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
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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.”
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.
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.
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


2. The Fourth Prime Ministerial Sub-Committee On The Caricom Single Market And Economy (CSME), St. John’s, Antigua And Barbuda, 1 July 2008


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


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 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, are 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 Directives or Governing Documentation
5. Prior Information Notice
6. Publication of Procurement Opportunities
7. Identification and Publication of the Minimum Content of Tender Notices
8. 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.”
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.
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)*
ACTIONS 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)*
The Community shall be responsible for establishing the necessary institutional mechanisms to ensure satisfactory functioning of the Community regime. *(Para 208)*
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)*
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.
Sixth Regional Meeting of Senior Public Procurement and Trade Officials convened for 14-15\textsuperscript{th} 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 recommended the Revised Policy to the 32\textsuperscript{th} Regular Meeting of the Council for Trade and Economic Development (COTED), week of 16\textsuperscript{th} May in Georgetown, Guyana.

- COTED was expected to approve the Policy and give drafting Instructions for the Protocol.
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RECOGNITION

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