



CARICOM

**REGIONAL INTEGRATION OF
PUBLIC PROCUREMENT IN THE
CARIBBEAN**

**REGIONAL COLLABORATIVE
WORKSHOP:**

**COOPERATION AND INTEGRATION, THE PATH TO
GOVERNMENT PROCUREMENT DEVELOPMENT IN THE
CARIBBEAN**

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Presented by the
**CARICOM SECRETARIAT
CSME UNIT**

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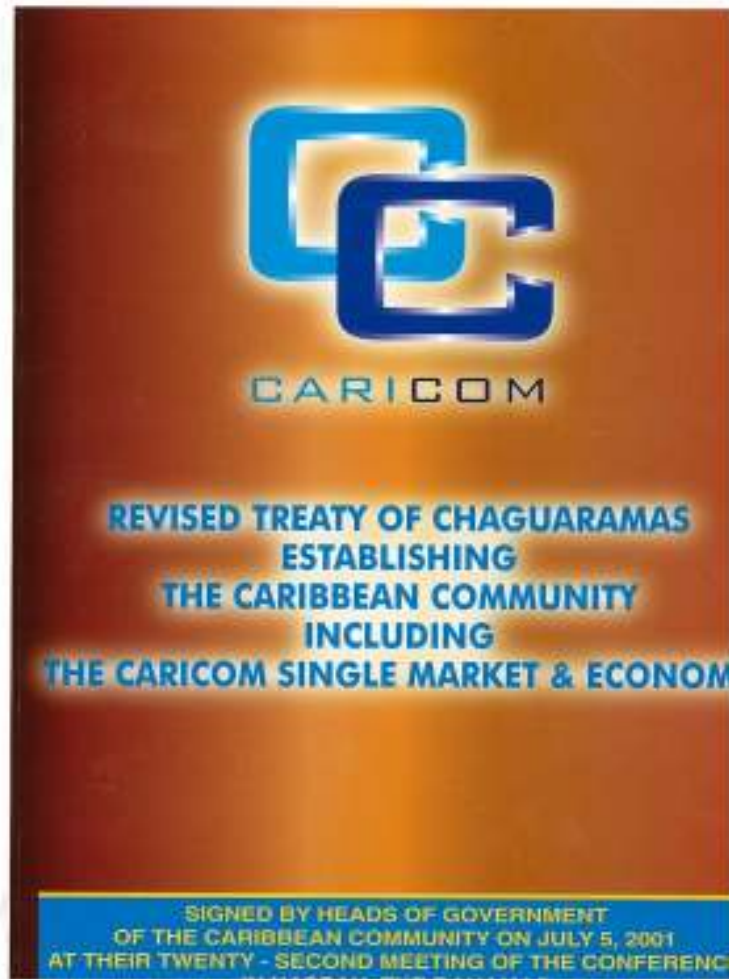




SECTION I

MANDATE

OVERARCHING JUSTIFICATION FOR THE ESTABLISHMENT AND IMPLEMENTATION OF A REGIONAL PUBLIC PROCUREMENT REGIME



OVERARCHING JUSTIFICATION FOR THE
ESTABLISHMENT AND IMPLEMENTATION OF A
REGIONAL PUBLIC PROCUREMENT REGIME

Article 239 of the Revised Treaty of Chaguaramas
obliges Member States to “*elaborate a Protocol
relating.... to.... Government Procurement.*”



LEGAL CONTEXT FOR ESTABLISHMENT OF A REGIONAL PUBLIC PROCUREMENT REGIME

- The fundamental legal context for establishment of a regional Public Procurement regime is grounded in existing obligations under the Revised Treaty, specifically the liberalization and integration of the regional market for trade in goods and services, the general obligation for which is found in Article 79



LEGAL CONTEXT FOR ESTABLISHMENT OF A REGIONAL PUBLIC PROCUREMENT REGIME

Article 79 states that

“The Member States shall establish and maintain a regime for the free movement of goods and services within the CARICOM Single Market and Economy” towards to objective of “full integration of national markets into a single unified and open area.”



LEGAL CONTEXT FOR ESTABLISHMENT OF A REGIONAL PUBLIC PROCUREMENT REGIME

- The Revised Treaty also provides the legal basis for the free movement of resources, specifically persons and capital, both of which are integral elements in Public Procurement activities.



