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FRAMEWORK
REGIONAL INTEGRATION POLICY
ON
PUBLIC PROCUREMENT

CARICOM SECRETARIAT

CSME UNIT

REVISED IN ACCORDANCE WITH RECOMMENDATIONS ARISING FROM THE FIFTH REGIONAL MEETING OF PUBLIC PROCUREMENT AND TRADE OFFICIALS, GRAND BARBADOS RESORT, ST. MICHAEL, BARBADOS, 2-3 JUNE 2010
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[Revisions in Grey]

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I. INTRODUCTION

1. The Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy (2001) (Revised Treaty) provides the overarching justification for the establishment and implementation of a regional Public Procurement regime. Article 239 obliges Member States to ***"elaborate a Protocol relating…. to…. Government Procurement."*** In addition, the Community has taken steps to facilitate cross-border trade in goods (Article 79) and services (Chapter III), observing the principles of non-discrimination as contained in Article 8, all of which have a direct bearing on Public Procurement of goods and services.

2. The underpinning purpose of the Single Market is to facilitate the expansion of all forms of economic activity. As in most small developing countries, Member State governments are generally the largest procurers of goods and services in their respective national contexts. Consequently, the collective volume and value of Public Procurement region-wide is considerable (estimated at 20% of GDP to be EC$12,098,300,000.00[1] in 2003). See Annex 2 for table reflecting GDP figures. An effective Public Procurement policy is fundamental, therefore, to the success of the single market in achieving its stated objectives:

a) Improved Standards of living and work;
b) Full employment of labor and other factors of production;
c) Accelerated, coordinated and sustained economic development and convergence;
d) Expansion of trade and economic relations with third States;
e) Enhanced levels of international competitiveness;
f) Organization for increased production and productivity;

[1] GDP figures obtained from the CARICOM website Statistics Database on National Accounts. All except the Bahamas (1995) and Jamaica (2001) reflect GDP figures for the year 2003.

g) The achievement of greater measure of economic leverage and effectiveness of Member States in dealing with third States, groups of States and entities of any description;

h) Enhanced coordination of Member States' foreign and [foreign] economic policies; and

i) Enhanced functional cooperation, including –

   (i) More efficient operation of common services and activities for the benefit of peoples;

   (ii) Accelerated promotion of greater understanding among its peoples and the advancement of their social, cultural and technological development;

   (iii) Intensified activities in areas such as health, education, transportation and telecommunications.

3. 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 and 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."*

4. 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. 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. 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. These provisions provide a necessary and important platform on which to build an effective regional Public Procurement regime, as they facilitate the mobilization of qualified human and financial resources necessary to adequately perform contracts.

5. To date, the Community has undertaken and concluded a significant volume of preparatory work regarding the establishment of a Community regime for Public Procurement. The Second Special Consultation on the CARICOM Single Market and Economy (CSME) noted that the CARICOM Secretariat in collaboration with the Caribbean Regional Negotiating machinery (CRNM) approached the Inter-American Development Bank (IDB) for funding for the conduct of a comprehensive policy-oriented study on Government Procurement (herein after referred to as "The Project"). The essential rationale for the Project were as follows:

a) the significance of Government as a consumer of goods, services and works and the potential impact on business, trade and the increased dynamic of the CSME if greater access were possible in all procurement markets and Public Procurement were to be progressively integrated into the CSME; and

b) the need for a policy and informed empirical basis for treating with undertakings given and to be negotiated at the bilateral, hemispheric and multilateral levels in particular

   (i) procurement under the Protocol Implementing the Agreement Establishing the Free Trade Area between the Community and the Dominican Republic,

   (ii) The FTAA Negotiating Group on Government Procurement,

(iii) Article 13 paragraph 2 of the General Agreement on Trade in Services (WTO).

6. An additional and particularly significant consideration is the negotiation for an Economic Partnership Agreement (EPA) currently underway between the European Community and CARIFORUM[2] countries, and which includes disciplines in the area of Public Procurement. It should also be noted that in preliminary meetings with Canadian officials in preparation for the launch of negotiations with Canada for a Free Trade Agreement, Canada has explicitly indicated its interest and strong intent to conclude a full Public Procurement agreement. Further, in considering expiration of the WTO waiver 31 December 2005 for the application of the Caribbean Basin Initiative (CBI), and strong resistance by some Members of the WTO to a request for renewal, the Council on Trade and Economic Development is considering the merits of pursuing a bilateral Free Trade Agreement with the United States. In this regard, it should be considered that the United States' "template" for bilateral free trade arrangements, as evidenced by the agreement with the countries of Central America and the Dominican Republic (US-DR-CAFTA) includes a full Public Procurement agreement, with little or no special provisions in respect of the small size of some of the parties to that agreement.

7. The 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's specific objective was to facilitate the decision-making process among national and regional authorities in Public Procurement matters, both in terms of CSME issues and as regards external trade negotiations, through the provision

[2] CARIFORUM is comprised of the CSME Member States, the Bahamas, the Dominican Republic and Cuba.

of important tools for improving national Public Procurement systems and practices, and for designing and implementing a regional best practice regime for Public Procurement that would bolster the CSME in a key aspect of economic growth and development, both regionally and extra-regionally.

8. The Project was comprised of three components, as follows. Component 1, *National Government Procurement Frameworks: Analysis, Comparison and Recommended Improvements*, provided decision-makers in the Region with an overview of existing national Public Procurement frameworks in CARICOM – including laws, regulations, procedures and practices – and recommendations for their improvement. Under this Component:

a) A diagnosis of existing legal and institutional Public Procurement frameworks for each of the CARICOM Member States, including The Bahamas and Haiti was performed. For each country, the diagnosis provided -

(i) an analysis of the country's public sector procurement structure, including the existing legal framework, organizational responsibilities and capabilities, and present procedures and practices, including how these may differ from the formal rules and procedures,

(ii) an assessment of institutional, organizational and other risks associated with the procurement process in each country,

(iii) recommendations on how to streamline and improve the structure and legal framework of public sector procurement at the national level, including proposed interim modifications to existing practices, and

(iv) an analysis of the organizational and procedural Public Procurement data collection framework in the country, and recommendations for its improvement;

b) The development of a comparative matrix of Public Procurement policies and practices in all the countries examined, including a summary of recommendations for improving national frameworks in each country which provided a foundation for future *national-level* activities in this area; and

c) A report outlining possible regional support activities to facilitate improvements in national Public Procurement frameworks.

9. A regional review of Component 1 outputs was carried out by Public Procurement officials from CARICOM Member States on 27-28 January 2004 in Kingston, Jamaica. Member States discussed the findings and recommendations of the Component 1 outputs and provided valuable clarifications and other relevant inputs into refining the draft documents. Following completion of a process comprising revisions pursuant to the comments and recommendations arising out of the regional review meeting and subsequent sign-off at the Member State level, Component 1 concluded in October 2005 with the delivery of fifteen national procurement assessment reports (full studies or updates); one comparative matrix on national Public Procurement frameworks in CARICOM; a report outlining possible regional support activities (including projects) to facilitate improvements in national Public Procurement frameworks; and a regional review meeting to discuss the findings of this report. These outputs served as key inputs for the activities under Components 2 and 3 of the Project, as described below.

10. Component 2, *Collection and Analysis of Government Procurement Statistics,* is expected to ensure greater availability of Public Procurement statistics for national and

regional policy makers in CARICOM. This Component, which is still underway, entails the collection of Public Procurement statistics in each of the 15 Member States of CARICOM. The data collected, where possible, provided the following information:

a) Composition and value of Public Procurement of goods, services and works by entity (central government, sub-central or de-centralized government entities, regional or government enterprises);

b) the procurement modality used, the type of merchandise, etc.; and

c) the composition and value of intra-regional and extra-regional trade deriving directly from Public Procurement of goods, services and works.

11. Based on the data collected, a database of statistical information is being developed using the WTO Uniform Classification System (with a UNCPC correspondence) for goods and services, and the UNCPC system for works. Also underway is a regional analysis of the size and scope of Public Procurement activities and related trade in CARICOM. The outputs of Component 2 are expected to be: (i) 15 national reports on Public Procurement statistics and recommendations for improving data collection at the national level; (ii) an electronic database containing all relevant statistics on Public Procurement for the years under review; and (iii) a report containing a regional analysis of the size and structure of Public Procurement and related trade in CARICOM. To date, Statistical Reports have been completed for 10 Member States. Component 2 is expected to conclude no later than July 2006.

12. Component 3, *Recommendations for a Regional Best-practice Regime for Government Procurement,* provides recommendations on the formulation and implementation of a regional Public Procurement framework that would facilitate the functioning of the CSME and strengthen CARICOM's external economic relations. This Component includes the preparation of a report containing the above-mentioned recommendations on moving towards a regional best-practice framework, covering all relevant institutional and organizational aspects. The recommendations include specific

options, decisions and other actions, as well as required resources, taking into account the findings of the Project as well as the experiences and approaches of other regional integration groups in the area of Public Procurement.

13. A workshop of regional Public Procurement experts was convened by the CARICOM Secretariat on 24-25 May 2005 in Saint Lucia to discuss the draft report and to provide recommendations for its final version. The draft report was revised taking into account comments and recommendations arising from the regional workshop and is awaiting input from Component 2. The final document is expected to be completed and delivered no later than August 2006.

14. The Project outputs have contributed to the Community decision-making process by providing a comprehensive picture of the current state of affairs in national procurement systems, identifying strengths and weaknesses as well as making recommendations for improvement in accordance with best practices. Consequently, the Community is adequately informed as regards the requisite measures that would need to be undertaken in order to create the conditions necessary for the establishment and sustainable operation of an effective and efficient regional Public Procurement regime. A summary of the key findings and recommendations of the Project is attached at Annex 4.

15. The First Draft of the Community Policy on Public Procurement was developed and disseminated to Member States for review. The Third Meeting of Regional Public Procurement Officials was convened in St. Vincent & the Grenadines, 24-25 April 2006 to discuss the draft Policy. Recommendations arising from the meeting were incorporated in a Second Draft, dated 30 April 2006, and presented to the 22 Meeting of the COTED, 16-17 November 2006 in Georgetown, Guyana. The recommendations of the COTED have been incorporated in this Third Draft, dated 12 November 2007.

16. In addition, the external context created by a global move towards liberalized trade has added new challenges to Public Procurement through integration and interdependence of markets, which impose strict disciplines on this sector. The rapidly changing patterns of world trade and commerce, and the consequent need to strengthen the Caribbean Community position in trading with other trading blocs, have mobilized the Community into recognition of the fact that procurement processes must be made part and parcel of the wider integrated market space. The Single Market, through a general convergence of norms will facilitate the improvement of productivity and competitiveness aligned with elimination of traditional intra-regional trade barriers specific to Public Procurement, and will afford increased opportunities for continued growth and development of regional industries, sustained economic viability, and optimization in the deployment of increasingly scarce resources.

17. Further, Member States (with the exception of the Bahamas which is not party to the World Trade Organization [WTO]) have made a binding commitment, under the General Agreement on Trade in Services (GATS), to negotiate Public Procurement in the area of services at the multilateral level. Similar binding commitments, at the bilateral level, have been made with the Dominican Republic and Costa Rica. As part of a single undertaking at the hemispheric level, Member States have agreed to negotiate rules on Public Procurement as part of a Free Trade Area of the Americas (FTAA). While the FTAA negotiations have stalled since 2003, the commitments under the GATS, and with the Dominican Republic as well as Costa Rica remain applicable and in force. Also important, are negotiations currently underway with the European Community for an Economic Partnership Agreement, and which as previously mentioned are expected to include commitments in Public Procurement. It is important therefore to develop and implement a Community regime for Public Procurement in order to adequately safeguard the Community's interests in extra-regional Public Procurement negotiations.

18. The following 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. Its 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 and existing agreements, some of which include small developing countries, notably, the European Union – Chile bilateral trade agreement, the United States - Central American Free Trade Agreement and the Free Trade Area of the Americas (FTAA) negotiations.

PREMISE

19. This 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…."* In this regard, the Revised Treaty establishes some binding and critical premises, which provide the appropriate conceptual and legal frameworks within which any regional Public Procurement regime must be established, as follows.

20. Article 1 Use of Terms: *"the CSME means the regime established by the provisions of this Treaty replacing Chapters Three through Seven of the Annex to the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas on 4 July 1973."*

21. Article 6 Objectives of the Community: *"The Community shall have the following objectives: … Accelerated, coordinated and sustained economic development and convergence."* This Article provides the legal and contextual basis for convergence of norms, procedures and practices in order to ensure the effective operation of the regional Public Procurement regime and to realize the anticipated benefits.

22. Article 76 Role of Public Authorities: *"COTED shall promote the modernization of government bureaucracies by, inter alia:*

- *(a) encouraging the development of closer contacts between sector administrations, industry and other stakeholders to ensure that challenges presented by the global environment are understood and cooperative solutions developed;*
- *(b) removing impediments and improving the regulatory framework for economic enterprises at national and regional levels;*
- *(c) encouraging cost-effectiveness in the delivery of services to the public; and*
- *(d) proposing adequate arrangements to address the changes in the business environment and future challenges to industry."*

23. Article 76, sets an important context for the role of public authorities in fostering an environment that is conducive to the growth and development of business and industry, particularly as regards the rapidly growing challenges of the global environment. It recognizes the inevitability of the current global dynamic and encourages the modernization of government bureaucracies, of which procurement makes up a substantial element, in order to foster sustained adaptation and derive benefit.

24. Article 78 sets out the objectives of the Community Trade Policy, in particular: *"….the Community shall pursue the following objectives: full integration of the national markets of all Member States of the Community into a single unified and open market area;"* and *"… the Community shall undertake the establishment of common instruments, common services and the joint regulation, operation and efficient administration of the internal and external commerce of the CSME…"* This Article provides the legal basis for implementation of a regional Public Procurement regime in which all Member States participate in forming a single and open regional Public Procurement market, facilitated by common instruments and regulations including, for example, a common Community Public Procurement policy, laws, regulations and practices, which are necessary in order to ensure effective integration and efficient operations.

25. Taken together, these Articles provide the legal and contextual frameworks for the establishment of a regional Public Procurement market that is a single, unified and open space. This would require that the procurement of goods, services and works at all levels of government is covered under the proposed regional regime. This common unified market would require the removal of restrictions on market entry by CARICOM nationals, prohibitions - with provision for exceptions - against introducing new restrictions subsequent to entry into force of the regional policy, rules to be observed by the State for the re-introduction of restrictions to market entry in exceptional circumstances, and disciplines to be observed by both the State and suppliers in order to preserve the single, open and unified Public Procurement market and maintain the integrity of the regime. In short, it is paramount to recognize that in a fully integrated single market, there would be no national boundaries per se, and therefore the regional market space is, in essence, the national market space. This fundamental premise **must** be clearly understood, operationalized and sustained in order achieve the anticipated benefits of establishing a regional Public Procurement regime.

26. Accepting this premise, this Policy, therefore, seeks to identify and define the requisite measures that will need to be undertaken in order to create this common space, in light of the findings of the Community's Public Procurement Project, and particularly as regards the identified strengths and weaknesses of the existing national regimes, including the:

a) establishment of general principles to be observed by all Member States;
b) elimination of existing barriers to market access and/or entry;
c) prohibition of new restrictions against non-nationals;
d) observation of national treatment;
e) creation of common obligations governing access, entry and participation in the Public Procurement markets which collectively comprise the regional single market space;
f) harmonization of laws, regulations, key practices and procedures; and
g) creation of common rules and disciplines to be observed by all Member States and by private agents or suppliers, irrespective of origin or nationality.

II. PART ONE

General Provisions

DEFINITIONS

27. For the purposes of this Policy:

CSME means	The regime established by the provisions of this Treaty replacing Chapters Three through Seven of the Annex to the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas on 4 July 1973.
Community means	The Caribbean Community established by Article 2 of the Revised Treaty and includes the CARICOM Single Market and Economy (CSME) established by provisions of the Treaty.
Concession means	A contract of the same type as construction works procurement contract, except for the fact that the remuneration for the works to be carried out consists solely in the right to exploit the construction or in this right together with a payment.

Covered Entities mean	The public entities of a Member State and subject to the List of Excluded Entities set out in Annex 1 shall include all central, sub-central or local government entities, statutory bodies, state-owned companies, and any other public undertakings
Excluded Entities	Excluded entities mean those public entities in each Member State that by agreement are not covered under the Policy
Public Procurement means	The acquisition of goods, service or works or any combination thereof for or on behalf of covered entities, by way of by purchase, rental, lease, concession or hire purchase with or without an option to buy and not

	with a view to commercial resale or use in the production of goods and services for commercial sale
In Writing or Written means	Any expression of information in words, numbers or other symbols, including electronic means, that can be read, reproduced and stored.
Offsets mean	Any conditions or undertakings that encourage local development or improve a Member State's balance-of-payments accounts, such as the use of domestic content, domestic suppliers, the licensing of technology, technology transfer, investment requirements, counter-trade and similar actions.
Open Tendering means	Procedure in which any interested supplier may submit a tender.
Publish means	To disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to suppliers in the Member States, governments, and to the general public.
Request for Quotations (RFQ) means	Procedure whereby only those suppliers invited by the covered entity may submit a quotation.
Selective Tendering means	Procedure whereby only those suppliers invited by the covered entity may submit a tender.
Single source means	Procedure whereby the covered entity invites only one supplier to submit a tender or quotation.
Supplier means	A natural or legal person who, in accordance with Article 32 of the Revised Treaty of Chaguaramas, provides or could provide goods, services or works to a covered entity.

