

General Guidelines



ETHICAL CODE OF CONDUCT FOR PUBLIC BODIES AND PUBLIC OFFICERS



Prepared by: The Office of Procurement Regulation

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Developed in accordance with the Trinidad and Tobago Public Procurement and Disposal of Property Act Number 1 of 2015 (as amended) and the attendant Public Procurement Regulations

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INTRODUCTION

PURPOSE & OBJECTIVE

1. Public procurement in Trinidad and Tobago is governed by the *Public Procurement Retention and Disposal of Public Property Act 2015 as amended (“the Act”), Regulations, Handbook and Guidelines and Directions issued by the Office of Procurement Regulation (“the OPR”).*
2. The values enshrined in section 5 of the Act namely, *accountability, integrity, transparency, value for money, efficiency, fairness, equity and public confidence*, serve as overarching values to which adherence is required by all Public Bodies & Public Officers participating in public procurement.
3. Unethical practices and its concomitant threats of conflict of interest, fraud, collusion and corruption may be considered to be major threats to the above-mentioned objects of the Act. In this respect, this guideline aims to encourage the adoption of good practices and set the minimum standards of ethical behaviour and conduct of Public Bodies & Public Officers participating in public procurement. It, however, does not anticipate every ethical dilemma or situation that may be encountered.
4. The guideline is being issued pursuant to **Section 13 (c) and Section 30 of the Act**. It is to be noted that this guideline complements the Act and the Regulations and **does not** replace any part of the Act or the Regulations or any other Law.

GENERAL EXPECTATIONS¹

INTEGRITY

5. Public Bodies & Public Officers are expected to make decisions and act without consideration of their private interests. The improper use of a public service position for private advantage is regarded as a serious breach of professional integrity

SERVING THE PUBLIC INTEREST

6. Public Bodies & Public Officers are expected to maintain and strengthen the public’s trust and confidence in public institutions, by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding the constitution and the laws, and seeking to advance the public good at all times.

LEGITIMACY

7. Public Bodies & Public Officers are required to administer the laws and government policy, and to exercise legitimate administrative authority under delegation. That power and authority should be exercised impartially and without fear or favour, for its

¹ Adapted from the OECD Public Procurement Tool-Box

proper public purpose as determined by the legislature or the Public Officer's organisation as appropriate in the circumstances.

TRANSPARENCY AND ACCOUNTABILITY

8. Public Bodies & Public Officers are expected to use their powers and resources for the public good, in accordance with the law and government policy. They should be prepared to be accountable for the decisions they make and to justify their official decisions and actions to the OPR or any other relevant authority, or publicly, as appropriate in the circumstances.

FAIRNESS

9. Public Bodies & Public Officers should make official decisions and take action in a fair and equitable manner, without being affected by bias or personal prejudice, taking into account only the merits of the matter, and respecting the rights of affected suppliers/contractors.

EFFICIENCY AND EFFECTIVENESS

10. Public Bodies & Public Officers are required to obtain best value in expenditure of public money/funds, and efficient use of assets deployed in or through public management, and to avoid waste and extravagance in the use of resources in public programmes and official activities.

SCOPE AND APPLICABILITY

11. This guideline shall apply to all Public Bodies & Public Officers,
 - i. Participating in public procurement retention and disposal of public property;
 - ii. Engaging or seeking to conduct business with a Supplier/Contractor.
12. A breach of this guideline by a public body shall be construed as a breach by the "named" procurement officer or an officer who purports to act in such capacity, if it is proved that,
 - i. the breach was committed with his direct consent or connivance; or
 - ii. he with knowledge, did not exercise reasonable diligence to prevent the commission of the breach.

