

SUBMISSION

on

**LEGISLATIVE PROPOSALS ON PUBLIC PROCUREMENT
REFORM**

laid in Parliament on 29 October, 2010

Submitted to

THE JOINT SELECT COMMITTEE

APPOINTED TO CONSIDER AND REPORT TO PARLIAMENT

ON

**THE LEGISLATIVE PROPOSALS TO PROVIDE FOR PUBLIC
PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY
AND THE REPEAL AND REPLACEMENT OF THE CENTRAL on
22 December, 2010 by the**

PRIVATE SECTOR/ CIVIL SOCIETY Group

**And further amended following discussions with the
Legal Advisor to the Joint Select Committee and
re-submitted on April 16th 2012.**

Private Sector/ Civil Society Group Members:

**JOINT CONSULTATIVE COUNCIL FOR
THE CONSTRUCTION INDUSTRY**

TRINIDAD AND TOBAGO TRANSPARENCY INSTITUTE

TRINIDAD & TOBAGO CHAMBER OF INDUSTRY AND COMMERCE

TRINIDAD AND TOBAGO MANUFACTURERS ASSOCIATION

INTRODUCTORY NOTE

1) A *Joint Select Committee of Parliament (JSC)* was appointed on the 29 October, 2010 to consider:

a) A *Legislative Proposal to provide for Public Procurement and the Disposal of Public Property*

This is in effect the text of a draft Procurement and Disposal of Public Property Bill 2006 that was produced as part of the procurement reform process initiated by Government following the laying in Parliament in September 2005 of the *White Paper on the Reform of the Public Sector Procurement Regime*¹. The signatories to the White paper were also responsible for the preparation of this draft bill as part of a Cabinet Appointed Committee chaired by the then Permanent Secretary in the Ministry of Finance, Kamal Mankee.

b) A *Legislative Proposal to repeal and replace the Central Tenders Board Act.*

This document, which was prepared in 1997 by the then Attorney General, Ramesh Lawrence Maharaj, is the text of *The National Tenders Board Bill, 1997* which sought to repeal and replace the Central Tenders Board Act and establish a National Tenders Board for the Government and certain statutory bodies and a Parliamentary Commission to monitor its activities.

The JSC is charged with reporting to Parliament with recommendations for new procurement legislation on the basis of these proposals.

2) *This submission is intended to assist the JSC by providing stakeholder inputs.*

It takes the form of suggested amendments/additions (² Amendments suggested by the Private Sector/ Civil Society Group are shown italicized in bold red) **to the text of the 2006 draft Bill taking into account elements of the 1997 Tenders Board Bill, developments since the policy statement of the White Paper from which the 2006 draft Bill evolved and discussions with the legal adviser to the JSC held on April 11th, 2011 in accordance with the direction of the JSC** (³ Those suggested by the Legal Advisor to the JSC are shown italicized in bold blue). **The amended text is submitted as a Draft Public Procurement and Disposal of Public Property Bill, 2012.**

3) This submission reflects our *endorsement of the White Paper* with two (2) material differences, which are:-

(a) *The separation of investigatory powers from regulatory powers* which, in the 2006 Bill, are functions of the proposed Procurement Regulator who reports only to Parliament.

In the 2012 draft Bill it is proposed that the investigatory powers reside with the *Public Procurement Commission*, a Standing Commission of Enquiry established to monitor the procurement process and deal with grievances arising out of the procurement process. This body too reports only to Parliament.

¹ Available at: <http://www.finance.gov.tt/content/pub50.pdf>

² Amendments suggested by the Private Sector/ Civil Society Group are shown italicized in bold red.

³ Those suggested by the Legal Advisor to the JSC are shown italicized in bold blue.

This accords with best practice and addresses concerns expressed in the *Uff Commission of Enquiry*. In addition, the 2012 Bill follows a similar separation of the investigatory from the regulatory function that was proposed in the *1997 National Tenders Board Bill*.

It also reflects a feature of the relevant *Jamaican legislation* in which The Contractor General Act 1985 was amended in 1999 so as to provide the Contractor General with the power to investigate any Government contract or grant, or issue any prescribed licence, while leaving to the National Contracts Commission the largely regulatory role of the granting and implementation of Government contracts.

- (b) In comparison with the White Paper and the 2006 draft Bill, this document provides for greater support for the proposed Procurement Regulator by *amplifying the role and composition of the National Procurement Advisory Council* and *establishing the organizational support of his Office* as a direct charge on the Consolidated Fund.

- 4) The text of our proposed draft Bill follows.

BILL FOR***AN ACT******PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY BILL, 2012*****EXPLANATORY NOTE**

(These notes form no part of the Bill, but are intended only to indicate its general purport).

Background

The purpose of this Bill is to provide the legal and regulatory framework to implement the Policy on Procurement Reform as contained in the White Paper entitled “Reform of the Public Sector Procurement Regime” (the White Paper), tabled in Parliament on 26 September 2005.

The intent is to maximize economy and efficiency in public expenditure in the area of procurement in accordance with the principle of accountability, transparency and value for money thereby increasing public confidence in the quality of governance. It does so by prescribing the legal and regulatory framework recommended in the White Paper entitled “The Reform of the Public Sector Procurement Regime” which was tabled in Parliament on 26 September 2005 by the Government.

The Bill reflects the assumption that expenditure involving public money triggers a prime responsibility of the purchaser who uses public funds for a transaction to ensure that the people get value. The Bill does not inhibit the common law doctrines in relation to contract nor specify a rigid process. Rather, it establishes the overarching legal framework founded on principles of public law in which contractual rights will operate. It enables customizing and responsibility of the procurement process to reside with agencies while identifying key points in the procurement system to which all agencies must adhere. The relevant design and monitoring of the procurement system within the specified parameters of the principles of accountability, transparency and value for money is the function of an independent Procurement Regulator.

This Bill therefore heralds the Government’s stated intention to strengthen the quality of governance by promoting these principles of good governance by systemic re-engineering of the public financial

management system. This Bill is thus one of a raft of relevant Bills for the re-engineering of the public financial management system.

Critical to the proposed new procurement regime is a clear understanding of the concept of ‘public money’. This encompasses –

- all money received or receivable by an agency regardless of source;*
- all money received by a non-public body from an agency.*

The legal framework will embrace expenditure by an agency which is essentially organisation using public money for a public purpose –

- a public organization even if for a private purpose;*
- a private organization for a public purpose regardless of the source or type of funding if it can be identified that the State is ultimately liable.*

The test therefore is not the mode of the incorporation of the body but the ultimate financial responsibility of the State.

The Bill also addresses the recommendations of the report of the Commission of Enquiry into the Construction Sector chaired by Professor John Uff, published in March 2010 that, inter alia, specified the need for a clear dispute resolution system which, in this Bill, is the function of the Public Procurement Commission.

Brief Description of Bill

The crux of the Bill is the mandatory compliance with the Operating Principles, Objectives and Guidelines by all parties to transactions related to the procurement of property, services involving public money and the disposal of public property. The details of the procurement process will in general terms be dealt with in the Guidelines whilst the customized details in respect of an agency will be found in Agency Handbooks. All documents are to be publicly available.

The responsibility for the effective operation of the overarching system will reside in an independent Procurement Regulator who directly accounts to Parliament while the accountability for the actual acquisition of property and services and the disposal of property acquired with public money will reside with the agencies.

The Bill requires that all parties to a transaction involving public money for the acquisition of property and services or the disposal of public property will need to ensure that their conduct, processes and documentation conform to;–

- *Economy, efficiency and competition;*
- Ethics and fair dealing according to the highest standards of **probity** and professionalism;
- Promotion of national industry in a manner that conforms to the international obligations of Trinidad and Tobago; and
- *Sustainable development taking into account the Social return on investment.*

The Operating Principles and the Objectives will inform the National Procurement Guidelines which, in turn, will inform the content of Handbooks for various categories of transaction which are to be prepared by the agency.

The Guidelines will be developed by the Procurement Regulator in consultation with the National Procurement Advisory Council. The Council will comprise a total of fourteen (14) persons including representatives of private sector organizations, of those organizations appointed by the President to represent civil society, and representatives from the public sector including the Ministry of Finance and the Tobago House of Assembly.

The Bill also provides for a Public Procurement Commission to treat with irregularities and complaints of non-compliance with the Operating Principles, Objectives and Guidelines. The members of the Commission are to be appointed by the President and are answerable to Parliament.

Apart from the accountability framework the Bill also prescribes penalties for non-compliance with the Operating Principles, Objectives and Guidelines: a fine of \$500,000 and imprisonment for seven (7) years where no other sanction is prescribed. As these penalties indicate an indictable offence, the Bill ensures the applicability of the Proceeds of Crimes Act, 2000. This may be used by the State for the tracing of assets to reclaim public money in the event that there is a breach of the Act.

Where a transaction is found either by a court or by the Public Procurement Commission to be in breach of the Act it is prescribed to be illegal – the common law result of a contract in breach of public policy.

For the purpose of operational flexibility for the local conditions and to take into account the culture of an agency, the Bill enables the Chief Executives of agencies (which include ministries and departments, statutory bodies and their subsidiaries, state controlled enterprises and their subsidiaries) to issue

instructions to treat with the procuring procedures of their respective agencies. These Agency Instructions are to be complied with by all parties to a transaction so long as they do not breach the Operating Principles, Objectives and Guidelines and will include details of the authorized purchasing officers and purchasing responsibilities, including the quanta of their purchasing limits.

Apart from the Guidelines and the Agency Instructions of the Chief Executive, the relevant procedures in respect of the transaction to aid purchasers using public money will be provided in support documents as Handbooks. These may be developed by the Procurement Regulator as model Handbooks which can be customized by the agency. The Bill thus enables the internal procuring rules of a state owned enterprise to be incorporated into the Handbook for the respective agency. The Bill thus enables the incorporation of existing procedures into the proposed legal and regulatory framework. The Bill enables model Handbooks to be designed for different types of categories of transactions such as those pertaining to construction, consultancy services and Information Technology.

