

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

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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 (CHALLENGE PROCEEDINGS)
(NO.2) REGULATIONS, 2021**

Citation

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

Procedure for review

2. (1) An application for review shall be made in writing and addressed to the Office within the time-limits set out in section 50(2) of the Act.

(2) Upon receipt of an application under section 50(1) of the Act, the Office shall promptly register the application for review.

(3) The decision of the Office shall be binding on the supplier or contractor who made the application and the procuring entity whose tender procedure is the subject of the review.

Supplier or contractor

3. Where the Office finds that a supplier or contractor who made an application for review has established a valid ground for the review, it may, as appropriate, apply the remedies provided for in section 50(10) of the Act.

- 4.** Where the Office is of the opinion that:
- (a) an application for review is manifestly without merit;
 - (b) an application for review was not presented in compliance with the timelines set out in section 50(2) of the Act; or
 - (c) the supplier or contractor who made the application for review has not demonstrated sufficient standing by way of either a pecuniary or otherwise economic interest in the procurement proceedings,

Dismissal of application

it shall dismiss the application for review and immediately lift any suspension that is in effect.

5. (1) The Office shall conduct a review independently and impartially in accordance with the Hearing Rules and Procedures.

Duties of the Office

(2) A member of the Office who has a direct or indirect personal interest in a matter being considered or to be considered shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his attention or knowledge, disclose the nature of his interest to the Office which shall appoint an alternative member.

6. (1) The Office shall be responsible for the organization and management of applications for review.

Office

(2) The business of the Office and all clerical matters arising out of the conduct of a review under this procedure shall be carried out by the Office, and in particular, all applications, replies and subsequent communications shall be addressed to the Office unless otherwise specified.

(3) A copy of all relevant forms to be used for the review procedure shall be made available for collection at the Office or for download from the website of the Office.

(4) Upon receipt of an application for review the Office shall prepare a case file in an appropriate form.

7. A party to a review may appear in person or may be represented by an Attorney-at-law or such other suitably qualified and experienced person, including an engineer, quantity surveyor,

Representation

valuator or such other person as is recognized by the Office for the purposes of the representation.

Submission of
application for
review

8. (1) A supplier or contractor who wishes to have a review conducted shall submit the following documents to the Office:

- (a) a completed application for review in the form provided for by the Office clearly setting out the grounds for review;
- (b) a copy of documentary evidence in support of the claim set out in the application for review;
- (c) where a request for a review is made by an agent of the supplier or contractor, an appropriate power of attorney in a form acceptable to the Office; and
- (d) where the request for review is made by a company, an extract of the minutes certified by the relevant personnel under resolution and seal of the Board.

(2) The Office shall record its receipt of the application for review in the Review Register and assign it a Case Reference Number.

(3) The Office shall immediately verify that the application for review is in conformity with these Regulations.

(4) An application for review that is not in conformity with these Regulations shall be rejected and returned to the applicant together with a statement of the reasons for its rejection.

(5) Upon recording the receipt of an application for review, the Office shall, pursuant to section 50(6) of the Act, notify the procuring entity against whom the application for review is made, in writing and delivered to the attention of the procurement officer appointed pursuant to section 61(2) of the Act, and the application for review shall include with the notice a complete copy of the Application.

(6) The Office shall simultaneously notify all qualified suppliers and contractors, and any public body whose interests are or may be affected by the application for review in accordance with section 50(6) of the Act.

9. (1) Pursuant to section 50(5) of the Act, the procuring entity against whom the application for review is made shall, within three working days of the receipt of the notification from the Office, submit to the Office the following documents:

Submission of
reply

- (a) a written reply to the application for review prepared and signed by the Accounting Officer or its equivalent in a public body;
- (b) a copy of documentary evidence relied upon in support of the reply; and
- (c) any other document referred to in the application for review which is in its possession but not available to the supplier or contractor who made the application for review.

(2) The failure to submit a written reply within the specified period will not prevent the conduct of the review procedure and the procuring entity shall be bound by any decision of the Office.

(3) Where a procuring entity fails to submit a written reply within the specified time limit, the Office may proceed with the formal assignment of the case.

