

SUBMISSION
to
The Commission of Enquiry into the
Construction Sector
on
PROCUREMENT PRACTICES IN THE
PUBLIC CONSTRUCTION SECTOR

Written Statement
of
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1. My name is *Victor Archibald Hart* of La Riviera Apartment 1C, Columbus Circle, Westmoorings, Trinidad and Tobago.
2. I am serving my second term as Chairman of the *Trinidad and Tobago Transparency Institute (TTTI)* and make this submission on its behalf having been duly authorised by its Board of Directors to do so.

TTTI is the National Chapter of *Transparency International (TI)*, the leader of a coalition of anti-corruption movements that was formed in 1993 and headquartered in Berlin, Germany¹. TTTI was formed in 1998 and is one of nearly 100 National Chapters worldwide².

3. I hold a professional qualification as a Chartered Quantity Surveyor (1965) and a Master of Science Degree in Project Management (1979 - University of Reading, UK).
4. I served as one of five Commissioners who were appointed in 2002 by then President of the Republic of Trinidad and Tobago Arthur N. R. Robinson to investigate the Piarco Airport Development Project.

Objective and scope

5. The objective of this submission is to make representations concerning procurement practices in the public construction sector that seek to provide the Commission of Enquiry into the Construction Sector (hereinafter referred to as the Enquiry) with:
 - a) an overview of *the current public procurement regime* in Trinidad and Tobago highlighting systemic weaknesses in the procurement methods currently in use in the construction sector and the potential for corruption in its various forms;
 - b) an overview of *the public procurement reform process* in Trinidad and Tobago outlining the new policy developed by Government with private sector and civil society assistance and our understanding of how much progress has been made to date in implementing this policy; and
 - c) *recommendations* that we suggest the Commission should make to Government, through the President of the Republic, for immediate action to promote greater integrity and transparency in public procurement.

¹ For more information on TI see: www.transparency.org .

² For more information on TTTI see: www.transparency.org.tt .

6. Subsequent submissions will respond to the core concerns of possible corruption in the local construction industry that led to the setting up of the Enquiry and provide:
 - a) a presentation on '*How Corruption Occurs in Construction Projects*';
 - b) a presentation on the results of a survey of '*Corruption in the Trinidad and Tobago Construction Industry*' that we are currently undertaking; and
 - c) an outline of *anti-corruption tools and resources* developed internationally that we suggest the Commission should recommend for use by both the public and private sectors.

THE CURRENT PUBLIC PROCUREMENT REGIME

Development of the current regime

7. In 1961 a Central Tenders Board (CTB) was established to, inter alia, “act for, in the name and on behalf of the Government and the Statutory Bodies ... in inviting, considering and accepting or rejecting offers for the supply of articles or for the undertaking of works or any services in connection therewith, necessary for carrying out the functions of the Government or any of the Statutory Bodies ...”³
8. With the growth of government activity over the years, it became increasingly obvious that the CTB, as originally envisaged, could no longer handle adequately the scale and range of projects placed before it. This led to a series of amendments to the 1961 legislation: in 1979, allowing the government to act on its own behalf; in 1987, allowing the government to act in the event of an emergency; in 1991, providing for a Special Ministerial Tenders Committee within the Ministry of National Security to procure military and police equipment (this in the wake of a failed coup attempt in 1990); in 1993, validating the National Insurance Property Development Company (NIPDEC) as a government procurement agency outside the purview of the CTB.
9. In addition, starting in 1979, statutory corporations and later Special Purpose State Enterprises were established which were placed outside the purview of the CTB. At the same time, a number of others were removed from the ambit of the Board.

³See description of the function of the CTB, quoting from the Central Tenders Board Ordinance, No. 22 of 1961 as amended, at: http://www.finance.gov.tt/about_us.php?mid=8&dept=4.

It is important to note here that, over the years, State-owned enterprises have become responsible for an ever greater proportion of public procurement expenditure.⁴

10. The inevitable result of all these actions was the considerable diminution of the role and functions of the CTB. On the other side of the coin, the dispersion of government responsibilities over an increasing number of new agencies led to concerns relating to their guidance, oversight and control, lack of transparency and accountability, and allegations of unfair practices. Inevitably, also, there arose in the construction sector charges of a lack of uniformity of procedures resulting in an absence of necessary standardisation in procurement documentation and practices.
11. Further, the public is not being supplied with adequate information on tender opportunities, the status of bids and awards, and the progress of major projects. Even where the CTB retains authority, its scope is limited to the award of the contract and does not extend to involvement in project design, implementation and maintenance. Yet it is precisely in these areas that the greatest possibilities for corruption lie.
12. There is therefore need for a framework that applies objective standards evenly across all stages of the process and to all the agencies that spend public funds.

