



H.O.R. PAPER NO. 13 of 2012 MP PARL: NO. 14/3/31

**REPORT
OF
THE JOINT SELECT COMMITTEE
APPOINTED TO CONSIDER AND REPORT TO
PARLIAMENT
ON
THE LEGISLATIVE PROPOSALS TO PROVIDE
FOR PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY
AND
THE REPEAL AND REPLACEMENT OF THE
CENTRAL TENDERS BOARD ACT
Second Session (2011/2012) Tenth Parliament**

[Ordered to be printed]

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BACKGROUND

APPOINTMENT AND TERMS OF REFERENCE

1.1 Pursuant to resolutions passed in the House of Representatives on **Wednesday November 09, 2011** and on **Friday November 18, 2011** and in the Senate on **Tuesday November 15, 2011 and on Tuesday November 22, 2011**, a Joint Select Committee was appointed to consider and report on the Legislative Proposal to provide for public procurement and disposal of public property together with the Legislative Proposal to repeal and replace the Central Tenders Board Act.

1.2. This is the second such Committee to have been established during this Tenth Parliament. The Committee appointed in the First Session (2010/2011) was unable to complete its mandate before prorogation on June 17, 2011, and as such requested that all its work be saved and referred to any subsequent committee.

1.3. In consonance with this request, this Committee was appointed to consider and report *on the Legislative Proposal to provide for public procurement and disposal of public property together with the Legislative Proposal to repeal and replace the Central Tenders Board Act which were laid in the House of Representatives on Friday June 25, 2010 along with the work of the previous Committee appointed in the First Session of the Tenth Parliament:*

The Committee was also required to:

- (a) *consult with stakeholders, experts and interested persons;*
- (b) *send for persons, papers, records and other documents;*
- (c) *recommend amendments to the proposals with a view to improving the drafts; and*
- (d) *submit a report to Parliament within three (3) months from the date of appointment.*

1.4. Based on the above stated reporting period, the deadline for the Committee to report to Parliament was set as **February 23, 2012.**

MEMBERSHIP

2.1 The following Members were appointed to the Joint Select Committee:

- | | |
|---|-----------------------|
| ▪ Dr. Bhoendradatt Tewarie- Chairman | Mr. Collin Partap, MP |
| ▪ Dr. Tim Gopeesingh, MP | Mr. Colm Imbert, MP |
| ▪ Mr. Prakash Ramadhar, MP | Mr. David Abdulah |
| ▪ Mr. Herbert Volney, MP | Mr. Faris Al-Rawi |
| ▪ Dr. Keith Rowley, MP | Mrs. Helen Drayton |
| ▪ Mr. Anand Ramlogan, SC | Dr. James Armstrong |

2.2 With the exception of, Mr. Kevin Ramnarine and Dr. Rolph Balgobin, the composition of the Committee remained the same as the one that was appointed in the First Session (2010/2011). These two Members were replaced by Dr. Bhoendradatt Tewarie and Dr. James Armstrong respectively.

SECRETARIAL SUPPORT

3.1 The following persons provided secretarial assistance:

- Ms. Lily Broomes- Secretary
- Mr. Julien Ogilvie-Assistant Secretary
- Ms. Sheranne Samuel- Parliamentary Intern

EXPERT ASSISTANCE

4.1 The following persons provided expert advice:

- Mrs. Claire Blake, S.C.- Senior Legal Consultant
- Ms. Anne Hussein- Legal Officer I

ELECTION OF CHAIRMAN AND QUORUM

5.1 At its First Meeting held on December 02, 2011, the Committee unanimously appointed Dr. Bhoendradatt Tewarie as Chairman.

5.2 At that meeting, the Committee also resolved that its quorum will be as follows:

- ***Four(4) Members***
Comprising two (2) Members of the Government, one (1) Member of the Opposition and one (1) Independent Member.

MEETINGS

6.1 Since its appointment, your Committee held five (5) meetings on:

1. December 02, 2011;
2. January 06, 2012;
3. January 16, 2012.
4. April 17, 2012; and
5. May 28, 2012

INTERIM REPORT

Challenges with convening meetings- Lack of a quorum

7.1 Following its Third Meeting held on January 16, 2012, your Committee experienced challenges in convening meetings due to lack of a quorum. Its Fourth Meeting was postponed on two occasions (Monday January 30, 2012 and Wednesday February 29, 2012).

7.2 The initial quorum requirements stated at item 5.2 above proved to be impractical. The specification that certain groups must be represented within the quorum resulted in a situation where meetings could not be convened in the absence of any particular grouping. As a result, the work of the Committee was interrupted for approximately one month.

7.3 Given the imminent expiration of the time frame for the completion of its mandate, your Committee submitted an interim report seeking an extension of time and the intervention of Parliament to resolve the quorum issue. The Interim report was presented in the Senate on March 06, 2012 and in the House of Representatives on March 09, 2012.

The issue of quorum resolved

7.4 However, at its Fourth meeting held on Tuesday April 17 2012, your Committee in accordance with the provisions of the standing orders¹ resolved, by a division of 5 to 2, to alter its quorum as follows²:

- **Any four Members of the Committee with at least one Member from the House of Representatives and one Member from the Senate, including the Chairman.**

DELIBERATIONS

GOVERNMENT'S POLICY POSITION ON PUBLIC PROCUREMENT

8.1 Initial discussions on the subject matter focused on the need for a policy position from the government with regard to the design for a national procurement system. It was agreed that this was essential in guiding your Committee in its deliberations and decision making.

8.2 Your Committee determined that the result of its deliberations ought to be a recommended framework on procurement that would inform the drafting of legislation

¹ Standing Orders 79(2) and 71(2) of the House of Representatives and the Senate respectively

² Refer to items 4.1 to 4.10 of the Minutes of the Fourth Meeting at Appendix III

MAJOR ISSUES TO BE RESOLVED

9.1 Your Committee identified the following issues as critical for the advancement of its deliberations:

- (a) Whether a Procurement Regulator or an equivalent to a Contractor General is necessary for Trinidad and Tobago and reasons for this;
- (b) The role of the Minister and the Executive. The issue of parliamentary oversight;
- (c) The registration and application process for contractors;
- (d) The question of appeals and the allowance for due process while not hindering the business of production;
- (e) Balancing value for money, transparency and accountability against the need to facilitate development;
- (f) Being current not only with good practice, but with the latest thinking on good practice.

9.2 The policy proposals at **Appendix I** as agreed by your Committee addresses all of the issues that your Committee sought to resolve.

9.3 In seeking to determine what was the most suitable legislative solution to be adopted, your Committee examined the procurement systems of countries that have made notable advancements in this area such as Finland, Canada, United Kingdom, the Philippines, Latin America and Jamaica, among others.

SUBMISSIONS RECEIVED BY THE COMMITTEE

10.1 In accordance with its mandate outlined at item 3.2, your Committee received written and oral submissions from organizations and persons as follows:

Table 1.

No.	Person or organization	Nature of the submission (Oral or written)	Dated made or submitted
i.	Inter-American Development Bank	Written Re: Program to support the Public Procurement Reform in Trinidad and Tobago	August 30, 2011
ii.	Mr. Greg Christie, Contractor General of Jamaica	Oral and written submissions Re: An overview of the operations of the Office of the Contractor General	January 16 2012 (<i>Third meeting</i>)
iii.	Ministry of Labour and Small and Micro-Enterprise Development	Written submission Re: The incorporation of the tenets of the <i>FairShare programme</i> into the legislative framework for public procurement reform	March 21, 2012
iv.	Chairman, Procurement Committee, Private Sector Civil Society Group	Written Re: Revised Draft Public Procurement Bill dated April 11, 2011 and Revised Draft framework for procurement guidelines	April 16, 2012
v.	Mr. Joao Veiga Malta, Senior Procurement Specialist from the World Bank	Oral and written submissions Re: options for Public Procurement Reform for Trinidad and Tobago	April 17 2012 (<i>Fourth Meeting</i>)
vi.	Chairman of the Committee	Written Re: Policy position for informing the Legislative Reform of Public Procurement and Disposal of Public Property by the Government of Trinidad and Tobago-	May 21, 2012 (<i>Fifth Meeting</i>)

CONSIDERATION OF PROPOSAL FOR ASSISTANCE FROM THE IDB

11.1 During the process of deliberation, your Committee was approached by representatives of the Inter-American Development Bank with an offer of technical assistance in the areas of public procurement reform. The Proposal sought to provide technical and financial Assistance to the Government of the Republic of Trinidad and Tobago in the sum of US\$300, 000.

11.2 Your Committee agreed to consult with the IDB to ascertain the feasibility of their offer of assistance and the possibility of execution, within a January 2012 timeframe. Discussions also ensued on the pre-legislation and post-legislation process. To date, the IDB agreed in principle that funding would be made available to support the implementation of the legislation, although a work plan between the Committee and the IDB had not been formulated.