(4) The Office may, if it is satisfied that the application for review was duly served on the procuring entity against whom the application for review is made and the procuring entity failed to submit a written reply without good cause, the Office may proceed with its deliberations on the basis of the evidence before it as if such proceedings had been conducted in the presence of all parties.

(5) A procuring entity may, at the time of submitting its written reply, request that the Office authorize it to award a procurement contract or enter into a framework agreement on the grounds that a delay in awarding the procurement contract or entering the framework agreement would be contrary to the public interest or such other consideration which would justify awarding the procurement contract or entering the framework agreement while the Office conducts its review.

10. (1) Upon the receipt of a written reply, the Office shall collate the relevant documents into a single case file, including the application for review, the written reply, the documentary evidence provided and the powers of attorney, if any.

Registration

(2) The Office shall notify the parties of the date of the case management conference which the parties involved are required to attend.

Suspension

11. (1) Within three working days of the receipt of an application for review, the Office shall convene to consider whether or not the procurement proceedings should be suspended.

(2) The Office shall comply with the provisions of the Act, and in particular sections 50(4) and 50(7).

Opening of challenge procedure

12. (1) The Office shall, taking into account the nature of the case defined in the application for review, determine the time and place of any hearing it intends to conduct.

(2) In determining the order and time of the hearing, the Office shall give sufficient consideration to preventing the delay of the proceedings.

(3) The Office shall communicate this decision to the parties involved in such form as the Office deems appropriate.

Hearing

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

(2) Where a party, despite having received notice of the hearing, fails to appear, the Office, if satisfied that the notification was received and the party is absent without good cause, may proceed with the hearing which shall be deemed to have been conducted in the presence of all the parties.

(3) The hearing shall be open to the public other than in the cases set out in section 52 of the Act.

(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 persons attending the hearing, together with a summary of the hearing.

(5) The parties to the proceedings shall have access to a copy of the record within ten days of the conclusion of the hearing.

(6) A request for access to the record of the hearing shall be made in writing to the Office and on notice to the other party to the proceedings.

(7) The Office shall prescribe in the Hearing Rules and Procedures the format within which access to the records will be provided.

(8) Notwithstanding the procedures set out in this regulation, the Office may proceed to determine a matter before it without a hearing if it is satisfied that the information, in the form of documentary evidence or case files presented, is sufficient to make a decision on the matter, and any decision so made shall be deemed to be in compliance with section 51(3) of the Act.

14. (1) The documentary evidence to be relied upon by a party in support of his claim and the written reply shall be put before the Office as attachments to the Application for Review and Reply Forms. Evidence

(2) Subsequent documentary evidence shall be admitted only where, in the opinion of the Office, it is relevant and only with the Office's consent.

(3) During a hearing a party may submit oral evidence or written witness statements which shall be subject to cross-examination in support of its own contentions by way of the voluntary appearance of witnesses.

(4) The Office may request the submission of further documentary evidence from the parties or their witnesses.

(5) The standard of proof to be applied in challenge proceedings shall be that required in a Court in civil matters.

(6) In the hearing of any matter before it the Office may act without regard to technicalities and legal form and shall not be bound to follow the rules of evidence stipulated in the Evidence Act, but the Office may inform itself on any matter in such manner as it thinks just and may take into account any generally recognized scientific or technical fact, information or opinion within its area of expertise and such facts as it considers relevant but in any such case,

the parties shall be given the opportunity, if they so desire, of adducing evidence in regard thereto.

(7) Notwithstanding sub-regulation (6), evidence is not admissible at a hearing if such evidence would be inadmissible in a Court by reason of any privilege under the law of evidence.

Conclusion of proceedings

15. (1) The Office shall, when satisfied that all contentions and evidence of the parties have been submitted, conclude the proceedings.

(2) The decision of the Office shall be confined to the issues raised by the application for review and written reply.

(3) The Office shall immediately notify the parties of its decision in accordance with the provisions of section 50(11) of the Act.

(4) The written reasons for decisions shall be delivered in accordance with the provisions of section 50(12) of the Act.

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