

Trinidad and Tobago Transparency Institute

Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption (MESICIC), Second Round

REPORT ON MEASURES TAKEN BY TRINIDAD AND TOBAGO TO CREATE, MAINTAIN AND STRENGTHEN GOVERNMENT SYSTEMS FOR PROCUREMENT OF GOODS AND SERVICES

1. Introduction

1.1 The Trinidad and Tobago chapter of Transparency International (TI), the *Trinidad and Tobago Transparency Institute (TTTI)*, at the invitation of the TI Secretariat, submits this report to the Committee of Experts of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption (MESICIC), Second Round, as an independent civil society contribution.

1.2 The report addresses *Questions 2 (c) in Section 1, Chapter One* of the Follow-up Questionnaire:

If no such laws and/or measures [establishing government systems for procurement of goods and services] exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government systems for procurement of goods and services, in accordance with Article III (5) of the Convention.

1.3 Although such laws and measures do exist, the Government of Trinidad and Tobago is currently implementing a *radical reform of the public procurement regime*.

TTTI is of the view—and TI Secretariat has agreed—that an independent assessment of the nature of the proposed reform and of its actual implementation to date would be of interest to the Committee.

1.4 We have included in our report some description of the part TTTI has been playing in the reform process.

2. Historical background

2.1 Establishment of the Central Tenders Board

2.1.1 Speaking in the Trinidad and Tobago Legislative Council on June 12, 1961, a little more than one year before the country's political independence, the Attorney-General, Mr. W.K.Fergusson, introduced a Bill to establish a Central Tenders Board (CTB) which would cover the central government as well as County Councils and statutory bodies.

2.1.2 According to Fergusson, the introduction of the Bill was “based on the conviction on the part of the government that nothing but good can result from the establishment of a central body charged with the specific duty of inviting tenders and considering those tenders when they have been received, and awarding contracts for the supply of goods or the carrying out of services or works for the public, to be paid for out of public funds.”

2.1.3 Even in 1961 the issue of value for money was noted as central: “The appointment or establishment of a body which will be charged with the duty of considering objectively and in a detached spirit the best means of securing what the government wishes and obtaining the best value for not only – I should say what the public – needs to be paid for from public funds is, I think, something that is beyond controversy.”

For the government, on whose behalf Fergusson was speaking, another benefit of the Bill was the acquisition and creation by the CTB of a storehouse of technical knowledge.

2.1.4 The CTB was therefore set up to be, among other things, “the sole and exclusive authority in inviting, considering and accepting or rejecting offers for the supply of articles or for the undertaking of works or any services necessary for carrying out the functions of Government or any statutory bodies...”

2.2 *Reduction in role and function of the CTB*

2.2.1 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 various challenges 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 CTB.

2.1.2 In addition, a number of new statutory corporations and State enterprises were established from 1979 on 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.

2.1.3 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 has led in large part to concerns relating to guidance, oversight and control, lack of transparency and accountability, and unfair practices. Inevitably, also, there is a lack of uniformity of procedures resulting in an absence of necessary standardisation in procurement documentation and practices.

2.1.4 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 or implementation. Yet it is precisely in these areas that the greatest possibilities for corruption lie.

2.1.5 There is need for a framework that applies objective standards evenly across all stages of the process and to all the agencies that spend public funds.

2.3 *Development of a new policy on procurement*

2.3.1 Given these glaring and growing deficiencies, the Government of Trinidad and Tobago, in October 2003, established a committee to produce a *Green Paper on the Reform of Government’s Procurement Regime* that was laid in Parliament in September 2004. The membership of the committee included people from both the public and private sectors. Civil society was represented by a director of TTTI.

2.3.2 Government invited public comment on the Green Paper and the Joint Consultative Council for the Construction Industry held a workshop for the purpose of providing such feedback.

2.3.4 Early in 2005 the Committee began work on a *White Paper on the Reform of the Public Sector Procurement Regime*. This official statement of Government’s new policy was laid in Parliament in September of the same year

3. The Proposed Reform

3.1 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. The main features of the reform are as follows.

3.2 *Public Money*

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

“Public money, in this context, includes money received by a public body regardless of source, or money received by a non-public body from a public body.” (*White Paper* p ix)

The new legal framework “will embrace expenditure by –

- (a) a public organisation for a public or private purpose; or
- (b) 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.” (*Ibid.*)

3.3 *A New Legal and Regulatory Framework*

A new Act, replacing the CTB Ordinance, will govern the procurement activities of all who use public money. It will establish a legal framework and prescribe operating principles leaving the details of process and procedure to subordinate instruments. “This framework approach enables flexibility of policy formulation to accommodate market and technological change and separates policy issues from operational issues.” (*Ibid.*)

3.4 *Prescribed Operating Principles*

The new Act will prescribe for all procuring agencies the operating principles of:

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

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

3.5 *A Procurement Regulator*

The legislation will establish the office of Procurement Regulator. According to the White Paper (on pg. 45), “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.” He will have investigatory powers equivalent to those of a Commission of Inquiry.

