

The Politics of Procurement Part II
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Abstract

This paper sets out to develop a perspective for looking at procurement in the construction industry in T&T in the context of construction in developing economies. This paper recounts essential aspects of the historical review of procurement methods and construction delivery systems in T&T as outlined in Part 1 of this work in progress. Part 1 was delivered (as an unpublished power point presentation) at CIBW92 Procurement Systems Symposium 2002 and had as its main objectives the following:

- To show how source of funds determined procurement methods and delivery systems that in turn acted as drivers for change in the public sector procurement in T&T.
- To highlight some of the negative impacts of procurement methods on development in T&T.

The Politics of Procurement Part 11 draws heavily on selected developments in the new Institutional Economics and some recent developments in cognitive science with a view to providing a conceptual framework to underpin the purely descriptive approach of Part 1.

In Part 11, the thesis under consideration is that procurement systems define the institutional matrix in the construction industry. In this section definitions of development and growth are cast in institutional terms thus setting the agenda for Part 111 of this work in progress.

In Part 111 cognisance will be taken of the fact that productive entrepreneurship is now being recognised as the foremost variable driving economic growth. Part 111 will set out to show how procurement systems affect the development of genuine productive entrepreneurship. *The emphasis here is on those activities that benefit both the entrepreneur and society at large. Different incentive systems lead to different kinds of entrepreneurship.*¹ In Part 111 concepts of Value Analysis (VA) and Social Return on Investment (SROI) in public sector investment programs will be introduced. Part 111 will thus bring finally into focus the crucial role procurement systems, with their incentive structures; can play in the development process.

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Coyne and Leeson The Plight of Underdeveloped Countries The Cato Journal Volume 24 2004

Introduction

In order to come to terms with construction in developing economies it is important to understand *“that infrastructure development and economic development cannot be separated for analytical purposes. They are as inseparable as opposite sides of the same coin”*².

Infrastructure development includes the development of human and institutional systems/structures to meet needs such as the movement of people, goods and information in addition to the provision of water, sanitation and shelter. The development of human and institutional infrastructure is symbiotically linked to economic development.

When one takes into account that the iconic examples of recent economic development, - Singapore, South Korea, China, Malaysia and India, are examples of countries that made great strides in developing not only their physical infrastructure but developed their existing institutions as pillars of economic growth and development; then in looking at construction in developing economies it becomes imperative that we focus on how institutions in the construction sector are affect the development process and vice versa.

The role of institutions in economic development is highlighted in the words of Nobel Prize winner Ronald Coase *“Economists have never considered until recently the role that institutions play in the working of the economic system. In fact, the institutions determine the way in which the economic system works”*³ The institutional context determines the stage of development attained by a given country.

The role of institutions in making a success of Capitalism is detailed by Hernando De Soto in the *Mystery of Capital* sub-titled *‘Why Capitalism Triumphs in the West and Fails Everywhere Else.’* De Soto identifies as one of the mysteries of capital the fact that most of the poor already possess the assets they need to make a success of capitalism. The value of savings among the poor is in fact immense - one hundred and fifty times greater than all the foreign investments received since Haiti’s independence from France in 1804. However, the assets of the poor are dead capital. The institutions that give life to capital, that allow for the re-presentation of capital so as to secure the interest of third parties with work and assets, do not exist or accessibility by the poor provides major challenges.

The western nations, De Soto states, invented the key conversion process 150 years ago, and their economies began to soar into wealth without their ever realizing what they had done.⁴ It should be noted that the process by which capital is acquired should be taken into account for societies that emerged out of slavery and indentureship.

The following distinctions are important for our deliberations - distinctions between:-

² Principles of Public and Private Infrastructure Delivery John B Miller MIT

³ Interview with Ronald Coase about New Institutional Economics September 17th 1997

⁴ Hernando De Soto *The Mystery of Capital* sub titled *Why Capitalism Triumphs in The West and Fails Everywhere Else*

Institutions and Organisations

Procurement Processes and Delivery Systems.

