PARLIAMENT OF THE

REPUBLIC OF TRINIDAD AND TOBAGO

(ELEVENTH PARLIAMENT- 2015/2016 SESSION)

REPORT

OF THE

JOINT SELECT COMMITTEE

ON

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

Ordered to be printed

TOGETHER WITH THE MINUTES OF PROCEEDINGS

PARL:

HOR PAPER NO: / 2016

THE COMMITTEE

APPOINTMENT

1.1 Pursuant to resolutions of the House of Representatives on Friday November 13, 2015 and of the Senate on Friday November 17, 2015, a Joint Select Committee was established:

"to consider and report on a Bill entitled the "Public Procurement and Disposal of Public Property (Amendment) Bill, 2015"; and…to report within eight weeks, that is to say, on or before January 22, 2016".

MEMBERSHIP

1.2 The following persons were appointed to serve on the Committee:

- Mr. Colm Imbert, MP
- Mrs. Cherrie-Ann Crichlow-Cockburn, MP
- Mr. Adrian Leonce, MP
- Dr. Bhoendradatt Tewarie, MP
- Mr. Franklin Khan
- Mrs. Paula Gopee-Scoon
- Mr. Wayne Sturge
- Mr. David Small

CHAIRMANSHIP

1.3 At its first meeting on Friday December 4, 2015, your Committee elected Mr. Colm Imbert to be its Chair, in accordance with House of Representatives Standing Order 97(3) and Senate Standing Order 87(3).

SECRETARIAT

1.4 During the session Ms. Jacqui Sampson Meiguel, Clerk of the House and Ms. Chantal La Roche, Legal Officer II were appointed to serve as Secretary and Assistant Secretary respectively and Ms. Tanya Alexis provided legal support to the Secretariat.

MEETINGS

1.5 Your Committee held five meetings on the following dates:

1. Friday December 4, 2015;
2. Friday January 8, 2016;
3. Friday January 22, 2016;
4. Friday February 12, 2016;
5. Friday February 19, 2016

1.6 The Minutes of the meetings and attendance records are attached at Appendix I.

INTERIM REPORT

1.7 On Friday January 22, 2016 and Monday January 25, 2016 the Committee reported to House and the Senate, respectively, that it required additional time for the completion of its report.

1.8 The Committee's request for a further period of six (6) weeks to present a final report was granted.

CONSIDERATION OF THE BILL

APPROACH TO DELIBERATIONS

2.1 At its First Meeting held on Friday December 4, 2015, your Committee agreed that all Members of the Committee should familiarize themselves with several documents, namely:

a) the Bill before the Committee (the Public Procurement and Disposal of Public Property (Amendment) Bill, 2015);

b) the parent Act (the Public Procurement and Disposal of Property Act 2015, Act No.1 of 2015 (partially proclaimed)); and

c) the reports of the Joint Select Committee on Public Procurement and Disposal of Property Bill (Tenth Parliament).

2.2 During preliminary discussions it was agreed that the assistance of technical persons and other experts in the field would be required.

2.3 The following persons comprised the Technical Team that was present during the consideration of the Bill:

Office of the Chief Parliamentary Counsel

Mr. Milton Sorzano	- Assistant Chief Parliamentary Counsel (Ag.)
Ms. Sharmaine Williams	- Assistant Chief Parliamentary Counsel (Ag.)
Mr. Parvin Sookhai	- Parliamentary Counsel II (Ag.)

Ministry of Finance

Mr. Maurice Suite	- Permanent Secretary

WRITTEN SUBMISSIONS

2.4 Your Committee received written submissions from:

- Private Sector/Civil Society Group
- Mr. Timothy Hamel Smith, Attorney-at-Law
- Mr. Afra Raymond, Member of the Public
- The Board of Permanent Secretaries
- The Insurance Brokers of Trinidad and Tobago (IBATT)

2.5 Your Committee noted that most of the submissions received related to the parent Act and were beyond the scope of the Committee. All submissions received are attached at Appendix II.

WITNESSES

2.6 The Committee agreed to meet with the representatives of the Private Sector/ Civil Society Group and allow them to make a short presentation of their comments on the amending Bill. On February 12, 2016, the Committee met with the Group and a presentation was made on their behalf by the Chairman of the Group, Mr. Winston Riley. Attached at Appendix III are the Verbatim Notes of the presentation made before the Committee.

MAIN ISSUES DISCUSSED

3.1 Based on its discussions with the technical team and with the Private Sector/ Civil Society Group, the Committee identified four (4) areas of the Bill for review:

a. *The process for the removal of the Procurement Regulator in relation to Trading with the Government*

The Bill referred to the Committee proposed an amendment to the parent Act to provide for the removal of the Regulator by a resolution of each House of Parliament where the Regulator trades with the Government, without prior approval. It also sought to establish a tribunal appointed by the President, comprised of sitting or retired judges to enquire into the conduct of the regulator and to determine whether he should be removed from office. However during its deliberations, the Committee was satisfied that the provisions of the parent Act sufficiently addressed this issue.

b. *The ability of Board Members to trade with the Government*

The Committee agreed that the legislation required an amendment to restrict Members of the Board from trading with the Government without prior approval of the Minister. It was agreed that the phrase "trades with Government" should include instances where a Board Member becomes a party to any contract with the Government.

c. *The procedure for the making of regulations in relation to the remuneration, staffing and other operational matters of the Review Board*

After due consideration the Committee agreed that the Bill should be amended to subject Regulations made by the Minister with respect to the staffing, remuneration, funding and other operational matters of the Review Board to the negative resolution of Parliament.

d. *The procedure for the making of regulations in relation to the disposal of State Lands.*

The Committee noted that the parent Act did not address the disposal of State Lands and real property owned by the Government, a State-controlled enterprise, or a statutory body for which a Minister of Government is responsible.

The Committee also acknowledged that Clause 7 of the amending Bill may affect the disposal of State Lands under the Minerals Act and Petroleum Act and as such Regulations when drafted should be made subject to these Acts. It was also agreed that Regulations in respect of the disposal of State Lands should be subject to the negative resolution of Parliament.

REPORT AND RECOMMENDATIONS

4.1 In accordance with Standing Orders 114(1) and 104(1) of the House of Representatives and the Senate, respectively, your Committee wishes to report that it has completed its work.

4.2 Your Committee recommends that the House agree with its proposals for amendments to the Bill, attached at Appendix IV. Your Committee further recommends that the House consider and adopt the (amended) Public Procurement and Disposal of Public Property (Amendment) Bill, 2015. A consolidated version of the amended Bill is attached at Appendix V for ease of consideration.

Respectfully submitted,

Mr. Colm Imbert, MP
Chairman

Mrs. Cherrie-Ann Crichlow-Cockburn, MP
Member

Mr. Adrian Leonce, MP
Member

Mr. Franklin Khan
Member

Dr. Bhoendradatt Tewarie, MP
Member

Mrs. Paula Gopee-Scoon
Member

Mr. David Small
Member

Mr. Wayne Sturge
Member

List of Appendices

Appendix I……Minutes of Proceedings and Attendance Record

Appendix II……Submissions Received by the Committee

Appendix III……Verbatim Notes of evidence taken before the Committee

Appendix IV……List of Recommended Amendments

Appendix V……Consolidated Version of Bill (with amendments)

Appendix VI……Comments of Dr. Bhoendradatt Tewarie, MP (under S.O. 114(6))

MINUTES

OF

PROCEEDINGS

AND

ATTENDANCE RECORD

ATTENDANCE RECORD

Attendance Record of
the Joint Select Committee appointed to consider and report on Public Procurement and Disposal of Public Property (Amendment)Bill, 2016

Member	1st Meeting (4-12-2015)	2nd Meeting (8 -01-2016)	3rd Meeting (22-01-2016)	4th Meeting (12-02-2016)	5th Meeting (19-02-2016)
Mr. Franklin Khan	PRESENT	EXCUSED ABSENT	PRESENT	PRESENT	PRESENT
Mrs. Paula Gopee-Scoon	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT
Mr. Wayne Sturge	EXCUSED ABSENT	EXCUSED ABSENT	EXCUSED ABSENT	EXCUSED ABSENT	EXCUSED ABSENT
Mr. David Small	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT
Mr. Colm Imbert	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT
Mrs. Cherrie-Ann Crichlow-Cockburn	PRESENT	PRESENT	PRESENT	EXCUSED ABSENT	PRESENT
Mr. Adrian Leonce	PRESENT	PRESENT	PRESENT	PRESENT	PRESENT
Dr. Bhoendradatt Tewarie	EXCUSED ABSENT	PRESENT	PRESENT	EXCUSED ABSENT	PRESENT

PARLIAMENT
Republic of Trinidad and Tobago
Levels G - 7, Tower D
The Port-of-Spain International Waterfront Centre
1A Wrightson Road, Port-of-Spain

JOINT SELECT COMMITTEE ON THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

MINUTES OF THE FIRST MEETING HELD IN THE ARNOLD THOMASOS ROOM (EAST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON DECEMBER 04, 2015 at 11:30 a.m.

PRESENT

Mrs. Brigid Annisette-George	-	Speaker of the House

Committee Members

Mr. Colm Imbert, MP	-	Member
Mrs. Cherrie-Ann Crichlow-Cockburn, MP	-	Member
Mr. Adrian Leonce, MP	-	Member
Mr. Franklin Khan	-	Member
Mrs. Paula Gopee-Scoon	-	Member
Mr. David Small	-	Member

ABSENT/EXCUSED

Mr. Wayne Sturge	-	Member
Dr. Bhoendradatt Tewarie, MP	-	Member

Secretariat

Mrs. Jacqui Sampson Meiguel	-	Secretary
Ms. Chantal La Roche	-	Assistant Secretary

COMMENCEMENT

1.1 The meeting was called to order by the Speaker of the House at 11:35 a.m.

ELECTION OF CHAIRMAN

2.1 The Speaker advised that her role was to facilitate the election of a Chair and she invited nominations.

2.2 Mr. Franklin Khan nominated Mr. Colm Imbert for the chairmanship and this nomination was seconded by Mrs. Paula Gopee-Scoon.

2.3 There being no further nominations, Mr. Imbert was declared Chairman.

2.4 The Speaker of the House informed Members that Mrs. Jacqui Sampson Meiguel would serve as Secretary to the Committee and Ms Chantal La Roche as Assistant Secretary.

2.5 Mr. Imbert was invited to take the Chair.

2.6 The Chairman took the Chair and thanked Members for their unanimous support for his nomination.

QUORUM

3.1 The Chairman proposed a quorum of 4 persons, inclusive of the Chair, provided that at least one Member from each House was present. The Committee agreed to this proposal.

TERMS OF REFERENCE

4.1 The Chairman reminded Members of the Terms of Reference of the Committee as follows:

i. to consider and report on a Bill entitled "An Act to amend the Public Procurement and Disposal of Public Property Act, 2015";

ii. to discuss the general merits of the Bill along with its details; and

iii. to report by **January 22, 2016.**

DISCUSSIONS ON THE WAY FORWARD

5.1 The Chairman invited discussion on the approach to be taken by the Committee in achieving its mandate.

5.2 The Chairman suggested, and the Committee concurred, that the Committee would first conduct a clause by clause analysis of the Bill.

5.3 The Committee also agreed that a work plan would be settled during its Second meeting, and the Chairman recommended that the Committee should meet on a weekly basis.

5.4 Members also requested that the Secretary circulate the report of the Joint Select Committee appointed during the Tenth Parliament to consider and report to the Parliament on the legislative proposals to provide for public procurement disposal of public property.

External Expert Assistance

5.5 The Committee also identified the need for external assistance during its deliberations and agreed to the following:

i. The Chief Parliamentary Counsel would be invited to assist with a clause by clause analysis on the Bill, as well as to assign an officer to assist the Committee during its deliberations; and

ii. The Permanent Secretary of the Ministry of Finance would also be invited to assist the Committee during its deliberations.

ADJOURNMENT

6.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Friday January 8, 2016 at 10:00 a.m.

6.2 The adjournment was taken at 11:45 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

December 4, 2015

PARLIAMENT
Republic of Trinidad and Tobago
Levels G - 7, Tower D
The Port-of-Spain International Waterfront Centre
1A Wrightson Road, Port-of-Spain

JOINT SELECT COMMITTEE ON THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

MINUTES OF THE 2ND MEETING HELD IN THE ARNOLD THOMASOS ROOM (EAST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON JANUARY 8TH 2016 AT 10:00 AM

COMMITTEE MEMBERS

Present

Mr. Colm Imbert, MP	-	Chairman
Mrs. Cherrie-Ann Crichlow–Cockburn, MP	-	Member
Mr. Adrian Leonce, MP	-	Member
Mrs. Paula Gopee-Scoon	-	Member
Mr. David Small	-	Member
Dr. Bhoendradatt Tewarie, MP	-	Member

Absent/Excused

Mr. Franklin Khan	–	Member
Mr. Wayne Sturge	-	Member
Mrs. Jacqui Sampson Meiguel	-	Secretary

SECRETARIAT

Ms. Chantal La Roche	-	Assistant Secretary
Ms. Tanya Alexis	-	Legal Officer I

OFFICE OF THE CHIEF PARLIAMENTARY COUNSEL

Mr. Milton Sorzano	-	Assistant Chief Parliamentary Counsel (Ag)
Ms. Sharmaine Williams	-	Assistant Chief Parliamentary Counsel (Ag)
Mr. Parvin Sookhai	-	Parliamentary Counsel II (Ag)

MINISTRY OF FINANCE

Mr. Maurice Suite	-	Permanent Secretary

COMMENCEMENT

1.1 The meeting was called to order by the Chairman at 10:20 a.m.

1.2 The Chairman indicated that Mr. Franklin Khan and Mr. Wayne Sturge were excused from the day's meeting.

CONFIRMATION OF MINUTES

2.1 The Committee considered the Minutes of the 1st Meeting held on December 4, 2015.

2.2 The motion for confirmation of the Minutes was moved by Mrs. Crichlow-Cockburn and seconded by Mr. Small.

MATTERS ARISING FROM THE MINUTES

3.1 **Item 5.5**

- The Chairman informed Members that the following persons from the Office of the Chief Parliamentary Counsel would be assisting the Committee during its deliberations,
  - Mr. Milton Sorzano, Assistant Chief Parliamentary Counsel (Ag);
  - Ms. Sharmaine Williams, Assistant Chief Parliamentary Counsel (Ag); and
  - Mr. Parvin Sookhai, Parliamentary Counsel II (Ag).
- The Chairman also advised that the Permanent Secretary of the Ministry of Finance, Mr Maurice Suite had also agreed to assist the Committee with its deliberations on the Bill.

CLAUSE BY CLAUSE ANALYSIS OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

4.1 The Committee invited Mr. Sorzano, Ms. Williams and Mr. Sookhai to join the meeting to give a brief presentation on the Public Procurement and Disposal of Public Property (Amendment) Bill, 2015.

4.2 The Committee then engaged in a clause by clause discussion on the

Bill.

4.3 The Committee approved and adopted Clauses 1 and 2 of the Bill.

4.4 The Committee noted the use of the term "The President" in Clause 3 and its practical effect in relation to authority to remove the Regulator. The Committee agreed to suspend discussions on this clause until a written opinion was provided by the Office of the Chief Parliamentary Counsel.

4.5 The Committee approved and adopted Clause 4 of the Bill.

4.6 In relation to Clause 5, Dr. Tewarie noted that there was a similar provision in the Public Procurement and Disposal of Public Property Act, 2015. The Committee agreed to suspend consideration of this clause until the next meeting to allow for further discussion.

4.7 The Committee agreed to suspend discussions on Clause 6 pending the submission by the Chairman of a paper relating to the creation of a Review Board.

4.8 The Committee approved and adopted Clause 7 of the Bill

OTHER MATTERS

5.1 The Chairman advised the Committee that the following correspondence had been received:

i. Letter dated January 4, 2016 from Private Sector Group/Civil Society, requesting a meeting;
ii. Electronic mail dated January, 6 2016 from Mr. Timothy Hamel-Smith inquiring on invitations for written submissions; and
iii. Letter and CV dated November 30, 2015 from Cherryl-Ann Simmons Project Management Consultant, offering assistance to the Committee.

5.2 The Committee agreed as follows:

i. the Committee will meet with the Private Sector Group/Civil Society on a date to be decided during its next meeting;
ii. written submissions on the Bill would be received from Mr. Hamel-Smith; and
iii. There was no need to engage the services of an external Consultant at this time.

DISCUSSIONS ON THE WAY FORWARD

6.1 Discussion ensued on the effect of the imminent reporting deadline on the work of the Committee.

6.2 As a consequence, the Committee agreed that a report would be tabled to bring to the attention of the Parliament:

i. the decisions of the Committee thus far;
ii. its inability to complete its work in the mandated period; and
iii. its request for an extension to the end of February 2016.

The Committee concurred that this report would be approved by round-robin.

6.3 The Committee agreed that its next meeting will be held on Friday January 22, 2016 at 10:00 a.m., to continue clause by clause analysis of the Bill.