In addition to developing the mandatory Guidelines in consultation with the National Procurement Advisory Council, the Procurement Regulator will also have the function of –

- enabling agencies to explore alternative service delivery options;
- promoting flexible and accountable *systems for procurement*;
- encouraging a streamlined Government purchasing framework;
- *implementing a procurement system to foster* small to medium enterprises;
- providing best practice advice on the conduct of procurement *including promoting electronic transactions; and*
- *auditing and reviewing the procurement system to ensure compliance with the Operating Principles and Objectives which will require generally the monitoring of award and implementation of transactions.*

The *Procurement* Regulator will also be required to prepare an Annual Report *to be submitted* directly to Parliament identifying *inter alia*:

- the strengths and weaknesses of the procurement system and steps taken to rectify any weaknesses;
- the total value of contracts awarded by agencies so that Parliament can get an idea of the amount of

public money involved in procurement; and

- *outcomes of investigations, and lessons learnt which are to be or have been fed back into the procurement system through amendment of the Guidelines.*

The Procurement Regulator will be supported by a statutory body to be known as the Office of the Procurement Regulator. The expenses of both offices are to be a charge on the Consolidated Fund.

The Public Procurement Commission has, with a direct reporting accountability to Parliament, the function of investigating breaches of the procurement system by parties to a transaction involving the expenditure of public money.

In so doing, it will have the powers of a Commission of Enquiry as if it were a Commission properly constituted under the Commissions of Enquiry Act, Chapter 19:01. The sanctions it may employ are, inter alia, to order a suspension of the contract pending the hearing in a court of law or to find the transaction to be in breach of the Operating Principles and Guidelines resulting in it being deemed illegal. It is noted that any decision it makes is subject to the Judicial Review Act, 2000.

However, persons bringing frivolous complaints to this body will be penalized.

Where parties comply with the Operating Principles, Objectives and Guidelines it is highly unlikely there will be much recourse to the Public Procurement Commission.

The Bill is in **6** Parts as follows:

PART I – PRELIMINARY

This Part deals with operational matters pertaining to the Bill.

The Bill is to commence on a date to be proclaimed. However, as the National Policy on procurement in the form of the White Paper was tabled in Parliament on 26 September 2005, this means that all agencies would have had to conform to the Operating Principles and Objectives in all their transactions from that date.

Clause 1

Therefore validates the duty by ensuring that the application of the Operating Principles and Objectives are deemed to apply from the date of the tabling of that Policy. This general duty is retrospective to 26 September 2005 – the date the Policy was tabled in Parliament. The provision entrenches the duty required of agencies

even prior to the passage of the Bill to conform to Government Policy.

Clause 2

Contains the definitions pertaining to the Bill.

Key definitions to note are –

“agency” – *means a body incorporated or otherwise that uses public money.*

“property” – *means real or personal property, or other tangible or intangible property including a right, interest, title, claim, chose in action, monetary or financial instrument, present or future, vested or contingent. This definition would encompass those matters that are the traditional focus of procurement such as goods works and services as well as intellectual property rights;*

“public property” means property that is acquired or is to be acquired by an agency, or is in the care, control or custody of an agency;

“public money” *all money received by a public body, regardless of source;*
all money received by a non-public body from a public body.
The legal framework will embrace expenditure by a –

- *public organization even if for a private purpose; a private organization for a public purpose regardless of the source or type of funding if it can be identified that the State is ultimately liable.*
- *The test therefore is not the mode of the incorporation of the body but the ultimate financial responsibility of the State.*

“procurement” *means the process of acquiring property and services commencing with the identification of the need for the acquisition and ending with the performance of the related contract. This definition conforms to current best practice;*

“public procurement” *means procurement involving the use of public money; (this definition is designed to encompass BOLT (Build, Own, Lease, Transfer), BOOT (Build, Own, Operate, Transfer) and DFC (Design, Finance, Construct) schemes or other funding schemes for the provision of capital works which can be found to be ultimately to the benefit of the public);*

“services” includes consultancy services, professional services, and any other activity which can be classified as services. This would encompass the provision of legal services, architectural services and maintenance services;

“transaction” means any contract, agreement or arrangement for, or in relation to, public procurement or disposal of public property. This definition would encompass related negotiations.

The nature of these definitions illustrates the ambit of the Act. *The critical element in the triggering of the application of the law is the use of public money in a transaction, not the institutional corpus of the spender nor the purpose nor the classification of the process that can be classified as commercial or private in the context of that transaction.*

Clause 3

Provides that this Act will bind the State.

PART II – PROCUREMENT FRAMEWORK

This Part establishes the *legal and* regulatory framework which will apply to all parties to a procurement transaction to ensure that it conforms to the Operating Principles defined as *Accountability, Transparency and Value for Money together with the Objectives of economy, being inter-alia efficiency, effectiveness, competition, ethics, and fair dealing. The promotion of national policy is also required to be addressed in any transaction. These requirements also apply to those involved in the disposal of public property.*

This Part also identifies the consequence of entering a transaction with an unauthorized purchaser.

Clause 4

States that the Operating Principles and Objectives apply to every transaction and requires that a person who is a party to a transaction conform to the Operating Principles of Accountability, Transparency and Value for Money. A person who is acting on behalf of an agency shall ensure the transaction reflects Value for Money. All parties to the transaction will also address the Objectives of economy, efficiency and competition, ethics and fair dealing according to the highest standards of probity and the provision of proceeds for national development such as the Fair Share Programme. All parties as of law are to ensure that the transaction conforms to the Guidelines.

Where there are no Guidelines in place, the operation of the Operating Principles and Objectives will be determined by current best practice.

Clause 5

Provides for the development of National Procurement Guidelines ('the Guidelines') by the Procurement Regulator in consultation with the National Procurement Advisory Council. These Guidelines are to be tabled in Parliament and are to be consistent with the Act, and essentially ensure the operation of best current procurement practice. It is expected that the Guidelines will, inter alia, address issues ranging from the format and content of Requests for Proposal to mechanisms of review of the whole procurement cycle, the publication of details in respect of the operation of best current practice in procurement which would encompass e-procurement, issues of conflict of interest, and emergency measures, to mention a few.

The Guidelines may also include direction of a tender process to apply to a specific transaction. The clause also requires the Procurement Regulator to consult with the private sector and civil society represented on the National Advisory Council which also has representatives of the public sector, when developing the Guidelines. The Guidelines are to be published in the Gazette and are a statutory instrument for the purposes of the Statutes Act.

Sample Procurement Guidelines are provided in the White Paper (Annex 1).

Clause 6

Enables the Procurement Regulator to develop generic Handbooks for categories of transactions as guidance material for agencies. These may supplement those developed by agencies. However, the prime responsibility for the development of handbooks lies with the Chief Executive. All Handbooks must conform to the Operating Principles, Objectives and Guidelines and must be published for public comment for a period of 30 days prior to implementation.

Clause 7

Enables the Chief Executive to issue Agency Instructions for the purpose of expediting transactions. Such Instructions must conform to the Act, Regulations and Guidelines and identify the authorized purchasers for the conduct of a transaction for or on behalf of an agency. An Agency Instruction that does not conform is void.

Clause 8

Provides that where there is a divergence from an Agency Instruction the Procurement Regulator needs to be accordingly advised, in writing with reasons.

Clause 9

Identifies the Chief Executive and any person in an agency so authorized by an Agency Instruction to have the lawful authority to enter a transaction. Where a person wrongly enters or represents himself as having authority to enter a transaction, he commits an offence. The clause also treats with the personal liability for damages of an authorized person where the transaction breaches the Act. A transaction that is entered into by a person without lawful authority is voidable at the instance of the agency.

The clause also provides that an authorized person is subject to the Integrity in Public Life Act, 2000. The clause requires publication of authorized persons and their spending limits.

The clause also provides that neither Cabinet nor a Minister shall be an authorized person.

Clause 10

Places the onus on suppliers to ensure that they are treating with persons who have the appropriate authority to enter a transaction. This is possible because of the requirement on agencies to publish details of authorized persons in clause 9.

The duty on suppliers to conform to the Operating Principles, Objectives and Guidelines is already provided for in clause 4. However, where in the course of an investigation, the Public Procurement Commission or, in the course of an action, a Court, finds that a supplier is recklessly dealing or has recklessly dealt with a non-authorized person, that supplier shall be prohibited, as of law, from entering into any future transaction with an agency for five years either personally or as an officeholder of a company. This means that if a supplier is dealing with a purchaser believing in good faith that the purchaser is an authorized purchaser and after exercising due diligence the purchaser is found to be an unauthorized purchaser the supplier will not be penalized. The same logic applies to transactions involving disposal of property particularly as it affects the would be beneficiary of that disposal.

PART III – PUBLIC PROCUREMENT COMMISSION

This Part enables an aggrieved person to complain, in the manner prescribed, to the Public Procurement Commission, to be appointed by the President and directly accountable to Parliament, that a transaction breaches the Operating Principles, Objectives and Guidelines. The Public Procurement Commission may, either on its own initiative or on the basis of a complaint, investigate any transaction so as to ensure conformity to the Operating Principles, Objectives and Guidelines. The Commission may, pending the

outcome of the investigation, suspend the process and employ mediation techniques in the course of the investigation. At the end of the investigation the Commission must advise all parties to the transaction of the outcome of the investigation and report accordingly to Parliament.

After investigating the complaint the Commission may confirm a decision as a consequence of mediation, direct a continuation of the suspension pending an appeal, find the transaction has been conducted by an unauthorized person, find that the transaction is contrary to public policy in that it breaches the Operating Principles, Objectives or Guidelines or find that the complaint is frivolous and vexatious.

The Part also enables the Commission to refer the matter to an appropriate authority for further dealing. All details of investigations will be reported to Parliament in the annual report. This does not preclude the Commission from submitting a special report with respect to a particular investigation.

Certain procedural issues are specified in the Act. In the event there is a gap in the powers of a Commission in respect of process, the Commissions of Enquiry Act can be availed of to fill the gaps.