Consequences for the Construction Industry

13. Under the current public sector procurement regime, the construction industry in Trinidad and Tobago is particularly susceptible to corruption. Over the last sixty years there have been several cases of grand corruption in construction procurement. Some examples are the Caura Dam Project, the Caroni Racing Complex and the Piarco Airport Development Project.
14. Few effective legislative and regulatory checks and safeguards exist in the public sector procurement regime and the dispersion of procurement responsibilities over many agencies has led to those agencies being staffed by inexperienced, under-qualified and under-trained

⁴ It was reported in the *Trinidad Guardian* of the 13th of March, 2007 that Minister Christine Sahadeo, during a March 12 e-auction seminar, stated that State enterprises purchased an estimated \$30 billion in goods and services annually. ('E-auction best bet' by Sherwin Long: <http://legacy.guardian.co.tt/archives/2007-03-13/business3.html>).

On the 9 of September 2008, *Newsday* quotes Minister Mariano Browne, speaking at a seminar hosted by the Institute of Chartered Accountants of Trinidad and Tobago, as saying, "From my own perspective, that the state enterprises account for approximately \$65 billion in assets, it is essential that the rigour associated with good governance in the private sector should also be brought to bear in all state enterprises" ('Browne: Good governance in private sector essential' by Anna-Rose Madray: <http://www.newsday.co.tt/business/0.85920.html>).

staff who are often out of their depth. They have to deal with increasingly complex projects and forms of contracts and with private sector personnel with superior experience and training with the result that they may not always recognize the subtle corrupt practices at play.

15. Corruption may more easily occur in many and diverse ways during the following five stages of a construction project:

- i. Pre-design and financing
- ii. Planning and design
- iii. Pre-qualification and tendering
- iv. Construction
- v. Post-construction, operations and maintenance

16. Corruption can involve representatives of government, developers, contractors, construction professionals, subsidiary companies and agents, partners, subcontractors and suppliers and persons in their respective supply-chains. Corruption can take place in variety of ways that are concealed by their very nature. A more complete explanation of how corruption occurs in infrastructure projects can be found on the website published by the *Global Infrastructure Anti-Corruption Centre (GIACC)*⁵ and, as noted in paragraph 6 above, will form part of a later submission by TTTI.

Design-Build

17. In the case of the Design-Build procurement method, the occurrence of corruption is likely to increase because the entire process, as compared with that of the more traditional methods, is less transparent with fewer opportunities for oversight by independent supervisors. The selection process of a Design-Builder is itself an opportunity for corruption. It is often referred to as a ‘beauty parade’ because there is a variety of criteria such as design, cost, schedule, quality, experience and financial resources that can be easily manipulated under the guise of a supposedly transparent process to achieve any desired result. Whereas in the traditional methods, the five project stages described above are supervised/overseen by a variety of independent agencies and interests, in Design-Build the project stages are reduced

⁵ See: http://www.giaccentre.org/how_corruption_occurs.php.

from five to three, or even less, thereby reducing transparency and making it more difficult to supervise/oversee and to detect the possibility of corruption.

THE REFORM OF THE REGIME

A new policy

18. Recognising the need for reform the Government of Trinidad and Tobago, in October 2003, urged on by many stakeholders, established a committee to produce a Green Paper on *Reform of Government's Procurement Regime* that was laid in Parliament in September 2004. In addition to public officers, the membership of the committee included representatives from the *Joint Consultative Council for the Construction Industry (JCC)*, the *Trinidad and Tobago Chamber of Industry and Commerce*, the *Trinidad and Tobago Manufacturers' Association (TTMA)* and *TTTI*.

Government invited public comment on the Green Paper and the JCC held a public workshop for the purpose of providing such feedback.

Early in 2005 the committee began work on a white paper on '*Reform of the Public Sector Procurement Regime*' (hereinafter referred to as 'The White Paper'). After Cabinet consideration, this became the official statement of Government's new procurement policy⁶ and was laid in Parliament on the 26th of September 2005⁷.

Main elements of the promised reform

19. The White Paper envisages a procurement regime that facilitates the achievement of value for money with transparency and accountability and supports Government's national development policy objectives in an environment in which increasing use is being made of State-owned and private bodies to carry out public procurement.

Public Money

20. The underlying philosophy of the reform is that once a body is spending public money, it is obliged to seek Value for Money. This, by definition, involves efficient and effective delivery of the property or services for which the money is spent. According to the White

⁶ *Reform of the Public Sector Procurement Regime – A White Paper*, Ministry of Finance, Republic of Trinidad and Tobago, August 2005; text available at <http://www.finance.gov.tt/documents/publications/pub50.pdf>.

⁷ See *Hansard* at: <http://www.ttparliament.org/hansards/hh20050926.pdf>.

Paper, “Public money ... includes money received by a public body regardless of source, or money received by a non-public body from a public body.”⁸

The new legal framework “will embrace expenditure by – a public organisation for a public or private purpose; or a private organisation for a public purpose regardless of the source or type of funding where it can be reasonably inferred that the State is ultimately liable.”⁹

A New Legal and Regulatory Framework

21. A new Act, replacing the CTB Ordinance, will govern the procurement activities of all who use public money. It will:

- a) establish a *legal and regulatory framework*;
- b) prescribe *operating principles* leaving the details of process and procedure to subordinate instruments;
- c) provide for the development of mandatory *Guidelines* that spell out the implications of the operating principles and policy objectives for the procedures and practice of all procuring agencies;
- d) define the *responsibilities* of the procuring agencies and prescribe *penalties*;
- e) establish the office of independent *Procurement Regulator*;
- f) establish a *National Procurement Advisory Council*, drawn from civil society and the private sector, to support the operations of the Regulator;
- g) provide a *complaints mechanism*; and
- h) provide for the allocation of adequate *human and material resources* to the regulatory agency.

