



Government of the Republic of Trinidad and Tobago

**Statement by the Hon. Colm Imbert, MP, Minister of Finance**

**in the House of Representatives on February 22<sup>nd</sup>, 2019**

**on the Implementation of**

**the Public Procurement and Disposal of Public Property Act, 2015**

Madam Speaker, I am authorized by the Cabinet to make this statement. Members of this House may recall that on February 1<sup>st</sup>, 2019, by way of a brief Statement, I informed this House, and the general public, on the ongoing efforts towards implementation of the Public Procurement and Disposal of Public Property Act (Act No. 1 of 2015). That Statement became necessary in light of a number of misleading, mischievous and uniformed statements made in the public domain that required correction.

At that time I indicated that Draft Procurement Regulations, to be made under Section 63 of the Act, were received at my office on November 30<sup>th</sup> 2018 and that those Draft Regulations had been reviewed internally by the Ministry of Finance and were also sent to external Senior

Counsel for their review and comments in order to ensure that the Regulations are intra vires the Act.

Madam Speaker, permit me this afternoon to provide a brief status update on those implementation efforts. Several Divisions of the Ministry of Finance, including the Central Tenders Board as the statutory body currently responsible for government procurement, undertook a comprehensive review of the Draft Procurement Regulations from both a technical and legal view point. That review highlighted several areas for amendment, clarification and elucidation aimed at greater workability and certainty of process. In particular, it was noted that the Regulations required more specific and focused provisions related to disposal of public property, an often overlooked area of public financial management that, left unchecked, can greatly contribute to wastage of public money.

It was also noted that the Regulations were silent on a critical aspect of the Act set out in its long title, namely the retention of public property. The Ministry of Finance therefore raised for consideration the inclusion of provisions that would mandate procuring entities to effectively maintain assets that were procured using public monies and setting minimum standards for such maintenance.

Written comments detailing all the aspects of the Regulations that require review have been prepared by the Ministry of Finance were

forwarded earlier today by my office to the Office of Procurement Regulation for consideration.

Madam Speaker, the Ministry of Finance is also in receipt of advice from external Senior Counsel dated February 11<sup>th</sup>, 2019 and February 15<sup>th</sup>, 2019 respectively. The advice received indicates that while the provisions of the Draft Regulations are for the most part intra vires, that is to say within the legal authority of, or powers created by, the Act, there are certain provisions that have been found to be ultra vires, that is to say beyond the legal authority and powers of the Act, and which require further review. Such provisions included instances where the scope of the Regulations extended beyond the confines of the Act resulting in an impermissible enlargement or addition to the Act. Conversely, there were instances where the Regulations purported to limit the operation of the Act in a manner inconsistent with its intent.

It was also suggested by Senior Counsel that in revising the Regulations careful consideration should be given to the aspects of the procurement process that should be the subject of regulations as opposed to guidelines and other guidance material issued by the Office.

A view was also expressed that the Regulations as currently drafted may be difficult to implement, since they may be open to subjective interpretation, thus leading to unnecessary and unproductive challenges.

Therefore, in addition to the comments prepared by the Ministry of Finance, the advice received from Senior Counsel was also forwarded by my office to the Office of Procurement Regulation for consideration today.

Madam Speaker, in light of the findings of both the internal and external review, I am confident that the comments provided will engage the attention of the Procurement Regulator and that a revised draft of the Procurement Regulations will be forthcoming in short order. The Ministry of Finance stands ready to continue providing all necessary support to the Procurement Regulator in the development of the Procurement Regulations so that upon the operationalization of the Act, the new procurement system will operate effectively and in keeping with the spirit and intent of the legislation.

Despite the need for further work on the finalisation of the Procurement Regulations, I remain committed to attaining full implementation of the Act in the shortest possible time and the Ministry of Finance will continue to work assiduously towards that goal.

