

Local Content, Government to Government and Procurement

Presented by Winston Riley

On July 16th 2013 the Joint Consultative Council (JCC) and the Trinidad and Tobago Local Content Chamber (TTLCC) hosted a breakfast meeting on Local Content, Government to Government (G2G) arrangements and Public Procurement at the conference room of the Trinidad and Tobago Chamber of Industry and Commerce (TTCIC).

At that meeting, the impact of G2G arrangements on the development of local institutions, organisations and skills came into sharp focus. G2G arrangements were analysed in the context of the existing legislation on procurement i.e. The Central Tenders Act (CTB) 1961 amended in 1979.

Documents of Relevance to g2g Discussion

The following documents were referenced:

- a) The CTB Act 1961 as amended in 1979 section 20A which allows Government to act on its own behalf where—
 - i. *‘as a result of an agreement for technical or other co-operation between it and the Government of a foreign State, the latter designates a company to supply the articles or to undertake the works or any services in connection therewith;*
 - ii. *the articles or works or any services in connection therewith are to be supplied or undertaken by a company which is wholly owned or controlled by a foreign State;*
 - iii. *it enters into a contract with the National Insurance Property Development Company Limited or a company which is wholly owned by the State, for the supply of articles or for the undertaking of works or services in connection therewith’*

- b) The Ballah Report submitted in 1982, by a committee appointed by the cabinet, to review the entire programme of G2G arrangements.

- c) The Laws of Trinidad and Tobago with specific reference to rights of citizens in civil society under the Constitution of Trinidad and Tobago and the Freedom of Information Act
- d) The proposed draft legislation placed before the Joint Select Committee on Public Procurement by the Private Sector/Civil Society group
- e) Papers on G2G arrangements and Public Procurement by Winston Riley (1979-2011)
- f) Recommendations of the UFF Commission for the attainment of Value for Money (VFM) in public procurement
- g) The G2G agreement with Canada signed in 2012 with particular reference to the Penal hospital.
- h) The experience of the Energy Service Sector with particular reference to the *“Framework for the Creation of a Sustainable Energy Service Sector and Local Content Program for Trinidad and Tobago as developed by the cabinet appointed committee on local content for the energy sector.”*

See www.JCC.org

Major Concern

Since the breakfast meeting of July 16th 2013, the group became aware of a Draft Public Procurement Act placed before the Legislative Review Committee (LRC) by the office of the Chief Parliamentary Council (CPC). The document states

“This Act does not apply to the procurement of goods and services arising out of –

- (a) a treaty or other form of agreement to which Trinidad and Tobago is a party with one or more other States;*
- (b) an agreement entered into by Trinidad and Tobago with an intergovernmental international financing institution;*
- (c) an agreement with CARICOM; or*
- (d) an agreement for technical or other cooperation between the Government and the Government of a foreign State,*

Where the treaty or agreement provides for rules or regulations regarding the procurement of goods or services.”

JCC's Position

General consensus was reached on the following:

1. That the history of G2G arrangements in Trinidad and Tobago shows:
 - Those G2G arrangements were initiated when money was not a problem in T&T.
 - Those G2G arrangements are continuing when the local banks are flush with funds and bonds could be raised at 2.5%.. (N.B G2G arrangements tend to be negotiated when there is a lack of indigenous resources)
2. That G2G arrangements are not only a instrument for procurement of goods and services from a foreign country but also for the outsourced of the procurement process, itself, by means of a treaty” ***or agreement which provides for rules or regulations regarding the procurement of goods or services.”***
3. Those as a result of the transferring of responsibility for procurement to foreign states human and institutional systems/structures are placed entirely in the hands of the foreign state. G2G arrangements have thus led to arrested local development in Trinidad and Tobago, and as such G2G arrangements have fostered abnormalities in human behaviour and in our local institutional systems/structures
4. That without legislative controls:
 - i. All major projects can be initiated under G2G arrangements thus making a sham of any procurement legislation.
 - ii. G2G arrangements can be utilised for the procurement of goods and services. When public monies are involved the citizens of Trinidad and Tobago for generations are responsible for the public debt incurred,