Comment

22. *It should be noted that, in the words of the White Paper, “This framework approach enables flexibility of policy formulation to accommodate market and technological change and separates policy issues from operational issues.”¹⁰ This is very much the opposite of a ‘one*

⁸ *White Paper*, p ix; see also pp 36 & 37 (Section 6.1)

⁹ *Ibid.*

¹⁰ *Ibid.*

size fits all' system that makes no allowance for different kinds of projects and changing conditions.

Prescribed Operating Principles

23. The Act will prescribe the operating principles of:

- *Value for Money*;
- *Transparency* of the procurement process; and
- *Accountability* of participants in the procurement process.¹¹

Compliance with these principles in every transaction involving expenditure of public money will be mandatory. *Penalties* will be prescribed for non-compliance.¹²

Comment

24. *The legislative model adopted by the White Paper is one that does not prescribe the procurement process in detail. Rather it prescribes principles that the processes of the various procuring agencies are required by law to follow. This is in sharp contrast to the prescriptive model exemplified by the CTB Ordinance.*

Mandatory Guidelines

25. The mandatory *Guidelines* provided for in the legislation will be developed by the Procurement Regulator in consultation with the National Procurement Advisory Council.

The Regulator, in collaboration with the procuring agencies, or the agencies themselves, assisted by the Regulator, will develop detailed procedural *Handbooks* that are in conformity with the Guidelines

Agencies may supplement the handbooks by *Chief Executive Instructions* that are in conformity with the Guidelines.

Comment

26. *This approach means that Government ministries and departments will now take full responsibility for all their procurement activities, including the tendering and supplier selection for projects of any size. This will put them on a par with State-owned enterprises as*

¹¹ *White Paper*, pp x & 38 (Section 6.3).

¹² *Ibid.*, at 41 (Section 6.5).

far as decision-making responsibility is concerned. The latter will lose nothing of the authority that they currently enjoy in this respect.

All agencies, however, whether Government departments or State enterprises, will be required to conduct their procurement activities in ways that follow the prescribed principles by complying with the procedures established in accordance with the mandatory Guidelines.

This requirement of itself will not hinder performance. On the contrary, it helps to ensure an environment in which the planned objectives of a project are more likely to be fully achieved, on time and within budget.

A Procurement Regulator

27. The office of Regulator will be statutorily established and thus subject to the oversight of Parliament to which it will be directly accountable. The Regulator is to be appointed by the President in the exercise of his own discretion after consultation with both the Prime Minister and the Leader of the Opposition.¹³

According to the White Paper, “the prime function of the Regulator is to proactively ensure an efficient and relevant procurement system that conforms to the Operating Principles, Objectives and Guidelines.”¹⁴

This will require constant review of the Guidelines, which will be submitted to Parliament by the Regulator for approval by negative resolution.

28. In the words of the White Paper: “Like its counterpart in Jamaica, the Regulator will have investigatory powers equivalent to that of a Commission of Enquiry and the discretion to suspend the procurement process or certain components of it for the purpose of investigation. Enforcement of its findings by way of legal proceedings will reside with other responsible agencies such as the Director of Public Prosecutions (for criminal breach and fraud) and the Service Commissions (for misconduct of public official and vitiating of contracts).”¹⁵

29. The investigatory powers of the Regulator will normally be exercised in response to complaints from or about procuring officers or potential suppliers in relation to activities alleged to be contrary to the provisions of the Act or procedures established under it. The Act

¹³ Ibid.

¹⁴ Ibid., at 45 (Section 6.10).

¹⁵ Ibid., at 46 (Section 6.10).

will provide for a Complaints Mechanism which the White Paper outlines. The regulator will also be empowered to dismiss, with sanctions, complaints that are deemed frivolous.¹⁶

Comment

30. *It has been argued that the regulation of public procurement envisaged by the White Paper will slow down Government's development thrust. Close examination of what is actually proposed, however, should demonstrate that the nature and extent of the regulation proposed are such as actually to reduce delays in the completion of projects.*

The oversight of the activities of all procuring agencies to be exercised by the Regulator is one that will leave agencies free to take their own decisions and manage their own projects while ensuring integrity of process. This will help make for on time and within budget delivery.

Where complaints arise, the Regulator will be able to handle them with much greater dispatch and at much less cost to all concerned than would a court of law. It is arguable that if the new regime were already in place there would not have been any need to hold this Enquiry.

To fill the post of Regulator it will, of course, be important to find a person who is suitably qualified and can maintain the independence required. It may be necessary, especially for the first appointment, to advertise abroad for candidates. Also, as the White Paper notes¹⁷, adequate staffing and funding of the Office of the Regulator will also be essential.