LEGAL CONTEXT FOR ESTABLISHMENT OF A REGIONAL PUBLIC PROCUREMENT REGIME

- Articles 45 and 46 commit Member States to pursuing the goal of **free movement of their Nationals** within the Community and to the establishment of appropriate legislative, administrative and procedural arrangements to facilitate the achievement of this goal.



LEGAL CONTEXT FOR ESTABLISHMENT OF A REGIONAL PUBLIC PROCUREMENT REGIME

- Articles 39 through 41 address the **free movement of capital** within the Community, including a commitment to remove restrictions on the movement of capital and related payments as well as an obligation not to introduce any new restrictions in this regard.





SECTION II

BACKGROUND OF THE FRAMEWORK REGIONAL INTEGRATION POLICY ON PUBLIC PROCUREMENT (FRIP -2007)

BUILDING A REGIME
FOR PUBLIC
PROCUREMENT



BUILDING A REGIME FOR PUBLIC PROCUREMENT

- The first stage of building a regime for government procurement consistent with the CSME began in 2001. Two studies were done within the Caribbean Community (CARICOM) in order to develop the scope of the Community Policy on Government Procurement.



BUILDING A REGIME FOR PUBLIC PROCUREMENT

A Project was commissioned in 2003 by the CARICOM Secretariat with a grant from the IDB and the Canadian International Development Agency (CIDA).

The general objective was to support CARICOM in its efforts to establish an effective regional regime for Public Procurement that facilitates the full implementation of the CSME, and to participate more effectively in external trade negotiations relating to Public Procurement



THE PROJECT

- The Project was comprised of three components:

Component 1, *National Government Procurement Frameworks: Analysis, Comparison and Recommended Improvements,*



THE PROJECT

- Component 2, *Collection and Analysis of Government Procurement Statistics*



THE PROJECT

- Component 3, *Recommendations for a Regional Best-practice Regime for Government Procurement*



THE KEY OUTPUTS OF THIS FIRST STAGE OF THE PROJECT

- (i) fifteen individual country procurement assessment reports (CPAR);
- (ii) a comparative matrix on national government procurement frameworks;
- (iii) fourteen country procurement statistical reports; and
- (iv) a set of recommendations on how CARICOM countries could move towards adopting a regional best practices framework for government procurement.



FRAMEWORK REGIONAL INTEGRATION POLICY ON PUBLIC PROCUREMENT (FRIP)

- Altogether, the outputs just identified informed the preparation of the first draft of the *Framework Regional Integration Policy on Public Procurement (FRIP)*



COMMUNITY REVIEW OF THE FRIP

1. Nineteenth Intersessional Meeting of the Conference of Heads of Government of the Caribbean Community, NASSAU; THE BAHAMAS; 7-8 MARCH 2008
2. The Fourth Prime Ministerial Sub-Committee On The Caricom Single Market And Economy (CSME), St. John's, Antigua And Barbuda, 1 July 2008
3. Twenty-Ninth Meeting of the Conference of Heads of Government of the Caribbean Community, Bolans, Antigua and Barbuda, 1-4 July 2008.
4. The Fifth Prime Ministerial Sub-Committee On The Caricom Single Market And Economy (CSME), St. Georges Grenada, 24 February 2011.
5. The Twenty-Second Inter-Sessional Meeting of Heads of Government of the Caribbean Community, St. Georges Grenada, 25-26 February 2011.



COMMUNITY REVIEW OF THE FRIP

6. Twenty-first Meeting of the COTED, 12-13 May 2006; St. Anns, TRINIDAD AND TOBAGO
7. Twenty-second Meeting of the COTED, Georgetown, Guyana 16-17 November 2006
8. Thirtieth Meeting of the COTED, Georgetown, Guyana 14-18 June 2010
9. First Meeting of Government Procurement Officials



COMMUNITY REVIEW OF THE FRIP

10. Second Meeting of Government Procurement Officials
11. Third Meeting of Government Procurement Officials (2006 – St. Vincent and the Grenadines)
12. Fourth Meeting of Government Procurement Officials (2007 Trinidad and Tobago)
13. Regional Meeting of Senior Public Procurement and Trade Officials 2-3 June 2010, St. Michael, Barbados



THE COMMUNITY POLICY ON PUBLIC PROCUREMENT PROVIDES POLICY GUIDANCE

- in respect of the development of the requisite modern, comprehensive regulatory and institutional/administrative framework that affords the Community an opportunity to realize the benefits of the utilization of Public Procurement as a regional development driver.