DISCUSSIONS WITH THE CONTRACTOR GENERAL OF JAMAICA

12.1 During its Second Meeting held on January 06, 2012, your Committee decided that it would be useful to hold discussions with the Contractor General of Jamaica to acquire a more in-depth insight into the operations of this office. The Office of the Contractor General is a similar office to the “Procurement Regulator” that was proposed to the Committee as a possible option. This Office has extensive powers and privileges to oversee the award and termination of public sector contracts.

12.2 To this end, Mr. Greg Christie, Contractor General of Jamaica was invited to Trinidad to meet with the Committee. Mr. Christie was accompanied by two other officials from his department, namely:

- **Mr. Craig Beresford**, Senior Director of Monitoring Operations, Corporate Communications & Special Projects; and
- **Ms. Sashein Wright**, Special Projects Assistant to the Contractor General, Communications Officer and Special Investigator.

12.3 At its Third Meeting, your Committee met with the Contractor General and engaged in in-depth discussion on the various aspects of his department’s operations. Due to the sensitive and confidential nature of the information that was anticipated to be shared, the Contractor General requested that discussions with the Committee be conducted in private. Thus, the Minutes of the Third Meeting held on January 16, 2012 at **Appendix III** do not reflect the full details of the discussions held between your Committee and the Contractor General.

12.4 This meeting proceeded as follows:

- A. The Contractor General made his presentation without any interjections by the Committee;
- B. Following his presentation, Members of the Committee posed questions and made comments;

C. The Committee then engaged the officials openly on issues of interest.

12.5 The following are the major subject areas and issues that were raised during the discussions:

- i. The jurisdiction of the Contractor General (CG) to oversee and scrutinize all contracts awarded and terminated by Government departments, agencies or bodies to ensure that contracts are awarded impartially and based on merit;
- ii. The wide and far reaching powers of investigation and inquiry vested in the Office of the Contractor General, including the ability to conduct investigations on current contracts and those awarded in the past;
- iii. The objectives of the CG's department as it relates to fostering transparency, impartiality and propriety in the public procurement system of Jamaica;
- iv. The high degree of independence and discretion granted to the CG;
- v. The different types and values of contracts over which the CG has jurisdiction;
- vi. The requirement for the CG to report the findings of investigations to the Executive and Parliament;
- vii. The requirement for strong political will to achieve Public Procurement reform.
- viii. Limitations and shortcomings of the Office of the Contractor General;
- ix. The existence of multiple anti-corruption bodies in Jamaica similar to Trinidad and Tobago (i.e. The Contractor General, the Integrity Commission and the Corruption Prevention Commission) and the need for them to be merged into a single Anti-corruption body.

12.6 Your Committee was very thankful for the knowledge, expertise and experience shared by the Contractor General and his team who traveled to Trinidad to meet with the Committee at short notice. Your Committee would have acquired invaluable insight into the operation of a 'regulator' in a Public Procurement Regime.

DISCUSSIONS WITH OFFICIALS FROM THE WORLD BANK

13.1 By letter dated March 20, 2012, the World Bank requested of your Committee to have **Mr. Joao Veiga Malta, Senior Procurement Specialist from the World Bank** make an oral presentation to the Committee on the contents of the World Bank's procurement reform proposals for Trinidad and Tobago. The World Bank has assisted numerous countries in the area of Public Procurement Reform. As part of the Performance-Informed Budgeting and Procurement Reform component under its Fee-Based Services, the World Bank prepared a guidance paper with options for procurement reform in Trinidad and Tobago.

13.2 Your Committee agreed to this request and met with Mr. Malta during its Fourth meeting. Your Committee heard Mr. Malta's presentation, following which a question and answer period ensued. (See items 7.1 to 9.5 of the Minutes of the Fourth Meeting).

CONSIDERATION OF GOVERNMENT'S POLICY POSITION FOR INFORMING THE LEGISLATIVE REFORM OF PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY

14.1 In fulfillment of a commitment made to Members, the Chairman circulated, a document outlining government's policy position on procurement in advance of the Fifth Meeting of your Committee.

14.2 At the Fifth Meeting, your Committee considered the policy document **at Appendix II** provided by the Chairman. Your Committee considered the document page by page and made amendments where it deemed necessary. Amendments were made to allow for the inclusion of the following:

- i. **Adherence to national labour laws and standards;**
- ii. **The broadening of the mandate of the PAC to scrutinize the reports of the Procurement Regulator;**
- iii. **The requirement for the Procurement regulator to make recommendations to the Minister of Finance for action on any matter where issues of transparency, probity or good governance may be compromised. And that reports on such instances also be submitted for the consideration of the PAC;**

- iv. **Defined deadlines for the submission of reports to Parliament;**
- v. **A mechanism for expeditious treatment of objections to procurement decisions and/or dispute resolution be included in the legislation;**
- vi. **An approved list of adjudicators will be compiled to support the function of resolution of disputes;**
- vii. **A timeline of thirty (30) days for the resolution of disputes from the date of referral.**

14.3 Having recommended the foregoing for inclusion in the policy document to guide the reform of Public Procurement legislation in Trinidad and Tobago, your Committee unanimously agreed that:

1. The amended policy document at **Appendix I** should be included in the Committee's report to Parliament.
2. Your Committee's report would inform the drafting of legislation for the reform of the Public Procurement system of Trinidad and Tobago.

CONCLUSION

15.1 The Joint Select Committee on Public Procurement was established on November 02, 2010. The work of this Committee has now spanned almost two sessions of Parliament. Over the period of work of this Committee, a fair range of proposals for consideration have been put forward by interested parties and stakeholders, both locally and abroad listed in Table 1. In addition, your Committee has reviewed a large volume of literature related to public procurement, including a number of models. The Uff Report on the Commission of Inquiry into the Construction Sector and its recommendations have been given due consideration.

15.2 The Legislative Proposals referred to the Committee in the First session (2010/2011) for its review and amendment were deemed to be mutually exclusive. The Committee at that time agreed that the two drafts required extensive and detailed redrafting to bring them in line

with the requirements for a modern procurement system relevant to the culture of Trinidad and Tobago.

15.3 Following the reappointment of the Committee in the Second Session (2011/2012), the mandate of your Committee remained the same except that the work of the Committee established in the first session was brought forward. Nonetheless, the new Committee also agreed that the product of its deliberations ought to be a legislative framework of policy that would inform the drafting of legislation for the reform rather than a revised draft Bill or prescriptive legislation. It was agreed that the policy framework emanating from the Committee must promote among other things:

- Transparency;
- Accountability;
- Fairness;
- Equity; and
- Value for money.

15.4 To this end, your Committee has reviewed and amended the Government's policy proposals to encapsulate the requirements/prerequisites listed at 15.3 above. Your Committee is satisfied that the policy proposals outlined in **Appendix I**, represent a relevant and appropriate guide/framework for the drafting of legislation for the reform of the Public Procurement Regime in Trinidad and Tobago.

RECOMMENDATIONS

16.1 Given the foregoing, your Committee respectfully submits its final report and recommends that the report, together with **Appendix I and II** be used as a guide for the drafting of legislation and the implementation of policy initiatives for the reform of the public procurement system in Trinidad and Tobago;

Respectfully submitted,

Sgd

Dr. Bhoendradatt Tewarie

Chairman

Sgd
Dr. Tim Gopeesingh, MP
Member

Sgd
Mr. Prakash Ramadhar, MP
Member

Sgd
Mr. Herbert Volney, MP
Member

Sgd
Mr. Collin Partap, MP
Member

Dr. Keith Rowley, MP
Member

Mr. Colm Imbert, MP
Member

Sgd
Mr. Anand Ramlogan, SC
Member

Sgd
Mr. David Abdulah
Member

Mr. Faris Al-Rawi
Member

Sgd
Mrs. Helen Drayton
Member

Sgd
Dr. James Armstrong
Member

June 04th, 2012

APPENDIX I

Revised policy proposals for informing the Legislative Reform of Public Procurement and Disposal of Public Property including amendments made by the Committee on May 28, 2012 (in bold)

- i. That the procurement regime to be established must deliver goods and services more efficiently, effectively and at higher performance levels than currently exists. The system should take into account clear lines of accountability, ensure transparency and promote ethical conduct;
- ii. That Framework legislation rather than prescriptive legislation is recommended;
- iii. That such Framework legislation should come to Parliament together with general regulations, and the net of coverage of State institutions should be wide, in keeping with the policy pledge to ensure transparency and accountability by all government departments and state enterprises;
- iv. That a hybrid model involving a system with centralized as well as decentralized elements would be more practical and would be desirable;
- v. That this hybrid model should result in greater efficiency in public procurement by permitting Government Agencies to engage in their own procurement processes - that is within the context of law, rules and regulations - but still be subject to scrutiny through the oversight of the Procurement Regulator.
- vi. That transparency, accountability, **fairness, equity** and value for money be regarded as essential to enlightened policy and practice and must inform the legislation;
- vii. That efficiency, effectiveness, ethics and fair dealing should be an important outcome of the legislation;
- viii. That a new procurement regime should promote local industry, ensure that “local content” considerations are adequately addressed and that international trade is facilitated;
- ix. That the procurement regime also promote enlightened and progressive environmental practices, **adherence to national labour laws and standards,**

provide opportunities for innovation and for human capital development and skills building;

