



Government of the Republic of Trinidad and Tobago
MINISTRY OF FINANCE

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MEDIA RELEASE

**THE ARGUMENTS AGAINST THE AMENDMENTS TO THE PUBLIC
PROCUREMENT ACT ,
ARE NOT BASED ON FACTS, LOGIC, OR INTERNATIONAL BEST PRACTICE**

The Minister of Finance, Hon. Colm Imbert, M.P., has taken note of commentary in the media regarding the proposed amendments to Section 7 of the Public Procurement and Disposal of Public Property Act, which would have the effect of excluding Government to Government contracts from the ambit of the Office of Procurement Regulation, in particular calls by interested parties to the Government to withdraw or defer the amendments, for further discussions with stakeholders.

Unfortunately, the commentary avoids the true facts and the history of the matter and is not based on reasoned argument or international best practice.

The truth is that all over the world, there is a general exception from statutory procurement regulation for what is defined as public/public co-operation or contracts between public bodies and/or Governments, especially where one of the co-operating public bodies is providing loan financing or other forms of assistance, such as technical assistance or equity investment.

For example, this exception can be found in Article II(3)(e)(iii) of the World Trade Organization's Revised Agreement on Government Procurement, which was published in March 2012, and adopted by numerous countries, including the United States, the European Union, Australia, New Zealand, and Singapore, among others, and reads as follows:

*"...this Agreement does NOT apply to procurement conducted under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance **where the applicable procedure or condition would be inconsistent with this Agreement...**"*

Similarly, in the United Kingdom, Regulation 12(7) of the Public Contracts Regulations 2015 makes it clear that contracts which establish or implement co-operation between contracting authorities fall OUTSIDE of the scope of the Regulations.

Further, in its September 2016 Brief #39 on Public Procurement, the Organization for Economic Cooperation and Development (OECD) and the European Union confirmed that the Hamburg judgement of the Court of Justice of the European Union (CJEU) accepted this public/public

exception, and explained that in contracts between states or other public/public cooperation arrangements, EU law did not require contracting authorities to use any particular legal form in order to jointly carry out their public service tasks.

Recently in Case No. *C-796/18 ISE v Stadt Köln*, which was decided by the European Court in May 2020, just 6 months ago, the European Court of Justice considered in detail the wording of the public-public cooperation exemption for procurement— often referred to as the “Hamburg” exemption.

It is settled international practice, therefore, that Government to Government contracts and other forms of public/public co-operation in procurement are exempt from control by local procurement regulators, and for good reason, since if a public body, international organisation or sovereign government is providing loan financing and technical assistance, it stands to reason that the procurement rules of these bodies should apply, rather than being circumscribed by the rules of local authorities. By way of example, this has been the established practice and procedure of the Inter-American Development Bank (IDB) almost from the inception of that organization, 61 years ago.

In addition, with respect to the call for further “discussions” with stakeholders on the amendments, the PNM Government’s position on the value of Government-to-Government arrangements and the substantial benefits that derive to the citizens of Trinidad and Tobago from these arrangements has been articulated on NUMEROUS occasions to ALL stakeholders over the last five years, as well as in the 2010-2015 period when the PNM was in Opposition.

We have made it pellucidly clear in meetings, discussions, and public forums for the last 10 years that we are of the firm value that in appropriate cases there is tremendous value and benefit to the country in accessing the specialised expertise, experience, technology, and concessional loan financing available from other sovereign Governments. A case in point is the recent procurement of two new state-of-the-art fast ferry vessels in cooperation with the Government of Australia, which are being funded by the Export Finance Agency of the Australian Government (efic).

Other examples are the new Point Fortin Hospital which was procured in cooperation with the Government of Austria under very generous loan financing terms through an Austrian financial institution and the new Couva Hospital which was procured in cooperation with the Government of China, again with concessional loan financing arrangements from China.

In summary, public to public procurement arrangements are well established as international best practice and the uninformed commentary on the issue serves only to undermine public confidence in the legislation before it is even passed, and this ill-advised commentary simply facilitates personal and self-serving agendas. It could also result in further unnecessary delays in the proclamation and full implementation of the Public Procurement Act.

END

Hon. Colm Imbert, M.P.
Minister of Finance