Board.

Clause 18 provides for the appointment of the requisite staff of the Office.

Clause 19 authorises the secondment of personnel from the public service or any commission, authority or body to the service of the Office of Procurement Regulation.

Clause 20 requires the establishment of a pension fund plan by the Office of Procurement Regulation.

Clause 21 provides for the source of funding of the Office of Procurement Regulation.

Clause 22 applies section 116 of the Constitution to the accounts of the Office of Procurement Regulation.

Clause 23 provides for the exemptions applicable to the Office of Procurement Regulation.

Clause 24 requires the Office of Procurement Regulation to prepare and submit an annual report to Parliament. This clause also specifies the matters that are to be addressed in the report.

Clause 25 specifies the financial year of the Office of Procurement Regulation.

PART III

GENERAL PROVISIONS

Clause 26 requires the Office of Procurement Regulation to establish a database to be known as “the Procurement Depository”.

Clause 27 requires a procuring entity to publish information with respect to planned procurement activities.

Clause 28 seeks to encourage local industry by authorizing a procuring entity to limit participation in procurement proceedings to promote local industry development and local content.

Clause 29 stipulates the criteria that suppliers and contractors must meet in order to satisfy a procuring entity of their qualification for consideration.

Clause 30 requires a procuring entity to comply with guidelines or handbooks that are issued or approved by the Office of Procurement Regulation with respect to public procurement.

Clause 31 prohibits the splitting of procurements in order to avoid obligations under the Act for which this is the Bill.

Clause 32 prohibits the division or estimation of a procurement in order to limit competition.

Clause 33 provides for the cancellation of a procurement by a procuring entity.

Clause 34 empowers a procuring entity to reject an abnormally low submission presented by a supplier or contractor.

Clause 35 provides for the procedure for the acceptance of a successful submission and the entry into force of a procurement contract.

Clause 36 provides for the procuring entity to publish notice of the award of a procurement contract or the conclusion of a framework agreement upon entry into force of the procurement contract or conclusion of a framework agreement.

Clause 37 requires a procuring entity to submit quarterly reports to the Office of Procurement Regulation of all contracts that are awarded within the relevant quarter.

Clause 38 authorises the use of electronic means in public procurement.

Clause 39 provides for confidentiality regarding communication between a procuring entity and suppliers or contractors.

Clause 40 seeks to provide protection to a person who provides information about a contravention of the Act for which this is the Bill.

PART IV

INVESTIGATION AND ENFORCEMENT

Clause 41 empowers the Office of Procurement Regulation to investigate any alleged breach of the Act for which this is the Bill.

Clause 42 empowers the Office of Procurement Regulation to obtain information and documents for the purpose of exercising its functions.

Clause 43 empowers any officer in the service of the Office of Procurement Regulation to conduct investigations.

Clause 44 requires the Office of Procurement Regulation to inform the relevant procuring entity of the result of any investigation that is conducted and make the necessary recommendations.

Clause 45 requires the Office of Procurement Regulation to make a report to the Director of Public Prosecutions where, during its investigations, it discovers evidence of a criminal offence.

Clause 46 prohibits a person from withholding, concealing, destroying or refusing to produce any book, record or document required for the purpose of an investigation.

Clause 47 seeks to provide protection to a person who provides information or opinions to the Office of Procurement Regulation.

Clause 48 requires notice of any adverse report about a procuring entity to be given to that procuring entity before the making of such a report.

PART V

CHALLENGE PROCEEDINGS

Clause 49 provides a supplier or contractor with the right to bring challenge proceedings.

Clause 50 provides for the procedure for the reviewing by the Office of Procurement Regulation of a decision or action of a procuring entity.

Clause 51 makes provision for the rights of persons participating in challenge proceedings.

Clause 52 provides for certain grounds upon which information shall not be disclosed in challenge proceedings.

PART VI

DISPOSAL OF STORES AND EQUIPMENT OF A PUBLIC BODY

Clause 53 states that the Act for which this is the Bill shall apply to the disposal of stores and equipment of a public body that are unserviceable, obsolete or surplus.

Clause 54 specifies that a public body must comply with guidelines or handbooks that are issued or approved by the Office of Procurement Regulation with respect to the retention or disposal of public property.

Clause 55 provides for the establishment of a disposal committee by a public body.

Clause 56 provides for the procedures for the disposal of public property.

Clause 57 prohibits a public body from disposing of public property to an employee of the public body or a member of a board or committee of the public body.

PART VII

MISCELLANEOUS

Clause 58 makes provision for preventing a supplier or contractor from participating in procurement proceedings based on an ineligibility list.

Clause 59 prohibits certain conduct, which aims to influence a public officer in order to gain an advantage or concession.

Clause 60 creates certain offences which involves collusion.

Clause 61 provides for penalties for the contravention of certain provisions of the Act for which this is the Bill.

Clause 62 provides for immunity for members of the Board or a committee or the staff of the Office for acts done in good faith.

Clause 63 empowers the Minister, on the recommendation of the Office of Procurement Regulation, to make Regulations.

Clause 64 repeals the Central Tenders Board Act and section 28 of the Tobago House of Assembly Act.

Clause 65 provides for the savings of certain procurement proceedings upon the repeal of the Central Tenders Board Act.

PART VIII

TRANSITIONAL

Clauses 66 to 69 provide for the options available to certain public officers under the Central Tenders Board and make provision for the treatment of such persons upon the commencement of the Act for which this is the Bill.

Clause 70 provides for the preservation of existing procurement proceedings and contracts.

THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY (NO. 2) BILL, 2014

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SCHEDULE 1

SCHEDULE 2

BILL

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

[, 2014]

WHEREAS it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have

effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

PART I

PRELIMINARY

Short title **1.** This Act may be cited as the Public Procurement and Disposal of Public Property Act, 2014.

Commencement **2.** This Act comes into operation on such date as is fixed by the President by Proclamation.