Technical Specification means	A specification which lays down the characteristics of the goods, services or works to be procured or their related processes and production methods, including the applicable administrative

	provisions, and a requirement relating to conformity assessment procedures that a covered entity prescribes. A technical specification may also address quality, performance, safety, dimensions, symbols, terminology, packaging, marking and labeling, as they apply to a good, process, service, production or operating method.
Tender documentation means	Documentation containing the information in respect of a tender opportunity. It generally includes the invitation to tender, specific information concerning the item(s) to be procured including any technical or other specifications, conditions for supplier participation, the manner, date and time for the submission of tenders, the form and format of the tender, evaluation criteria, the form of contract, the implementation period and any other relevant information.
Tenderer means	A supplier who has submitted a tender.

28. Most Member States use legal systems based on British Common Law, with the exception of Suriname, which uses a combination of Common Law and Civil Law based on the Dutch legal framework, and Haiti, which operates on a system of Civil Law. Within this framework, with the exception of Guyana, no Member State has enacted dedicated Public Procurement legislation. Instead, much of the documentation governing Public Procurement is rooted in regulations and administrative guidelines derived from umbrella Finance Acts. In addition, due to a lack of currency, the governing documentation does not take into account recognition of Public Procurement as part and parcel of the strategic operations of government, but rather, treats the issue as an administrative support function. As a result, the existing national frameworks do not adequately address all the elements of a modern competitive Public Procurement system. The following table summarizes the core of the legal framework, in order of enactment dates, under which Member States conduct Public Procurement.

1952: Suriname - *Government Compatibility Act*
1961: Trinidad & Tobago - *Central Tenders Board (CTB) Ordinance Act, Central Tenders Board Regulations*
1964 Barbados - *Financial Administration and Audit Act*
1964 Grenada - *Finance and Audit Act*
St. Vincent & the Grenadines - *Financial and Audit Act*
1965 Dominica - *Finance and Audit Ac*t
1973 Bahamas - *Financial Administration and Audit Act*
1976 Dominica - *Financial Regulations*
1983 St. Kitts & Nevis - *Financial Instructions, Store Rules*
1985 Jamaica - *Financial Administration and Audit Act, Contractor General Act, Contractors Levy Act*
1989 Haiti - *Procurement Decree*
1990 St. Kitts & Nevis - *Finance Act, Audit Act*
1991 Antigua & Barbuda - *Tenders Board Act*
1992 Trinidad & Tobago - *Finance Act*
1994 Dominica - *Finance and Audit Act*
1996 Bahamas - *Local Government Act*
1997 St. Lucia - *Finance (Administration) Act, Financial Regulations, Procurement and Store Regulations*

1998 Grenada - *Finance and Audit (Amendment) Act, Financial Rules*
St. Lucia - *Audit Act*
St. Vincent & the Grenadines - *Finance Regulations*
1999 Grenada - *Store Rules*
St. Vincent & the Grenadines - *Procurement and Stores Regulations*
1999 Jamaica – *Contract General (Amendment) Act*
2001 Antigua & Barbuda - *Tenders Board Act, (Amendment)*
2002 Montserrat - *Statutory Rules and Orders, Procurement and Stores Regulations*
2003 Guyana – *Procurement Act*
2003 Jamaica - *National Contracts Commission: Handbook of Public Sector Procurement Procedures (May 2001)*
2005 Belize - *Finance and Audit Act (Amendment)*

29. The foregoing has resulted in differences in interpretation and application of concepts, words and terms across, and even within, Member States, which can hinder the overall effectiveness of the proposed regional regime. A Community policy on Public Procurement within the context of a Single Market would need therefore to take into account and provide for the uniform interpretation of words and terms.

OBJECTIVES

30. 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. The foundations of the Community Policy on Public Procurement are found in the Revised Treaty, particularly in those provisions which guarantee the free movement of goods, services and capital, establish fundamental principles (equality of treatment, transparency and mutual recognition) and prohibit discrimination on grounds of nationality.

31. Secondary objectives include:

(a) Creation of the necessary competitive and non-discriminatory conditions to facilitate achievement of value for taxpayers' money. As previously noted, in most small developing economies the government is generally the largest procurer of goods and services, including construction services, a substantial portion of which forms critical components of the overall social and economic infrastructure. Within this context, coupled with a global scarcity of resources, regional economic sustainability increasingly demands the consistent achievement of value for money and the increased productivity of public expenditure. While the primary benefit derived from value for money outcomes is within the national context, it is driven, in large part, by the extent of competition in the procurement

regime. The greater the number of suppliers allowed to compete in a procurement, consistent with the value of the procurement and the applicable procurement method, the higher will be a government's probability of achieving the best possible value for money. Increased competition brings down costs, improves quality and delivery terms and fosters innovation. Conversely, in procurement environments closed to competition and dominated by vested interests, economic incentives tend to disappear, "dominant" national suppliers generally become complacent about minimizing costs and there arises a real risk that that markets will lose dynamics and firms will become less competitive. Without incentive to innovate continuously, the outcome is generally that the market becomes stagnant, characterized by uncompetitive firms, outdated technologies and high prices, all of which contribute to negative economic growth and development.

(b) Provision of opportunities for access to a single market with regional sales opportunities. Since governments are the largest procurers of goods and services in the region, it stands to reason that Public Procurement is one of the best-placed measures through which suppliers can grow and develop. The small size of most individual markets, however, is a significant constraint in achieving this end. A common or single Public Procurement market will provide suppliers with a much wider base for sales opportunities, thereby facilitating a greater probability for sustained competitive operations, growth and development, through inter alia economies of scale and specialization.

(c) Strengthening the competitiveness of the regional supplier base and encourage the rational use of scarce resources. A wider pool of participating suppliers will necessarily engender increased competitiveness. As the number of suppliers increase, they will need to

create more efficiencies in production processes, for example, in order to increase competitiveness and their chances of winning a tender for award of government contract. Increased competitiveness leads to improved price and quality benefits to government. Member States stand to benefit, therefore, from more competitive Public Procurement processes not so much because of the capacity to gain international contracts, but much more so in terms of improved resource utilization through more transparent and competitive practices. Competitive pricing, product innovation and performance improvements result from competitive practices and help to ensure that governments get the best value for money. In the absence of a competitive environment, governments risk using taxpayer monies to purchase inferior products at inflated prices, resulting in loss.

32. The objectives set out in paragraphs 30 and 31 above accord with the economic and efficiency objectives of the CSME as articulated in Article 6 of the Revised Treaty, and as follows:

a) improved standards of living and work;
b) full employment of labour and other factors of production;
c) accelerated, coordinated and sustained economic development and convergence;
d) expansion of trade and economic relations with third States;
e) enhanced levels of international competitiveness;
f) organization for increased production and capacity;
g) the achievement of a greater measure of economic effectiveness of Member States in dealing with third States, groups of States and entities of any description; and
h) enhanced functional cooperation.

33. A fully integrated regional government regime will significantly contribute to the achievement of the afore-noted objectives through ensuring a rational use of scarce resources; improved value for money resulting from the creation and sustained implementation of the necessary competitive conditions in which Public Procurement contracts are awarded without discrimination to the most advantageous tender submitted; supplier access to a single market with regional sales opportunities thereby providing adequate market space to facilitate growth; strengthening the competitiveness of the regional supplier base to afford successful interface in the global market; and the provision of a common platform from which to address relationships with third countries, groups and/or other extra-regional entities.

34. Because governments are the largest buyers of goods and services, developing an effective regional Public Procurement policy is essential if the Single Market is deliver the anticipated economic benefits including long-term sustainable growth of CARICOM firms and industries, increased employment through job creation and improved labour mobility; a supplier base that can exploit the opportunities of a single integrated regional market and continue to grow to compete successfully in global markets; and a more rational use of scarce resources through the provision of better public services at lower costs to the taxpayer.

35. The extent of regional integration in this regard is directly related to the extent of savings for governments and ultimately for taxpayers. Such considerations are all the more relevant in view of the debt burdens of many of the Member States.

IMPLEMENTATION

36. In order to achieve the objectives of the Community Policy on Public Procurement, the tenets must be implemented into national law. The policy is an essential instrument for the Public Procurement regime, and failure to implement, improper and/or incomplete implementation prevent regional businesses and

governments from taking advantage of the full benefits of a regional market. A lack of implementing measures can serve as a mitigating factor in applying the policy in practice. It is important therefore, that implementing provisions are drafted with due care to ensure a sufficiently high quality of implementation to fully achieve the Community objectives.

37. The Community shall be required to ensure the development of an appropriate Community Model Law on Public Procurement for implementation by the Member States. It is the responsibility of the Community to monitor, guide, and assist where necessary, the implementation process in the Member States. A common law will ensure a necessary level of harmonization and/or compatibility in implementation across Member States, addressing the fundamental common principles, rules, rights and responsibilities, so as to preserve equitable application across Member States, which is critical to the success of a single unified marketplace.

38. Member States shall be required to:

(a) 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;

(b) establish, strengthen and/or maintain national institutional arrangements to ensure the enforcement of, and compliance with the laws;

(c) give effect to the importance of trained and appropriately qualified human resources in the proper functioning of the Community regime. In this regard, Annex 5 elaborates.

39. 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. A Community Public Procurement Notice Board can be established through use of the Internet at reasonable cost and with wide-ranging accessibility. This is an important means of informing of procurement opportunities across Member States, as the costs associated with accessibility to the traditional paper publications can be a limiting factor as regards the potential number of competing suppliers in a procurement opportunity.

40. The Community shall also establish the relevant regional institutional systems and mechanisms in order to facilitate the efficient and effective functioning of the regional procurement regime. In light of fiscal as well as other resource constraints, the Community could take advantage of expertise already existent in previously established Organs. 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 would encapsulate the competence necessary to effect long-term monitoring, review and oversight of the operations of the regional regime.

41. The Community shall establish a mechanism to facilitate joint bidding by regional suppliers for award of government contracts. One of the most cost effective ways in which this can be accomplished is by way of the Internet, using a page that is linked to the Community Public Procurement Notice Board, where suppliers interested in bidding jointly with other suppliers on any particular procurement opportunity can so indicate. This mechanism will help the small and medium sized suppliers to derive increased benefits from the regime, encourage the transfer or sharing of skills and technology, thereby having the overall effect of strengthening the regional supplier base. The proposed Model Law should address the specific operational details of this mechanism, particularly in relation to possible anti-trust concerns, controls to avoid bid rigging, size of firms any other eligibility criteria, treatment of small and medium-sized enterprises that are subsidiaries or, or controlled by, larger enterprises, etc.

42. Additional implementation measures are discussed as they relate to other facets of this Policy in Parts II, III and IV.

SCOPE OF APPLICATION

43. Subject to negotiated terms of market access, this Policy applies to all:

(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) levels of government; and

(d) procurement methods and/or contractual means, including:

i) purchase,

ii) lease,

iii) rental, and

iv) concession arrangements.

44. The preparatory work performed by the CARICOM Secretariat in collaboration with the Inter-American Development Bank (IDB) and the Canadian International Development Agency (CIDA), i.e., country procurement diagnostic studies, indicates that there are a myriad of instruments currently in use to regulate Public Procurement activities in the Member States, ranging from formal legislation to cultural practices which, over time, have become norms. The studies also indicate that a substantial volume of Public Procurement contracts are awarded at the sub-central governmental levels, for example through State-owned companies, statutory bodies, executive agencies, and other sub-central agencies of government. Further, throughout the Region, the number of central government Ministries is relatively small compared with the total number of governmental bodies, i.e., central and sub-central entities. In order to afford meaningful market access, particularly with respect to contracts that will be

attractive to the smaller suppliers in the region, it is important to include both central and sub-central levels of government in the scope of coverage.

45. As previously noted, the basis for liberalized trade in goods and services is already in place in the Revised Treaty. In addition, the GATS obliges signatories to liberalize trade in services procured by or on behalf of government. It is important, therefore, that the region safeguards against providing an extra-regional party with better access than that which it accords intra-regionally. Accordingly, the regional regime can then properly function as a benchmark ceiling in external trade negotiations and relationships with third countries.

46. Member State governments have primary responsibility for the establishment of infrastructure works, which accounts for a substantial percentage of contract awards. It is therefore important to include construction works within the scope of coverage. Annex 3 contains a table showing breakdown among goods, services and works procured by some Member States for the year 1999, as reported by those Member States in the FTAA negotiations.

47. For the purposes of implementation of this Policy, procurement activities by the covered entities carried out pursuant to (a) through (c) below are excluded from the scope of coverage:

a) Agreements entered into by any Member State with an international financing institution which limit participation in procurement due to specific conditions and or limitations stated in the agreement. This provision is founded in the fact that governments **must** use the procurement procedures of the international financing institution, e.g., the World Bank, as a condition of access to funds from the institution by way of grant or loan;

b) Agreements entered into by any Member State and a third country intended for the joint implementation or exploitation of a project by the contracting parties, and financed by the third party when it limits participation in procurement because of specific conditions and limitations of nationality and/or eligibility of suppliers, etc. From time to time, Member States may wish to take advantage of opportunities offered to them through third countries which may require the exclusive or majority employment of the third country suppliers and/or products. For example, a Member State may wish to accept an offer from a third country to improve the Member State's distribution network for delivery of goods through the construction of an all-island throughway, but with the pre-condition that the prime contractor originate from or be a national of the third country; and

c) Employment contracts. Traditional employment is not considered to be a Public Procurement issue. The recruitment and selection process in human resources management is different from a traditional Public Procurement process. Best practice therefore excludes this aspect of government expenditure from the scope of coverage of Public Procurement.

CONTRACT VALUE THRESHOLD(S)

48. Thresholds are very important to the integrity of a procurement system. In general, there are three broad types of thresholds; (a) the efficiency threshold – which sets the value or range of values for use of a specific procurement procedure or measure. (b) the transparency threshold, which sets the value above which open competitive procedures must be used, and; (c) the market access threshold – which sets the value above which the non-discrimination principle would be observed as regards market access, i.e., the value above which participation in procurement

opportunities are open to the regional market. Within a fully implemented and operational single market, such as the CSME, it could be expected that all values of procurement would be open to competition i.e., the market access threshold would be zero (0). Despite this expectation, CSME implementation is not a single but an on-going undertaking and as such, the CSME is not yet fully implemented. Consequently, CARICOM Member States do not yet enjoy full market access within the CSME. It should however be noted that CARICOM countries currently do not directly discourage suppliers from other Member States from bidding for contracts which values fall under the efficiency thresholds. This practice is expected to be continued as part of agreement within this framework policy. The CSME is intended to be a domestic space with CARICOM Member States enjoying full market access. As such, within this **single procurement** market only efficiency thresholds and transparency rules should exist. Market access thresholds are not proposed within this policy.

This Policy focuses on the harmonized transparency thresholds for goods, services and works, hereinafter referred to as "threshold."

49. **National Policy Space**. In the current environment of increasing globalization, government procurement is one of the few remaining disciplines where governments still retain some level of national policy space. This is important in the successful implementation of key national policies and programmes, for example, measures to foster the growth and development of selected sunrise industries like information technology and e-commerce based services. Indeed, some Member States currently have such policies in place. It is, however, equally important to recognize the realities of the operating environment and to proactively implement strategic plans to optimally position the Member States and the Region as a whole to be better able to compete in the global market. It is therefore critical to balance the need for policy space with the need to grow and develop by way of an integrated regional market. One of the most common tools for achieving this balance is the use of a threshold. While contracts with values exceeding the threshold would be open to regional competition and participation,

such an instrument allows Member States the policy space they may need in respect of contract values below the threshold.

50. **Efficiency.** In consideration of the achievement of the efficiency objective in particular, there is a value or range of values below which it becomes inefficient to employ an open competitive tendering procedure. First, procurement procedures entail compliance and administrative costs for the covered entities and tendering costs for participating suppliers. If the value of the contract is relatively low for the type of product(s) under consideration, the potential benefits from greater competition will not compensate for those costs. Additionally, increased transparency in the procurement market will not necessarily translate into greater cross-border competition if the value of the contract does not make it worthwhile for extra-national suppliers to tender and still cover the additional costs that cross-border supply necessarily implies. It is important from an efficiency perspective therefore, to establish a Threshold that would function as the "floor" dollar value above which, the provisions of this Policy would apply.

51. Based on the information submitted by CARICOM Member States in 2009 the dollar value at which Member States begin to employ competitive tendering procedures currently varies from State to State. The Table below provides a summary comparison of these values according to the category of item, as well as the regional Mean.

CARICOM EFFICIENCY THRESHOLDS 2009 (EC$)

COUNTRY	GOODS	SERVICES	WORKS
ANTIGUA AND BARBUDA	20,000	20,000	20,000
BAHAMAS	135,500	135,500	135,500
BARBADOS	135,500	27,100	135,500
BELIZE	27,100	27,100	27,100
DOMINICA	5,000	5,000	5,000
GRENADA	100,000	100,000	100,000
GUYANA	84000	125000	125000
HAITI			
JAMAICA	89,000	89,000	89,000
MONTSERRAT	100,000	100,000	100,000
ST. KITTS AND NEVIS			
SAINT LUCIA	40,000	40,000	40,000
ST. VINCENT AND THE GRENADINES	20,000	20,000	20,000
SURINAME	30,000	30,000	30,000
TRINIDAD & TOBAGO	650,000	650,000	650,000
MEAN (EC$)	**110,469**	**105,284**	**113,623**

52. The Sixth Meeting of of Senior Public Procurement and Trade Officials held in Montego Bay, Jamaica 14-15 April 2011, agreed to the following guidelines for operating thresholds within the CSME:

- Within a **single procurement** market such as the CSME, only efficiency thresholds and transparency rules should exist.
- For the purpose of the CSME it is not necessary to establish thresholds with substantial difference in values applicable to central versus sub-central government;
- CARICOM countries currently do not directly discourage suppliers from other Member States from bidding for contracts whose value fall under the efficiency thresholds;
- The central elements of the CSME threshold policy to be included in this policy are -

(a) Non-harmonised efficiency thresholds;
(b) Harmonised transparency threshold values for goods, services and works;

- rules applying to **values relating to the efficiency threshold** would be that -

(ii) Member States would continue the existing practice of allowing non- national bidders to participate;

(iii) each Member State would be free to choose the procurement method which it considered to be efficient for any values **below the** agreed harmonized transparency threshold value;

(iv) Rules on transparency would be obligatory for any values above the threshold;

(v) Each Member State may operate an offset mechanism that allows the procuring entity to apply a margin of preference at the point of selection of the qualified bidder. **This would apply to extra regional suppliers only;**

(vi) Full and open competition **(FOC)** procedures must be used for all values above the thresholds, such as Request for Proposal **(RFP**), Request for Tender **(RFT)**, Request for quotation **(RFQ)** etc.

