

27th January 2014

Public procurement pressure

The complete overhaul of our country's public procurement system is urgently required, given the daily reports of large-scale theft and waste of public money.

The last administration lost public confidence due largely to the high levels of corruption, as revealed in the [Uff Enquiry](#) into the Public Sector Construction Industry.

The JCC met in April 2010 with the leadership of the People's Partnership at its request and with the media in attendance.

At that meeting, the People's Partnership made three significant promises:

1. Implementation of the recommendations of the Uff Report – This was the first item at the first post-Cabinet press briefing on July 1, 2010, with the Justice Ministry being tasked to implement those critical recommendations. That promise has been broken.
2. Tabling of legislative proposals for public procurement within one month of an electoral victory. Then Finance Minister Winston Dookeran did lay two draft bills — a 1997 draft to repeal the Central Tenders Board Act and a 2006 draft Public Procurement Bill — so that promise was fulfilled.
3. Creation of new laws for Public Procurement & the Disposal of Public Property within one year of an electoral victory. Despite the statements at pg 18 of the [People's Partnership Manifesto](#), the appointment of a Joint Select Committee (JSC) and many public pronouncements, that has not happened.

The Private Sector/Civil Society group which is campaigning for this critical public policy reform is comprised of:

- Joint Consultative Council for the Construction Industry (JCC)
- Trinidad & Tobago Chamber of Industry & Commerce (The Chamber)
- Trinidad & Tobago Manufacturers' Association (TTMA)
- Trinidad & Tobago Transparency Institute (TTTI)
- American Chamber of Commerce (AmCham)
- Federation of Independent Trade Unions & NGOs (FITUN)
- Local Content Chamber

The PSCS group submitted its [own Draft Bill](#) to the JSC in December 2010 — it was also published on JCC's website. Our draft was derived from the two draft bills tabled by Dookeran: it also conforms to the proposals in the 2005 White Paper, the learning in the Uff Report and international best-practice. At no point has there been any public criticism or response from the administration. No doubt the JSC procedure was intended to cover that requirement.

The Prime Minister stated, at the close of the Budget Debate on 10th October 2012 — at pg 237

of [Hansard](#)

...Mr Speaker, we propose to send before the Legislative Review Committee, the report of the joint select committee and, in addition, this document. This document has been prepared by the Joint Consultative Council for the construction industry; the Trinidad and Tobago Transparency Institute; the Trinidad and Tobago Chamber of Industry and Commerce, and the Trinidad and Tobago Manufacturers Association. This document is a draft Bill, 2012 –“Draft Public Procurement and Disposal of Public Property Bill, 2012”, which will be sent to the LRC for consideration for the laying of a Bill in Parliament for procurement...

The government is now advancing its own draft Public Procurement Bill as the preferred alternative to our group’s submission. The government bill is being presented as the outcome of the JSC process, which is a misleading spin being put on this matter of utmost public importance.

The Minister of Planning & Sustainable Development, Dr Bhoendradatt Tewarie, was also the chairman of the JSC when it presented its report to Parliament. Tewarie’s [letter of October 28, 2013](#) to the PSCS group states -

...All submissions, written and oral, from interested parties would have been taken into account by the Joint Select Committee in arriving at its consensus and this includes submissions from the Private Sector/Civil Society group. The recommendations of that Joint Select Committee were unanimously accepted by Parliament after full debate...

Given that the PNM abstained from voting at both the JSC and in subsequent Parliamentary debate, Tewarie’s claims for “consensus” and “unanimous acceptance” are false.

The PNM withdrew the [2005 Public Procurement White Paper](#) as public policy in 2006, so there is no formal statement as to PNM’s policy on these issues.

The government’s draft bill is inflexible and inadequate to deal with the severe challenges of controlling the widespread public procurement corruption and waste now rampant in our country. A new law which is inadequate will only worsen this very serious situation by raising expectations, yet doing little, if anything, to stop the rot.

The PSCS group's [November 25, 2013 letter to Tewarie](#) restated our position on the five indispensable elements of an effective Public Procurement system:

1. use of public money as the cornerstone of any public procurement process;
2. definition of procuring agency encapsulating any organisations responsible for transactions in public money;
3. Effective independence for both Regulator and grievance resolution;
4. Value for money linked to performance/efficient use of Public Money; and
5. Embedded participation of civil society to maintain the integrity of the procurement system.

EASY COMPARISON

ELEMENT	DEFINITIONS	PSCS DRAFT	GOVT DRAFT
Public Money	Public Money is monies due to or payable by the State or its Agencies, including any monies for which the State is ultimately liable.	Modern definition, linked to provisions which protect the public interest.	Only the definition is included, but since there is no reference to any other provisions, <i>the concept of Public Money has effectively been excluded.</i>
Transactions in Public Money	'Transactions' is an essential concept to cover <u>all</u> the various ways Public Money can be involved – this includes Government to Government arrangements; State Enterprises; disposals of public property including licences, concessions and real estate; BOLT; PPP and so on.	Modern definition, linked to provisions which protect the public interest.	'Transactions' are omitted, leaving the larger transactions outside the control of the proposed system.
Effective Independence of Regulator and Grievance procedure	This element is essential to avoid the interference of politicians. To ensure non-interference, the Regulator is only accountable to Parliament.	Procurement Regulator funded via Consolidated Fund and appointed by the President.	Regulations to be approved by Minister of Finance.
Value for Money	To avoid waste of Public Money	Value for Money checks are an integral part of the proposed Procurement Guidelines.	No specific provisions to achieve Value for Money.
Civil Society participation	It is commonly accepted that for good governance, Civil Society involvement is a defining feature of successful Public Procurement systems.	National Procurement Advisory Council comprising Professional groups, Trade Unions, Business Service Organisations and Civil Society to monitor the effectiveness of the system.	No proposals for Civil Society participation.

On a matter of this utmost public importance, any government must publish its draft Bill for public consultation. Public procurement reform is far too important to our nation's development for the usual secrecy and dishonesty to prevail.

We don't want another Section 34