ADJOURNMENT

7.1 The Chairman thanked Members and adjourned the meeting to Friday January 22, 2016 at 10:00 a.m.

7.2 The adjournment was taken at 11:20 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

January 8, 2016

PARLIAMENT
Republic of Trinidad and Tobago

Levels G - 7, Tower D
The Port-of-Spain International Waterfront Centre
1A Wrightson Road, Port-of-Spain

JOINT SELECT COMMITTEE ON THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

MINUTES OF THE 3RD MEETING HELD IN THE ARNOLD THOMASOS ROOM (EAST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON JANUARY 22nd 2016 AT 10:00 AM

COMMITTEE MEMBERS

Present

Mr. Colm Imbert, MP	-	Chairman
Mrs. Cherrie-Ann Crichlow–Cockburn, MP	-	Member
Mr. Adrian Leonce, MP	-	Member
Mrs. Paula Gopee-Scoon	-	Member
Mr. David Small	-	Member
Dr. Bhoendradatt Tewarie, MP	-	Member
Mr Franklin Khan	-	Member

Absent/Excused

Mr. Wayne Sturge	-	Member

SECRETARIAT

Mrs. Jacqui Sampson Meiguel	-	Secretary
Ms. Chantal La Roche	-	Assistant Secretary
Ms. Tanya Alexis	-	Legal Officer I

OFFICE OF THE CHIEF PARLIAMENTARY COUNSEL

Mr. Milton Sorzano	Assistant Chief Parliamentary Counsel (Ag)
Ms. Sharmaine Williams	Assistant Chief Parliamentary Counsel (Ag)
Mr. Parvin Sookhai	Parliamentary Counsel II (Ag)

COMMENCEMENT

1.1 The meeting was called to order by the Chairman at 10:07 a.m.

1.2 The Chairman indicated that Mr. Wayne Sturge was excused from the day's meeting.

CONFIRMATION OF MINUTES

2.1 The Committee considered the Minutes of the second Meeting held on January 8, 2016.

2.2 The Minutes were amended by correcting the spelling of Mrs. Crichlow-Cockburn's name on page 1.
On page 3, the phrase "Whistleblower Protection Bill", was removed and "Public Procurement and Disposal of Public Property (Amendment) Bill" was inserted.

2.3 The motion for the confirmation of the Minutes was moved by Mr. Small and seconded by Mrs. Gopee-Scoon and the Minutes were confirmed by the Committee.

MATTERS ARISING FROM THE MINUTES

Item 4.4

3.1 The Committee considered an opinion on the use of the phrase "The President" in clause 3 prepared and circulated by the Office of the Chief Parliamentary Counsel. After discussion on the matter the Committee was satisfied that the word "President" meant on the advice of Cabinet. Clause 3 of the Bill was approved.

Item 5.2

3.2 The Committee agreed that it would meet with the Private Sector /Civil Society Group (PSCSG) during its next meeting on February 12, 2016 at 9:30 a.m.

CONTINUATION OF CLAUSE BY CLAUSE DISCUSSION ON THE PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

4.1 The Committee agreed that Dr. Tewarie would circulate a written report on the effect of the establishment of a Review Board pursuant to Clause 6 of the Bill before the next meeting of the Committee.

4.2 The Committee also agreed to suspend further discussions on Clause 6 of the Bill until Members received Dr. Tewarie's report and had a chance to read the Public Procurement Administrative Review Board draft procedure manual from Kenya which was circulated via e-mail.

4.3 In relation to Clause 5, Dr. Tewarie noted that there was a similar provision in the Parent Act to the Amendment Bill at section 50 (9).

4.4 After discussion on the issue, the Committee agreed, that Clause 5 of the Bill was not captured by section 50 (9) of the Parent Act and that Clause 5 should remain.

4.5 The Committee approved the replacement of Clause 3 of the Bill with an amendment of Clause 12 of the parent Act, and inserting 12 (h) and retain the definition of trades with Clause 3 of the Bill. Section 12 (h) will now read:

"Trades with the government without the prior approval of the Minister"

4.6 The Committee agreed to suspend deliberations on Clause 7 of the Bill until the Office of the Chief Parliamentary Office circulated a written opinion on the effect of broadening the definition of disposal of state lands to include leases and the jurisdictional responsibilities of all state lands and mining leases.

OTHER MATTERS

5.1 The Chairman advised the Committee that correspondence had been received from the Board of Permanent Secretaries and Heads of Departments, requesting a meeting with the Committee.

5.2 The Committee decided as follows:

i. to request from the Board of Permanent Secretaries and Heads of Departments written submissions on the Public Procurement and Disposal of Public Property (Amendment) Bill, 2015; and

ii. the Committee agreed that upon receipt of the submissions, the Committee will consider the submissions and set a date for a meeting if it finds a meeting is required thereafter.

5.3 The Committee agreed to consider the submissions of Mr. Hamel-Smith and Mr. Afra Raymond at a later date.

5.4 The Committee agreed that its next meeting will be held on Friday 12th February, 2016 at 9:30 a.m.

ADJOURNMENT

6.1 The Chairman thanked Members and adjourned the meeting to Friday 12th February, 2016 at 9:30 a.m.

6.2 The adjournment was taken at 10:59 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

January 22, 2016

PARLIAMENT
Republic of Trinidad and Tobago

Levels G - 7, Tower D
The Port-of-Spain International Waterfront Centre
1A Wrightson Road, Port-of-Spain

JOINT SELECT COMMITTEE ON THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

MINUTES OF THE 4TH MEETING HELD IN THE ARNOLD THOMASOS ROOM (EAST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON FEBRUARY 12, 2016 AT 9:30AM

COMMITTEE MEMBERS

Present

Mr. Colm Imbert, MP	-	Chairman
Mr. Adrian Leonce, MP	-	Member
Mrs. Paula Gopee-Scoon	-	Member
Mr. David Small	-	Member
Mr. Franklin Khan	-	Member

Absent/Excused

Mr. Wayne Sturge	-	Member
Mrs. Cherrie-Ann Crichlow–Cockburn, MP	-	Member
Dr. Bhoendradatt Tewarie, MP	-	Member

SECRETARIAT

Mrs. Jacqui Sampson Meiguel	-	Secretary
Ms. Chantal La Roche	-	Assistant Secretary
Ms. Tanya Alexis	-	Legal Officer I

COMMENCEMENT

1.1 The meeting was called to order by the Chairman at 9:42 a.m.

1.2 The Chairman indicated that Mr. Wayne Sturge, Mrs. Cherrie-Ann Crichlow–Cockburn and Dr. Bhoendradatt Tewarie were excused from the day's meeting.

CONFIRMATION OF MINUTES

2.1 The Committee considered the Minutes of the 3rd meeting held on January 22, 2016.

2.2 The Minutes were amended by deleting item 5.2 (ii) on page 3 and replacing it with "the Committee agreed that upon receipt of the submissions, the Committee will consider the submissions and set a date for a meeting if it finds a meeting is required thereafter".

2.3 The motion for the confirmation of the Minutes was moved by Mr. Small and seconded by Mrs. Gopee-Scoon and the Minutes were confirmed by the Committee.

MATTERS ARISING FROM THE MINUTES

Item 4.1

3.1 Members present considered Dr. Tewarie's submissions and, after some discussion, agreed on the inclusion of a Public Procurement Review Board as proposed by Clause 6 of the Bill. It was agreed that the final position of Members would be relayed to Dr. Tewarie at the Committee's next meeting.

DISCUSSIONS WITH REPRENTATIVES OF THE PRIVATE SECTOR/CIVIL SOCIETY GROUP

4.1 The Chairman welcomed the representatives of **the Private Sector/Civil Society Group (PSCSG)** and invited them to introduce themselves.

4.2 Representing PSCSG were:

- Mr. Winston Riley — Chairman, Private Sector/Civil Society Group
- Dr. James Armstrong — President, The Joint Consultative Council for the Construction Industry
- Mr. Robert Trestrail — President, Trinidad and Tobago Chamber of Industry and Commerce
- Mr. Navin Seeterram — Manager, Trinidad and Tobago Chamber of Industry and Commerce
- Mr. Mitchell Da Silva — Director, American Chamber of Commerce of Trinidad and Tobago
- Mr. Lennox Sirjuesingh — President, Trinidad and Tobago Local Content Chamber
- Mr. Deryck Murray — Chair, Trinidad and Tobago Transparency Institute
- Mr. Marc Sandy — Team Lead, Trinidad and Tobago Manufacturers' Association
- Mrs. Desiree Lopez-Arthur — The Joint Consultative Council for the Construction Industry

4.3 Representing the Chief Parliamentary Counsel to provide technical assistance were:

- Ms. Sharmaine Williams — Ag. Assistant Chief Parliamentary Counsel
- Mr. Milton Sorzano — Ag. Assistant Chief Parliamentary Counsel

4.4 The Chairman of PSCSG made a PowerPoint presentation which is attached as **Appendix I** to these Minutes.

4.5 Arising from discussions between the Members of the Committee and representatives of PSCSG, the Committee agreed to consider a number of recommendations and amendments, which are attached as **Appendix II** of these Minutes.

4.6 At the completion of the presentation, the Chairman thanked the representatives of PSCSG for their attendance and presentation and excused them from the meeting.

The Meeting was suspended at 10.56 a.m.
The Meeting resumed at 11.01 a.m.

CONTINUATION OF CLAUSE BY CLAUSE CONSIDERATION OF THE PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

5.1 In relation to Clause 7 of the Bill, the Committee considered an opinion submitted by the Office of the Chief Parliamentary Counsel on the effect of broadening the definition of disposal of state lands to include leases and the jurisdictional responsibilities of all state lands and mining leases. The Committee noted the following:

- Clause 7 of the Bill may affect the disposal of state lands under the Minerals Act and Petroleum Act and as such Regulations when drafted must be made subject to these Act.

- There should be a similar process for the disposal of state lands as the one in place for the procurement process. State entities should submit their rules to the Office of the Procurement Regulator for approval for consistency across the state entities.

5.2 After some discussion the Committee also noted that there would be need to amend the following Sections of the Public Procurement and Disposal of Public Property Bill, 2015 (Act No.1 of 2015):

- **Section 63**

That the Minister should be empowered to make regulations in relation to the disposal of state lands in his own right. Accordingly, the Act would need to be amended to reflect this.

- **Section 11**

Tenure and remuneration of the Regulator
Section 11 (1) should be amended by reducing the tenure of the Regulator to five (5) years with no automatic eligibility for re-appointment.

- That the Regulator and Deputy Regulator should be engaged on a full time basis and be restricted from any other occupation.

5.3 The Chairman also noted that due to the limited mandate of the Committee, further amendments outside of the Committee's remit would be considered via a separate Amendment Bill.

OTHER MATTERS

6.1 In response to a request made by letter dated February 5, 2016, the Committee agreed to grant an extension of time to the Board of Permanent Secretaries and Heads of Departments to submit their written submissions on the Public Procurement and Disposal of Public Property (Amendment) Bill, 2015.The deadline for receipt of submissions from the Board was revised to February 17, 2016.

6.2 The Committee agreed to note the submissions of Mr. Timothy Hamel-Smith and Mr. Afra Raymond.

6.3 The Committee agreed that its next meeting will be held on Friday 19th February, 2016 at 10:00 a.m.

ADJOURNMENT

7.1 There being no other business, the Chairman thanked Members and adjourned the meeting.

7.2 The adjournment was taken at 11:10 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

February 12, 2016

Appendix II

a) The Office of the Procurement Regulator (OPR) as a regulatory and monitoring body should not be involved in trade or any transactional elements of procurement;

b) Subsection 13 (o) of the Parent Act be removed;

c) The Office of the Procurement Regulator should not be involved in the transactional aspect of any public procurement function irrespective of Parliament's approval of a budget for its operations which may provide for the acquisition of goods, works or services necessary for its functioning;

d) The Office of the Procurement Regulator should not be involved in the transactional nature of the disposal of its own property;

e) All procurement transactions required for the efficient operation of the OPR should be undertaken by public bodies such as a Ministry and /or a State owned Enterprise;

f) The Regulator is a mere functionary responsible to the Office of the Procurement Regulator. The Regulator does not have the powers or reach of the Contractor General. The substantive powers under Act No. 1 of 2015 reside with the OPR, thus, any removal process should apply to all members of the OPR;

g) The Tribunal charged with the responsibility for removing the Regulator, should have the same powers of a High Court and be appointed by the President Similar to the appointment of High Court Judges;

h) The removal of members of the Board of the OPR should be equivalent to or adopt best HR practices;

i) The Review Board and the Tribunal should be merged into one entity under one name;

j) This one entity should have all the powers of a High Court and should be appointed by the President in his sole discretion;

k) In relation to clause 7 of the Bill, and considering the following:

   i. That the idea of monitoring, auditing, investigating and reporting on the disposal of real property is already in Act No. 1 of 2015;
   ii. That Public Property is already defined in Act No. 1 of 2015;
   iii. That subsection 63 (1) provides that the Minister may on the recommendation of the Office make regulations to give effect to the provisions of this Act; and
   iv. That the Act No. 1 of 2015 specifies that the OPR reports to Parliament through the Minister.

That the amendment 57 A Clause 7 of the Bill should read:

> *"notwithstanding the State Lands Act and other written law to the contrary, the disposal of Public Property shall be subject to regulations made under section 63 (1) which shall specify that each such disposal shall be subject to negative approval of Parliament".*

PARLIAMENT
Republic of Trinidad and Tobago

Levels G - 7, Tower D
The Port-of-Spain International Waterfront Centre
1A Wrightson Road, Port-of-Spain

JOINT SELECT COMMITTEE ON THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

MINUTES OF THE 5TH MEETING HELD IN THE ARNOLD THOMASOS ROOM (EAST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON FEBRUARY 19, 2016 AT 10:00AM

COMMITTEE MEMBERS

Present

Mr. Colm Imbert, MP	-	Chairman
Mr. Adrian Leonce, MP	-	Member
Mrs. Paula Gopee-Scoon	-	Member
Mr. David Small	-	Member
Mr. Franklin Khan	-	Member
Mrs. Cherrie-Ann Crichlow–Cockburn, MP	-	Member
Dr. Bhoendradatt Tewarie, MP	-	Member

Absent/Excused

Mr. Wayne Sturge	-	Member

SECRETARIAT

Mrs. Jacqui Sampson Meiguel	-	Secretary
Ms. Chantal La Roche	-	Assistant Secretary
Ms. Tanya Alexis	-	Legal Officer I

COMMENCEMENT

1.1 The meeting was called to order by the Chairman at 10:18 a.m.

1.2 The Chairman indicated that Mr. Wayne Sturge, was excused from the day's meeting.

CONFIRMATION OF MINUTES

2.1 The Committee considered the Minutes of the 4th meeting held on February 12, 2016.

2.2 The motion for the confirmation of the Minutes was moved by Mr. Small and seconded by Mr. Khan and the Minutes were confirmed by the Committee.

MATTERS ARISING FROM THE MINUTES

Item 4.1

3.1 The Committee invited Dr. Tewarie to present his submissions on the inclusion of a Public Procurement Review Board as proposed by Clause 6 of the Bill.

3.2 Dr. Tewarie noted the following reasons for his objections to the inclusion of the review board as proposed in the Bill, *inter alia*:

- The matters the Review Board would address were already covered by Act No. 1 of 2015.
- The inclusion of the Review Board would not prevent litigation
- The review system established under Act No. 1 of 2015 is faster than that of the Kenyan process (which the proposed Review Board was modeled after)
- Alternative methods of dispute resolution are already available to aggrieved persons under Act No. 1 of 2015.

3.3 After hearing Dr. Tewarie's presentation on Clause 6 of the Bill, the Committee agreed to retain the Review Board as proposed in the Bill. Dr. Tewarie objected to the inclusion of the Review Board in the Bill.

CONTINUATION OF CONSIDERATION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015 (INCLUDING FINALISATION OF AMENDMENTS).

4.1 The Committee agreed to the amendments attached to these Minutes as Appendix I with the following exceptions:

- The amendment to clause 7 "the Regulations made under this section shall be subject to affirmative resolution of Parliament"; affirmative should be removed and replaced with "negative".
- The proposed amendment to section 11 (1) of Act No. 1 of 2015 was outside the mandate of the Committee. The Committee agreed to recommend in its report to Parliament that another amendment Bill be drafted to capture its recommended amendments which fell outside of the mandate of the Committee.

OTHER MATTERS

5.1 The Committee noted the written submissions from the Board of Permanent Secretaries and Heads of Departments on the Public Procurement and Disposal of Public Property (Amendment) Bill, 2015 and agreed that the submissions fell outside the Committee's mandate.

REPORT TO PARLIAMENT

6.1 The Committee agreed that a draft report would be circulated to Members via email for comment and approval.

6.2 The Committee concurred that this report would be approved by round-robin. The Committee also agreed that should Members have any objections to same, they should email them to the Secretariat.

6.3 The Chairman expressed his gratitude to Members for their commitment and the tremendous work done by the Committee and the Members complimented the Chairman on his performance as Committee Chair.