Act inconsistent with Constitution **3.** This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation **4.** In this Act—
“bid rigging” means collusion between persons for the purpose of manipulating the proceedings;
“Board” means the Board established under section 10;
“classified information” means information that is exempted from disclosure under this Act, the Freedom of Information Act or any other written law;

“committee” means a committee appointed under section 16;

“disposal of public property” includes the transfer without value, sale, lease, concession, or other alienation of property that is owned by a public body;

“document” includes an electronic document;

“electronic means” means the use of electronic equipment for the processing, including digital compression, and storage of data which is transmitted, conveyed and received by wire or radio or by optical, electromagnetic or any other means;

“electronic reverse auction” means an online real time purchasing technique utilized by a procuring entity to select the successful submission, which involves the presentation by suppliers or contractors of successively lowered bids during a scheduled period of time and the automatic evaluation of tenders;

“framework agreement” means an agreement or other arrangement between one or more procuring entities and one or more contractors or suppliers which establishes the terms, in particular the terms as to price and, where appropriate, quantity, under which the contractor or supplier will enter into one or more contracts with the procuring entity during the period in which the framework agreement or arrangement applies;

“local content” means the local value added to goods, works or services measured as the amount of money or percentage of each dollar of expenditure remaining in Trinidad and Tobago after the production of the good or the performance of the work or service;

“local industry development” includes those activities that serve to enhance local capacity and competitiveness by involvement and participation of local persons, firms and capital market and knowledge transfer during the conduct of the programme of goods, works or services that are being procured;

“member” means a member of the Board;

“Minister” means the Minister with responsibility for finance;

“pre-qualification” means the procedure to identify, prior to solicitation, suppliers or contractors who are qualified;

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

“private party” means an individual, a body corporate or an unincorporated entity, other than a public body;

“procurement” or “public procurement” means the acquisition of goods, works or services involving the use of public money;

“procurement contract” means a contract concluded between a procuring entity and a supplier or a contractor;

“procurement involving classified information” means procurement in which a procuring entity may be authorized under this Act or any other written law to take measures and impose requirements for the protection of classified information;

“procuring entity” means a public body engaged in procurement proceedings;

“procurement proceedings”, in relation to public procurement, includes the process of procurement from the planning stage, soliciting of tenders, awarding of contracts, and contract management to the formal acknowledgement of completion of the contract;

“public body” means—

(a) the Office of the President;

(b) the Parliament;

(c) the Judiciary;

(d) a Ministry or a department or division of a Ministry;

(e) the Tobago House of Assembly, or a division of the Tobago House of Assembly;

(f) a Municipal Corporation established under the Municipal Corporations Act;

Chap. 25:04

(g) a Regional Health Authority established under the Regional Health Authorities Act;

Chap. 29:05

(h) a statutory body, responsibility for which is assigned to a Minister of Government;

(i) a State-controlled enterprise;

(j) a Service Commission established under the Constitution or other written law; or

(*k*) a body corporate or unincorporated entity—

- (i) in relation to any function which it exercises on behalf of the State; or
- (ii) which is established by virtue of the President's prerogative, by a Minister of Government in his capacity as such or by another public authority; or

(*l*) a body corporate or unincorporated entity in relation to any function, project, scheme or arrangement which involves the use by it, of public money;

“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;

“public-private partnership arrangement” includes an arrangement between a public body and a private party under which—

- (*a*) the private party undertakes to perform a public function or provide a service on behalf of the public body;

(b) the private party receives a benefit for performing the function or providing the service, either by way of—

- (i) compensation from a public fund;
- (ii) charges or fees collected by the private party from the users of a service provided to them; or
- (iii) a combination of such compensation and such charges or fees; and

(c) the private party is generally liable for the risks arising from the performance of the function or the provision of the service depending on the terms of the arrangement;

“public property” means real or personal property owned by a public body;

“Regulations” means regulations made under section 63;

“Regulator” means the person referred to in section 10(1)(a);

“services” means any objects of procurement or disposal other than goods and works and includes professional, non-professional and commercial services as well as goods and works which are incidental to, but not exceeding, the value of those services;

“socio-economic policies” means environmental, social, economic and other policies of Trinidad and Tobago authorized or required by the Regulations or other provisions of the laws of Trinidad and Tobago to be taken into account by a procuring entity in procurement proceedings;

“solicitation” means an invitation to tender, present submissions or participate in request-for-proposals proceedings or an electronic reverse auction;

“solicitation document” means a document issued by, or on behalf of a procuring entity, including any amendments thereto, that sets out the terms and conditions of the procurement;

“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;

“State-controlled enterprise” means—

- (a) a company incorporated under the laws of Trinidad and Tobago which is owned or controlled by the State;
- (b) a company incorporated under the laws of Trinidad and Tobago which is owned or controlled by a company referred to in paragraph (a); or
- (c) a body corporate or unincorporated entity which is supported, directly or indirectly, by public money and over which the State, a statutory body or a company referred to in paragraph (a) or (b) is in a position to exercise control directly or indirectly;

“submission” means a tender, a proposal, an offer, a quotation or a bid referred to collectively or generically, including, where the context so requires, an initial or indicative submission;

“supplier” or “contractor” means, according to the context, any party or potential party to procurement proceedings with a procuring entity;

“sustainable procurement” means a process whereby public bodies meet their needs for goods, works or services in a way that achieves value for money on a long-term basis in terms of generating benefits not only to the public body, but also to the economy and the wider society, whilst minimising damage to the environment;

“tender security” means a security required from suppliers or contractors by a procuring entity and provided to a procuring entity to secure the fulfilment of an obligation and includes such arrangements as bank guarantees, indemnities, surety bonds, standby letters of credit, cheques for which a bank is primarily liable, cash deposits, promissory notes, bills of exchange and other like instruments;

“Tobago House of Assembly” means the Tobago House of Assembly established by section 141A of the Constitution;

“unfulfilled contract” includes a contract that is incomplete, terminated or delayed;

“value for money” includes the value derived from the optimal balance of outcomes and input costs on the basis of the total cost of supply, maintenance and sustainable use;

“works” includes construction and engineering works of all kinds.

Objects

5. (1) The objects of this Act are to promote—

- (a) the principles of accountability, integrity, transparency and value for money;
- (b) efficiency, fairness, equity and public confidence; and
- (c) local industry development, sustainable procurement and sustainable development,

in public procurement and the disposal of public property.

(2) A public body shall carry out public procurement and the disposal of public property in a manner that is consistent with the objects of this Act.

Illegality of procurement or disposal

6. (1) Subject to subsection (2), 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.

(2) Nothing in subsection (1) shall affect the rights of an innocent third party.

Application of the Act

7. (1) This Act applies to public bodies and public-private partnership arrangements.

(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; or

- (c) an agreement for technical or other co-operation 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.

8. This Act binds the State.

Act binds the State

PART II

THE OFFICE OF PROCUREMENT REGULATION

9. There is hereby established as a body corporate the Office of Procurement Regulation (hereinafter referred to as “the Office”).

Establishment and
incorporation of the
Office

10. (1) The Office shall be governed by a Board which shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition and shall comprise no less than eight and no more than eleven members as follows:

Procurement Board

- (a) the Procurement Regulator (hereinafter referred to as “the Regulator”), who shall be

the Chairman and who shall have at least ten years' experience in matters relating to procurement and possess—

- (i) a degree from an accredited University in a field relating to finance, economics or law; or
 - (ii) a degree from an accredited University in accounting or an equivalent professional qualification in accounting;
- (b) a member with qualifications and experience in accounting;
 - (c) a member with qualifications and experience in finance;
 - (d) a member with qualifications and experience in business management;
 - (e) a member with qualifications and experience in civil engineering;
 - (f) an Attorney-at-law of at least ten years' standing;
 - (g) a member with qualifications and experience in any other field relating to procurement; and
 - (h) no more than four members who represent the interests of the community, women, youth, religion or civil society.