National Procurement Advisory Council

31. There will be a National Procurement Advisory Council made up of representatives of public and private sector organisations, including civil society. The Council will advise the Regulator in the development of procurement guidelines, procedures and handbooks. With the Regulator, it will also have an oversight and monitoring role.¹⁸

Comment

32. *The establishment of an advisory council should go a long way to building public confidence in the public procurement process and encouraging a collaboration with and consultation of*

¹⁶ Ibid., pp 42 & 43 (Section 6.7).

¹⁷ Ibid., at 46

¹⁸ Ibid., pp 46 & 47 (Section 6.11).

stakeholders that cannot but be in the interest of the public in general and the construction sector in particular.

A potentially successful system

33. Introducing the model of legal and regulatory framework that it proposes, the White Paper says:¹⁹

The success of the procurement system depends on a clear articulation and understanding of what the legal and regulatory framework seeks to achieve. The framework must reflect the various objectives and the relative weights given to these objectives. In the context of Trinidad and Tobago, these objectives must include:

- value for money in public spending,
- greater public accountability,
- promotion of greater transparency in public procurement,
- consistency with and support of government policies,
- effective and efficient contract performance,
- balance between a commitment to develop local businesses and the need to provide a level playing field, and
- a trade-off between control, rules, regulations and accountability on the one hand, and efficiency, flexibility, judgement and innovation on the other.

Comment

34. It is our firm conviction that the model proposed by the White Paper is well suited to achieve these objectives and, therefore, should have long since been fully implemented.

Implementation of the new policy

35. The story of implementation as it can be discerned from the public statements of Government officials appears to be one a period of considerable fruitful effort followed by one of near inactivity.

Government Commitment

36. Two days after the White Paper was laid in Parliament, on the 28th of September 2005, the Honourable Patrick Manning, Prime Minister and Minister of Finance, made reference to the reform in his 2005/6 Budget Presentation²⁰, saying that legislation to replace the CTB Ordinance would be forthcoming. He anticipated that *the new procurement regime would be*

¹⁹ Ibid., at 36

²⁰ See Hansard at: <http://www.ttparliament.org/hansards/hh20050928.pdf>

in place by the last quarter of fiscal year 2005/6, i.e., between July 1 and September 30, 2006.

The new regime would, he said, “entail the following:”

- (1) a fully decentralised procurement regime;
- (2) establishment of a single legal and regulatory framework based on the underlying principles of value for money, transparency and accountability;
- (3) establishment of a regulatory agency and an Independent Regulator with a monitoring and auditing function;
- (4) application of the new Public Sector Procurement Regime to all Government Ministries, Statutory Boards, Regional Health Authorities, Regional Corporations, State Enterprises, NGOs and CBOs.

Implementation Team

37. Some months before the White Paper was laid in Parliament, an implementation team was set up under a Permanent Secretary in the Ministry of Finance and began work. It was assisted by the committee that had drawn up the Green and White Papers and worked, inter alia, on the *drafting of new legislation*.

Government’s commitment re-affirmed

38. On the 22nd of March, 2006, the Prime Minister, addressing a seminar held in Port-of-Spain on ‘E-Auctions: Revolutionising Government Procurement’, acknowledged that “the public procurement system in Trinidad & Tobago” stood “in need of revision”. He went on to explain that it was necessary to establish what was currently lacking: a legal and regulatory framework that brought all agencies that use public funds, including state-owned enterprises and statutory authorities, within its ambit and applied objective standards evenly across all stages of the procurement and to all the actors in the process.

39. He noted that increasingly high levels of expectation among the population, coupled with the Government’s commitment to an accelerated pace of national development, as well as to the national aspirations to transform Trinidad & Tobago into a developed country, required the delivery of goods and services at a level and pace which dictated significant restructuring and adjustments in our procurement systems.

40. He then made reference to the *Special Purpose State Enterprises*, established in 2005 to increase the rate of implementation of the Government’s expanded Public Sector Investment

Programme and to undertake projects in areas critical to overall national development. It was clear from his remarks that these too would be brought within the ambit of the new regime.

41. He re-affirmed Government's intention "to introduce in Parliament legislation to repeal the Central Tenders Board Ordinance and its subsidiary legislation, and to replace these with a new Act which will govern the procurement activities of all entities that use public money." He added, "(t)he new framework proposed in the White Paper will enable flexibility in policy formulation, to accommodate market changes and information technology developments." (For extracts from the Prime Minister's address see Appendix 1.)

Full Implementation delayed: Government's commitment repeated

42. By the last quarter of fiscal year 2005/6 the work of the implementation team had not yet been completed. In his 2006/7 Budget Statement on the 4th of October, 2006²¹, the Prime Minister and Minister of Finance, noting that some of the recommendations of the White Paper were currently being implemented, repeated his government's commitment to reform, saying that he now expected the new regime to come into effect early in the 2006/7 fiscal year.
43. On October 20 2006, TTTI issued a media statement²² expressing its disappointment at this delay and noting that the door was now left open to possible corruption. In addition, TTTI noted that, despite the Prime Minister's assurance, there were no provisions in the budget estimates for the implementation of the new regime. We urged the government to ensure that the relevant draft legislation was laid in Parliament not later than the end of November 2006 and was made available for public comment.
44. TTTI also called, unsuccessfully, on the government to publish details of the procurement procedures it said it had already put in place for the so-called "special purpose State enterprises" it had set up in recent years. TTTI has, on more than one occasion, expressed concern about the structure and operation of these bodies which the government said it had established in order to expedite efficient and effective delivery of services to the public but which operated outside the current legal framework for procurement and were responsible for a very large part of public capital expenditure.