53. Officials recommended a Threshold of US$ 100.000 or EC$271,000 for goods and services, and US$ 1, 000,000 or EC$2,710,000 for works as outlined in the table below.

Caribbean Community (CARICOM)
Efficiency and Transparency Threshold Proposal 2011

CSME	General Government		
	GOODS	SERVICES	WORKS
USD	100,000	100,000	1,000,000
EC	271,000	271,000	2,710,000

54. The table below compares the proposed Thresholds with those existing in other international and/or regional trading arrangements.

Agreement	Goods	Services	Works
WTO GPA (US):			
Central Govt.	US$208,013 (SDRs130, 000)	US$208,013 (SDRs130, 000)	US$8,000,524 (SDRs 5, 000, 000)
Sub-Central	US$568,037 (SDR 355,000)	US$568,037 (SDR 355,000	US$8,000,000-24,001,574 (SDRs 5, 000, 000-15,000,000)
NAFTA:			
Central Govt.	US$50,000	US$50,000	US$6, 500, 000
Sub-Central	US$250,000	US$250,000	US$8, 000, 000
FTAA: Market Access Offers made to CARICOM from -			
- United States			
Central Govt.	US$56,190	US$56,190	US$6,481,000
Sub-Central	US$280,951	US$280,951	US$6,481,000
- Canada			
Central & Sub-Central	CAN$150,000	CAN$150,000	CAN$10,900,000
- Mexico			
Central & Sub-Central	US$112,380	US$112,380	US$7,304,733
CARICOM – EC EPA	US$248, 000 (SDRs 155 000)	US$248, 000 (SDRs 155 000)	US$10,400,682 (SDRs 6,500,000)
CARICOM-CANADA (Proposed)	US$248, 000 (SDRs 155 000)	US$248, 000 (SDRs 155 000)	US$10,400,682 (SDRs 6,500,000)
CSME GP Regime	US$100, 000	US$100, 000	US$1, 000, 000

55. Taking into account the difference in economic size among the compared countries, the recommended Thresholds are still considerably less than the average thresholds in existing international trade agreements, and would afford regional suppliers a reasonable margin for growth and development through regional market access without the likelihood of having to contemplate extra-regional competition, particularly with respect to works contracts. In light of the range of values of contracts awarded across the Region, however, these thresholds are likely to be relatively low in respect of policy space concerns. It should be recognized that the smallest suppliers are unlikely to be able to participate – as stand-lone suppliers - in the regime. The Policy supports joint-bidding practices primarily to facilitate such suppliers.

56. The Threshold is a permanent measure that safeguards the efficacy of the regional regime. Consequently there will be a need for periodic review to ensure currency, and adjustments –as necessary, in accordance with the dynamics of the operating environment. It is proposed that the Threshold is reviewed at 2-year intervals, and adjusted according to the following:

(a) Rate of inflation in Member States
(b) Strength of the economies;
(c) Strength of the currencies;
(d) Other factors as the Member States consider appropriate

PRINCIPLES

57. Member States shall give effect to the following principles in its Public Procurement practices, pursuant to the provisions of this Policy:

a) Free entry and participation in the Public Procurement markets for goods, services and works;
b) National Treatment and Most Favoured Nation Treatment;

c) Transparency; and

d) Procedural Fairness.

58. Free Entry and Participation. It is important to recognize and give effect to the principle of free entry and participation in Public Procurement markets for goods, services and works. Technically and financially qualified suppliers who are interested in participating in a procurement opportunity should not be prevented from doing so due discriminatory restrictions and/or other artificial barriers to entry. Use of such barriers work against the achievement of the stated objectives of the proposed regional Public Procurement regime as well as the CSME as a whole, and run the risk of negative growth and development in the long term.

59. The Revised Treaty in Article 79 obliges the removal of impediments to economic enterprises at the national and regional levels, and Articles 45-46 address the free movement of skilled persons. In this regard, Members States are already committed to the basic principle of free movement and participation. It is important, therefore, to ensure that the proposed Public Procurement regime builds on this principle, and does not allow or seek to impose new restrictions in this regard.

60. Non-Discrimination, National Treatment and Most Favoured Nation Treatment. Member States shall:

a) ensure that its procurement laws, regulations, policies, administrative rules, guidelines, procedures and practices are not prepared, adopted or applied so as to afford, and do not have the effect of affording, protection, or favour to, or bias against, the goods, services, works or suppliers of any other Member State;

b) grant the goods, services, works and suppliers of any other Member State treatment that is no less favourable than that accorded by it to domestic goods, services, works and suppliers;

c) grant the goods, services, works and suppliers of any other Member State treatment that is no less favourable than that accorded by it to third country goods, services, works and suppliers; and

d) ensure that its procuring entities do not treat a locally established supplier less favourably than another locally established supplier on the basis of degree of affiliation to, or ownership by, a person or persons of any other Member State.

61. The use of discriminatory practices in Public Procurement undermines the competitive process and thus the ability of Member States to achieve the best possible value for money outcomes. There is little doubt that discrimination among Member State suppliers can, in the short run, help countries to achieve industrial policy objectives. However, there is equally little doubt that in the long term, such actions consistently prevent governments from obtaining the best possible goods and services at the lowest possible prices, resulting in considerable monetary losses, and perhaps more importantly robbing the protected supplier(s)/industries of the motivation to improve business systems and processes or to develop new products.

62. Considerations in respect of customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and measures affecting trade in services other than measures specifically governing procurement as covered by this Policy, are addressed in Chapters 5 and 3, respectively, of the Revised Treaty. Further Chapter 3 also affords service providers the right of establishment applicable, for example, to the provision of construction services within the context of Public Procurement.

63. Transparency. Member States shall ensure that sufficient and relevant information be made available to all interested parties in any other Member State consistently and in a timely manner through readily accessible and widely available media at reasonable or no cost. This principle should be applicable to all aspects of

Public Procurement, including the operating environment, procurement opportunities, purchase requirements, tender evaluation criteria and award of contracts. Mechanisms and methodologies are discussed within the context of each aspect as they appear in this Policy.

64. *Sufficiency and relevance of information* is necessary to enable potential suppliers from any Member State to make informed decisions, and to prepare responsive offers to tender invitations.

65. *Timeliness* is necessary to ensure that the information provided is valid and useful when available to the receiver.

66. *Availability/accessibility to all interested parties at reasonable or no cost* is necessary to ensure that the procurement process is fair to all participants and that information is accessible in practice.

67. *Consistency* is important to achieving the stated objectives of the regional regime and to preserving its credibility. For example, maintaining a transparent regional Public Procurement regime can only be achieved if the individual (national) procurement systems that comprise the regional regime remain consistently transparent. Consistent transparency can also have an important spin-off benefit in attracting foreign direct investment (FDI). Because transparency and predictability of market mechanisms are crucial factors influencing business decisions on how and where to invest and generate value-added, foreign investors tend to view a country's Public Procurement practices as a strong indication of the fundamental paradigms of governmental operations. Transparency also enhances the competitiveness of suppliers by establishing a market-launch base which is particularly beneficial for smaller suppliers.

67. While transparency should permeate most of the provisions of the Public Procurement Policy, there are certain key provisions, which must be in place if the

regime is to function effectively and efficiently, and which are set out in Part II of this Policy.

68. Procedural Fairness. Member States shall implement the necessary mechanisms to ensure the fair treatment of suppliers, including due process considerations. Fair treatment is particularly important in Public Procurement because it involves the expenditure of public funds, and is therefore subject to public scrutiny. From a regional perspective, fair treatment will promote confidence in the Public Procurement regime and mutual trust and respect among participants. This, in turn, will encourage participation and contribute to achieving best value for money outcomes. Procedural Fairness also encompasses due process considerations which are crucial to the sustained effectiveness of the regional regime. Suppliers from any Member State must be confident that mechanisms permitting the timely scrutiny of procurement processes, channels for challenge to procurement decisions, as well as objective and independent review are readily available and accessible.

PUBLIC PROCUREMENT AND THE ENVIRONMENT

69. 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.

70. There are several legislative instruments in place at the National level concerning action to combat air, water and soil pollution, waste management and the protection of nature that have been adopted by several Member States. Because of purchasing power in respect of volume and value, Public Procurement can have a significant positive impact on environmental preservation and conservation. This Policy seeks to clarify the possibilities offered by its general provisions for taking environmental

concerns into account, and at the same time, to define more precisely the limits of these possibilities.

71. First, environmental protection can be achieved through specific rules for the infringement of which a supplier can be convicted of an offense under National laws in some Member States. In such cases, this Policy allows covered entities to exclude that supplier from participating in procurement opportunities.

72. Second, environmental protection considerations can be incorporated into the technical requirements relating to the characteristics of the works, goods or services to be procured. However, any such requirement must be non-discriminatory and properly indicated in the tender documents. In addition, covered entities can encourage a more pro-active approach to environmental conservation and protection by encouraging the supply of, and accepting, goods that incorporate reconditioned or recycled materials whenever their technical characteristics satisfy the requirements set out in the tender documents.

73. Third, under certain circumstances, environmental protection objectives can be included in the criteria for selecting suppliers. This is different from the award criteria. Selection criteria address those characteristics employed in determining whether a supplier is qualified to participate in a procurement opportunity. These criteria are designed to test suppliers' economic, financial and technical capacities and may therefore include environmental concerns depending on the expertise required for specific contracts.

74. Fourth, during the contract award phase of the procurement process, environmental factors could play a part in identifying the most economically advantageous tender, but only in cases where reference to such factors makes it possible to gauge an economic advantage which is specific to the works, goods or services being procured and directly benefits the covered entity.

75. Fifth, covered entities can pursue environmental protection objectives through performance conditions imposed contractually on successful tenderers. Therefore, a covered entity can require the supplier whose tender has been selected to perform the contract in accordance with certain constraints aimed at protecting the environment. However, any such performance conditions should not be discriminatory or in any way disturb the smooth functioning of the Single Market. In addition, such conditions must also be included in the tender documents in order to ensure that tenderers are sufficiently aware of their existence.

III. PART TWO

Substantive Provisions

PROHIBITION OF OFFSETS

76. Member States shall ensure that covered entities do not seek or impose offsets in the qualification and selection of suppliers, goods, services or works, in the evaluation of tenders or in the award of contract in respect procurement covered under the provisions of the Policy for CARICOM suppliers. A margin of preference may be applied only to extra-regional tenderers.

77. The use of discriminatory measures such as offsets distort trade and limit the potential of the Single Market. In addition, such measures are most effectively applied between a developed country and a developing country and only in the short term. This is because the larger more advanced developed country is far more likely to have the skills and technology that a developing country may wish to acquire. On the other hand, relatively equal smaller developing countries in respect of level of development, technological advancement, professional skill sets and qualifications, like the Member States, are unlikely to possess the kinds of advantages over each other that are generally embodied in offset requirements and that be usefully transferred among them.

78. Further the provisions of the Revised Treaty already oblige the treatment within the context of the Single market and Economy of the free movement of skills, technology and the right of establishment. As such, the use of offsets in the regional Public Procurement regime would be counter-productive to the stated objectives and goals of the CSME. Consequently, subject to Part IV, *Temporary Safeguards*, this Policy does not recommend the use of offsets.

RULES OF ORIGIN

79. Member States shall apply the existing Community rules of origin to the public procurement activities of the covered entities. It is not the intent of this Policy to recommend the creation of new rules of origin to govern the regional Public Procurement regime. It is neither efficient nor effective for a single market space to employ differing sets of origin rules, as the monitoring and management requirements would be overly burdensome at both the Community and National levels. The Public Procurement regime should therefore be subject to the same rules of origin that apply within the Community as regards originating and non-originating goods.

DENIAL OF BENEFITS

80. A Member State may deny the benefits of this Policy to a service supplier of another Member State, following notification and consultation, directly to the supplier, the Member State of supplier, and the Permanent Committee on Public Procurement when the denying Member State determines that the service is being provided by a supplier that:

(a) is not established in the Region; or
(b) is owned or controlled by extra-regional persons.

PUBLICITY CONCERNING LAWS AND REGULATIONS, AND OTHER RELEVANT DIRECTIVES OR GOVERNING DOCUMENTATION

81. Requirements for publicity and market access are the two most critical elements that will distinguish national regimes from the regional regime. It is important therefore to ensure that all interested parties are aware, in advance, of the laws, regulations and other documentation that govern procurement processes in which they intend to participate. This affords a level of efficiency and effectiveness to the procurement process and safeguards against mis-procurements, unnecessary supplier challenges

and the institution of dispute settlement procedures, as well as other potentially costly mistakes.

82. Covered entities in the Member States shall ensure the electronic submission of information as described in paragraphs 83 to 87 below to the Community level for dissemination through the Community Public Procurement Notice Board. The Community shall ensure regional dissemination upon receipt of such information from the covered entities.

PRIOR INFORMATION NOTICE

83. Covered entities of the Member States shall publish, as early as possible in each fiscal year, a Prior Information Notice containing information regarding covered entities' procurement plans for the relevant year.

84. Prior information Notices shall be disseminated by way of the Community Public Procurement Notice Board, and shall, as far as possible, include the subject matter of planned procurements including volumes and values, and the proposed dates or range of possible dates for publication of relevant invitations to tender.

85. Owing to the nature of the Prior Information Notice, the content of such notices shall not be binding on covered entities. Notwithstanding, covered entities shall make the best efforts to carry out procurement activities in accordance with the content of the Prior Information Notices.

86. Prior information notices are intended to enable suppliers, particularly the smaller regional suppliers, to become aware of purchasers' procurement requirements sufficiently early and to organize their internal operations and processes accordingly in order to optimally position themselves for successfully competing in a procurement opportunity when it is formally announced. The Prior Information Notice seeks to

provide an indication of the types of goods, services and works that a government will require, the possible volume, and, if known, the time of the procurement. It is important to recognize that the Prior Information Notice is a procurement-planning tool or a basic estimate of procurement needs. The specific content of such notices, including estimated schedules, quantities, inter alia, are subject to change, and as such supplier challenge and/or dispute settlement procedures should not apply in the event of a Member State's non-compliance with the content of the such notices. Notwithstanding Member States should consider that suppliers would have been planning their activities according to the published estimated needs of the covered entities. Consequently, covered entities should make every effort to follow the estimated plans published in their Prior Information Notices as closely as possible in the relevant circumstances.

PUBLICATION OF PROCUREMENT OPPORTUNITIES

87. Covered entities of the Member States shall publish procurement opportunities where such opportunities involve contracts with values equal to and/or exceeding the applicable Thresholds. Such notices shall be published by way of the Community Public Procurement Notice Board, and shall include a minimum content as set out in paragraph 89 below. Covered entities may choose not to apply the provisions of this paragraph when employing a single source procedure.

88. The publication of procurement opportunities of the covered entities is necessary in order to obtain the benefits of increased competition through the participation of as many interested suppliers as practicable in any given procurement opportunity. Such notices serve also serve the purpose of informing potential suppliers of the opportunity so that they may submit tenders.

IDENTIFICATION AND PUBLICATION OF THE MINIMUM CONTENT OF TENDER NOTICES

89. Covered entities of the Member States shall ensure that invitations to tender published in accordance with paragraph 87 above, contain at a minimum the following information:

a) name and address of the covered entity, including the post of the designated responsible public officer;
b) description of the required works, goods or services;
c) location of the deliverable(s);
d) qualification requirements;
e) date, time and location where tender or prequalification documents may be collected, and the price charged, if any;
f) source of funding;
g) closing date and time for tender submission, the place and form of submission;
h) date, time, location and manner of tender opening;
i) tender security (if required);
j) main criteria to be used for award of contract; and
k) subject to the details of (j) above, a statement to the effect that the Member State is not bound to accept the lowest priced or any tender.

90. It is important to prescribe a minimum content for tender notices in order to ensure an equitable and fair level of predictability throughout the proposed regional regime, as well as to ensure that suppliers are afforded sufficient information to adequately determine whether to participate in any given procurement opportunity. Further, while 89 (k) is a general measure that affords a certain level of protection to the Member State, should 89 (j) identify price as the main criterion to be used in the award

of contract, the covered entity would, in fact, be bound to accept the lowest priced tender. Consequently, the exercise of 89 (k) must be subject to the details of 89 (j).

PUBLICATION OF QUALIFICATION REQUIREMENTS

91. Covered entities of the Member States shall publish any supplier qualification requirements in respect of a procurement opportunity. Such publication should be made by way of Community Public Procurement Notice Board and as part of the minimum content requirement of the Invitation to Tender referred to in paragraph 89 (d) above. Covered entities may choose not to apply the provisions of this paragraph when employing a single source procedure.