5. That it is thus, of paramount importance that best practice outcomes be incorporated in all G2G arrangements by incorporating in procurement legislation provisions which states, :
 - a) That all public procurement of goods and services when public money is involved is subject to the procurement laws of the Republic of Trinidad and Tobago.
 - b) That to ensure best practice outcomes the following are mandatory:
 - i. That a clear and transparent statement be given by the relevant local implementing agency on the measurable development objectives of a given project before that the project is implemented,
 - ii. That procedures for optimising of local value added along supply chains be a primary development objective,
 - iii. That the laws and regulations with respect to the employment of labour and health and safety be followed.
 - iv. That Value for Money should be linked to stated measurable development objectives. Value for Money thus becomes the guiding principle in decision making along the value chain.
 - v. That the optimising of local value added in the context of value for money objectives, should be revealed through a value analysis at the design phase and be instituted as part of an evaluation process at the tender for construction.
 - vi. That all G2G arrangements be tabled in the Parliament on signing for public consideration –
 - vii. That all G2G arrangements already signed be tabled immediately in Parliament. These G2G arrangements include, but not limited to-:
 - The Declaration of POS with the People’s Republic of China
 - The 2012 Canadian agreements,
 - The agreement with the Austrian Government (San Fernando Hospital).
6. National development demands that the best practice outcomes as listed above be instituted as a national priority. This will mean:
 - i. A remodelling of the current G2G arrangement for the Penal hospital to take into account objectives, outlined above,

- ii. The recognition that Trinidad and Tobago's history and experience in oil and gas has allowed T&T a strategic advantage over developed countries in becoming an altruistic donor government to developing countries with potential in extractive industries,
- iii. That through G2G arrangements T&T can expand:
 - a) business through the supply of goods and services from our resident companies;
 - b) our banking sector through the provision and or organisation of private or State funding & loans
 - c) our learning institutions through the provision of training to foreign students

An Approach to G2G re. Canadian Commercial Corporation (CCC) and SNC Lavalin

The Trinidad and Tobago Government signed a G2G arrangement with the Government of Canada for the development of health care facilities. The Canadian Government named the Canadian Commercial Corporation (CCC) the implementing agency under the agreement and the Trinidad and Tobago Government named the Urban Development Corporation as its counterpart.

SNC Lavalin through CCC undertook preliminary designs for a hospital at Penal. Recently a ten year ban was imposed by the World Bank and the Canadian International Development Agency (CIDA) on SNC Lavalin Inc. and its affiliates, for corruption and a series of newspaper articles both in T&T and abroad called for clarification of the role of SNC Lavalin in the Penal hospital project. CCC has stated that they are at present undertaking a due diligence exercise on the hospital project.

The JCC and the TTLCC are of the view that due diligence being undertaken by the (CCC) at this stage with respect to SNC Lavalin Inc. is an insult to the Government of Trinidad and Tobago and the following should be implemented:

- I. Abandon any existing or proposed contractual agreement with SNC Lavalin Inc and or its affiliates.

- II. Ban SNC Lavalin Inc and its affiliates from engaging in any contractual arrangement in T&T, for the next ten years where the public money is involved.
- III. Implement UDECOTT's procurement rules for the procurement of consultants to act as Client Representative, during the design and construction supervision phases,
- IV. Undertake a value engineering exercise at the preliminary design stage to optimise value for money and local content,
- V. That the Canadian Commercial Corporation (CCC), after undertaking due diligence, recommend a firm or firms to UDECOTT for the construction of the Penal Hospital.
- VI. That UDECOTT undertakes its own due diligence procedures on the firms recommended by CCC which include checking with the World Bank anticorruption window.
- VII. That the firms be encouraged to enter into an arrangement with domestic firms for submission of tenders.
- VIII. Implement UDECOTT's tendering procedure with the following amendments to facilitate evaluation and verification of local content by:-
 - a) setting up technical specifications with requirements and procedures that define, measure and allow for the declaration and verification of the local content of goods, services and works. The specifications should state :-
 - i. how the import content for each product or service is to be measured and
 - ii. indicate a minimum pass or fail standard for local content for a tender to be considered compliant. N.B. The Chinese Exim Bank requires ***"The portion of the Chinese content of exported goods should be no less than 50% of the total value"*** of project financing from China. Thus the statements made in the local media about 40% local content are not at all palatable.
 - b) The marking system should also give a minimum of 15% marks for local content for firms compliant with a) ii above.
 - c) Local Content shall be expressed as a percentage of the tender price, and shall be calculated as follows:
$$LC = (1 - x/y) \times 100$$
 where

(x) is the imported component in Trinidad and Tobago Dollars and (y) the tender price in Trinidad and Tobago Dollars.