²¹ See Hansard at: <http://www.ttparliament.org/hansards/hh20061004.pdf>

²² 'Transparency boss: Bidding process still open to corruption', *Newsday*, 26 October 2006: <http://www.newsday.co.tt/businessday/0.46612.html>

Interim measures

45. Minister in the Ministry of Finance, Conrad Enill, was reported as saying, at a news conference on the 11th of October 2006, “we have put out a procurement policy that we have approved that basically all of the companies [i.e. the State Enterprises] must follow that procurement policy, ...” and that there was a central audit team set up to “... go out and determine on an ongoing basis how contracts are being dealt with and whether or not they follow the procurement procedures.”²³

Comment

46. *In the absence of the new regulatory regime, there was no ready means of the public learning either what exactly these procedures were or how well or ill the State Enterprises were following them.*

Status of the Implementation Process: Conflicting Signals

47. On the 12th of March 2007, Minister in the Ministry of Finance Christine Sahadeo, commenting on complaints about the delay in implementing the promised reform, is reported as denying that Government was dragging its feet in implementing the new regime and is quoted as saying, “The reason for the delay in moving forward is that we have received several further recommendations and inputs which are currently under review”.²⁴

48. On the 6th of June 2007 it was reported in *Newsday*²⁵ that the Prime Minister had disclosed that implementation of Government’s new public sector procurement regime had been delayed once again. According to the report:

Responding to concerns raised by the Joint Consultative Council (JCC) during a “Breakfast with the Prime Minister” meeting at the Crowne Plaza in Port-of-Spain, Manning said it would be difficult to implement the new public procurement regime in its present form.

To do so he explained, could slow down the rate of Government’s national development initiatives at a time when the population was clamouring for improved delivery of goods and services.

Manning said Government intended to review the proposed public sector procurement policy and speak with key stakeholders, such as the JCC, about how best it could be implemented.

²³ ‘Enill: Yetting off target’, *Newsday*, 12 October, 2006: <http://www.newsday.co.tt/politics/0,45853.html>

²⁴ ‘Sahadeo: Procurement procedures fine tuned’, *Newsday*, 13 March 2007: <http://www.newsday.co.tt/politics/0,53748.html>

²⁵ ‘PM: Procurement policy delayed’, C. Chan Tack, *Newsday*, 6 June 2007: <http://www.newsday.co.tt/politics/0,58371.html>.

JCC's Winston Riley told the PM that some of the problems the country was witnessing in public sector procurement could have been prevented if the regime was operational.

This was followed—as indeed it had been preceded—by renewed calls for implementation from stakeholders, including the TTMA. Reporting on the latter organisation's release, the *Trinidad Guardian*, on the 12th of June²⁶ noted:

The TTMA statement was in response to comments by Prime Minister Patrick Manning ... during his Breakfast with the Prime Minister meeting ...

In a response to call from contractor Winston Riley ... for the implementation of the policy, Manning said Government had “serious reservations” about provisions of the White Paper ... [which] ... arose from the Government's “experience” especially over the last few years.

He added that if the public procurement policy was implemented as published it would slow down the process of nation building.

Manning said the Government thought it would be better to review the White Paper and hold talks with the stakeholders in the construction industry to see whether a system could be found that would be more acceptable and to the mutual benefit of the construction industry and meet the requirements of the State.

Comment

49. *It is difficult to see how the implementation of the model proposed in the White Paper could 'slow down the process of nation-building'. It therefore appears that, at a time when considerable resources had already been invested and considerable progress made in the implementation of the new policy (including the drafting of enabling legislation), more serious objections were raised to some elements of the policy.*

50. *A White Paper is issued by the Government in order to lay out considered policy and/or proposed action on an issue. It is usually done, as was certainly the case with this one, only after considerable research, engagement of expertise and public consultation. It is used to signify a clear and considered intention on the part of a government to pass new law.*

Rather than 'reviewing' the White Paper, the Government, we suggest, should have published these objections for public comment and then published the draft enabling legislation along with proposals for amendment arising from the public debate. The end result could have been, not a revised White Paper, but draft legislation that better enables the considered policy and is ready to be laid in Parliament.

²⁶ 'TTMA: Implement procurement policy', *Trinidad Guardian*, 12 June 2007

It is surely not too late to do this now.

