

SUBMISSION

to

**The Commission of Enquiry into the
Construction Sector**

on

**RECOMMENDATIONS FOR ENSURING
GREATER INTEGRITY IN THE
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, Germany.

TTTI was formed in 1998 and is one of nearly 100 National Chapters worldwide.

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 recommendations for the consideration of the Commission of Enquiry into the Construction Sector (hereinafter referred to as ‘the Enquiry’) on measures that could be introduced to ensure that:

There is free and fair competition, full participation and access for all citizens in the public procurement process.

Integrity and transparency in the public procurement practice are assured.

[Terms of Reference of the Enquiry 2 (iii) and 2 (iv)]

The problem

6. Whereas the Enquiry is ongoing and has drawn no conclusions on the existence or extent of corruption in the local construction sector, the country’s history shows clearly that most cases of grand corruption have occurred during the procurement process of construction projects.

7. This is also a worldwide phenomenon as shown by TI's *Bribe Payers Index 2008*¹ which ranked the likelihood of firms from 22 top exporting countries to bribe abroad and reported, among other things, as follows:

- Companies based in emerging economic giants, such as China, India, Mexico and Russia, are perceived to routinely engage in bribery when doing business abroad.
- Public works and construction companies are the most corruption-prone when dealing with the public sector, and most likely to exert undue influence on the policies, decisions and practices of governments.
- Companies engaged in public works contracts and construction; real estate and property development were seen to bribe officials most frequently.
- Companies from France and Italy were the ones most likely to pay bribes to win contracts in Africa.

In a commentary on BPI 2008, TI said: "The inequity and injustice that corruption causes makes it vital for governments to redouble their efforts to enforce existing laws and regulations on foreign bribery and for companies to adopt effective anti-bribery programmes."

The solution

8. The solution to the problem of corruption in construction projects begins with the *recognition* that it exists and an *understanding* of how and where it occurs.

This is examined in general terms, and from an international perspective, by Mr. Neill Stansbury of the GIACC, in the submission entitled '*Preventing Corruption on Construction Projects*' that TTTI is pleased to offer the Enquiry.

9. Based on an understanding of how and where corruption occurs, *public policies* on procurement reform have been adopted, anti-corruption *tools* developed and specific *measures* undertaken that are curbing corruption in construction projects in a number of countries. This submission outlines some of the anti-corruption initiatives that should be of special interest to the Enquiry and suggests appropriate

¹ See: www.transparency.org/policy_research/surveys_indices/bpi/bpi_2008

recommendations.

PUBLIC POLICY

The Government's policy on public procurement reform

10. In my first submission to the Enquiry on '*Procurement Practices in the Public Construction Sector*' I dealt at length with the policy of the Government of Trinidad and Tobago that is set out in [the White Paper on Reform of the Public Sector Procurement Regime](#) (hereinafter referred to as 'the White Paper') which was laid in Parliament in September, 2005 but is still to be implemented. Prime Minister Patrick Manning, on that and subsequent occasions, told the Parliament and the nation that the White Paper provisions represented his government's new procurement policy.

11. Recommendation

I repeat here in this my second submission the recommendation made in the first² urging 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; [and]*
- 2) lay the draft legislation in Parliament for public discussion, debate, amendment where necessary and enactment;... "*

Public participation in project design

12. In some jurisdictions it is public policy that, for all major projects, there be held, before the supplier selection stage, *Public Hearings* to discuss the project objectives and the terms of the procurement process and obtain public support. Inputs from stakeholders at these hearings have sometimes led to significant reductions in the costs of projects and revision of objectives to better serve the public interest and satisfy user requirements.

13. Recommendation

The Government's policy should be to hold, for all major projects, public

² See Section 72

consultations at which there is a real possibility of the views of stakeholders influencing the design of the project.

The need for greater transparency

14. The importance of greater transparency on construction projects is examined thoroughly by Mr. Stansbury in his submission.³ He states there that

secrecy and the failure to disclose information facilitate corrupt activity and its concealment. It also enables poor governance to be concealed which in itself will promote corruption.⁴

He sets out in some detail what should be disclosed, by whom and to whom. Much of what he sees as required is set out as public policy in the White Paper.⁵

15. Recommendation

In implementing the White Paper, Government should pay particular attention to its transparency requirements.

ANTI-CORRUPTION TOOLS

Comprehensive corruption prevention on construction projects

16. The *Project Anti-Corruption System (PACS)*, which is an integrated and comprehensive system developed by the GIACC and designed to assist in the prevention and detection of corruption on both public and private sector construction projects, is described by Mr. Stansbury in his submission.⁶

17. Recommendation

Both Government agencies (including State-owned Enterprises) and private sector companies should seriously consider using appropriate modules of PACS in their construction projects.

Countering bribery in companies

18. It is recognised that bribery is the most common form of corruption in the

³ Sections 85 to 97.

⁴ Section 85

⁵ See particularly Sections 4.2.2 and 6.3.3

⁶ *Preventing Corruption on Construction Projects*, Sections 83 and 84

procurement process yet too few companies in the construction sector see the need for or have effective anti-bribery systems to break the cycle of corruption. [*The Business Principles for Countering Bribery \(BPCB\)*](#) has been developed by TI and other partners to provide companies with a comprehensive approach to countering bribery that is flexible and can be modified to take into account the size of the company.

