

**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY (INELIGIBILITY PROCEEDINGS)
(NO.2) REGULATIONS, 2021**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Report of prohibited conduct
4. Notice of proposed ineligibility
5. Hearings and evidence
6. Recommendation of the Office
7. Ineligibility sanction
8. Scope and consequences of ineligibility
9. Obligation of procuring entity upon eligibility
10. Ineligibility exemption
11. Review of ineligibility
12. Reinstatement

Legal Notice No.

REPUBLIC OF TRINIDAD AND TOBAGO

**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY ACT, 2015**

REGULATIONS

Made by the Minister, on the recommendation of the Office of Procurement Regulation, under section 63 of the Public Procurement and Disposal of Public Property Act and subject to affirmative resolution of Parliament

**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY (INELIGIBILITY PROCEEDINGS)
(NO.2) REGULATIONS, 2021**

Citation

1. These Regulations may be cited as the Public Procurement and Disposal of Public Property (Ineligibility Proceedings) Regulations, 2021.

Interpretation

2. In these Regulations –
“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.

Report of prohibited conduct

3. (1) If an officer of a procuring entity, a bidder or a member of the public suspects that a supplier or contractor, participating in a contract award procedure, or a senior officer of the supplier or contractor has engaged in any of the prohibited activities under Section 41 (2) or (3) of the Act, he may bring this to the attention of the Accounting Officer, or equivalent in a public body, or to the Office in a report, together with any documentary evidence at his disposal.

(2) Where, as a result of the information provided or subsequent to his own investigation, the Accounting Officer, or equivalent in a public body, is satisfied that there is sufficient evidence to support a finding of prohibited conduct, he may transmit the report and evidence to the Office.

(3) The Office shall, within ten working days of receipt of the report, review its contents and decide whether or not to proceed.

(4) Where the Office determines that the report does not contain sufficient evidence to support a finding of ineligibility or the imposition of a sanction, it shall notify the person who provided the report to the Office, of its decision and of the reasons for the decision.

(5) Where new facts or evidence materializes the person who provided the report to the Office, may amend and resubmit a revised report for consideration by the Office.

(6) The Office shall determine whether there is sufficient evidence in each case to declare a supplier or contractor, accused of a prohibited conduct, ineligible and to issue a Notice of Proposed Ineligibility.

(7) For the purposes of this regulation, “prohibited conduct” means conduct referred to in sections 58(3) or 59(7) or conduct which is in contravention of the Act.

4. (1) The Office shall prepare and send to the supplier or contractor, and where applicable the senior officer of a supplier or a contractor, (hereinafter referred to as “the Respondent”), a Notice of Proposed Ineligibility based on the information and evidence contained in the report submitted to the Office pursuant to regulation 3(1) and any supplemental information received by the Office.

Notice of
proposed
ineligibility

(2) The Notice of Proposed Ineligibility shall be communicated to the Respondent in writing and shall inform the Respondent of the details of the proposed ineligibility, the evidence to be relied upon and the applicable procedure.

(3) Where the Respondent does not inform the Office, in writing, within ten working days of the confirmation of receipt of the Notice of Proposed Ineligibility, of its intention to contest the allegation and provide a written reply to the contents of the Notice of Proposed Ineligibility, the Office shall, and without the need for a hearing, issue a decision imposing the sanction proposed in the Notice of Proposed Ineligibility, taking into account any mitigating factors disclosed. The Office may extend the time for the submission of the written reply where a request is made in writing by the Respondent and good cause shown.

(4) Where the Respondent informs the Office, in writing, that it intends to contest the allegations set out in the Notice of Proposed Ineligibility, the Office shall, within five working days, inform the Respondent, in writing, of the procedure to be followed, including any hearing proposed.

Hearings and evidence

5. (1) A hearing shall take place in the manner provided for by the Office.

(2) A party may appear in person or may be represented by an Attorney-at-law or such other person as shall be recognised by the Office as suitable for the purposes of such representation.

(3) The hearing shall be closed to the public.

(4) The Office shall, for each hearing, take and keep a record stating the time and place of the hearing and the names of the parties to the hearing, together with a summary of the hearing, and the record shall be available to all parties within fourteen working days of the completion of the hearing.

(5) The Office retains the discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

Recommendation of the Office

6. (1) Upon the conclusion of a hearing, the Office shall determine whether the proposed ineligibility is in the interest of the procuring entity, the State or the general public on the basis of the evidence presented.

(2) The existence of a proven cause for ineligibility does not necessarily require that the supplier, contractor or senior officer be declared ineligible or receive the sanction proposed in the Notice of Proposed Ineligibility.

(3) When making a determination with respect to ineligibility, the Office shall take into consideration the seriousness of the supplier's, contractor's, or senior officer's acts or omissions and any remedial measures or mitigating factors, which the Respondent provides.