- x. That the position of Regulator for Procurement and the Office of the Regulator for Procurement be established;
- xi. That the Office of the Regulator for Procurement be constituted as a statutory body, independent of any Ministry;
- xii. That to oversee the reporting of the Procurement Regulator to Parliament, the Public Accounts Committee be made to perform the oversight function, and that the Procurement Regulator be accountable to the Public Accounts Committee;
- xiii. Item (xii) above will require the institutionalization of an independent audit process. It will also require an expansion of the remit of the Public Accounts Committee which may also require a possible amendment to the law governing the Public Accounts Committee. These matters need to be taken into account in the drafting of the legislation;**
- xiv. That this Regulator be responsible for **establishing** centralized rules and regulations that will generally guide procurement matters at all levels, including e-procurement, within the context of Public Procurement Laws and Regulations;
- xv. That this Regulator be responsible for investigating complaints from any party involved in public procurement:
 - a. To ensure that the procurement process at all levels be above reproach at all times
 - b. To address complaints in an expeditious manner
 - c. To identify matters which may require investigation
 - d. To make recommendations **to the Minister of Finance** for action on any matter where issues of transparency, probity or good governance may be compromised;
 - e. That such matters as may relate to (c) and (d) above, also be submitted to the Public Accounts Committee**
- xvi. That this Regulator report to Parliament on an annual basis not later than ninety (90) days following the end of the reporting year and that the regulator submit special investigation reports within thirty (30)**

- days of the initiation of an investigation to the Minister of Finance as well as to Parliament;
- xvii. **that the Regulator should be appointed by the President following consultation with the Prime Minister and the Leader of the Opposition;**
- xviii. That the Procurement Regulator be able to select and appoint the staff of the Office of the Procurement Regulator on a merit basis;
- xix. That the Procurement Regulator be able to employ alternative dispute resolution and mediation, in the settling of complaints;
- xx. **That a mechanism for expeditious treatment of objections to procurement decisions and/or dispute resolution be established as part of the legislation. An approved list of adjudicators will be compiled to support the function of resolution of disputes. Adjudicators will be responsible for proposing a solution to disputes within 30 days from the date of referral.**

*Joint Select Committee
Legislative Proposals on Public Procurement and
on the Repealing and Replacing of the Central Tenders Board Act*

Dated Monday May 28, 2012

APPENDIX II

Policy position for informing the Legislative Reform of Public Procurement and Disposal of Public Property by the Government of Trinidad and Tobago- May 21, 2012

1. The current system of public procurement was established in 1961 under the Central Tenders Board Act, which established the Central Tenders Board (CTB) for the Government of Trinidad and Tobago and certain Statutory Bodies. The centralized procurement established in 1961 is still applicable to Government Ministries, departments and only a few statutory authorities, as through a series of amendments to the 1961 legislation, other agencies have been empowered to act independently of the CTB, these include:
 - The armed forces and the protective services which since 1991 are not required to revert to the CTB
 - NIPDEC which since 1993 as Agent of the State can conduct its own procurement

Additionally a 1987 amendment grants power to Government to undertake procurement during a period of emergency.

2. However, in all cases the regulatory framework which governs the CTB applies. In other words an overarching framework of rules governs all procurement but the CTB is not the Sole Agency authorized to award and execute contracts.
3. In 2005, the Investment Division of the Ministry of Finance produced a body of rules to guide State Enterprises/Statutory Authorities which include rules for appointment of tender committees, registration of contractors, the application and award process, appeals regarding unfair treatment and for the disposal of unserviceable items, so that State Enterprises not governed by the CTB are covered under these standard procurement procedure, and rules.
4. There have been previous attempts at Procurement Reform which were considered by Cabinet. The draft National Tenders Board Bill 1997 was considered by Cabinet but not introduced in Parliament. “The Reform of the Public Procurement Regime – A White Paper” produced by the Ministry of Finance was presented to Parliament in 2005 followed by the “Public Procurement and Disposal of Public Property Bill 2006” based on the White Paper. But the Bill was never debated.

5. The last amendment of the Central Tenders Board Act was done in 1993; so between 1993 and February 2012, although Cabinet has reviewed and considered the issue of procurement reform and has presented a White Paper as well as draft legislation to Parliament, Parliament itself sitting as House of Representatives and Senate have not considered or debated any amended or new procurement legislation since 1993.
6. In spite of all of this, procurement practices have often been suspect, and evidence within recent times has demonstrated possible instances of corruption and there have been calls as well as recommendations for Reform of the Procurement system. The 2010 People's Partnership Manifesto which formally and officially informs Government policy, makes the following commitment to Procurement Reform:

"Our policy on infrastructure will be based on ensuring quality, reliability and maintenance of existing infrastructure while adopting transparent and fair procurement practices." (p. 61)

"Prioritize the passing of procurement legislation and appropriate rules and regulations. Establish equitable arrangements for an efficient procurement system ensuring transparency and accountability by all government departments and state enterprises." (p. 18)

7. The Medium Term Policy Framework 2011-14 reinforces this position:

"Priority will also be given to reforming the public procurement process and measures are to be undertaken to give effect to the recommendations contained in the White Paper on Reforming the Public Sector Procurement Regime" (Page 18).

"Government's policy is to ensure that the quality, reliability and maintenance of existing infrastructure is of the highest standard, while adopting transparent and fair procurement practice" (Page 74).

8. Over the period of the work of this Joint Select Committee meeting since 2010, a fair range of proposals for consideration have been put forward by interested parties and stakeholders including from the Joint Consultative Council, Chambers of Commerce and Environmental organisations. The World Bank has also made a presentation to the Committee. In addition, a number of models have been examined and the Uff Report and its recommendations have been given due consideration.
9. Since 2010, the Government of Trinidad and Tobago has made a clear commitment to reform the system but has not so far articulated a clear policy. The approach so far has been to wait on the completed report of the Joint Select Committee so that Cabinet could review the Committee's work, as a consensus position which would then inform the legislative drafting stage. At this point, given the recent unfolding of events with regard to the functioning of the Joint Select Committee it is doubtful whether the level of cooperation required to achieve a consensus policy position from the Committee can be

achieved. Accordingly, the Government of Trinidad and Tobago considers it prudent to present its policy position formally to the Committee.

10. In outlining its policy position the Government of Trinidad and Tobago has taken into account features identified in the relevant literature to support a good and modern public procurement system appropriate to a country such as ours. These include:

(i) Demand Identification- which takes into account that we need in Trinidad and Tobago a platform of government spending which would address:

- a. Government agencies now subject to the Central Tenders Board as well as State Enterprises and State Agencies which may not now be so subject;
- b. The achievement of best value for each unit of government spending.

(ii) Needs Based Assessment- in the case of Trinidad and Tobago refers to the collective assessment of what might have gone wrong in the current system and what needs to be done differently to improve the system and facilitate enlightened practice.

(iii) Best Identifiable Remedy- which in the case of Trinidad and Tobago would mean a universal system encompassing all arms of government. Such a system will allow for:

- a. Government savings, while spending in procuring goods at good value;
- b. the use of government special purpose companies as an incubator for sound principles in contracting;
- c. the use of government spending to grow skills in local industry;
- d. the use of government spending to encourage small business, green practices and innovation;
- e. the use of government spending presented to the public in a clear easily identifiable manner;
- f. good quantification (accounting) of government spending;
- g. easy identification of goods for the short and long term value and their position within government strategy;
- h. an identifiable link between government macroeconomic strategy, macroeconomic spending and microeconomic initiatives.

(iv) Implementation of the Best Identifiable Remedy- which will require adherence to the following principles:

- a. best value for money;
- b. open and effective competition;
- c. transparency;

d. enhancing opportunities for local businesses within the framework of (iii) identified above.

(v) A Monitoring and Evaluation System- which will allow for independent scrutiny of the execution of policy in matters related to procurement.

(vi) Ensuring that objections in procurement matters are expeditiously handled-this will allow a distinction to be made between genuine well substantiated objections and frivolous and obstructionist ones. The idea is that government strategy for progress and development should not be undermined by irresponsible actions but that legitimate objections grounded in evidence will be taken into account.