Clause 11

Establishes a Public Procurement Commission for the purpose of investigating complaints. This clause provides for the appointment of members of a Public Procurement Commission to be appointed by the President in the exercise of his discretion after consultation with the Prime Minister and the Leader of the Opposition. The persons to be appointed as members of the Commission are to have qualifications in law, finance or engineering.

Clause 12

Adumbrates the functions and powers of the Public Procurement Commission to investigate transactions and resolve complaints. The Commission is to have the powers of a Commission of Enquiry as if it were constituted under the Commissions of Enquiry Act (Chap. 19:01) and also operates as a mediator in respect of resolving a complaint as if appointed as such under the Mediation Act (Chapter 5:32).

The Act specifically mandates the Commission to expedite issues before it in a timely fashion so as to minimize negative economic impact.

Clause 13

Details some operational matters of the Commission viz that it is not to be subject to the direction or control of any person for its functions but is directly accountable to Parliament. Where a transaction under enquiry exceeds TT50 Million, no less than three members of the commission shall hear the matter.

Clause 14

Enables a person who has a complaint that a transaction does not comply with the Act to complain to the Commission. The Commission may also on its own initiative institute the process as regards complaints.

Clause 15

Specifies the procedure of the Commission when investigating a complaint.

Clause 16

Treats with the powers of obtaining of material pertinent to the investigation by the Commission.

The Commission or a person authorized by it in writing will be able to access documents or property in the course of an investigation. An entry on private property (i.e. not belonging to an agency) can only be effected with the consent of the owner or occupier. Where that consent is not forthcoming, the Commission or person authorized by it to do the investigation shall obtain a warrant to do so. Copies of books, records or documents including those in digital format are also to be made available to the Commission.

Clause 17

Provides for the Commission to summon certain persons to give evidence as a witness.

Clause 18

Enables the Commission at the expiry of an enquiry to confirm a decision as a consequence of mediation, direct a continuation of a suspension pending an appeal to the Court or find that the transaction is contrary to Operating Principles, Objectives and Guidelines. The Commission may also refer the matter to an appropriate authority for further action.

This clause also provides for a mandatory report to Parliament on the outcome of any investigation.

Clause 19

Statutorily declares a transaction to be illegal once it is found as a fact to be in breach of the Operating Principles, Objectives and Guidelines by the Commission. This clause also protects the rights of innocent third parties to a transaction so declared.

Clause 20

Enables the Commission to surcharge a complainant for costs if the complaint is frivolous or vexatious.

Clause 21

Enables the Commission to make a special report to Parliament in the event that it finds that an officer of an agency is in breach of his duty, commits misconduct or a criminal offence, which report it further refers to the appropriate agency for further action.

Clause 22

Protects proceedings from being voided for want of form.

PART IV – THE *PROCUREMENT* REGULATOR

This Part treats with the appointment of a Procurement Regulator. The functions and powers together with operational and institutional matters pertinent to the Procurement Regulator such as the provision of staff and other resources by way of the establishment of the Office of the Procurement Regulator are treated with as well. The Part also provides for an audit of this agency by the Auditor General.

Clause 23

Provides for the establishment of the office of the Procurement Regulator who is to be appointed by the President in the exercise of his own discretion for a contract of five (5) years or more but not exceeding seven (7) years.

The President chooses from the recommendations made by Parliament which considers the list of names submitted to Parliament by a Joint Select Committee specifically established to recruit the Procurement Regulator.

This clause also provides for the removal of the officeholder in the event that he is infirm of mind or body, or misbehaves. The President may also appoint a person to act and such person has the power to finish what the Procurement Regulator commenced before he went on leave or other temporary absence. The provisions of the Integrity in Public Life Act, 2000 apply to the office holder.

Clause 24

Establishes the Office of the Procurement Regulator to comprise the staff and support for the Procurement Regulator. The costs incurred for the performance of that Office shall be a direct charge on the Consolidated Fund.

Clause 25

Prescribes the functions of the *Procurement* Regulator. *The prime function is to ensure an effective, efficient and relevant procurement system that conforms to the Operating Principles, Objectives and Guidelines. The Procurement Regulator is required therefore to develop, implement and review Guidelines in consultation with the National Procurement Advisory Council for the implementation of the Operating Principles and Objectives. This provides for inputs from industry and service providers. The functions of the Procurement Regulator also include, inter alia, establishing a comprehensive database with information on procurement opportunities, processes, contract awards and prices, the promotion of public understanding of procurement, the fostering of improvements with the use of technology including e-commerce, the receipt of complaints and reporting to Parliament.*

This clause states that in the exercise of his functions the Procurement Regulator is not subject to the direction or control of any person. In this regard his independence of office is analogous to that of the Auditor General.

Clause 26

Provides that the cost and related expenses of the Procurement Regulator is a direct charge on the Consolidated Fund.

Clause 27

Provides for the Auditor General to audit the Procurement Regulator and the Office of the Procurement Regulator annually.

Clause 28

Requires the *Procurement* Regulator similar to the Auditor General, to report at least annually to Parliament *but no later than forty (40) days after the expiry of the financial year.* The Report is required to inform Parliament of the total figure of contracts awarded *involving public money and cost overruns by agencies, details of transactions involved in a project including the beneficiaries of the transaction and the value of those transactions to the State,* outcomes of investigation including lessons learnt, *details of changes to the Guidelines to implement best practice and recommendations including those of the National Procurement Advisory Council.*

The Report does not need to include details of contracts of value less than \$50,000 or contracts for the settlement of a legal liability. The Speaker is to table the Report within 28 days of receipt.

PART V – NATIONAL PROCUREMENT ADVISORY COUNCIL

This Part identifies the membership and functions of the National Procurement Advisory Council which essentially, as a consultative body, provides inputs into the design and content of the Guidelines so as to ensure relevance.

Clause 29

Establishes the National Procurement Advisory Council in a manner so as to avoid allegations of executive manipulation of the membership. The membership of the National Procurement Advisory Council, in conformity with the Policy, will comprise *fourteen (14) persons being the* nominees of three civil society organizations which are publicly acknowledged as having a concern for good governance, five organizations representing the construction, manufacturing and retail sectors of Trinidad and Tobago, two representing labour and professional organisations, *a nominee representing the State Owned Enterprises, a nominee of* the Tobago House of Assembly, an *ex officio* member from the Ministry of Finance *and the Chief State Solicitor*.

The nominating organizations are to be selected by the President in his own discretion after taking into account the record of those organizations in serving the public interest. *The Procurement Regulator is to advise the public of the successful nominees by notice in the Gazette and a major circulating daily newspaper. Nominees will hold their positions for a term of 3 years*

Operational matters for the Council are specified in the Second Schedule.

The Council is to present an annual report to the Procurement Regulator who includes that report in his own report to Parliament.

Clause 30

Provides that the function of the Council is to consider the effectiveness and efficiency of the procurement system and to make recommendation to the *Procurement* Regulator in the development of the Guidelines and Handbooks so as to ensure conformity with the Operating Principles, *Objectives and Guidelines*. The Council, *when so doing*, is to canvass the views of the national community as widely as possible. *The Council may also co-opt representatives of agencies to assist in its function but such persons will not have a vote.*

Clause 31

Requires the Procurement Regulator to provide secretariat services to the Council.

PART VI – MISCELLANEOUS

This Part deals with matters that enhance effective implementation of the Act including protection from liability, statutory obligations of reporting by agencies, offences, repeal of the Central Tenders Board Ordinance, 1961 and transitional arrangements. To ensure there is consistency in the definition in respect of expenditure of public money, the Exchequer and Audit Act has been consequently amended.

Clause 32

Protects a member of the Commission, from liability.

Clause 33

Provides for privilege of information, in the course of investigation as if in a court of law and protection from defamation proceedings.

Clause 34

Provides that a request made under this clause is to be treated as if, it were made under the Freedom of Information Act 1999. It is to be noted that, as some agencies affected are currently outside the jurisdiction of the Freedom of Information Act, 1999, there is need for this provision. The section also provides that the failure to disclose on the grounds of confidentiality cannot encompass mere embarrassment that such disclosure would afford. The section is to apply notwithstanding any other law.

Clause 35

Requires that the person authorized to enter a transaction, publish specified details of the award of a contract, or any variation and other relevant details contemporaneously with the making of the award. This provision not only conforms to current best practice but also ensures transparency.

Clause 36

Guarantees legal remedies under the Judicial Review Act, 2000 to be available to any decision made in the course of procurement.

Clause 37

Requires a person who has a reasonable belief that, collusion between all or any of the parties, or any breach of the Act has occurred, as a matter of law, to report accordingly to the Procurement Regulator or the Public

Procurement Commission. The Procurement Regulator will be required to refer that report to the Public Procurement Commission and report accordingly to Parliament. This promotes transparency.

Clause 38

Treats with offences: It provides that a person who fails to comply with the Act commits an offence.

This clause also makes it an offence to hold assets that are prima-facie disproportionate to emoluments one can be expected to receive as an officer, without justification. The word “disproportionate” in subsection (3) conveys the idea that the acquisition of the total value of the assets under the control of a person who was an officer of the agency could not reasonably have been afforded by the person at that date given total emoluments provided.

Clause 39

Provides a general penalty for an offence under the Act to be a fine of \$500,000 and 7 years imprisonment. In addition an offence under this Act is deemed a “specified offence” for the purpose of the Proceeds of Crime Act, 2000 thereby attracting the capacity of the State to trace public funds.

Clause 40

This clause protects a ‘whistleblower’ from being demoted, harassed or otherwise discriminated against because of his report made under Clause 39.

It will also be an offence to discharge, suspend, demote or otherwise negatively treat a person simply because they have reported a breach of the Act to the Procurement Regulator.

Clause 41

Prescribes a Parliamentary majority of 2/3 in the event of future amendment of sections 4 to 10 of the Act. This entrenches the framework and acknowledges that the flexibility of process to ensure competitiveness will be through the subordinate instruments such as the Guidelines and Handbooks. Parliament, by this provision, is entrenching the provisions of this Act particularly in the future event that a disaffected executive with a simple Parliamentary majority would want to change the framework.

