

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
PROPERTY (PARTICIPATION IN PROCUREMENT) REGULATIONS,
2021

Arrangement of Regulations

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LEGAL NOTICE NO. 29

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 (PARTICIPATION IN PROCUREMENT) REGULATIONS,
2021

1. These Regulations may be cited as the Public Procurement and Disposal of Public Property (Participation in Procurement) Regulations, 2021. Citation

2. In these Regulations—

Interpretation

“domestic preference” means a measure that gives an advantage to a domestic good or service as compared to its foreign counterpart;

“joint venture or consortium” means an association of two or more persons who form a temporary partnership for the purpose of procurement proceedings, but who retain their separate identities, and it does not include sub-contractors; and

“Office” means the Office established pursuant to section 9 of the Act.

3. (1) A supplier or contractor who participates in an international competitive bid may benefit from domestic preference mechanisms set out in the bidding document where the procurement involves— Domestic preference

(a) the supply of goods which are manufactured exclusively in Trinidad and Tobago; or

(b) the supply of goods which are partially manufactured or assembled in Trinidad and Tobago and the supplier or contractor establishes, to the satisfaction of the procuring entity, that the proportion of domestic value added to the total value of manufactured or assembled goods is at least thirty-five per cent of the ex-works price of the goods offered.

(2) In determining the domestic value added in accordance with regulation 3(1)(b), the procuring entity shall take account of the value of domestic labour, raw materials or components manufactured within Trinidad and Tobago as well as the value of any manufacturing and assembly carried out within Trinidad and Tobago.

(3) A supplier or contractor shall certify that the necessary manufacturing capacity exists where domestic value is to be added.

(4) A supplier or contractor who participates in an international competitive bid may benefit from domestic preference mechanisms set out in the bidding document where the procurement involves the performance of works and the supplier or contractor proposes the employment of at least sixty-five per cent of domestic labour.

(5) For the purposes of sub-regulation (4), domestic labour—

- (a) includes skilled or unskilled labour and may include management input;
- (b) in the case of a national contractor, may be provided by the supplier or contractor directly;
- (c) in the case of a foreign contractor, may be provided indirectly by a foreign contractor through sub-contracting of labour from Trinidad and Tobago or through an association with a national contractor which employs labour from Trinidad and Tobago.

(6) The nationality of a supplier or contractor shall not be a condition for eligibility.

(7) In determining the eligibility of a submission for the applicable preference, the procuring entity may require evidence of eligibility which may include—

- (a) in the case of the supply of goods—
 - (i) a certificate of origin of raw materials and finished products;
 - (ii) a commercial invoice for imported components containing an exporter's declaration of origin; and
 - (iii) a signed declaration of the manufacturer testifying to the origin of the product or a signed declaration of the supplier or contractor in respect of the level of manufacture or assembly carried out in Trinidad and Tobago; and

- (b) in the case of the provision of works—
- (i) a signed statement regarding the identity of the employee to be engaged on a contractual basis;
 - (ii) a *curriculum vitae* of the manager or key personnel to be engaged;
 - (iii) a copy of the sub-contract with any local company which employs domestic labour and the local company's registration documents; and
 - (iv) a copy of the association agreement with any national contractor which employs domestic labour and the national contractor's registration documents.

4. (1) Where a margin of domestic preference is to be applied in procurement proceedings, the bidding document shall clearly state— Margin of domestic preference

- (a) the eligibility requirement for the application of the margin of preference in terms of—
- (i) ownership;
 - (ii) location of the supplier or contractor or production facilities;
 - (iii) origin of labour, raw materials or components;
 - (iv) extent of sub-contracting or association with local partners; and
 - (v) such other factors as may be relevant;
- (b) the document required as evidence of eligibility for the application of the margin of preference;
- (c) the percentage of the margin of preference to be applied; and
- (d) the manner in which the margin of preference is to be applied during the evaluation of submissions.

(2) The percentage of domestic preference permitted in a bidding document shall be ten per cent and may be reviewed quarterly by the procuring entity.

(3) Participation in procurement proceedings may be limited in order to promote local industry development or local content.

5. (1) A supplier or contractor may rely on the capacity of a joint venture or consortium to fulfil the legal, financial and technical requirements of procurement proceedings. Participation of joint ventures and other consortia

(2) The members of a joint venture or consortium are jointly and severally liable for the execution of the contract in accordance with the contractual terms set out in the bidding document.

(3) A supplier or contractor may participate in procurement proceedings as part of an existing joint venture or consortium or a proposed joint venture or consortium agreement supported by a letter of intent.

(4) A supplier or contractor participating in procurement proceedings as part of a joint venture or consortium shall provide a document in which the parties—

- (a) commit to providing the goods, works or services at their disposal in performance of the procurement contract;
- (b) assume joint and several liability for the procurement contract; and
- (c) nominate a representative who shall have the authority to conduct business for and on their behalf during the procurement proceedings.

(5) The parties to a joint venture or consortium shall not participate in the same procurement proceedings individually or with another joint venture or consortium.

Procurement
Depository

6. (1) With a view to identifying reliable Suppliers or Contractors for a subject matter of procurement activity or a class of procurement activity, the Office shall maintain a panel of registered Suppliers or Contractors known as the Procurement Depository database pursuant to section 26(1) of the Act.

(2) For the purpose of regulation 6(1), the Office shall upon establishment of the Procurement Depository database, and at least annually thereafter, advise prospective Suppliers or Contractors of the opportunity to express their interest in participating in public procurement. In that regard, the Office shall publish an appropriate notice in one (1) or more national newspaper of wide circulation and on its website.

(3) The notice referred to in regulation 6(2) above shall set out the minimum documentary evidence to be submitted by Suppliers or Contractors to the Procurement Depository database, in order to fulfil the requirements set out in section 29(1)(a)–f of the Act.

(4) A supplier or contractor may update the information he submitted to the Procurement Depository database to ensure that the information is current and valid.

(5) A supplier or contractor who is registered in the Procurement Depository database will continue to maintain a registered status, unless he is added to the ineligibility list in accordance with section 58(6) of the Act.

(6) Notwithstanding regulation 6(5) above, procuring entities shall, in accordance with section 29 of the Act, establish and evaluate qualification criteria that demonstrate the ability of Suppliers or Contractors to perform the procurement activity in question.

(7) As part of its due diligence process for pre-qualification, a procuring entity in verifying the information submitted into the Procurement Depository database, shall ensure at a minimum to comply with the requirements of section 29 of the Act.

(8) A person who knowingly makes, causes to be made, or misleads the Office by providing false information for or into the Procurement Depository database commits an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for one year.

Dated this 13th day of December, 2021

C. IMBERT
Minister of Finance

Approved by the Senate this 8th day of February, 2022.

K. MOTTLEY
Acting Clerk of the Senate

Approved by the House of Representatives this 14th day of January, 2022.

B. CAESAR
Acting Clerk of the House