(2) The President, after consultation with the Prime Minister and Leader of the Opposition shall appoint a member as Deputy Chairman of the Board who shall exercise the powers and functions of the Regulator in the event of the Regulator's absence or inability to exercise his powers or perform his functions.

(3) The names of all members of the Board as first constituted and every change in the membership of the Board thereafter shall be published in the *Gazette* and at least one newspaper in daily circulation in Trinidad and Tobago.

(4) The Office shall have an official seal which shall be authenticated by the signatures of—

(a) the Regulator or in his absence, the Deputy Chairman; and

(b) any other member authorized by the Board,

and shall be judicially noticed.

11. (1) The Regulator shall be appointed for a term of seven years and is eligible for reappointment, ^{Tenure and remuneration of} ~~except~~ _{members} that he shall not serve more than two consecutive terms.

(2) The Regulator shall be entrusted with the day-to-day management, administration, direction and control of the business of the Office with authority to act in the conduct of the business of the Office.

(3) A person who has served as the Regulator for two consecutive terms shall not be eligible to become a member.

(4) The appointment of members, other than the Regulator, shall be as follows:

(a) of the six members appointed under section 10(1)(b) to (g)—

(i) three members shall be appointed for a term not exceeding six years and shall be eligible for reappointment for not more than one consecutive term; and

(ii) three members shall be appointed for a term not exceeding five years and shall be eligible for reappointment for not more than one consecutive term; and

(b) the members appointed under section 10(1)(h) shall be appointed for a term not exceeding four years and shall be eligible for reappointment for not more than one consecutive term.

(5) The appointment of a member shall be by instrument in writing.

(6) The Regulator may resign his office by letter addressed to the President.

(7) A member, other than the Regulator, may resign his office by letter addressed to the Regulator who shall immediately cause it to be forwarded to the President.

(8) The resignation of the Regulator shall take effect from the date of receipt of his letter of resignation by the President, and in the case of a member, other than the Regulator, by the Regulator.

(9) The salaries and allowances of the Regulator and other members shall be determined by the Minister, subject to the approval of Parliament.

(10) All expenses incurred by the Office for the purposes of this Act shall be a charge on the Consolidated Fund.

Removal of member

12. The President may remove a member from office upon being satisfied that the member—

- (a) is declared to be bankrupt;
- (b) is incapable of performing the duties of a member;
- (c) has neglected his duties or has engaged in conduct that would bring his office into disrepute;
- (d) has been absent, without the leave of the Board, from three consecutive meetings of the Board;
- (e) has been convicted of an offence involving dishonesty;
- (f) has been convicted of an offence under the Integrity in Public Life Act; or

(g) has been convicted of an offence punishable by imprisonment for one year or more or an offence under this Act.

13. (1) The functions of the Office are to—

Functions of the
Office

- (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;
- (b) set training standards, competence levels and certification requirements to promote best practices in procurement;
- (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);
- (d) prepare, update and issue model handbooks, incorporating standardized bidding documents, procedural forms and relevant documents for use in public procurement and the retention and disposal of public property;
- (e) approve, in respect of each procuring entity, special guidelines and handbooks in relation to public procurement and the retention and disposal of public property;
- (f) promote the use of technology in public procurement and the retention and disposal of public property;
- (g) provide best practice advice in the conduct of procurement activities, including the promotion of electronic transactions;
- (h) audit and review the system of procurement and disposal of public property to ensure compliance with the objectives of the Act;

- (i) harmonize policies, systems and practices in relation to public procurement activities and the disposal of public property;
- (j) review procurement practices and delivery systems on an annual basis to identify best practices;
- (k) determine, develop, introduce, maintain and update related system-wide databases and technology;
- (l) promote the awareness of public bodies and the public to issues relating to public procurement and disposal of public property;
- (m) undertake research and surveys with respect to public procurement and disposal of public property;
- (n) investigate, on its 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;
- (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;
- (p) create and publish standard form contracts for public procurement and disposal of public property;
- (q) prepare and maintain a database of pre-qualified contractors and suppliers;
- (r) prepare and maintain a list of pre-qualified mediators, arbitrators and experts for the purposes of alternative dispute resolution under this Act; and
- (s) provide advice on best practice on the aggregation of the procurement or disposal of goods for the purpose of obtaining value for money.

(2) 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.

14. (1) In the performance of its functions, the Office Powers of the Office may—

- (a) monitor the procurement of goods, works and services, and the disposal of public property, by public bodies to ensure compliance with this Act;
- (b) conduct audits and periodic inspections of public bodies to ensure compliance with this Act;
- (c) issue directions to public bodies to ensure compliance with this Act; and
- (d) carry out such other activities and do such other acts as it considers necessary or expedient for the carrying out its functions.

(2) A public body or person who, without reasonable justification, fails to comply with a direction issued under this Act commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

(3) At all times the Office shall, in the performance of its functions and exercise of its powers, act in an objective and non-discriminatory manner.

15. (1) The Board shall meet at least once every Meetings month and as often as is required to effect its business.

(2) The Regulator shall preside at meetings of the Board and, in the absence of the Regulator, the Deputy Chairman shall preside.

(3) The quorum of a meeting of the Board shall be six members, including either the Regulator or the Deputy Chairman.

(4) The minutes of each meeting of the Board shall be kept in proper form and be confirmed at the next meeting.

(5) The Board may regulate its own proceedings.

Committees

16. (1) The Board may appoint such committees as it considers necessary.

(2) A committee may—

- (a) inquire into and advise the Board on any matter within the scope of the Board's functions;
- (b) exercise such of the powers of the Board as the Board delegates to it in writing; or
- (c) perform such other duties as the Board assigns to it.

(3) Membership of a committee may include or consist of persons who satisfy the fit and proper criteria as prescribed by the Regulations and who are not members of the Board, except that the chairperson of a committee shall be a member of the Board.

(4) The Board shall appoint the chairperson of a committee.

(5) A committee shall be subject to the control of the Board and may be discharged or reconstituted at any time by the Board.

(6) A committee may regulate its own procedure, subject to any directions that may be given by the Board.

17. (1) A member of the Board or a committee who has a direct or indirect interest in a matter under consideration by the Board or committee shall disclose the fact of his interest at the earliest opportunity and shall not participate in the consideration of, or vote on, any question relating to the matter.

(2) A member of the Board or committee who knowingly or wilfully fails to disclose his interest in accordance with subsection (1) commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and imprisonment for one year.