Clause 42

Prescribes the regulation making power to reside with the President.

Clause 43

Validates, to the extent of their validity, transactions entered into by those agencies that fall outside the ambit of the Central Tenders Board where those transactions conform to the agency's internal tendering rules and the Operating Principles, Objectives and Guidelines as of 26 September, 2005, the date of the tabling of the Policy in Parliament.

Clause 44

Repeals the Central Tenders Board Ordinance, 1961 and validates any transaction entered into or in force under the authority of the Central Tenders Board on behalf of an agency at the commencement of this Act as validly conducted by an agency under this Act.

The section also provides that a reference to the Central Tenders Board Ordinance 1961 or the Director of Contracts in any legislation shall be construed as reference to this Act or the Procurement Regulator as the context demands.

The section also provides for the continuation of the Central Tenders Board Regulations, 1965 Regulations and the Central Tenders Board (Defence Force and Protective Services (No. 2) Order 1992), pending the formulation of in-house tender procedures by an agency, and the Guidelines, notwithstanding the repeal of the principal legislation pending the implementation of the Guidelines.

Clause 45

Provides for, the consequential amendments to the Exchequer and Audit Act which include revised definitions of "public money", "revenue" and "statutory body" so as to harmonize public expenditure on the acquisition of property and services with provision in the Exchequer and Audit Act.

First Schedule

Specifies the framework for the establishment of Procurement Guidelines.

Second Schedule

Provides for the administration and terms and conditions of members of the Public Procurement Commission.

Third Schedule

Provides for the operation of the National Procurement Advisory Council including the quorum requirement resignation of an officer, termination of appointment and remuneration of members.

PUBLIC* PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY BILL, 2010*Arrangement of Clauses***Clauses***PART 1 – PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Act to bind the State

PART II – PROCUREMENT FRAMEWORK

4. ***Application of the Act***
5. Guidelines
6. Handbooks as guidance material to supplement Guidelines
7. Chief Executives to issue Agency Instructions to supplement Guidelines
8. ***Report of action inconsistent action with Agency Instruction***
9. ***Authorized person for the purpose of a transaction***
10. Supplier not to enter transaction unless with an authorized purchaser

PART III – PUBLIC PROCUREMENT COMMISSION

11. ***Establishment of the Public Procurement Commission***
12. ***Functions and powers of the Commission***
13. ***Matters pertaining to the performance of the Commission***
14. ***Instituting process to treat with a complaint***
15. ***Procedure of Commission***
16. ***Access to property of an agency***
17. ***Witness on oath***
18. ***Outcome of Commission***
19. ***Illegal transaction***
20. ***Surcharge for frivolous complaint***
21. ***Special Report***
22. ***Proceedings not to be voided for want of form***

PART IV – PROCUREMENT REGULATOR

23. Appointment of the ***Procurement*** Regulator **by the President**
24. ***Establishment of the Office of Procurement Regulator***
25. ***Functions and Powers of the Procurement*** Regulator
26. **Support for the Procurement Regulator**
27. ***Audit of the Procurement Regulator***
28. Procurement Regulator **Parliamentary Reporting**

PART V – NATIONAL PROCUREMENT ADVISORY COUNCIL

29. National Procurement Advisory Council
30. Functions *and powers* of the National Procurement Advisory Council
31. Secretariat services to be provided by the Procurement Regulator
32. Procurement Regulator to attend Council

PART VI – MISCELLANEOUS

33. *Protection from liability*
34. *Privileged information and protection from defamation*
35. Procurement records to be public
36. *Agencies to publish award of contracts*
37. *Application of Judicial Review Act, 2000*
38. Reporting *on collusion*
39. Offences
40. **General**
41. *Protection for whistleblowers*
42. Amendment to Act
43. Regulations
44. Validation of transactions by agencies outside the jurisdiction of the Central Tenders Board Ordinance, 1961
45. Repeal and savings *of transaction within the jurisdiction of the Central Tenders Board Ordinance, 1961*
46. *Consequential amendments to the Exchequer and Audit Act, Chap. 69:01*

First Schedule

Second Schedule

Third Schedule

“Agency Instruction” means an instruction issued in accordance with section 7;

“appropriate authority” means -

- (a) the Auditor General;
- (b) the relevant Service Commission;
- (c) the Commissioner of Police;
- (d) the Director of Public Prosecutions;
- (e) an authority as prescribed;

“authorized person” means a person referred to in section 9;

“Chief Executive” means a person who **is the accounting officer of an agency;**

“Commission” means the Public Procurement Commission established by section 11 and a ‘member of the Commission’ has the corresponding meaning;

“Constitution” means the Constitution of the Republic of Trinidad and Tobago;

“Council” means the National Procurement Advisory Council established in accordance with section 29;

“disposal of public property” includes the transfer without ***consideration by way of sale or lease, a concession, a licence, or other alienation, of public property;***

“Guidelines” means the National Procurement Guidelines referred to in section 5;

“ Handbook” means the handbooks referred to in clause 6

“Intellectual Property” as reflected in the Copyright Act of 1997

“Objectives” means the objectives specified in section 4(2) (b);

“Office of the Procurement Regulator” means the body established by section 24;

“Operating Principles” means the principles of accountability, transparency and value for money;

“procurement” means the process of acquiring property or services commencing with the identification of the need of the property or services and ending with the performance of the related contracts;

“Procurement Regulator: means the person performing the duties of, or occupying, the office of the Procurement Regulator as established by section 23;

“property” means real or personal property or other tangible or intangible property including a right, interest, intellectual property, title, claim, chose in action, monetary or financial instrument, whether present or future or vested or contingent;

“public money” means money that is:-

- (a) received or receivable by *the State, a statutory body or a state controlled enterprise;*
- (b) raised by an instrument from which it can be reasonably inferred that the State accepts ultimate liability in the case of default;
- (c) *spent or committed for future expenditure, by the State, a statutory body or a state controlled enterprise;*
- (d) *distributed by the State, a statutory body or a state controlled enterprise to a person; or*
- (e) *raised by a private body in accordance with a statutory instrument, for a public purpose;*

“public procurement” means procurement involving the use of public money;

“public property” means property acquired, or in the process of being acquired, by an agency or in the care, control or custody of an agency whether as a trustee or not;

Chapter 81:01

“services” *includes* consultancies, professional services, *management services* and *related* activities;

“State controlled enterprise” means a company that is registered under the Companies Act -

(a) for a public purpose; or

(b) where the government or any person controlled by the government is entitled to exercise control directly or indirectly over the affairs of the company;

“statutory body” means -

(a) the Tobago House of Assembly as established by section 141A of the Constitution;

(b) a board, commission, body **or body corporate established by an act other than that regulating the conduct of professional occupations;** or

“supplier” includes *a contractor or a consultant;*

“transaction” means any contract, agreement, licence or arrangement for or in relation to -

(a) public procurement;

(b) the use of public property by an agency; or

(c) the disposal of public property.

“value analysis” means an analysis of the functions of a programme, project, system, product, items of equipment, building, facility, service or supply by a person, directed at improving performance, reliability, quality, safety and life-cycle.

(2) For the purpose of this act “procurement “does not include:-

a) Grants (with in the form of a contract or conditional gift)

b) Investment or divestment

c) Sales by tender

d) Loans

e) Purchases of property or services used in the production of goods for resale

- f) *Any property right not acquired through the expenditure of Public money- for example, a right to pursue a legal claim for negligence;*
- g) *Statutory appointments;*
- h) *appointments made by a Minister using the executive power) – for example, the appointment of a person to an advisory board: or*
- i) *(engagement of employees in the public service) on contract or the appointment of public officers in the public service”.*

Act to bind the State 3. This Act binds the State.

PART II - PROCUREMENT FRAMEWORK

Application of
Principles and Objectives

4. ***(1) The Operating Principles of Accountability, Transparency and Value Value for Money, together with the Objectives of Public Procurement which are:***

- (a) economy, efficiency and competition;***
- (b) ethics and fair dealing according to the highest standards of probity and professionalism;***
- (c) the promotion of national industry effecting sustainable development, poverty alleviation and environmental management;***
- (d) a social return on investment shall apply to every transaction.***

(2) A person who is a party or seeks to be a party to a transaction shall ensure that the transaction-

- (a) conforms to the Operating Principles specified in sub-section 1;***
- (b) addresses the Objectives specified in sub-section 1; and***
- (c) conforms to the Guidelines and where no Guidelines are in place, to current best practice.***

(3) A person who fails to comply with subsection (2) and (3) commits an offence.

Guidelines

5. (1) The Procurement Regulator shall develop *the National Procurement Guidelines* **taking into account the First Schedule -**

- (a) for the implementation and monitoring of the Operating Principles and Objectives in their application to a transaction **and the system of public procurement;**
- (b) **for** the publication of details in respect of a transaction;
- (c) to treat with matters for, **and** in relation to a transaction;
- (d) to ensure *best practices in public procurement in every matter in relation to-*
 - (i) *identification of needs;*
 - (ii) *feasibility study;*
 - (iii) *value analysis.*
- (e) **handling of complaints by Agencies in respect of a transaction estimated below the thresholds specified in the Guidelines.**

(2) The Guidelines may address the following:

- (a) general rules relating to procurement including those with respect to -
 - (i) the format and content of requests for proposals;
 - (ii) the means of improving the process of competitive tendering and contracting;
 - (iii) the system of using bonded **or preferred** suppliers;
 - (iv) the preference, according to Government policy, for local suppliers and small business in procurement;
 - (v) **the principle of** open and effective competition including public notification of opportunities and evaluation criteria to be used in the bid process;
 - (vi) advertising rules and time limits;
 - (vii) participation and qualification **of interested parties to a transaction;**

- (viii) the tender documentation and technical specifications;
- (ix) the tender evaluation and award criteria;
- (x) the reporting **and monitoring** requirements;
- (xi) conflict of interest;*
- (xii) measures in times of emergency;*
- (xiii) whole of government procurement contracts;*
- (xiv) select tendering or direct sourcing as a means of procurement;*
- (xv) dealing with complaints at the agency level*
- (b) the procurement indispensable for national security or national defence purposes;**
- (c) public consultation on major contracts;
- (d) the use of a joint undertaking by all parties to a transaction to comply with an agreed code of ethics with sanctions;
- (e) the consideration of government policies in public procurement;
- (f) an independent review process **to include civil society at critical points of the system of public procurement;**
- (g) reporting requirements of agencies;**
- (h) monitoring of the performance of the contract;**
- (i) the relationship of the Handbooks to the Guidelines;
- (j) general rules on disposal of public property including those with respect to disposal of unserviceable, surplus or obsolete public property and sale or lease of real property in the care, control or custody, of an agency;**
- (k) Parliamentary approval of Government to Government contracts involving the use of public money; and**
- (l) any other matters as are prescribed.**

(3) The Procurement Regulator, when developing the Guidelines, shall consult with the Council.