COMPLIANCE AND MONITORING

13. To ensure that the principles and obligations stipulated in the Act, Regulations and this Guideline are complied with:
 - i. Public Bodies & Public Officers shall observe and communicate the content of this guideline to their members, their employees and their agents who may be directly or indirectly involved in any stage of a procurement proceedings and/or the retention and disposal of public property;
 - ii. Public Bodies & Public Officers shall also communicate the content of this guideline to all suppliers/contractors engaging and or seeking to engage in business with a public body.
14. The content of this guideline shall be communicated in the relevant local language of the supplier/ contractor and in a manner that is understood by all parties to the procurement and or disposal proceeding.
15. Public Bodies & Public Officers participating in procurement, retention and disposal of public property shall operate in full compliance with the laws of Trinidad and Tobago. The provisions of this guideline shall be deemed to be incorporated by reference into the standard bidding documents of procuring entities and shall therefore be binding on Public Bodies & Public Officers who shall commit to the same by duly signing the form set out in Appendix 1.
16. In accordance with section 13 (1) (g) the OPR may audit and review the system of procurement and disposal of public property to ensure compliance with the objectives of the Act.
17. Additionally, the OPR may, on its own initiative or upon receipt of a complaint from any party involved in public procurement or disposal of public property, or any member of the public, investigate any alleged or suspected breach of the Act.
18. Accounting Officers, Chief Executive Officers, Heads of Public Bodies, and “Named” Procurement Officers, shall be responsible for ensuring observance and compliance with this guideline.

CONSEQUENCES FOR NON- COMPLIANCE

19. Breach of this guideline may provide grounds for:
 - i. Review, Audit and or Investigation into the Public Body
 - ii. Issuance of a Directive by the Procurement Regulator
 - iii. Challenge Proceedings by Supplier / Contractor
 - iv. The establishment of the commission on an offence.

OBLIGATIONS OF PUBLIC BODIES & PUBLIC OFFICERS

GENERAL

20. Public Bodies & Public Officers must ensure that they are never beholden to an economic operator or a supplier/contractor.
21. Throughout the procurement cycle, Public Bodies & Public Officers shall seek to exhibit responsible behaviour.
22. Public Bodies & Public Officers shall inform all suppliers/contractors that they are subject to this code and cannot deviate from it.
23. Public Bodies & Public Officers shall:
 - i. Act with honesty and integrity in all their engagements and transactions with suppliers and contractors, ensuring that all the information and statements made are true;
 - ii. Report to the OPR and/or any other relevant agency any procurement practice or act which might be deemed improper;
 - iii. Ensure that no associate, officer, director, employee or agent of the supplier/contractor, or a member of the immediate family or household of the public body has directly or indirectly received or been offered any form of benefit, payment or compensation, whether tangible or intangible, in connection with procurement and disposal proceedings and an award of a contract;
 - iv. Ensure the integrity of the standing list of registered bidders and fairness and non-discrimination in sharing the bidding opportunities;
 - v. Ensure the security and safe custody of procurement, retention and disposal of public property information received or generated and shall not allow access to the information to persons who have no official reasons to know;
 - vi. Accomplish their procurement and disposal of public property activities in a timely manner, including provision of required procurement, retention and disposal information and reports;
 - vii. Maintain the good image and reputation of their procuring entities;
 - viii. Endeavour to protect their procuring entities from risks of stock outs, overstocking, overpricing and undeserving payments.
24. A Public Body shall request evidence / proof that suppliers/contractors:
 - i. Do not engage in forced or compulsory labour in all its forms;
 - ii. Respect and adhere to the working time of employees in accordance with the laws of Trinidad and Tobago and/or any collective agreements or other contractual agreements between the parties;
 - iii. Pays at least the minimum wage or the appropriate prevailing wage, whichever is higher, comply with all legal requirements on wages, and provide any fringe benefits required by laws of Trinidad and Tobago or contract;
 - iv. Does not evade or attempt to evade payment of taxes imposed in accordance with section 119 of the Income Tax Act;

- v. Provides a safe and healthy workplace setting and comply with the Occupational Safety and Health Act of Trinidad and Tobago;
- vi. Adopts responsible measures to mitigate negative impacts that the workplace has on the environment;
- vii. Strives to use durable products, reusable products and products that contain recyclable content, without significantly affecting the intended use of the goods and services, in order to contribute to waste reduction and to increase the development and awareness of sustainable and environmentally sound procurement and disposal of public property wherever possible.
- viii. Utilise strategies to deliver the product or service that minimises the emissions and discharges of pollutants and generation of waste;
- ix. Obtain, maintain and keep current all environmental permits, approval and registrations;
- x. Adhere to all applicable laws and regulations regarding the restriction of specific substances in products and manufacturing and will take particular care to restrict and/or avoid the use of the “hazardous substances”² in products.

