

*Trinidad and Tobago Transparency Institute*

**INTER-AMERICAN CONVENTION AGAINST CORRUPTION (MESICIC), SECOND ROUND**

**CIVIL SOCIETY'S REPORTS ON COMPLIANCE, WASHINGTON D.C., USA, JUNE 25 2007**

**Summary of a report entitled 'Report on measures taken by Trinidad and Tobago to create, maintain and strengthen government systems for procurement of goods and services' dated 8 November 2006 submitted by the Trinidad and Tobago Transparency Institute (TTTI) to the Committee of Experts.**

(To be presented to the Committee of Experts on 25 June 2007 by TTTI Chairman Victor Hart.)

**1. Introduction**

TTTI welcomes this opportunity to summarise our *'Report on measures taken by Trinidad and Tobago to create, maintain and strengthen government systems for procurement of goods and services'* dated 8 November 2006 and to update the Committee of Experts on progress, or lack thereof, since the report was written and on other related matters.

The Report begins by noting that the Government of Trinidad and Tobago is currently implementing a radical reform of the public procurement regime and that we are of the view 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.

**2. The current regime**

The report explains that the current regime has its origins in the *Central Tenders Board Ordinance* which was enacted in 1961, the year before Trinidad and Tobago became an independent State. This law established a Central Tenders Board (CTB) to be the "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..."

Since then there have been several amendments that, in effect, have limited the functions of the CTB to inviting tenders and awarding contracts on behalf of Government Ministries and departments. The bulk of public procurement is now carried by new statutory corporations and State enterprises which operate outside the legal framework of the CTB Ordinance.

As a result, the current regime lacks transparency and accountability. Guidance, oversight and control are inadequate. The door is therefore open to corrupt practices.

Given these deficiencies, as the Report explains, the Government of Trinidad and Tobago began in October, 2003 to develop a new procurement policy, establishing a committee drawn from both public and private sectors as well as from civil society that produced a Green Paper and, after public discussion, a White Paper on the reform of the regime. It also drafted new legislation.

**3. The proposed reform**

According to the White Paper that was laid in Parliament in September, 2005, Government's new policy is to establish a regime that facilitates the achievement of value for money with transparency and accountability and supports Government's national development policy objectives.

A new Act, replacing the CTB Ordinance, will govern the procurement activities of all who use public money, thereby including statutory bodies and State enterprises.

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

- Value for Money;
- Transparency of the procurement process; and
- 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.

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The legislation will establish the office of Procurement Regulator whose mandate includes developing mandatory guidelines for procuring agencies, monitoring the observance of these guidelines and investigating infringements.

The Regulator will be assisted by a National Procurement Advisory Council made up of representatives of the public and private sectors as well as of civil society organisations.

### **4. Implementation of the reform**

#### *4.1 Up to the time of submission of our Report (November 2006)*

As the report states, towards the end of 2005, the Prime Minister announced that the new procurement regime should be in place by September 2006. One year later, at the time of submission of our Report, the Prime Minister repeated his government's commitment to reform and said that he now expected the new regime to come into effect within a matter of months.

Some months before the new policy was announced in September, 2005 an implementation team was set up in the Ministry of Finance. Our Report notes that by November 2006, among other things:

- procurement training for middle level public officers was well underway. (TTTI participated in this.)
- applicants for the post of "Procurement Regulator Designate" had been interviewed;
- work on drafting the Guidelines had begun;
- a proposed organisational structure for the Procurement Regulatory Agency was before a Cabinet Committee; and
- the draft legislation was currently under review in the Ministry of Finance.

#### *4.2 Since the submission the Report*

We understand that from November 2006 until the present, amongst other things:

- procurement training has continued with courses for higher level officers about to begin;
- the drafting of the Guidelines has almost been completed;
- a proposal to invite tenders for key infrastructure is awaiting Cabinet approval; and
- a proposal to publish the draft legislation for public comment is also awaiting Cabinet approval.

We understand that the implementation team is confident that, if the required Cabinet approvals were given now, the new regime could be fully in place by March, 2008.

These approvals have so far not been given.

After repeated calls from TTTI and others for no further delays, the Prime Minister recently explained at a public forum that the Government has been "taking a second look" at the White Paper. It appears that there are fears that some of its provisions would slow down delivery of projects, especially the high-profile, high-value ones being undertaken by the so-called 'special-purpose State enterprises'. He announced Government's intention to hold discussions about its concerns with all stakeholders.