(4) The Guidelines –

- (a) shall be consistent with this Act;

- (b) may adopt or adapt any published **international** standard **in accordance with best procurement practice;**
- (c) shall specify exemptions in certain restricted circumstances *that are not inconsistent with the public interest;*
- (d) *shall be public and easily available.*

(5) The Procurement Regulator shall submit the Guidelines *directly to Parliament to be tabled no later than ten (10) sitting days of receipt by Parliament.*

(6) *The Guidelines* shall be subject to negative resolution of Parliament.

(7) *The Procurement Regulator shall publish the Guidelines in the Gazette.*

8) *The Guidelines, once published, are a statutory instrument for the purpose of the statutes Act.*

9) *A party to a transaction who fails to comply with the Guidelines commits an offence.*

Chapter 3:20

Handbook as
guidance
material to
supplement
Guidelines

6. (1) The Procurement Regulator may develop Handbooks *or other material* to serve as detailed guides *for the process to be followed in respect of specified categories* of transactions.

(2) The Chief Executive shall cause a Handbook to be published in respect of the procedures to be followed by his agency in respect of procurement and disposal of public property.

(3) A Handbook, whether produced by the Procurement Regulator or an agency shall conform to the Operating Principles, Objectives and Guidelines.

(4) A Handbook shall be published for public comment for 30 days before it becomes operational.

Chief Executive
to issue Agency
Instructions to
supplement
Guidelines

7. (1) The Chief Executive may issue, in writing, an internal administrative direction for the purpose of expediting a transaction *to be known as an Agency Instruction*.

(2) The Chief Executive shall forward a copy of the Agency Instruction to the Procurement Regulator before its date of operation.

(3) An Agency Instruction shall-

- (a) conform to the Act, Regulations and Guidelines and take into account any guidance material such as Handbooks issued by the Procurement Regulator so that the practices of the agency relating to procurement and disposal of public property conform to the Operating Principles, Objectives and Guideline; and
- (b) authorize a person to enter into a transaction for, or on behalf of, the agency.

(4) An Agency Instruction that fails to conform to the Act, Regulations or Guidelines is void.

Report of *actions*
inconsistent
with Agency
Instruction

8. A person being an officer or employee of an agency who is a party to a transaction and makes a decision that is inconsistent with an Agency Instruction shall make a written record for the Procurement Regulator of the reasons of the decision for so acting.

Authorized
person for
the purpose of

9. (1) A Chief Executive, *or a person authorized in accordance with an Agency Instruction*, has the authority to *execute* a transaction or enter a *related negotiation* for or on behalf of the agency which he serves.

transaction

(2) The Chief Executive may authorize, by an Agency Instruction, a person to enter a transaction or related negotiation for or on behalf of an agency.

(3) The Chief Executive shall cause the names and positions of the persons authorized under subsection (2) and the extent of their capacity to treat, to be published.

(4) A transaction that is entered into by a person without lawful authority is voidable at the instance of the agency.

(5) A person authorized to act for or on behalf of an agency may be personally liable for the damages incurred by the agency as a consequence of entering a transaction in breach of the Operating Principles, Objectives and Guidelines.

(6) An authorized person under subsections (1) and (2) is deemed to be “a person in public life” for the purposes of the Integrity in Public Life Act, 2000.

(7) A person who wrongly represents himself as a person authorized to enter a transaction commits an offence.

(8) Neither Cabinet, a Minister of Government nor a person directly instructed by either, is authorized to enter a transaction.

Supplier not to
enter transaction
unless with a
authorized
purchaser

10. (1) A person who is, or intends to be, a supplier *shall ensure that the person with whom he is entering into a transaction or related negotiations is an authorized person.*

(2) A supplier who is found either by the Procurement Regulator, the Public Procurement Commission or the Court to have recklessly entered, or be entering, a transaction with an unauthorized person shall be prohibited from entering any future transaction with any agency for a period of five years either in

a personal capacity or in respect of any corporate body *of which that person is a corporate office holder*, in addition to any other penalty.

PART III - PUBLIC PROCUREMENT COMMISSION

Establishment of
the Public
Procurement
Commission

11. (11) For the purposes of this Act there is hereby constituted as a standing commission of enquiry a body to be known as the Public Procurement Commission which shall be directly accountable to Parliament.

(2) The membership of the Commission shall comprise a full time Chairman, 4 full time Commissioners and 4 part-time Commissioners being persons with a minimum of experience of 10 years in the disciplines of law, accounting and engineering and such other disciplines as the President sees fit, to be appointed by the President in the exercise of his discretion after consultation with the Prime Minister and the Leader of the Opposition;

(3) The Chairman of the Commission shall be a retired judge;

(4) The terms and conditions of the members of the Commission and other matters pertaining to the operation of the Commission are prescribed in the Second Schedule.

(5) The costs incurred for, and in relation to, the performance of the functions of the Commission shall be a direct charge on the Consolidated Fund.

Functions and
powers of
the Commission

12. (1) The function of the Commission is to investigate and resolve a complaint arising out of public procurement that cannot be resolved by the by the agency in accordance with the Guidelines, whether the complaint is submitted by an aggrieved party or the Commission is acting on its own initiative.

(2) In the exercise of its functions the Commission shall expedite issues before it in a timely fashion and take such other steps so as to minimize negative economic impact arising out of the performance of its functions.

Chapter 19:01

(3) Subject to the Act, the Commission is deemed to be a commission for the purposes of the Commissions of Enquiry Act and a member of the Commission shall have all the powers of a Commissioner appointed under that Act.

Chap. 5:32

(4) The Commission may conduct a mediation in accordance with the Mediation Act.

Matters pertaining
To the performance
of the Commission

13. (1) Where a transaction arises out of a development project, social or otherwise, valued in excess of \$50 million which is the subject of investigation by the Commission, no less than three (3) of the members of the Commission shall hear the matter

(2) The Commission shall not be subject to the direction or control of any other person or authority in the performance of its functions but is directly accountable to Parliament.

(3) Nothing in subsection (2) shall be construed as preventing the Minister with the responsibility for such aspects of the administration of this Act to make such arrangements as are necessary or desirable to facilitate liaison between Parliament and *the Commission*.

(4) The Commission upon hearing the parties to a transaction may direct the suspension of the procurement process pertaining to a transaction pending the outcome of an investigation and in so doing shall provide reasons.

(5) The Commission may employ alternative dispute resolution and other mediation techniques in the course of investigating and resolving a complaint.

(6) Subject to sections **14, 15, 16 and 17, the Commission** may regulate its own procedure and confer powers and impose duties on any officer of an agency.

(7) *The Commission* shall, no later than 10 working days following the expiry of the investigation, advise the parties to the transaction of the outcome of the investigation and report accordingly to Parliament.

Instituting
process to treat
with a complaint

14. (1) *Subject to the Guidelines* a person who has a complaint that a transaction to which this Act applies is in breach of the Operating Principles and Objectives or the Guidelines, may complain to *the Commission* in writing.

(2) *The Commission* may on its own initiative, or shall as a result of a complaint made under subsection (1), investigate a matter relating to a transaction so as to ensure the integrity of the process applied in the transaction and the application of the Operating Principles, Objectives and Guidelines.

(3) *The Commission may* offer mediation to the parties to a complaint in the first instance.

Procedure of
Commission

15. (1) *For the purposes of an investigation under this Act, the Commission shall inform itself in such manner as it sees fit.*

(2) For the purpose of an investigation under this Act, the Commission may-

(a) by notice in writing, require an agency or any officer or employee of that agency to furnish information that may assist the investigation into a transaction in such manner and at such times as may be specified by the *Commission*;

(b) by notice in writing require any person to provide information, data or reports for or in relation to, a transaction as may be in the possession or under the control of that person.

(3) The Commission may summon before it and examine on oath -

(a) any person who has made representations to it; or

(b) any officer, member or employee of a public body or any other person who, in the opinion of the Commission is able to furnish information relating to the investigation.

(4) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.

Access to
property of an
agency

16. (1) For the purpose of an investigation under this Act the *Commission or a* person authorized by it in writing for that purpose shall have the power to –

- (a) access books, records, documents, stores or other property belonging to an agency whether in the possession of an official or any other person, and make copies accordingly;
- (b) enter premises or a location under the care, control or custody of an agency where the Commission has reason to believe that the books, records, documents or other property pertinent to the investigation may be found;
- (c) enter premises occupied by any person in order to make such enquiries or to inspect a document, record or property that he considers necessary to any matter being investigated by him.

(2) The Commission or a person authorized by it in writing for that purpose shall only enter premises, other than those belonging to an agency with the consent of the occupier or owner, and where that consent is not forthcoming, may enter after having obtained a warrant to so do.

(3) A person, where so directed by the Commission or a person authorized in writing, shall make available copies of books, records or documents including those in digital format as required.

Witness on oath

17. The Commission may summon before it and examine on oath -

(a) any person who has made representations to it; or

(b) any officer, member or employee of an agency or any other

person who, in the opinion of the Commissioner is able to furnish information relating to the investigation.