ADJOURNMENT

7.1 There being no other business, the Chairman thanked Members and adjourned the meeting.

7.2 The adjournment was taken at 11:05 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

February 19, 2016

SUBMISSIONS

PRIVATE SECTOR/CIVIL SOCIETY GROUP

Tel: 868-627-2522 Fax: 625-5749 email:pscsgwj©aolicom

29 January, 2016

The Honourable Mr. Colm Imbert, MP
Chairman
Joint Select Committee
The Public Procurement & Disposal of Public Property (Amendment) Bill
Office of the Parliament
Levels G-8, Tower D
The Port of Spain International Waterfront Centre
1A Wrightson Road
Port of Spain

THE PRIVATE SECTOR CIVIL SOCIETY RESPONSE TO THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015 BEFORE THE JOINT SELECT COMMITTEE

Preamble

The Joint Select Committee (JSC) is reminded here that the Regulator and Deputy Regulator are mere functionaries under Act No. 1 of 2015. The Regulator, and in his absence the Deputy Regulator, administers the day to day operations of the Act and do not have similar powers of the Contractor General under the Jamaican Act or the Director General under the Kenyan Act. The substantive powers under Act No. 1 of 2015 lie exclusively with the Board of the Office of Procurement Regulation (OPR). This is clearly expressed in the Act under sub-section 12 (2) (b) which states "(2) ***in the exercise of its function, the Office shall-***
(b) not be subject to the direction or control of any other person or authority in the performance of its functions, but shall be accountable to Parliament "

The Regulator and Deputy Regulator are limited as such and are not accountable to Parliament but to the Board of the OPR:

1. Powers of the Regulator

The powers of the Regulator are limited to the following:

a. **Chairing meetings of the board of the (OPR) - see sub-section 10 (1) (a) and 15 (2);**
b. **Authenticating with others the official seal of the OPR - see sub-section 10 (4);**
c. ***"The day to day management, administration direction and control of the business of the Office with the authority to act in the conduct of the business of the Office."*** **See sub section 11 (2);**

d. **Receive resignation letters from other members of the OPR - see sub-section 11 (7);**

e. ***Submit reports annually to the Speaker of the House of Representatives, the President of the Senate and the Minister of Finance.*** **See section 24;**

f **Receive complaints** ***"after the entry into force of a procurement contract or conclusion of a framework agreement when an agency does not publish promptly on its web site or any other electronic format notice of award."*** **See sub-section 36 (2);**

g. **Authorises officers to undertake investigations into any alleged or suspected breach of the Act - see sub-section 43 (1).**

It should be noted that the Board receives a full and complete written report of an investigation in writing and informs the affected parties and the Minister. See section 44. If the Office is of the view that a breach has been committed, it shall make a report to the Director of Public Prosecution. See section 45.

All Challenge Proceedings are directed to the OPR by a supplier or Contractor for review of a decision made by a procuring entity - see sections 49, 50 and 51.

2. The proposed amendment under Section 3-Appointment of tribunal by the President

The proposed amendment to section 3 states ***"The Act is amended by inserting after section 12, the following subsection:***

12A. ***(1) "In addition to the provisions of section 12, the Regulator may be removed from office where he trades with the Government without the prior approval, by resolution, of each House of Parliament".***

(2) ***Where a resolution is passed by each House of Parliament that the question of removing the Regulator from office, under subsection (1) or section 12, should be investigated -***

(a) the President shall appoint a tribunal, which shall consist of a chairman and not less than two other members, from among persons who hold or have held the office of a Judge of a Court having unlimited jurisdiction in civil and criminal matters or a Court having jurisdiction in appeals from any such Court; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to the President whether the Regulator should be removed from office.

The phrase "trade with the Government" can be interpreted in several ways in the context of a Regulator trading with the Government particularly if the Regulator has similar powers to the Contractor General

under the Jamaica Act or the Director General under the Kenyan Act. The phrase trade with Government could mean trading as-:

(1) a person using his position of Regulator to trade with the Government or
(2) the Regulator in his private capacity trading with the Government

A person using his position of Regulator to trade with the Government

Act No. 1 of 2015 deals with acquisition of goods, works and services and the disposal of public property. It is thus conceivable that the OPR may need to acquire goods, works and or services and dispose of public property under its ownership.

The OPR is a public body and sub-section 61 (2) of the Act states ***"For the purposes of this Act, a public body shall have a procurement officer who shall be responsible for the public procurement and the disposal of public property for the body."***

In this context (of the Regulator operating as procurement officer) it is important to note that section 10 states quite clearly that "All expenses incurred by the Office for the purpose of this Act shall be a charge on the Consolidated Fund". Section 21 states that ***"the funds of the Office shall consist of monies appropriated by Parliament for the purposes of the office."*** **It is thus clear that the only funds available for the OPR or the Regulator acting as procurement officer for the OPR are funds approved by Parliament. The approved funds may be for the acquisition of goods, works or services facilitating the operations of the Office.**

On the disposal side however, Act No. 1 of 2015 sub-section 13 (1) (o) gives the OPR the power ***"to act for, in the name and on behalf of the State to dispose of real property owned by the Government in such manner as the Government may consider appropriate and desirable."***

The Private Sector Civil Society Group (PSCSG) Recommendations (1)

The PSCSG is of the view that the OPR as a regulatory and monitoring body should not be involved in trade or any transactional elements of procurement. The PSCSG thus recommends the following:

a) **That sub-section 13 (1) (o) be removed;**
b) **The OPR should not be involved in the transactional aspect of any public procurement function irrespective of Parliament's approval of a budget for its operations which may provide for the acquisition of goods, works or services necessary for its functioning;**
c) **The OPR should not be involved in the transactional nature of the disposal of its own property;**
d) **All procurement transactions required for the efficient operation of the OPR should be undertaken by public body such as a Ministry and/or a State owned Enterprise.**

The Regulator in his private capacity trading with the Government

Taking into account the fact that the amendments may refer to the Regulator acting in his private capacity, reference is here made to the Jamaican Act section (7) which allows for the removal of the Contractor General for trading with the Government of Jamaica without the prior approval, by resolution, of each House of Parliament. The Jamaican act specifies the limits of such trading by stating that the Contractor General *"shall not be so removed except in accordance with the provisions of this section".* **"Part 2 of section 7 states:**

"For the purposes of this section a Contractor-General trades with the Government of Jamaica if, while holding office as such, he becomes party to, or is a partner in a firm or a director or manager of a company which to his knowledge becomes a party to any contract with the Government of Jamaica for or on behalf of the public service."

Sub-sections 3, 4, 5 and 6 of section 7 deal as follows with the issue of removal of the Contractor General:

Sub-section (3) states *"If the question of the removal from office of a Contractor-General has been referred to a tribunal appointed under subsection (4) and the tribunal has recommended to the Governor-General that the Contractor-General ought to be removed from office, the Governor-General shall, by instrument under the Broad Seal, remove the Contractor-General from office."*

Sub-section states (4) *"If each House of Parliament by resolution decides that the question of removing a Contractor-General from office ought to be investigated then -*

a) the Governor-General shall appoint a tribunal, which shall consist of a chairman and not less than two or more than five other members from among persons who hold or have held the office of a Judge of a court having unlimited jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from any such court; and

b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor General and recommend to the Governor-General whether the Contractor-General ought to be removed from office for inability as aforesaid or for misbehavior or for trading as aforesaid."

Sub-section (5) states *"The provisions of sections 8 to 16 (inclusive) of the Commissions of Enquiry Act shall apply mutatis mutandis in like manner in relation to tribunals appointed under subsection (4) or, as the context may require, to the members thereof, as they apply in relation to the Commissions or Commissioners appointed under that Act."*

Sub-section (6) states: *" Where the question of removing a Contractor-General from office has been referred to a tribunal the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Contractor-General from performing the functions of his office."*

It is clear from the above that the proposed amendments to section 3 of Act No. 1 of 2015 were derived from the Contractor General's Act of Jamaica without taking into account the following:

(1) The Jamaican Act defines and limits the concept of what it means to trade with the Government;

(2) The Contractor General is a Commission of Parliament as stated under sub- section 3 (1)

3 The Contractor General Commission

(1) For purposes of this Act there is hereby constituted a Commission of Parliament to be known as the Contractor General;

(3) The Jamaica Act states under section 5 (1):

5 Independence of Contractor General

(1) In the exercise of the powers conferred upon him by this Act a Contractor General shall not be subject to the direction or control of any other person or authority;

(4) That sub-section 4 (1) of the Jamaica Act states:

4 Functions of the Contractor General

(1) Subject to the provisions of this Act, it shall be the function a Contractor General on behalf of Parliament-

(a) to monitor the award and the implementation of government contracts._

The Regulator is a mere functionary responsible to the OPR. The Regulator does not have the powers or reach of the Contractor General. The substantive powers under Act No. 1 of 2015 reside with the OPR, thus any removal process should apply to all members of the OPR.

The Private Sector Civil Society Group (PSCSG) Recommendations (2)

1) **The Tribunal should have the powers of a High Court and be appointed by the President similar to the appointment of High Court Judges;**
2) **The removal of members of the Board of the OPR should be subject to the same processes;**
3) **The process for removal should be equivalent to or adopt best HR practices;**
4) **The process for removal should start with the Board of the OPR, which should have the power to investigate and make recommendations;**
5) **Following investigation by the Board of the OPR, all recommendations should be passed to the Tribunal for review and decision;**
6) **The decision of the Tribunal is to be forwarded to the President, The Prime Minister and The Leader of the Opposition;**

7) **If removal is the decision of the Tribunal, then the President, after informing the Prime Minister and Leader of the Opposition, should remove the offending member of the OPR from the Office; and**

8) **The Regulator and Deputy Regulator engagement should be full-time and they should not be engaged in any other occupation or be engaged in any other public office while holding such position.**

4, The proposed amendment 4 under **Section 24(4)**

"Section 24(4) of the Act is amended by inserting after the word "respectively", in the second place where it occurs, the words "and the report shall be referred forthwith to the Public Accounts Committee"

The Private Sector Civil Society Group (PSCSG) Recommendations (3)

The proposed amendment under section 24 (4) is accepted by the PSCSG.

5.The proposed amendment **5** under Section 50

Section 50 of the Act is amended by inserting after subsection (12), following subsection:
"(13) ***The suspension of procurement proceedings under subsection (4) (a) shall be lifted immediately upon the issuance of the decision of the Office under subsection (1)."***

The Private Sector Civil Society Group (PSCSG) Recommendations (4)

The proposed amendment under section 50 subsection (13) is accepted by the PSCSG.

6.The proposed amendment 6 under Section **51**

The Act is amended by inserting after section 51, the following new sections:

"Establishment of Public Procurement Review Board Composition of Review Board

51A. The Public Procurement Review Board, herein after referred to as the "Review Board", is hereby established to review decisions made by the Office..

The Private Sector Civil Society Group (PSCSG) Recommendations (5)

(1) The proposed amendment is accepted in principle;

(2) The Review Board and the Tribunal should be merged into one entity under one name;

(3) Under this one entity, time lines for decision making for different proceedings should be stipulated;

(4) This one entity should have all the powers of a High Court and should be appointed by the President in his sole discretion.

7. The proposed amendment 7 inserting after section 57 the following Part:

Part VIA DISPOSAL OF STATE LANDS

"57A Notwithstanding the State Lands Act and other written law to the contrary, the disposal of

a) State Lands;
b) real property owned by the Government;
c) real property owned by State controlled enterprises; and
d) real property owned by a statutory body, responsibility for which is assigned to a Minister of Government shall be subject to Regulations made by the Minister under section **63**

The following should be noted: -

a. **Act No. 1 of 2015 section 4 Part 1 states the following: -**

"Public Property means real or personal property owned by the state."

"Disposal of public property includes the transfer without value, sale, lease, concessions or other alienation of property that is owned by a public body."

"Public Property means real or personal property owned by a public body."

b. **Under section 13 and 14, in the performance of its functions, the Office is to monitor, audit and investigate all activities related to the disposal of public property;**

c. **Under sub-section 24 (1), the Regulator shall submit his reports annually to the Speaker of the House of Representatives, the President of the Senate and the Minister. Sub-section 24 (2) states that a report under subsection (1) shall include: - (d) a summary of transactions in respect of each public body concerning the disposal of public property;**

d. **That Dr. the Honourable Keith Rowley, Prime Minister is reported on the 15th November 2015 in the Newsday, under the caption PM on Secret Distribution of Land, as making a statement at the office of the Prime Minister. The PM recalled that the House of Representatives last Friday approved the Government's recommendations to send the Public Procurement and Disposal of Public Property (Amendment) Bill, 2015 to a JSC which is mandated to complete its work by January 22, and the Prime Minister said that this will involve legislative amendments that will**

prevent any parcel of State land or any State assert from being distributed to any person or Agency without the knowledge of Parliament.

e. **That sub-section 63 (1) states: The Minister may on the recommendation of the Office make regulations to give effect to the provisions of this Act...; and**

f. **That sub-section 63 (3) states that: "Regulations made under this section shall be subject to affirmative resolution of Parliament".**

The Private Sector Civil Society Group (PSCSG) Recommendations (6)

That: -

1. **As the idea of monitoring, auditing, investigating and reporting on the disposal of real property is already in Act No. 1 of 2015;**
2. **As Public Property is already defined in Act No. 1 of 2015;**
3. **As sub-section 63 (1) provides that the Minister may on the recommendation of the Office make regulations to give effect to the provisions of this Act; and**
4. **As Act No. 1 of 2015 specifies that the OPR reports to Parliament through the Minister;**

Then:-
The amendment 57A should read:

"Notwithstanding the State Lands Act and other written law to the contrary, the disposal of Public Property shall be subject to regulations made under section 63 (1) which shall specify that each such disposal shall be subject to negative approval of Parliament."

Yours truly,
PRIVATE SECTOR / CIVIL SOCIETY GROUP

Winston Riley,P.E., FAPETT
Chairman

r. JAMES ARMSTRONG
PRESIDENT
JOINT CONSULTATIVE COUNCIL
FOR THE CONSTRUCTION INDUSTRY

4-ROBERT TRESTRAIL
PRESIDENT
TRINIDAD & TOBAGO CHAMBER OF
INDUSTRY & COMMERCE

RAVI SURYADEVARA
PRESIDENT
AMERICAN CHAMBER OF COMMERCE
OF TRINIDAD & TOBAGO

ERYCK MURRAY
CHAIRMAN
TRINIDAD & TOBAGO TRANSPARENCY INSTITUE

LANGELA LEE LOY
PRESIDENT
TRINIDAD & TOBAGO CO f(TION OF
SERVICES INDUSTRIES

JOSEPH REMY
PRESIDENT
FEDERATED INDEPENDENT TRADE UNIONS
NGO's

LENNOX SIRJ ESINGH
PRESIDENT
TRINIDAD & TOBAGO LOCAL CONTENT CHAMBER

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The Secretary
Joint Select Committee - Procurement and Disposal of Public Property (Amendment) Bill, 2015
Parliament of the Republic of Trinidad and Tobago
Level 3 Tower D
Port of Spain International Waterfront Centre
lA Wrightson Road
Port of Spain

Via email: jscprocurementgtparlaimentorg

WRITTEN SUBMISSION

Date: 8th January 2016

I have reviewed the Procurement and Disposal of Public Property (Amendment) Bill, 2015 (the `Amending Bill') which seeks to amend the Procurement and Disposal of Public Property Act, 2015 (the 'Procurement Act'). The Amending Bill has been referred to a Joint Select Committee of Parliament with directions to report to parliament by 22 nd January 2016.

As a consequence I have prepared this submission which is divided into three parts. Part 1 consists of introductory comments, Part 2 is the review and recommendations on the provisions of the Bill and Part 3 includes references in an Appendix to relevant Sections of the Act and Bill which are under consideration.

PART 1— INTRODUCTORY COMMENTS

1. The enactment and implementation of fair and equitable procurement legislation is one of the most significant steps which Trinidad and Tobago can take towards sustainable development.

If done well, the procurement legislation will ensure that (a) the citizens of Trinidad and Tobago receive the best goods and services possible for their tax dollars and (b) that there is an opportunity for all contractors and suppliers to participate on an equal footing in a competitive environment in respect of delivery of works, goods and services required by the State for the benefit of the people of Trinidad and Tobago. It is important that we get this right.

2. **Equal in importance to getting the text of the procurement legislation right, is ensuring that the legislation is implemented efficiently. Without proper implementation the best legislation in the world will be of no practical use. In implementing the legislation there must be a focus on achieving the end result of providing better goods and services for the people of Trinidad and Tobago. While the goals of transparency, accountability and best value for money are vital, it is easy to see these as ends in themselves, as opposed to tools for achieving the ultimate goal of delivering the best goods and services to the people of Trinidad and Tobago.**

3. **With the importance of implementation in mind, and in an effort to assist in the implementation of the Procurement Act, set out below are:**

   3.1. On overview of the remaining steps needed to implement the Procurement Act as well as general comments on the implementation of these steps; and

   3.2. Suggestions as to the most efficient sequencing of these steps.

4. **STEPS REMAINING FOR IMPLEMENTATION**

5. **The implementation of the procurement regime under the Procurement Act contemplates that the following actions must be taken in the following sequential order:**

   5.1. Salary

   5.2. The salary and allowances of the Regulator must be approved by Parliament.

5.3. It would be advisable that this salary be approved prior to the Regulator being appointed as presumably anyone who is considering taking up such an executive role of Regulator will as a prerequisite of acceptance would want to know at least the salary range applicable to the post.

5.4. Given the importance of the role played by the regulator it is essential that the salary be comparable to executive positions in the private sector in order to attract quality personnel.

5.5. Appointment of Regulator and Members of the Board

5.6. The Regulator and members of the Board must be appointed by the President in consultation with the Prime Minister and Leader of the Opposition.