BOARD, ACCOUNTING OFFICERS AND HEADS OF PUBLIC BODIES

25. The Board, Accounting Officers and Heads of Procuring entities shall:
- i. Ensure availability and allocation of funds to meet the commitments under procurement contracts;
 - ii. Ensure that procurement bills are paid in a timely manner and avoid accumulation of pending bills; and
 - iii. Allow the “named” procurement officers and the committees appointed to advise in relation to public procurement and disposal of public property (*such as the procurement and disposal advisory committees and evaluation committees*) to perform their duties and assignments without undue influence or interference from your offices or any other quarters.

“NAMED” PROCUREMENT OFFICERS, EMPLOYEES AND AGENTS OF PUBLIC BODIES

PROFESSIONALISM

26. Public Bodies & Public Officers shall maintain the highest standards of integrity and professionalism in their operations and when engaging in business with a supplier/contractor and their operations in respect of public procurement and disposal of public property.

AVAILABILITY OF FUNDS

27. The “Named” Procurement Officer shall confirm the allocation of funds before the initiation of any procurement and disposal of public property proceedings.

² Section 2 of the Environmental Management Act

GIFTS FAVOURS AND OTHER BENEFITS

In accordance with Section 59 of the Act:-

28. Public Bodies & Public Officers shall not request or accept a gratuity in any form, gifts of money, or other valuable thing, any form of employment, service or any other thing of value, either directly or indirectly, as an inducement or to influence the outcome of a decision or a procurement or disposal proceeding.
29. Public Bodies & Public Officers shall promptly reject a tender of any supplier or contractor who gives, agrees to give or offers directly or indirectly, any such inducement.
30. Public Bodies & Public Officers shall not procure goods, works or services from its members of staff or from persons who have direct influence on the decision of a procuring entity.
31. Where a Public Body is satisfied that a gratuity in any form, gifts, money, any form of employment, service or any other thing of value, was offered by a supplier/ contractor or any person as an inducement or to influence the outcome of a decision, or a procurement or disposal proceeding, the Public Body shall reject or revoke the tender or proposal and report the matter to the OPR for appropriate action.
32. Notwithstanding the above, in circumstances where a gift is received or is deemed to be of minor / of low value, Public Bodies & Public Officers shall regardless of the nature of a gift,
 - i. report it immediately to the named procurement officer and/ or their hierarchical superior in order to avoid any suspicion;
 - ii. mention them in a specific document, including the origin, nature and destination of the good delivered in order to guarantee traceability in case of subsequent challenge or audit;
 - iii. use them, to the extent possible, for the benefit of the entire office (for example, passing a box of chocolates, sharing calendars or distributing pens); and
 - iv. request their supervisor's advice in case of doubt, as to what is acceptable or not and on the steps to take.
33. Gifts or any other thing of value, that do not fall within the framework described above must also be recorded, with the name of the organisation concerned, and returned to the sender with a letter.

CONFIDENTIALITY

34. Public Bodies & Public Officers shall respect and preserve the confidentiality of information received in the course of any public procurement process in accordance with contractual requirements or the prevailing law and even after the business or contractual relationship with the supplier/contractor has been determined.

CONFLICT OF INTEREST & BIAS

35. In order to preserve the integrity of the bidding process, all parties should avoid any conflict of interest or unfair advantage.
36. Public Bodies & Public Officers shall ensure that all persons with direct influence on the recommendations and decisions of a procuring entity shall declare any interest that they may have in any tender and shall, so far as possible, recuse themselves from the proceedings.
37. Public Bodies & Public Officers shall also ensure that no bidder has a conflict of interest or unfair advantage during a tendering process.
38. Public Bodies & Public Officers shall ensure that their evaluation decisions are made free from bias.
39. Public Bodies & Public Officers may be compelled to disqualify a bidder in order to preserve the integrity of a bidding process. In order to better ensure that a decision to disqualify is transparent and defensible, Public Bodies shall clearly define the circumstances that they would consider to be an unfair advantage or conflict of interest prior to procurement and disposal of public property proceedings.