18. (1) The Office shall appoint such staff as it considers necessary for the efficient performance of the functions of the Office.

(2) The staff of the Office shall be appointed on such terms and conditions as the Office may determine.

19. (1) A public officer or any person in the employ of any public body may, with the approval of the appropriate Service Commission or public body and with the consent of the officer or employed person, be seconded to the service of the Office.

(2) Where any secondment is effected, the Office shall make, with the appropriate public body, such arrangements as may be necessary to preserve the rights of the officer or employed person to superannuation benefits for which the officer or employed person would have been eligible had that officer or employed person remained in the service from which the secondment was effected.

(3) A period of secondment under this section shall not exceed five years.

Establishment of
pension fund plan

20. (1) The Office shall, within five years of the date of assent to this Act, establish a pension fund plan.

(2) All staff of the Office shall be members of the pension fund plan.

Funds of the Office

21. The funds of the Office shall consist of moneys appropriated by Parliament for the purposes of the Office.

Accounts and audit

22. Section 116 of the Constitution shall apply to the accounts of the Office.

Exemptions

23. The Office shall be exempt from stamp duties, corporation taxes, customs duties, value added taxes, motor vehicle taxes and all other taxes, charges, levies and imposts.

Report of the
Regulator

24. (1) The Regulator shall submit his reports annually to Speaker of the House of Representatives, the President of the Senate and the Minister.

(2) A report under subsection (1) shall include—

- (a) a figure representing the total value of contracts as awarded by public bodies, and another figure representing the cost of the total value of procurement contract variances for that year;
- (b) the number of unfulfilled contracts awarded by public bodies in respect of procurement;
- (c) a summary of transactions in respect of each public body specifying in respect of public procurement—
 - (i) the number of procurement contracts awarded;
 - (ii) the number of procurement contracts varied;
 - (iii) the quantum of those variances;

- (iv) the number of unfulfilled procurement contracts and the quantum of cost incurred;
 - (v) with respect to the procurement for a project, a brief description, the awardee, the value, the scope of works and the expected deliverables of the project; and
 - (vi) lessons learnt as a consequence of the management of procurement contracts;
- (d) a summary of transactions in respect of each public body concerning the disposal of public property—
- (i) in respect of real property, the address and other identifying details of the property disposed of, including value, to whom it was disposed, date of disposal, means of disposal and consideration; and
 - (ii) in respect of property other than real property, details of the property disposed of, including value, to whom it was disposed, means of disposal, and consideration;
- (e) details of changes implemented to ensure current best practice for procurement, and disposal of public property;
- (f) the names of public bodies that have failed to comply with this Act;
- (g) an assessment of the overall performance of the procurement system;
- (h) a summary of unresolved issues that are to be dealt with; and
- (i) any recommendations requiring action on the part of a procuring entity.

(3) A report under subsection (1) need not include details of contracts less than two million dollars or contracts for the settlement of legal liability other than the total number and quantum.

(4) The President of the Senate and the Speaker of the House of Representatives shall cause the report to be laid before the Senate and the House of Representatives, respectively, at the next sitting of the Senate and the House of Representatives after the receipt thereof, respectively.

(5) The Minister may, on the recommendation of the Office, vary the amount specified in subsection (3), by Order subject to negative resolution of Parliament.

Financial year

25. The financial year of the Board shall be the twelve-month period ending on 30th September each year.

PART III

GENERAL PROVISIONS

Procurement
Depository

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.

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

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

(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.

27. (1) A procuring entity shall—

- (a) no later than six weeks after the approval of Information on possible forthcoming procurement 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.

(2) 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.

(3) Publication under this section does not—

- (a) constitute a solicitation;
- (b) oblige a procuring entity to issue a solicitation; or
- (c) confer any rights on suppliers or contractors.

(4) Subsection (1) shall not apply to a procuring entity involved in the procurement of goods and services for the purpose of national security.

28. (1) A procuring entity may limit participation in Participation by suppliers or contractors procurement proceedings to promote local industry development and local content.

(2) A procuring entity, when first soliciting the participation of suppliers or contractors, shall declare whether the participation of suppliers or contractors is limited pursuant to this section and the nature of, and reason for the limitation.

(3) A declaration made under subsection (2) shall not be altered.

(4) A procuring entity that decides to limit the participation of suppliers or contractors pursuant to this section shall include in the record of the procurement proceedings a statement of the reasons and circumstances on which it relied.

Due diligence

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;
- (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.

(2) Subject to the right of suppliers or contractors to protect their intellectual property or trade secrets, a procuring entity shall require suppliers or contractors to provide appropriate documentary evidence or other information to satisfy itself that the suppliers or contractors are qualified in accordance with subsection (1).

(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.

(4) A procuring entity shall evaluate the qualifications of suppliers or contractors in accordance with the qualification criteria specified in subsection (1) and procedures set out in the pre-qualification or pre-selection documents, if any, and in the solicitation documents.

(5) Notwithstanding subsection (4), a procuring entity may require the supplier or contractor presenting the successful submission to certify on oath that the documentary evidence provided to demonstrate his qualifications for the particular procurement is true and correct.

(6) A procuring entity shall disqualify a supplier or contractor if the information submitted concerning the qualifications of the supplier or contractor was materially inaccurate or materially incomplete so as to constitute a misrepresentation.

(7) A procuring entity may disqualify a supplier or contractor if the information submitted concerning the qualifications of the supplier or contractor was inaccurate or incomplete in any respect and the supplier or contractor fails to promptly remedy the inaccuracy or incompleteness upon the request of the procuring entity.

(8) A procuring entity may require a supplier or contractor that was pre-qualified in accordance with this Act to demonstrate his qualifications again in accordance with the same criteria used to pre-qualify such supplier or contractor.

(9) A procuring entity shall disqualify any supplier or contractor who, without reasonable cause, fails to demonstrate his qualifications when requested to do so.

(10) A procuring entity shall promptly notify each supplier or contractor who is requested to demonstrate his qualifications again as to whether or not he has done so to the satisfaction of the procuring entity.

Guidelines and handbooks in relation to public procurement

- 30.** (1) A procuring entity shall comply with—
- (a) such general guidelines in relation to public procurement as the Office may issue;
 - (b) such special guidelines in relation to public procurement as the Office may approve for that procuring entity; and
 - (c) such handbooks in relation to public procurement as the Office may approve for that procuring entity for the purposes of ensuring compliance with this Act and guidelines under paragraphs (a) and (b).
- (2) Special guidelines under subsection (1)(b)—
- (a) shall be prepared by the procuring entity and submitted to the Office for its approval; and
 - (b) may provide that general guidelines under subsection (1)(a) shall apply to a procuring entity subject to such exemptions or amendments as are specified in the special guidelines.
- (3) Handbooks under subsection (1)(c) shall be prepared by the procuring entity and submitted to the Office for its approval.