- Outcome of Investigation
- 18.** (1) Upon the completion of the investigation the Commission may –
- (a) confirm a decision that is satisfactory to all and in compliance with this Act as a result of mediation or arbitration;
 - (b) direct a continuation of the suspension made under section 13(5) pending an appeal to the Court by the parties;
 - (c) find that a transaction has been conducted by an unauthorized purchaser;
 - (d) find the transaction is contrary to the Operating Principles, Objectives or Guidelines;
 - (e) find the complaint to be frivolous and vexatious.

(2) The Commission in addition to the powers in subsection (1) may refer the matter to an appropriate authority for further action.

(3) The Commission shall present a report to Parliament on the outcome of any investigation on any matter pertaining to public procurement or disposal of public property.

(4) After conducting an investigation under this Act, a Commission shall, in writing, inform the Chief Executive of the agency concerned and the Minister having responsibility of that agency the result of that investigation and make such recommendations as he considers necessary in respect of the matter which was investigated.

(5) Where a report of the Commission reflects adversely upon any person the Commission shall, so far as practicable, inform that person of the substance of the report.

- Illegal transaction
- 19.** (1) Where, as a consequence of an investigation by ***the Commission***, the party to a transaction is found by the ***Commission to be*** in breach of an Operating Principle, Objectives or Guidelines, the transaction shall be deemed to be ***void***.

(2) The deeming of a transaction to be void shall not preclude the enforcement of remedies by an innocent third party against a party to that transaction.

Surcharge for
frivolous complaint

20. The Commission may surcharge a person instituting a complainant for costs where the complaint is found by the Commission to be frivolous or vexatious.

Special Report

21. If a Commission finds, during the course of its investigations or on the conclusion of a hearing that there is evidence of a breach of duty, misconduct or a criminal offence on the part of an officer or member of an agency, it shall refer the matter to the person competent to take disciplinary or other proceedings as may be appropriate against that officer or member, and in all such cases shall submit a special report to Parliament.

Proceedings not
to be voided for
want of form

22. The proceedings of a Commission shall not be rendered void for want of form.

PART IV – THE PROCUREMENT REGULATOR

Appointment of
the Procurement
Regulator *by the
President*

23. (1) Subject to sub-section 2, 3 and 4 the President acting in his own deliberate discretion shall appoint a person to the office of Procurement Regulator after taking into consideration the advice of Parliament.

(2) A person who is an eligible candidate according to the qualifications as advertised by Parliament for the office of Procurement Regulator shall submit his application to a Joint Select Committee appointed by Parliament for the purpose of recruiting the Procurement Regulator.

(3) The Joint Select Committee shall conduct public hearings to consider eligible candidates for appointment to the office of Procurement Regulator and submit a list of names to Parliament.

(4) Parliament shall consider the list of the names submitted by the Joint Select Committee and together with its recommendations submit a list of names to the President.

(5) The terms and conditions in respect of the office of the Procurement Regulator including remuneration, gratuity and pension benefits shall be as determined by the President on the advice of the Joint Select Committee.

(6) The Procurement Regulator is deemed to be “a person in public life” for the purpose of the Integrity in Public Life Act 2000 and is directly accountable to Parliament for the performance of his functions and powers.

(7) The Procurement Regulator shall be appointed on a contract for a term of not less than five (5) years but no more than seven (7) years on terms as determined by the President in the exercise of his own discretion and is eligible for re-appointment for one more consecutive term only.

(8) The President may terminate the appointment of the Procurement Regulator where that person -

- (a) becomes of unsound mind or is incapable of carrying out the duties of the Procurement Regulator;
- (b) has been declared bankrupt;
- (c) is convicted of an offence which brings the office into disrepute;
- (d) is guilty of misconduct in relation to the functions, powers and duties of the Procurement Regulator;
- (e) is absent from three consecutive meetings of the Council except on leave granted by the President;
- (h) fails materially or wilfully to carry out of the duties or functions as required of the Procurement Regulator under this Act.

(9) Where the Procurement Regulator is unable to act by reason of illness or other cause, the President may appoint a person to act in his stead and the person so appointed may complete any unfinished business commenced by the Procurement Regulator.

Establishment of
the Office of
Procurement

24. (1) There shall be established by this Act a statutory authority, headed by the Procurement Regulator, to be known as the Office of the Procurement Regulator, to provide support to the Procurement Regulator in the performance of his functions and powers.

(2) The Parliament shall provide the Office of the Procurement Regulator with adequate human, financial and capital resources, for and in relation to the efficient and effective operation of the functions and powers of the Procurement Regulator, including staffing, training and technical support.

(3) The parliament shall provide for the costs and expenses to be incurred in the operations of the Office of the Procurement Regulator to be a direct charge on the Consolidated Fund.

Functions and Powers
of the Procurement
Regulator

25. (1) The Procurement Regulator shall have the power to do anything necessary or convenient for performing his functions under this Act, including the power to enter *into* contracts, hire consultants or purchase or lease real *property*.

(1) Without limiting the generality of sub-section (1) the Procurement Regulator shall have the power to engage such staff on contract according to terms and conditions as he sees fit and enter such contracts as he deems necessary for the purpose of his functions.

- (3) The Procurement Regulator has the function of –
- (a) promoting a flexible and responsible system for procurement;
 - (b) developing a streamlined public procurement framework;

- (c) enabling agencies to explore alternative service delivery options *within the context of the Operating Principles, Objectives and Guidelines;*
- (d) providing ‘best practice’ advice in the conduct of procurement including the promotion of electronic transactions;
- (e) implementing a procurement system to foster small and medium enterprises;
- (f) auditing and reviewing the systems of procurement to ensure compliance with the Operating Principles and Objectives.
- (g) monitoring the award and implementation of transactions to ensure compliance with the Operating Principles, Objectives and Guidelines;*
- (h) liaising with the Public Procurement Commission with respect to its powers so as to advise and guide parties to a transaction and the public of current best practice.*

(4) Without limiting the generality of the foregoing, the Procurement Regulator may-

- (a) harmonize policies, systems and practices of agencies **taking into account costs reduction strategies** in relation to public procurement and disposal of public property;
- (b) *review* procurement *practices and delivery systems annually to identify best practices;*
- (c) establish a comprehensive database with information on procurement processes, contract awards and prices and any other information of public interest as the Procurement Regulator determines;
- (d) determine, develop, introduce, maintain and update related system-wide data-bases and technology;
- (e) maintain a Register of Suppliers in respect of classes of transactions;*

-
- (f) adopt, adapt and update common specifications, standards and other whole-of-government arrangements for mandatory compliance;
 - (g) promote public understanding of procurement and related processes;
 - (h) in consultation with competent authorities set training standards, competence levels, and certification requirements to promote best practices in procurement;
 - (i) prepare, update and issue authorized versions of Handbooks incorporating standardized bidding documents, procedural forms and attendant documents for use by agencies in public procurement and disposal of public property;
 - (j) ensure that any deviation by agency from the use of the Handbooks, standardized bidding documents, procedural forms, any other attendant documents and standardized contracts, accord with the Operating Principles, Objectives, and Guidelines;
 - (k) foster improvements with the use of technology in public procurement including electronic trading;
 - (l) conduct periodic inspections of the records and proceedings of the procuring and disposing practices of agencies to ensure the application of the operating Principles, Objectives and Guidelines;
 - (m) refer complaints concerning a transaction to the Public Procurement Commission;***
 - (n) institute audits for or in relation to –
 - (i) public procurement or disposal of public property;
 - (ii) the content and conduct of a contract; and
 - (iii) the conduct of a transaction;
 - (o) heighten the awareness of agencies and members of the public to issues of public procurement;***
 - (p) establish and maintain institutional linkages with professional entities and other bodies with interest in public procurement and disposal of public property, particularly the Public Procurement Commission;***
-

- (q) undertake research and surveys with respect to public procurement and disposal of public property; and
- (r) under take any other activity that may be necessary for the implementation of the Operating Principles, Objectives and Guidelines.

(5) In the exercise of his functions the Procurement Regulator shall not be subject to the direction or control of any person or authority.

(6) In the exercise of his functions, the Procurement Regulator may request an agency for details in respect of a transaction, and the agency shall comply with that request within the time specified in the request.

(7) Where a person fails to comply with such request within the time specified in that request, that person is guilty of an offence.

Expenses of the
Procurement
Regulator

26. (1) The Parliament shall provide for the cost and expenses of the Procurement Regulator to be a direct charge on the Consolidated Fund.

Audit of the
Procurement
Regulator

27. The Auditor General shall audit the Procurement Regulator annually and submit the report to Parliament.

Reporting by the
Procurement
Regulator to
Parliament

28. (1) The Procurement Regulator shall present an annual report to Parliament no later than forty (40) days after the expiry of the financial year to which that report relates.

(2) The report shall include-

- (a) a figure representing the total value of contracts as awarded by agencies, *and another figure representing* the cost of the total value of contract overruns;

- (b) the number of unfulfilled contracts awarded by agencies in respect of procurement;
- (c) the means of financing the contracts;
- (d) the number of variations to a contract and related costs;
- (e) a summary of transactions on an agency by agency basis specifying in respect of public procurement-
 - (i) the number of contracts awarded;
 - (ii) the means of funding the contracts together with quantum;
 - (iii) the number of contracts varied;
 - (iv) the number of contracts with cost overruns;
 - (v) the quantum of those overruns;
 - (vi) the number of unfulfilled contracts and the quantum of cost incurred;
 - (vii) with respect to the procurement for a project, the expected deliverables of that project, the number and value of the contracts involved and a list of the successful awardees with respect to contracts issued in relation to the project together with a brief description of each contract;
 - (viii) lessons learnt as a consequence of the management contracts;
- (f) a summary of transactions concerning the disposal of public property on an agency by agency basis -
 - (i) in respect of real property – the address and other identifying details of the property disposed of including value, to whom it was disposed, date of disposal, means of disposal, and consideration;
 - (ii) in respect of property other than real property, details of the property disposed of including value, to whom it was disposed, means of disposal, and consideration;*
- (g) details of changes implemented to ensure current best practice for procurement, and disposal of public property;
- (h) the contents of the report of the Council;
- (i) recommendations.

