



Government of the Republic of Trinidad and Tobago

**MINISTRY OF FINANCE**

OFFICE OF THE PERMANENT SECRETARY

F(PS): 2/1/1

December 9, 2019

Ms Jacqui Sampson-Meiguel  
Clerk of the House  
Levels G-9, Tower D  
The Port of Spain International Waterfront  
1A Wrightson Road  
PORT OF SPAIN

Dear Ms Sampson-Meiguel

**Sixth Report of the Joint Select Committee on Finance and Legal Affairs on an  
Inquiry into the Implementation of the new Public Procurement System**

Please find attached for your consideration, Comments by the Ministry of Finance on the Report of the JSC Finance and Legal Affairs following the Inquiry into the Implementation of the new Public Procurement System in response to your request referenced Parl: 14/3/56 Vol. II dated May 24, 2019.

The delay in submission is deeply regretted.

Yours sincerely

Permanent Secretary  
Ministry of Finance

**COMMENTS BY THE MINISTRY OF FINANCE ON THE RECOMMENDATIONS CONTAINED IN THE  
REPORT OF JSC FINANCE AND LEGAL AFFAIRS – INQUIRY INTO THE IMPLEMENTATION OF THE NEW  
PUBLIC PROCUREMENT SYSTEM**

**Shortcomings in the PPDPP Act (as identified by the Regulator)**

*Report's Recommendation*

*The Ministry of Finance must provide the necessary technical and financial support to the OPR in order to expeditiously resolve the apparent shortcomings with the Procurement Regulations. An Action Plan detailing the proposed strategy for modifying and finalizing the Draft Regulations should be included in the Minister's response to this report*

**Response**

Section 21 of Act No.1 of 2015 states that "The funds of the Office (Office of Procurement Regulation) shall consist of moneys appropriated by Parliament for the purposes of the Office." From the Appropriations of Parliament the following financial resources were utilized by OPR over the years:

- Fiscal year 2017: TTD 0.169 mn
- Fiscal year 2018: TTD 16.767 mn
- Fiscal Year 2019: TTD 17.044 mn

For Fiscal Year 2020, the Parliament appropriated TTD 26.830 mn.

Prior to the establishment of the Office, the following technical documents were drafted in order to fast track the roll out of the new Procurement Regime:

- A model handbook;
- A Modern Risk-Based Internal Control Framework;
- Health Sector Special Guidelines;
- Local Government Special Guidelines;
- Non-Governmental Organisations Special Guidelines;
- State-Owned Enterprises Special Guidelines;
- Special Guidelines Works Procurement; and
- A Recommendation for staffing of the Office of Procurement Regulation.

These draft technical documents were handed over to the Procurement Regulator after he assumed duty. Otherwise, the financial resources listed above, amounting to sum TTD 34 million by the end of the 2019 financial year, facilitated the engagement of technical resources for further development of the Handbooks and Guidelines.

In addressing the shortcomings in the Regulations, the Ministry of Finance submitted its third and final round of written feedback to OPR in early July, 2019, on the amended Draft Regulations based on internal review by several Divisions of the Ministry of Finance including the Central Tenders Board,

Treasury Division, Investments Division, General Administration Department and the Treasury Solicitor's Department. The review focused on specific aspects of the Regulations such as domestic preference, procurement depository, pre-qualification and pre-selection, bid validity, risk mitigation strategies and disposal of stores and equipment.

### *Report's Recommendation*

*That the Ministerial Response of the Ministry of Finance include an update on the completion of deliverables associated with the functions of the OPR as set out in section (13) (1) a to s.*

### Response

The Ministry of Finance recognizes the comment within the Report stating that the circulation/dispensation of the Handbooks and Guidelines containing the details of public procurement and practices will be contingent upon the finalization of the Regulations. To date, the technical work towards formulation of Regulations to give effect to the following areas of Act No.1 of 2015, has been completed:

- i) Part 1- Participation in Procurement
- (ii) Part 2- Pre-qualification and pre-selection
- (iii) Part 3-Technical Requirements
- (iv) Part 4-Procurement Methods
- (v) Part 5-Procedural Safeguards
- (vi) Part 6-Evaluation
- (vii) Part 7-Selection of Consultants
- (viii) Part 8- Records
- (ix) Part 9-Retention of Public Property and Disposal of Personal Property
- (x) Part 10-Challenge Proceedings
- (xi) Part 11-Ineligibility Proceedings
- (xii) Part 12-Miscellaneous

Specifically, the OPR in consultation with Chief Parliamentary Counsel (CPC) has identified the following specific provisions of the Act which can operate independently of the Regulations, namely:-

Section 13(1)(e), (f), (g), (h), (i), (j), (k), (l), (m), (o), (q) and (s);

*Report's Recommendation*

*That the Regulator collaborate with the Ministry of Finance and external legal counsel (where necessary) with a view to determining the most suitable legislative arrangement for including the procurement and disposal of real estate in the new procurement regime.*

Response

Following a meeting between the Minister of Finance and the Regulator on September 3, 2019, it was agreed that the Minister of Finance will seek an amendment to Section 57A (1) of Act No. 5 of 2016 to include a provision for the OPR to advise and make recommendations for following, given the technical resources available to the OPR:

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.