Development and Growth

Institutions and Organisations

- **Institutions** are the humanly devised constraints that structure human interaction, and function as the rules of the game, the governance structures, within which individuals operate. Institutions make up the formal constraints such as rules, laws, and constitutions as well as informal constraints such as norms, conventions and codes of conduct with their respective enforcement characteristics and mechanisms. The main purposes of institutions are to reduce uncertainty that pervades all societal interaction and to set the framework for continuity of ideas and experience.
- **Organisations** are the players. Organisations are made up of groups of individuals bound by some common purpose to achieve specified objectives. An organisation may be a family, a clan, a firm, a regulatory agency, a trade union, a political party or any of the many and varied community and non-governmental bodies.

“The relationships between organisations and institutions are such that the organisations that come into existence reflect the opportunities provided by the institutional matrix... Institutions form the incentive structures of a society and the political and economic institutions, in consequence, are the underlying determinants of economic performance. If the institutional framework awards piracy, piratical organisations will come into existence; and if the institutional framework rewards productive activities then organisation/firms will come into existence to engage in productive activity.”⁵

Procurement Processes and Delivery Systems

- **Procurement processes** are the rules, the institutional framework, for the accomplishment of a specified acquisitive purpose such as the acquisition of property, works and or services by a public or private entity. Procurement processes begin with the identification of a need and end with the fulfillment of a contract.
- **The term Delivery System(s)** is used to identify project delivery methods used in the construction industry. Delivery systems include:-
 - In House Delivery (Force Account)
 - Sequential Design-Bid-Build
 - Design Build

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Economic Performance Through Time Douglass C North's Nobel Prize Lecture 1993

- Design Build Finance Operate and
- Other combinations of designing, building, operating and financing.

The important issue is that different delivery methods require different procurement processes and different institutional and organisational arrangements. The relationship between procurement systems and delivery systems is such that procurement systems set the rules of the game in which organisations and delivery systems are chosen and operate.

Procurement systems are the institutional matrix, the governance structure within which a specific procurement strategy, procurement route and contract strategy operates. The procurement route is determined by the delivery system and contract strategy. The procurement route determines the operational relationship between organisations in the supply chain. Delivery systems, on the other hand are differentiated mainly in terms of risk allocation, constraints and the integration of the processes in the supply chain.

Development and Growth

Development is conceived to be a process of institutional evolution in the context of uncertainty. Complexity and the emergence of new properties are defining characteristics of the evolutionary process. *“Favorable institutions are thus those cultural elements that encourage the development of the key-variables for economic growth: - trade, productive entrepreneurship, individual responsibility and individual preferences, risk taking, and competition.”*⁶

Growth is the result of enabling institutional environments where chances are exploited and individuals succeed in improving their living conditions. Economic growth is meant to concern changes in consumer's surplus, rather than in purchasing power. Economic growth does not depend on the rate of scientific innovation, but on the ability to transform technological advances into productive undertakings addressed to satisfy or create demand.

Institutional Development and Change

Institutional change is a direct result of the choices made by decision makers with inherited institutions and cognitive propensities as background. Institutions if used creatively can function as adaptive processes that help decision makers to cope with systemic uncertainty and pervasive negotiation cost arising from opportunistic and difficult to circumscribe informational asymmetry. It is thus important for decision makers to be cognisance of the need and the capability to develop and nurture institutions and modes of thought that can bring about the emerging development paradigm. In this context in T&T our colonial past and our validatory modes of thought are major constraints on our cognitive processes. In the construction sector institutional change are changes in the procurement systems which affect organisations and determining delivery systems and contract forms.