11. Against this background the following recommendations are made by the Government of Trinidad and Tobago for the establishment of a modern procurement system:

- i. That the procurement regime to be established must deliver goods and services more efficiently, effectively and at higher performance levels than currently exists. The system should take into account clear lines of accountability, ensure transparency and promote ethical conduct;
- ii. That Framework legislation rather than prescriptive legislation is recommended;
- iii. That such Framework legislation should come to Parliament together with general regulations, and the net of coverage of State institutions should be wide, in keeping with the policy pledge to ensure transparency and accountability by all government departments and state enterprises;
- iv. That a hybrid model involving a system with centralized as well as decentralized elements would be more practical and would be desirable;
- v. That this hybrid model should result in greater efficiency in public procurement by permitting Government Agencies to engage in their own procurement processes - that is within the context of law, rules and regulations - but still be subject to scrutiny through the oversight of the Procurement Regulator.
- vi. That transparency, accountability and value for money be regarded as essential to enlightened policy and practice and must inform the legislation;
- vii. That efficiency, effectiveness, ethics and fair dealing should be an important outcome of the legislation;
- viii. That a new procurement regime should promote local industry, ensure that “local content” considerations are adequately addressed and that international trade is facilitated;

- ix. That the procurement regime also promote enlightened and progressive environmental practices and provide opportunities for innovation and for human capital development and skills building;
- x. That the position of Regulator for Procurement and the Office of the Regulator for Procurement be established;
- xi. That the Office of the Regulator for Procurement be constituted as a statutory body, independent of any Ministry;
- xii. That this Regulator report to Parliament on an annual basis;
- xiii. That to oversee the reporting of the Procurement Regulator to Parliament, the Public Accounts Committee be made to perform the oversight function, and that the Procurement Regulator be accountable to the Public Accounts Committee;
- xiv. That this Regulator be responsible for establishing centralized rules and regulations that will generally guide procurement matters at all levels, including e-procurement, within the context of Public Procurement Laws and Regulations;
- xv. That this Regulator be responsible for investigating and resolving complaints from any party involved in public procurement:
 - a. To ensure that the procurement process at all levels be above reproach at all times
 - b. To address complaints in an expeditious manner
 - c. To identify matters which may require investigation
 - d. To make recommendations for action on any matter where issues of transparency, probity or good governance may be compromised to the Minister of Finance
- xvi. That the Procurement Regulator be appointed by the President
- xvii. That the Procurement Regulator be able to select and appoint the staff of the Office of the Procurement Regulator on a merit basis;
- xviii. That the Procurement Regulator be able to employ alternative dispute resolution and mediation, in the settling of complaints;
- xix. That a mechanism for expeditious treatment of objections to procurement decisions and/or dispute resolution be established as part of the legislation.

The Government's policy position on procurement, in keeping with its commitment in the Manifesto of 2010 and the Medium-Term Policy Framework of 2011 is hereby made available for scrutiny, comment and engagement.

Senator, Dr. the Honourable Bhoendradatt Tewarie
Chairman, Joint Select Committee-
Legislative Proposals on Public Procurement and
on the Repealing and Replacing of the Central Tenders Board Act

Date May 21, 2012

APPENDIX III

MINUTES OF THE PROCEEDINGS OF MEETINGS

**MINUTES OF THE FIRST MEETING OF THE JOINT SELECT COMMITTEE
ESTABLISHED TO CONSIDER AND REPORT ON
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL
TENDERS BOARD ACT
HELD IN LEVEL 2 MEETING ROOM, OFFICE OF THE PARLIAMENT, TOWER D,
THE PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE,
1A WRIGHTSON ROAD, PORT OF SPAIN
ON FRIDAY DECEMBER 2, 2011 AT 11:18 A.M.**

PRESENT

Hon. Wade Mark, MP	Speaker of the House
Dr. Tim Gopeesingh, MP	Member
Mr. Herbert Volney, MP	Member
Mr. Collin Partap, MP	Member
Dr. Keith Rowley, MP	Member
Mr. Anand Ramlogan	Member
Dr. Bhoendradatt Tewarie	Member
Mr. David Abdulah	Member
Mrs. Helen Drayton	Member
Dr. James Armstrong	Member

ABSENT

Mr. Colm Imbert, MP	Member (Excused)
Mr. Prakash Ramadhar, MP	Member (Excused)
Mr. Faris Al-Rawi	Member (Excused)

SECRETARIAT

Mrs. Lily Broomes	Secretary
Ms. Candice Williams	Graduate Research Assistant

INTRODUCTION

1.1 The Speaker of the House called the meeting to order at 11.18 a.m. and welcomed Members present. He explained that his role at the meeting was to facilitate the election of a Chairman.

ELECTION OF CHAIRMAN

- 2.1 The Speaker invited nominations for the post of Chairman.
- 2.2 Dr. Bhoendradatt Tewarie was nominated by Dr. Tim Gopeesingh. This was seconded by
Mr. Anand Ramlogan.
- 2.3 The Speaker inquired whether there were any other nominations. There being no other nominations, Dr. Bhoendradatt Tewarie was declared the duly elected Chairman of the Committee.
- 2.4 The Speaker of the House congratulated the Chairman and wished the entire Committee success in its deliberations. He further emphasized the importance of the Committee and its undertaking and expressed the hope that its business would be managed effectively.
- 2.5 The Speaker then invited Dr. Tewarie to take the chair and excused himself from the Meeting.

DETERMINATION OF QUORUM

- 3.1 The Chairman invited suggestions for a quorum.
- 3.2 After some discussion, the Committee agreed to the composition of the quorum as follows:
- ***Four(4) Members , comprising two (2) Members of the Government, one (1) Member of the Opposition and one (1) Independent Member.***

APOLOGIES

- 4.1 The Chairman extended apologies on behalf of the following members who indicated their inability to attend the meeting:-

- Mr. Prakash Ramadhar;
- Mr. Colm Imbert; and
- Mr. Faris Al-Rawi.

SECRETARIAL SUPPORT

- 5.1 The Chairman informed Members that in accordance with Standing Order 6(7), Mrs. Lily Broomes has been assigned as Secretary to the Committee with Mr. Julien Ogilvie as Assistant Secretary.

- 5.2 The Chairman thanked the Committee and the former chairman for the significant work that was completed.
- 5.3 The Chairman requested the cooperation of the Leader of the Opposition and the Independent Members in assisting the Committee to fulfill its mandate with integrity, excellence and in an expeditious manner.

MANDATE

- 6.1 The Chairman reiterated the Committee's mandate and also sought clarification on item (C) of the mandate "Send for papers, records and other documents" to which the Secretary gave an explanation.
- 6.2 The Committee ascertained that the deadline for reporting to Parliament was **February 23, 2012**.
- 6.3 Much discussion ensued on whether there was need to have a policy position from the government to guide the way forward for the Committee. Issues of decentralized or hybrid models, regulatory framework and adjudication formed part of the discussion. The Committee would continue its work and hope to arrive at a consensus position.
- 6.4 The Chairman indicated that in the interest of transparency, Members needed to have a discussion on the issue of "**declaration of interest**" considering the fact that we are a small society with unknown connections.
- 6.5 The Committee agreed that it would be useful to hold discussions with the Contractor General of Jamaica and in this regard, it was also agreed to invite the Contractor General to meet with the Committee to share their experience.

Requested information

- 7.1 The Secretary was directed to provide the Committee with the following:
- i. **Completed legislation on public procurement recently passed in Finland;**
 - ii. **Documentation on E- procurement systems and how they work;**
 - iii. **Examples of small societies where procurement legislation and E-procurement systems are in use in addition to countries such as the United States and Canada.**

Inter-American Development Bank (IDB) Offer

- 8.1 The Committee was informed that an offer of assistance from the Inter-American Development Bank (IDB) will be placed on the Agenda for discussion at the next meeting. The IDB offer is to be circulated to Members in advance of the next meeting.

NEXT MEETING

- 9.1 After some discussion, the Committee established that meetings will be held every Friday at 11.00 a.m. but the next meeting will however be held on **Monday December 12, 2011 at 1.30 p.m.**

ADJOURNMENT

- 10.1 The Chairman thanked Members for their participation. The meeting was adjourned to **Monday December 12, 2011 at 1.30 p.m.**
- 10.2 The adjournment was taken at 12.03 p.m.

I certify that the Minutes are true and correct.