Splitting of procurement

31. A procuring entity shall not split procurement requirements for a given quantity of goods, works or services to avoid obligations under the Act.

Estimation of the value of procurement

32. (1) A procuring entity shall not divide its procurement or use a particular valuation method for estimating the value of procurement so as to limit competition among suppliers or contractors or otherwise avoid its obligations under this Act.

(2) In estimating the value of procurement, a procuring entity shall include the estimated maximum total value of the procurement contract, or of all procurement contracts envisaged under a framework agreement over its entire duration, taking into account all forms of remuneration.

33. (1) A procuring entity may cancel a Cancellation of the procurement procurement—

- (a) at any time prior to the acceptance of the successful submission; or
- (b) after the successful submission is accepted under the circumstances referred to in section 35(6).

(2) A procuring entity shall not open any tenders or proposals after taking a decision to cancel the procurement.

(3) The decision of a procuring entity to cancel a procurement and the reasons for its decision shall be included in the record of the procurement proceedings and promptly communicated to any supplier or contractor who presented a submission.

(4) A procuring entity shall promptly publish a notice of the cancellation of the procurement in the same manner and place in which the original information regarding the procurement proceedings was published, and return any tenders or proposals that remain unopened at the time of the decision to the respective suppliers or contractors.

34. (1) Where a procuring entity is of the opinion that a submission is abnormally low, it shall request, in Rejection of abnormally low submissions writing from the supplier or contractor, details of the submission that gives rise to concerns as to the ability of the supplier or contractor to perform the procurement contract.

(2) Where a procuring entity, having taken into account any information provided by the supplier or contractor following its request under subsection (1) and the information included in the submission, is still of the opinion that the price, in combination with other constituent elements of the submission, is abnormally low in relation to the subject matter of the procurement

and raises concerns with the procuring entity as to the ability of the supplier or contractor who presented that submission to perform the procurement contract, the procuring entity may reject the submission.

(3) The decision of a procuring entity to reject a submission in accordance with this section, the reasons for that decision, and all communications with the supplier or contractor under this section shall be included in the record of the procurement proceedings and the decision of the procuring entity and the reasons therefor shall be promptly communicated to the respective supplier or contractor.

Acceptance of the successful submission and entry into force of the procurement contract

35. (1) A procuring entity shall accept the successful submission unless—

- (a) the supplier or contractor presenting the successful submission is disqualified in accordance with section 29;
- (b) the procurement is cancelled in accordance with section 33; or
- (c) the submission found successful at the end of evaluation is rejected as abnormally low under section 34.

(2) 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.

(3) The notice referred to in subsection (2) shall contain, at a minimum, the following information:

- (a) the name and address of the supplier or contractor presenting the successful submission;
- (b) the contract price; and
- (c) the duration of the standstill period as set out in the solicitation documents.

(4) 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.

(5) The decision of a procuring entity that urgent public interest considerations exist and the reasons for the decision shall be included in the record of the procurement proceedings.

(6) Upon expiry of the standstill period or, where there is none, promptly after the successful submission is ascertained, a procuring entity shall dispatch the notice of acceptance of the successful submission to the supplier or contractor who presented that submission, unless the Office orders otherwise.

(7) Unless a written procurement contract is required, a procurement contract in accordance with the terms and conditions of the successful submission enters into force when the notice of acceptance is delivered to the supplier or contractor concerned, so, however, that the notice is dispatched while the submission is still in effect.

(8) Where the solicitation documents require the supplier or contractor whose submission has been accepted to sign a written procurement contract conforming to the terms and conditions of the accepted submission—

- (a) the procuring entity and the supplier or contractor concerned shall sign the procurement contract within a reasonable period of time after the notice of acceptance is dispatched to the respective supplier or contractor; and
- (b) the procurement contract enters into force when the contract is signed by the respective supplier or contractor and by the procuring entity.

(9) Neither a procuring entity nor the respective supplier or contractor shall take any action that interferes with the entry into force of the procurement contract or its performance during the time between the dispatch of the notice of acceptance and the entry into force of the procurement contract.

(10) If the supplier or contractor whose submission has been accepted fails to sign any written procurement contract as required or fails to provide any required security for the performance of the contract, a procuring entity shall withdraw the award and either—

- (a) select the next highest ranked submission from among those remaining in effect, in accordance with the criteria and procedures set out in this Act and in the solicitation documents; or
- (b) terminate the procurement proceedings.

(11) Notices under this section are dispatched when they are promptly and properly addressed or otherwise directed and transmitted to the supplier or contractor or conveyed to an appropriate authority for transmission to the supplier or contractor by any reliable means specified in accordance with the Regulations.

Public notice of the award of a procurement contract or framework agreement

36. (1) Upon the entry into force of a procurement contract or conclusion of a framework agreement, a procuring entity shall promptly publish on its website or in any other electronic format, notice of the award of the procurement contract or the framework agreement, specifying the name of any supplier or contractor with whom the procurement contract or framework agreement was entered into, the goods or services to be supplied, the works to be effected and, in the case of procurement contracts, the date of the award of the contract and the contract price.

(2) Where the information referred to in subsection (1) is unavailable, a complaint may be made to the Regulator.

37. A procuring entity shall submit to the Office no Report of procuring entities later than three weeks after the end of each quarter a report of all contracts awarded during the immediately preceding quarter.

38. (1) Notwithstanding any other law for carrying Use of electronic means in public procurement out the purposes of this Act, public procurement under this Act may be undertaken using electronic means.

(2) Nothing in subsection (1) shall affect the validity of procurements effected by means that were lawful before the coming into force of this Part.

39. (1) In its communications with suppliers or Confidentiality contractors or with any person, a procuring entity shall not disclose any information if non-disclosure of such information is necessary for the protection of essential security interests of the State or if disclosure of such information would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the suppliers or contractors or would impede fair competition, unless disclosure of that information is ordered by the court and, in such case, subject to the conditions of such an order.

(2) Other than when providing or publishing information pursuant to this Act, a procuring entity shall treat submissions in such a manner as to avoid the disclosure of their contents to competing suppliers or contractors or to any other person not authorized to have access to this type of information.

(3) Any discussions, communications, negotiations or dialogue between a procuring entity and a supplier or contractor shall be confidential, unless the disclosure is ordered by the court or required by law.

(4) Subject to subsection (1), in procurement involving classified information, a procuring entity may—

- (a) impose on suppliers or contractors requirements aimed at protecting classified information; and

- (b) demand that suppliers or contractors ensure that their sub-contractors, directors, officers and employees comply with the requirements aimed at protecting classified information.

