

**GOVERNANCE ISSUES  
IN STATE OWNED ENTERPRISES**

A Presentation by

**SENATOR THE HONOURABLE MARIANO BROWNE  
MINISTER IN THE MINISTRY OF FINANCE**

at the

**The Caribbean Public Procurement Law and Practice Conference (CPPC)**

**Wednesday 19<sup>th</sup> to Thursday March 20<sup>th</sup>, 2008**

**Hyatt Regency Hotel**

## **SALUTATIONS**

Mr. Chairman

Members of the Head Table

Conference Organizers and Presenters

Other Distinguished Guests

Conference Participants

Members of the Media

Ladies and Gentlemen

A pleasant good morning! It is with great pleasure that I address this distinguished gathering of Procurement Professionals at this conference and launch of the Caribbean Association of Procurement Professionals (CAPP).

## **INTRODUCTION**

The Government of Trinidad and Tobago acknowledges that effective procurement practices are an essential prerequisite for the implementation of the various projects designed to ensure that Trinidad and Tobago attains developed country status by the year 2020.

The State is the primary purchaser of goods and services in Trinidad and Tobago. Therefore, the State has to ensure that public procurement systems generate value for money for all stakeholders.

As the Honourable Minister of Finance, Karen Nunez-Tesheira indicated yesterday, Government's strategies, for the sector will focus on reducing the opportunities for corruption and abuse of power, include strengthening the

management system, strengthening the Local Government system and most importantly, reforming the procurement system for goods and services in the public sector, including the State Enterprises.

Government's developmental needs have changed, and in order for Trinidad and Tobago to keep pace with the realities of globalization there is a need for transformation of the rules and regulations which govern the present procurement regime.

Public procurement has a tremendous impact on the economic, social, political and legal environment.

### **THE CENTRAL TENDERS BOARD ORDINANCE (1961)**

The legal and regulatory framework for public procurement in Trinidad and Tobago is based primarily on the Central Tenders' Board Ordinance, 1961. Subsequent amendments

to this framework have sought, with success, to meet the challenges of a rapidly evolving national, international and technological environment.

## **POLICY EVOLUTION**

As you are aware the constant evolution of State Policy has driven reform of the procurement regime. The policy objectives of the government in the sixties were informed by the principles of transparency, accountability and efficiency. Since then, the demands for increased public sector spending, the availability of funds, the source of funding and deficiencies in the legislative framework have combined to force dramatic changes in policy and the legislative framework.

In response, the Procurement Policy of the government has reflected a piecemeal attempt to reform that has led to the proliferation of parallel procuring agencies in the stated

attempt to improve efficiency in delivery. This has weakened the original mandate of the Central tenders Board (CTB) established by the CTB Ordinance as the sole agency responsible for Central Government procurement.

## **THE NEED FOR REFORM**

It has thus become increasingly evident that if public procurement is to be carried out in such a manner as to be efficient, strengthen the local economy, build public confidence in the institutions involved in the procurement process, improve the quality of governance and promote the public interest, then a new framework supporting the best procurement practice is required.

It is also apparent that there are several deficiencies in the present framework. Not surprisingly, the existing procurement legislation is considered archaic by all stakeholders. This problem is compounded by the fact that

the CTB Ordinance was compromised by prescribing the CTB as the procuring agency of the State, while at the same time limiting its activities mainly to the tendering and award stages.

For example, the CTB has no direct involvement in the design of the Terms of Reference (TOR), nor the preparation of Requests For Proposal (RFPs), nor the monitoring or the execution of the contract. Further, after the award of a contract, all matters that are dealt with fall within the domain of contract law to which the CTB cannot be a party.

Therefore some contractors, suppliers and consultants share the view that there are too many stages in the procurement process. They argue that the resultant delays affect tender prices and more often than not justify price increases since the validity period of three months expires before a contract is awarded.

Because of concerns that the procurement procedures are outdated, different forms of project delivery systems such as Design Finance Construct (DFC), Build Own Lease Transfer (BOLT) and Build Own Operate Transfer (BOOT) are used to shorten the procurement cycle. The Ordinance does not apply to tendering on financial matters and as a result does not accommodate these systems. These limitations effectively put the procurement activity of these projects outside the ambit of the CTB.