92. It is necessary to include supplier qualification requirements in the invitations to tender in order to preserve efficiency and to avoid the waste of scarce resources. If suppliers are not advised, in advance, of any qualification requirements in respect of a particular procurement opportunity, this may result in the waste of the suppliers resources in preparing and submitting a tender for a contract for which he is unqualified to perform; as well as the waste the covered entities' resources in processing that tender.

PUBLICATION OF TIME LIMITS FOR THE TENDER PERIOD

93. Covered entities of the Member States shall publish any time limits for the tender period in respect of a procurement opportunity. Such publication should be made by way of the Community Public Procurement Notice Board and as part of the minimum content requirement of the Invitation to Tender referred to in paragraph 89 (g) above.

94. This information is important because it helps to clearly set out the covered entity's requirements and allows the potential supplier an the opportunity to make an appropriate determination as regards participation in the procurement opportunity. The

publication of this information is necessary in order to preserve efficiency and to avoid the waste of scarce resources. If suppliers are not advised, in advance, of the relevant tender period in respect of a particular procurement opportunity, this may result in the waste of the suppliers resources in preparing and submitting a tender for which the tender period has expired.

PUBLICATION OF TECHNICAL SPECIFICATIONS

95. Covered entities of the Member States shall publish any technical specification requirements in respect of the product(s) to be procured. Such publication should be made by way of the Community Public Procurement Notice Board and as part of the minimum content requirement of the Tender Documentation referred to in paragraph 150 (e) below.

96. The publication of technical specifications is an important element of transparency. It helps to properly specify the needs of the covered entity and allows the supplier sufficient information to make a judgement as to whether he can fulfil them, thereby avoiding potentially costly delays and mis-procurements.

PUBLICATION OF CONTRACT AWARD CRITERIA AND AWARD NOTICES

97. Covered entities of the Member States shall publish any evaluation and/or contract award criteria in respect of the procurements under consideration product(s). Such publication should be made by way of the Community Public Procurement Notice Board and as part of the minimum content requirement of the Invitation to Tender referred to at paragraph 89 (j) above and the Tender Documentation referred to in paragraph 150 (g) below.

98. Covered entities of the Member States shall:

a) directly inform participating tenderers in a procurement opportunity of the results of the tender evaluation process;

b) submit by way of electronic process a similar notice to the Community level for general publication;

c) ensure the dispatch of notices referred to at (a) and (b) above within a reasonable time; and

d) provide the reasons for its contract award decision, within a reasonable time and

upon request of any tenderer or Member State.

99. Covered entities of the Member States should make the best effort to ensure that the time period referred to in paragraph 98 (c) above does not exceed three (3) days.

100. The Community shall ensure the publication, by way of the Community Public Procurement Notice Board, of notices referred to in paragraph 98 (b) above immediately upon receipt of such notices from the Member States, and shall remain posted for a minimum period of thirty (30) calendar days in order to allow sufficient time for all interested parties to access the information.

101. Contract Award Notices shall, at a minimum, contain the following information:

a) a description of the goods, services and works procured;

b) the name and address of the covered entity making the award;

c) the name and address of the successful tenderer;

d) the value of the successful tender;

e) the date of award; and

f) the procurement method employed. Where a procedure other than open or selective tendering was used, therefore not requiring the publication of

an invitation to tender, a description of the circumstances justifying the use of such procedure should be included in the Contract Award Notice.

102. It is important that potential suppliers be made aware, in advance, of the criteria upon which their tenders will be evaluated and a contract awarded in order to ensure that the best possible tender is submitted and, by extension, the covered entity receives the best possible value for money in the particular procurement opportunity.

103. The publication of contract award notices is also important to the effectiveness of the procurement system. In addition to identifying the successful tenderer, such notices should also include a summary of the relative advantages of the successful tender. This serves to improve the effectiveness of the procurement regime, by affording the unsuccessful tenderers some general information by which to evaluate their own tenders and to accurately identify elements that can be improved in future. Contract award notices also serve the specific purposes of enabling tenderers to check that their rights have not been infringed and providing useful information for analyzing market trends in different sectors. As a transparency requirement, publication of these notices helps to establish and maintain the credibility of the Public Procurement regime. These notices should therefore contain sufficient information to facilitate achievement of these objectives.

104. In order to ensure the widest possible accessibility to the Contract Award Notice, the proposed Community Public Procurement Notice Board could serve as an effective dissemination vehicle. In this regard, covered entities would be responsible for the prompt transmission of their contract award notices to the Community level, where such notices would be posted to the Notice Board immediately upon receipt.

RECORD OF THE PROCUREMENT PROCEEDINGS

105. Covered entities of the Member States shall document and maintain records of their procurement proceedings as set out in paragraph 106 below.

106. Without prejudice to the means of retention and/or storage, covered entities of the Member States shall ensure that procurement records, at a minimum, contain the following information and are retained for a minimum period of five (5) years:

a) Brief description of the works, goods or services procured;
b) Names and addresses of supplier(s);
c) Procurement procedure used
d) Name and address of successful tenderer;
e) Date of approval;
f) Contract price and actual completion cost;
g) Contract duration;
h) Information relative to the qualifications of suppliers;
i) Summary of the evaluation and comparison of tenders;
j) Reason(s) for rejection of any or all tenders;
k) Summary of requests for clarification/verification of tender documents and any modifications thereof;
l) Information relative to the successful tenderer's performance on the contract; and
m) Information relative to complaints, resolution decisions and appeals.

107. One of the most effective means to promote transparency and accountability is by requiring covered entities to maintain complete records of procurement processes. A Procurement Record summarizes key information concerning the procurement proceedings. It also assists in facilitating the exercise of the right of aggrieved suppliers to seek review. That in turn will help to ensure that the Community policy is, to the extent possible, self-policing and self-enforcing. Furthermore, adequate record

requirements will facilitate the work of Government bodies exercising an audit or control function and promote the accountability of covered entities to the public at large as regards the disbursement of public funds.

108. It is important to ensure that the record and maintenance of procurement activities are sufficiently adequate to allow for the fulfillment of reporting obligations under this Policy, the availability of accessibility to information that may be necessary in the event of a supplier challenge or the institution of dispute settlement proceedings, and informed decision-making in respect of review and update of the regional regime as necessary. As such, while Member States may choose to retain additional information, the minimum standard of information necessary for the satisfactory functioning of the Community regime is required to be maintained for the purposes of this Policy.

LIMITATIONS ON THE PUBLIC DISCLOSURE OF INFORMATION

109. Except when ordered to do so by a competent court, and subject to the conditions of such an order, covered entities of a Member State shall not disclose:

a) information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the supplier(s) or would inhibit fair competition; or
b) information relating to the examination, evaluation and comparison of tenders, other than a summary of the evaluation and comparison of tenders.

110. This Policy recognizes the need for certain limitations on the public disclosure of information in order to preserve the integrity of the Community regime and to engender supplier confidence as regards the protection of their proprietary information. An important aspect therefore of enacting record requirements is to specify the extent and

the recipients of the disclosure. Setting the parameters of disclosure involves balancing factors such as: the general desirability, from the standpoint of the accountability of covered entities, of broad disclosure; the need to provide suppliers with information necessary to permit them to assess their performance in the proceedings and to detect instances in which there are legitimate grounds for seeking review; and the need to protect the confidential trade information of suppliers.

DESIGNATION OF CONTACT POINTS

111. For the purposes of the dissemination of general information under the requirements of this Policy, Member States shall:

a) establish National Contact Points; and
b) submit information about such Contact Points to the Community level for posting to the Community Public Procurement Notice Board.

112. The Community shall also establish a regional contact point, information about which shall also be posted to the Community Public Procurement Notice Board.

113. Member States and the Community shall ensure the currency of their respective information.

114. A general information contact, including the name, address (physical and electronic) and telephone/telefax numbers, in each Member State should be included in the information posted to the Community Public Procurement Notice Board. From time to time, interested suppliers or any member of the general public may wish to obtain clarification or have other queries as regards Member States' laws, regulations, procedures, or other aspect of the procurement systems. This is also a necessary requirement at the Community level. Consequently, a means of contact should be

established and published for both the Community and Member State levels of operation.

VALUATION RULES

115. For the purposes of determining the use of the most appropriate procurement method in accordance with the provisions of this Policy, and in cases where it is not possible to specify a fixed contract price, covered entities shall observe the following as the basis for estimating the value of the procurement, with respect to:

a) a fixed-term contract,
   (i) where the term is 12 months or less, the total estimated contract value for the contract's duration; or
   (ii) where the term exceeds 12 months, the total estimated contract value, including the estimated residual value; or

b) a contract for an undetermined timeframe, the estimated monthly installment multiplied by 36. Where there is doubt as to whether the contract is to be a fixed-term contract, the basis for estimating the value of the procurement described in this subparagraph should be used.

116. Where due to the nature of a procurement, it may not be possible to calculate its precise value in advance, for example, a procurement by lease or rental that does not specify a total price or for which the precise duration is unknown, covered entities should make the best possible estimate of the total contract value on the basis of objective criteria, in order to determine whether the value of the contract under consideration falls within the range of values for which competitive tender on a regional basis should be applied, i.e., above the value of the Efficiency Threshold. In the case of the long-term lease of agricultural equipment, for example, where the duration of the contract is not known at the time of tender, in the absence of a common formula, it is possible and probable that each Member State would estimate a different value of the

contract for the purposes carrying out the procurement process. This is undesirable in the context of a single unified market. It is important, therefore to establish a common valuation formula which all Member States would utilize in the appropriate circumstances.

117. Notwithstanding the best practice duration of 48 months, taking into account the size of the regional Public Procurement market as well as the average size and capacity of private enterprises, it may not be feasible to anticipate that contract duration would frequently exceed 36 months in respect of the types of procurement that would require the calculation of an estimated contract value.

TENDERING PROCEDURES

118. Member States shall employ open competitive tendering procedures for values of contract equal to and/or exceeding the relevant Threshold, except where such procedure is inefficient or would harm the interests of the Member States, as set out in paragraph 119.

119. Subject to paragraph 118 above, Member States may employ a procedure other than open tendering in the following circumstances:

a) when no suitable tenders are received in response to an invitation to open tender;
b) when the value of the product(s) to be procured is less than the relevant Threshold;
c) when the contract may be performed only by a particular supplier, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, and no reasonable alternative or substitute exists;

d) for reasons of extreme urgency brought about by unforeseeable events and the product(s) to be procured cannot be obtained in sufficient time by means of open tendering procedures;

e) for additional deliveries by the original supplier where a change of supplier would compel the covered entity to procure goods or services which do not meet requirements of interchangeability with already existing goods and services;

f) when additional goods, services or works which were not included in the initial contract, but which were within the objectives of the original tender documentation, have, through unforeseen circumstances, become necessary to satisfactorily complete the procurement. However, the total value of contracts awarded for additional construction services should not exceed fifty percent (50%) of the amount of the initial contract. It is important to establish a limitation with respect to construction contracts as repeated modifications and/or other changes can be used as a means of circumventing the requirements of this Policy;

g) in the case of contracts awarded to the winner of a design or other artistic contest;

h) for goods purchased on a commodity market and for purchases of goods and services made under exceptionally advantageous conditions which only arise in the very short term;

i) when the procurement under consideration is of a highly sensitive or confidential nature and where the specificity and extent of disclosure required in a competitive tender process will prejudice or harm the Member State's or general public's interests; and

j) in the case of intra-governmental procurement, i.e., procurement between procuring entities within any Member State. Procurement between entities of a single government does not usually follow the same rules that are applicable to procurement between private sector suppliers and covered entities. While some governments may choose to develop a set of rules to

govern this type of internal procurement activity, most governments, including the majority of the Member States, choose to treat this issue as a cooperation transaction, without monetary exchange.

120. Notwithstanding the provisions of paragraph 119 above, Member States shall recognize that flexibility to determine the best suited procurement method in the circumstance shall not prevent a covered entity in one Member State from awarding the relevant contract to a supplier in another Member State, provided that supplier satisfactorily fulfils the identified requirements.

121. In the cases of Selective tendering and/or Requests for Quotation, Member States shall undertake to make their supplier participation selections in a fair and non-discriminatory manner so as to afford the opportunity to participate to the maximum number of regional suppliers.

122. From time to time circumstances may arise where the nature of the procurement to be undertaken makes an open tender process unsuitable or infeasible. In such circumstances, Member States have the flexibility to utilize a method other than open competitive tender. Such methods include Selective Tender, Requests for Quotation (RFQs), and Single Source. Nonetheless, this flexibility should not prevent a covered entity in one Member State from directly contracting with a supplier from another Member State, should the covered entity determine this action to be in the best interests. Additionally, it is important to clearly identify such circumstances, as far as possible, so that any flexibility provided for in the selection and application of procurement methods is appropriately employed.

123. Member States and the Community shall recognize and apply, as necessary to fulfill obligations of this Policy, the following rules associated with the tender process:

a) Procurement Planning. Covered entities of the Member States shall ensure adequate planning of their procurement processes so as to facilitate the efficient and effective operation of the Community regime;

b) Advertising Media.

   (i) Covered entities of the Member States shall ensure that procurement opportunities covered under this Policy are advertised by way of the Community Public Procurement Notice Board, in order to facilitate the widest regional participation, and

   (ii) The Community shall ensure that subsequent documentation to this Policy provides common rules in respect of (i) above;

c) E-Procurement. The Community shall make best efforts to ensure that governing documentation for the Community regime facilitates the future implementation of electronic procurement systems and processes in order to afford the highest levels of regional competition, improved value for money and the overall efficiency of the Community regime;

d) Clarifications, Modifications and Amendments.

   (i) Covered entities of the Member States shall ensure that clarifications, modifications and amendments in respect of Public Procurement documentation are fairly and impartially disseminated to each supplier who received such documents, and

The Community shall ensure that subsequent documentation to this Policy provides common rules for treating with clarifications, modifications and amendments so as to ensure that each potential tenderer obtains fair and impartial treatment with respect to the provision of relevant information, and to avoid the perception of unfair advantage;

e) Security of Tenders.

(i) Without prejudice to the mechanism or facility employed, covered entities of the Member States shall ensure optimum security of tenders subsequent to submission and prior to tender opening, and

(ii) The Community shall ensure that subsequent documentation to this Policy provides common rules for ensuring the security of tenders including, as far as practicable, the use of locked tender boxes and similar mechanisms, as well as authorities and responsibilities regarding access to such secure mechanisms;

f) Establishment of Tender Evaluation Committees.

(i) Covered entities of the Member States shall ensure the objective review and evaluation of tenders,

(ii) Member States shall encourage covered entities to establish Tender Evaluation Committees consisting of not less than three (3) persons in order to foster fairness and impartiality in the tender evaluation processes, and

(iii) The Community shall ensure that, in the context of the harmonization objective, subsequent documentation to this Policy provides common rules for the establishment and operation of such Committees;

g) Regional Reporting requirements – mechanisms, time frames, and content/form.

(i) Member States shall submit periodic reports on their procurement activities covered under the provisions of this Policy to the Community level,

(ii) The Community shall be responsible for transferring such information into the Community database on public procurement statistics, and

(iii) The Community shall also ensure that subsequent documentation to this Policy sets out common rules for reporting periods, deadlines, relevant forms and formats, minimum content, the use of classification systems, a form of aggregated reporting for the lower value procurements where detailed reporting on such individual procurements would result in inefficiencies in the reporting process, and any other relevant elements.

h) Charge or Fee for Tender Documents:

(i) Member States shall ensure that fees charged to suppliers by covered entities in exchange for access to tender documents, are reasonable, reflect only the cost of printing and delivery to prospective suppliers, and shall, in no case be so high as to discourage qualified suppliers.

(ii) The Community shall ensure that subsequent documentation to this Policy provides detailed guidance in respect of this consideration, taking into account average costs associated with the preparation of such documents across the Member States, as well as the need for some level of harmonization in the context of a single unified regional public procurement market space.

TIME LIMITS

124. Member States shall ensure that all time limits applied to procurements carried out by their covered entities and covered by the provisions of this Policy are adequate to allow interested regional suppliers to prepare and submit tenders and, where appropriate, applications for qualifying.

125. In determining these time limits, covered entities of the Member States shall take into account the complexity of the intended procurement and the possibility of publication delays, and time considerations involved in the cross-border transport of relevant documentation, where necessary, consistent with the covered entities' own reasonable needs.

126. Covered entities of the Member States shall:

a) when using the open tender procedure, provide no less than forty (40) calendar days between the date on which an invitation to tender is published and the date for the close of the tender period, i.e., the deadline for the submission of tenders; and

b) when using the selective tender procedure, provide no less than twenty-one (21) calendar days between the date on which an invitation to tender is published and the date for the close of the tender period, i.e., the deadline for the submission of tenders.

127. Notwithstanding the provisions of paragraph 126 (a) and (b) above, covered entities of the Member States retain the flexibility to employ shorter time periods, consistent with the needs of the procurement:

a) when applying a procedure other than open tender; or
b) in the circumstances defined in paragraph 119.

128. The establishment of appropriate time limits or deadlines for the submission of tenders, following an invitation to tender, is important to the overall success of the tender process. Imposition of deadlines by a covered entity in one Member State that are too short makes it difficult for suppliers from other Member States to participate in the procurement opportunity. This has the effect of limiting competition and reducing the covered entity's chance of obtaining the best value for money in respect of that procurement. In the absence of the prescription of minimum time limits, the possibility exists for covered entities to use excessively shortened time periods with the effect of reducing competition in favour of national suppliers. Several considerations should be taken into account in establishing minimum time limits. These include the nature and complexity of the intended procurement, the volume to be procured and the reasonable needs of the covered entity.

129. Generally, shorter time limits are applied in cases where the item(s) to be procured do not require customized production and can be acquired on the commodity market. Longer time limits are normally applied in cases where the procurement involves multiple parts, is complex, or may require the issuance of sub-contracts.