51. Only two months after the “Breakfast with the Prime Minister”, without any talks with stakeholders being held, the Acting Planning and Development Minister Christine Sahadeo was reported on the 8th of August²⁷ as saying that Mr. Manning was expected to announce the implementation of a new public sector procurement regime and the replacement of the Central Tenders Board (CTB) with a Regulator when he presented the 2007/2008 Budget in Parliament in September. According to the report, Minister Sahadeo also said that discussions on the White Paper had come “back on the front burner” and that Cabinet was now fine tuning the legislation.
52. However the Prime Minister made no mention of procurement reform in his presentation of the 2007/2008 National Budget which he made in Parliament on the 20th of August 2007²⁸.
53. On the 3rd of December, in a speech on “Accountability by Public Interest Entities”²⁹, the new Minister of Finance, Mrs. Karen Nunez-Tesheira, stated that the Special Purpose State Enterprises, “established with a view to increasing public sector investment execution ... are being monitored and managed on the same basis as the other state enterprises in the government’s portfolio.” She informs her audience, “[t]here will not be any relaxation of the governance arrangements for these enterprises.” She notes that they must comply with the provisions of the Companies Act and that the “Central Audit Committee of the Ministry of Finance is specifically mandated to ensure that the internal control processes of these enterprises comply with the policy guidelines of the Ministry, international standards and applicable laws.”

Comment

54. *The Minister makes no mention of any additional oversight such as would be provided by the office of the Regulator proposed by the White Paper and without which it is difficult to ensure compliance.*

²⁷ ‘Central Tenders Board to go’, Clint Chan Tack, *Newsday*, 8 August 2007

²⁸ See *Hansard* at: <http://www.ttparliament.org/hansards/hh20070820.pdf>

²⁹ Speech to a seminar of the *Institute of Chartered Accountants of Trinidad and Tobago (ICATT)*: <http://www.finance.gov.tt/documents/news/sp7.pdf>

55. At a meeting with the Prime Minister and others on the 19th of February 2008,³⁰ representatives of the JCC and other stakeholders including TTTI were given a verbal assurance that the reform of the public sector procurement regime had not stalled. TTTI took the opportunity to express appreciation of this and to urge that all people concerned be given an opportunity to comment on the draft legislation and thus help make it the best possible.
56. On the 19th of March 2008 the Minister of Finance spoke at a *Conference on Caribbean Public Procurement, Law and Practice* held in Port-of-Spain on Government's proposed procurement reform. In the words of a report appearing the next day in the *Trinidad Guardian*, headed 'Govt to reform public procurement policy'³¹, she stated that Government was "close to finalising its reform agenda for public procurement, but that the document" would "not become law without public scrutiny of the draft". In a report on the Minister's talk in the *Newsday* of the 20th of March it is said that she told reporters that Government was "moving with some haste to have an upgraded procurement policy by year end" and that public consultations would take place to ensure that the "draft white paper" addressed all requirements.

Comment

57. *As far as TTTI is aware, so far no such upgraded procurement policy has been published and no public consultations have yet taken place.*

Status of the Implementation Process: Work Completed

58. Minister in the Ministry of Finance, Mariano Browne also spoke at this conference. The text of his talk can be found on the Ministry of Finance's website³². In it there is a discussion of the status of implementation of the reform proposed in the White Paper. The Minister notes, "... an implementation plan which was originally scheduled for completion by June 2007 has been rescheduled to a date to be determined. Nonetheless, considerable work has been completed on several of the prerequisites for the introduction of the new Public Sector Procurement Regime." He goes on to give the following description of the "exercises completed to date".

³⁰ See: 'Contractors take woes to PM', Kimberley Castillo, *Trinidad Express*, 20 February 2008: http://www.trinidadexpress.com/index.pl/article_archive?id=161281120.

³¹ Article by Sean Nero: <http://legacy.guardian.co.tt/archives/2008-03-20/business3.html>

³² 'Governance Issues in State Owned Enterprises': a presentation by Senator the Honourable Mariano Browne, Minister in the Ministry of Finance at the Caribbean Public Procurement Law and Practice Conference (CPPC), 19th & 20th March, 2008: <http://www.finance.gov.tt/documents/news/sp588206.pdf>

(i) Production of a White Paper titled “Reform of the Public Sector Procurement Regime – A White Paper” which was laid in Parliament on 26th September, 2005.

(ii) Development of the Organizational Structure for Procurement Units in Line Ministries

Following upon meetings held with Permanent Secretaries and other representatives of line Ministries and other Agencies with a view to determining an agreed organizational structure and staffing requirements for each Ministry and Agency, a procurement unit structure was developed for each Ministry and Agency to facilitate the procurement needs of each organization. The proposed Unit structures and staffing requirements are currently before the Cabinet for its consideration and approval.

(iii) Development of Job Functions and Compensation Packages for the various Positions in the Procurement Units.

Draft Job Specifications have been developed for the Procurement Units in line Ministries and Agencies and are currently before the Cabinet.

Draft Compensation Packages have also been developed and are currently before the CPO for consideration and approval.

(iv) Training of personnel to staff the Procurement Units.

Level one (1) training titled “*Fundamentals of Public Procurement*” has been completed. Approximately three hundred participants have benefited from this training, with requests for additional training to be conducted. The prospectus for Level 11 and Level 111 Training has been completed and is available for review.