FAIR AND TRANSPARENT PRACTICE

40. Public Bodies & Public Officers shall act in a manner that is transparent, fair, accountable and honest, and shall not engage in any act that may promote or encourage patronage, tribalism, cronyism and nepotism or any other form of preferential treatment towards a supplier/ contractor.
41. Public Bodies & Public Officers shall act with honesty and integrity in all their engagements and transactions with supplier/ contractors.
42. Public Bodies & Public Officers shall not include in a solicitation document any condition or specification which is likely to favour a particular supplier or contractor

PROHIBITION AGAINST CORRUPT, FRAUDULENT, COERCIVE, COLLUSIVE AND UNETHICAL PRACTICES

43. Public Bodies & Public Officers shall not,
 - i. Unduly influence or exert pressure on any member of a committee or any other employee of a procuring entity to take a particular action which favours or tends to favour a particular bidder;
 - ii. Engage in bid rigging or in any form of fraudulent, collusive, corrupt, coercive, and/or unethical practices or inappropriate influences;
 - iii. Open any sealed bid, including such bids as may be submitted through an electronic system and any document required to be sealed, or divulge their contents prior to the appointed time for the public opening of the bid or documents;

- iv. Enter into a contract with a supplier/contractor where that supplier/contractor has direct influence on the decision of the public body;
- v. Tolerate impunity, that is, the freedom from any risk of being punished for doing something wrong.

DUE DILLIGENCE

44. Public Bodies & Public Officers shall,
- i. Ensure that their procurements and disposal proceedings achieve value for money in terms of cost, quality, quantity and timeliness of the delivered works, goods or services;
 - ii. Ensure that all instructions to suppliers/ contractors are given in writing by the named procurement officer;
 - iii. Ensure that any information they provide to those participating in public procurement is true, accurate and fair, and any such information provided is never designed to mislead;
 - iv. Conduct work with due diligence, always maintaining records and documentation in an easily traceable and retrievable form in order to facilitate review and audit.

DISCLOSURE DUTY

45. Public Bodies, through their “Named” Procurement Officers shall disclose, all material information about the contemplated contract including information that could influence a bidder’s decision to bid or influence the bidder’s quotes in its tender. This disclosure duty shall continue to apply throughout the tendering process.
46. Public Bodies & Public Officers shall disclose any unusual or dangerous conditions that they are aware of to a supplier/ contractor.
47. Public Bodies & Public Officers shall ensure that information in solicitation documents should be correct and complete and be provided with the average bidder in mind. Solicitation specifications should be drafted clearly and coherently.

APPENDIX 1 – DECLARATION AND COMMITMENT

To be signed by Public Officers / persons involved in the procurement and disposal proceeding and retained by the procuring entity.

My signature indicates that I have read and fully understood the content of these Guidelines for Ethical Conduct For Public Bodies & Public Officers in Public Procurement, Retention & Disposal and my responsibilities under the Code.

Name.....
 Signature.....
 Position.....
 Office address.....
 Telephone.....
 Email.....

Name of the Public Body/ Company.....
 Date..... (Public Body/Company Seal/ Rubber Stamp where applicable)
 Witness Name
 Signature.....
 Date.....

APPENDIX 2 – CONFLICT OF INTEREST DECLARATION FORM

[PUBLIC BODY]
Confidentiality and Conflict of Interest Declaration Form

Name:	Job Title:
Procurement Project:	

CONFIDENTIALITY DECLARATION

As a member of the evaluation committee/approver of the procurement process or approver of the recommendation for award of contract for the above-mentioned procurement project, I hereby declare that all the information that comes into my possession and that is deliberated upon during the procurement process, especially during the evaluation, shall not be disclosed to any other party other than that which is approved by the panel. I understand that disclosure of information to unauthorised parties may lead to my input being disqualified, rejection of the entire report and/ or the termination of the procurement process.