Dr. Bhoendradatt Tewarie
Chairman

Mrs. Lily Broomes
Secretary

December 05, 2011

**MINUTES OF THE SECOND MEETING OF THE JOINT SELECT COMMITTEE
ESTABLISHED TO CONSIDER AND REPORT ON
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL
TENDERS BOARD ACT
HELD IN THE ARNOLD THOMASOS ROOM (WEST), LEVEL 6, OFFICE OF THE
PARLIAMENT, TOWER D, THE PORT OF SPAIN, IWFC,
1A WRIGHTSON ROAD, PORT OF SPAIN
ON FRIDAY JANUARY 06, 2012 AT 10:20 A.M.**

PRESENT

COMMITTEE MEMBERS

Dr. Bhoendradatt Tewarie	Chairman
Dr. Tim Gopeesingh, MP	Member
Mr. Prakash Ramadhar, MP	Member
Mr. Colm Imbert, MP	Member
Mr. Anand Ramlogan, SC	Member
Mr. David Abdulah	Member
Mrs. Helen Drayton	Member
Dr. James Armstrong	Member

ABSENT

Mr. Herbert Volney, MP	Member (Excused)
Mr. Collin Partap, MP	Member (Excused)
Dr. Keith Rowley, MP	Member (Excused)
Mr. Faris Al-Rawi	Member (Excused)

SECRETARIAT

Mrs. Lily Broomes	Secretary
Mr. Julien Ogilvie	Assistant Secretary
Ms. Sheranne Samuel	Parliamentary Intern

MINISTRY OF THE ATTORNEY GENERAL

Ms. Claire Blake, SC	Senior Legal Consultant
Ms. Joan Furlonge	Legal Adviser to the Honourable Attorney General
Ms. Anne Hussein	Legal Officer

INTRODUCTION

1.1 The Chairman called the meeting to order at 10.20a.m, welcomed Members and extended New Year greetings.

1.2 The Chairman invited the officers from the Office of the Attorney General, the Parliament Secretariat and Hansard Unit to introduce themselves to the Committee.

1.3 The Chairman informed members that the following persons indicated their inability to attend the meeting:

- Mr. Herbert Volney, MP
- Mr. Collin Partap, MP
- Dr. Keith Rowley, MP
- Mr. Faris Al-Rawi

Consideration of Minutes of the First Meeting

2.1 The Chairman directed the attention of Members to the Minutes of the First meeting held on December 02, 2012 and inquired whether Members wished to highlight any errors or omissions.

2.2 Dr. Armstrong objected to the wording of item 6.3 and thought it did not sufficiently represent the course of discussions that transpired. He referred to pages 15 and 16 of the verbatim notes from the First meeting and proposed that the item be appropriately reworded.

2.3 Lengthy decision ensued with various members articulating their position on the matter

2.4 In the end, the committee agreed that the item should be amended by inserting the following:

“...Members expressed the hope that the consensus position arrived at by the committee would be favourably considered by the government in the adoption of its policy”

2.5 The motion for the confirmation of the minutes was moved by Dr. Gopeesingh and was seconded by Mr. Abdulah.

MATTERS ARISING OUT OF THE MINUTES

3.1 Mr. Imbert reverted to the discussions on item 6.3 and reiterated that a Parliamentary Committee cannot dictate or bind the actions of Cabinet or the Executive.

CONSIDERATION OF PROPOSAL FOR ASSISTANCE FROM THE IDB

4.1 The Chairman referred members to a letter dated August 30, 2011 from the Inter-American Development Bank (IDB) offering financial and technical assistance to the Government of the Republic of Trinidad and Tobago in the area of Public Procurement Reform.

4.2 The assistance will come in two phases: pre-legislation and post-legislation.

4.3 The Committee decided that they would consult with the IDB to determine whether their offer of assistance can be carried out expeditiously i.e. within a January 2012 timeframe and also to discuss the pre-legislation and post-legislation process.

CONSIDERATION OF REQUESTED RESEARCH INFORMATION

5.1 Mrs. Blake emphasized the need for the Committee to decide on the model of legislation, be it the prescriptive model or the framework model. There was consensus among Members that the Committee will go the way of framework legislation.

5.2 Mrs. Drayton reiterated the importance of regulations and stated that it would be inappropriate to table a piece of legislation without the regulations.

5.3 Debate ensued on whether the proposed legislation will deal solely with central government or whether it will govern state enterprises as well.

5.4 There was a general consensus that there should be rules and regulations to govern state enterprises and special purpose companies. It was felt that a hybrid model will address this.

5.5 Mr. Imbert stated that standard tender rules should be legislated and questioned the need for a regulator.

5.6 Members expressed an appreciation for the Finnish model.

OTHER BUSINESS

6.1 Dr. Gopeesingh suggested that the Committee examine the Draft Public Procurement and Disposal of Public Property Bill, 2011 prepared by the Ms. Blake and a legal team from the Joint Consultative Council for the Construction Industry (JCC). Mr. Imbert reminded members that the Committee agreed to come up with a legislative framework and not a Bill.

6.2 Mrs. Drayton suggested having a two (2) day workshop to deal with matters of the Committee. Members acknowledged that this may be feasible after the Committee meets with the Contractor General of Jamaica.

6.3 The Committee decided that they will meet with the Contractor General at their next meeting on Monday January 16, 2012, the timeframe of which will be extended to facilitate this.

NEXT MEETING

7.1 After some discussion, the Committee established that the next meeting will be held on **Monday January 16, 2012 at 10.00 a.m.**

ADJOURNMENT

8.1 The Chairman thanked Members for their participation. The meeting was adjourned to **Monday January 16, 2012 at 10.00 a.m.**

8.2 The adjournment was taken at 11.57 a.m.

I certify that the Minutes are true and correct.

Dr. Bhoendradatt Tewarie
Chairman

Mrs. Lily Broomes
Secretary

January 11, 2012

**MINUTES OF THE THIRD MEETING OF THE JOINT SELECT COMMITTEE
ESTABLISHED TO CONSIDER AND REPORT ON
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL
TENDERS BOARD ACT
HELD IN THE ARNOLD THOMASOS ROOM (WEST), LEVEL6, OFFICE OF THE
PARLIAMENT, TOWER D, THE PORT OF SPAIN, IWFC,
1A WRIGHTSON ROAD, PORT OF SPAIN
ON MONDAY JANUARY 16, 2012 AT 10:00 A.M.**

PRESENT

COMMITTEE MEMBERS

Dr. Bhoendradatt Tewarie	Chairman
Dr. Tim Gopeesingh, MP	Member
Mr. Prakash Ramadhar, MP	Member
Mr. Herbert Volney, MP	Member
Mr. Collin Partap, MP	Member
Dr. Keith Rowley, MP	Member
Mr. Colm Imbert, MP	Member
Mr. Anand Ramlogan, SC	Member
Mr. David Abdulah	Member
Mr. Faris Al-Rawi	Member
Mrs. Helen Drayton	Member
Dr. James Armstrong	Member

SECRETARIAT

Mrs. Jacqui Sampson- Meiguel	Clerk of the House
Mrs. Lily Broomes	Secretary
Mr. Julien Ogilvie	Assistant Secretary
Ms. Sheranne Samuel	Parliamentary Intern

MINISTRY OF THE ATTORNEY GENERAL

Ms. Claire Blake, SC	Senior Legal Consultant
Ms. Joan Furlonge	Legal Adviser to the Honourable Attorney General
Ms. Anne Hussein	Legal Officer I

OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Mr. Greg Christie

Contractor General of Jamaica

Mr. Craig Beresford

Senior Director of Monitoring Operations,
Corporate Communications & Special
Projects

Ms. Sashein Wright

The Special Projects Assistant to the
Contractor General, Communications
Officer and Special Investigator.

INTRODUCTION

1.1 The Chairman called the meeting to order at 10.04 a.m. He suggested that the meeting proceed since the Members in attendance constituted a quorum and other members will join as the morning progressed.

Consideration of Minutes of the Second Meeting

2.1 The Chairman directed the attention of Members to the Minutes of the Second meeting held on December 02, 2012. The Committee examined the minutes page by page and found no errors or omissions.

2.2 The Chairman therefore requested that a member move the adoption of the Minutes.

2.3 Mrs. Drayton moved and Senator Abdulah seconded.

MATTERS ARISING OUT OF THE MINUTES

Inter-American Development Bank (IDB)

3.1 Mr. Abdulah inquired whether any feedback from the IDB was received.

3.2 In response, the Chairman advised the Committee that he consulted with the IDB and they agreed in principle that most of the funding would be made available to support the implementation of the legislation.

3.3 In addition, the Chairman indicated that the IDB was willing to provide a technical expert to assist in the preparation of Committee documents for submission to Parliament. He further advised that the funding available for the implementation of the legislation was free and did not have to be repaid.

- 3.4 Mr. Al-Rawi sought clarification on a concern expressed in the minutes with regards to the timeliness of the assistance from the IDB. The Chairman indicated that the Committee will proceed with its business with or without the input of the IDB.