(4) Before making a determination with respect to ineligibility, the Office shall consider factors including the following:

- (a) the severity of the Respondent's conduct;
- (b) the degree of involvement of the Respondent;
- (c) the magnitude of any losses caused by the Respondent;
- (d) any damage caused by the Respondent to the credibility of the procurement process;
- (e) the past conduct of the Respondent;
- (f) the extent to which the Respondent cooperated in the investigation and whether such cooperation is of substantial benefit to the procuring entity;
- (g) whether the Respondent has fully investigated the circumstances surrounding the cause for ineligibility and, if so, made the result of the investigation available to the Office and taken appropriate disciplinary action against the individual responsible for the activity which constitutes cause for ineligibility;
- (h) whether the Respondent's management recognizes and understands the seriousness of the prohibited conduct giving rise to the cause for ineligibility and has instituted or agreed to institute new or revised review and control procedures and ethics training programmes or other programmes to prevent its recurrence; and
- (i) any other factor that the Office deems relevant.

(5) Where the Office determines that there is insufficient evidence to support the proposed ineligibility or sanction, it shall recommend that no ineligibility sanction be imposed.

(6) The Office shall notify the Respondent of its decision not to impose any ineligibility sanction.

(7) The Office shall provide its decision immediately

after the hearing and provide written reasons within five working days after the hearing.

Ineligibility
sanction

7. (1) The Office may impose an ineligibility sanction in one of the following forms:

- (a) a formal “Letter of Reprimand” based on the Respondent’s conduct but which falls short of ineligibility, which may be used where it is the Respondent’s first offence and where the offence is relatively minor or where there are sufficiently compelling mitigating factors;
- (b) conditional non-debarment, not exceeding six months, which threatens ineligibility where certain conditions are not met, based on the gravity of the offences and the existence of mitigating factors, and in the event that the Respondent fails to demonstrate compliance with the conditions within the time periods established by the Office, ineligibility would automatically become effective; and
- (c) ineligibility for one to ten years, which is appropriate only in cases of particularly egregious offences and the severity of the offence will determine the period of ineligibility.

(2) The decision of the Office shall be final and shall take effect immediately, without prejudice to any other action taken by any other government organisation under applicable law.

Scope and
consequences of
ineligibility

8. (1) The Office may extend the effect of the Notice of Ineligibility to include a senior officer of the supplier or contractor provided he is:

- (a) specifically named in the Notice of Proposed Ineligibility; and
- (b) given an opportunity to respond.

(2) Following ineligibility, the supplier or contractor, senior officer, or any person who purports to act in such a capacity, shall be included in the Ineligibility List maintained by the Office.

Obligation of
procuring entity
upon eligibility

9. (1) In respect of suppliers or contractors and other persons properly included in the Ineligibility List, a procuring entity shall:

- (a) exclude them from receiving contracts awarded by it;
- (b) not solicit offers from, award contracts to, or consent to sub-contracts with them;
- (c) reject any bids received from them in response to an invitation for bids;
- (d) not evaluate any proposals, quotations, or offers received from them or enter into discussions with them; and
- (e) not consent to their appointment as a sub-contractor to a supplier or contractor who has not been declared ineligible.

(2) Notwithstanding the ineligibility of a supplier or contractor, a procuring entity may continue contracts or sub-contracts in existence at the time of the listing on the ineligibility list, unless the Accounting Officer, or his equivalent in a public body, directs otherwise.

10. Notwithstanding the inclusion of a supplier or contractor on the ineligibility list, a procuring entity may apply to the Office for an exemption to conduct business with the supplier or contractor on the basis that there are overriding requirements in the public interest which justify the exemption.

Ineligibility exemption

11. (1) A supplier, contractor, or senior officer who is declared ineligible may seek a review of the declaration of ineligibility with the Office where:

Review of ineligibility

- (a) new material evidence or facts materializes which tend to exculpate the ineligible supplier, contractor, or senior officer;
- (b) a conviction or civil judgment, upon which the ineligibility was based, has been reversed;
- (c) there has been a *bona fide* change in ownership or management of the supplier or contractor; or
- (d) the supplier, contractor, or senior officer has complied with any remedial, preventative or other measures imposed by the Office during the period of conditional non-debarment.

(2) A request for a review shall be made in writing and the procedure for review shall be determined by the Office at its discretion.

Reinstatement

12. The Office may withdraw the name of a supplier, contractor, or senior officer from the Ineligibility List by notifying the supplier, contractor, senior officer, procuring entity, and all public bodies in writing within seven days, whenever the Office determines that one or more of the conditions of regulation 11 have been met.

Dated this day of , 2021.

Minister of Finance

Approved by the Senate this day of , 2021

Clerk of the Senate

Approved by the House of Representatives this day of , 2021.

Clerk of the House