5.7. Procurement Regulations

5.8. Once the appointments have been made, the Office of Procurement Regulation would have to make recommendations to the Minister as to the Regulations to be made under the Procurement Act.

5.9. Such Regulations will have to be brought before Parliament for approval by affirmative resolution.

5.10. Developing Capacity in Public Bodies

5.11. Ministries and Departments formerly had only limited procurement responsibilities as the major projects were handled by the Central Tenders Board the legislation for which is to be repealed. Further each State Enterprise dealt with procurement on an individual basis.

5.12. In order for the Procurement Act to be effectively implemented, considerable resources will need to be invested into public bodies so that they develop the capacity to implement the new procurement system in a way that attains the ultimate goal of delivering goods and services to the people of Trinidad and Tobago.

5.13. Developing such capacity will include:

5.13.1. ***Creation of Standardized Documents***

5.13.2. The Office of the Regulator would have to start on the preparation of (i) Handbooks (incorporating standardized bidding documents, procedural forms and relevant documents for use in public procurement and disposal of public property), (ii) Model Contracts for Procurement, (iii) Standards as to Best Practices in Public Procurement, (iv) a comprehensive Database as required by the Procurement Act.

5.13.3. ***Appointment of a Procurement Officer for each Public Body***

5.13.4. Consideration should be given to combining clusters of 3/4 Ministries or State Enterprises into a single procurement entity in light of staffing constraints.

5.13.5. ***Financial Regulations***

5.13.6. The Minister will need to prepare Financial Regulations under the Exchequer and Audit Act to facilitate spending procedures.

5.13.7. Such financial regulations will ensure timely payments are authorized to effect procurement by Ministries and Departments.

5.13.8. Indeed, the lack of clear Financial Regulations is perhaps the crucial factor which inhibits progress payments on a timely basis being made for projects.

Inevitably this delay in payment, results in State contracts being more expensive and completion dates being extended well beyond targeted completion which in turn runs counter to the key objective of providing goods and services to the public.

5.13.9. ***Training Programs***

5.13.10. An initial and ongoing program should be circulated to all stakeholders as to how the procurement legislation will impact suppliers and contractors and outlining the training programs intended to be implemented in order to upgrade the competencies of the staff of public bodies to implement the procurement procedures required by the Act and as directed by the Regulator.

5.13.11. ***Guiding Principles***

5.13.12. Guiding Principles should be developed to assist public bodies in conducting procurement exercises. A preliminary working draft of such principles is attached.

5.13.13. Of utmost importance is the understanding that the key objective is to ensure the best delivery of goods and services to the people of Trinidad and Tobago. The good governance principles with respect to accountability, transparency and best value for money are tools towards achieving this key objective.

6. EFFICIENT SEQUENCING OF IMPLEMENTATIONS STEPS

7. Given the sequence of implementation actions outlined above I would like to recommend that simultaneously with the Procurement Bill being debated in Parliament that the Minister's proposed salary and allowances of the Regulator be approved by Parliament.

8. **The determination of salary and allowances of the Regulator would allow the President to proceed with the appointment of the Regulator and Members of the Board who could then proceed to make recommendations to the Minister as to the staffing of the Office of the Regulator.**

9. **The Office of the Regulator would then be in a position to make recommendations to the Minister as to Regulations under the Procurement Act which would then have to be presented to parliament for approval by Affirmative Resolution.**

10. **This would then enable the Office of the Regulator to start with preparation of Handbooks and other documents as outlined at 15.13.2 above so that the new procurement regime can commence.**

PART 2 - REVIEW OF PROCUREMENT BILL

11. **I have set out below my comments on the Procurement Bill and Act for consideration by the Joint Select Committee with Appendix dealing with relevant Sections to which reference is made in relation to Offences and Penalties, Salaries/ Allowances of members of the Office of Procurement Regulation (the 'Office'), Regulations, Guidelines/Handbooks, Whistle Blowing, Investigation and Enforcement and Challenge Proceedings.**

12. **The Procurement Bill addresses four critical areas with respect to the procurement process:**
    - **12.1. Removal of the Regulator by a Tribunal;**
    - **12.2. Suspension of Procurement Proceedings;**
    - **12.3. Creation of a Public Procurement Review Board; and**
    - **12.4. Disposal of State Lands.**

1 3. REMOVAL OF THE REGULATOR BY A TRIBUNAL

14. The role of the Regulator is pivotal to the success of the Procurement Act. Consequently the protections afforded to the regulator and the mechanisms for holding him accountable are of the utmost importance.

15. Set out below is an examination of:

15.1. The factors that need to be balanced in removing the Regulator;

1 5.2. The current mechanism under the Procurement Act for removing the regulator;

15.3. The proposed mechanism for removing the regulator under the Procurement Bill;

1 5.4. Alternative mechanisms for removing the Regulator.

16. Factors that need to be balanced in removing the regulator

17. In determining a mechanism for removing the Regulator there are several, somewhat contradictory, factors that must be carefully balanced.

18. Firstly, a substantial part of the Regulator's job is to act as a bulwark against excesses of the Executive in the award of contracts. It is therefore absolutely critical to the success of procurement regulation that the Regulator not be subject to interference by the Executive.

19. Secondly, the Regulator cannot be a law onto itself. There must be mechanisms to hold the Regulator accountable and, if necessary remove the Regulator. If the Regulator cannot be held accountable there will be no way to ensure that the functions of the Office are performed to the standard required.

20. Lastly, natural justice requires that the Regulator be given a fair hearing before being removed. This is not only important in terms of fairness to the Regulator, but it is also ¡mportant if highly qualified individuals are to be attracted to the post of Regulator; no one

will take the post if they believe they can be removed on a whim, especially when such removal will tarnish their reputation.

21. The current mechanism under the Procurement Act for removing the Regulator

22. Section 12 of the Procurement Act provides that the President may remove a member of the Board from office upon being satisfied that the member commits certain actions, including discretionary matters namely:

22.1. being incapable of performing the duties of a member, or

22.2. has neglected his duties or has engaged in conduct that would bring his office into disrepute.

23. The concern raised with this mechanism, and which the Amendment Bill seeks to address, is that as the Cabinet advises the President to remove the Regulator and the President is obliged to follow such advice then really the right to remove is in the hands of the Executive.

24. Such a mechanism is open to abuse by an Executive in that they may remove the Regulator if it was felt that he was preventing the State from using the procurement process for the benefit of the people of Trinidad and Tobago.

25. On the other hand, the reality is that under the existing Procurement Act one would be required to satisfy the rules of natural justice before removing the Regulator which would require that the Regulator be notified of the grounds being relied upon for his removal and to give the Regulator an opportunity to be heard. In addition the Regulator would be entitled to seek judicial review of the decision to have him removed from office, thus affording some protection for the office of the Regulator from the Executive.

26. The proposed mechanism for removing the Regulator under the Procurement Bill

27. The amending Bill provides for the interposition of a Tribunal and requires the President to appoint a Tribunal to investigate the actions of the Regulator and if the Tribunal so recommends the President is required to remove the Regulator.

28. The requirement that the President appoint the Tribunal is based on a resolution of both Houses of Parliament. Under this provision the Government introduces into Parliament a resolution for referral of the conduct of the Regulator to be investigated by the Tribunal. No opportunity is given for the operation of the rules of natural justice which would allow the Regulator an opportunity to be heard by Parliament.

29. Further such a parliamentary process would not allow the Regulator a right to be heard before appointing a Tribunal. Once the Tribunal was appointed it is likely that the reputation of the Regulator would be so lowered in the public estimation by virtue of his public Parliamentary trial that he would not be in a position to perform his duties.

30. The provisions of the Bill which will involve a Parliamentary debate to determine if a Tribunal is appointed are unacceptable. The members of Parliament are entitled to immunity, privilege and freedom of speech. The Government bringing the resolution to Parliament would have already made up its mind to remove the Regulator and could defame him/her with impunity resulting in a public trial without the ability of the Regulator to respond.

31. The reality is that in modem Trinidad and Tobago politics, Parliament does not provide a check on the Executive; unlike larger jurisdiction in which there are significant numbers of back benchers which may revolt against their party leadership. In Trinidad and Tobago the Executive forms a far larger percentage of the governing party's membership in Parliament and such a revolt is extremely unlikely and indeed would be unprecedented.

32. The proposed amendment represents a retrograde step which flouts the rules of natural justice. The existing provision in the Procurement Act at least allows some protection to the

Regulator both in terms of the rules of natural justice and the ability to approach the Court for judicial review. Moreover under the provisions of the Bill, the members of the Tribunal are all hand-picked by the Executive and appointed by the President on the advice of the Cabinet. It creates the façade of independence in the removal of the Regulator while in reality making it even more likely that the Executive can remove the Regulator at its whim.

33. Alternative mechanisms for removing the Regulator

34. A better approach, if the Parliament is to be involved, would be to have a Senatorial Committee sitting in camera and chaired by an Independent Senator and comprising the Senate President, an additional Independent Senator and an Opposition Senator conduct an inquiry in which the Regulator would attend for questioning and to advance his/her own position relative to the allegations made against him. This Senatorial Committee would then make its recommendations on the question of the removal of the Regulator to the President who would be required to act on such recommendations. The advantage of having the President act on the recommendations of the Senatorial Committee would be to preserve the neutral status of the President and avoid any judicial process which may inquire into his conduct.

35. Alternatively the question of the removal of the Regulator could be vested in the President exercising his own discretion or after consultation with the Prime Minister and Leader of the Opposition and/or other persons, subject in either case to the rules of natural justice. The President would still be obligated to observe the rules of natural justice to allow the Regulator an opportunity to be heard and the Regulator would still have the right to resort to the Court by way of judicial review.

36. The Amendment Bill (12A(2)(a)) provides that "The President shall appoint a tribunal". This would mean the Cabinet which decided to bring the resolution to Parliament for removal of the Regulator will now have the power to advise the President as to the members of the Tribunal who will determine if the Regulator should be removed.

37. **I recommend that rather than have the President act on the advice of Cabinet that the President should also have the right to appoint the members of the Tribunal in his own discretion or after relevant consultation.**

38. **SUSPENSION OF PROCUREMENT PROCEEDINGS**

39. **Section 50(4)(a) of the Procurement Act empowers the Office of the Regulator to suspend procurement proceedings to protect the interests of the Applicant.**

40. **Section 50(10) of the Procurement Act empowers the Office of the Regulator to take one of a list of actions, including at paragraph (e) "direct that the procurement proceedings be terminated".**

41. **By Clause 5 the Procurement Bill seeks to introduce into Section 50 an additional sub-section 13 in following terms: "The suspension of procurement proceedings under subsection (4)(a) shall be lifted immediately upon the issuance of the decision of the Office under subsection (11)" without prejudice to the terms of any decision of the Office under subsection (10).**

42. **The mandatory lifting of the suspension of procurement proceedings intended to be introduced by virtue of Clause 5 gives rise to the possibility that it will contradict elements of the decision made by the Procurement Office under Section 50(10) or at least lead to ambiguities arising from such a suspension. It may be wise to add to Clause 5 of the Bill the wording which I have included at 41 above as shown in bold red.**

43. **An alternative approach would be to amend Section 50(10)(h) as follows (changes shown in bold red) "take such other action as is appropriate in the circumstances, including if thought fit, the lifting of any suspension of procurement proceedings order made under subsection (4)(a)". This would then give the Office of the Regulator the discretion as to whether the suspension should be lifted in the context of its decision.**

44. In deciding to make the lifting of the suspension mandatory the State is signalling that if the Office of the Regulator upholds the procurement process by dismissing the application, the procurement proceedings should not continue to be subject to suspension pending a review or appeal. In other words such a decision should not be a matter for the exercise of discretion by the Office of the Regulator, the Review Tribunal or the High Court or other appellate court. That can be a justifiable position for the State to adopt as such a suspension could cause real harm to ongoing projects of the State and therefore it is arguable that an applicant should only have one bite of the cherry as proposed in the Amending Bill.

45. PUBLIC PROCUREMENT REVIEW BOARD

46. By clause 6 of the Amending Bill a new clause 51A is introduced which establishes a Public Procurement Review Board for purposes of reviewing decisions.

47. The members of the Review Board are appointed to serve for a period of 3 years by the President after consultation with the Prime Minister and the Leader of the Opposition.

48. The proposed Section 5 1 B sets out the composition of the Board. I would recommend that 51B(b) should be amended so as to include either a registered engineer or a quantity surveyor and that the reference to quantity surveyor in 51B(c) be deleted. This would ensure that the Review Board always includes a chartered accountant.

49. The proposed Section 51E provides for the removal of a member of the Review Board by the President upon being satisfied that certain circumstances exist, including discretionary matters — "(b) is incapable of performing the duties of a member: and (c) has neglected his duties or has engaged in conduct that would bring his office into disrepute". This would result in the Cabinet being entitled to simply advise the President as to removal of a member and produces the same concern of the Government as to the removal of the Regulator which the Amending Bill seeks to overcome.

50. I would recommend that removal be made by the President either in his own discretion or after consultation with the Prime Minister and the Leader of the Opposition and in either case in accordance with the rules of natural justice.

51. Alternatively a better approach would be to have a Senatorial Committee established in similar manner to that recommended at paragraph 34 above. That Senatorial Committee would hold an inquiry at which the member of the Review Board would be entitled to attend and be heard. The Senatorial Committee would then present its recommendations to the President who would be obliged to act on such recommendations.

52. The proposed Section 51M provides that "A party to a review may appeal against the decision of the review Board to the High Court within twenty-eight days of the making of the decision".

53. The effect of such an appeal is that there may be further appeals to the Court of Appeal and the Privy Council, resulting in an unnecessary multiplicity of hearings. I would recommend that a single appeal be allowed directly to the Court of Appeal, with no further right of appeal or that such final appeal be made directly to the Caribbean Court of Justice if it is willing and able to accept jurisdiction over the matter under the present arrangements establishing the CCJ.

54. DISPOSAL OF STATE LANDS

55. The proposed Section 57A provides that regulations made by the Minister under Section 63 shall govern the disposal of State Lands and real property owned by the State or State-controlled entities or a statutory body responsible to a Government Minister. This would seem to imply, based on the provisions of Section 63, that the regulations are made, "on the recommendation of the Office", but it worth having this confirmed as the intention of the Amending Bill.

56. Section 13(1) of the Procurement Act sets out the functions of the Office which includes at paragraph (o) "act for, and in the name and on behalf of the State to dispose of real property owned by the Government in such manner as the Government may consider appropriate and desirable".

57. This function is adopted directly from the Central Tenders Board Act. However the Office which has been set up to regulate and monitor procurement and disposal of public property ought not also to have the function of disposing of real property of the State as this would be a conflict of interest, being tantamount to the Office regulating and monitoring itself (see Section 14(1) (a) — monitoring of disposal of public property by public bodies to ensure compliance).

58. I would recommend that paragraph (o) of Section 13(1) of the Procurement Act be deleted and that the proposed Regulations under Section 57A make appropriate provisions for who performs the functions as to disposal.

59. It is to be noted that by Section 13 (1) (c) one of the functions of the Office is to "issue and review guidelines in relation to public procurement and the retention and disposal of public property....". It would therefore be necessary to ensure that the Regulations and any Guidelines issued by the Office with respect to the Disposal of Public Property are synchronised.

Part 3 - APPENDIX

(Sections referred to in Review)

1. Offences and Penalties

- **a. Section 6(1) of the Procurement Act provides that any procurement that is not done in accordance with the Act shall be void and illegal.**
- **b. Section 14(2) of the Procurement Act provides that a person or public body who fails to comply with a direction under the Act, commits an office and is liable to a fine of $100,000.**

c. **Section 17(2) makes it an offence where a member of the Board or committee fails to disclose an interest, the penalty for which is a fine of $500,000 and imprisonment for one year.**

d. **Section 59(10) makes it an offence where a person offers inducement (bribe) to a person in a procuring entity- On conviction this offence is subject to a fine of $1 million and 5 years' imprisonment.**

e. **By Section 60(1) a person involved in bid rigging or offence involving collusion commits an offence liable to a fine of $5 million and 7 years imprisonment.**

f. **By Section 60(2) a person who alters procurement document with intent to influence outcome commits offence and liable to fine of $2 million and 5 years imprisonment.**

g. **By Section 61(1) a person who contravenes sections of Act as listed in Schedule 1 is subject to penalty listed in Schedule 1.**

h. **By Section 63(2) the Regulations may make the breach of any Regulation an office and prescribe penalties therefor not exceeding a fine of $1 million and imprisonment for 5 years.**

i. **However Schedule 1 (Offences and Penalties) — does not include Section 6(1) as an offence and therefore provides no penalty. This needs to be remedied and the other sections referenced above while specifying the offence and fixing the resulting penalty) could also be usefully listed in Schedule 1.**

2. **Salaries and Allowances of the Office of Procurement Regulation (the 'Office')**

   (a) Section 11(9) of the Procurement Act provides that "the salaries and allowances of the Regulator and other members shall be determined by the Minister, subject to the approval of Parliament".

3. **Regulations — Parliamentary Approval**

   (a) Section 6 (3) — members of Committee to satisfy fit and proper criteria as prescribed by Regulations

   (b) By Section 11(9) the salaries and allowances of the Regulator and other members shall be determined by the Minister, subject to the approval of Parliament.