19. A company implementing this tool first sends, through its executives and board, a clear *message* to employees, business partners and the wider public that corrupt behaviour is not tolerated. This broad commitment is then translated into an *internal policy* that sets out clear *guidelines* for employees and business partners of what is expected of them. Appropriate *structures*, integrated into existing management systems, are put in place to monitor *compliance* and address new issues as they arise. *Training* with regard to ethical behaviour - as well as ethics programmes in general - are implemented to ensure that company policy is sufficiently communicated to all employees, as well as to business partners.

20. Recommendation

Companies of all sizes (including State-owned enterprises) should establish effective anti-bribery systems, making appropriate use of the BPCB, where it may be helpful.

Ensuring integrity on major public projects

21. According to Government's policy set out in the White Paper, among measures in current best practice to incorporate the principle of Accountability in procurement is one in which:

... all interested parties are required to sign a joint undertaking guaranteeing the integrity of the process and accepting sanctions in the event there is a lapse, arbitration in the event of disputes, and monitoring by a third party such as a civil society body ...⁷

What the policy has in mind is [*TI's Integrity Pact*](#). This can be deduced from the following statement in the White Paper's *Sample Procurement Guidelines*:

A useful tool for ensuring the demonstrable integrity of public contracting is Transparency International's Integrity Pact (IP). This is an undertaking signed jointly by all with direct or indirect interest in a

⁷ *Reform of the Public Sector Procurement Regime – A White Paper*, Ministry of Finance, Republic of Trinidad and Tobago, August 2005; text available at.

project by which they agree to be bound by specified behaviour and values.

All parties to the IP agree:

- not to collude or solicit any undue benefit, or offer or grant bribes or awards;
- to disclose payments to intermediaries and comply with specified ethical principles;
- to sanctions for violation of the pact such as denial of contract, forfeiture of performance bonds and agreed liquidated damages;
- to submit disputes to arbitration; and
- to have their observance of the provisions of the agreement monitored by an independent body.

Agencies are recommended to consider incorporating the essential elements of this anti-corruption tool in major projects.⁸

22. The IP has been successfully implemented in some 20 countries on a variety of projects. Its benefits have included:

- ✓ allowing companies to refrain from bribing in the knowledge that their competitors are bound by the same rules.
- ✓ enabling public officials to avoid corrupt practices, particularly by relieving them of pressure to accept bribes or otherwise bend the rules.
- ✓ contributing greatly to restoring public trust and building a culture of national integrity.

Despite the White Paper's approval and TTTI's advocacy, the IP is yet to be implemented on any public project in Trinidad and Tobago.

23. Recommendation

In implementing the White Paper Government should pay serious attention to its accountability requirements and in particular to the use of measures such as the Integrity Pact.

Working together to eliminate corruption in construction

24. Mr. Stansbury, in his submission⁹, explains the concept of the [*Anti-Corruption Forum \(ACF\)*](#) which is an alliance of the participants in the sector that can take effective

⁸ Ibid., Annex 1, Section 1.2.2 (e)

⁹ Sections 101 to 104

action on both the supply and demand sides to eliminate corruption in the sector.

25. TTTI sees this tool as having great potential for local use and has taken the initial steps, in discussion with other stakeholders, to introduce an Anti-Corruption Forum in the local construction sector.

26. Recommendation

Construction sector stakeholders, including government, should be encouraged to support the establishment of an ACF for the local construction/infrastructure sector.

SUMMARY OF RECOMMENDATIONS

27. TTTI respectfully recommends to the Commissioners that, in order to satisfy their mandate to make recommendations on measures that could be introduced to ensure that there is free and fair competition, full participation and access for all citizens in the public procurement process and that integrity and transparency in the public procurement practice are assured, they should consider including in their report to Government, through the President of the Republic, the adoption of some or all of the following (recommendations that we consider absolutely essential in bold type):

Government should, in the best interest of the construction industry:

- a) **resume without further delay implementation of the policy set out in the White Paper and lay the draft legislation in Parliament for public discussion, debate, amendment where necessary and enactment.** (see para.11 above)
- b) Government should hold, for all major projects, public consultations at which there is a real possibility of the views of stakeholders influencing the design of the project. (para. 13)
- c) **In implementing the White Paper, Government should pay particular attention to its transparency requirements.** (para. 15)
- d) Both Government agencies (including State-owned Enterprises) and private sector companies should seriously consider using appropriate modules of PACS in their construction projects. (para. 17)
- e) Companies of all sizes (including State-owned enterprises) should establish

effective anti-bribery systems, making appropriate use of the BPCB, where it may be helpful. (para. 20)

- f) In implementing the White Paper Government should pay serious attention to its accountability requirements and in particular to the use of measures such as the Integrity Pact. (para. 23)
- g) Construction sector stakeholders, including government, should be encouraged to support the establishment of an ACF for the local construction/infrastructure sector. (para. 26)