Prohibition of
victimisation

40. A person shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because—

- (a) he, acting in good faith and on the basis of a reasonable belief, has—

(i) notified the Director of Public Prosecutions, the Police, the Integrity Commission or the Office that his employer or any other person has contravened or is about to contravene this Act;

(ii) done or stated the intention of doing anything that is required to be done in order to avoid having any person contravene this Act; or

(iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Act; or

- (b) his employer or any other person believes that he will do something described in paragraph (a).

PART IV

INVESTIGATION AND ENFORCEMENT

Complaints

41. (1) The Office may on its own initiative, or shall as a result of a complaint made under this Act, consider, inquire into and investigate any alleged breach of this Act.

(2) A person who wishes to allege or make a complaint that—

(a) bid rigging or other forms of collusion between all or any of the interested parties to procurement proceedings has occurred; or

(b) an irregularity in procurement proceedings or a breach of this Act has occurred,

may do so in writing to the Office.

(3) Notwithstanding any other written law, where a person has a reasonable belief that bid rigging or other forms of collusion between all or any of the interested parties to procurement proceedings has occurred, that person shall report the matter in writing to the Office.

(4) A person who knowingly and mischievously makes, or causes to be made, a false report to the Office or misleads the Office by giving false information or by making false statements or accusations, commits an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for one year.

42. (1) Where the Office considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act, it may, by written notice served on any person, require the person—

Power to obtain information and documents

(a) to supply to the Office, within the time and in the manner specified in the notice, any book, record, document or information specified in the notice;

(b) to produce to the Office, or to a person specified in the notice acting on its behalf in accordance with the notice, any book, record, document or information specified in the notice within the time and in the manner specified in the notice;

- (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any book, record or document within the time and in the manner specified in the notice; or
- (d) to appear before the Office, or a specified person, at a time and place specified in the notice to provide information, either orally or in writing, and produce any book, record or document specified in the notice.

(2) Information supplied in response to a notice under subsection (1)(d) shall, if given in writing, be signed in the manner specified in the notice.

(3) If a book, record or document is produced in response to a notice under subsection (1), the Office, or the person to whom the book, record or document is produced may examine and make copies of the book, record or document or extracts thereof.

(4) The Office may require a person to give orally or in writing, information on oath or affirmation and may administer an oath or affirmation at any place.

(5) A person who is required to provide information under this section may be represented by counsel and may claim any privilege to which the person is entitled.

(6) Where a person who is required to appear before the Office or give information fails or refuses to appear or provide information without lawful justification, the Office may make an application to the High Court to compel the person to do so.

Investigations by the
Office

43. (1) Any officer in the service of the Office and authorised by the Regulator in writing (hereinafter referred to as an “authorised officer”) may, for the purpose of conducting an investigation into any alleged or suspected breach of this Act—

- (a) examine and inquire into the affairs of a public body or person in respect of whom the investigation is being conducted;

- (b) examine and make copies of, or remove from the premises, all such books, records and documents or other things relating to the subject of the investigation, whether or not they are in the possession or control of the person in respect of whom the investigation is ordered or of any other person; or
- (c) subject to subsection (3), enter the premises of a public body or person during reasonable hours.

(2) Any book, record or document removed under subsection (1)(b) shall be returned to the public body or person from whom or to the premises from which it was removed as soon as practicable.

(3) An authorized officer shall not enter the premises of a public body or person, unless the Office first obtains, on an *ex parte* application to a Judge of the High Court, an order authorizing him to enter the premises to conduct an investigation under subsection (1).

(4) An authorized officer shall provide the Office with a full and complete written report of the investigation including any transcript of statements and any material in his possession relating to the investigation.

44. After conducting an investigation under this Act, the Office shall without delay, in writing, inform the affected parties and the Minister, the Chief Secretary or public official having responsibility for that body, of the result of that investigation and make such recommendations as it considers necessary in respect of the matter which was investigated. ^{Outcome of investigation}

Report to Director of
Public Prosecutions

45. Where, after the conduct of an investigation, the Office is satisfied that there are reasonable grounds for suspecting that an offence has been committed, it shall make a report to the Director of Public Prosecutions who may take such action as he thinks appropriate.

Restrictions on
withholding or
concealing

46. No person shall withhold, conceal, destroy or refuse to produce any book, record or document required for the purpose of an examination or investigation under this Act.

No breach of duty

47. Notwithstanding any other written law, no person shall be regarded as having breached any duty to which he may be subject by reason of his communication in good faith to the Office, of any information or opinion on a matter which is relevant to any function of the Office under this Act, whether or not in response to a request made by the Office.

Notice of adverse
report

48. The Office shall not make a report which concludes that a public body or a person has failed without reasonable justification to fulfil a duty or obligation under this Act unless reasonable notice has been given to the public body or person of the alleged failure and the public body or person has been allowed full opportunity to be heard either in person or by an Attorney-at-law.

PART V

CHALLENGE PROCEEDINGS

Right to challenge
and appeal

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.

(2) Challenge proceedings may be made by way of an application for review by the Office under section 50.

(3) Subject to section 52, all hearings under this Part shall take place in public.

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. Application for review by the Office

(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—
 - (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.

(3) Within three 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.

(4) The Office may, within three 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.

(5) Promptly upon receipt of an application for review, the Office shall notify the procuring entity of the application and upon receipt of the notice, the procuring entity shall provide the Office with effective access to all documents in its possession relating to the procurement proceedings, in a manner appropriate to the circumstances.

(6) Within seven days of receiving an application for review the Office shall notify the procuring entity and all qualified suppliers and contractors of the application and its substance and of its decision on suspension pursuant to subsection (4).

(7) Where the Office decides to suspend the procurement proceedings, the performance of a procurement contract or the operation of a framework agreement, as the case may be, it shall specify the period of the suspension and where it decides not to suspend the procurement proceedings, it shall provide the reasons for its decision to the applicant and to the procuring entity.

(8) The Office may dismiss an application and shall lift any suspension applied, where it is of the opinion that the application is manifestly without merit or was not presented in compliance with the deadlines set out in subsection (2).

(9) The Office shall promptly notify the applicant, the procuring entity and all qualified suppliers and contractors in the procurement proceedings of the

dismissal and the reasons therefor and that any suspension in force is lifted and such a dismissal constitutes a decision on the application.