   (c) Section 58(4) provides that the Minister may make Regulations with respect to ineligibility list.

(d) Section 63(1) empowers the Minister, on recommendations of the Office, to make Regulations to give effect to the Procurement Act, including Regulations with respect to-

(i) Conduct of challenge proceedings

(ii) The addition to or removal from ineligibility list.

(e) Section 63(3) provides that "Regulations made under this section shall be subject to affirmative resolution of Parliament".

(0 The proposed Section 51F in the Amending Bill provides that "the staffing, remuneration, funding and other operational matters of the Review Board shall be prescribed by the Minister by regulations made under section 63".

(g) The proposed Section 57A provides that regulations made by the Minister under Section 63 shall govern the disposal of State Lands and real property owned by the State or State-controlled entities or a statutory body responsible to a Government Minister.

4. Guidelines, Handbooks

(a) By section 30(1) a procuring entity is required to comply with-

(i) General guidelines issued by the Office

(ii) Special guidelines prepared by procuring entity and approved for a particular procuring entity

(iii) Handbooks prepared by procuring entity and in relation to public procurement approved by the Office

(b) By Section 13 (1) (c) one of the functions of the Office is to "issue and review guidelines in relation to public procurement and the retention and disposal of public property....".

5. Whistle Blowing

(a) Section 40 of the Procurement Act embodies protection for any person who acting in good faith and on the basis of a reasonable belief gives notice of a contravention of the Procurement Act

6. Investigation and Enforcement

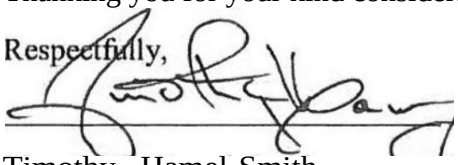
(a) By Section 41 the Office on its own initiative or based on complaint may investigate allegation of bid rigging or irregularity in procurement proceedings.

7. Challenge Proceedings

(a) By Section 49 a supplier or contractor may bring challenge proceedings by applying for review of a decision or action taken by procuring entity

Thanking you for your kind consideration.

Respectfully,



Timothy . Hamel-Smith

Afra Raymond B.Sc. FRICS
Apt #14,
Highsquare Condominiums.
1A Dere Street,
Port-of-Spain

20th January 2016

By email only

Submission to the Joint Select Committee of Parliament
on
The Public Procurement and Disposal of Public Property (Amendment) Bill, 2o15

My name is Afra Martin Raymond and I am a Chartered Surveyor, being a Fellow of the Royal Institution of Chartered Surveyors. I am Managing Director of Raymond & Pierre Limited — Chartered Valuation Surveyors, Real Estate Agents and Property Consultants. I am past President of the Institute of Surveyors of Trinidad & Tobago (2009-2010) and the Immediate past-President of the Joint Consultative Council for the Construction Industry (2010-2015).

This submission is bVhg made in my personal capacity and does not represent the position of Raymond & Pierre-Limited, the ISTT or the JCC.

This JSC was established on 13th November 2015 to obtain and consider views on The Public Procurement and Disposal of Public Property (Amendment) Bill, 2015 (The Bill).

The preparation of The Bill and the invitation to submit comments on it is an accelerated process to address the perceived shortcomings of the Public Procurement & Disposal of Public Property Act (The Act). One fully appreciates the motivation for this choice of process, given the urgent need to properly control the high levels of waste and theft of Public Money. These comments are submitted in accordance with the mandate of the JSC, but I have also taken the opportunity to submit for consideration three proposals to increase the effectiveness of this important new law.

The Bill proposes three amendments to The Act with which I wish to treat -

Tribunal for removal of the Regulator

S.12 A (2) (a) should be amended to specify that the Tribunal be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. That apart, the proposal is acceptable, since would create an independent Tribunal which ought to add confidence to this process.

Public Procurement Review Board

This is proposed to be established as stipulated at Ss.51 (a) through (m) and this is also acceptable as it would provide a further layer of oversight before the Courts can be involved.

Disposal of Public Property

The proposed Part VI A, which sets out S.57 A, treating with 'State Lands' is acceptable, subject to these three points -

- **OPR acting for the Government/State** - **S. 13 (a)** (o), which stipulates one of the functions of the OPR as being to - *"...(o) act for, in the name and on behalf of the State to dispose of real property owned by the Government in such manner as the Government may consider appropriate and desirable,-..."* is an unacceptable anomaly in three respects. Firstly, it proposes the idea that 'Government' could actually own anything, when in fact those properties are held by the State and its Agencies. Secondly, this arrangement is one which would be impossible for the OPR to satisfactorily superintend, since it would be performing the agency functions itself. Thirdly, this sub-section creates an avenue within which the Government could instruct the OPR, which would be in fundamental conflict with the independence of the OPR as stipulated at 5.13 (2) (b) -

  ".. *(2) In the exercise of its functions, the Office shall-*
  (b) not be subject to the direction or control of any other person or authority in the performance of its functions, but shall be accountable to the Parliament..."

  S. 13 (a) (o) should therefore be deleted.

- **Government to Government Agreements** are covered in S. 7 (2), which contains a serious loophole in terms of the disposal of Public Property .

  "7... *(2) To the extent that this Act conflicts with an obligation of the State under or arising out of the following:*
  (a) a treaty or other form of agreement to which Trinidad and Tobago is a party with one or more States or entity within a State;
  (b) an agreement entered into by the Government of Trinidad and Tobago with an international financing institution; or
  (c) an agreement for technical or other cooperation between the Government of Trinidad and Tobago and the Government of a foreign State, the requirements of the treaty or agreement shall prevail ***except that the procurement of goods, works or services shall be governed by this Act*** *and shall promote the socio-economic policies of Trinidad and Tobago and shall adhere to the objects of this Act..."* (emphasis mine)

  This means that The Act would only be effective if the Government to Government Agreement were in relation to the procurement of goods, works or services. As such, this represents an unacceptable gap through which Public Property could be disposed without the complete oversight of The Act as intended and specified in the 'objects clause'.

  The provisions of 5.7 **(2)** should therefore be extended to include 'disposal of Public Property', so as to properly safeguard our country's assets.

- **Acquisition of Property** is an aspect of procurement which is not covered in The Act and that is a significant oversight, given that these processes by which the State acquires property can involve great sums of Public Money. The latest and most egregious example of this is in relation to the HDC's controversial **2012** purchase of 'Eden Gardens', which was the subject of a formal and detailed JCC Report, which can be viewed at http.//www.jcc.org.tt/edengardens.htm . In that case the State used its discretion to bypass the option to compulsorily purchase the property for an estimated $35M and proceeded to pay unknown beneficiaries $175M for a parcel of land which had been transferred for $5M, less than three years previously. The Act is intended to provide an effective framework to govern procurement, yet it excludes the procurement of real property. That is an oversight which should be rectified, in my view.

  Land acquisitions by the State can proceed either via private treaty or compulsorily, under the 1994 Land Acquisition Act. The issue of improper practice arises when the State uses its discretion to opt for a more expensive private treaty solution, when a significantly cheaper and lawful acquisition can be done via the compulsory route. My proposal is that land acquisitions should only proceed if the State pays the lower price between the two options.

I trust that these comments and proposals will receive due consideration. Please note that if requested, I am willing to give oral evidence before the Joint Select Committee (JSC).

I believe all the items in this submission to be true and correct.

.....

Afra M. Raymond B.Sc. FRICS

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Public Procurement and Disposal of Public Property Act 2015

Comments of the Board of Permanent Secretaries

Introduction and Purpose

The term Public Procurement refers to the acquisition of goods, work, or services involving the use of public money. Public Property is real or personal property owned by a public body. Disposal of Public Property includes the transfer without value, sale, lease, concession, or other alienation of property that is owned by a public body. The Act seeks to reform the procurement laws of Trinidad and Tobago by making provisions which support the principles of good governance, such as accountability, transparency, integrity and value for money.

Definitions

In the Public Procurement and Disposal of Property Act there are several terms that need to be clearly defined to fully interpret the Act and to determine its purpose. These definitions make it easier to understand and determine the purpose of the Act. However the Act is not fully clear or is silent on some definition/areas.

The Board of Permanent Secretary recommends that the under-mentioned areas of the definitions be addressed:

(i) Definition of Accounting Officer/Permanent Secretary:

The Act does not clearly define who is an Accounting Officer and the role of the Accounting Officer/Permanent Secretary as prescribed in the Public Service Regulations. It refers broadly to a ***Public Entity,*** including Ministries and Departments, which are all headed by an Accounting Officer with a specific and clearly defined role of managing public funds. The Act ascribes responsibility to a public entity and a Procurement Officer.

(ii) Definition of 'Standstill period':

This definition refers to the period from the dispatch of a notice as required by section 35 (2). However, section 35 (2) does not specify a period of notice to be given. Section 35 (2) merely states that a procuring entity ***promptly notify.*** This may need to be amended or require further clarification in the regulations to the Act.

Role of the Permanent Secr3tary as Interpreted from the Act

The role of the Permanent Secretary as an Accounting Office is apparently curtailed by the Act or at least in the functioning of the procurement process.

The Exchequer and Audit Act of 1965 defines the Accounting Officer as follows

`accounting officer" means any person appointed by the Treasury and charged with the duty of accounting for any service in respect of which moneys have been appropriated by the Constitution or by Parliament, or any person to whom issues are made from the Exchequer Account'.

The Act describes several responsibilities of the Public Entity in order to support the functions of the Regulator and the procurement process within the Entity, ranging from the establishment of a comprehensive database of information on public procurement to the employment of a Procurement Officer and the establishment of a Disposal Committee. The role of the Accounting Officer as it relates to that of the role identified

for the Procurement Officer in the accomplishment of these responsibilities has to be interpreted in order to properly assign responsibilities, allegations and offences.

Implications of the Act for a Ministry/Department:-

The Board of Permanent Secretaries is of the view that:

(i) The role of the Permanent Secretary as an accounting officer may be in conflict with that of the Procurement Officer. At section 14 (2) the Act refers to 'a public body or person' and can be interpreted as the Accounting Officer or Procurement Officer. The Act states that every public body shall have a procurement officer. With the employment of this person and given the related provisions of the Act, one must then assess and determine the accountability of the Permanent Secretary/Accounting Officer. This must be considered in light of the apparent accounting responsibility assign to the Procurement Officer under the Act and it must be rationalized in view of the role of the Accounting Officer.

(ii) The Act is silent on the qualifications of the Procurement Officer. However, given the responsibilities of the officer; some level of professional experience ought to be statutorily defined in terms of the requirements of the Office. Reference is made to the commission of an offence by a public body and if construed as a reference to an offence committed by the Procurement Officer, this Officer must therefore be someone at the Management Level and not someone below Management without authority to question or stand up to decisions taken by Management. The Act therefore should clearly identify the qualifications required of the office, either in the act or in future regulations to ensure the appropriateness of responsibilities, allegations and convictions under the law.

(iii) Given the responsibility under the Act the Public Entity and by extension Accounting Officer the following institutional arrangement necessary for an enabling environment, must be addressed in the Public Service to ensure the implementation of the Act and the protection of accounting officer and other staff in light of the penalties prescribed by law:

Human Resources

Procurement Officer and staff must be in place at commencement of the implementation of the Act as procurement is an ongoing process. The role of the Central Administrative agencies, namely the Public Management Consulting Division, the Office of the Chief Personnel Officer and the Service Commissions Department are critical players in this regard. It is therefore imperative that these agencies have the appropriate cadre of staff with the requisite skills to meet the human resource needs of the Office at the right time.

Given the responsibility and importance of the function, there is absolute need to have permanent staff assigned to the function. The Procurement process in the public service is carried out by General Administration and Project Management Staff. General Administration is affected by frequent

changes in staff within the clerical and administrative streams. The Project or Programme Management offices are predominantly staffed with contract officers on contract for 3 years. The stability of procurement staff and the continuity of the process must be addressed to ensure that public entities meet the obligations of the law.

- To support an enabling environment additional training must be provided relevant to the implementation of the Act.

- Regulations and Guidelines must also be in place on commencement of implementation.

Legal

- Legal units would have to also be properly staffed as the Act creates a somewhat highly litigious environment
- The Act also includes some phrases which might be construed as unclear. It states for example that potential contractors cannot approach "any member or an associate of a member of a procuring entity ... [or] any person or an associate of any person providing services to a procuring entity." This phrasing is unclear as public officials and contactor interacts with each other regularly. As contractor would have to submit documentations and information to these personnel.

Audit

- The Audit function would also require upgrading and this function can provide oversight and protection for the accounting officer regarding procurement, particularly as it relates to the disposal of public property. This is an area which an Accounting Officer must report on to the Auditor General.

Internal control systems

- The Internal Procurement systems in the public entities must be aligned with the financial systems in operation at the Ministry of Finance (inclusive of Comptroller of Accounts and Budgets Division). This is the only way that internal controls can function effectively and cost efficiently through the entire procurement cycle can be achieved. This must be reflected in either the guidelines or the regulations to the Act.

Specific Role of Office of the Regulator

The Regulator has an investigative and audit role (Section 13 refers). It must be determined whether these roles are limited to interaction with the named Procurement Officer or the Accounting Officer.

Other Areas of Concern

Tenure of the Procurement Regulator

Section II indicates that the Regulator shall be appointed for a term of seven years and is eligible for reappointment for two (2) consecutive terms. This would mean that the Regulator can potentially serve fourteen (14) consecutive years. This poses inherent risks as it relates to entrenched bureaucratic relationships and/or other vested interests.

Appointment and composition of the Board

Section 10 lists the professional qualifications that the Board Members will possess while section 11 **(4)** treats with their appointment. Section 11 (4) (i) — (ii) provides that three members shall be appointed for six years and three members for 5 years. However, there are no guidelines on how these Members will be appointed.

Functions of the Procurement Office

Section 13 (1) (a — s) outlines very expansive functions of the Office. Notably, 13 (o) authorizes the Office to act for and on behalf of the State to dispose of real property owned by Government. It is not clear whether this section is intended to mean that only the Office has the authority to dispose of real property owned by the Government.

Section 13 (2) authorizes the Office to act ***"expeditiously and take such other steps as it thinks fit".*** This is too subjective as it is the Board that will have to decide. This can be abused and or/ used as a loophole.

The expansive functions of the Office requires the Office to develop guidelines, establish systems, procedures and processes, policies and to deal with complaints arising out of transactions performed in accordance with those guidelines. This is a herculean task and in order to effectively perform these functions, the Board must consist of procurement practitioners who are able to understand and maneuver through the intricacies of Public Sector Procurement. There is considerable overlap of functions within Sections 13 and 14.

Information on upcoming procurements

Every procuring entity shall no later than six (6) weeks after the approval of the National Budget publish information regarding planned procurement activities for the financial year. This applies to all procurement proceedings. It time scale may be unworkable given the budgetary processes relating to the allocation and release of funds to the Ministry. The Board of Permanent Secretaries is of the view that there should be a minimum qualifying sum for this requirement.

Power to Obtain Information and documents

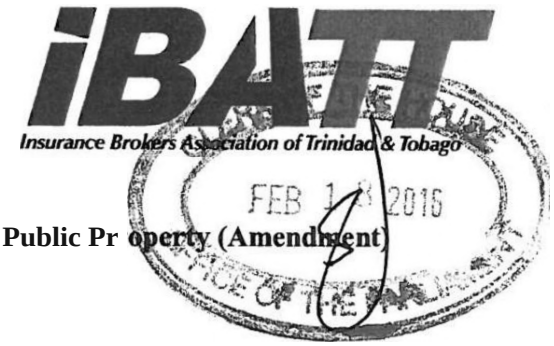
As it stands, the Office during an investigation for breaches of the Act, may serve notice on any person requiring them to supply information outlined in the notice. A breach of the Act amounts to a criminal offence. Therefore, the requirement for notice in an investigative process does not accord with the criminal process.

Repeal of the Central Tenders Board

There is no transitional period contemplated to reform the CTB. The Act contemplates that Procurement Office would now perform those tasks. This is fraught with inherent challenges as the performance of several of these functions will require significant human, physical and financial resources if there is to be effective implementation. It will also impact negatively on the procurement of services in the public sector during the period.

Submitted by

The Head of the Public Service
Chairman of the Board of the Permanent Secretaries



February 11, 2016

Ms Jacqui Sampson-Meiguel
Secretary
Joint Select Committee — The Public Procurement and Disposal of Public Property (Amendment) Bill 2015
Office of the Parliament
Levels G-8, Tower D
International Waterfront Centre
l A Wrightson Road
Port of Spain

Dear Madam,

Re: Joint Select Committee - Public Procurement and Disposal of Public Property (Amendment) Bill 2015

The Insurance Brokers Association of Trinidad and Tobago (IBATT) on our review, wishes to make the following comments regarding the Public Procurement and Disposal of Public Property (Amendment) Bill, 2015 now before the Joint Select Committee.

In the interest of meeting the objects of Section 5 (1) (c) of the Public Procurement and Disposal of Public Property Act 2015 - promoting local industry development - we wish to:

1) Firstly, verify that the definition of "services' includes insurance and insurance related services such as broking and loss adjusting.
2) Recommend the following amendments to Sections of the Act that are not yet proclaimed :

Section 13: Functions of the Office — in respect of the contracts placed with overseas suppliers, that the purchaser has complied with the local tax regime applicable had such service been procured locally;

Sections 13 (a): The Functions of the Office should include compiling the value of contracts placed with overseas suppliers by sector;

Section 24 (2)(a), (b) and (c) The Report of The Regulator should inform separately on contracts that are placed with overseas suppliers.

