

# ETHICAL CODE OF CONDUCT FOR SUPPLIERS & CONTRACTORS



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Developed in accordance with the Trinidad and Tobago Public Procurement and Disposal of Public Property Act Number 1 of 2015 (as amended) and the attendant Public Procurement and Disposal of Public Property Regulations 2021

## REVISIONS

### Revisions of 2023

Revisions were made within these guidelines with respect to:

Revision	Page No.
Section identified as 'Key Terms' relocated	11
Deletion of Glossary of Terms; replaced by link to OPR website for Glossary of Terms	14
Inclusion of link to OPR's website for Acronyms	14
Deletion of Item #7 from original document - <i>"The content of this guideline shall be communicated in the relevant local language and in a manner that is understood by all."</i>	
Minor Editorial Changes throughout document	

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TABLE OF CONTENTS	
TABLE OF CONTENTS .....	3
Introduction .....	4
Purpose & Objective .....	4
Scope and Applicability .....	4
Compliance and Monitoring .....	4
Consequences for Non- Compliance.....	5
Obligations of Suppliers/ Contractors.....	5
Professionalism .....	5
Fair And Transparent Practice.....	5
Gifts, Favors And Other Benefits.....	6
Prohibition Against Corrupt, Fraudulent, Coercive, Collusive And Unethical Practices .....	6
Confidentiality.....	7
Conflict of Interest .....	7
Labour, Human Rights And Social Responsibility .....	7
Health, Safety And Environment.....	8
APPENDIX 1 – DECLARATION AND COMMITMENT .....	9
APPENDIX 2 – EXAMPLES OF GIFTS .....	10
LISTING OF KEY TERMS.....	11
GLOSSARY OF TERMS .....	14
LIST OF ACRONYMS.....	14

## 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 suppliers/contractors of goods and services to a public body 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 suppliers/contractors engaging or seeking to conduct business with a public body. It however, does not anticipate every ethical dilemma or situation one may encounter.
4. The guideline is being issued pursuant to Section 13 (1) (c) and Section 30 and 54 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.

### SCOPE AND APPLICABILITY

5. This guideline shall apply to all suppliers/ contractors and their agents:
  - i. Participating in public procurement or disposal of public property;
  - ii. Engaging or seeking to conduct business with a public body.

### COMPLIANCE AND MONITORING

6. To ensure that the principles and obligations stipulated in the Act, Regulations and this Guideline are complied with,
  - i. All named procurement officers shall observe the rules of and communicate the content of this guideline to suppliers/ contractors ; and
  - ii. All suppliers/contractors shall observe the rules of and communicate the content of this guideline to their agents, including employees, subcontractors and subsidiaries who may be engaged in procurement proceedings with a public body;
7. Suppliers/ contractors engaging in business with public bodies 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 suppliers/contractors who shall commit to the same by duly signing the form set out in Appendix 1: Declaration and Commitment.

8. The OPR shall, on its own initiative or upon receipt of a complaint, consider, inquire into, investigate and or institute ineligibility proceedings in accordance with section 41 and section 58 of the Act and [Regulation X].
9. In accordance with [Regulation X] a public body may submit a report to the OPR on any breaches by suppliers/ contractors of this guideline and any action taken against the breach.

#### CONSEQUENCES FOR NON- COMPLIANCE

10. Breach of this guideline may provide grounds for,
  - i. Rejection or revocation of a bid, tender or proposal by a procuring entity;
  - ii. Being placed on the ineligibility list thereby debarring suppliers/contractors from participating in procurement proceedings for a stated period; or
  - iii. Establishing the commission of an offence.

#### *OBLIGATIONS OF SUPPLIERS/ CONTRACTORS*

##### PROFESSIONALISM

11. A supplier/contractor shall maintain the highest standards of integrity and professionalism in their operations and when engaging in business with a public body.
12. A supplier/ contractor shall comply with professional standards of their industry or of any professional body of which they are members. Where a supplier/contractor is a member of a professional body, the supplier/contractor shall uphold the code of ethics of the respective profession and be of good professional standing.

##### FAIR AND TRANSPARENT PRACTICE

13. A supplier/contractor 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 personnel of a public body who are directly or indirectly involved in the procurement proceedings, conducted by a public body or personnel who may be in a position to influence the outcome thereof including but not limited to an elected or appointed officer.
14. A supplier/contractor shall act with honesty and integrity in all their engagements and transactions with a procuring entity, ensuring that all the information and certifications provided, as well as the statements made, are true.

15. A supplier/contractor shall respond to solicitations by a procuring entity in an honest, fair, and comprehensive manner, accurately reflecting their capacity to satisfy the requirements set out in the bid or contract documents.
16. In accordance with section 34 of the Act, a supplier/ contractor shall ensure that the bid price reflects the ability of the supplier/contractor to successfully perform the procurement contract and is not abnormally low.
17. A supplier/contractor shall perform the obligations of the contracts efficiently and effectively and ensure that competent persons carry out its contractual obligations.
18. A supplier/ contractor shall accept full responsibility for all works, services or supplies provided to a procuring entity.