The source of funds as highlighted in Part 1, the symbiotic relationship between institutional and economic development coupled with the role of those who have the power to attempt to

⁶ **Enrico Colombatto on Growth and Development** Springer Science+ Business Media, LLC 2006

change the rules, determine the incentives in the procurement processes that map the thrust to efficiency, social equity, and piracy. The overarching issues affecting construction in emerging economies are thus issues that are captured by the phrase *the politics of procurement* - issues that deal essentially with:-

- The restraints, opportunities and agendas associated with the financing of infrastructure development
- The decision maker's considerable influence over the incentive arrangements in procurement systems.
- The local decision maker concept of development
- The local decision maker's attitude to the demands of the polity
- The lack of sensitivity to institutional issues by decision makers

The literature on procurement deals essentially with methods to improve efficiency, social equity and avoidance of corruption. There is however a dearth of literature that focuses on the mental maps and computational power of the decision makers in construction in developing economies.

Decision Making and Decision Makers

An analysis of a decision maker's knowledge of the prevailing conditions requiring change necessary for the construction industry in developing economies, should take into account the mental maps and cognitive power of the decision makers in the context of the perceived speed of delivery required. In such situations, the underlying prevailing condition is uncertainty. Uncertainty fueled by the understanding that:-

- i. Choice is made by decision makers with historically and culturally determined mental maps.
- ii. Knowledge and analytical power of decision makers are severely limited,
- iii. Information is asymmetrically held among the different actors involved.

*iv. "That the process of institutional change is largely path dependent. In particular, institutional change starts to occur when, the parties to an exchange become aware that to be better off they need to ...restructure the existing rules. However when a path is set on a particular course, the network externalities, the learning process of organisations and the historically derived subjective models reinforce the course in a path dependent way."*⁷

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N C North 1990 Institutional Change and Economic Performance

- ⊖. Institutional development and change require a learning process which takes place over time in the context of uncertainty. The speed of delivery will thus affect the quality of learning and the efficiency of organisations.

One of the major issues raised by Nobel Prize winners Coase and North on the issue of decision making and change is that development should start with an understanding of the institutions in one's country and one should build from where one is.

Contributions from Cognitive Sciences

John Dewey's distinction between "**know how** and **knows what**"⁸ refined by the new trends in cognitive science shed new light on the learning process and the environment in which choices are made by decision makers. "*Cognitive science is waking up to the full importance of the realization that perception does not consist in the recovery of a pre-given world, but rather in the perceptual guidance of action in a world that is inseparable from our sensory-motor capacities, and that higher cognitive structures also emerge from recurrent patterns of perceptually guided action. Thus cognition consists not of representations but of embodied en-action.*"⁹

Cognitive Science recognises two cognitive modes of behavior:-

- A mode of spontaneous coping
- A mode in which detachment, deliberation and analysis take place (conscious reflection)

Spontaneous coping and recurrent patterns dominate our mental lives and give rise to our habits, to our 'know-how'. 'Know-how' transparent, stable and grounded in our personal history. We know how to do most things in our lives without conscious reflection. During spontaneous coping we are in fact experts in the context of the seven-stage skill acquisition model developed by Hubert and Stuart Dreyfus¹⁰. The seven stages of skills acquisition are as follows:

1. Novice
2. Advanced Beginner
3. Competent
4. Proficient
5. Expert
6. Mastery
7. Practical wisdom

⁸ John Dewey Human Nature and Conduct

⁹ Ethical Know-How Action Wisdom and Cognition Francisco J Varela

¹⁰ Mind over Machine. Hubert and Stuart Dreyfus

However, it is in the moments of breakdown when spontaneous coping does not work that detachment occurs and the space for deliberation and analysis is created; world is objectified and gives rise to the processes by which we come to 'know-what.' It is at the inception of that detached mode that we are at the level of the novice. Novices make judgments using strict rules and features.