We thank you for your kind consideration.

Yours sincerely,

Prakash Bhaggan
President

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VERBATIM NOTES

VERBATIM NOTES OF THE FOURTH MEETING OF THE JOINT SELECT COMMITTEE ON THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015, IN THE ARNOLD THOMASOS ROOM (EAST), SIXTH FLOOR, TOWER D, INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD, PORT OF SPAIN, ON FRIDAY, FEBRUARY 12, 2016 AT 9.42 A.M.

PRESENT

Mr. Colm Imbert	Chairman
Mrs. Paula Gopee-Scoon	Member
Mr. Adrian Leonce	Member
Mr. David Small	Member
Mr. Franklin Khan	Member
Mrs. Jacqueline Sampson-Meiguel	Secretary
Miss Chantal La Roche	Assistant Secretary
Miss Tanya Alexis	Legal Officer

ABSENT

Mrs. Cherrie-Ann Crichlow-Cockburn	Member [*Excused*]
Dr. Bhoendradatt Tewarie	Member [*Excused*]
Mr. Wayne Sturge	Member [*Excused*]

CHIEF PARLIAMENTARY COUNSEL

Mr. Milton Sorzano	Assistant Chief Parliamentary Counsel (Ag.)
Miss Sharmaine Williams	Assistant Chief Parliamentary Counsel (Ag.)

PRIVATE SECTOR/CIVIL SOCIETY GROUP

Mr. Winston Riley	Chairman, Private Sector/Civil Society Group
Dr. James Armstrong	President, Joint Consultative Council for the Construction Industry
Mr. Robert Trestrail	President, Trinidad and Tobago Chamber of Industry and Commerce
Mr. Navin Seeterram	Manager, Trinidad and Tobago Chamber of Industry and Commerce
Mr. Mitchell Da Silva	Director, American Chamber of Commerce of Trinidad and Tobago

Mr. Lennox Sirjuesingh	President, Trinidad and Tobago Local Content Chamber
Mr. Deryck Murray	Chair, Trinidad and Tobago Transparency Institute
Mr. Marc Sandy	Team Lead, Trinidad and Tobago Manufacturers' Association
Mrs. Desiree Lopez-Arthur	Joint Consultative Council for the Construction Industry

Mr. Chairman: Okay, good morning ladies and gentlemen. Mr. Riley, am I correct to assume you are the leader of this group?

Mr. Riley: Yes, Sir.

Mr. Chairman: Could you introduce your group, please?

Mr. Riley: I will let them introduce themselves individually.

Mr. Chairman: Sure, sure.

[*Introductions*]

Mr. Chairman: So you have two Chamber reps?

Mr. Riley: Yes.

Mr. Chairman: President and—

Mr. Khan: President, Local Content Chamber.

Mr. Chairman: No, that is different. We have two Chamber reps here.

Visitors: Yes, yes.

Mr. Chairman: Right, okay. Are you expecting anybody else, Mr. Riley?

Mr. Riley: Yes. We are expecting a person from FITUN, but he may be late.

Mr. Chairman: All right, no problem. Okay. Now, the matters before this Committee, the amendment Bill, which is a short Bill with just about seven clauses, and we are also seeking to look at the terms of engagement of the Regulator, but we have to find a procedure to do that, because that is not in this amendment Bill, okay? So, please proceed. We are here to listen to you.

Oh, sorry, let me introduce the members of the Committee that are here: Sen. Small, Independent Senator, or you want to introduce yourself, Sen. Small?

Mr. Small: That is fine. I have no problem being introduced by you, Mr. Chairman.

Mr. Chairman: All right. Independent Sen. Small; Minister of Trade and Industry, Mrs. Paula Gopee-Scoon; myself, Minister of Finance; Mr. Adrian Leonce, Member of Parliament for Laventille East/Morvant. Did I get that right? Mr. Franklin Khan, Minister of Rural Development and Local Government. Missing are: the Minister of Social Development and Family Services; the MP for Caroni Central, Dr. Tewarie and Sen. Sturge, Opposition Senator, okay?

Mr. Riley: We are from the Private Sector Services/Civil Society Group. Mr. Chairman, thank you

for the opportunity to allow us to speak to you on these matters. We have a PowerPoint presentation. I do not know if anybody can see it clearly.

Mr. Chairman: Yes, we can see here and there, so go ahead. [*Points at the monitors to the front and back of the room*] It is behind you as well. I could also look this way.

Mr. Riley: Yes, I will have a problem speaking to you and people looking behind me, anyway, that is only frivolous, of course. [*Laughter*]

Mr. Chairman: Would you have a problem talking to me if I look behind you?

Mr. Riley: No, no, no, somebody else. [*Laughter*]

Okay. Before we actually start the proceedings, what I would like to make a remark on, and this has to do with most people who are in the industry itself did not know it happened, that is the death of Mr. Bynoe. So we wanted to make an announcement on that, and we wanted to make the remark that it appears that the loss of the matter, the $14 million matter in the court has accelerated the process. There is no proof of that, but all we can say, it appears that way, okay? So we are concerned about the question of payment generally, and the question of the use of the Limitation Act to prevent people from being paid, right? Okay.

So let us go—I should probably indicate generally what this document is saying, and then go into the specifics of the document itself. Virtually, our main comment had to do with the issue of the Regulator, as such, and the clauses for amendment of removal of the Regulator. That is our main concern.

The other concern we had of interest had to do with land, but that was not of the same level as the Regulator, and that was how we had dealt with it more or less. In dealing with the Regulator issues, we were of the view not only now, but even prior to now, that there was no specific clause in the Act itself which deals specifically with the removal of the Regulator. It dealt with the removal of members of the board of regulation, okay? And that has to do with the fact that the Regulator was not seen to have the same kind of power as say, the Contractor General in Jamaica, and as such, and that that kind of power was held in the office of regulation. So this is how our presentation begins. I am trying to see if I can shorten it. We said:

> "The Regulator and in his absence the Deputy Regulator, administers the day to day operations of the Act and do not have similar powers of the Contractor General under the Jamaica Act or the Kenyan Act. The substantive powers under Act No. 1 of 2015 lie exclusively with the Board of the Office of Procurement Regulation (OPR). This is clearly expressed in the Act under subsection 12(2)(b) which states '(2) in the exercise of its function, the Office shall-
>
> (b) not be subject to the direction or control of any other person or authority in the

performance of its functions, but shall be accountable to Parliament.'"

That is the Office, not the Regulator, okay?

"The power of the Regulator are limited to the following:"

And we listed these:

"a. Chairing of meetings…

b. Authenticating with others the official seal of the OPR...

c. The day to day management, administration, direction and control of the business of the Office…

d. Receive resignation letters from other members…

e. Submit reports annually to the Speaker of the House of Representatives, the President of the Senate and the Minister of Finance.

f. Receive complaints 'after the entry into force of a procurement contract or conclusion of a framework agreement when an agency does not publish promptly on its web site or any other electronic formation notice of award'.

g. Authorises officers to undertake investigations into any alleged or suspected breach of the Act.

It should be noted that the Board receives a full and complete written report of an investigation in writing and informs the affected parties and the Minister. See section 44."

In other words, that is the responsibility of the Board:

"If the Office is of the view that a breach has been committed, it shall make a report to the Director of Public Prosecution. See section 45."

So, all those powers lie with the Office.

Under "Challenge Proceedings…they are directed to the OPR…"

That is with the Office;

"…by a supplier or Contractor for review of a decision made by a procuring entity, see sections 49, 50 and 51."

—speaks to that of the Act itself.

Now, we come to the proposed amendment:

"The proposed amendment to Section 3-Appointment of a tribunal by the President:

The proposed amendment to section 3 states 'The Act is amended by inserting after section 12, the following subsection:

12A. (1) 'In addition to the provisions of section 12, the Regulator may be removed from office where he trades with the Government without the prior approval, by resolution, of each

House of Parliament."

That is a specific requirement directed totally to the Regulator. All the other requirements under section 12, are directed to members of the board of regulation, right? And then it goes on:

"(2) Where a resolution is passed by each House of Parliament, that the question of removing the Regulator from office, under subsection (1) or section 12, should be investigated -

(a) the President shall appoint a tribunal..."

And then there is listed, the important members of the tribunal. You must have at least three persons with authority of a judge in civil, and as well as criminal proceedings.

"(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to the President whether the Regulator should be removed from office.

Now, we were looking at this in the more generic sense, first of all. We said that:

"The phrase 'trade with the Government' can be interpreted in several ways, at least two ways in the context of a Regulator trading with the Government particularly if the Regulator has similar powers to the Contractor General under the Jamaica Act or the Director General under the Kenyan Act. The phrase trade with the Government could mean trading as:

(1) a person using his position of Regulator to trade with the Government, or

(2) the Regulator in his private capacity trading with the Government."

Then a person using—this is the first part—his position of Regulator to trade with the Government. Act 1 of 2015 deals with acquisition of goods, works and services and the disposal of public property. It is thus conceivable that the OPR may need to acquire goods, works and/or services and dispose of public property under its ownership.

The OPR is a public body and subsection 61(2) of the Act states:

"For the purposes of this Act, a public body shall have a procurement officer who shall be responsible for the public procurement and the disposal of public property for the body."

In this context of the Regulator operating as procurement officer, it is important to note that section 10 states quite clearly that all expenses incurred by the office for the purpose of this Act shall be a charge on the Consolidated Fund.

Section 21 states that:

"The funds of the Office shall consist of moneys appropriated by Parliament for the purpose of the Office."

It is not thus clear that the only funds available for the OPR or the Regulator acting as procurement officer for the OPR are funds approved by Parliament. The approved funds may be for the acquisition

of goods, works or services facilitating the operations of the office.

On the disposal side, however, Act No. 1 of 2015 subsection 13(1) gives the OPR the power to act for, and in the name and on behalf of the State to dispose of real property owned by the Government in such a manner as the Government may consider appropriate and desirable. So we dealt with the procurement side and that is also the disposal side.

Now, these are our recommendations:

- The Private Sector Civil Society Group is of the view that the OPR as a regulatory and monitoring body should not be involved in trade or any transactional element of procurement.

The Private Sector Civil Society Group thus recommends the following:

- That subsection 13(1)(o) be removed—that is the one that deals specifically with disposal of public property. Under the Act it gives the OPR the ability to dispose of public property. We are saying that is wrong and it should be removed.
- The OPR should not be involved in the transactional aspect of any public procurement function irrespective of Parliament's approval of a budget or charge on the Consolidated Fund for its operations which may provide for the acquisition of goods, works or services necessary for its functioning.

Mr. Chairman: You are not presenting.

Mr. Riley: Or yes, sorry. That is correct. You are very alert, as usual. [*Laughter*]

Mr. Chairman: No, you just caught my attention with what you said, and I wanted to see what page you are on.

Mr. Riley: What is there? No, that last part was a clarification as to why the first part of it was said—all procurement transactions required for the efficient operation—

Mr. Chairman: But which page would that be? Which page is this? I am looking at this, I am looking at the screen and I am not seeing it. So which one is it? You have gone way down. Right. Could you just explain what you were just saying?

Mr. Riley: Okay. What we are saying here is that—and it may probably be good for me to reread the last part of it.

- The OPR should not be involved in the transactional aspect of any procurement function irrespective of Parliament's approval of a budget for its operations which may provide for the acquisition of goods, works or services necessary for its functioning.

Mr. Chairman: So, therefore, Mr. Riley, am I correct to assume that you are not only commenting

on the amendment Bill, you are commenting on the parent Act as well?

Mr. Riley: No, the parent Act does not say that.

Mr. Chairman: We do not have a subsection 13(1).

Mr. Riley: Yes, in that context yes, under subsection 13(1)—

Mr. Chairman: You are proposing—

Mr. Riley: A removal.

Mr. Chairman:—that we look at additional clauses to the clauses that we have in the amendment Bill. This is a proposal that we remove 13(1)(o).

Mr. Riley: Yes.

Mr. Chairman: 13(1)(o) is not mentioned in the amendment Bill.

Mr. Riley: You are correct, yes.

Mr. Chairman: So what you are proposing is outside of the amendment Bill. I am not vexed, let me put it this way. I am just trying to clarify because I am not sure this committee is empowered to look at clauses that are not part of the amendment Bill.

Mr. Riley: Okay, understood.

Mr. Chairman: But that does not mean we are not listening to you, and we will not take action. I just want to be clear in my mind exactly what you are doing. So, you have looked at the whole thing, the parent Act and the amendment Bill and you are now making recommendations.

Mr. Riley: We took it in the context that since you are bringing the issue of procurement and disposal relative to the office of the Regulator, then any issue that deals with the question of procurement and disposal, we took it in that context, in a more generic context.

Mr. Chairman: I am not saying we cannot do that, but normally a joint select committee could only look at what is before it.

Mr. Riley: What Parliament has approved.

Mr. Chairman: What is before it. They can amend, delete, modify what is before it, and this is not before us right now. At least, I do not think so, but I would get the Clerk to clarify that to see whether this flows from what we are doing and therefore we could bring it in.

Perhaps, we should bring the Chief Parliamentary Counsel in at this point in time. Let us do that. I want to do this now because I am not sure whether there are other clauses in the parent Act that you are going to comment on.

Mr. Riley: I do not think so.

Mr. Chairman: This is the only one.

Mr. Riley: That is the only one.

Mr. Chairman: No problem. Well, we will settle this fast then.

[*Staff of Chief Parliamentary Counsel enter the room*]

Is that the leader of the CPC group there? You are in charge. Right? Is it you or Mr. Sorzano?

Mr. Sorzano: Either one of us could respond.

Mr. Chairman: Right. The civil society group has suggested that we delete section 13(1)(o) of the parent Act which says:

> "act for, in the name and on behalf of the State to dispose of real property owned by the Government in such manner as the Government may consider appropriate…"

That flows from the clause in the amendment Bill which refers to the disposal of real property. We are wondering whether this Committee has the authority to look at 13(1)(o).

Miss Williams: It is outside the scope of the intention of the amendment Bill that came before Parliament.

Mr. Chairman: If you look at clause 7 of the amendment Bill, there is a section that says disposal of state lands, and it does refer to the disposal of lands being subject to regulations made by the Minister, and what the group is saying is that 13(1)(o) gives the office of the procurement regulator the authority to dispose of lands. Is there any way we could link this to the amendment Bill?

Miss Williams: We may be able to link it, but I know the intention of (o) was to deal with Government quarters as opposed to lands.

Mr. Chairman: I know how we can deal with this Mr. Riley. When this Bill goes back to the Parliament we could always table an amendment on the floor in addition to this report. You see what would happen is that this Committee would report to the House that we met, we listened to submission, we considered recommendations and we recommend that the amendment Bill be treated in a particular way, but we can then amend that. Not so, Ms. Sampson? [*Crosstalk*] So we can do a further amendment when this matter goes back to the Parliament to cater for the point that you are making. I would like us to pause because I understand the point that is being made. What the civil society group is saying is that the office of the procurement regulator should not have the authority to dispose of property.

Mr. Riley: To be involved in any transaction at all.

Mr. Chairman: In other words, they are a regulatory body, they should not be involved in this sort of transaction. I think it is a good point. From a policy point of view, if you are the Regulator, should you be involved in selling land; the direct process?

So, go ahead, Mr. Riley. I think that you have made a good point. The Committee will consider it and we will see whether we can accommodate the point you have made after we consult with the Parliamentary Counsel and the Members have deliberated. If we are of the view that it is valid we will find a way to get it done.

Mr. Riley: It goes one step further, Mr. Chairman, and that is that since the clause amendment had to do with the question of the Regulator trading with the Government, that is the context, that is the rubric under which we placed it.

Mr. Chairman: I think this is a good time for us to tell you what we have done. I did not want to interrupt you, because you have done all this work, but we have decided to modify the amendment Bill to remove all of the provisions that deal with the appointment of a tribunal where the matter of trading is raised and simply add in clause 12 of the parent Act, which lists the reasons—this is on page 14 of the parent Act, section 12:

> "The President may remove a member from office upon being satisfied that the member—
>
> (a) is declared to be bankrupt;
>
> (b) is incapable of performing the duties…"

We have simply decided to put in there:

> "...has traded with the Government without the prior approval of the Minister."

We just add it in there as a reason why the President would remove a member from office, and then we have defined "the trading" as follows:

> That for the purpose of this section a member trades with the Government if while holding office he becomes a party to or is a partner in a firm or a director or manager of a company which to his knowledge becomes party to any contract with the Government for or on behalf of the public service.

So, we have defined "trading" to be essentially a contractor. You know that if you are associated with a firm and you are a contractor contracting for Government services, you are disqualified from being a member of this office.

Mr. Riley: Okay, that is in keeping to a great extent with our thinking except that the way it was presented to us we had two bases for trading: trading in your own right as Regulator in which you have met the requirements that you are not in conflict with Parliament as such, and then trading in the context of which you have put it. It is in that context that the whole issue of removing all transactional nature aspect—and I think it still holds—should not occur.