(3) The report does not need to include details of contracts less than \$50,000 or contracts for the settlement of legal liability other than the total number and quantum.

(4) The Speaker shall cause a copy of that report to be laid before Parliament within twenty-eight (28) days of its receipt by him, or if Parliament is not then in session, within twenty-eight (28) days of the commencement of its next session.

PART V - NATIONAL PROCUREMENT ADVISORY COUNCIL

National
Procurement
Advisory Council

29. (1) There shall be established a National Procurement Advisory Council comprising fourteen (14) persons being -

(a) a nominee of the Trinidad and Tobago Transparency Institute and one nominee from each of two (2) other civil society organizations established under law having an interest in good governance;

(b) two nominees of the Joint Consultative Council for the Construction Industry and one each from the Trinidad and Tobago Manufacturers' Association, the Trinidad and Tobago Chamber of Industry and Commerce and the Energy Chamber;

(c) a nominee *from an organization representing labour and one representing a professional organization;*

(d) a nominee of the Tobago House of Assembly;

(e) a nominee of a body that represents the State enterprises other than the Corporation Sole;

(f) the Chief State Solicitor; and

(g) an *ex-officio* member from the Ministry of Finance.

(2) A nominating organization referred to in sub-section (1) *other than that which is specified*, shall be appointed for a period of three years by the President

exercising his own discretion after taking into account the effectiveness of that organization in serving the public interest, which organization shall nominate its representative to serve on the Council.

(3) Should a nominating organization cease to exist, the President may identify an alternative organization for the balance of the term of the organization being replaced, and the nominee's term on the Council shall be affected accordingly.

(4) An organization within five (5) working days of being appointed by the President shall advise the Procurement Regulator in writing of its nominee to the Council being selected by the President.

(5) The Procurement Regulator shall advise the public of the nominees by a notice in the Gazette and in a major circulating daily newspaper.

(6) Matters pertaining to the operation of the Council are prescribed in the **Third** Schedule.

(7) The Council shall present an annual report to the Procurement Regulator and include in that report its observations and recommendations on the operation of the systems pertaining to public procurement, and disposal of public property.

Functions and
powers of the
National
Procurement
Advisory Council

30. (1) The Council shall meet –

(a) to consider the implementation of the Operating Principles and Objectives, and to advise the Procurement Regulator accordingly;

(b) to make recommendations to the Procurement Regulator for the development of the Guidelines so as to ensure that the Guidelines and other matters in relation to public procurement, and disposal of public property, conform to the Operating Principles and Objectives.

(2) In performing its functions under subsection (1), the Council shall take all reasonable steps to obtain the views of the national community on the operation of the public procurement system *and take into account Government procurement policy for local suppliers and small businesses.*

(3) The Council may invite a representative of an agency to assist in the performance of its functions but the representative shall have no vote.

Secretariat services
to be provided by
the Procurement
Regulator

31. The Procurement Regulator shall provide the necessary secretariat services to the Council and bear the cost for the operation of the Council.

PART VI – MISCELLANEOUS

Protection from
liability

32. *Subject to section 37, no proceedings whatsoever shall lie against a Commission or any person concerned with the administration of this Act for anything that he may do or report or say in the performance of its functions and powers under this Act.*

Privileged
information and
protection from
defamation

33. (1) *Anything said or information supplied or any document or thing produced by any person in proceedings before a Commission or in the course of any investigation by the Commission shall be absolutely privileged in the same manner as if the proceedings or investigations were in a court of law.*

(2) *For the purposes of defamation proceedings any report made by a Commission or the Procurement Regulator under this Act and any fair and accurate comment concerning that report shall be deemed to be privileged.*

Procurement
records to be public

34. (1) A person may make a request of an agency to supply information and documents relating to a transaction.

(2) The Freedom of Information Act, 1999 applies to a request under subsection (1) as if that request had been made under the Freedom of Information Act, 1999.

(3) An agency shall not withhold disclosure on the grounds of confidentiality because that disclosure may prove embarrassing to the agency.

Agencies to publish
award of contracts

35. Where an agency awards a contract, the authorized officer of that agency shall cause the public to be advised of that award, the names of the parties, the property or services to be acquired or disposed of, the price, and the performance date of the contract contemporaneously with the making of the award, and the requirements shall apply in respect of any variation of that contract or award.

Application of
Judicial Review
Act, 2000

36. Notwithstanding any other law, the Judicial Review Act, 2000 applies to a decision which arises in the process of procurement in respect of a transaction by an agency.

Reporting on
Collusion

37. (1) Notwithstanding any other written law, where a person has a reasonable belief that collusion between all or any of the interested parties to a transaction, or reasonably believes that an irregularity or a breach of this Act, has occurred, that person shall report accordingly to the Procurement Regulator, or the Public Procurement Commission.

(2) The Procurement Regulator shall refer any report of a breach of this Act to the relevant authorities and to the Public Procurement Commission for prompt attention, and advise accordingly in his report to Parliament.

Offences

38. (1) A person who exercises undue influence which results in a transaction being in breach of the Operating Principles, Objectives or Guidelines commits an offence.

(2) A person who being or having been an officer of an agency -

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of financial resources or property disproportionate to his present or past official emoluments, *and*, unless he gives a satisfactory explanation to the Court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control; commits an offence.

(3) Where a Court is satisfied in proceedings incurring subsection (2) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for, or otherwise on behalf of, the accused or acquired such resources or property as a gift from the accused, those resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused.

General penalty

39. (1) A person who commits an offence under this Act for which no penalty is prescribed shall be liable to a fine of five hundred thousand dollars and imprisonment for seven (7) years.

(2) An offence attracting a penalty under subsection (1) is a "specified offence" for the purpose and application of the Proceeds of Crime Act, 2000.

Protection for
whistleblowers

40. (1) *Notwithstanding any other law, a person shall not be discharged, demoted, suspended, threatened, harassed, or financially prejudiced or otherwise discriminated against for making a report under section 38.*

(2) A person who is discharged, demoted, suspended, threatened, harassed or financially prejudice or otherwise discriminated against for making a report under section 38 shall be reinstated in his original office with no loss of benefit and provided with a public apology by the agency without prejudice to other

legal recourse available to him.

(3) A person who acting on behalf of an agency discharges, demotes, suspends, threatens, harasses or in any manner discriminates against a person or acts so as to prejudicially impact upon a person's livelihood as a consequence of his making a report under section 38 commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars (\$150,000) and imprisonment for six (6) months.

- Amendment to Act **41.** A law altering sections 4, 5, 6, 7, 8, 9, and 10 of this Act shall not be passed by Parliament unless the final vote is supported by the votes of not less than two-thirds of the members of each House.
- Regulations **42.** The President may make regulations for the giving effect of this Act, and for prescribing anything required or authorized by this Act to be prescribed.
- Validation of
transactions by
agencies outside the
jurisdiction of
Central Tenders
Board Ordinance
1961 **43.** A transaction that is a transaction to which the Central Tenders Board Ordinance, 1961 does not apply and which is entered into or in force in accordance with an agency's tendering rules and procedures at the commencement of this Act, shall be deemed to be performed in accordance with this Act, and to the extent that the transaction is valid at the commencement of the Act, it shall be deemed to be so valid for the purposes of this Act so long as it conforms to section 4 of this Act.
- Repeal and savings
of transaction within
the jurisdiction of the
Central Tenders Board
Ordinance 1961 **44.** (1) The Central Tenders Board Ordinance, 1961 is repealed.
- (2) At the commencement of this Act a transaction that is entered into by the Director of Contracts, the Central Tenders Board or by any person in accordance with the Central Tenders Board Ordinance, 1961, for or on behalf of an agency shall be deemed to have been entered in accordance with this Act with respect to that agency *and a reference to the Director of Contracts, the Central*

Tenders Board as the Central Tenders Board Ordinance 1961, as the case may be, shall be construed as a reference to the Procurement Regulator or this Act as the context demands.

(3) Notwithstanding the repeal of the Central Tenders Board Ordinance, 1961, the Central Tenders Board Regulations 1965 and the Central Tenders Board (Defence Force and Protective Services) (No 2) Order 1992 shall continue to be in effect and shall apply, as appropriate to a transaction to which the Central Tenders Board Ordinance, 1961 applied prior to the commencement of this Act, until such time as the Guidelines are in force.

Consequential
Amendments to
the Exchequer
and Audit Act

45. The Exchequer and Audit Act is amended in section 2 by -

(a) adding at the end of the definition of “public money”

“(c) spent or committed for expenditure by or on behalf of an Chap. 69:01
accounting officer or a statutory body;

(d) distributed or administered by or on behalf of an accounting
officer to a person.”

(b) by adding at the end of the definition of “revenue” the following

words:

“received or receivable by an accounting officer or raised by an
instrument that is issued by or on behalf of the State from which it
can be inferred that the State accepts liability in the case of
default”;

(c) by deleting from the definition of “statutory body” **the following**

words:

“or similar body corporate established and incorporated by an act”
and substituting the words “established by an act or body corporate
that is established by under an act including the Companies Act
where the Government or any person controlled by the
Government is entitled to exercise control directly or indirectly
over the affairs of that body”. Section 11(3)

FIRST SCHEDULE**(Section 5)*****Framework for the Establishment of Procurement Guidelines***

1. The Objectives of Public Procurement include the promotion of economy, efficiency and competition in public procurement and in the disposal of public property in accordance with the Operating Principles of Accountability, Transparency and Value for Money. These objectives are more readily achievable when procurement is-

(a) perceived as a knowledge-based management activity geared to enhancing good governance by linking the financial system to economic and social outputs and outcomes;

(b) managed in such a manner that inputs, outputs and related methods adhere to best practice.