FRIP PROVISIONS ACCORD WITH INTERNATIONAL BEST PRACTICES

as evidenced by:

- the World Trade Organization (WTO) Agreement on Government Procurement,
- the non-binding principles promulgated by the Government Procurement Experts' Group (GPEG) of the Asia-Pacific Economic Commission (APEC),
- the Model Law on Procurement of Goods, Construction and Services developed by the United Nations Commission on International Trade law (UNCITRAL), as well as,
- current trends in hemispheric, regional and bilateral Public Procurement negotiations





SECTION III

THE POLICY

THE FRIP

- The Policy is expected to provide the basic instruction to draft legally binding obligations, rules and other disciplines on Public Procurement in order to effect its inclusion in the Revised Treaty, in accordance with the intention of Article 239, which states: *“The Member States undertake to elaborate a Protocol relating...to....government procurement....”*



CONTENTS OF THE POLICY

- PART ONE – General Provisions
- PART TWO – Substantive Provisions
- PART THREE – Temporary Safeguards and Technical Cooperation and Assistance
- PART FOUR – Institutional Provisions
- PART FIVE – Final Provisions



PART ONE
GENERAL PROVISIONS



OBJECTIVES

- The primary objective of the Community Policy on Public Procurement is to identify and set out the conditions necessary for full integration of the national procurement markets of the Member States into a single, unified and open area through the designing and implementation of a regional best practice regime for Public Procurement that would bolster the CSME in a key aspect of economic growth and development.



SECONDARY OBJECTIVES

- Creation of the necessary competitive and non-discriminatory conditions to facilitate achievement of value for taxpayers' money.



SECONDARY OBJECTIVES

- Provision of opportunities for access to a single market with regional sales opportunities.



SECONDARY OBJECTIVES

- Strengthening the competitiveness of the regional supplier base and encourage the rational use of scarce resources.



PRINCIPLES

- Free entry and participation in the Public Procurement markets for goods, services and works;
- National Treatment and Most Favoured Nation Treatment;
- Transparency; and
- Procedural Fairness.



SCOPE OF APPLICATION



THIS POLICY APPLIES TO

- a) laws, regulations, rules, procedures and practices that relate to Public Procurement;
- b) procurement by the covered entities of the Member States of goods, services, works or any combination thereof;
- c) (c) levels of government; and



THIS POLICY APPLIES TO

- d) procurement methods and/or contractual means, including:
 - i) purchase,
 - ii) lease,
 - iii) rental, and
 - iv) concession arrangements



THE ENVIRONMENT

- Member States are encouraged to give effect to the inter-relationship between environment and procurement policies. Covered entities should make best efforts to incorporate green procurement considerations, as far as practicable, in their procurement activities.



PART TWO
SUBSTANTIVE PROVISIONS
(PARAS 76-195)



SUBSTANTIVE PROVISIONS

1. Prohibition of Offsets
2. Rules of Origin
3. Denial of Benefits
4. Publicity Concerning Laws and Regulations, and other Relevant
5. Directives or Governing Documentation
6. Prior Information Notice
7. Publication of procurement Opportunities
8. Identification and Publication of the Minimum Content of Tender Notices
9. Publication of Qualification Requirements



SUBSTANTIVE PROVISIONS

10. Publication of Time Limits for the Tender Period
11. Publication of Technical Specifications
12. Publication of Contract Award Criteria and Award Notices
13. Record of the Procurement Proceedings
14. Limitations on the Public Disclosure of Information
15. Designation of Contact Points
16. Valuation Rules
17. **Tendering Procedures**
18. Time Limits
19. Technical Specifications



SUBSTANTIVE PROVISIONS

- 20. Qualification of Suppliers
- 21. Supplier Registers
- 22. Tender Documentation
- 23. Standard Bidding Documents
- 24. Submission, Receipt and Opening of Tenders
- 25. Evaluation of Tenders and Award of Contracts
- 26. Negotiations
- 27. Contract Administration
- 28. Anti-Corruption and Conflicts of Interest
- 29. Use of Information Technology
- 30. Statistical Reporting
- 31. Supplier Challenge and Review