Mr. Chairman: You mean all purchases?

Mr. Riley: All purchases.

Mr. Chairman: You mean even buying stationary and so on?

Mr. Riley: Yes, everything.

Mr. Chairman: Well, who would do that then?

Mr. Riley: That is what we said in our recommendation. It should go through a Ministry or a state enterprise.

Mr. Chairman: Okay, well I think we could take your views under consideration. I understand what you are saying. We could perhaps put an exception in the amendment Bill to say except for essential goods and services required for the functioning of the office, or we could go with your proposal. Okay. I hear you. I think this is something that we will consider when we meet after you have finished your presentation. As I said, we have taken out this whole thing with the tribunal and Parliament and so on, and just added that the President may remove a member if the member has traded with the Government without the prior approval of the Minister, and then defined trading to be someone contracting with the Government to provide a service to the Government, and we will consider your point that they should not be involved in anything, not even buying ink is what you are saying, not even buying a coke. You cannot even buy water. [*Laughter*] That is what you are saying.

Mr. Riley: There is one comment and it is that under the parent Act we are talking about removal of a member.

Mr. Chairman: But the Regulator is a member.

Mr. Riley: Yes, the Regulator is a member right and, therefore, if your amendment that you are proposing now does not specified it in the context of the regulator, the regulator as a member of.

Mr. Chairman: It is all members, and if you go to the composition of the office, the regulator is a member of the board of the office. He is a member, so it covers the Regulator.

Mr. Riley: Our concern was not only that the regulator trades but any member.

Mr. Chairman: No, we have done that. We have changed it to member. Okay? So it is anybody on the board including the Regulator.

Mr. Riley: Perfect.

Mr. Chairman: So we will consider your point that they should not even buy water. We would seriously consider it.

Mr. Riley: I could shorten our presentation.

Mr. Chairman: Well, go ahead, yeah.

Mr. Riley: Because if you have removed the whole question of going to Parliament, because we were showing in the presentation how the wording and everything came from the Jamaican Act and under

the Jamaican Act, the Contractor General is a commissioner of Parliament.

Mr. Chairman: He has more powers.

Mr. Riley: He has more powers in that context, and we are talking here now about the office of the Regulator, which means all the members, then we say okay go through a normal HR process.

Mr. Chairman: Follow industrial relations procedure.

Mr. Riley: The question still remains, we still put into that the triggering of a process and that once it comes—it is triggered first by coming to the office of the Regulator, if you want to remove a member. A complaint comes, it goes to the Office of the Regulator, but once the Office of the Regulator comes into operation then an independent body from the office—we said that body has to be named. We could still call it a tribunal—is automatically triggered and the decisions and recommendations to the office goes there. So that in the final analysis there is this independent view that comes in. That is the other approach that we were looking at.

Mr. Chairman: We understand.

Mr. Riley: I do not need to go through all of that again.

Mr. Chairman: Okay, great.

Mr. Riley: All right? So we can go straight to—

Mr. Chairman: And you would scroll for me Mr. Riley, so I could read.

Mr. Riley: Okay. The other issue here is that since you are proposing—let me see if that is the right one. Okay, yes. That is another part of our recommendation which dealt with the whole question of Jamaica and where it came from.

Mr. Chairman: Understood.

Mr. Riley: And then they said the tribunal shall have the power—we are using the term "tribunal", but later on you will see the tribunal with the Review Body, that that should have the power of a High Court and be appointed by the President similar to the appointment of High Court Judges. Now, I would have to give you some aspects of the thinking behind that. The thinking behind that is that it is not only the question of removal of the Regulator or a person or a member of the board of regulation is important, is that any decision that is made by the OPR it is subject to this process there, and I think this is one I think you will agree with fundamentally.

Mr. Chairman: This is what we more or less have in the amendment Bill.

Mr. Riley: But what we were looking at, basically, is that it should go to a body that has the power of the High Court. So the only approach to that after that is appeal. Okay. The thinking behind that had to do with something that came out of the Uff Commission about having something that was parallel to the Construction Court in England, which deals also with the whole question of what is happening

at the EU, and this could be the nexus of something like that. This is the thinking. I am just giving you the thinking.

Mr. Chairman: I am listening to you.

Mr. Riley: This is what we came with, but to get it at the powers of a High Court.

The other issue, let us continue.

- the removal of members of the board of the OPR should be subject to the same process, which I think you have agreed with just now.
- the process for removal should be equivalent to or adopting best HR practices;
- the process for removal should start with the Board of the OPR, which should have the power to investigate and make recommendations;
- following investigation by the board of the OPR, all recommendations should be passed to the tribunal—I am using the term tribunal advisedly—for review and decision.
- the decision of the tribunal is to be forwarded to the President, the Prime Minister and the Leader of the Opposition. This is similar to what you have.
- if the removal is the decision of the tribunal, then the President, after informing the Prime Minister and Leader of the Opposition, should remove the offending member of the OPR from the office.

We want to make two other suggestions with respect to that. That is that if you are dealing now with the question of somebody with HR practices, the tribunal has the power of a High Court, we should still allow the ability to go to the Appeal Court.

Mr. Chairman: That would be a different slide.

Mr. Riley: That is not in our document, but this is a suggestion that we want to make. If it is stopped there and it goes straight to the President, we feel that there should be a period of I think normally we would say 28 days and if the person wants to make an appeal to the High Court he could make it, but that is basically an idea we want to introduce. It is not in the document here, but we feel—

Mr. Chairman: So that is like the Industrial Court then, in a form.

Mr. Riley: In a form. Okay?

M**r. Chairman:** All right.

Mr. Riley: The other part of it is that the Regulator and Deputy Regulator engagement should be full time and they should not be engaged in any other occupation or be engaged in any office.

Mr. Chairman: I agree with that. Is that in the parent Act?

Mr. Riley: No.

Mr. Chairman: Okay.

Mr. Riley: The question is that that is a section that was taken straight from the Kenyan Act.

Mr. Chairman: I agree with that. The Ministers cannot work full time. I mean we cannot work part time, so why the Regulator should be able to work, and there is a reason for that, integrity.

Mr. Riley: Okay. So we are saying there should be a period of time which allows for the time being for the tribunal to come to a decision and an appeal process should take place. We should allow the appeal process to take place. Therefore, if that is happening then there should be different time frames for different types of activity, because one, you do not want to hold up the whole procurement process, because if something goes to the Office of the Regulator or somebody wants to appeal, we should give them the right to appeal, but again a time frame should be set for that situation not to put off the whole process of procurement. So that is it in a nutshell.

Mr. Chairman: Is there anything else?

Mr. Riley: Just to make sure that we are on the same page.

Mr. Chairman: I am hearing you. I want to tell you the procedure that we are probably going to adopt. We will amend the amendment Bill as far as we can to accommodate your proposals that we agree with, and those that we cannot amend by way of the amendment Bill, we will bring another Bill which could probably be debated at the same time that we do the amendment Bill, so there is no delay or while we are putting all of the infrastructure in place, we can bring a Bill and do the amendment because it does take a little while. You have to appoint a Regulator, you have to have an office and that sort of thing, so while that process is going on, we can deal with these issues, because you are really asking for a process of adjudication, similar to what is done in the UK which is then appealable in the Court of Appeal, you skip the High Court. That is really what you are asking for, and I am in total agreement with that. We will take a little while to amend the parent Act to establish this tribunal and give the powers that you have in mind. Okay? There are different ways we could accommodate your proposals. All right, but our objective is really to complete this job, finish the work on this amendment Bill, deal with it in the House and start putting in place the office, but while that is going on we can deal with the issues that you have raised. Okay?

Mr. Riley: In that case, we could go straight to the proposed amendment 4 under section 24(4).

Mr. Chairman: This is the parent Act, right?

Mr. Riley: No, no, this is the amendment. I am saying this is the amendment to the parent Act.

Mr. Chairman: Okay, sorry, go ahead.

Mr. Riley: Section 24(4) of the Act is amended by inserting after the word "respectively", in the

second place where it occurs, the words "and the report shall be referred forthwith to the Public Accounts Committee". We have no problem with that.

Then we go straight to the proposed amendment 5 under section 50. Section 50 of the Act is amended by inserting after subsection (12) the following subsection:

> "The suspension of procurement proceedings under subsection (4)(a) shall be lifted immediately upon the issuance of the decision of the Office under subsection (1)".

We have no problem with that.

Mr. Chairman: Okay, good.

Mr. Riley: Then we go now to the proposed amendment 6 under Section 51.

The Act is amended by inserting after section 51, the following new sections:

"Establishment of Public Procurement Review Board"

And the composition of the Review Board is specified here. Now, I am shifting straight away. The proposed amendment is accepted in principle. The Review Board and the Tribunal should be merged into one entity under one name.

Mr. Chairman: I got that.

Mr. Riley: Under this one entity, time lines for decision making for different procedures should be stipulated. This one entity should have all the powers of a High Court—we said this before—and shall be appointed by the President in his sole discretion.

Mr. Chairman: Now, if you go to 51(h), 51(i), 51(j), 51(k) in this same clause in the amendment Bill, you will see we were giving the Review Board 21 days to do the review and complete it within 21 days upon receiving the request and so on and so on. We already have time lines in there. I understand what you are saying, but we already have time lines in there.

Mr. Riley: We understood that, but if you merge the two and you are dealing with the opportunity to go to what I would call for an individual who you want to fire—if you want to put that term—you may want a different time line for that.

Mr. Chairman: I understand that.

Mr. Riley: We want 28 days.

Mr. Chairman: I understand what you are saying.

Mr. Riley: That is all we are saying.

Mr. Chairman: I just want to let you know that the principle of short time lines is already here and we are trying to get this thing done fast.

Mr. Khan: The issue of merging the two and as you say give them the powers of a High Court, the purpose of the Review Board—if you give them the powers of a High Court there is a way a High

Court has to take evidence and that will slow down the process. This Review Board is not a purely judicial function, and because of that and the nature in which they will take the evidence and view the evidence and make a decision, if the offended party feels that the decision is not in their favour then they still have the option to go to the High Court, but we are hoping that we will filter 90 per cent of those queries. So, in that context, I think to merge the tribunal with the Review Board is inconsistent.

Mr. Riley: I am not clear with you. The tribunal only dealt with the issue of the Regulator.

Mr. Khan: But you are saying giving it the powers of a high court.

Mr. Riley: When you merge it, yes.

Mr. Khan: If you have the powers of a High Court, I am guided by the legal minds here, if you are operating with the powers of a High Court, there is a certain way you have to take evidence and deal with evidence and how you deal with civil proceedings or criminal proceeding practices, and the Review Board would not be subjected to those stringent methods. They would probably take a file and just go through it in one meeting and say, "Hey, this is a valid claim or just reject it."

Mr. Riley: Except there is a process that takes place under the OPR before in which exactly that issue has to be dealt with. It is dealt with first by a complaint that goes to the OPR, the OPR has to take the necessary evidence—everything is in the public domain, by the way when that is happening—and go through that process and it is their recommendation that goes to the High Court. Now, I am not a lawyer, I cannot comment on that.

Mr. Chairman: Mr. Riley, what I would suggest, we understand what you are saying and we are going to consider it very seriously. Mr. Khan is just making a point that this was really an attempt at alternative dispute resolution without the strictures of court procedures in an attempt to get the thing settled fast and to weed out the frivolous matters and then the serious ones would go to the High Court, but we hear what you are saying. It is not that we are not hearing you. So we are going to consider what you are saying.

We just wanted to make the point that this Review Board was not supposed to have the powers of a High Court. It is just supposed to be an adjudicatory body. You know, like a dispute. You know in FIDIC you have the DAB, it is something like that and you know it is an intermediate step. So if a person gets rejected by the Office of the Procurement Regulator, then goes to the Review Board and they reject it too and there are good reasons why these two bodies have rejected it, most people would say: "Well, you see that, I am not bothering to go to the High Court, because that is a waste of time and money." So, it is really to filter out the frivolous ones and the serious ones would go forward to the court. I however, understand what you are proposing and we will consider it. Okay? He just wanted to make that point. I think a very important point.

Mr. Riley: Okay. So we go to the next stage after that, that is:

"The proposed amendment 7 inserting after section 57 the following part:"

That has to do with disposal of state lands.

"…Notwithstanding the State Lands Act and other written law to the contrary, the disposal of:

a) State Lands;

b) real property owned by the Government;

c) real property owned by State controlled enterprises; and

d) real property owned by a statutory body, responsibility for which is assigned to a Minister of Government shall be subject to Regulations made by the Minister under section 63."

That is the proposed amendment.

Then we say here—this is the Private Sector Civil Society Group recommendations.

"The following should be noted:-

a) Act No. 1 of 2015 section 4 Part 1 states the following:-

'Public Property means real or personal property owned by the state.'

'Disposal of public property includes the transfer without value, sale, lease, concessions or other alienation of property that is owned by public body.'

'Public Property means real or personal property owned by a public body.'

That is all in the original Act.

b) Under section 13 and 14, in the performance of its functions, the Office is to monitor, audit and investigate all activities related to the disposal of public property;"

Which is what we mentioned before with the Act.

"c) Under sub-section 24 (1), the Regulator shall submit his reports annually to the Speaker of the House of Representatives, the President of the Senate and the Minister. Sub-section 24 (2) states that a report under subsection (1) shall include:-

a summary of transactions in respect of each public body…"

Then d), I am saying is that there was a statement made by the Prime Minister, and that is:

"Dr The Honourable Keith Rowley, Prime Minister, is reported on the 15th November 2015 in the *Newsday*, under the caption "PM on Secret Distribution of Land", as making a statement at the Office of the Prime Minister.

The PM recalled that the House of Representatives last Friday approved the Government's recommendations to send the Public Procurement and Disposal of Public Property (Amendment) Bill, 2015 to a JSC which is mandated to complete its

work by January 22, and the Prime Minister said that this will involve legislative amendments that will prevent any parcel of State land or any State asset from being distributed to any person or Agency without the knowledge of Parliament."

Now, this is slightly not quite in keeping with what the amendment says, and as such, and then the private sector here is proposing, the Civil Society Group is proposing that:

"e) that sub-section 63(1) states: The Minister may on the recommendation of the Office make regulations to give effect to the provisions of this Act…; and

f) that sub-section 63(3) states that: 'Regulations made under this section shall be subject to affirmative resolution of Parliament'".

So any regulation that is made goes through to Minister and the final decision comes through affirmative resolution of Parliament. Right? Our recommendations is:

"1) As the idea of monitoring, auditing, investigating and reporting on the disposal of real property is already in Act No. 1 of 2015;

2) As Public Property is already defined in Act No. 1 of 2015;

3) As sub-section 63(1) provides that the Minister may on the recommendation of the Office make regulations to give effect to the provisions of this Act; and

4) As Act No. 1 of 2015 specifies that the OPR reports to Parliament through the Minister;"

Then our amendment should read like this:

"'Notwithstanding the State Lands Act and other written law to the contrary, the disposal of Public Property shall be subject to regulations made under section 63(1) which shall specify that each such disposal shall be subject to negative approval of Parliament.'"

Now, the issue here is that there are two issues, the regulation itself goes to Parliament for affirmative resolution but our view is that you cannot have Parliament being bogged down with every disposal of state land looking for affirmative resolution. The transparency aspect of this is that it should be laid before the Parliament so the public knows, the Parliament knows of the disposal in the context of which the Prime Minister was speaking, and the Minister was also speaking. We are saying that, yes, the regulation should go to Parliament for affirmative resolution but every disposal should also go to Parliament but for negative resolution. That is what we are saying.

Mr. Chairman: All right, could you just go back a few slides. Right, section 14 of the parent Act.

Mr. Riley: It is a long section.

Mr. Chairman: I know, I just want to see where you got that from, "to monitor, audit and investigate all activities related to the disposal of public property".

Mr. Riley: Under section 14 it is clear, "monitor the procurement of goods, works and services".

Mr. Chairman: Section 14(1)(a)?

Mr. Riley: Section 14(a), 14(b)—

Mr. Chairman: Okay, fine. We wanted the office to do more than that, more than monitoring, auditing and investigating, and it was specifically the Invader's Bay problem that has motivated the Government to come with this amendment. We wanted a situation where you have this large valuable piece of state land being disposed of, whether it is by lease, sale, or whatever, without following any procedure that we know of. Okay? This is our view, that is what happened, and we wanted, in a case like that, that any Government going forward now—let us say we decide to give away 1,000 acres of land somewhere in south just so to somebody for a dollar, we wanted the procurement office to be able to investigate that and have the power to overturn that. Okay? So we wanted to add that work to the office of the procurement regulator because we saw that as a form of procurement.

Mr. Riley: Okay. So what you are saying is that the OPR will have the power to overturn—

Mr. Chairman: Will have the powers that it has to deal with tendering and the award of contracts. They could deal with that too in the same way. Somebody makes a complaint, "Look, I have discovered that there was an invitation for proposals to acquire state property in Soldado, or wherever, and this fella bid a dollar, that fella bid $10 million; they gave it to de fella for $1 and they did not follow any proper procedure"—I am just speaking very loosely, and that we want the office to be able to deal with that in the way it deals with the award of contracts.

