



## FREQUENTLY ASKED QUESTIONS OFFENCES AND PENALTIES

No.	Question	Category	Response
1	Can you clarify if the penalties attached when breaching the Act are attached to the Procurement Officer alone?	Offences & Penalties	<p>Section 61(3) of the Public Procurement and Disposal of Public Property Act 2015 (as amended) (hereinafter referred to as 'the Act') states that "a reference in this Act to the commission of an offence by a public body shall be construed as a reference to the commission of an offence by the procurement officer referred to in subsection (2) or an officer who purports to act in such capacity, if it is proved that –</p> <ul style="list-style-type: none"> <li>(a) the offence was committed with his direct consent and connivance; or</li> <li>(b) he, with knowledge, did not exercise reasonable diligence to prevent the commission of the offence".</li> </ul> <p>Any breach under the Act is construed as a breach committed by the Procurement Officer or an officer intending to act in such capacity. Of note, the breaches also apply to other parties involved in the splitting of contracts, failure of the procuring entity to comply with confidentiality requirements, concealing or destroying information required for an investigation and failure of a person to report instances of collusion.</p>



**FREQUENTLY ASKED QUESTIONS  
OFFENCES AND PENALTIES**

No.	Question	Category	Response
			Therefore, the Procurement Officer has a significant responsibility under the Act, but any person who purports to act in the capacity of the Procurement Officer will be held responsible.
2	<p>Is responsibility assigned to a specific person for the keeping of procurement documents for auditing purposes?</p> <p>What is the result of non-production of documents and how does the OPR determine who is liable if the said documents are not produced?</p>	Offences & Penalties	<p>Section 46 of the Act states that “No person shall withhold, conceal, destroy or refuse to produce any book, record or document required for the purpose of an examination or investigation under this Act”.</p> <p>The Procurement Officer and the Accounting Officer are responsible for ensuring that the records for procurement proceedings are maintained for audit purposes. Therefore your document management system should be robust and files should be maintained both physically and electronically. Of note, Offences and Penalties (Schedule 1) states that “concealing or destroying information required for an investigation carries on conviction on Indictment, a penalty of five (5) million dollars and ten (10) years imprisonment”.</p> <p>The Procurement Officer will be accountable for securing the procurement proceedings documents.</p>



## FREQUENTLY ASKED QUESTIONS OFFENCES AND PENALTIES

No.	Question	Category	Response
3	Are there any provisions under The Act to address breaches by Suppliers/Contractors?	Offences & Penalties	<p>Section 59 of the Act addresses conduct influencing public officers. Specifically, section 59(7) states that “where a procuring entity is satisfied that an inducement was offered, or any corrupt, fraudulent, collusive, coercive or obstructive practice was carried out in relation to a tender or proposal, the procuring entity shall reject or revoke the tender or proposal and report the matter to the Officer for appropriate action”. Further, s59(8) provides that a supplier or contractor whose tender or proposal has been rejected or revoked under s59(7), shall be added to the ineligibility list pursuant to s58, for a period of ten (10) years following the date of rejection or revocation of his tender or proposal.</p> <p>Any persons who contravene section 59 commits an offence and is liable on conviction to a fine of one (1) million dollars and five (5) years’ imprisonment.</p>
4	How should the Procurement Officer treat with restricting an award of a contract to suppliers/contractors based on instructions?	Offences & Penalties- -Bid Rigging	The Act defines bid rigging as “collusion between persons for the purpose of manipulating the proceedings”.



**FREQUENTLY ASKED QUESTIONS  
OFFENCES AND PENALTIES**

No.	Question	Category	Response
			<p>As such, the Procurement Officer is strongly advised against manipulating any public procurement or disposal process to achieve a particular outcome.</p> <p>In accordance with section 60 of the Act, “a person who is involved in or participates in bid rigging; or directly or indirectly influences in any manner or attempts to influence in any manner any procurement proceedings in order to obtain a fair advantage in the award of a procurement contract commits an offence and is liable to a fine of five (5) million dollars and imprisonment for ten (10) years”.</p>
5	With reference to estimation and value of procurement, section 32(1) of the Act, what exactly is splitting of procurement?	Offences & Penalties- -Splitting of Procurement with respect to section 32(1) of the Act	<p>According to section 27 (1) (a) of the Act a procuring entity shall publish on its website or any other electronic format, information regarding all planned procurement activities for the following twelve months, no later than six (6) weeks after the approval of the National Budget.</p> <p>Therefore, you are required to indicate in your plan your various procurement activities to be executed in the said period based on allocated funding and your strategic objectives.</p>



**FREQUENTLY ASKED QUESTIONS  
OFFENCES AND PENALTIES**

No.	Question	Category	Response
			<p>It is important in the planning process to develop a reasonable estimate of the value of your procurement. Additionally you should not divide the procurement to deliberately limit competition and/or avoid obligations under the Act. If this is done, it is considered splitting of procurement and will be subjected to - investigation by the Office.</p> <p>Offences and Penalties (Schedule 1) - Splitting of Procurement carries on summary conviction a fine of Five Hundred Thousand dollars (\$500,000) and one (1) year imprisonment.</p>
6	<p>What safety measures are in place for refusing to conduct any procurement activity that is in contravention of the Act for persons that perform the duties of a Procurement Officer but is not the 'Named' Procurement Officer?</p>	Offences & Penalties	<p>Section 40(a) provides that a person shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because –</p> <ul style="list-style-type: none"> <li>(a) he, acting in good faith and on the basis of a reasonable belief, has –               <ul style="list-style-type: none"> <li>(i) notified the DPP, the Police, the Integrity Commission or the Office that his employer or any other person has contravened or is about to contravene this Act;</li> </ul> </li> </ul>



**FREQUENTLY ASKED QUESTIONS  
OFFENCES AND PENALTIES**

No.	Question	Category	Response
			<p>(ii) done or stated the intention of doing anything that is required to be done in order to avoid having any person contravene this Act; or</p> <p>(iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Act; or</p> <p>(b) his employer or any other person believes that he will do something described in paragraph (a)".</p> <p>Victimisation - Offences and Penalties (Schedule 1) - carries a fine of Five Hundred Thousand (\$500,000) dollars and one (1) year imprisonment on summary conviction.</p>
7	Would the Office deal with issues as it relates to wrongful dismissal of Public Procurement Officers?	Offences & Penalties	Yes, there will be an independent mechanism for whistleblowing where you can report issues of wrongful dismissals as it pertains to breaches of the Act or any other related issue which may result in an investigation by the Office.