(v) Sourcing of a Procurement Regulator

The position of Procurement Regulator had been advertised in the both the local and foreign media. A total of thirty applications were received and two applicants were shortlisted. The selection process has been completed and a prospective candidate identified.

(v) Establishment of the Procurement Regulatory Agency.

A Draft Organizational Structure has been developed and the requisite job descriptions for each position completed. The draft Organizational Structure has been referred by the Cabinet to the Public Management Consulting Division of the Ministry of Public Administration and Information for that Ministry’s comments.

(vii) Development of the Procurement Website

A Draft Proposal for the development of an integrated database and website to facilitate the activities of the Procurement Regulatory Agency and the new Procurement Regime has been completed.

(viii) Development of the Legal and Regulatory Framework for the new Procurement Regime: Draft Legislation to support the new Public Sector Procurement Regime has been completed by the Project Unit, Ministry of Finance, and is awaiting approval of the Cabinet.

59. Mr. Browne then notes that the introduction of e-auction will supplement these reform initiatives and concludes with the statement, “Government will continue to reform the

procurement regime ...” and “as mentioned by the Minister of Finance ... is committed to ongoing dialogue with stakeholders in order to promote procurement reform.”

Comment

60. *This description of “exercises completed” agrees closely with what we had learned from informal conversations held at the end of 2006 with the persons in the Project Unit of the Ministry of Finance who were charged with managing the implementation process and with whom we, together with private sector representatives, had been collaborating since 2003. (We had helped in the production of the White Paper, the training of personnel, the drafting of the new legislation and the selection of the prospective candidate for the position of Procurement Regulator.)*

It was our understanding that, in November 2006, the implementation team was confident that, if the required Cabinet approvals were given, the new regime could have been fully in place by April, 2007.

We understand that not much further work on implementation was done by the Project Unit and by early 2008 it was no longer responsible for management of the implementation process. The Unit itself was closed down, we understand, around July 2008.

The White Paper Under Review

61. At a sitting of the House of Representatives on the 16th of May 2008, Mr. Browne, responding to comments made with respect to the procurement regime noted that a “committee was established in September 2007, to review the public comments and a number of objections, which had been made against the White Paper. That committee was overtaken by events—events of which you all well know—and some of those Members moved on. That committee has since been re-established and held its first meeting recently to consider the implementation of the White Paper. The White Paper is presently being reviewed.”³³

62. In the Newsday of the 9th of September 2008, Minister Mariano Browne was reported as telling reporters during a seminar hosted by the Institute of Chartered Accountants of Trinidad and Tobago that he had been scrutinising the White Paper and would soon bring the subject to Cabinet for discussion. He is quoted as saying “I am in a committee responsible

³³ See *Hansard* of the 16th of May 2008: <http://www.ttparliament.org/hansards/hh20080516.pdf>.

for looking at a the white paper and coming up with what you would call the recommendations in terms of how we move forward ... That will be the subject of a cabinet note and there is a time frame, we will come back to cabinet this week, during the course of this month, with regard to a methodology and a way forward”³⁴

Some Small Steps Forward

63. The Minister of Finance, in her presentation of the 2008/2009 National Budget made in Parliament on the 22nd of September 2008³⁵, following a brief reference to the White Paper, announced that the government proposed to:

- (i) provide online procurement in the form of an e-government platform for tendering process as well as the dissemination of procurement information to the general public;
- (ii) strengthen the present public sector procurement tender rules; and
- (iii) standardize the rules and procedures to be used by the state enterprises.

64. In the *Trinidad Guardian* of the 13th of December 2008³⁶ the Attorney General was reported to have told the previous day’s sitting of the House of Representatives that among the legislation that would be brought to Parliament in the new Parliamentary session would be amendments to the Central Tenders Board strengthening the present public sector procurement regime.

65. It was reported in *Newsday* of 22 Dec 2008 that the Minister in the Ministry of Finance, Mariano Browne, had said that the new public procurement regime outlined in the White Paper on Public Sector Procurement Reform would not be implemented by December 31, as Government had previously indicated. The minister said that Cabinet had agreed to revise existing arrangements and the Attorney General had referred to this when she outlined Government's legislative agenda for the next two years in Parliament.³⁷

Comment

66. *It appears that the process of implementing of the reform promised in 2005 has almost ground to halt. What is now being promised is ‘review of policy’, ‘strengthening of tender*

³⁴ See ‘Browne: Good governance in private sector essential’, Anna-Rose Madray, *Newsday*, 9 September 2008: <http://www.newsday.co.tt/business/0,85920.html>.

³⁵ See *Hansard* of the 22nd of September 2008: <http://www.ttparliament.org/hansards/hh20080922.pdf>.

³⁶ See ‘AG on 2009 Parliament agenda ...’, Gail Alexander, *Trinidad Guardian*, 13 December 2008: <http://www.guardian.co.tt/news9.html>

³⁷ See article by Clint Chan Tack, *Newsday*, 22 December 2008

rules’, ‘standardizing of rules and procedures’ and ‘amendments to the Central Tenders Board’. This is a far cry from what was promised in 2005. It can in no way be considered sufficient to ensure the integrity of the public procurement in any industry, least of all construction.