Frame work or prescriptive legislation

- 3.5 Mr. Al-Rawi also queried whether at the last meeting, the Committee determined the type of legislative solution its deliberations will aim to produce, that is, a draft Bill or framework legislation etc.
- 3.6 The Chairman indicated that at the last meeting, the Committee did not agree on the preparation of a draft Bill, rather there was agreement that the Committee's report must contain a solid policy position and a recommended course of action in the form of a Legislative Framework, which will adopt elements of a Hybrid Model.
- 3.7 The Chairman held that if each member would examine the Public Procurement Bill dated April 09, 2011, which was revised by the Joint Consultative Council for the Construction Industry (JCC) in collaboration with Ms. Claire Blake, SC, the Committee will be in a better position.

CONSIDERATION OF APPROACH FOR DISCUSSION WITH THE CONTRACTOR GENERAL

- 4.1 The Chairman advised members that the Contractor General and two of his support officers were available and waiting to meet with the Committee. He further advised that the Contractor General had forwarded some documents for the consideration of the Committee in advance of the meeting.
- 4.2 The Chairman reiterated the approach for the meeting that was discussed on the last occasion the Committee met, which he mentioned as follows:
- A. The Contractor General will make his presentation without any interjections by the Committee;
 - B. Following his presentation, members of the Committee may ask questions and make comments;
 - C. The Committee would engage the officials openly on issues of interest.
- 4.3 Members proffered the following suggestions:
- i. Inquire about the models Jamaica would have examined to arrive at their existing Public Procurement arrangements. Also state the shortcomings of the current legislation;

- ii. The extent to which litigation has impacted the operations of the Office of the Contractor General, in terms of delays, particularly with regards to implementation;
- iii. Whether Jamaica has conducted a review or assessment of its existing procurement legislation and if so, what models were considered;
- iv. Inquire about the operations of the National Contracts Commission (NCC);
- v. Engage on the question of E-procurement;
- vi. Clarification needed on Sector Committees;
- vii. Ascertain whether there are opportunities for abuse of power within the system;
- viii. Clarification needed on the relationship between the Contractor General, the National Contracts Commission and subsector bodies.

4.4 Mr. Imbert drew Members' attention to the Public Sector Procurement Policy of Jamaica (Item 35.1), included in the documents supplied by the Office of the Contractor General of Jamaica:

"It is issued under the authority of the Minister of Finance pursuant to Section 19 B of the Financial Administration and Audit Act and the National Contracts Commission in accordance with the Contractor-General Act 1993".

4.5 He requested a copy of the Financial Administration and Audit Act of Jamaica to which the item refers. He also suggested that the Committee adopts the measure whereby tender rules become legally binding by order of the Minister of Finance.

CONSIDERATION OF MATTERS TO BE DISCUSSED AT THE NEXT MEETING

5.1 The Chairman asked that members avail themselves of the following documents:

- i. Draft Public Procurement and Disposal of Public Property Bill, 2011 (dated April 09, 2011) revised by the JCC and Ms. Claire Blake, SC;
- ii. Legislative Framework on Public Procurement (Inclusive of Explanatory Notes);
- iii. Auditor General's comments on the Legislative Proposals;
- iv. Reservations/ concerns expressed by the last Committee (to be forwarded by Mrs. Blake);
- v. World Bank Proposals – (Chairman indicated that he will make these available).

5.2 Some concern was raised about the reservations of the last Committee in relation to the Procurement and Disposal of Public Property Bill, 2006. Mrs. Blake indicated that they were not recorded in the framework and that she would like to do so in order to produce a revised document. The Chairman requested that the reservations be detailed separately from the existing Legislative Framework.

5.3 The Chairman highlighted the following issues to be considered:

- (a) Whether a regulator or an equivalent to a Contractor General is necessary or not in the case of Trinidad and Tobago and reasons for this;
- (b) The role of the Minister and the Executive. The issue of parliamentary oversight;
- (c) The registration and application process for contractors;
- (d) The question of appeals and the allowance for due process while not hindering the business of production;

5.4 Mrs. Drayton raised the issue of the National Procurement Advisory Council.

5.5 Both Mr. Al-Rawi and Mr. Gopeesingh raised the point of a need for an independent anti-corruption state agency which was an issue coming out of the media releases of the Contractor General of Jamaica. It was noted that the proposed procurement legislation would have implications for this.

REPORT TO PARLIAMENT

6.1 The Chairman suggested that the reality of the procurement process in Trinidad and Tobago as it stands today and the changing global realities and benchmarks that demand an enlightened procurement process be included in the Committee's Report to Parliament.

SUSPENSION

7.1 The Meeting was suspended at 11:22 a.m.

MEETING WITH OFFICIALS FROM THE OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Proceedings Off the record

Further to a request from the Contractor General of Jamaica there was no Audio Recording or Hansard reporting during the period of discussions with the Committee

Discussions following meeting with the Contractor General

8.1 Following the discussions with the Contractor General Members engaged each other on the way forward.

8.2 It was suggested that the next course of action for the Committee is to take a serious and detailed look at the legislative models available and determine what elements of those models should be incorporated in our legislative solution.

8.3 The Chairman suggested that for the committee to achieve meaningful progress each and every member must conduct a detailed examination of the following documents:

- a. Revised Legislative Framework (inclusive of explanatory Note) on Public Procurement prepared by Ms. Claire Blake, SC, Legal Consultant;
- b. Revised Draft Public Procurement and Disposal of Public Property Bill, 2011 (dated April 09, 2011) amended by the JCC and Ms. Claire Blake, SC;
- c. The Auditor General's comments on the Legislative Proposals;
- d. World Bank Proposals (*Chairman indicated that he will make these available*)

NEXT MEETING

9.1 After some discussion, the Committee established that the next meeting will be held on **Monday January 30, 2012 at 9.00 a.m.**

ADJOURNMENT

10.1 The Chairman thanked Members for their participation. The meeting was adjourned to **Monday January 30, 2012 at 9.00 a.m.**

10.2 The adjournment was taken at 3: 33 p.m.

I certify that the Minutes are true and correct.

Dr. Bhoendradatt Tewarie
Chairman

Mrs. Lily Broomes
Secretary

January 23, 2012

**MINUTES OF THE FOURTH MEETING OF THE JOINT SELECT COMMITTEE
ESTABLISHED TO CONSIDER AND REPORT ON
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL
TENDERS BOARD ACT
HELD IN THE ARNOLD THOMASOS ROOM (WEST), LEVEL6, OFFICE OF THE
PARLIAMENT, TOWER D, THE PORT OF SPAIN, IWFC,
1A WRIGHTSON ROAD, PORT OF SPAIN
ON TUESDAY APRIL 17, 2012 AT 9:20 A.M.**

PRESENT

COMMITTEE MEMBERS

Dr. Bhoendradatt Tewarie	Chairman
Dr. Tim Gopeesingh, MP	Member
Mr. Herbert Volney, MP	Member
Mr. Collin Partap, MP	Member
Dr. Keith Rowley, MP	Member
Mr. Colm Imbert, MP	Member
Mr. David Abdulah	Member
Mr. Faris Al-Rawi	Member
Mrs. Helen Drayton	Member
Dr. James Armstrong	Member

ABSENT

Mr. Anand Ramlogan, SC	Member
Mr. Prakash Ramadhar, MP	Member

SECRETARIAT

Mrs. Lily Broomes	Secretary
Mr. Julien Ogilvie	Assistant Secretary
Ms. Sheranne Samuel	Parliamentary Intern

MINISTRY OF THE ATTORNEY GENERAL

Ms. Claire Blake, SC	Senior Legal Consultant
Ms. Anne Hussein	Legal Officer I

OBSERVERS

Mr. Michael Mendez

Deputy Permanent Secretary
Ministry of Finance

Ms. Joan Furlonge

Legal Adviser to the Honourable Attorney
General

THE WORLD BANK

Mr. Joao Veiga Malta

Senior Procurement Specialist

Ms. Fanny Weiner

Public Sector Group, Latin America and
the Caribbean Region

INTRODUCTION

1.1 The Chairman called the meeting to order at 9:20 a.m. and thanked those present for their attendance.

Consideration of Minutes of the Third Meeting

2.1 The Chairman directed the attention of Members to the Minutes of the Third meeting held on January 16, 2012. The Committee examined the minutes page by page and found no errors or omissions.

2.2 The Chairman therefore requested that a member move the confirmation of the Minutes.

2.3 Mr. Abdulah moved and Mr. Partap seconded.

MATTERS ARISING OUT OF THE MINUTES

3.1 No matters were raised.

REVISITING THE QUORUM

4.1 The Chairman directed members' attention to the issue of revising the quorum of the Committee. He referred members to the Standing Order that gave a Joint Select Committee the discretion to determine its quorum.

4.2 The Chairman proposed that the quorum be as follows:

- Any four (4) members of the Committee with at least one member from the House and one Member from the Senate.

4.3 The proposal was seconded by Mr. Partap.

4.4 Mr. Imbert stated his objection to the Chairman's proposal. He contended that the perception he had was that the Committee would seek to arrive at consensus based on its deliberations. He also expressed concern about the tendency for meetings to be convened early in the morning, which he held would inconvenience members who serve on a part-time basis.