When we are coping normally as experts we do not solve problems. When we are coping normally as experts, we do not make decisions. When we are coping normally as experts we 'simply' do what normally works. The expert gathers his or her skill through talent, intense involvement and experience-based, holistic discrimination-association derived from embodied en-action that produces deep situational understanding. If time permits, an expert will deliberate before acting. But the deliberation does not require the application of rules, principles, theories or calculative problem solving but rather an intuitive grasp of the phenomena. Chess players, like people who drive cars, understand this clearly.

What is posited is the need for a thinking which is an embodied en-action, a matter of remaining receptive to the phenomena, to our historically derived conditions, a remaining resistant to the imposition of theories and models, so that what is not yet thought can emerge through intense involvement and commitment with a deep sense of the risk involved. In the words of Niels Bohr *"every great and deep difficulty bears in itself its own solution. It forces us to change our thinking in order to find it."*¹¹

Decision Making for Change in Construction in Trinidad and Tobago (T&T)

Part 1 of The Politics of Procurement showed that;-

- Source of funds determined procurement methods and delivery systems that in turn acted as drivers for change in the public sector procurement in T&T.
- The increased demand for infrastructure facilities 1956-1960 led to an increase in public sector in-house activity giving rise to financial management problems. Two organisations were set up as response to these problems.
 1. A Central Tenders Board (CTB) with the sole and exclusive authority over government procurement and
 2. A Cost Accounting Division in the Ministry of Finance to control and monitor government development expenditure.

The emphasis was then on the development of native capacity through institutional reform and training. Skills training consisted of the setting up of the Faculty of Engineering at St. Augustine and the establishment of the John Donaldson and San Fernando Technical Institutes. The result was the development of a cadre of young engineers and technicians in the public sector through training and direct experiences the going beyond 'know what' (theoretical and methodical approaches) to 'know how'.

¹¹ Niels Bohr Nobel Prize winner in Quantum Physics

- The inability of the government to fund its development programme in the 1960's led to sourcing finance from the International Funding Agencies (IFIs). The procurement approaches of the IFIs were not ideologically free. Out-sourcing of infrastructure delivery to the private sector became lender conditionality for loans.

The demand to shift to the private sector was based initially, more on the need to satisfy the interest of the donating countries of the IFIs, than on any attempt to secure efficient delivery. The issue of development of local capacity was not a priority of the IFIs. The flow of foreign exchange back to the donating countries through the sale of goods and services to borrowing countries was the primary objective of the IFIs. The donor country manufacturing and services sectors were thus enhanced.

- The initial shift to the private sector led to an exponential reduction in the efficiency of the public sector in-house delivery caused by the haemorrhaging of trained human capital to the private sector. Declining performance in the public sector then became the self-fulfilling justification for out-sourcing to the private sector. The decay in the public sector organisations was exacerbated through the following processes:-
 - Starving of the public sector organisations of meaningful work
 - Emptying of the public sector of trained personnel both at professional and sub-professional levels.
 - Setting up of Project Execution Units within public sector organisations to manage projects funded by the IFIs. This led to the remaining experienced staff from the public sector becoming managers of these units thus further reducing the technical staff available for day to day operations and maintenance. The net result was decay in the technical capacity of the public organisations. Young professionals were now without mentors. Organisational know-how was lost. Young professionals in their quest for advancement were also catapulted into management and the opportunity to develop sound technical expertise was lost.
- The cyclical nature of construction led to the migration abroad of trained professional and technical staff, mainly from the private sector during the period of reduced construction activity.
- In T&T and other Caribbean islands the increased demand for infrastructure facilities, the long delivery times associated with financing from IFIs coupled with the requirement for off balance sheet financing led to local banks and insurance companies becoming major players in the financing of public sector infrastructure.
- In T&T the oil bonanza of the 1970's gave the government increased financial capability which led to the acceleration of infrastructure delivery. The process was

not structured and the resources of the public and private sector were unable to cope with the speed of implementation imposed. The planning process was flawed.