#### GIFTS, FAVORS AND OTHER BENEFITS

In accordance with Section 59 of the Act:-

19. A supplier/contractor shall not solicit, offer, give, receive, grant, promise or represent to offer, a gratuity in any form, gifts, money, any form of employment, service or any other thing of value, either directly or indirectly, with intent of gaining an advantage or a concession for himself or any other person, to any public body, personnel of a public body or personnel who may be in a position to influence the outcome thereof including but not limited to an elected or appointed officer.
20. A supplier/contractor shall not approach, contact, 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 them, or in respect of any matter that is before that procuring entity or that is expected to come before that procuring entity.

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

21. A supplier shall report to the OPR and/or any other relevant agency any procurement practice which might be deemed improper.
22. A supplier/contractor shall not engage in bid rigging or in any form of fraudulent, collusive, corrupt, coercive, and or unethical practices, or inappropriate influences. For the avoidance of doubt, a supplier/ contractor shall not:
  - i. engage in, nor be a party to, agreements, arrangements, business practices or conduct that are anti-competitive and designed to establish prices at an artificial,

- non-competitive level, prior to or after bid submission, that would deprive the procuring entity of the benefits of free and open competition.
- ii. misrepresent facts in order to influence a procurement exercise, manipulate the tender process, or the execution of a contract to the detriment of a public body.
  - iii. deliberately harm or threaten to harm, either directly or indirectly, personnel of a public body or their property, to influence their participation in procurement proceedings, or to affect the execution of a contract.
  - iv. engage in any obstructive practices either by deliberately destroying, falsifying, altering or concealing evidence material to an investigation, or making false, statements to an inquiry, in order to materially impede an investigation.

## CONFIDENTIALITY

23. A supplier/contractor shall respect the confidentiality of information received in the course of performing a contract and shall not disclose the same or use such information for material gain or the furtherance of its private interest.
24. A supplier/ contractor shall preserve the confidentiality of information in accordance with contractual requirements or the prevailing law and even after the business or contractual relationship with the procuring entity has been determined.

## CONFLICT OF INTEREST

25. A supplier/contractor shall declare and disclose all potential, apparent and/or actual conflict of interest to the accounting officer and the named procurement officer of a public body in writing.
26. A supplier/ contractor shall not enter into a contract with a procuring entity where the supplier or contractor is an associate, an employee of/ member of staff or person who has a direct influence on the decision of the procuring entity.
27. Where the supplier/ contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation, promptly bring such information to the attention of the public body; and shall cooperate with the public body's review and investigation of such information and comply with the instructions it receives from the public body in regard to remedying the situation.

## LABOUR, HUMAN RIGHTS AND SOCIAL RESPONSIBILITY

28. A supplier/contractor shall not engage in forced or compulsory labour in all its forms.

29. A supplier/contractor shall 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.
30. A supplier/contractor shall pay 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.
31. A supplier/ Contractor shall not evade or attempt to evade payment of taxes imposed in accordance with section 119 of the Income Tax Act.

#### HEALTH, SAFETY AND ENVIRONMENT

32. A supplier/contractor shall provide a safe and healthy workplace setting and comply with the Occupational Safety and Health Act of Trinidad and Tobago.
33. A supplier/contractor shall adopt responsible measures to mitigate negative impacts that the workplace has on the environment.
34. A supplier/ contractor shall strive to use durable products, reusable products and products (including those used in provision of services) that contain the maximum level of post-consumer waste, post-industrial and/or recyclable content, without significantly affecting the intended use of the goods or services, in order to contribute to waste reduction and to increase the development and awareness of sustainable and environmentally sound procurement, wherever possible.
35. A supplier/contractor shall utilize strategies to deliver the product or service that minimizes the emissions and discharges of pollutants and generation of waste.
36. A supplier/contractor shall obtain, maintain, and keep current all environmental permits, approvals, and registrations.
37. A supplier/ contractor shall 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”<sup>1</sup> in products.

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<sup>1</sup> Section 2 of the Environmental Management Act



**APPENDIX 1 – DECLARATION AND COMMITMENT**

The supplier/ contractor shall declare, at a minimum, the following but can be called upon to make additional declarations by the public body:

I ..... declare that I have read and fully understood the contents of the PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY ACT 2015 (AS AMENDED) AND THE GUIDELINES FOR ETHICAL CONDUCT FOR SUPPLIERS/CONTRACTORS IN PUBLIC, PROCUREMENT, RETENTION & DISPOSAL.

I do hereby commit to abide by the provisions of the PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY ACT 2015 (AS AMENDED) AND THE GUIDELINES FOR ETHICAL CONDUCT FOR SUPPLIERS/CONTRACTORS IN PUBLIC, PROCUREMENT, RETENTION & DISPOSAL.