## **STATE ENTERPRISES**

It is also significant to note that the establishment of the Special Purpose State Enterprises to speed up the implementation of projects has led to the increasing use of the sole selective tendering process as the preferred

choice for ensuring that projects are completed within the specified deadlines.

The criteria and procedures adopted by the Special Purpose State Enterprises in awarding contracts are in accordance with the Ministry of Finance, Investments Division's Standard Procurement Procedures for the Acquisition of Goods, Works and Services and for the Disposal of Unserviceable Items in a State Enterprise/Statutory Authority (State Agencies). Some of the Special Purpose State Enterprises have developed their own procurement procedures which have been approved by the Ministry of Finance. The overall authority in the acquisition of goods, works and services reside with the Board of Directors.

In an effort to improve the management of public funds especially as it relates to the procurement process within

State Agencies, Government in 2002 established the Central Audit Committee, in the Ministry of Finance, to evaluate and analyse the procedures and practices relating to the procurement of goods and services.

## **PROCUREMENT POLICIES FOR STATE ENTERPRISES**

State Agencies, in procuring goods and services must obtain prior approval of the Minister of Finance before awarding contracts above the sum of \$5-Mn or such other sum to be determined. State Enterprises spend over 30 billion annually in acquiring goods and services. Procurement policies for State Enterprises are outlined in the document “Standard Procurement Procedures for the acquisition of goods and services” produced by the Ministry of Finance.

In respect of such contracts, State Agencies are required to provide the Minister of Finance with details of the following:-

- The form of invitation to tender, whether open or selective
- The nature and specifications of the contract
- The duration of the contract
- The names of all tenderers and their respective bids
- The name of the recommended tenderer.

In the case of contracts of less than \$5-Mn or such other determined amount, State Agencies are required to submit to the Minister of Finance the following information for review:-

- The form of invitation to tender, whether open or selective
- The names of all tenderers and their respective bids

- The name of the successful tenderer or contractor
- The value and duration of the proposed contract
- The rationale for the selection of the successful contractor

It should be emphasized here that in instances where a contractor is already onsite or expertise is limited due to the specialized nature of the profit companies may engage in sole selective tendering. Companies such as UDeCOTT have used this process. UDeCOTT procured 3.6 billion in goods and services between September 2003 and September 2007.

The Ministry of Finance also provides a working guideline or code of conduct for State Enterprises, including tendering through its ***Performance Monitoring Manual*** which outlines the relationship that should prevail between the Shareholder,

the directors and management of the Enterprises ensuring good Corporate Governance. Documents such as strategic plans, cash flow statements etc. are reviewed to ensure that specified performance criteria are met.

## **PROCUREMENT REFORM**

Cabinet has already accepted the White Paper on the Reform of the Public Sector Procurement Regime as official policy. The proposals in the White Paper included the appointment of a Procurement Reform Committee to oversee and manage the implementation of the proposed recommendations for reform of the regime. The preferred model is the Principle Model which will be adapted to the local institutional environment. Based on this model the emphasis will be upon:

- Value for money
- Transparency in the procurement process and

- Accountability

The underlying philosophy of the Principle Model is that once a body is spending public money it has an obligation to ensure effective accountability and utilization of the goods and services which has purchased. Therefore, it has to ensure that it is obtaining value for money.

Accordingly, the White Paper proposes the following actions:

- i. Introduction of a fully decentralised, flexible and transparent procurement system
- ii. Introduction of a complaints mechanism to accommodate complaints.
- iii. Review of all procurement projects, including the disposal of public property above a specific threshold value

- iv. Promotion of the use of pre-contract audits which act as a check and balance on the procurement process, reinforce the integrity of the process and facilitate greater transparency and efficiencies in procurement.
- v. Repeal of the Central Tenders Board Ordinance with its subsidiary legislation.
- vi. Development and introduction of the new Legislation that will provide a legal and regulatory framework that is applicable to all procuring activities using public money, in contrast to the current environment of parallel procuring systems. The new legislation will accommodate the current tendering processes of State-Owned Enterprises while placing them firmly within an overarching legal and regulatory framework.