130. The minimum time limits proposed in this Policy afford flexibility to the covered entity to fix specific time limits in accordance with the circumstances of the procurement under consideration and are in keeping with international best practices, while taking into account the need to ensure the opportunity for smaller suppliers to derive benefit.

TECHNICAL SPECIFICATIONS

131. In prescribing technical specifications, covered entities of the Member States shall ensure that such specifications:

a) are included in the tender documents;
b) are worded in terms of performance and functional requirements, wherever possible, rather than design or descriptive characteristics;
c) be based on regional standards, where these exist, or in their absence, on national standards or internationally recognized standards and codes;
d) do not refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirement(s). Where this type of specification is necessary, words such as “equivalent or similar to” should be included in the specifications.

132. Covered entities of the Member States shall ensure that the design and use of technical specifications in their procurement processes are not intended to, nor have the effect of, unfairly limiting competition and/or directing the award of contract to a particular supplier.

133. Technical specifications describe the features of the item(s) to be procured. Inappropriate, inaccurate or incomplete technical specifications can result in considerable loss to the covered entity through the acquisition of unsuitable items or the expenditure incurred by both the covered entity and the supplier in respect of time and

other resources that will be required to repeat the tender process. It is important, therefore, to ensure that tender documents, where appropriate, contain complete and accurate technical specifications that adequately reflect the needs of the covered entity.

134. Technical specifications, if inappropriately used, can have the effect of unfairly directing the award of contract to a particular supplier. It is therefore also important to provide policy guidance with regard to the development and inclusion of fair and objective technical specification in the tender documents which encourage the widest possible competition in the particular procurement opportunity.

QUALIFICATION OF SUPPLIERS

135. Covered entities of the Member States shall ensure that:

a) any conditions for participation in a procurement opportunity imposed on an interested supplier by a covered entity are limited to those conditions that are essential to ensure that the supplier possesses the required capabilities to fulfill the requirements of the procurement and the ability to execute the corresponding contract;

b) in the process of qualifying suppliers, covered entities do not discriminate between national and non-national suppliers;

c) qualification decisions are based solely on the conditions for participation that have been specified in the invitation to tender and/or other tender documentation;

d) all suppliers that meet the conditions for participation in a particular procurement opportunity, as set out by the covered entity and notified in the tender documents, are recognized as qualified;

e) suppliers that have applied for qualification are promptly notified of the qualification decision of the covered entity; and

f) where a supplier is rejected on the basis of qualifications, the covered entity within a reasonable time and at the request of that supplier, communicate the reasons for its decision to the supplier.

136. Covered entities of the Member States shall not impose artificial constraints that serve to limit the opportunity to participate in procurement processes, such as conditions that require previous award of contract by the covered entity or prior work experience in the territory of the covered entity, as a pre-requisite for award of contract.

137. Nothing in this Policy prevents a covered entity from disqualifying a supplier from participating in a procurement opportunity on grounds such as supplier bankruptcy, false declarations or conviction for serious criminal offense(s).

138. The Community shall ensure that subsequent documentation to this Policy sets out common rules for the temporary suspension and/or permanent debarment of suppliers in the circumstances outlined in paragraph 137 above.

139. Provision on the qualification of suppliers is intended to ensure that the suppliers with whom covered entities contract are qualified to perform the contracts awarded to them. Although such provisions are generally aimed at equal treatment of suppliers and the prevention of arbitrary discriminatory actions on the part of the covered entities, the covered entities should also be afforded sufficient flexibility to determine the required qualifications commensurate with the nature and complexity of the intended procurement and their reasonable needs. If properly applied, supplier qualifications can help to prevent frivolous tendering while affording the covered entity a measure of protection against poor performers.

SUPPLIER REGISTERS

140. For the purposes of this Policy, there shall be a single common register of community suppliers for use by all Member States.

141. The Community shall establish and maintain the Community Register of Eligible Suppliers, which shall be published on the Community Public Procurement Notice Board and accessible to covered entities, regional suppliers and any interested member of the general public.

142. Member States, through their respective designated National Contact Points, shall be responsible for submitting lists of eligible National suppliers to the Community level for publication, as well as for the verification and currency of the information contained in such National lists.

143. The Community shall ensure that subsequent documentation to this Policy sets out common rules and standards to be observed by the Member States for the selection of suppliers to be included in the National lists submitted to the Community level for publication in the Community Register of Eligible Suppliers.

144. The Community shall also ensure adequate administrative capacity to satisfactorily establish and maintain the Community Register.

145. Some covered entities maintain short lists of qualified suppliers in conducting very small value procurements and where a qualification exercise carried out for each such procurement would cause the overall procurement process to become inefficient. Such short lists are, therefore, important to the efficiency of the procurement process.

146. In addition, several Member States currently maintain formal national lists or supplier registers, the majority of which do not exclude the participation of non-national suppliers. Within the CSME framework, however, any national register could not be different from the regional register and vice versa. Further, national registers, when combined into a single regional register, can provide covered entities of the Member States with important information regarding the existence, specializations and qualifications of suppliers that are outside of their National jurisdictions, in order to facilitate opportunities for regional participation in the procurement processes of Member States, particularly those procurements that do not employ an open competitive tender process.

147. Covered entities in all the Member States will be relying on the accuracy and currency of the information contained in the Community Register. It is important, therefore, that Member States periodically update the information contained in their National lists submitted to the Community level, and also that the selection of suppliers for inclusion in the National lists is performed according to common rules observed by all Member States.

148. According to international best practices, the only rationale or justification for the establishment and maintenance of such national registers is to pre-qualify suppliers in order to obviate the need to conduct a qualification exercise as part of the procurement process, with the expectation, thereby, of improved efficiency gains. However, this rationale relates primarily to the National context. In the Community context, the greatest benefit is facilitation that it affords for regional participation and competition in the regime. There is also the added potential benefit of improved efficiency gains through the obviation of need to conduct a qualification exercise, but this will only occur if there are agreed common rules and standards by which Member States will generally qualify suppliers for inclusion in their National lists. Further, it is important to recognize that a qualification exercise for the purposes of a list or register must necessarily be a general one, and not specific to any particular procurement opportunity.

TENDER DOCUMENTATION

149. Covered entities of the Member States shall ensure that tender documentation provided to suppliers contain all information necessary to allow the suppliers to submit responsive tenders.

150. At a minimum, such documentation shall contain the following:

a) name and address of the covered entity, including the date, time and place for the submission and opening of the tenders, as well as the requests for additional information;

b) the procurement procedure to be employed;

c) the language(s) in which tenders and tendering documents should be submitted;

d) the tender validity period;

e) the purpose of the intended procurement, including the nature and quantity of the goods or services to be procured or the works to be executed and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings or any required instructions;

f) the conditions required of suppliers for participation in the procurement, including-

(i) bonds or other securities,

(ii) proof of legal and financial eligibility, of technical and economic/financial competence, where appropriate, and

(iii) deadline for delivering goods or works or providing services;

g) all criteria to be considered in the evaluation of tenders and the awarding of the contract, including any factors, other than price, that are to be considered in the evaluation of tenders, and if applicable, a clear explanation of the formula for weighing the factors used to select tenders, as well as the currency for submitting tenders and payment;

h) the terms of payment, and any other related terms or conditions;

i) date set to begin and conclude delivery of the goods or works or provision of services;

j) the laws governing the procurement and challenge procedures;

k) the model contract to be signed by the supplier; and

l) any specifications and execution standards relevant to the tender**.**

151. Covered entities of the Member States shall promptly respond to any reasonable request for relevant information relating to the intended procurement, on condition that such information is not intended to, and will not have the effect of, giving any supplier an unfair advantage over its competitors. Such information shall be provided to all suppliers who are in receipt of the tender documentation, along with a copy of the request(s) for information without identifying the source of such request(s) for information.

152. Covered entities shall respond to any requests for clarification and/or modification to the tender documentation within a reasonable time of receipt of such requests. Responses shall be copied to all suppliers who are in receipt of the tender documentation, along with a copy of the request(s) for information without identifying the source of such request(s) for clarification and/or modification.

153. The provision of tender documentation to suppliers is necessary to adequately inform interested suppliers of the covered entities' needs so that suppliers will be able to accurately determine their ability to successfully tender and satisfactorily perform the requirements of the contract. It is also important from the perspective of the covered entity because the provision of full information is likely to result in the receipt of more responsive tenders, thereby providing for a more effective and efficient procurement process.

154. Further, within the context of a single unified market, it is important that there is a common standard applied in all Member States in respect of the content of such tender documentation to ensure uniformity in the single market as well an equal transparency obligation in this process across all Member States.

STANDARD BIDDING DOCUMENTS

155. For the purposes of procurement carried out under provisions of this Policy, Member States shall use Community Standard Bidding Documents.

156. The Community shall ensure:

a) The development and dissemination of Community Standard Bidding Documents in respect of procurements of goods, services and works, to include the standard forms and content of the invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data; delivery time or schedule of completion; and any necessary appendices, such as formats for tender securities; and

b) The availability of and accessibility to Community Standard Bidding Documents by way of the Community Public Procurement Notice Board.

157. Covered entities of the Member States and suppliers, through their Member States may submit requests for modifications and amendments of the Community Standard Bidding Documents to the Permanent Committee on Public Procurement for its consideration.

158. The Permanent Committee on Public Procurement shall be responsible for considering and approving any modifications or amendments to the Community Standard Bidding Documents, as well as ensuring the continued currency of such documentation.

159. Standard Bidding Documents (SBDs) are an important part of the procurement process. Such documents ensure that there is commonality and predictability as regards the general requirements in a tender process. In the circumstance of the CARICOM Region with predominantly small Member States and small suppliers, the use of SBDs assumes greater significance in providing suppliers with a level of familiarity with the obligations that would generally be expected of them, irrespective of the nature or location of the procurement opportunity, and would also prevent the unnecessary use of scarce resource to meet different terms and conditions with each procurement opportunity or within different Member States. SBDs furnish all information necessary for a prospective supplier to prepare a tender for the supply of goods, services or works. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data; delivery time or schedule of completion; and any necessary appendices, such as formats for tender securities. The basis for tender evaluation and selection of the lowest evaluated tender should also be clearly outlined in the instructions to bidders and/or the specifications.

160. Member States would be aware of the procurement harmonization efforts currently being undertaken by the heads of procurement of the multilateral and international financing institutions, for which Jamaica has agreed to be the pilot in the Caribbean region. Participating banks that operate in the Caribbean include the Caribbean Development Bank, the Inter-American Development Bank and the International Bank for Reconstruction and Development (World Bank). It is the experience of the Region that at any given point in time, A Member State will have several different projects underway that are financed by all of these donors and all of which require different procurement procedures, contract administration, monitoring and accounting requirements, as well as reporting requirements – culminating in higher total procurement costs. The rationale for this harmonization effort, therefore, is to improve borrower and donor efficiencies by avoiding the implementation these several different requirements with a view to the realization of cost savings. To date, the procurement harmonization initiative has produced draft SBDs for goods, works, and "small" works (for values of up to US$10 Million) procurements. Operating on a similar premise of improved efficiencies in the procurement process, it may be in the Community's best interests to conduct a technical review of the SBDs produced to date under the procurement harmonization initiative, with a view to adaptation to the CSME context and the development of Community SBDs for use in procurement activities undertaken within the framework of this Policy. In this regard, the relevant draft Multilateral Development Bank Harmonized Edition SBDs produced to date are attached at Annex 7.

SUBMISSION, RECEIPT AND OPENING OF TENDERS

161. Member States shall ensure that Tenders:

a) Are requested to be submitted in writing;
b) Received after the closing date and time for submission are returned unopened to the sender(s); and

c) Are received and opened under procedures and conditions that guarantee transparency, fairness and objectivity.

162. Notwithstanding paragraph 161 (b) above, covered entities of the Member States shall accept later tenders in circumstances where the covered entity can ascertain that such tenders were delayed as a result of Acts of God.

163. The Community shall ensure that subsequent documentation to this Policy sets out common rules for determining procedures and conditions that guarantee transparency, fairness and objectivity, pursuant to paragraph 161 (c) above.

164. The submission, receipt and opening of tenders are important aspects of the tender process which should be performed fairly, without discrimination and in an environment of transparency. Detailed regulatory and procedural guidelines addressing, for example, the use and security of a tender box within the context of a regional procurement process, required number of copies of tenders to be submitted, minimum content of the tender opening record, allowance for the correction of non-material errors, etc., while necessary for the satisfactory functioning of the Community regime, are not appropriate for a policy document and are properly placed in subsequent documentation to this Policy, for example legislation and/or procedural manuals.

EVALUATION OF TENDERS AND AWARD OF CONTRACTS

165. Covered entities of the Member States shall:

a) Consider for evaluation only tenders which, at the time of opening, materially comply with the requirements of the covered entity for participation as described in the tender documents; and

b) Ensure that tender evaluations are performed fairly and objectively, and solely on the basis of the evaluation criteria which is contained in the relevant tender documents.

166. Where a tender is abnormally lower in price than other tenders submitted, the covered entity shall make the necessary inquiries to ensure that the tenderer submitting that tender is capable of fulfilling the terms of the contract.

167. Covered entities of the Member States shall retain the right to cancel a procurement opportunity, rejecting all the tenders where necessary, at any stage of the procurement process without incurring liability, for justifiable reasons in the public interest. Covered entities acting in this manner shall provide, within a reasonable time, its reasons to any supplier or Member State that requests them.

168. Covered entities of the Member States shall award contracts to the tenderer whose tender is determined to be the most advantageous based on the criteria contained in the tender documents.

169. Covered entities of the Member States shall provide reasons for rejection of his tender to the unsuccessful tenderer who so requests. Such requests must be received by the covered entity of the Member State within five (5) calendar days of notification of contract award. The covered entity of the Member States shall respond to such requests with ten (10) calendar days of receipt of same.

170. The evaluation and contract award functions can be considered to be the crux of the procurement process because irrespective of the completeness of the tender documents or the actual responsiveness of the tenders, a poor or badly managed evaluation and award process can result in significant losses to both the government and the tenderers. As such it is important to ensure a common standard in all the

Member States for the fair and objective evaluation and determination of contract award.

NEGOTIATIONS

171. Covered entities of the Member States may conduct negotiations in the following circumstances:

a) In cases of extreme urgency brought about by unforeseen circumstances;

b) When in the reasonable judgment of the covered entity, there is only one supplier that can perform the contract;

c) In the context of procurements in which they have indicated such intent in the invitation to tender; and

d) When it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria described in the tender documents.

172. With respect to paragraph 171 (d) above, negotiations, covered entities of the Member States shall ensure that negotiations are used primarily to identify the strengths and weaknesses in tenders, and not to arbitrarily discriminate among tenders. In particular, covered entities of the Member States shall ensure that:

a) any elimination of participants is carried out in accordance with the criteria described in the tender documentation;

b) any resulting modifications to the criteria and/or the technical requirements are communicated in writing to all remaining participants in the negotiations; and

c) on the basis of the revised requirements and/or when negotiations are concluded, all remaining participants are afforded an equal opportunity to submit new or amended tenders according to a reasonable and common deadline.

173. The Community shall ensure that subsequent documentation to this Policy sets out any additional rules for using this procedure, as may be necessary to ensure that this procedure is not used as an unfair discriminatory tool or as an artificial barrier to regional market access.

174. Negotiation is a derogation or an exceptional means of awarding contracts and should be used only in specific circumstances, particularly when a tender process or other traditional methods of procurement, will not be useful to the covered entity conducting the procurement.

175. One of the benefits available to CARICOM in designing a Community regime for Public Procurement is the opportunity to be guided by the experiences of other regions or countries that have already accomplished such an undertaking. One of the critical lessons to be learned is in the use of the Negotiated Procedure as experienced by the European Union (EU) in the administration of its internal Public Procurement regime. In a case brought before the Court of Justice *(in Commission v. Italy)* the Court ruled[3] that "the burden of proving the actual existence of exceptional circumstances justifying the derogation lies on the person seeking to rely on those circumstances."[4] Some of the cases brought before the EU Court stem from contracting authorities' (covered entities) use of the Negotiation procedure by way of claiming extreme urgency when this was not the case or where the urgency arose owing to factors for which the contracting authorities were, themselves, responsible, or by wrongly claiming that there was only one supplier capable of performing the contract.

176. The lesson for CARICOM Member States is that although the flexibility offered by this procedure, particularly in the circumstances listed below, is necessary for the

[3] Judgment of 10.03.1987 in Case 199/85 [1987] ECR 1039.
[4] Source: European Commission Green Paper, Public Procurement in the European Union: Exploring the Way Forward.

effective functioning of the procurement system, the decision to employ Negotiation must be carefully considered and properly justifiable within the parameters provided.

CONTRACT ADMINISTRATION

177. Member States shall make the best efforts to ensure that procurement personnel are adequately trained and qualified to administer procurement and contract administration processes.

178. The Community shall make best efforts to design regional training programmes and to assist Member States with the implementation of such programmes on an on-going basis.

179. Contract administration is a key element of managing the outputs of a public sector procurement system. It provides oversight on quality, timely performance and provides for early access to information that is needed for good management. In the context of major public investment projects, contract administration is critical to successful implementation. It is important therefore to define general and common procedures for undertaking contract administration responsibilities to include inspection and acceptance procedures, quality control procedures and methods to review and issue contract amendments in a timely manner.

180. Further, as shown in Annex 4, the “Project” outputs have identified contract administration to be a significant difficulty in almost all of the Member States, resulting in excessive contract modifications, change orders, and sometimes massive cost overruns. These negative outcomes, in turn, could be due to several challenges including a lack of monitoring capacity due to scarce human resources or insufficiently trained personnel, as well as improper procurement planning.