### **5. Concerns**

#### *5.1 Inadequate oversight*

TTTI's main concern—now well known to Government and other stakeholders—is that since the White Paper was laid in Parliament several 'mega-projects' have been embarked upon by Government that are budgeted to cost many billions of Trinidad and Tobago dollars. They are being implemented by different agencies each using procurement rules that do not necessarily meet the standards set out in the White Paper. In other words, Government is implementing these mega-projects without conforming to the requirements of its own declared new procurement regime and, in the absence of new legislation, there is no enforcement of compliance. As a result, we see considerable risk of corruption.

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In our view, the fear that the reform as proposed would cause undue delays in the delivery of projects is unjustified. The legislation that we helped to draft follows the White Paper in establishing a complaints mechanism administered by the Regulator that would allow disputes to be settled comparatively quickly. It does not allow complainants to cause serious delays as would be the case if their first recourse were to the courts via judicial review.

Undoubtedly, the new regime will impose more discipline on Government, requiring as it does, proper planning of projects. This will allow Government to avoid ‘fast-tracking’, a practice which, in the past, has led to time and cost overruns and provided scope for corruption.

### *5.2 Further unacceptable delay*

TTTI is also concerned—and has so advised Government and the national community—that, with general elections due shortly, chances are that Parliament may be dissolved before the legislation can be enacted. We have therefore been calling on Government to publish the completed draft legislation for public comment, now, rather than seek to have a further round of consultation with stakeholders about its concerns. Public discussion of the draft could give rise to amendments that would allay the fears of those who see the reform as inhibiting industrial development.

If Government pursues its plan for more consultation, implementation of the reforms could, at best, be delayed until late in 2008. At worst, the reforms could be placed in jeopardy, if a political party unsympathetic to them should take power after the elections.

### *5.3 Whistle-blower protection*

As far as we are aware there is currently no whistle-blower protection legislation of any kind in Trinidad and Tobago. Our contacts with public officers have convinced us that it is very much needed. We understand that it will be included in an amended Integrity in Public Life Act. This is encouraging. We should also mention here that the procurement legislation that we helped to draft contained such a provision.

### *5.4 The Extractive Industries Transparency Initiative (EITI)*

Trinidad and Tobago is blessed with an abundance of petroleum-based natural resources that make it one of the richer countries in the region. The presence of large quantities of natural gas has not only developed a strong export market in the USA and elsewhere but has attracted investments in ammonia, steel, methanol and aluminium plants and related downstream industries.

Billions of dollars worth of hydrocarbons are extracted annually by national and multi-national companies that engage in exploration, processing and manufacture, mainly for export. TTTI was therefore encouraged when, in March 2005, the Government committed to the Extractive Industries Transparency Initiative (EITI). TTTI saw this as an assurance that the disclosure requirements of the EITI would make all contractual arrangements in the extractive industries more transparent.

However Government has not yet begun to take even the first steps in the EITI process. While we wait for a public explanation, billions of dollars are exchanging hands without the checks and balances that the EITI obligations would impose.

It should be noted that the Government’s new procurement reform policy specifically enjoins observance of the principles of Value for Money, Transparency and Accountability in disposal of property transactions such as the granting of petroleum exploration licences.

## **6. Conclusion**

Government’s initial anti-corruption initiatives have been very welcome and they deserve commendation. Government’s announced intention to reform public sector procurement is excellent and necessary. TTTI, in recognizing the good intentions, has given full support to Government to effect the necessary change by serving on the various research and drafting committees and by providing training to selected public officers. However, we are disappointed with the unfulfilled promises for procurement

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reform because we see the reform as an important anti-corruption tool at the current time when the economic boom being experienced in Trinidad and Tobago is permitting the implementation of expensive mega-projects. TTTI keeps urging government to do much better in this regard.

TTTI is also disappointed that Government has not yet begun honouring its EITI obligations and continues to urge Government to do.

TTTI asks the Committee of Experts to make strong recommendations to the Government of the Republic of Trinidad and Tobago to:

- a) make good its promises with respect to Public Sector Procurement Reform;
- b) begin honouring its EITI disclosure obligations and
- c) enact whistle-blower protection legislation, without further delay.

Thank you