- In 1970, decisions for local capacity development were foisted on the administration by the polity. T&T's economy is fuelled mainly by the rents from oil and gas. The 1970 riots led to localising of the banks, oil and sugar companies resulting in the development of local skills and entrepreneurship in the petrochemical, banking and construction sectors to the extent that skills and entrepreneurs are now exported from these areas.
- The Government of T&T (GOTT) in the 1970s in its haste took the unprecedented step of outsourcing its responsibility for procurement, outsourcing governance to foreign governments in Europe, Canada and the Far East through government to government arrangements. Not one single project was completed on time and within budget. Inflation in construction and in other areas of the economy spiralled. The gain to the construction industry was in small measure, the development of the local construction and consulting sectors.
- From 1985 to 2000 a period of scarcer financial resources, the developed local capacity in private sector construction was in the main sufficient to deliver the infrastructure requirements and compete with the foreign private sector.
- It is important to note that both the need for imported finance and the excessive availability of local finance to fund infrastructure activity had little impact on the choices made for the implementation of construction delivery. The stance of the local decision makers could only be described as 'douen-like'¹² in the sense that their feet are in T&T but their heads and hearts are either in Europe or Asia depending on the latest foreign trip made.
- A feature of public procurement in T&T after 1970 was the continued decentralisation of the procurement process without an oversight agency. This decentralisation without oversight opened the way for excessive piracy. The situation at present has not been rectified because the promised new procurement legalisation, after six years, has not been implemented.

The Present Conditions

At present because of a boom in the oil and gas sectors, the present administration has embarked on a combination of free market conditions and the direct handing of projects to companies out of China, in an effort to accelerate the speed of infrastructure delivery. The labour, health and safety practices of Chinese firms are of such a nature that they go against all trade practises enshrined in international conventions and the laws of T&T.

¹² An expression in our folk lore popularised by artist Leroy Clarke meaning feet forward head turned backward...or stillborn

What is even more alarming is that T&T, outside the petroleum sector, has embarked on a 'tourist' view of development while paying lip service to the development and progress taking place in the Far East particularly China. The deficiencies in the mental maps of the decision makers and the intelligentsia are patent.

In T&T as well as in other parts of the Caribbean, construction has been used as a tool for balancing social equity through employment. The basic objective is laudable but the incentives in the procurement system have led more to piracy than efficiency, more towards criminal activity and gang violence than towards the development of trade and entrepreneurial skills. In addition the measurement method is deeply flawed. In Part 111 the use of VA and SROI in public procurement will be developed as a corrective.

The Development Policy Department of the International Labour Organisation (ILO) suggests that *“employment-intensive works programmes should lead to the development of local productive capacity, through cost-effective instruments targeted at the poor and be placed in the perspective of longer-term economic growth. Investment policies should then be steered towards employment creation and social objectives, and most importantly, be accompanied by measures to ensure cost-effectiveness, quality results and local capacity building in both public and private sectors.”*¹³

In 2003, the Cabinet of the Government of T&T (GOTT) appointed a committee to reform its public procurement system. The JCC was represented on that Cabinet appointed committee.¹⁴ The work of the committee which came exclusively from local resources culminated in a White Paper and a draft Act. The White Paper which was laid in Parliament in 2005 took into account the historical background of the existing procurement regime, the quality of governance envisioned in the GOTT Vision 2020 policy statements, deficiencies in the existing legislation governing the CTB, deficiencies in the CTB's operations, proliferation of State Owned Enterprises (SOEs) with their own procurement systems, the lack of central oversight, the impact of technology and different delivery systems on the procurement regime, the requirements of the Caribbean Single Market and Economy and the promotion of national development.

The White Paper accepted the decentralized nature of the existing system and took the operating principles of Value for Money, Transparency, Accountability and the Promotion of National Development as its guiding principles.