PART THREE
TEMPORARY RESTRICTIONS,
TECHNICAL COOPERATION
ASSISTANCE



TEMPORARY RESTRICTIONS

- Having regard to Article 47 of the Revised Treaty entitled “*Restrictions to Resolve Difficulties or Hardships arising from the exercise of rights,*” ..., a Member State adversely affected thereby may, subject to the provisions of Article 47 of the Revised Treaty, apply such restrictions on the exercise of rights as it considers appropriate in order to resolve the difficulties or alleviate the hardships.
- *Paras 196-205*



TEMPORARY RESTRICTIONS

“Temporary safeguards or restrictions that may be applied, ... include:

- Offsets, including counter-trade measures, or specific requirements for local labour and/or material content in the good or service being procured;
- Higher thresholds, thereby allowing for a larger exclusion of the domestic market from the regional market;
- Sectoral exclusions, for example the exclusion of a particular sector or sectors from coverage; and
- Price preferences for domestic suppliers. “



TECHNICAL COOPERATION AND ASSISTANCE

- The **Community shall be responsible for**, upon the request of any disadvantaged country, region, sector and/or less developed country, **providing technical cooperation** and assistance for the purposes of enabling such disadvantaged country, region, sector and/or less developed country **to participate in the Community regime** and to discharge responsibilities there-under.

Paras 206-207



TECHNICAL COOPERATION AND ASSISTANCE

- The mode, scope and extent of application of technical cooperation and assistance shall be **agreed between the relevant Member States** and **notified** to the Permanent Committee on Public Procurement



PART FOUR
INSTITUTIONAL PROVISIONS



IMPLEMENTATION INTO NATIONAL LAW

- In order to achieve the objectives of the Community Policy on Public Procurement, the tenets must be implemented into national law



ACTION BY THE COMMUNITY

- The Community shall be required to ensure the development of an appropriate **Community Model Law** on Public Procurement for implementation by the Member States. (*Para 37*)



ACTION BY THE COMMUNITY

- The Community shall be responsible for the establishment and maintenance of **regional information systems**, through media accessible by covered entities and suppliers, including the development of Community Public Procurement Notice Board, to facilitate optimal participation in the regional Public Procurement system (*Para 39*)



ACTION BY THE COMMUNITY

- The Community shall also establish the relevant regional institutional systems and mechanisms, such as
 - A Permanent Joint Council or Committee drawn from membership in the existing Council on Trade and Economic Development and the Council on Finance and Planning (*Para 40*)



ACTION BY THE COMMUNITY

- The Community shall establish a mechanism to facilitate joint bidding by regional suppliers for award of government contracts. (*Para 41*)



ACTION BY MEMBER STATES

- enact and implement the Community Model Law on Public Procurement or sufficiently harmonized Public Procurement laws which prescribe and guarantee principles, rights and responsibilities in accordance with the terms of the Community Policy on Public Procurement;
- establish, strengthen and/or maintain national institutional arrangements to ensure the enforcement of, and compliance with the laws



ACTION BY MEMBER STATES

- effect to the importance of trained and appropriately qualified human resources in the proper functioning of the Community regime.
(Para 38)



POLICY-MAKING, MONITORING AND REVIEW BODIES

- The Community shall be responsible for establishing the necessary institutional mechanisms to ensure satisfactory functioning of the Community regime. (*Para 208*)



PERMANENT COMMITTEE ON PUBLIC PROCUREMENT

- The Community shall ensure the establishment of a **Permanent Committee on Public Procurement** with the requisite competence for adequate provision of policy oversight and relevant decision-making (*Paras 209-213*)



COMMUNITY PUBLIC PROCUREMENT NOTICE BOARD

- The Community shall establish and maintain an electronic **Community Public Procurement Notice Board**, which shall be accessible to all participants in the Community Regime on Public Procurement as well as to any interested member of the general public. (*Paras 214-221*)



DISPUTE SETTLEMENT

- The dispute settlement procedures as contained in Chapter 9 of the Revised Treaty shall apply to the review and resolution of State-to-State disputes: (Para222) RTC ARTICLES 187- 224



PART FIVE
FINAL PROVISIONS



GENERAL EXCEPTIONS

- The General Exception measures as contained in Articles 225 and 266, respectively, of the Revised Treaty shall apply to the Community Regime on Government Procurement

Paras 223-225



AMENDMENTS AND MODIFICATIONS

- Member States shall, ..., in writing, requests to modify and/or amend to the COTED, with the advice of the COFAP, prior to the taking of any such action. Where prior notification is not possible, Member States shall notify the COTED and COFAP, in writing, as soon as possible following on any such action, together with any proposed compensation measures in cases of reduced coverage.