ANTI-CORRUPTION AND CONFLICTS OF INTEREST

181. Member States shall ensure that their procurement personnel discharge their duties impartially so as to assure fair competitive access to procurement opportunities in the regional marketplace by responsible and qualified suppliers, and shall conduct themselves in such a manner as to foster public confidence in the integrity of the Community Regime on Public Procurement.

182. Member States shall ensure that their procurement personnel observe the minimum standard of ethical conduct as follows:

a) It is a breach of ethics to attempt to realize personal gain through public office by any conduct inconsistent with the proper discharge of duties;

b) It is a breach of ethics to attempt to influence any public employee involved in Public Procurement activities of the Community to breach the standards of ethical conduct in this code;

c) It is a breach of ethics for any public officer involved in Public Procurement activities to participate directly or indirectly in a procurement process when the officer knows that:

(i) the officer or any member of the officer's immediate family has a financial interest pertaining to the procurement,

(ii) a business or organization in which the officer, or any member of the officer's immediate family, has a financial interest pertaining to the procurement,

(iii) any other person, business or organization with whom the officer or any member of the officer's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement;

d) It is a breach of ethics for a supplier to offer, give or agree to give any public officer or former public officer, or for any public officer or former public officer to solicit, demand, accept or agree to accept from a supplier, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a procurement, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any preceding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any Public Procurement contract, subcontract, activity; and

e) It is a breach of ethics for any public officer or former public officer knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

183. The Community is encouraged to develop additional norms and standards for the implementation and enforcement by all Member States and which would be included in subsequent documentation to this Policy.

184. Corruption can take multiple forms. Donald Strombom, former Chief of Procurement for the World Bank wrote, in 1998, that in his experience "no form of corruption is more pervasive or has higher costs than corruption related to Public Procurement: government buying of goods, works, and services." (See Annex 6 for complete article.) The costs of corruption, real or perceived can be quite significant. This consideration takes on greater significance in light of some of the key findings of

the "Project" as shown in Annex 4. There are several types of corruption that can occur in Public Procurement, from the more common forms like bribery, bid-rigging, supplier collusion to less "visible" forms like the transfer of company stocks or an elite school scholarship for a family member or relative. The occurrence of any of these activities can significantly constrain, and even negate, realization of the anticipated benefits of the regional Public Procurement regime. A number of the Policy recommendations, if properly implemented and enforced will serve to lessen the likelihood of occurrence of these kinds of activities, particularly those requirements relating to transparency. However, it is also important to ensure that a common code of conduct is enforced as an integral part of the Community Public Procurement regime. Consequently, this Policy recommends some general anti-corruption provisions, and that subsequent documentation including the Proposed Model Law should design and direct their enforceability, including the application of sanctions and other forms of redress.

185. Public employment is a public trust. As such, the Community should promote the objective of protecting the integrity of the Community regime on Public Procurement. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to public service.

USE OF INFORMATION TECHNOLOGY

186. Member States should endeavour to use electronic means of communication, as far as practicable and as domestic laws permit, to disseminate information on Public Procurement particularly as regards the publication of notices, including the Prior Information Notice, Invitations to Tender and Contract Award Notices, taking into account:

a) The high costs of paper publication;
b) The volume of publication that will be necessary in the operation of the Community regime;

c) The complexities of inter-regional transport and delivery of paper copy documents;
d) The time constraints involved in Public Procurement processes; and
e) Regional progress in the use of electronic data processing and telecommunication technologies.

STATISTICAL REPORTING

187. Member States to maintain and periodically submit at the Community level information relative to their procurement activities.

188. The Community shall, consistent with paragraph 123 (g) (ii) and (iii) ensure the development of common rules with respect to the maintenance, content and submission of such periodic reports, and the dissemination of such common rules in subsequent documentation to this Policy.

189. The Community shall ensure the development of an electronic Database of Community Statistical Information, and the recording in the database of statistical data submitted by the Member States for the purposes of reporting under the provisions of this Policy. The Community shall further ensure full or partial secure access to the Member States in respect of the information contained in such database and facilitated by way of the Community Public Procurement Notice Board.

190. Public Procurement statistics is one of the most effective means of acquiring the information necessary to evaluate the performance of the Public Procurement regime including the extent of compliance with the provisions of this Policy, identify problems and formulate beneficial resolution. In order to ensure the proper functioning of the Community regime, it is therefore necessary to require Member States to maintain and periodically submit at the Community level information relative to their procurement activities. The specific details of

Member States' statistical reporting obligations, including the content and frequency of submission of such reports, as well as the preferred or mandated classifier, as noted in paragraph 123 (g), are such that properly belong in the proposed Community Model Law on Public Procurement. However, it is a sufficiently important issue for this Policy document to recognize the need for statistical reporting on the part of the Member States, as well as the significance and the purpose of such reports.

SUPPLIER CHALLENGE AND REVIEW

191. For the purposes of implementation of this Policy, the right to review appertains only to suppliers, and not to members of the general public. Further, certain types of actions and decisions by the covered entities of the Member State that involve an exercise of discretion are not subject to the right of review provided for by this Policy. The exemption of certain acts and decisions is based on a distinction between, on the one hand, requirements and duties imposed on the covered entity that are directed to its relationship with suppliers and that are intended to constitute legal obligations towards suppliers, and, on the other hand, other requirements that are regarded as being only "internal" to the administration, that are aimed at the general public interest, or that for other reasons are not intended to constitute legal obligations of the covered entity towards suppliers. The right to review is generally restricted to cases where the first type of requirement is violated by the covered entity.

192. Member States shall provide for the independent review of supplier challenges. Such review may be at the administrative or judicial levels. When an authority other than a Court hears a supplier challenge, this does not prejudice the right of the supplier initiating the challenge to seek judicial review.

193. Independence shall be determined by the <u>total</u> lack of involvement with the covered entities as well as any aspect of the procurement processes carried out by the covered entities.

194. Member States shall ensure that the exercise of a supplier's right to challenge and seek review of the procurement decisions of their covered entities does not prejudice that supplier's participation in ongoing or future procurement opportunities within the Member State of the covered entity.

195. The Community shall ensure the development of common non-discriminatory, timely, transparent and effective procedures that enable suppliers to challenge alleged breaches of this Policy arising in the context of procurements in which they have, or have had, an interest. Such common rules shall be set out in subsequent documentation to this Policy.

IV. PART THREE

Temporary Restrictions, Technical Cooperation and Assistance

TEMPORARY RESTRICTIONS

196. Having regard to Article 47 of the Revised Treaty entitled *"Restrictions to Resolve Difficulties or Hardships arising from the exercise of rights,"* and subject to the provisions therein, where the exercise of rights granted by the provisions of the regional regime creates serious difficulties in any sector of the economy of a Member State or occasions economic hardships in a region of the Community, 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.

197. Temporary safeguards or restrictions that may be applied, pursuant to paragraph 196, shall include:

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

198. Member States shall comply with the notification requirements of Article 47 of the Revised Treaty, as outlined below.

199. Where a Member State:

a. intends to apply restrictions in accordance with paragraph 196 it shall, prior to applying those restrictions, notify the COTED of that intention and the nature of the restrictions;

b. is unable to comply with sub-paragraph (a) of this paragraph, it shall immediately notify the COTED of the application and nature of the restrictions.

200. The Member State shall, at the time of application of the restriction(s), submit to COTED, a programme setting out the measures to be taken by that Member State to resolve the difficulties or to alleviate the hardships.

201. The COTED shall give its earliest consideration to the programme, and:

a. make a determination in respect of the appropriateness of the restrictions and whether they shall be continued; and
b. where it decides that the restrictions shall be continued, determine:

i. the adequacy of the programme; and
ii. the period for which the restrictions should continue.

The COTED, in making a determination under sub-paragraph (b) of this paragraph, may impose such conditions as it considers necessary.

202. Restrictions applied by a Member State shall be confined to those necessary:

a. to resolve the difficulties in the affected sectors;
b. to alleviate economic hardships in a particular region.

203. In applying any of the restrictions mentioned in paragraph 197, Member States shall:

a. minimize damage to the commercial or economic interests of any other Member State; or

b. prevent the unreasonable exercise of rights granted by the provisions governing the regional regime, the exclusion of which could impair the development of the CSME.

204. The Member States, in applying restrictions, shall not discriminate and:

a. shall progressively relax them as relevant conditions improve;

b. may maintain them only to the extent that conditions mentioned in paragraph 196 of this Article continue to justify their application.

205. If COTED is not satisfied that the Member States applying restrictions are acting in accordance with the provisions of paragraph 203, it may recommend to the Member States adversely affected thereby alternative arrangements to the same end.

TECHNICAL COOPERATION AND ASSISTANCE

206. 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.

207. 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.

V. PART FOUR
Institutional Provisions

POLICY-MAKING, MONITORING AND REVIEW BODIES

208. The Community shall be responsible to establish the necessary institutional mechanisms to ensure satisfactory functioning of the Community regime.

PERMANENT COMMITTEE ON PUBLIC PROCUREMENT

209. 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.

210. The Permanent Committee on Public Procurement shall:

a) oversee the implementation of the Policy and compliance with its provisions;

b) meet as necessary to examine and evaluate the operation of the Policy and progress in achieving its objectives, including the performance of the periodic reviews in respect of disadvantaged countries, sectors, regions as well as less developed countries, recommended in Part Three (III) of this Policy;

c) review the results of this Policy's application every two (2) years, the report on which should be made available to Member States at the earliest opportunity after completion of such reviews and should include a report on the application of any special provisions pursuant to Part III of this Policy and Chapter 7 of the Revised Treaty. The purpose of such report

shall for the Councils to adopt and to take action, as necessary, designed to enhance the effectiveness of the Community regime;

d) in its decision-making processes, promote as far as practicable the use of electronic communications in light of the reasonableness of cost, and scope and ease of access;

e) coordinate the development of a Community Database of government statistical information and make decisions relative to the accessibility of the information its contains;

f) coordinate and promote the design of training programs, as necessary, to support the implementation processes at the Community level and in the Member States; and

g) coordinate, as necessary, the requests and provision of technical cooperation and assistance referred to in Part III, paragraphs 206 and 207.

211. The Permanent Committee on Public Procurement is encouraged to establish ad-hoc working groups, as necessary, comprised of Trade and Public Procurement Officials to assist in the discharge of its responsibilities under the provisions of this Policy.

212. Pursuant to Article 15 of the Revised Treaty, the Council on Trade and Economic Development (COTED) has primary responsibility for promoting the development and overseeing the operations of the Single Market and Economy, and the Council on Finance and Planning (COFAP) which is mandated in Article 14 of the Revised Treaty to, inter alia, recommend measures to achieve and maintain fiscal discipline by the governments of the Member States. As such, this Policy recommends that the Permanent Committee on Public Procurement is comprised of representative membership from the COTED and COFAP.

213. Further, it is recommended that the first meeting of this Committee should take decisions with regard to the operational characteristics of the Committee, including those relative to specific membership, chairmanship, tenures, etc. It is therefore important that the Committee is established and begins to meet prior to the entry into force of the Community regime.

COMMUNITY PUBLIC PROCUREMENT NOTICE BOARD

214. 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.

215. For the purposes of implementation of this Policy, the Community and Member States shall use the Community Public Procurement Notice Board to fulfill obligations as noted throughout this Policy, including:

a) Supplier exchange of information to facilitate joint bidding activities;
b) Publication of the following –

(i) Prior Information Notice,
(ii) Procurement Opportunities,
(iii) Contract Award Notices,
(iv) Designated National and Community Contact Points,
(v) Community Register of Regional Suppliers,
(vi) Community Standard Bidding Documents, and
(vii) Modifications and/or Amendments to Coverage; and

c) Accessibility to the Electronic Database of Regional Public Procurement Statistics.

216. Member States and the Community shall ensure respective administrative and technical capacities necessary to optimally utilize the Community Public Procurement Notice Board in accordance with the provisions of this Policy.

217. Policy recommendation for the design, establishment and maintenance of a Community Notice Board on Public Procurement will require Information Technology and Data Management Specialists to receive information from the Member States including laws, regulations, administrative procedures, contact points, prior information notices, invitations to tender, contract award notices and procurement statistics for posting to the Notice Board in a sufficiently coherent form and format that is user-friendly to covered entities, regional suppliers, and any interested member of the general public. The maintenance of such a Notice Board, particularly with respect to the currency of posted information is, itself, a significantly complex task. While infrequent changes are likely to occur in respect of laws, regulations, administrative procedures as well as information on designated contact points, prior information notices should remain posted only for the duration of the period to which they apply. Further, invitations to tender will need to be removed once the relevant tender period expires, corresponding contract award notices need to be posted as soon as possible after receipt from Member States and should remain posted for a minimum period of thirty (30) calendar days in order to allow sufficient time for all interested parties to access the information. Management of the Notice board is, therefore, a constant activity that will require sufficient qualified and dedicated resources to ensure success.

218. As previously recommended, the Community Public Procurement Notice Board should also function as a mechanism which allows suppliers who are interested in bidding jointly with other suppliers on any particular procurement opportunity to identify and access contact information on each other.

219. There will necessarily be significant reliance on Member States to fulfill their obligations as it is not possible at the Community level to effectively monitor the execution of every procurement process within the scope of this Policy that Member States will perform. Therefore the greater responsibility for controlling compliance will reside at the Member State level.

220. The likely benefits are well understood: savings at all levels; more effective use of limited resources; healthier employment situation in the region as a whole and improved confidence from taxpayers and the public in general – which itself is an unquantifiable benefit with a multiplicity of returns at the economic, political and social levels.

221. Member States need therefore to ensure the establishment and effective operation of Public Procurement oversight mechanisms at the national level.

DISPUTE SETTLEMENT

222. 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.

VI. PART FIVE
Final Provisions

GENERAL EXCEPTIONS

223. 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.

224. Member States shall not apply general exception measures in a manner that would constitute a means of arbitrary or unjustifiable discrimination among Member States or as disguised restrictions on cross-border trade.

225. Consistent with the context of a single unified and open market and taking into account existing relevant Revised Treaty provisions in this regard, Member States shall not introduce any new general exception measures subsequent to entry into force of the Community regime.

AMENDMENTS AND MODIFICATIONS

226. Member States shall not withdraw covered entities from the scope of coverage with the intention of avoiding compliance with the provisions of this Policy.

227. Notwithstanding the provisions of paragraph 226 above, Member States shall retain the right to take certain actions, which may impact on the scope of coverage, including the privatization of an entity, or the merger of two or more covered entities.

228. Member States shall, in the circumstances described in paragraph 227 above, submit, 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.

229. Member States shall not be required to make compensatory adjustments where:

a) It can be established that a proposed modification covers an entity over which the government of the Member State has effectively eliminated majority ownership and/or control; or

b) Proposed amendments or modifications are minor in nature and do not substantially affect the scope of coverage offered by any Member State.

230. Member States shall ensure the updating of Schedules and other relevant documentation reflecting any agreed modifications and amendments, and shall submit same to the Community level as soon as possible thereafter.

231. The Community shall ensure that agreed modifications and/or amendments to Schedules and other relevant documentation that are submitted by Member States are promptly disseminated by way of update to information contained on the Community Public Procurement Notice Board.

ANNEX 1

Resource Documents

1. Agreement between the Caribbean Community and the Government of the Republic of Costa Rica

2. Agreement establishing a Free Trade Area between the Caribbean Community and the Dominican Republic

3. Agreement on Government Procurement 1994. World Trade Organization.

4. APEC Non-binding Principles on Government Procurement

5. Directive 2004/18/EC of the European Parliament and of the Joint Council of 31 March 2004 on the Coordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts

6. European Union – Chile Association Agreement February 2004

7. European Union Green Paper. Public Procurement in the European Union: Exploring the Way Forward. November 1996

8. Free Trade Area of the Americas Draft Chapter on Government Procurement. September 2003

9. General Agreement on Trade in Services (GATS). World Trade Organization.

10. Public Procurement: Market Access, Transparency and Multilateral Trade Rules. Evenett and Hoekman. World Bank Policy Research Working Paper 3195. January 2005

11. Public Procurement in CARICOM: A Comparative Assessment. Hagop Angaladian. April 2005

12. Public Procurement in CARICOM: Best Practice Formulation. Hagop Angaladian. March 2005

13. UNCITRAL Model Law on Procurement of Goods, Construction and Services 1994.

ANNEX 2

Gross Domestic Product (GDP) for CARICOM Member States (in $EC Millions)

Antigua and Barbuda	1,368.00
The Bahamas	7,786.00
Barbados	4,501.00
Belize	1,980.00
Dominica	415.00
Grenada	706.00
Guyana	1,224.00
Jamaica	13,312.00
St. Lucia	1,164.00
St. Kitts and Nevis	566.00
St. Vincent and the Grenadines	647.00
Suriname	5,368.00
Trinidad and Tobago	21,394.00
TOTAL	**60,431.00**

Note:

Figures are reflected in 2003 dollars, with the exception of the Bahamas (1995) and Jamaica (2001).

Source: National Statistics Database – CARICOM Secretariat www.caricom.org

ANNEX 3

DISAGGREGATION AMONG GOODS AND SERVICES AND WORKS PROCURED BY SELECTED MEMBER STATES IN 1999 (FIGURES SHOWN IN UNITED STATES DOLLARS)

Country	Goods and Services	Works
Bahamas	288,000,000	149,000,000
Barbados	135,000,000	71,000,000
Haiti	32,000,000	13,000,000
Jamaica	191,484,000	22,580,000
Suriname	47,822,385	7,638,889
Trinidad and Tobago	185,259,850	276,024,636

Source: Country submissions to the FTAA Secretariat. FTAA secure website.