After reviewing several regional and international models effecting current best practice in public procurement the committee settled on the Principled Model. “The underlying philosophy of the Principled Model is that the responsibility for delivery should rest solely with the implementing agencies. However once an agency is spending public money that agency has to operate in accordance with the principles set out in law-principles of Transparency, Accountability and Value for Money. Value for Money by definition

¹³ D Tajman and J de Veen, Employment Incentive Infrastructure Programme: Labour policies and practices (Development Polices Department, International Labour Office, Geneva 1998)

¹⁴ Winston Riley. Chapter 2 of the White Paper drew extensively from Part 1 of the Politics of Procurement

encompasses efficient and effective delivery of the property or services for which public money is spent.

Public money in this context includes “*money received by a public body regardless of source, or money received by a non-public body from a public body. The legal framework will embrace expenditure by –*

(a) a public organisation for a public or private purpose; or

(b) a private organisation for a public purpose regardless of the source or type of Funding where it can be reasonably inferred that the State is ultimately liable”¹⁵

The use of ‘public money’ immediately brings all agencies using public money under the purview of the law. Organisations undertaking Programs for Employment Relief, Non Governmental Organisations will also have to conform to the operating principles.

The introduction of the public money concept was influenced by Lord Sharman 2001 report Holding Account which examined then current audit and accountability arrangements for the central government of the United Kingdom. The recommendations in the 2001 report had as an “*...underlying assumption that, where public money is involved, some level of public accountability is required, regardless of the status of the body handling that money”¹⁶* Accountability in Lord Sharman’s context includes accountability for performance and the promotion of innovation and efficient management of risk.

The major elements of the T&T White Paper on Public Procurement are as follows:

- The placing of the prime responsibility for procurement at all stages of the procurement process with the purchasing agencies
- The prescribing in law the operating principles underlying procurement that promotes best practice.
- The establishment of a central regulatory agency headed by a Regulator to formulate operating policies and guidelines to amplify the operating principles.
- The establishment of a central agency under the Regulator to develop and modify procedure manuals for specific types of transactions for purchasing agencies
- The establishment in law, that purchasing agencies comply with the principles, policies, and guidelines of the Regulator.

¹⁵ Reform of the Public Sector Procurement Regime A White Paper 2005

¹⁶ Lord Sharman Holding To Account The Review of Audit and Accountability for Central Government 2001

- The establishment of a National Procurement Advisory Council, drawn from civil society to support the operations of the Regulator. This provision is unprecedented and has the advantage of increasing public confidence in the quality of governance, by the involvement of civil society as a check and balance to ensure transparent practices.

Although the White Paper laid in parliament represents government policy there is at present a reluctance to bring the relevant legislation to parliament. This reluctance is based on the misguided notion that the proposed legislation will slow the pace of infrastructure development in T&T. The Principled Model allows for each implementing agency to be responsible for its own level of efficiency once the guiding principles of Value for Money, Transparency and Accountability are adhered to, thus the objection is without merit.

In the energy sector where foreign multinational firms are responsible for the establishment of petrochemical facilities the decision makers in an approach which establishes schizoid responses relative to the non energy sectors have supported the development of local skills and entrepreneurship.

- Negotiating concessions to have off-shore gas platforms constructed in T&T and financing the necessary infrastructure for same
- *“Establishing a permanent local content committee to continually and closely monitor the various activities in the energy sector to ensure that, as far as possible, all energy projects include opportunities for the development of the expertise of nationals and maximize the level of local content and local participation”*¹⁷

Conclusions

It is important to re-emphasise that uncertainty is a necessary condition for creativity. The human condition is such that knowledge and cognitive capacity is always circumscribed by culture and information asymmetry. Choices are made which affect the society for generations to come. In-depth understandings of our history, together with a sympathetic view of our culture are essential pre-requisites for acquiring know-how and making decisions in the context of uncertainty. In the words of Nobel Prize Winner in quantum physics Niels Bohr. *“What we want to do is to move people from being logical to thinking.”*¹⁸

¹⁷ Cabinet Minute No.751 2004

¹⁸ Interview with Ronal Coase about New Institutional Economics 1997