(10) In making its decision with respect to an application that it has entertained, the Office may take one or more of the following actions, as appropriate:

- (a) prohibit a procuring entity from acting in a manner, or taking a decision or following a procedure, that is not in compliance with this Act;
- (b) require a procuring entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Act to act, to take a decision or to proceed in a manner that is in compliance with the provisions of this Act;
- (c) confirm a decision of a procuring entity;
- (d) overturn the award of a procurement contract or a framework agreement that entered into force in a manner that is not in compliance with this Act and, if notice of the award of the procurement contract or the framework agreement has been published, direct that the notice of the overturning of the award be published;
- (e) direct that the procurement proceedings be terminated;
- (f) dismiss the application;
- (g) require the payment of compensation for any reasonable costs incurred by the supplier or contractor submitting an application as a result of an act or decision of, or procedure followed by, a procuring entity in the procurement proceedings that is not in compliance with the provisions of this Act, and for any loss or damages suffered, which shall be limited to the costs of the preparation

of the submission or the costs relating to the application, or both; or

(*h*) take such other action as is appropriate in the circumstances.

(11) The decision of the Office under subsection (10) shall be issued within twenty working days after receipt of the application and the Office shall immediately thereafter communicate its decision to the procuring entity, to the applicant, to all other participants in the application for review and to all other participants in the procurement proceedings and all persons shall comply with the decision and directive of the Office.

(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.

Rights of
participants in
challenge
proceedings

51. (1) Any supplier or contractor participating in the procurement proceedings to which the application relates, as well as any public body whose interests are or could be affected by the application, shall have the right to participate in challenge proceedings under this Part.

(2) A supplier or contractor who is notified of an application for review and who fails to participate in proceedings relating to the application is barred from subsequently challenging the decisions or actions that are the subject matter of the application.

(3) The participants in challenge proceedings under this Part shall have the right to—

(*a*) be present, represented and accompanied at all hearings during the proceedings;

- (b) be heard;
- (c) present evidence, including witnesses; and
- (d) seek access to the record of the challenge proceedings subject to section 52.

52. No public hearing for the purpose of challenge proceedings shall take place and no information shall be disclosed in challenge proceedings if it would—

Grounds for confidentiality in challenge proceedings

- (a) impair the protection of essential security interests of the State;
- (b) be contrary to law;
- (c) impede law enforcement;
- (d) prejudice the legitimate commercial interests of the suppliers or contractors; or
- (e) impede fair competition.

PART VI

DISPOSAL OF STORES AND EQUIPMENT OF A PUBLIC BODY

53. This Part applies with respect to the retention and disposal of stores and equipment of a public body that are unserviceable, obsolete or surplus.

Application

54. (1) A public body shall comply with—

Guidelines and handbooks in

- (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; and
- (c) such handbooks in relation to the retention and disposal of stores and equipment of a public body as the Office may approve for that

relation to retention and disposal of public property

public body for the purposes of ensuring compliance with this Act and guidelines under paragraphs (a) and (b).

- (2) Special guidelines under subsection (1)(b)—
- (a) shall be prepared by the public body and submitted to the Office for its approval; and
 - (b) may provide that general guidelines under subsection (1)(a) shall apply to a public body subject to such exemptions or amendments as are specified in the special guidelines.

(3) Handbooks under subsection (1)(c) shall be prepared by the public body and submitted to the Office for its approval.

Disposal Committee **55.** A public body shall establish a disposal committee comprising not less than three officers for the purpose of recommending the best method of disposing of unserviceable, obsolete or surplus stores or equipment.

Procedure for disposal **56.** (1) A public body shall refer all matters relating to the disposal of unserviceable, obsolete or surplus stores or equipment to its disposal committee.

(2) A public body shall comply with subsection (1) within a reasonable time after the stores or equipment become unserviceable, obsolete or surplus.

(3) Within fourteen days after receiving the recommendations of the disposal committee, the accounting officer shall give the committee a written notice as to whether the accounting officer accepts or rejects the recommendations of the committee and where the accounting officer rejects the recommendations, he shall include in the notice written reasons for the rejection.

(4) If the accounting officer accepts the recommendations of the disposal committee, the stores and equipment shall be disposed of in accordance with those recommendations.

(5) If the accounting officer rejects the recommendations of the disposal committee, he shall, after consultation with the Minister with responsibility for the public body, determine the manner in which the stores or equipment shall be disposed of and give the Office a copy of the notice under subsection (3) and inform the Office, in writing, of his decision under this subsection and his reasons therefor.

57. A public body shall not dispose of unserviceable, ^{Prohibition of disposal within public body} obsolete or surplus stores and equipment to an employee of the public body or a member of a board or committee of the public body except as expressly allowed under Regulations.

PART VII

MISCELLANEOUS

58. (1) For the purposes of this section—

Ineligibility list

“ineligibility list” means a list of suppliers or contractors who shall not participate in procurement proceedings;

“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; and

“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.

(2) The Office shall be responsible for preparing and maintaining an ineligibility list in accordance with this section.

(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.

(4) The Minister, on the advice of the Office, may make Regulations to specify the mechanism and manner for adding a supplier or contractor to the ineligibility list, including the procedure for removing a supplier or contractor from an ineligibility list.

(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.

(6) Where a supplier or contractor is added to the ineligibility list pursuant to this section—

- (a) any information relating to the supplier or contractor that is stored in the Procurement Depository shall be removed; and
- (b) the fact of the addition of the supplier or contractor to the ineligibility list shall be published and communicated to all public bodies.

59. (1) For the purposes of this section, “associate”, ^{Conduct influencing public officer} when used to indicate a relationship with any person, means—

- (a) an entity of which that person beneficially owns or controls, directly or indirectly, either shares or securities currently convertible into shares, carrying more than twenty per cent of the voting rights;
- (b) a partner of that person acting on behalf of the partnership of which they are partners;
- (c) a trust or estate, in which that person has a substantial beneficial interest or in respect of which he serves as a trustee, legal representative or in a similar capacity;
- (d) a spouse or child of that person; or
- (e) a relative of that person if that relative has the same residence as that person.

(2) No person shall, with intent to gaining an advantage or concession for himself or any other person—

- (a) offer—
 - (i) any member or an associate of a member of a procuring entity;
 - (ii) any consultant or an associate of any consultant providing services to a procuring entity; or
 - (iii) any person or an associate of any person providing services to a procuring entity,
 a gift of money or other valuable thing; or
- (b) approach—
 - (i) any member or an associate of a member of a procuring entity;
 - (ii) any consultant or an associate of any consultant providing services to a procuring entity; or

(iii) any person or an associate of any person providing services to a procuring entity,

with respect to any matter that is before that procuring entity or that is expected to come before that procuring entity.

(3) 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.

(4) A procuring entity shall not procure goods, works or services from a member of its staff or a person who has direct influence on the decision of a procuring entity.

(5) A procuring entity shall not include in a solicitation document any condition or specification which is likely to favour a particular supplier or contractor.

(6) A member of staff of a procuring entity or a person with direct influence on the decisions of a procuring entity shall declare any interest that he may have in any tender and shall, so far as possible, recuse himself from the proceedings.