ANNEX 4

KEY FINDINGS AND RECOMMENDATIONS OF THE "PROJECT"

Findings

Present Status of Public Procurement within CARICOM Member States

The findings put forth through the Country Procurement Assessment Reports[5] for all 15 CSME participatory States identify major shortfalls and deficiencies. These could, in general, be summarized as follows:

- **Competitive public procurement regimes in the CARICOM States are in disarray and are dysfunctional:** In general terms, the roots of competitive public procurement in CARICOM States are obsolete and shallow, developed at a time when transparency and accountability emanated solely from public finance administration concerns. The result is dysfunctional procurement regimes which translate into segregated pockets of procurement practices and not national systems. National Governments have not yet considered or tackled the challenge of public procurement reform in any meaningful way;

- **Public procurement accounts for a significant percentage of public expenditure:** There are major deficiencies in data collection in the area of public procurement in all CARICOM member States. Apart from hampering the Community's efforts to develop effective negotiating positions within the FTAA, public procurement data is not only essential for developing a regional regime in procurement, but also a pre-requisite to scope each member State's procurement. The absence of data has resulted in lack of analysis which in turn has drastically diminished levels of economy, efficiency, reliability, transparency and accountability. From the sketchy order of magnitude public procurement levels provided in the individual Country Procurement Assessment Reports, it is estimated that the scope of public procurement in the CARICOM amounts to 10 to 15% of the GDP, or US $ 3,425 to US $ 5,140 million for a total Community GDP of US $ 34,253 million equivalent. Therefore, public procurement is a key component of public sector operations and improving the value for public money spent on procurement holds out the promise of substantial savings in CARICOM Governments expenditures. Based on experience in other countries, CARICOM Governments can realize savings of as much as 20 to 25% of the total procurement value in the medium term by subjecting procurement to internationally accepted best-practices. These savings would translate collectively to around US $ 685 to US $ 1,285 million equivalent;

[5] Conducted 2003 – 2004.

- **In 2003, 14 of the 15 CARICOM member States ranked in the top 30 of the World's highly indebted emerging market economies:** In proportion to the size of their economies all 14 of the CARICOM independent States (excluding Montserrat) are among the 30 most heavily indebted emerging economy market countries in 2003 (largely due to a sharp increase in expenditures, rather than a fall in revenues), with seven member States (Guyana, St. Kitts and Nevis, Jamaica, Antigua and Barbuda, Dominica, Grenada and Belize) in the top ten. In 2003, the public sector debt as percent of GDP of Guyana stood at 179%, St. Kitts and Nevis at 160%, Jamaica at 142%, Dominica at 122%, Antigua and Barbuda at 115%, Grenada at 109% and of Belize at 93%. Thus, any savings in public spending accrued would be welcoming factor to public finances;

- **Legal Framework:**
  The current legislation governing procurement in CARICOM States is made up of poorly-coordinated and outdated sub-legislative Regulations/Acts and Decrees: There are no dedicated legislations governing public procurement within the CARICOM States, except for Guyana where the Public Procurement Act is not yet fully operational. In general, the legal framework in member States emanate from subsidiary legislation issued under outdated "Financial Administration and Audit Acts" or similar variants of it (Government Compatibility Act in Surinam and Procurement Decree in Haiti). These make up a poorly-coordinated and piecemeal approach to procurement legislation and fail to provide a satisfactory set of rules for planning, awarding and monitoring government contracts. These types of legislation fail the key tests of economy, efficiency, reliability, transparency and accountability which are all essential to any well-functioning national public procurement system.

- **Current Practices:**
  The weakness of legislations and/or their enforcement breeds many abusive and manipulative practices in public procurement: The deficiencies, and lack of comprehensive legislation and its enforcement, governing the public procurement, are demonstrated in inefficient and non-transparent procurement practices throughout. Procurement Regulating Authorities are highly centralized and are often in conflict of interest situation as they are involved in procurement operations as well. Procurement planning is either non-existent or inherently weak and ineffective. Budgeting is opaque to priority projects by under-funding, resulting in operational delays and cost-overruns. Most of public procurement is currently not exposed to competitive bidding and even camouflaged through State Owned Companies (SOCs) or Procurement Agents which in turn are not selected on a competitive basis. Vehemently arguing that economies are comparatively small, bidders are selected through pre-prepared and pre-registration lists.

Arrangements for bid openings, a crucial step in achieving transparency, are non-transparent, with bidders often denied the right to attend bid opening sessions. Evaluation criteria are not only vague but most of the time not disclosed to bidders. The crucial process of bid evaluation and selection of the winner is particularly non-transparent as the work of evaluation committees/bodies is undermined by excessive discretion afforded to senior public officials and or Ministers, all in an environment that they are not held accountable for their decisions.

Organization & Resources:

Enforcement of the procurement rules is extremely weak and sometimes non-existent, due to the absence of a single regulatory authority: There are no national institutions, throughout all CARICOM member States, with the sole authority for oversight or regulatory functions over public procurement. Instead these functions are shared with those of procurement operational decisions, mostly concentrated within Ministries of Finance. Furthermore, current legislation generally requires that procurement be conducted by tender boards/committees. However, accountability is severely undermined by the fact that these Boards/Committees do not have clear authority to make any procurement decisions and by excessive discretion allowed to senior public officials and Ministers.

The rights of bidders are not adequately protected: There are practically no formal mechanisms in place for administrative review of bidders' complaints. Bidders' rights are further eroded through registration schemes. As such bidders are not protected. In some CARICOM States, in the absence of administrative review, the only venue is legal process, the costs of which repel bidders to launch complaints.

Capacity to conduct procurement is extremely weak: Procurement is not regarded as a profession throughout the public sector in the CARICOM States. Procurement functions are handled by untrained, non-specialist staff at all levels of administration. Combined with weak legislation and regulations, procurement has turned into an interpretive function. Compounded by low salary levels the risk is significantly high resulting in adverse outcomes throughout the procurement process. Most public officials who handle procurement have never received any procurement training at all.

Internal and external procurement controls are inadequate: The absence and/or lack of internal and external audit functions in public procurement is a major gap for accountability. Most of the Auditor General's offices in the CARICOM States derive their authority through the "Financial Administration" Acts, by which they are mandated to report to their respective Parliaments on examinations of operations of all entities that receive funding by Parliamentary vote. However, most of these offices are under-staffed and their reporting is restricted only to financial audits. In many cases, although the physical institution exists its utility is marginal. The apparent breakdown of comprehensive auditing functions in CARICOM member States has resulted in a large

gap in the public procurement monitoring process resulting in opaque procurement systems.

- **Anti-Corruption:**
  Procurement related corruption is a major problem: Throughout the CARICOM member States there are no clear guidelines of what constitutes conflict of interest in public procurement. Existing Anti-Corruption Acts and/or rules and regulations for all levels of administration involved in procurement are vague and are loosely defined, which foster opportunities and the risk of corruption for petty and for substantial procurement expenditures.

- **Private Sector:**
  Due to small size of individual economies, the private sector actively seeks public procurement opportunities, albeit with little or no confidence in the integrity of the public procurement system: Due to the small size of individual economies of the CARICOM States, the private sector actively seeks participation in public procurement opportunities, albeit with a low level of confidence in the integrity of the public procurement system and with the majority not perceiving it fair and equitable. In fear of being excluded from subsequent contracts, there has not been apparent dissatisfaction expressed. This approach is further eroded by pending/late payments on contracts executed. Such environment has resulted in inflated prices within public contracts. Compounded with selective procurement methods from registered suppliers, governments in the CARICOM member States are missing the important opportunity to control their public procurement expenditures for the benefit of stimulating the economic activity in their countries.

- **Public Procurement in the CARICOM States is severely under-developed and rated as high-risk:** Based on the analysis of the legislative framework, the absence of the regulatory institutions, the non-enforcement of existing regimes, the lack of capacity of institutional and human resources to render an effective and efficient public procurement and the threat of corruption and fraudulent actions, the CPARs conducted, found that in general the environment for conducting public procurement within the CARICOM States is substantially under-developed and at high-risk.

- **The general conclusion was that the present procurement regimes are counter productive towards the efforts of CSME:** The prevalent abusive practices in public procurement throughout the CARICOM member States is counter-productive to the Community's efforts for a regional integration program and does not foster towards the full potential of CSME.

Framework of Best Practice in Public Procurement

To achieve an effective implementation of CSME while embracing a modern Best-Practice, reforms in Public Procurement entails the following key areas:

A. At Community Level, a Protocol with:

- Clear Policy Framework; and
- Comprehensive Objectives.

B. At Member State level:

- A Legislative and Regulatory Framework, that complies with applicable obligations deriving from regional and national along with the tools to support the implementation;

- Institutional Framework and Management Capacity, that integrates into the Public Financial Management System of the member State, implying the existence of a Functional Management and/or Regulatory Body with strong institutional development Capacity;

- A Public Procurement Operations that is efficient and functional in the market place, implying well established practices in the procurement process, contract administration and management and dispute resolution provisions and mechanisms;

- A Reliable Public Procurement System with effective control and audit systems, efficient appeal mechanism, easy access to information and provision of ethics and anti-corruption measures.

Recommendations

Recommendation # 1

To empower the Treaty to its full potential, it must be further amended to include Government Procurement.

Recommendation # 2

It is proposed that the Conference of the Heads of Government establish a Council in Government Procurement (or COGOP).

Recommendation # 3

Thus, it is further proposed to establish a permanent Public Procurement Coordination Unit within the CSME Unit at the CARICOM Secretariat, that would assist the Council for Government procurement to:

(a) Promote the concept of "Best Practice in Public Procurement";
(b) Formulate a reform Action plan;
(c) Facilitate the establishment of public procurement forum within the Community;
(d) Promulgate the "Best-Practice" regime;
(e) Design and implement training packages in procurement;
(f) Compile information and data on the performance of public procurement within the CARICOM; and
(g) From time to time coordinate a public information campaign.

Recommendation # 4

Principles of Best-Practice Public Procurement

The overriding principles of a Best Practice public procurement system is to deliver *economy and efficiency* in the use of public funds while adhering to the fundamental principles of *reliability, non-discrimination and fair treatment (due process), transparency and access to information,* conducted in an *Accountable and Ethical manner*.

Recommendation # 5

Adoption of National Public Procurement Laws/Acts Based on UNCITRAL Model Law

Based on the recommendations of the Country Procurement Assessment Reports and to align the Public Procurement regime with the Community policies for harmonization purposes under the CSME, it is recommended that all CARICOM member States consider enacting national public procurement Laws/Acts based on the UNCITRAL Model Law[6].

Recommendation # 6

Enacting of a Core Set of the UNCITRAL Model Law as Statutory Instrument Governing Public Procurement

It is recommended that CARICOM member States adopt Option II as a legislative approach by enacting a Core Set of Model Law provisions rather than the full statutory enactment of the Model Law (Option I).

Recommendation # 7

Adopting Procurement Regulations to Supplement Procurement Acts/Laws

The enactment of a Core Set of Model Law requires supplementary "administrative instruments" in terms of Procurement Regulations.

Recommendation # 8

Issuing Procurement Guidelines and Manuals in Support of Procurement Regulations

To provide clear guidance to public officials dealing in public procurement, member States are advised to issue detailed procurement Manuals and Guidelines, which apart from providing a crystallized road map in public procurement could as well be used as training tools.

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[6] Guyana has already enacted the Procurement Act 2003 which is based on the UNCITRAL Model Law. It is strongly recommended to follow the recommendations of the Country Procurement Assessment Report for Guyana to revise the Act in line with a Best Practice approach.

Recommendation # 9

Legislative and Regulatory Framework Summary in Best Practice

In summary, a legislative and regulatory framework for Best Practice in Public Procurement within the context of CSME, entails:

- Enacting of a National Public Procurement based on the Core Set of the UNCITRAL Model Law as Statutory Instrument Governing Public Procurement;

- Adopting a set of Procurement Regulations as a sub-set and supplementary to the enacted Statutory Instrument;

- Issuing Procurement Guidelines and Manuals in support of Procurement Acts/Laws and Regulations, to serve also as training tool to public officials dealing in procurement.

Recommendation # 10

Objectives of Public Procurement System

A Best Practice public procurement regime should operate to meet the following objectives:

- Provide public accountability;
- Achieve value for money in public spending;
- Work within current government policies;
- Ensure contract performance;
- Operate within current available resources.

Recommendation # 11

Establishing a Central Functional Normative Body

A Best Practice system in procurement characterizes itself with the establishment of a Central Functional Normative Body with oversight responsibilities in public procurement and to mainstream it with national budgets.

Recommendation # 12

Status of the Central Functional Management/Normative Body in Public Procurement

It is imperative that the Central Functional Normative Body be independent and to derive its powers from the legislative and regulatory framework, implying the need of adequate funding through the national budget and staffing, for the exercise its duties and responsibilities. It is further recommended that such a Body report to the member States' Parliaments through the Council of Ministers.

Recommendation # 13

Institutional Structure of the Procurement Operations

To meet the objectives of a Best Practice public procurement regime, i.e. Provide public accountability, Achieve value for money in public spending, Work within current government policies and to Ensure contract performance, CARICOM member States should:

- Decentralize the decision making process in public procurement to procuring entities;
- Establish a Central Functional Normative Body with oversight responsibilities.

Recommendation # 14

The Choice to Centralize or Decentralize Public Procurement

The choice between centralized or decentralized public procurement approaches is not empirical and simple. Both systems have their merits and demerits. Within the CARICOM context, the choice of the strategy depends on the level of national public procurement activity and market development, which should be based on available detailed statistics and information on existing "critical mass" per sector.

Thus, it is imperative that CARICOM member States complete expeditiously Component II of the "Government Procurement Frameworks in the Caribbean Community: Towards a Regional Best-Practice Regime for the CARICOM Single Market and Economy" project, to enable an in-depth analysis for the formulation of the mix of centralized and decentralized public procurement structure.

Recommendation # 15

- Decentralize the Procurement Decision Making to the Procuring Entities;

- A Best-Practice entrusts the procuring entities to organize internally, on delegated authority levels based on procurement thresholds, to be fully responsible for the decisions of their own procurement. Their functioning control should be the responsibility of the Central Functional Normative Body as an oversight institution, to ensure adherence of the procurement process to established rules and regulations.

Recommendation # 16

Use of Procurement Thresholds

Subsequent to the establishment of a Central Functional Normative Body with procurement oversight responsibilities and entrusting the decision making to the procuring entities, a Best-Practice procurement threshold determines the method/type of procurement to be undertaken. Procurement thresholds should not be utilized to repatriate award decisions into a central focal point for political influence purposes.

Recommendation # 17

Updating of Procurement Thresholds

Furthermore, the Central Functional Normative Body shall from time to time, review the threshold levels and should align them to meet the market conditions. Such a process should be a consultative one with all procuring entities.

Recommendation # 18

Harmonizing Procurement Thresholds

Taking into account the similarities of the scope of the economic activity of the member States it is advisable that procurement thresholds be also harmonized throughout the member States, to facilitate the conduction of CSME objectives.

Recommendation # 19

Contract Administration and Dispute Resolution Provisions

Best-Practice public procurement covers contractually all procedures of inspection, acceptance, quality control and dispute resolution procedures. Sufficient safeguards should be incorporated in contractual documentation to this effect. Procedures must also exist to enforce the outcome of a dispute resolution process.

Recommendation # 20

- Training is the Key to a Best Practice in Public Procurement;

- Training on procurement rules and best practice may well be the best and least costly way to achieve economy, efficiency, reliability, transparency and accountability in public procurement. New procurement techniques and structures will not deliver greater efficiency and lower costs unless procurement officers know how to use them.

Recommendation # 21

- Training in Procurement Must be a Continuous Process

- A public procurement training program needs to be developed which spreads training throughout the Community; a program that focuses on best procurement practice and which is not simply a one-off event. The elaboration of such a program would involve many players: the CARICOM Secretariat, the member States, National Sectoral associations, businesses, Universities, Donors and even the civil society.

Recommendation # 22

Scope of Training in Public Procurement

Apart from government officials, a training strategy in procurement should envisage including representatives of audit and control authorities, the supply community, civil society and the public at large.

Recommendation # 23

Streamlining Procurement as a Profession

Steps must be taken to stimulate the training of procurement officers in the new and evolving skills they need and to help them to better understand the new role they are called upon to play. Procurement must be streamlined as a profession within governments with salary levels commensurate with the responsibilities involved.

Recommendation # 24

Self Evaluation

Member States must be able to conduct continuous self-evaluations on the performance of their public procurement activities to be able to redress shortfalls and lacunae. Such an activity is essential in public administration and requires highly trained and experienced procurement professionals.

Recommendation # 25

Green Procurement

Green procurement considerations must be integrated in the procurement process. Where Environmental protection Laws/Acts are not yet enacted, Procuring entities may incorporate green requirements into the pre-selection process, tendering process and post-qualification process, by referring to internationally accepted standards and by employing life-cycle costs in their evaluation procedures.

Recommendation # 26

Internal and External Procurement Controls

Internal and external controls at the procuring entity level and an effective external audit system are key elements of a governance and public financial management system and are particularly important to the effective and efficient operations of the public procurement system. These controls should be undertaken at three levels:

- Auditor Generals of all CARICOM Member States and internal audit units of procuring entities, should include procurement as part of their audit portfolio not only at financial levels but also in terms of operations;
- Central Functional Normative Bodies must undertake regular annual procurement and technical reviews of the procuring entities;
- Procuring entities should maintain on-going internal audits.