Binding ..

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 – 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

LISTING OF KEY TERMS:	
KEY TERM	EXPLANATION
❖ The Act	Refers to the Public Procurement and Disposal of Public Property Act, 2015 as amended. <sup>2</sup>
❖ Accounting Officer	Any person appointed by the Treasury and charged with the duty of accounting for any service in respect of which moneys have been appropriated by the Constitution or by Parliament, or any person to whom issues are made from the Exchequer Account. <sup>3</sup>
❖ Anti - competitive practice	Includes any agreement, decision or practice which has as its object or effect the restriction or distortion of competition in any market.
❖ Bid- Rigging	Means collusion between persons for the purpose of tampering with procurement proceedings. <sup>4</sup> It also includes anti-competitive agreements in which otherwise competing businesses seek to determine the outcome of a bidding process by agreeing among themselves which of them will submit the bid and which of them will not.
❖ Coercive practice	deliberately harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement exercise, or to affect the execution of a contract; or affect the efficient retention or disposal of public property.
❖ Collusion	A secret agreement or cooperation especially for an illegal or deceitful purpose.
❖ Conflict of Interest	Includes a conflict between the public duty and the private interest of a public official, in which the official's private-capacity interest could improperly influence the performance of his official duties and responsibilities;

<sup>2</sup> Act No 1 of 2015 , Act No. 5 of 2016 & Act No 3 of 2017

<sup>3</sup> The Exchequer and Audit Act Chapter 69:01

<sup>4</sup> The Public Procurement and Disposal of Public Property Act as amended.

KEY TERM	EXPLANATION
❖ Corrupt practice	Includes the offering, promising, giving, receiving, or soliciting, directly or indirectly, anything of value or any other advantage to influence improperly the actions of another person or entity;
❖ Disposal of public property	Includes the transfer without value, sale, lease, concession, or other alienation of property that is owned by a public body <sup>5</sup>
❖ Fraudulent practice	Includes any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a person or entity to obtain a financial or other benefit or to avoid an obligation
❖ Gifts	Includes items received or offered, directly or indirectly, whether tangible or intangible, from a current or potential supplier or contractor or any other person(s), that can induce or be perceived to induce an employee of a public body to take actions other than those that are independent or impartial in the procurement and disposal activities of the public body.
❖ “Named” Procurement Officer	an officer who shall be responsible for public procurement and disposal of public property for that body pursuant to section 61 (2) of the Act.
❖ Obstructive practice	Refers to the act or omission of deliberately destroying, falsifying, altering or concealing evidence material to an investigation, or making false statements to an inquiry, in order to materially impede an investigation (by a public body or the OPR) into allegations of corrupt, fraudulent, coercive or collusive practices. For the purposes of the guidelines, it also includes making threats, harassing or intimidating any individual to prevent them from disclosing knowledge of matters relevant to an investigation, or from pursuing the investigation are also regarded as obstructive practice.

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<sup>5</sup> The Public Procurement and Disposal of Public Property Act as amended.

KEY TERM	EXPLANATION
❖ Procuring Entity	A public body engaged in procurement proceedings <sup>6</sup>
❖ Public Body	Has the same meaning attributed to it in section 4 of the Act.
❖ Public Officer	The holder of any public office and includes any person appointed to act in any such office <sup>7</sup> .
❖ Procurement Proceedings	In relation to public procurement, includes the process of procurement from the planning stage, solicitation of tenders, awarding of contracts, and contract management to the formal acknowledgement of completion of the contract <sup>8</sup>
❖ Senior Officer	Includes a Managing Director, Chief Executive Officer, Chief Operations Officer, Deputy Managing Director, President, Vice-President, Secretary, Treasurer, CEO, Financial Controller, General Manager, Corporate Secretary, Chief Accountant, Chief Auditor, Chief Investment Officer, Chief Compliance Officer or Chief Risk Officer. <sup>9</sup>
❖ Supplier & Contractor	According to the context, any party or potential party to procurement proceedings with a procuring entity <sup>10</sup>
❖ Unethical Practices	Include actions that fall outside of what is considered morally right or proper for a person, a profession or an industry.

\*Note: Key Terms identified should be read in conjunction with the Glossary of Terms provided by the OPR (see link below).

<sup>6</sup> Section 4 of the Public Procurement and Disposal of Public Property Act

<sup>7</sup> The Constitution of the Republic of Trinidad and Tobago

<sup>8</sup> The Public Procurement and Disposal of Public Property Act

<sup>9</sup> The Public Procurement & Disposal of Public Property Act

<sup>10</sup> The Public Procurement and Disposal of Public Property Act

## GLOSSARY OF TERMS

The Glossary of Terms is available on the OPR's website at <https://oprtd.org/handbooks-of-procurement-retention-disposal/>

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