(7) Where a procuring entity is satisfied that an inducement was offered, or any corrupt, fraudulent, collusive, coercive or obstructive practice was carried out in relation to a tender or proposal, the procuring entity shall reject or revoke the tender or proposal and report the matter to the Office for appropriate action.

(8) A supplier or contractor whose tender or proposal is rejected or revoked under subsection (7) shall be added to the ineligibility list, pursuant to section 58, for a period of ten years following the date of rejection or revocation of his tender or proposal.

(9) The Office shall notify, in writing, all public bodies of the disqualification of any supplier or contractor under this section.

(10) A person who contravenes this section commits an offence and is liable on conviction to a fine of one million dollars and five years' imprisonment.

60. (1) A person who—

(a) is involved in, or participates in bid rigging; or

(b) directly or indirectly influences in any manner or attempts to influence in any manner any procurement proceedings in order to obtain an unfair advantage in the award of a procurement contract,

commits an offence and is liable to a fine of five million dollars and imprisonment for ten years.

Offence involving
collusion

(2) A person who alters any procurement document with intent to influence the outcome of procurement proceedings commits an offence and is liable to a fine of two million dollars and imprisonment for seven years.

61. (1) Any person who contravenes a section referred to in the First Column of Schedule 1 commits an offence and is liable on conviction to the penalty specified in the Third Column of that Schedule.

Offence and penalty
Schedule 1

(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.

(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.

(4) No prosecution of an offence under this Act may be instituted without the written consent of the Director of Public Prosecutions.

Immunity

62. No personal liability shall attach to any member of the Board, a committee or the staff of the Office or to any authorized officer for anything done, omitted or permitted in the course of the operations of the Office, unless it is shown that the act or omission was reckless or in bad faith.

Regulations

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—

- (a) the conduct of challenge proceedings under Part V; and
- (b) the addition to, or removal from, an ineligibility list under section 58.

(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.

64. (1) The Central Tenders Board Act is repealed ^{Repeal} save that any actions in respect of a procurement or disposal of public property which had commenced before the proclamation of this Act shall proceed as if the Central Tenders Board Act continues to have effect, and a reference to the Director of Contracts or the Central Tenders Board Act shall be construed as a reference to the Office or this Act as the context requires.

(2) Section 28 of the Tobago House of Assembly Act is repealed.

Chap. 25:03

65. Where any procurement proceeding is in force ^{Savings of certain procurement proceedings} upon the commencement of this Act, it shall be deemed to be in conformity with this Act and to the extent that the transaction would have been valid prior to the commencement of this Act, it shall be deemed to be so valid for the purposes of this Act.

PART VIII

TRANSITIONAL

66. (1) This section applies to an officer who, on the ^{Options available to public officers} date of assent of this Act—

- (a) holds a permanent appointment to; or
- (b) holds a temporary appointment to, and has served at least two continuous years in,

a public office specified in the Schedule 2.

Schedule 2

(2) A person to whom this section applies may, within three months of the coming into force of this Act, exercise one of the following options:

- (a) voluntary retire from the Public Service on terms and conditions agreed between him or his appropriate recognized association and the Chief Personnel Officer;

- (b) transfer to the Office with the approval of the Public Service Commission on terms and conditions no less favourable than those enjoyed by him in the Public Service; or
- (c) remain in the Public Service provided that an office commensurate with the office held by him in the Public Service prior to the date of the assent of this Act, is available.

Preservation and
accrual of
superannuation
benefits

67. The superannuation benefits which have accrued to a person who exercises the option under section 66(2)(b) shall be preserved at the date of his employment by the Office and such person shall continue to accrue superannuation benefits under the Pensions Act up to the date of the establishment of the pension fund plan on the basis of salary applicable to the office which he held immediately prior to his employment by the Office under section 66.

Payment of
superannuation
benefits by the Office
prior to the
establishment of a
pension fund plan

68. (1) Where a member of staff of the Office who exercises the option referred to in section 66(2)(b) dies or retires prior to the establishment of the pension fund plan, and at the date of his death or retirement was in receipt of a salary higher than that referred to in section 67, the superannuation benefits payable to his estate or to him shall be based on the higher salary.

(2) The difference between the superannuation benefits payable on the basis of the higher salary and those payable under the Pensions Act on the basis of the salary referred to in section 66, shall be paid by the Office.

Payment of
superannuation
benefits by pension
fund plan

69. (1) Where a member of staff of the Office who exercises the option referred to in section 66(2)(b) retires or dies and is a member of the pension fund plan, he shall be paid superannuation benefits by the pension fund plan at the amount which, when combined with the superannuation benefits payable under section 67 is the equivalent to the benefits based on his pensionable service in the Public Service combined with his service in the Office and calculated at the pensionable salary applicable to him on the date of his retirement or death.

(2) For the purposes of this section, “pensionable salary” has the meaning assigned to it by the pension fund plan.

70. Nothing in this Act affects the validity of any proceedings commenced, or contract entered into, before the commencement of this Act, but if this Act would have been applicable to the proceedings or the contract if the proceedings had commenced, or the contract had been entered into after the commencement of this Act, the conduct of the proceedings and the performance of the contract shall, from the commencement of this Act, be subject to such directions as the Office may issue under section 14(1)(c) for the purposes of achieving the objectives of this Act.

Preservation of
existing proceedings
and contracts

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 imprisonment for one year
39	Failure of procuring entity to comply with requirements with respect to the confidentiality of information	Summary Conviction-\$500,000 and imprisonment for one year
40	Victimisation	Summary Conviction-\$500,000 and imprisonment for one year
41	Failure of a person to report instances of collusion	Summary Conviction-\$500,000 and imprisonment for one year
46	Concealing or destroying information required for an investigation	Conviction on Indictment - \$5 Million and 10 years imprisonment
52	Failure to comply with requirements with respect to confidentiality in challenge proceedings	Summary Conviction-\$500,000 and imprisonment for one year

SCHEDULE 2

[Section 66(1)]

Public Offices of the Central Tenders Board

Director of Contracts
Deputy Director of Contracts
Assistant Director
Administrative Officer IV
Administrative Officer II
Contracts Officer III
Contracts Officer II
Contracts Officer I
Clerk IV
Accounting Assistant
Clerk III
Clerk II
Clerk I
Clerk Stenographer IV
Clerk Stenographer III
Clerk Stenographer I/II
Clerk Typists
Vault Attendant
Messenger II
Messenger I
Maid I
Cleaner I
Chaffeur I
Estate Constable
Architect II
Civil Engineer II
Mechanical Engineer
Quantity Surveyor II
Economist I
Quantity Surveyor Assistant I
Engineering Assistant II
Draughtsman I

Passed in the House of Representatives this day
of , 2014.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say, by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2014.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 19 of 2014

FIFTH SESSION
TENTH PARLIAMENT

REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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

Received and read the

First time

Second time

Third time