- vii. Establishment of the Office of Procurement Administrator and the Procurement Regulatory Agency as a Statutory Authority.
- viii. Establishment of a National Procurement Advisory Council to support the operations of the Procurement Administrator and the Procurement Regulatory Agency.
- ix. Establishment of Procurement Units in all State Agencies, including Line Ministries.
- x. Development of a cadre of procurement professionals.
- xi. Provision of training to procurement officers.
- xii. Introduction of appropriate IT infrastructure and systems to support the Procurement Administrator's reporting requirements and communication with the Public.

- xiii. Establishment of a Procurement Website and National Database for viewing of information on tenders.

Accordingly, an implementation plan which was originally scheduled for completion by June 2007 has been rescheduled to a date to be determined. Nonetheless, considerable work has been completed on several of the prerequisites for the introduction of the new Public Sector Procurement Regime.

These are:-

***Exercises completed to date:-***

- (i) *Production of a White Paper titled “Reform of the Public Sector Procurement Regime – A White Paper” which was laid in Parliament on 26<sup>th</sup> September, 2005.*

*(ii) Development of the Organizational Structure for Procurement Units in Line Ministries*

Following upon meetings held with Permanent Secretaries and other representatives of line Ministries and other Agencies with a view to determining an agreed organizational structure and staffing requirements for each Ministry and Agency, a procurement unit structure was developed for each Ministry and Agency to facilitate the procurement needs of each organization. The proposed Unit structures and staffing requirements are currently before the Cabinet for its consideration and approval.

*(iii) Development of Job Functions and Compensation Packages for the various Positions in the Procurement Units. Draft Job Specifications have*

been developed for the Procurement Units in line Ministries and Agencies and are currently before the Cabinet.

Draft Compensation Packages have also been developed and are currently before the CPO for consideration and approval.

- (iv) *Training of personnel to staff the Procurement Units.* Level one (1) training titled “*Fundamentals of Public Procurement*” has been completed. Approximately three hundred participants have benefited from this training, with requests for additional training to be conducted. The prospectus for Level 11 and Level 111 Training has been completed and is available for review.

- (v) *Sourcing of a Procurement Regulator*

The position of Procurement Regulator had been advertised in the both the local and foreign media. A total of thirty applications were received and two applicants were shortlisted. The selection process has been completed and a prospective candidate identified.

- (v) *Establishment of the Procurement Regulatory Agency.* A Draft Organizational Structure has been developed and the requisite job descriptions for each position completed. The draft Organizational Structure has been referred by the Cabinet to the Public Management Consulting Division of the Ministry of Public Administration and Information for that Ministry's comments.

- (vii) *Development of the Procurement Website*

A Draft Proposal for the development of an integrated database and website to facilitate the activities of the Procurement Regulatory Agency and the new Procurement Regime has been completed.

(viii) *Development of the Legal and Regulatory Framework for the new Procurement Regime:*

Draft Legislation to support the new Public Sector Procurement Regime has been completed by the Project Unit, Ministry of Finance, and is awaiting approval of the Cabinet.

## **e-AUCTIONS**

The introduction of electronic auction or e-auction will supplement these initiatives to reform the present system. E-Auctions create an audit trail and promote competition among suppliers resulting in substantial savings of up to

30% on supplies. Government is committed to expanding the use of e-auctions in the State Enterprise Sector.

Accordingly, in October 2007 the government established the Task Force for the implementation of e-Auction, which comprises representatives of the Ministry of Finance and procurement specialists from Petrotrin, WASA and Phoenix Park Gas Processors. This team of dedicated professionals has been working closely with fourteen State Enterprises in the first phase of the exercise to encourage all State companies to adopt e-auction.

## **CONCLUSION**

Government will continue to reform the procurement regime in order to ensure transparency, accountability, the highest level of efficiency and effectiveness, equity and adherence to the rule of law.

In so doing government will also seek to ensure that at least 10% of all procurement is reserved for domestic suppliers. It should be noted that state enterprises procure a total of \$30 billion in goods and services annually; thereby generating considerable employment and business development in the local economy.

As mentioned by the Minister of Finance in her presentation yesterday, Government is committed to ongoing dialogue with stakeholders in order to promote procurement reform.

Ladies and Gentlemen, thank you!