2. Guidelines, Agency Handbooks and Agency Instructions must apply-

a) standards for public contracting as recommended by Transparency International (see Appendix 1);

b) Methodologies for optimising Value for Money and apply on a whole of life basis to achieve stated economic and social outputs reflecting the principles of Transparency and Accountability.

3. Value for Money methodologies require:-

(a) Identification of needs and of economic and social outputs and outcomes; specification in these terms facilitates cost benefit analysis: the proper identification, assessment and comparison of the costs and benefits at each phase of the procurement cycle.

(b) Planning, including the selection of an appropriate procurement method and of evaluation criteria, taking into account:

- i. government and agency policies;*
 - ii. market maturity;*
 - iii. the need to implement a competitive process of a scale commensurate with the size and risk profile of the particular procurement;*
 - iv. admission requirements for tenderers;*

 - v. the performance history of each tenderer;*

 - vi. the requirement that the procurement contract promote stated social and economic outputs and outcomes.*
- (c) Disposal of assets in accordance with best practice, accountability and transparency principles.*
- 4. Guidelines, Agency Handbooks and Agency Instructions shall apply accountability and transparency criteria to all stages of the procurement cycle.*
- The application of these criteria should identify performance indicators that include:*
- (a) the extent to which the procurement process to be undertaken-*
 - i. optimizes value for money in accordance with the economic and social outputs and outcomes of the agency;*
 - ii. protects the agency's integrity in the use of public money.*

 - (b) What social and economic outputs and outcomes to be achieved through the procurement process using the value for money methodologies.*
- 5) Agencies through their Chief Executives are accountable for their procurement processes. Accountability and transparency are best achieved by ensuring that an agency's procurement procedures are clear, well understood, open applied equitably and adhere to best practice in accordance with the agency's policies and objectives. The procedures must be documented and published thereby enabling third party verification.*

- 6) *Guidelines, Agency Handbooks and Agency Instructions shall foster the achievement of economic and social outputs and outcomes in accordance with Government policy decisions, particularly those relating to national industry, promotion of small and medium-sized enterprises and of local content, sustainable development, poverty alleviation and environmental management.*
- 7) *An agency's performance in meeting accountability and transparency criteria should form part of the Procurement Regulator's report to Parliament and be published on the agency's website.*

SECOND SCHEDULE

(Section 11)

Matters pertaining to the operation, and terms and conditions of the members, of the Public Procurement Commission.

Period of
Appointment

1. *(1) Subject to this Act, a person appointed as a member of the Commission shall hold office for a period of seven (7) years and may be re-appointed for period not exceeding five (5) years but shall not be appointed for more than two (2) consecutive terms.*

(2) A member of the Commission is deemed to be a person in public life for the purpose of the Integrity in Public Life Act, 2000 and is directly accountable to Parliament for the performance of his functions and powers.

Remuneration of
members of the
Commission

2. *(1) Subject to subsection (2), a member of the Commission shall receive such emoluments and be subject to such other terms and conditions of service as the President may from time to time determine.*

(2) The emoluments and terms of conditions of a member of the Commission shall not be less than the emoluments which may, from time to time, be payable to a Puisne Judge.

(3) The emoluments and terms and conditions of service of a member of the Commission, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during the period of his appointment or reappointment, as the case may be.

Voluntary
departure from
office

3. A person appointed as a member of the Commission may at his own request be relieved of office by the President and shall in any case, subject to Clause 4, vacate office on attaining the age of seventy (70) years.

Extension of
in limited
circumstances

4. (1) The President may, after consultation with the Prime Minister and the Leader of the Opposition, permit a member of the Commission to continue in office until he has attained a later age, but not exceeding seventy-five (75) years.

(2) Notwithstanding that he has attained the age at which he is required to vacate his office, a member of the Commission may continue in office for such period after attaining that age as the President after consultation with the Prime Minister and the Leader of the Opposition, may specify, so that the member can give his decision or conclude any investigation he was conducting before he attained that age.

Validation of
action of member

5. Nothing done by a member of the Commission shall be invalid by reason only that he has attained the age at which he required to vacate his office.

Removal of
member of the
Commission

6. (1) A member of the Commission may be removed from office for –

(a) inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause);

(b) trading with the Government of Trinidad and Tobago without the prior approval by resolution of each House of Parliament;

*(c) bringing the office into disrepute;
and shall not be so removed except in accordance with this provision.*

(2) For the purposes of this clause a Commissioner trades with “the Government of Trinidad and Tobago” if, while holding office as such, he becomes a party to, or is a partner in a firm or a director or manager of a company which to his knowledge becomes a party to, any transaction with the Government of Trinidad and Tobago.

(3) If each House of Parliament by resolution decides that the question of removing a person from the Commission ought to be investigated, then the President shall appoint a disciplinary tribunal, which shall comprise a Chairman and not less than two or more than five other members from among persons who hold or have held the office of Judge of a superior court having jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from any such court.

(4) The disciplinary tribunal shall enquire into the matter and report on the facts to the President and recommend whether the member of the Commission the subject of the enquiry, ought to be removed from office for the grounds specified in this clause, within three (3) months of being appointed under sub clause (3).

(5) If the question of the removal from office of a member of the Commission has been referred to a tribunal appointed under sub clause (3) and the tribunal has recommended to the President that the person appointed as a member of the Commission should be removed from office, the President shall, remove that person from office.

(3) The appointment of a member of the Commission and the termination of his appointment whether by death, resignation or otherwise shall be published in the Gazette.

Suspension of
member

7. Where the question of removing a member of the Commission from office has been referred to a tribunal the President, after consulting with the Prime

Minister and the Leader of the Opposition, may suspend him from performing the functions of his office and any such suspension may at any time be revoked by the President after consultation with the Prime Minister and the Leader of the Opposition and shall in any case cease to have effect if the tribunal advises the President that the person ought not be removed from office.

Disqualification of
member of Commission

8. (1) No person shall be appointed as a member of the Commission if he is-

- (a) a member of the Senate or of the House of Representatives,*
- (b) an undischarged bankrupt;*
- (c) has been convicted of any offence involving dishonesty or moral turpitude; or*
- (d) a partner in a firm, or a director or manager of a company which to his knowledge is a party to any transaction with the Government of Trinidad and Tobago, unless, prior to his appointment, he has disclosed the nature of that transaction and interest of such firm or company.*

Member to be
full time

9. A person appointed as a full time member of the Commission shall devote his time to the appointment and shall not accept paid employment in any other capacity during any period in which he holds office and a person appointed as a part-time member of the Commission shall devote his full time to the performance of his duties when acting as a Commissioner.

Vacancy to be
filled

10. (1) Where a vacancy arises in the membership of the Commission the President, after consultation with the Prime Minister and the Leader of the Opposition, may designate one of the part-time members of the Commission to act in that office during that vacancy, until an appointment is made by the President.

(2) Where, by reason of illness, absence from the jurisdiction or other sufficient cause a person appointed as a member of the Commission is unable

to perform the functions of his office, the President after consultation with the Prime Minister and the Leader of the Opposition, may appoint a part-time Commissioner as he thinks fit, being a person qualified under this Act, to perform those functions as a replacement.

Staff of
Commission

11. (1) The Commission may appoint and employ persons as are necessary to assist it in the proper performance of its function, at such remuneration, terms and conditions as may be approved by the Commission.

THIRD SCHEDULE

Section 29 (1) (6)

Matters pertaining to the operation of the National Procurement Advisory Council

Tenure of office

1. (1) An organization that is represented on the Council may through its nominee hold an office for a period of three (3) years and the organization is eligible for re-appointment for no more than two (2) consecutive terms

(2) The organization may change its nominee after giving notice to the President and the Procurement Regulator.

Council vacancy

2. (1) The office of a member of the Council shall become vacant –

(a) if he resigns in writing;

(b) if his appointment is terminated in accordance with this Schedule.

(2) If any vacancy occurs in the membership of the Council, that vacancy shall be filled by another nominee of the relevant organization who shall, subject to this Schedule, hold office for the remainder of the period for which the previous member was appointed, and the consequent appointment shall be made in the manner and from the same category of persons as the appointment of the previous member.

- Gazetting of appointments 3. The names of all the members of the Council as first constituted and every change of membership following shall be published in the *Gazette*.
- Resignation from office 4. A member of the Council may at any time resign his office by instrument in writing addressed to the President and transmitted through the Chairman, and from the date of the receipt by the President of that instrument, the member shall cease to hold office.
- Termination of appointment 5. The membership of a person to the Council shall cease if –
- i. the nominating organization withdraws support from the person who is its nominee on the Council;
 - ii. the nominating organization becomes bankrupt or compounds with or suspends payment to a creditor;
 - iii. the President revokes the organization as a nominating body, which the person represents.
 - iv. that person becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
 - v. that person is convicted of an offence and sentenced to a term of imprisonment;
 - vi. that person dies.
- Procedure of meetings 6. (1) The Council shall meet not less than once a month or as often as may be necessary or expedient for the performance of its functions under this Act and these meetings may be held at such places and times and on such days as the Council determines.
1. The Council shall appoint one of its members as Chairman.
 2. The Chairman shall preside at all meetings of the Council and if the Chairman is absent from a meeting the members present shall elect another member to preside at that meeting.
 3. Five members shall constitute a quorum of the Council.
 4. The decisions of the Council shall be by a majority of votes and in addition to an original Vote, the Chairman or other member presiding

at the meeting shall have a casting vote in any case in which the voting is equal.

5. Subject to the provision of this Act the Council may regulate its own proceedings
6. The validity of any proceedings of the Council shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

Remuneration of members

7. There shall be paid to the members of the Council such remuneration, whether by way of salary, honorarium, travelling or other allowances as the Cabinet determines.

Passed in the House of Representative thisday of2012

Clerk of the House

I confirm the above

Speaker of the House of Representative

Passed in the Senate thisday of2012

Clerk of the House

I confirm the above

President of the Senate

July 05 2012 – Public Procurement and Disposal of Public Property Act, 2012

This document is a draft only and thus may contain typographical errors. Should you locate such an error please forward same to us via email – jcctt1@gmail.com. Other comments are also welcome.