I confirm that the declarations I have made above are, to the best of my knowledge, correct. I fully understand that, if the [PUBLIC BODY] concludes that the declarations I have made are false or materially misleading, the [PUBLIC BODY] may refer the matter to [PERSON/ AUTHORITY] for disciplinary action.

I have read, understand and agree to adhere to the above declaration.

Title:	
Signature:	Date:

CONFLICT OF INTEREST DECLARATION

In exercising my responsibility as a member of the evaluation committee/approver of the procurement process or recommendation for award of contract I will uphold the objects of the Public Procurement and Disposal of Public Property Act 2015, as amended. Additionally, I have read and understood the [OFFICE OF PROCUREMENT REGULATION’S GUIDELINES FOR ETHICAL CONDUCT FOR SUPPLIERS AND CONTRACTORS AND GUIDELINES FOR ETHICAL CONDUCT FOR PUBLIC BODIES AND PUBLIC OFFICERS] and I will take all reasonable steps to notify the Chairman of the Evaluation Committee, the ‘named’ Procurement Officer or the Accounting Officer / CEO (as may be appropriate) of any conflict that arises through professional or personal interests relevant to this procurement project.

I agree to declare any effort by any party to unduly influence the evaluation process and decisions concerning the award of a contract, at the earliest opportunity. Should an actual or potential conflict arise at any time during the evaluation process, I further declare that I will immediately notify the Chairman of the Evaluation Committee, the ‘named’ Procurement Officer or the Accounting Officer / CEO in writing. I acknowledge that the Chairman, the ‘named’ Procurement Officer or the Accounting Officer / CEO may take such decision as appropriate, including discontinuing my involvement in the evaluation process.

Please enter details in the relevant sections below; If no conflict exists, please write “none”.

Please indicate whether you or your family members have any ownership, part-ownership or directorship (including non-executive directorships) in any of the firms participating in this process:

--

Please indicate if you or your family members have any majority or controlling shareholdings in organisations entering this process:

--

Please indicate if you or family members have received any benefits, gifts or hospitality from organisations entering this process:

--

Please provide details of any actual³, potential⁴ or perceived⁵ conflict of interest that may arise from your participation in this procurement project:

--

I have read, understood and agree to adhere to the above declaration:

Title:	
Signature:	Date:

REVIEW OF DECLARATION (to be completed by Named Procurement Officer or delegate)

Ensure the Declaration has been completed and signed. Where a conflict of interest has been declared state how the conflict of interest will be managed.

Conflict of interest management plan:

- Restricting:** imposing restrictions on the member’s further involvement in the matter.
- Recruiting:** engaging an independent third party to oversee all or part of the process and verify its integrity.
- Removing:** where the member chooses, or is asked, to be removed completely from the matter.
- Relinquishing:** where the member relinquishes the private interest that created the conflict
- Resigning:** where the member resigns from their position with the Office. (This should only be considered if the conflict of interest can’t be resolved in any other workable way).

Please provide details of option(s) chosen above:

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Person proposing the management plan:

Title:	
Signature:	Date:

³ Actual Conflict of Interest: where a real conflict already exists

⁴ Potential Conflict of Interest: where a conflict is about to happen, or could happen

⁵ Perceived Conflict of Interest: where others might reasonably perceive that a person is compromised and unable to be independent, impartial or objective (the appearance or perception by others of a conflict of interest can be as damaging as an actual conflict of interest)

Person approving the management plan:

Title:	
Signature:	Date:

Consent of person making the declaration (not applicable when the plan is to remove the member):

Title:	
Signature:	Date:

APPENDIX 3 – EXAMPLES OF GIFTS

Gifts and entertainment include for example:

- gratuities
- favour
- meals
- attending sporting, social and cultural events
- lodging/accommodation
- loans and loan guarantees
- discounts or favourable terms on any product or service
- services
- prizes
- transportation
- use of vacation facilities
- shares or other securities or participation in share offerings
- home improvements
- tickets to cultural, social or sporting events
- gift certificates