67. If the work of implementation that the Project Unit completed before it was closed down is not to be resumed, we are faced with a serious waste of public funds that is in violation of the principle of Value for Money.

International Treaty Obligations

68. Under the *Inter-American Convention Against Corruption (IACAC)*,³⁸ Trinidad and Tobago has agreed to consider the applicability of measures to create, maintain and strengthen “[s]ystems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems” (Article III,5).

69. Under Article 9, 1 of the *United Nations Convention Against Corruption (UNCAC)*³⁹ Trinidad and Tobago has undertaken “to take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption”. Such systems “shall address, inter alia:”

- a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
- c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

³⁸ The text of the IACAC can be found at: <http://www.oas.org/juridico/english/treaties/b-58.html>.

³⁹ The text of the UNCAC can be found at: http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

- e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

Comment

70. *Clearly, the establishment of the legal and regulatory framework proposed by the White Paper would fulfil these serious international obligations.*

RECOMMENDATIONS

71. In this submission, we list recommendations for immediate action that we respectfully suggest the Commission should consider making in its report to Government through the President of the Republic.

72. *We urge the Commission to recommend that Government, in the best interest of the construction industry:*

1. *resume without further delay implementation of the policy set out in the White Paper;*
2. *lay the draft legislation in Parliament for public discussion, debate, amendment where necessary and enactment; and*
3. *recommend to all agencies spending public money in the acquisition of property and services that they seriously consider using, where appropriate, one of the anti-corruption tools developed by TI and the GIACC which will be discussed in a subsequent submission.*

APPENDIX 1

Extracts from remarks made by the Honourable Prime Minister, Mr. Patrick Manning, at a seminar: 'E-Auctions: Revolutionising Government Procurement', Port-of-Spain, 22 March, 2006

(Full text at:

http://www.mofpd.gov.tt/documentlibrary/downloads/10/e_auctions_pm_speech.pdf)

... I mention this [the unprecedented level of profitability, control and simplicity that the E-Auction system brings to corporate procurement] primarily because the present public procurement system in Trinidad & Tobago stands in need of revision. There are a number of limitations to the current legal and regulatory framework. Firstly, it is embodied in the Central Tenders Board Ordinance, 1961, which applies mainly to Government ministries and departments and some statutory authorities. There are, however, other agencies which use public funds, including state-owned enterprises and statutory authorities whose procurement practices fall outside the ambit of the Ordinance. What is necessary is a framework applicable to all and based on sound policy.

Secondly, the scope of public procurement envisaged by the current legal and regulatory framework is largely limited to the tendering stage, in which offers of supply are invited and contracts are awarded. Accordingly, what is also needed is a procurement policy that goes well beyond the tendering process. The Government believes that a public sector procurement policy should include, of course, the prior design stage in which needs are identified, the scope of work determined, the costs estimated and the bid packages prepared. But we must go further. Procurements should also adequately cover the subsequent or implementation stage in which the performance of the contract is managed. There is, therefore, the need for a framework that applies objective standards evenly across all stages of procurement and to all the actors in the process.

The Government's position, as some are aware, has been presented in its White Paper on Procurement. The time has come for more definitive change, having regard to developments over the years. The past 30 years have seen a gradual de-centralisation of the role of the Central Tenders Board. In 1987, the Ordinance governing the operations of the Board was amended to provide for the handling of matters in the event of an emergency, without having to refer to the Central Tenders Board. In 1991, an amendment provided for a Special Ministerial Tenders Committee to be established at the Ministry of National Security to procure ammunition and equipment for our Defence Force and the Protective Services. In 1993, it became necessary to give NIPDEC the authority to carry out its own procurement for Government projects outside the ambit of the Central Tenders Board.

Today, increasingly high levels of expectation among the population, coupled with the Government's commitment to an accelerated pace of national development, as well as to the national aspirations to transform Trinidad & Tobago into a developed country, require the delivery of goods and services at a level and pace which dictated significant restructuring and adjustments in our procurement systems.

Recall, Ladies and Gentlemen... the establishment last year of a number of Special Purpose State Enterprises. Of necessity, these were created to increase the rate of implementation of the Government's expanded Public Sector Investment Programme, and to undertake projects in areas critical to overall national development. These have been charged with responsibility for ensuring that the execution of Government's development policy initiatives is done in a manner that is timely, transparent, efficient

and effective. And they will be held accountable for every dollar of public funds that is spent on these projects.

All the same, what is still needed is implementation of a practical, over-arching policy that will govern Public Sector procurement across the board. The new approach being proposed by the Government is based on a procurement regime that facilitates the achievement of value for money with transparency and accountability, and the achievement of Government's national development objectives.

It is the Government's intention to introduce in Parliament legislation to repeal the Central Tenders Board Ordinance and its subsidiary legislation, and to replace these with a new Act which will govern the procurement activities of all entities that use public money. The new framework proposed in the White Paper will enable flexibility in policy formulation, to accommodate market changes and information technology developments.