*Report's Recommendation*

*Specific guidelines related to contracts entered into between the government and multilateral entities be drafted*

Response

In the said meeting of September 3, 2019, it was agreed that there will be further discussions surrounding the issues that relate to section 7(2) of Act No. 1 of 2015 which states that:

“To the extent that this Act conflicts with an obligation of the State under or arising out the following:

- a) A treaty or other form of agreement to which Trinidad and Tobago is 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 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.”

## Transition Arrangements for Staff of the CTB

### *Report's Recommendation*

*Technical officer/s from the CTB be assigned to Ministries in building the expertise and capacity of internal Procurement Units in Ministries and Departments. Ministries whose procurement activities have been classified as "high risk" should be prioritized for such temporary assignments*

### Response

The recommendation is consistent with a decision of Cabinet taken in March 2017.

### *Report's Recommendation*

*Notwithstanding the provisions of section 13(1) of the PPDPP Act, as the line Ministry, the Ministry of Finance must continue to collaborate with the OPR in ensuring that all Procuring Entities undertake and complete the necessary institutional modifications in preparation for the full implementation of the PPDPP Act.*

### Response

Although the Ministry of Finance is Line Ministry, it finds itself in a unique position under Act No. 1 of 2015. According to Section 11(9), the Minister determines salaries and allowances of the Regulator and other members, subject to the approval of Parliament. Under Section 24, the Minister receives the reports of the Regulator. Under sub section (5), the Minister may, on the recommendation of the OPR, vary the required benchmarked contract value for contracts reported upon in the Regulator's report. And Sections 58(4) and 63 allow the Minister to make regulations to give effect to the provisions of the Act, on the recommendation of the OPR. Otherwise, the Ministry of Finance is subject to the Act as are all other procuring entities. The only institutional modification required of procuring entities under the Act is under section 61(2) which states that a public body is to have a procurement officer who is to be responsible for public procurement and disposal of public property and that the public body is required to notify the OPR of that person directly. There is no role for the Ministry of Finance in that function. The Ministry of Finance is mindful of the very specific and unambiguous provisions in Act No. 1 of 2015 relating to the independence of the OPR and remains cautious, in its collaborations with the OPR on the roll out of the new procurement regime, not to be perceived as disregarding spirit and provisions of the Act, particularly section 13(2) (b), which mandates that the OPR shall 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.

*Report's Recommendation*

*Up-skilling and capacity building in the "high-risk" Ministries be made mandatory. A plan for developing the capacity of staff designated to perform procurement responsibilities within Ministries should be included in the Ministerial Response to this Report.*

Response

The Ministry of Finance notes that the Report acknowledges the training coordinated by the Ministry and facilitated by the UNDP as well as the comment that the Ministry had not conducted any further training so as not to usurp the authority of the OPR. Two additional points should be noted. Firstly, Ministries and Departments have facilitated internal training for designated staff since the appointment of the OPR. This training however would not have benefited from training standards, which are to be put in place by the OPR, in accordance with section 13(1)(b) of the Act. Once these training standards are put in place, the Ministry of Finance can explore delivery of training mechanisms with the OPR and the Ministry of Public Administration.

*Report's Recommendation*

*Increased coordination between the Ministries of Finance, the Public Service Commission, Service Commissions and the OPR to secure alternative employment for staff demitting the CTB.*

Response

Coordination with the Service Commissions Department will be stepped up when the timing for further Proclamation of the Act is envisaged. A firmer timeline will assist in the calculation of the value of individual VSEP packages and facilitate the CTB officers in exercising the choice of options available to them under section 66 of the Act. Meanwhile, the CTB is fully operational. That timeline will be estimated based on when the draft Regulations are submitted to the Chief Parliamentary Counsel.

*Report's Recommendation*

*Parliament must be provided with an update on the progress made in completing the necessary arrangements to facilitate the transitioning of staff of the CTB to positions within the Public Service or out of the Public Service via VSEP*

Response

The Pension and Leave records of ninety per cent (90%) of the CTB staff were updated to December 2018 and instructions have been conveyed for the necessary updates as at December 2019. This is an important step in facilitating any choice that the staff may choose to exercise.