4.5 In response, the Chairman reiterated that the rationale for instituting the new requirements for a quorum is to prevent the work of the committee from being stymied by the non-participation of a particular sector of members. He committed to ensure that subsequent meetings are scheduled for dates that are convenient to opposition and independent members.

4.6 Mrs. Drayton inquired of the Chairman, whether the traditional composition of the a Joint Select Committee will remain, that is, a committee with representation from the Government, Opposition and Independent bench.

4.7 The Chairman explained that the initial approach that would have been adopted to resolve the quorum issue was to have the Interim Report of the Committee debated. However, he advised that the debate was preempted when the opposition gave a commitment to continue participating in the committee.

4.8 Mr. Al-Rawi concurred with the observations made by Mr. Imbert.

4.9 At the end of the discussions, the Chairman again proposed that the quorum of the Committee be constituted as follows:

- **Any four members of the Committee with at least one member from the House of Representatives and one Member from the Senate, including the Chairman.**

4.10 The Members present voted as follows:-

- i. five of the seven Members present (excluding the Chairman) voted in favour of the motion: Mr. Volney, Mr. Partap, Mr. Abdulah, Mrs. Drayton and Dr. Armstrong;
- ii. two of the seven Members present (Excluding the Chairman) voted against: Mr. Imbert and Mr. Al-Rawi.

4. 11 In light of the results of the vote, the quorum of the Committee was duly amended as stated at 4.8 above.

ABSENT/EXCUSED

5.1 The Chairman advised that Mr. Anand Ramlogan, SC and Mr. Prakash Ramadhar, were both out of the country and were excused from the meeting.

PRELIMINARY DISCUSSIONS ON PRESENTATION FROM THE WORLD BANK

6.1 The Chairman advised Members that the World Bank had requested a meeting with the Committee to present its position on a modern procurement system. He indicated that as Chairman he believed that in the spirit of openness, the committee should accede to the World Bank's request.

6.2 The Chairman indicated that the officials from the World Bank had agreed to make a 20 minute presentation to be followed by a 30 minute question and answer period.

6.3 Mr. Al-Rawi sought to ascertain the genesis of the input or assistance from the World Bank and also sought clarification about the meaning of '*Fee-based services*.'

6.4 In response, the Chairman indicated as follows:

- i. the Ministry of Finance and to a lesser extent, the Ministry of Planning and the Economy have engaged the IDB and the World Bank. The Minister of Finance wrote to the Chairman of the Committee advising that the World Bank was desirous of meeting with the 'Procurement Committee' to share the organisation's views on modern best practice in procurement and on matters leading up to procurement legislation;
- ii. It may be possible to acquire the assistance of the World Bank in drafting procurement legislation. However, the Government has already committed to the IDB's offer of a US\$300, 000 assistance grant;
- iii. The IDB's assistance will be used mainly during the implementation and operationalization of the provisions of the new procurement legislation;

6.5 Mr. Imbert and Mrs. Drayton expressed their dissatisfaction with the contents of the draft submission from the World Bank (circulated prior to the meeting).

6.6 In response, the Chairman suggested that the Committee proceed to meet with the World Bank officials and members can state their positions then.

MEETING WITH OFFICIALS FROM THE WORLD BANK

[Officials from the World Bank enter the meeting room]

Introductory remarks

7.1 The Chairman welcomed **Mr. Joao Veiga Malta, Senior Procurement Specialist** and **Ms. Fanny Weiner, Public Sector Group, Latin America and the Caribbean Region** and thank them for attending.

7.2 The Chairman also took the opportunity to indicate that Mr. Michael Mendez, Deputy Permanent Secretary in the Ministry of Finance and Ms. Joan Furlonge, Legal Adviser to the Honourable Attorney General, were present as observers.

Presentation by Mr. Joao Veiga Malta, Senior Procurement Specialist, World Bank

8.1 Before the commencement of his presentation Mr. Malta expressed appreciation to the committee for acceding to the World Bank's request to meet with the Committee.

8.2 **See attached as Appendix I**, the Presentation of Mr. Joao Veiga Malta, Senior Procurement Specialist, World Bank.

QUESTION AND ANSWER PERIOD

9.1 The following is a synopsis of the questions posed by members and the responses provided by Mr. Malta:

a. How can the Trinidadian Model be improved in the short to medium term vis-à-vis framework arrangements or complex transactions with Government?

- A detailed plan for reforming the system has to be created.
- Standardization of the activities of Government.
- The removal or reductions in the amount of discretion public officials have in the purchasing process and the introduction of policies that standardize what government buys.
- The training and development of a cadre of accredited staff to deal with procurement procedures i.e. Building a competency-based System.
- Overriding all of this is the requirement for a National Policy on procurement and a legislative framework that addresses this national policy.

b. Whether a Risk-based Framework should be integrated into the governing authority and also into the body of primary legislation?

- The risk approach needs to be applied throughout agencies, so that the agencies will be assigned with the right competencies.
- c. How must principles and standards be applied in the context of individual procurement agreements?**
- The Rules and Principles must be applied simultaneously to produce the most cost-efficient and beneficial outcome.
- d. Where/when should the principles and rules be applied in relation to the regulations that govern the procurement legislation?**
- One ought to ensure that the underpinning principles are instituted first, followed by rules and regulations. The basic principles that must be included in any system/model are; value for money, efficiency and transparency.
 - The World Bank reviewed the procurement systems of several countries and found that those countries with a highly regulated system were ranked as more corrupt than those with fewer regulations by Transparency International.
 - A holistic and flexible system must be adopted. The World Bank has found that in this region on average, 50% of public expenditure procurement is done outside the legal framework for procurement.
- e. Based on your knowledge of procurement models and statutory frameworks found in different countries, can you identify three models that can be the foundation for a statutory framework for Trinidad and Tobago?**
- There are many models but the ones which work are jurisdiction specific. However, what most of them have in common is that they include the pillars which form a modern system i.e. transparency, technology, professionalism and a governance framework.
 - Singapore, New Zealand, UK, Denmark and Finland are interesting examples to examine.
 - Every country has specific conditions and circumstances that require them to modify their procurement system as these conditions change.

f. How do you avoid a few large and well-resourced suppliers from dominating the market?

- By establishing a tier system where suppliers are ranked according to their capacity/ volume or size. This is required to avoid the monopolization of the system by large entities and also avoid smaller suppliers from bidding for contracts they may be unable to fulfill.
- Mechanisms must be implemented to prevent market distortion.
- Market analysis must be conducted before introducing a framework agreement.

g. How does a government balance the drive to attain more output with ensuring that processes are done in accordance with the rules and regulations?

- Regardless of the organizational models government chooses to adopt in the implementation of its policies (e.g. Special purpose companies), all involved in the system must be accountable and bound by common rules.

h. When does government policy on procurement apply in the system/market?

- First the objectives and guiding rules of the system must be established.
- A policy may target a specific group of suppliers based on a particular requirement e.g. geographic location or size.

i. How do you sustain what already exist and create opportunities for new growth, expansion and diversity in the system?

- A Government must consider whether its policy promotes and facilitates capital development, innovation etc.
- It comes down to having a procurement policy that incorporates the requirements for National Development.

- Innovation is a prerequisite for competitiveness. Therefore, those in the system who are inefficient will need to reinvent themselves in order to compete in the market.

9.2 After issues emanating from Mr. Malta's presentation were addressed, inquiries were made about the scope of the World Bank's assistance.

9.3 In response, Mr. Malta informed the Committee as follows:

- The scope of the requirement was initially to do a review of the existing procurement arrangements and to make recommendations for a new procurement system. Since this arrangement for assistance is fee-based, the scope is therefore flexible and based on the demands of the Government.
- This assistance programme began in May, 2011. During the initial phase, the Bank held discussions with Government officials and members of the private sector.

9.4 The Chairman indicated that as far as his Chairmanship of the meeting was concern, the meeting in question was his first involvement with the World Bank.

9.5 He reiterated that the World Bank was primarily engaged with the Ministry of Finance under whose remit Public Procurement falls. The Chairman explained that the Minister of Finance wanted the Committee to benefit from whatever his Ministry was pursuing in the area of public procurement, so as to avoid the Ministry impinging on the work of the committee.

[The Officials from the World Bank exited the room]

FORMULATING A POLICY POSITION

10.1 Following the discussions with the officials from the World Bank, the Chairman directed members' attention to the issue of the formulation of a policy position.

10.2 The Chairman committed to provide members with a document stating the Government's policy position on Public Procurement, at least five clear days before the next meeting.

NEXT MEETING

11.1 After some discussion, the Committee established that the next meeting will be held on **Wednesday May 09, 2012 at 9.00 a.m.** The Committee acknowledged that its next meeting may endure for the entire day.