Mr. Riley: Okay. We have no problem with that—

Mr. Chairman: And that is the policy behind this amendment. The reason why we are saying the regulations would be made by the Minister is we are going to make it clear in the regulations what we are talking about, because it would not be agricultural leases and, you know, it would not be routine matters. It will be matters where you have valuable state property that is just being disposed of secretly, and we are now giving a member of the public the ability, or an aggrieved person the ability to make a complaint and then the office steps in and can stop it, and so on. That is what is behind our amendment. Okay?

Mr. Khan: Let me just make one point.

Mr. Chairman: Yeah.

Mr. Khan: You are saying here it is already covered but it is not really, public property means real or personal property owned by the State but if you check in our amendments we included real property owned by state-controlled enterprises, because state-controlled enterprises are registered under the Companies Act. So, Petrotrin lands legally is not state lands, but Petrotrin lands will now fall under this regulation because Caroni lands had been vested with the Commissioner of State Lands. So you

would be broadening the horizon for where the Procurement Regulator has—

Mr. Riley: But the Act deals with all public bodies. The Act covers all public bodies and it is defined.

Mr. Chairman: But, Minister Khan, he already agreed with us you know. You are trying to snatch victory—[*Laughter*] What are you trying to do here? He already agreed so let us keep that. Is there any other point you all want to make?

Mr. Riley: Not so much in terms of what our main purpose would be in here. We are satisfied with the responses that we have gotten so far, in principle. We would like to make a few general comments afterwards, unless you all want to state something specific—

Mr. Chairman: No, I want to make a statement on behalf of the Committee, in my opinion, and members can disagree with me openly if what I am saying is not correct. I am very interested in the points you have made, many of them are very useful, and we will accommodate all of the proposals you have made that are feasible. Okay? We have listened to you, a lot of what you have said makes a lot of sense to me. We will discuss it as a committee and we will take your comments very seriously. But what we want to do is to get this procedure over and done with, tinkering with this Bill, and get moving and start to establish the office. And while we establish that office, or even simultaneously when we are debating this amendment Bill, like that 13(1)(o) that you brought up, the question of disposing, I agree with you. I do not think the office should be doing that at all. That is just my view, the members will discuss it, and that is something that we could bring, a separate amendment Bill to deal with simultaneously when we deal with this, and also try and incorporate some of the other points you have made that we agree with. And, also, take the opportunity, while we are operationalizing the office of the procurement regulator, to make further amendments consistent with the proposals that you have made that are, you know, feasible. Okay? I just want to let you know that is what this Committee would be doing. Is there any member who disagrees with me? No? Well good. All right, so go ahead.

Mr. Riley: We are very heartened by the fact that the time frame is crucial in any of the operations that are happening now. So that is one of the points we want to make, that a lot of amendments can take place while the whole question of putting the OPR into place, even after it is operationalized and proclaimed that can take place. I mean, the Jamaican Act going through five amendments, you know; I cannot remember how much the Kenyan Act went through, but what I am saying is that is an ongoing process.

Mr. Chairman: Okay.

Mr. Riley: The other point we want to make is this, is under last administration we were very concerned about the fact that an organization like this, of all the important stakeholders, were not

involved in the process. The first attempt we wanted is to have—under the Act itself, we are not pushing for that now— is, and we use the term advisably, that a civil society group be involved in the whole question of oversight. Okay? That is what we said, right. They disagreed with that from the point of view of the Act; we do not have a problem with that because oversight is going to come on the ground. We are very good at that. What we did not want is to have a situation where we are on the ground critiquing the Regulator before the Regulator has an opportunity to hear what we have to say, and, as a result of that—and this is not only at the level of the Regulator, it has do with the question of how regulations are being made as such, and that is why we decided to agree with the last administration with the oversight committee. Maybe the composition you may disagree with. We have our disagreement with that too. We did not put it in writing, but what we are saying is that the timely intervention, as we are doing now, is crucial in making sure that the right things are done. To me, to us, the one ingredient that is missing in terms of having civil society operate properly, we have the laws, we have the institutions, but we do not have ways and means of making sure that there is timely intervention by civil society in what is going on. As a result, things become banal in terms of how it is done on the street, more or less, and we do not want to necessarily being involved in that.

Mr. Chairman: So what are you proposing?

Mr. Riley: Excuse me?

Mr. Chairman: What you are proposing?

Mr. Riley: I thought it was clear, Mr. Chairman.

Mr. Chairman: No, it is not.

Mr. Riley: Okay. What I am saying is we would like, even at the stage of getting the OPR operational, we would like to be involved.

Mr. Chairman: Now, we can give you that assurance, but the Government could change 10 years from now and another Government could come in and say, "Well, I am not bothering with all yuh".

Mr. Riley: Disband us.

Mr. Chairman: Yeah. So I am just wondering what you are proposing because this depends on goodwill, what you are proposing.

Mr. Riley: We are worried about proposing anything that will lengthen the process, because it means going back to Parliament.

Mr. Chairman: All right, well, we will give you—this Government—well, I am speaking for the Government, I cannot speak for the Independent Members, and we have no Opposition here today—this Government will ensure that you are involved in the process, okay, but I am speaking on behalf of the Government now and also as the Minister responsible for this portfolio. I will ensure that you are

involved in the process, okay, but I cannot speak for another Minister.

Mr. Riley: No. Understood. There is another way of doing it, partly after the Act is proclaimed. There are four committees that are established under the Act, and to some extent some of it can overflow in these institutions.

Mr. Chairman: I understand.

Mr. Riley: These are the kind of things that we are looking for. We do not want to be fighting on the street on every single issue at time; we would like to be involved in the civil process where things are clear, and, like this, we agree, and we are happy.

Mr. Chairman: Okay, good. All right. Yes, Sen. Small, because I cannot speak for you. [*Laughter*]

Mr. Small: I shall hope not, Mr. Chairman. I am wont to make my own comments. I first want to thank the group for coming this morning. I think that several of the proposals are proposals that I am fully and strongly supportive of. I think that the reason why we are here is because there has been a general failure of oversight in the history of management of all, a lot of state entities in this country. I think that the last point you made there, Mr. Riley, about making sure that members who have a great deal of experience and a lot to add to the governance aspect of how we do things in Trinidad and Tobago, we should be able to try to include them in the fold when we are doing things. So, certainly, as a Member of the Independent Bench, I am on the record many times in this Parliament process of saying that I do not think at any point in time you will get anything 100 per cent correct the first time, and if we ever try to get 100 per cent correct before you start to do it, you will never do it. So, in spite of us trying we will always try to get as much as we can done, we would like to try to move the process forward. So, in that frame, I am aligned with the Chairman's view that we should try to get this done, but it does not preclude us from trying to tweak and improve as we go along, because this procurement process has been—this particular piece of legislation is long overdue for being in force, and I think that we are moving in the right direction. Once again, I want to thank you for the opportunity to hear your comments because I think some of it has been very instructive for me. Thank you.

Mr. Chairman: Okay. Any other members want to say anything? Okay.

Mr. Riley: Just as one minor point, the document that we submitted to you is likely to go up on the website of the different bodies, but we would like you to be informed of such a process.

Mr. Chairman: No problem. Thanks for not ambushing us. Thank you very much for coming, and I hope we could continue in this cordial manner. I really hope so, so we will see. Okay. Thank you very much.

Mr. Riley: Thank you very much.

[*Private Sector/Civil Society Group exits the room*]

LIST OF RECOMMENDED AMENDMENTS TO THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

List of Recommended Amendments

CLAUSE	RECOMMENDATION	DECISION
1	None	Agreed
2	None	Agreed
3	Delete Clause 3 and substitute the following new clause: 3. Section 12 of the Act is amended – (a) in paragraph (f), by deleting the word "or"; (b) in paragraph (g), by deleting the full-stop at the end of the paragraph and inserting the words "; or"; (c) by inserting the following new paragraph: "(h) has traded with the Government without the prior approval of the Minister."; (d) by renumbering section 12 as section 12(1); and (e) by inserting after section 12(1), as renumbered, the following new subsection: "(2) For the purposes of this section, a member trades with the Government if, while holding office, he becomes a party to, or is a partner in a firm or a director or manager of a company which to his knowledge becomes a party to any contract with the Government for or on behalf of the public service."	Agreed
4	None	Agreed
5	None	Agreed
6	Delete the proposed section 51F and substitute the following new section: "51F. The Minister may make Regulations, subject to negative resolution of Parliament, with respect to staffing, remuneration, funding and other operation matters of the Review Board	Agreed
7	Delete the proposed section 57A and substitute the following new section: "57A (1) Notwithstanding the State Lands Act and any other written law to the contrary, the Minister may make Regulations in respect of the disposal of a) State Lands; b) real property owned by the Government	

	c) real property owned by State-controlled enterprises; and d) real property owned by a statutory body, responsibility for which is assigned to a Minister of Government. 2) Regulations made this section shall be subject to negative resolution of Parliament."	

CONSOLIDATED VERSION

OF

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY (AMENDMENT) BILL, 2015

A BILL

An Act to amend the Public Procurement and Disposal of Public Property Act, 2015

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title

1. This Act may be cited as the Public Procurement and Disposal of Public Property (Amendment) Act, 2015.

Interpretation Act No. 1 of 2015

2. In this Act, "the Act" means the Public Procurement and Disposal of Public Property Act, 2015.

~~Section 12A inserted~~

~~**3.**The Act is amended by inserting after section 12, the following section:~~

~~"Appointment of tribunal by President~~

~~12A. (1) In addition to the provisions of section 12, the Regulator may be removed from office where he trades with the Government without the prior approval, by resolution, of each House of Parliament.~~

~~(2) Where a resolution is passed by each House of Parliament that the question of removing the Regulator from office, under subsection (1) or section 12, should be investigated~~

~~(a) the President shall appoint a tribunal, which shall consist of a chairman and not less than two other members, from among persons who hold or have held the office of a Judge of a Court having unlimited jurisdiction in civil and criminal matters or a Court having jurisdiction in appeals from any such Court; and~~

~~(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to the~~

~~President whether the Regulator should be removed from office.~~

~~(3) The names of each member of the tribunal appointed under subsection (2) as first constituted and every change in the membership of the Board thereafter shall be published in the *Gazette*.~~

~~(4) Where the question of the removal from office of a Regulator has been referred to a tribunal appointed under subsection (2) and the tribunal has recommended to the President that the Regulator should be removed from office, the President shall remove the Regulator from office.~~

~~Chap. 19:01~~

~~(5) The Commissions of Enquiries Act shall apply *mutatis mutandis* to a tribunal appointed under subsection (2) or, as the context may require, to the members thereof, as they apply in relation to a commission or commissioners appointed under that Act.~~

~~(6) Where the question of removing a Regulator from office has been referred to a tribunal, the President, after consultation with the Prime Minister and the leader of the Opposition, may suspend the Regulator from performing the functions of his office and any such suspension may at time be revoked by the President after consultation, as aforesaid, and shall in any case cease to have effect if the tribunal advises the President that the Regulator should not be removed from office.~~

~~(7) For the purposes of this section, the Regulator trades with the Government if, while holding office, he becomes a party to, or is a partner in a firm or a director or manager of a company which to his knowledge becomes a party to any contract with the Government for or on behalf of the public service.".~~

Section 12 amended

3. Section 12 of the Act is amended –

(a) in paragraph (f), by deleting the word "or";

(b) in paragraph (g), by deleting the full-stop at the end of the paragraph and inserting the words "; or";

(c) by inserting the following new paragraph:

" (h) has traded with the Government without the prior approval of the Minister.";

(d) by renumbering section 12 as section 12(1); and

(e) by inserting after section 12(1), as renumbered, the following new subsection:

" (2) For the purposes of this section, a member trades with the Government if, while holding office, he becomes a party to, or is a partner in a firm or a director or manager of a company which to his knowledge becomes a party to any contract with the Government for or on behalf of the public service.".

Section 24 amended

4. Section 24(4) of the Act is amended by inserting after the word "respectively", in the second place where it occurs, the words "and the report shall be referred forthwith to the Public Accounts Committee".

Section 50 amended

5. Section 50 of the Act is amended by inserting after subsection (12), the following subsection:

" (13) The suspension of procurement proceedings under subsection (4)(a) shall be lifted immediately upon the issuance of the decision of the Office under subsection (11).".

Sections 51A to 51M inserted

6. The Act is amended by inserting after section 51, the following new sections:

"Establishment of Public Procurement Review Board

51A. The Public Procurement Review Board, hereinafter referred to as the "Review Board", is hereby established to review decisions made by the Office. .

Composition of Review Board

51B. The Review Board shall comprise –

(a) a retired judge, who shall be the chairman;

(b) a registered engineer with at least ten years' experience in matters relating to procurement; and

(c) a chartered accountant or quantity surveyor with at least ten years' experience in matters relating to procurement.

Appointment of members of Review Board

51C. (1) The members of the Review Board shall be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition, for a period of three years.

(2) The names of each member of the Review Board as first constituted and every change in the membership of the Board thereafter shall be published in the *Gazette*.

Resignation of member of Review Board

51D. A member of the Review Board may resign his office by letter addressed to the President.

Removal of member of Review Board

51E. The President may remove a member of the Review Board from office upon being satisfied that the member –

(a) is declared to be bankrupt;

(b) is incapable of performing the duties of a member;

(c) has neglected his duties or has engaged in conduct that would bring his office into disrepute;

(d) has been absent, without leave of the Review Board, from three consecutive meetings of the Board;

(e) has been convicted of an offence involving dishonesty;

(f) has been convicted of an offence under the Integrity in Public Life Act;

(g) has been convicted of an offence punishable by imprisonment for at least one year; or

(h) has been convicted of an offence under this Act.

Minister to make Regulations for operation of Review Board

~~51F. The staffing, remuneration, funding and other operational matters of the Review Board shall be prescribed by the Minister by Regulations made under section 63.~~

51F. The Minister may make Regulations, subject to negative resolution of Parliament, with respect to staffing, remuneration, funding and other operational matters of the Review Board.

Request for review

51G. (1) A procuring entity or any other person who is entitled to be given an opportunity to make representations under section 50(1) or 51(1), may request the Review Board to review the order or decision of the Office made under section 50(4) or 50(10).

(2) A request for a review shall be made within twenty-one days of the making of the order or decision.

(3) A request for a review shall be accompanied by the prescribed fee.

(4) The right to request a review under this section is in addition to any other legal remedy available to a person.

Frivolous or vexatious request

51H. The Review Board may dismiss a request for a review if it is of the opinion that the request is frivolous or vexatious.

Time limit for review

51I. The Review Board shall meet to conduct a review within twenty-one days of receiving the request for a review.

Party to a review

51J. The parties to a review shall be –

(a) the person who requests the review;

(b) the relevant procuring entity; and

(c) such other person who has an interest in the order or decision of the Office, as the Review Board may determine.

Time for completion of review

51K. The Review Board shall complete its review within twenty-eight days of receiving the request for the review.

Outcome of review

51L. Upon completing a review the Review Board may –

(a) confirm, vary or overturn the decision of the Office; and

(b) order the payment of costs as between parties to the review.

Appeal from Review Board

51M. A party to a review may appeal against the decision of the Review Board to the High Court within twenty-eight days of the making of the decision.".

Part VIA inserted

7. The Act is amended by inserting after section 57, the following Part:

"PART VIA
DISPOSAL OF STATE LANDS

Disposal of State Land

Chap. 57:01

57A. ~~Notwithstanding the State Lands Act and any other written law to the contrary, the disposal of –~~

~~(a) State Lands;~~

~~(b) real property owned by the Government;~~

~~(c) real property owned by State-controlled enterprises; and~~

~~(d) real property owned by a statutory body, responsibility for which is assigned to a Minister of Government,~~

~~shall be subject to Regulations made by the Minister under section 63.".~~

57A. (1) Notwithstanding the State Lands Act and any other written law to the contrary, the Minister may make Regulations in respect of the disposal of –

(a) State Lands;

(b) real property owned by the Government;

(c) real property owned by State-controlled enterprises; and

(d) real property owned by a statutory body, responsibility for which is assigned to a Minister of Government.

(2) Regulations made under this section shall be subject to negative resolution of Parliament.".

Passed in the House of Representatives this day of , 2015.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2015.

Clerk of the Senate

I confirm the above.

President of the Senate

COMMENTS OF DR. BHOENDRADATT TEWARIE, MP IN ACCORDANCE WITH STANDING ORDER 114(6)

1. The inclusion of a Review Board appointed in the very same manner by the President as the Procurement Regulator will create a parallel organization, undermining the Office of the Procurement Regulator.

2. The proposal for a Review Board does not seem to have taken into consideration the fact that the Procurement Regulator addresses all disputes in the public glare and therefore under public scrutiny including scrutiny by the media.

3. The transfer of the idea of the Review Board from Kenya does not take into account the difference in philosophical approach between the Kenyan legislation and the Trinidad and Tobago legislation. There are four institutions which manage different phases and aspects of the procurement process in Kenya. Act No. 1 of 2015 is ONE comprehensive law which replaces the Central Tenders Board Act covers all entities involved with the management of public money without exception, decentralizes the procurement execution process to all agencies with the Procurement Regulator and the Procurement entity managing, nurturing and guiding the evolution and development of a modern, responsive transparent procurement system with the Regulator accountable only to Parliament.

4. The Review Board was included in the first draft of the Bill but was removed since it created another layer of bureaucracy in case of disputes and would have no impact on the right of any aggrieved individual to seek redress in a court of law.