“The Regulator will be mandated to, *inter alia*:

- monitor procurement and divestment activities;
- develop mandatory guidelines for procuring agencies;
- establish minimum standards of skills and competencies for procuring officers;
- promote public awareness of the processes;
- report to Parliament;
- foster improvements in the use and application of purchasing systems and electronic trading; and

- establish and maintain a database of procurement activities.” (*White Paper* pg xii)

- 3.6 There will be a *National Procurement Advisory Council* made up of representatives of public and private sector, as well as civil society, organisations. 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.
- 3.7 The Regulator, in consultation with the National Procurement Advisory Council, will design *mandatory Guidelines* for the procuring agencies that will spell out the implications for their procedures and practice of the prescribed principles and objectives.

The actual details of the procedures to be followed in public procurement will be found in *Handbooks* developed by the Regulator in collaboration with the procuring agencies or developed by the agencies in conformity with the Guidelines. These handbooks may be supplemented by *Chief Executive Instructions*.

3. Implementation of the Reform

- 3.1 A few days after the White paper was laid in Parliament, the Prime Minister and Minister of Finance, in his 2005/6 Budget Presentation, made reference to the reform, saying that legislation to replace the CTB Ordinance would be forthcoming. He anticipated that the new procurement regime would be 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.”
- 3.2 Unfortunately, however, the promised implementation of the new regime has not yet come to pass. In his 2006/7 Budget Statement in early October, the Prime Minister and Minister of Finance repeated his government’s commitment to reform and now said that he expected the new regime to come into effect early in the 2006/7 fiscal year.
- 3.3 On October 20 TTTI issued a media statement expressing its disappointment at this delay and noting that the door was now left open to further 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 (on the regime) is laid in Parliament not later than the end of [November 2006].”
- 3.4 TTTI also called 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 has 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 says it has established in order to expedite efficient and effective delivery of services to the public but which operate outside the current legal framework for procurement and are responsible for by far the greater part of public capital expenditure.
- 3.5 A Minister in the Ministry of Finance was reported as saying, at a news conference on the 11th of October, “we have put out a procurement policy” that “all the companies [i.e. the State

enterprises] must follow” 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.” (from a report in the *Newsday* of 12 October 2006)

- 3.6 But, in the absence of the new regulatory regime, there is no ready means of learning either what exactly these procedures are or how well or ill the State enterprises are following them.
- 3.7 In a response in Parliament on October 23, the same Minister said that interviews for the position of Procurement Regulator had been held and that a nominee was expected to be announced “soon.” He added that draft legislation had been completed but would not be circulated until the Regulator was on board and able to review it.
- 4.2 This announcement of a nominee for the post of Regulator raises a difficult question. The White Paper, which represents government policy waiting to be turned into legislation, states clearly (on pg. 45) that the Regulator “is to be appointed by the President *in the exercise of his own discretion* [our italics] after consultation with both the Prime Minister and the Leader of the Opposition.” Given the constitutional separation of powers between the President and the Executive, it is difficult to see how a Minister, member of the Executive, could be properly announcing the imminent appointment of the Regulator.
- 3.8 *The implementation process to date*

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.

We understand, from informal inquiries made with the relevant persons in the Ministry of Finance, that to date:

- a) The team has arranged training for middle level personnel in the public service in the ‘Fundamentals of Public Procurement’. (At the invitation of the team, TTTI contributed to these courses presentations on ‘Ethics in Public Procurement’.)
- b) Currently a course structure for a second level of training for procurement specialists who will be working in the procuring agencies is being developed.
- c) Applicants for the post of “Procurement Regulator Designate” (PRD) have been interviewed and an appointment is expected shortly.
- d) Work on drafting the Guidelines has begun. These will eventually be put before all stakeholders for their input.
- e) A Request for Proposal (RFP) for the development of a website is about to be published.
- f) A proposed organisational structure for the Procurement Regulatory Agency is before a Cabinet Committee. Currently it is proposed that the Agency have the following sections: Policy Development & Co-ordination, Legal, Corporate, Information & Communications Technology (ICT) and Monitoring & Audit.
- g) Draft legislation is currently under review by a Minister in the Ministry of Finance. It is intended that, before it goes further along the path to publication for public discussion, the inputs of the PRD, once appointed, will be sought.
- h) It is currently expected that the implementation process will be completed by April 2007.

4 Conclusion

- 4.1 The government’s announced intentions in the area of public sector procurement reform are excellent and TTTI has willingly participated in the process towards effective change.

Unfortunately, the government's tardiness in implementation, coupled with its haste in creating new and heavy-spending agencies that undertake major projects outside a proper legal and regulatory framework has engendered an atmosphere of doubt, disappointment and suspicion about its real intentions.

One such announced project is a rapid rail transit system, estimated to cost billions of dollars, for which few details have been made available to the public and which appears to have been decided on without a proper feasibility study. And there are other straws in the wind.

- 4.2 TTTI will continue to strive for the correct approach to issues such as these and for the speedier implementation of promised reforms.

Santa Cruz
Trinidad and Tobago
8 November 2006