ADJOURNMENT

12.1 The Chairman thanked Members for their participation. The meeting was adjourned to **Wednesday May 09, 2012 at 9.00 a.m.**

12.2 The adjournment was taken at 12: 01 p.m.

I certify that the Minutes are true and correct.

Dr. Bhoendradatt Tewarie
Chairman

Mrs. Lily Broomes
Secretary

April 24, 2012

UNCONFIRMED
MINUTES OF THE FIFTH MEETING OF THE JOINT SELECT COMMITTEE
ESTABLISHED TO CONSIDER AND REPORT ON
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL
TENDERS BOARD ACT
HELD IN THE ARNOLD THOMASOS ROOM (EAST), LEVEL 6, OFFICE OF THE
PARLIAMENT, TOWER D, THE PORT OF SPAIN, IWFC,
1A WRIGHTSON ROAD, PORT OF SPAIN
ON MONDAY MAY, 28 2012 AT 9:00 A.M.

PRESENT

COMMITTEE MEMBERS

Dr. Bhoendradatt Tewarie	Chairman
Mr. Anand Ramlogan, SC	Member
Dr. Tim Gopeesingh, MP	Member
Mr. Prakash Ramadhar, MP	Member
Mr. Herbert Volney, MP	Member
Mr. Colm Imbert, MP	Member
Mr. David Abdulah	Member
Mr. Faris Al-Rawi	Member
Mrs. Helen Drayton	Member

ABSENT/EXCUSED

Mr. Collin Partap, MP	Member
Dr. Keith Rowley, MP	Member
Dr. James Armstrong	Member

SECRETARIAT

Mrs. Lily Broomes	Secretary
Mr. Julien Ogilvie	Assistant Secretary

MINISTRY OF THE ATTORNEY GENERAL

Ms. Claire Blake, SC	Senior Legal Consultant
Ms. Anne Hussein	Legal Officer I

INTRODUCTION

1.1 The Chairman called the meeting to order at 9:28 a.m. and thanked those present for their attendance.

Consideration of Minutes of the Fourth Meeting

2.1 The Chairman directed the attention of Members to the Minutes of the Fourth Meeting held on April 17, 2012. The Committee examined the Minutes page by page. The following amendments were made:

- i. **Page 3- in line 3 of item 4.5, insert the words “, notwithstanding the change in quorum requirements” after the word “that”;**
- ii. **Page 5- item 6.5 was amended to read as follows:**

Mr. Imbert expressed his dissatisfaction with the contents of the draft submission from the World Bank (circulated prior to the meeting). Mrs. Drayton expressed concern about the World Bank making a presentation at this late stage.

2.2 There being no further amendments to the Minutes, the Chairman requested that a Member move the confirmation of the Minutes.

2.3 Mrs. Drayton moved and the Chairman seconded.

MATTERS ARISING OUT OF THE MINUTES

3.1 No matters were raised.

CONSIDERATION OF GOVERNMENT'S POLICY POSITION FOR INFORMING THE LEGISLATIVE REFORM OF PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY

4.1 The Chairman directed Members' attention to the Government's policy document on Public Procurement Reform that he committed to provide at the conclusion of the fourth meeting. He highlighted the fact that the document was forwarded to Members approximately seven days before the actual meeting day, which was in keeping with his commitment.

4.2 The Chairman indicated that the document outlined Government's policies on procurement and the principles that would inform them.

4.3 The Chairman drew Members' attention specifically to items 5, 6, 7, 8 and 11 of the document. It was agreed that it will be a more beneficial if the Committee considered the document page by page and make amendment where necessary.

4.4 Clarification was sought on whether the purpose of the meeting was to achieve consensus on the Government's policy proposals or on the work the Committee has done for the past 14 months.

4.5 In response, the Chairman stated that it would be difficult to achieve consensus on what the Committee did in the past, since the Members of the Opposition have vehemently rejected the previous approach and requested that the government produce its policy position on public procurement. He further advised that the policy document before the Committee took into account the five or six points on which consensus was reached by the Committee.

4.6 Lengthy discussions ensued as the Committee paid particular attention to item 11 of the document. The following are the key points and suggested amendments that emanated from the deliberations:

- i. The inclusion of the words **"fairness and equity"** in sub item **(vi)**;
- ii. The inclusion of the word **"adherence to local labour laws and standards"** in sub item **(ix)**;
- iii. That the Procurement regulator should report to Parliament more frequently than once per year;
- iv. There was some discussion as to whether reports on matters which the Procurement Regulator judged to be requiring further investigation should be referred to the Minister of Finance and it was subsequently agreed that referral should be made to the Minister of Finance and the Public Accounts Committee of Parliament simultaneously;
- v. **New sub item (xvi)**- that the deadline for the submission of Annuals Reports of the Procurement Regulator to Parliament will be ninety (90) days following the end of the reporting year. The audited financial statements of the Office of the Procurement Regulator to be submitted within that same timeframe. Special investigation reports are to be submitted within thirty (30) days of the initiation of an investigation to the Minister of Finance as well as to the Public Accounts Committee;

- vi. The possibility that a separate committee with the responsibility of scrutinizing reports of the Procurement Regulator and to exercise general oversight of the public procurement system being established was discussed;
- vii. Despite the foregoing suggestion for a separate committee, it was proposed that the remit of the Public Accounts Committee be modified via a possible amendment to the law governing the Public Accounts Committee, to facilitate its expanded scope to consider reports of the Regulator. The enhancement of the construct and resources available to the PAC were considered as essential requirements for the Committee to effectively achieve its expanded mandate;
- viii. That standards and requirements should be established for reports that are to be submitted to Parliament. It was posited that this will ensure that the committee scrutinizing the reports will have adequate information to make informed determinations and conclusions;
- ix. The Committee was assured by the Attorney General that in drafting procurement legislation he would ensure that the remit and the jurisdiction of the Committee with respect to this particular function is widely drafted so as to capture, not just the accounts or the report, but to allow for a panoramic overview that would allow the Parliamentary Committee to look at the management and the operations itself;
- x. **Sub item (xvii)-** that the Regulator should be appointed by the President following consultation with the Prime Minister and the Leader of the Opposition;
- xi. **New sub item (xx)-** a mechanism for expeditious treatment of objections to procurement decisions and/or dispute resolution. In addition, an approved list of adjudicators will be compiled to support the function of resolution of disputes. Disputes are to be resolved within a 30 day timeline from the date of referral;

4.7 After considering and amending the policy document, the Chairman sought the concurrence of Members on the way forward.

4.8 It was agreed that the Chairman should circulate to members a revised policy document highlighting the amendments made by the Committee for their scrutiny and comfort. The Chairman would then prepare a Draft Report for submission to Parliament based on the consensus achieved.

NB: The amendments made to Item 11 of the policy document are reflected fully at Appendix I.

OTHER BUSINESS

5.1 The Chairman sought and received the agreement of Members not to proceed with the other items on the Agenda.

5.2 In response to whether the Committee had considered any submissions from the private sector. The Chairman advised that recent submissions from the Private Sector/Civil Society Group as well as the Ministry of Labour, were considered in the process of drafting the policy document.

ADJOURNMENT

6.1 The Chairman thanked Members for their participation and for their contribution to arriving at a consensus document. The meeting was adjourned to **a date to be fixed.**

6.2 The adjournment was taken at 12: 11 p.m.

I certify that the Minutes are true and correct.

Dr. Bhoendradatt Tewarie
Chairman

Mrs. Lily Broomes
Secretary

June 01, 2012

APPENDIX IV

ATTENDANCE
RECORD
OF
MEMBERS OF THE
COMMITTEE

Attendance Record
Joint Select Committee on Legislative Proposals for Public Procurement
Second Session (2011/2012)

	MEMBERS	1st Meeting 02.12.2011	2nd Meeting 06.01.2012	3rd Meeting 17.01.2012	4th Meeting 17.04.2012	5th Meeting 28.05.2012
1.	Dr. Bhoendradatt Tewarie	√	√	√	√	√
2.	Dr. Tim Gopeesingh	√	√	√	√	√
3.	Mr. Prakash Ramadhar	Abs/exc	√	√	Abs/exc	√
4.	Mr. Herbert Volney	√	Abs/exc	√	√	√
5.	Mr. Collin Partap	√	Abs/exc	√	√	Abs/exc
6.	Dr. Keith Rowley	√	Abs/exc	√	√	Abs/exc
7.	Mr. Colm Imbert	Abs/exc	√	√	√	√
8.	Mr. Anand Ramlogan, SC	√	√	√	Abs/exc	√
9.	Mr. David Abdulah	√	√	√	√	√
10.	Mr. Faris Al-Rawi	Abs/exc	Abs/exc	√	√	√
11.	Mrs. Helen Drayton	√	√	√	√	√
12.	Dr. James Armstrong	√	√	√	√	Abs/exc