Recommendation # 27

Establish an Independent Review Mechanism through a Public Procurement Administrative Review Board

The appeal mechanisms, which include a complaint review and remedy system, provide an important contribution to the compliance environment and integrity of the public procurement system. Such a system must be seen to operate efficiently, fairly and providing balanced unbiased decisions. In the absence of such mechanisms throughout the CARICOM member States (except in Haiti, Guyana and to a certain degree in Jamaica) it is recommended that such Administrative Review Boards in public procurement be established directly by the Parliaments, be adequately staffed and funded to perform their functions.

Recommendation # 28

E-Procurement

E-procurement delivers a more transparent public procurement regime with substantial cost savings, evaluated around 10%, when compared to traditional paper-based procurement costs. E-procurement is not a simple process. It requires commitment from government of member States and a specific regulatory environment, combined with a dedicated policy. In light of the present reform environment, it is recommended, that member States institute an “electronic tender notifications” system, to announce Invitations to Bid, disseminate regulatory information, distribute tender/proposal documentation and to announce Contract awards. At this stage, such an approach will greatly enhance the transparency of the public procurement regimes.

Recommendation # 29

Ethics and Anti-corruption Measures

In a Best-Practice procurement environment, check and balances should be supported with clear, unambiguous legal enforceable instruments to deter corrupt and fraudulent practices. Tender documents should also make reference to such practices and sanctions thereof. Each Procuring Entity should adopt a Code of Ethics and should enforce it without exceptions.

ANNEX 5

Human Resource Training and Development in Support of the Regional Integration Policy on Government Procurement

(Extracted from: *Public Procurement in CARICOM: Best Practice Formulation.* Hagop Angaladian. March 2005 – Draft Report)

None of the [Policy recommendations] can operate efficiently in the absence of trained staff. The Country Procurement Assessment Reports presented a dismal state of the staff involved in procurement throughout the member States.

Changing traditional procurement practices will only succeed if there is a change in management ethos away from closed relationships with national suppliers to a transparent and truly commercial environment where doors are open to other bidders and the primary motivation of a public procurement policy is economy, efficiency, reliability, transparency and accountability. Training on procurement rules and best practice may well be the best and least costly way to achieve such a change. Yet for some governments, this is sometimes depicted as a costly luxury, the first to suffer cuts in times of budgetary stringency. New procurement techniques and structures will not deliver greater efficiency and lower costs unless procurement officers know how to use them.

However pressing is the need, it is not expected that traditional practices change overnight. Such a strategy must include nurturing on an optimal procurement policy demands and a real awareness of what procurement of the highest standard actually entails. Steps must be taken to stimulate the training of procurement officers in the new and evolving skills they need and to help them to better understand the new role they are called upon to play. If a real change is desired, a program needs to be developed which spreads training throughout the Community; a program that focuses on best procurement practice and which is not simply a one-off event. The elaboration of such a program would involve many players: the CARICOM Secretariat, the member States, National Sectoral associations, businesses, Universities, Donors and even the civil society.

Such a program should also focus on the importance of continuing education and the application of knowledge. For procurement, this must result in still greater efforts to provide systematic and rigorous training for officials in order to give them the tools that effective procurement demands.

Training does not end with governmental procurement officers. It also entails private sector participants and the public in general as well.

A training strategy in procurement should envisage including representatives of the local supply community, to disseminate the regulatory framework of procurement, bidders' rights, tendering procedures, evaluation methods, etc. Concurrently, the public in general and the civil society must also be informed of the changing environment.

Procurement should be streamlined as a profession within governments with salary levels commensurate with the responsibilities involved.

Member States' Central Functional Normative Bodies should also be able to evaluate their national procurement performance. This would involve evaluation performance standards within each procuring entity, which requires high level of knowledge by each procurement officer/department.

ANNEX 6

CORRUPTION IN PROCUREMENT

By Donald Strombom, President, IDBC

Government procurement contracts for construction projects such as airports, dams, and highways generate immense opportunities for bribes, kickbacks, and other payoffs. In this article, Donald Strombom, a former chief of procurement for the World Bank, looks at the wasting effects of corruption on development and offers a sober assessment of the difficulties in dealing with the problem. Strombom is currently president of IDBC, a consulting firm that advises and trains its clients to win international contracts by competing intelligently and effectively within the rules -- not by corrupt practices.

Corruption takes several forms -- the petty bureaucratic variety, corruption in police and the judiciary, corruption in the election process, to name just a few. But probably none is more pervasive or has higher costs than corruption related to procurement: government buying of goods, works, and services. The reasons are simple. If one sets aside government salaries and social benefits, procurement typically accounts for the largest share of public expenditures at all levels of government. Both the overall amounts and individual contract amounts are huge, and they offer correspondingly large opportunities for bribes, kickbacks, and other payoffs. The potential reward for a single contract directed to the right winner can exceed the legitimate lifetime salary earnings of a decision-maker. The temptations are enormous and, in too many cases, the risks of punishment are relatively small.

Public works construction projects -- airports, dams, highways, subways, water systems -- traditionally have provided the biggest, most publicized, and most dramatic cases of corruption worldwide. Other prime targets are "big ticket" equipment items -- bus fleets, construction equipment, airplanes, turbines, and generators -- as well as simple items like office supplies, pharmaceuticals, textbooks, and uniforms that are purchased in huge quantities year after year.

Corruption practices adapt to changing trends, however. The growing use of external consultants and the increasing outsourcing of contracts for maintenance and other services formerly provided by in-house staff are just two examples of new opportunities for corruption. Perhaps the ripest new opportunity of all, because of the general lack of familiarity with what it involves and the numerous high-value contracts, is in the information technology field. The most spectacular, attention-catching cases are those in which millions of dollars change hands over the award of a single contract or in which governments and political parties fall because of bribery scandals brought out into the

open.

It would be a serious mistake to think that corruption occurs only in these big, high-visibility cases. One could argue, in fact, that these are the more easily monitored and controlled situations -- if the will and the means exist to do so. The more difficult corruption to deal with is that which is ingrained in the culture and permeates entire systems of government procurement, from the lowest-level contract officer and inspector in the field to the ministers or higher who have final authority for contract approvals.

FORMS OF CORRUPTION

How does corruption occur in procurement? The popular image is of a would-be contractor arriving in a minister's or a mayor's office with a suitcase full of cash, just before a critical decision is made about a contract award -- an amusing caricature, but an awkward method and hardly in keeping with modern technology. The reality is more likely to be an electronic deposit in a foreign account, corporate stock shares, an elite school scholarship for a son or daughter. The fact that the recipient may use the proceeds for a worthy cause makes combating corruption that much harder. But the direct contractor-client payoff for a contract award is only one of many possible scenarios, and not necessarily the most common or most costly form of corruption.

Bribery often occurs at a much earlier stage in the procurement process: to get a firm included on a restricted list of bidders, for example, or to encourage a client to write specifications in such a way that the winning bidder is a foregone conclusion. Or corruption may be carried out entirely among competing firms, through collusion and bid-rigging, without the client being involved or even aware it is happening. Firms may agree in advance who will submit competitive bids and at what prices, who will win, and how the profits will be shared. To illustrate how complicated it can be to eliminate corruption, the prequalification of bidders by a client to ensure that only qualified and financially sound firms participate in bidding competition quite unintentionally makes it easier for dishonest bidders to collude, since all prequalified bidders are announced in advance.

Quite likely the most extensive and costly corruption occurs after contracts have been awarded. Corruption is not a charitable game; "winners" have every intention of recovering their bribery costs, and they have a variety of ways to do so. The first stage, especially in collusive bidding, is by inflating their bid prices. Further cost recovery can be achieved during contract performance by over-invoicing for quantities of goods delivered or work performed, reducing the quality of materials used for construction or delivering cheaper models of goods, and obtaining contract change orders to increase the amounts of goods sold or works performed at overpriced unit costs. Again, corruption in the post-award stage of a contract may be with the knowledge and consent of at least some parties in the client's organization, or it may be through well-concealed

initiatives of the contractor alone.

In fairness to contractors, many of the above practices are motivated by attempts to hedge against perceived uncertainties and risks in clients' systems of contracting, rather than deliberate corruption. In that sense, better risk management and contracting terms may be part of an approach to reducing "corrupt" practices.

The debate about who is responsible for corruption in procurement is largely irrelevant, for there is no single pattern. Sometimes the initiative clearly comes from the client in the form of explicit demands by a director for a specified percentage of the bid price or from inspectors who "certify" incorrect quantities for payments to contractors. (This highlights one difficulty in fighting corruption: clients are not monolithic, but rather are many different individuals or groups looking out for their own interests.) In other cases the bidder is first to offer inducements. In most cases there is some degree of complicity between client and bidder/contractor. In all cases, the taxpayer and public at large are the losers.

THE COSTS OF CORRUPTION

What are the real costs of corruption in procurement? One way to measure this is to compare actual prices of similar goods and services delivered under different conditions; for example, in contracts awarded through direct negotiations or restricted bidding in comparison with open and apparently properly conducted competitive bidding. (This does not mean that contracts awarded by direct negotiations or restricted bidding are never appropriate; in some situations these are preferred procedures. The comparisons should be in cases where these are not likely to be the most economical or efficient methods.) Price differentials on the order of 20 to 30 percent are commonly found, and sometimes substantially more. These comparisons are rough approximations at best.

Some would argue that it is virtually impossible to find a reference case that is completely free from the influence of corrupt practices, and that the true cost differences are therefore understated. Conservatively, where corruption is systemic, it probably adds at least 20 to 25 percent to the costs of government procurement. Following a corruption scandal in Milan several years ago, which led to many criminal indictments and closer scrutiny of public contracting practices, unit costs of major works projects fell by more than 50 percent, according to an IMF working paper, "Corruption, Public Investment and Growth," by Vito Tanzi and Hamid Davoodi. With annual purchasing budgets running in the billions or hundreds of millions of dollars, this begins to involve "real money."

If costs of this magnitude are at stake, why isn't something being done to correct the

waste? Some rationalize inaction on corruption by the fact that "it's always been there; it's just part of the cost of doing business." There are those who argue that it isn't really a "problem" because corruption produces economic benefits by "greasing the wheels" of inefficient bureaucracies: how else to get prompt customs clearances, expedite contract payments, and the like? And the reality is that bribery of foreign officials, for example, is not illegal in many countries; until very recently, only the United States had a strong and enforced foreign corrupt practices law. More than anything else, it has probably been a combination of opposition from strong vested interests that benefit from continued corruption and a lack of public appreciation that corrupt practices and their costs can certainly be reduced, even if never completely eliminated.

The good news is that significant steps are being taken to make it clear that corruption is not an acceptable part of public procurement. Various organizations operating on different fronts are mounting a campaign to create public awareness and citizen empowerment, broaden the use of sound procurement practices, and penalize the violators of established norms.

ELEMENTS OF SOUND PUBLIC PROCUREMENT SYSTEMS

What are the characteristics of a good public procurement system? It should be able to deliver the goods and services needed by government to perform its functions in a timely manner and at fair prices; in other words, it should be economical and efficient. Contracting opportunities should be widely publicized. Awards should be made to those who are able to meet the stated needs and required standards and who make the best offers. Rules should be clear and fair, the process transparent, and the results predictable. Underlying the entire system should be a notion that public officials are accountable for the proper use of public funds and should not enrich themselves in the process. Unfortunately, all of these concepts are not yet universally accepted or practiced, and therein lies one of the excuses or causes for corruption.

Wide international experience shows that these desirable characteristics can best be achieved through a system that is based on appropriately designed methods of competition among qualified suppliers of goods and services. There is also broad agreement about the main elements in a competitive bidding process; namely, it should feature:

Public notification of bidding opportunities;

Documents that clearly set out the needs, describe the bidding process and contract terms and conditions, and give the criteria for choosing the winner;

Submission of secret sealed bids that are opened in the presence of the bidders at a specified time and place;

Impartial evaluation and comparison of bids by competent evaluators without influence or interference by bidders or other parties;

Award of the contract to the bidder complying with all requirements and offering the best bid, as defined by the published selection criteria.

TOWARD A UNIVERSAL STANDARD OF GOOD PRACTICES

Governments in many countries and at all levels have developed and successfully used procurement procedures built around these basic elements. The major multilateral development banks (MDBs) -- the World Bank, the African, Asian and Inter-American development banks, the European Bank for Reconstruction and Development, and others -- have all adopted rules for procurement that apply to projects they finance. In order to use funds from their loans, borrowers must follow the prescribed rules; the banks supervise their loans to ensure the rules are properly applied. Failure to follow the rules may result in cancellation of the loans.

In 1993, the United Nations Commission on International Trade Law (UNCITRAL) adopted a Model Law on Procurement of Goods and Construction as a guide for countries to follow for the evaluation and modernization of their procurement laws and practices. This model law was particularly intended to help developing countries and countries in transition from planned to market economies to avoid inefficiency, ineffectiveness, and abuse in public procurement as a result of an inadequate legislative framework. It embodied virtually all of the same principles that the MDBs had built into their procurement rules, as well as administrative and judicial processes for review of procurement decisions, providing an important step toward the development of uniform international rules and procedures.

The most significant accomplishment in this regard was the development, as an integral part of the General Agreement on Trade and Tariffs (GATT) negotiations, of the Agreement on Government Procurement, which was signed in Marrakech in 1994. This agreement, which entered into force for signature countries in January 1996, is more commonly identified as the World Trade Organization's (WTO) procurement rules. Government members of the WTO are encouraged to accede to this agreement, although this is not a condition for membership. Whether or not there is formal country accession to the agreement, the rules and procedures it contains become the closest thing there is to a universal standard for good practices.

In parallel developments, member countries of the Organization for Economic Cooperation and Development (OECD) joined in a concerted effort to promote the adoption of national laws, similar in nature to the U.S. Foreign Corrupt Practices Act, that make bribery of government officials, whether at home or abroad, and other forms of corruption in procurement criminal offenses subject to severe punishment. In 1996, the Organization of American States approved an Inter-American Convention Against Corruption. That same year, the International Chamber of Commerce proposed anti-corruption rules of conduct for corporations and corresponding actions for governments. Suddenly, much of the official and corporate world seems to have decided something should be done about corruption.

Transparency International has played a pivotal role by creating public awareness of the scale of the problem and organizing grassroots efforts to combat corruption. Their influence has been a driving force behind many of the reform efforts under way around the world.

Do these converging positive steps mean that the end of corruption in procurement is in sight? Regrettably, no, for while the rules bring order and sound principles to the process, determined corrupters can still find ways around them and get their payoffs. The MDBs, for example, spend considerable staff time and administrative budget to supervise each lending operation, and particularly to monitor and approve procurement procedures and decisions. Yet recent disclosures suggest that 20 percent or more of these funds in some countries may be lost through "leakage," a euphemism for moneys misdirected by corrupt practices into officials' pockets and personal bank accounts.

Even before these estimates became public, the international financing institutions had taken steps to strengthen their hands in combating corruption. They expanded their procurement rules to include explicit prohibitions against fraud and corruption and to impose strict sanctions in cases in which these practices were discovered: denying contract awards to violators, prohibiting their participation in future bidding for contracts financed by the banks, refusing to pay for improperly awarded contracts, and canceling entire loans in extreme cases. In addition to their normal project supervision and financial audit requirements, the MDBs initiated procurement audits by external companies to determine whether borrowers were strictly observing their rules and procedures.

Along with this tightening of project monitoring and supervision, MDBs are taking parallel steps to ensure that borrowers really understand and are able to apply sound procurement procedures correctly. The World Bank, for example, now requires regular assessments of its borrowers' procurement rules and their organizational capacity to implement them correctly. Conformity with accepted practices and evidence of corruption are two key areas for investigation.

These country procurement assessments, conducted in collaboration with the borrower country, become the foundations for designing and funding technical assistance programs where needed to build professional competence.

STEPPING UP THE FIGHT

Experience of the international financing institutions and others demonstrates one of the truisms in procurement: corruption is not stopped or curtailed simply by having sound rules. It is increasingly clear that other coordinated efforts are needed to make a significant impact on corrupt practices. Everyone must be made aware that violations of the rules are illegal acts that will be discovered and punished. This creates the need for effective monitoring and audit systems and for enforcement agencies that have the will and ability to take actions against violators, regardless of their position. It requires a judiciary system that is not corruptible and is able to make and enforce convictions. Cadres of procurement professionals must be developed who are insulated from political interference in contract award decisions. Temptations for these people to engage in corrupt practices themselves need to be reduced by paying them a reasonable wage that compensates them for their honesty. In short, corruption abatement may require nothing less than a complete overhaul of civil service and governance systems.

Creative thinking and innovative approaches are needed in the fight against corruption. One promising development is the movement to inject transparency into the procurement process by citizen groups that are not amused by government officials getting rich at their expense. Efforts to date are largely concerned with recruiting like-minded citizens and publicizing cases of corruption, but these groups often lack systematic ways to get more deeply into the reform process. Means should be devised for them, as true stakeholders, to take a more active role in monitoring and verifying that procurement processes are not corrupted. The challenge is how to engage them in meaningful ways without corrupting them as well.

The complexity of the fight against corruption should not be taken as an excuse for doing nothing. Many public bodies have already made notable progress in reducing corruption, and enough experience has been gained to point with some assurance to the kinds of measures that are needed and will work. Public reaction against corruption has probably never been stronger, partly because it becomes increasingly clear that the public is the big loser if corruption continues.

There is no better time to mobilize forces in a serious effort to take corruption out of procurement. But reforms must be approached with realistic expectations about how much time and resources will be required. Lasting results will take years to achieve, and sustained efforts must be on a scale commensurate with the problem. It would be particularly tragic if good intentions are backed up by only halfhearted, quick-fix measures that allow corruption in procurement to continue unabated and discourage reformers.

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ANNEX 7

Multilateral Development Bank Harmonized Editions

DRAFT Standard Bidding Documents for Goods, Works, and Smaller Works