Paras 226-231





SECTION IV

CURRENT STATUS

CURRENT STATUS

The IVth Meeting of Officials :

- *“Recommended that the determination of thresholds be examined by a Special Working Group of Trade and Finance Officials.”*



CURRENT STATUS

The IVth Meeting of Officials :

- “accepted *proposed revisions to the Third Draft of the “Framework Regional Integration Policy on Government procurement”;*
- requested *the CARICOM Secretariat to circulate the Third Draft of the “Framework Regional Integration Policy on Government procurement” to Member States”*



CURRENT STATUS

- Contribution Agreement between the CARICOM Secretariat and the IDB for USD\$250,000.00 to execute the project **Regional Integration of Public Procurement in the Caribbean**, took effect on July 21, 2009



CURRENT STATUS

- The Project is being executed in two parts as follows: **Component 1**, which involves the development of a section on *Thresholds* in order to complete the Draft Framework Regional Integration Policy on Public Procurement and **Component 2**, which involves the preparation of a Regional Protocol on Public Procurement.



RECENT DEVELOPMENTS

- The Draft Report of the consultant for Component 1 was the subject of technical review by a Meeting of Senior Public Procurement and Trade Officials was convened in Barbados 2-3 June, 2010



RECENT DEVELOPMENTS- REGIONAL MEETING

- review the report of the consultancy
- agree on proposals for Thresholds to complete the Draft Framework Regional Integration Policy on Public Procurement; *and*
- recommend a final Draft Framework Regional Integration Policy on Public Procurement to the COTED for adoption.



RECENT DEVELOPMENTS- REGIONAL MEETING

- Sixth Regional Meeting of Senior Public Procurement and Trade Officials convened for 14-15th April 2011 to :
- Decide on threshold policy to complete Framework Regional Integration Policy on Public Procurement
- Recommend FRIP to Trade Council (COTED) for approval in May



CURRENT STATUS

Action Required:

- It is expected that this meeting will recommend the Revised Policy to the 32th Regular Meeting of the Council for Trade and Economic Development (COTED), week of 16th May in Georgetown, Guyana.
- COTED was expected to approve the Policy and give drafting Instructions for the Protocol.



PROJECT SCHEDULE

| ACTIVITY | TIMETABLE |
|---|--------------------------------|
| AGREEMENT BY PROCUREMENT OFFICIALS | JUNE 2010 |
| AGREEMENT BY COTED | JUNE 2010 |
| INSTRUCTIONS TO DRAFTING FACILITY | JUNE 2010 |
| STAKEHOLDER CONSULTATIONS IN MEMBER STATES | JUNE-JULY 2010 |
| COMMENCEMENT OF COMPONENT II | AUGUST 2010 |
| CONSULTANCY TO PREPARE PROTOCOL | AUGUST – SEPT 2010 |
| DRAFT TO CPC | OCT-NOV 2010 |
| GP OFFICIALS TO COMMENT ON PROTOCOL | NOVEMBER 2010 |
| RECONSTITUTION AND MEETING OF IGTF | DECEMBER 2010 |
| DRAFT PROTOCOL TO COTED | JANUARY 2011 |
| SUBMISSION (A) SUB-COMMITTEE ON HARMONISATION (B) LEGAL AFFAIRS COMMITTEE | FEBRUARY 2011 FEBRUARY 2011 |
| STAKEHOLDER CONSULTATIONS IN MEMBER STATES | MARCH-APRIL 2011 |
| SUBMISSION TO COMMUNITY COUNCIL | MAY 2011 |
| SUBMISSION TO CONFERENCE FOR SIGNATURE | JULY 2011 |
| SUBMISSION TO MEMBER STATES FOR RATIFICATION | AUGUST 2011 |



RECOGNITION

- IDB
- CIDA
- OTN (CRNM)
- Members of the Caribbean Community
- Staff





THANK YOU

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