

IMPLEMENTING THE PROCUREMENT LEGISLATION

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Preamble

- The following are the main reasons for this presentation:
- (1) The present administration successively advocated for amendments to the existing legislation and successfully amended the legislation through Act #5 of 2016 which was assented to on the 6th of June 2016
- (2) The administrative structure for implementing the legislation appears to have been disbanded
- (3) The present administration made several announcements on Implementation and March 31 st 2017 is the targeted date for full implementation

The Two Stages of The Implementation Process

(1) Proclamation

(2) Operationalization

These two stages are interlinked. The Act affects every aspect of government business thus, in order to initiate operations some sections of the Act have to be proclaimed without giving power to the sections of the Act which affects external entities.

The Proclamation Process

(1) What is to be proclaimed

(2) The proclamation process

What is to be Proclaimed

At present there are two Acts to be proclaimed. These two Act are now law but are subject to the provision laid out in section 2 of the parent Act which states ***“This Act comes into operation on such date as is fixed by the President by Proclamation.”***

The Two Acts

(1) Act #1 of 2015 assented to 14th January, 2015 is an Act to provide for Public Procurement, and for the retention and disposal of public property, in accordance with the principles of good governance, namely accountability, transparency, integrity and value for money, the establishment of the Office of Procurement Regulation, the repeal of the Central Tenders Board Act, Chap. 71:91 and related matters.

(2) Act #5 of 2016 which is an Act to amend the Public Procurement and Disposal of Public Property Act, 2015 assented to 17th June, 2016

Partial Proclamation of Act #1 of 2015

Act #1 of 2015 was partially proclaimed on the 31st of July 2015.

WHEREAS it is provided by section 2 of the Public Procurement and Disposal of Public Property Act, 2015 (hereinafter referred to as "the Act") that the Act shall come into operation on such date as is fixed by the President by Proclamation:

And whereas it is expedient that sections 1,2,3,4,5(1), 8, 9, 10, 11, 12, 13(l)(a), (b), (c), (d), (k), (p) and (r), 13(2),14(3), 15, 16, 17, 18, 19,20,21,22,23,25,62 and 63 of the Act come into operation:

Appointment of the OPR

Section 10. (1) *“The Office shall be governed by a Board which shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition and shall comprise no less than eight and no more than eleven members as follows:”*

(a) *“The Procurement Regulator (hereinafter referred to as “the Regulator, who shall be the Chairman”*

Appointment of the OPR Cont.

(2) “The President, after consultation with the Prime Minister and Leader of the Opposition shall appoint a member as Deputy Chairman of the Board who shall exercise the powers and functions of the Regulator in the event of the Regulator’s absence or inability to exercise his powers or perform his functions”

Regulations Section 63 (1)

“The Minister may, on the recommendation of the Office, make regulations to give effect to the provisions of this Act, including regulations with respect to—

(a) the conduct of challenge proceedings under Part V; and (b) the addition to, or removal from, an ineligibility list under section 58.”

Regulations Section 63 (1) Cont.

- (2) *“Regulations made under this section may provide that the contravention of any regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of one million dollars and imprisonment for five years.”*
- (3) *“Regulations made under this section shall be subject to affirmative resolution of Parliament.”*

Other Sections Proclaimed

Sections 1,2,3,4,5(1) and 8 are part of Part one the Preliminary Section of the Act. They state how the Act is to cited, which sections of the constitution are waved, conditions for operationalization. Section 8 defines terms and objectives of the Act. Section 8 states This Act binds the state.

Sections 11, 12, 13(l)(a), (b), (c), (d), (k), (p) and (r), 13(2),14(3), 15, 16, 17, 18, 19,20,21,22,23,25 are part of the Part two of the Act dealing with General Provisions of the OPR

Section 62 gives immunity from personal liability for members of the OPR, staff of the Office or to any authorized officer.

The Amendment to Act #1 of 2015 (Act # 5 of 2016)

The amendments deal specifically with

- (1) The addition of a sub-section 12 (h) to the parent Act and deals with removal of a member of the OPR by the President.
- (2) Matters related to the lifting of suspension of procurement proceedings under Section 50 of the parent Act.
- (3) The establishment of a Public Procurement Review Board to review decisions of the OPR by inserting under sections 51 sub-sections a to m of the parent Act
- (4) The disposal of state lands through the addition of sub-section 57 A to the parent Act

Establishing the Environment for Effective Implementation

The following conditions are necessary for the establishment of an environment for effective Implementation:

- (1) The process must be transparent This can only be achieved by having civil-society embedded in the process.
- (2) The establishing of the OPR and a Review Board envisage at organisational level a major change management process.
- (3) The initiation of sustainable procurement brings into play Value for Money and Risk Management which require a change in mind set about the procurement process

Change Management Requirements

Sustainable Public Procurement as envisaged by the act is a process that takes into account the economic, environmental and social impacts of the entity's spending. Sustainable procurement allows organizations to define goals and measure outcomes in a way that achieves Value for Money on a whole-life basis.

In the present context assessment of procurement performance is defined in terms of the Central Tenders Board Act which is modelled on procedural compliance.

The cultural shift is required. A shift in the mind set to a modern results oriented management approach

Internal Control Framework

The establishment of a modern risk based Internal Control Framework (ICF) for all procuring entities is the process by which change management can be accomplished and the principles of Transparency, Accountability and Value for Money implemented.

An ICF is “a process, effected by a procuring entity’s designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting and compliance.”

Its purpose is to provide a framework of accountability at all stages of the procurement process through an effective system of internal controls.

The ICF links the Procurement Act with the Audit and Exchequer Act

Guidelines, Special Guidelines and Handbooks

The Office of Procurement Regulation may:

- *recommend to the Minister regulations to give effect to the provisions of this Act,*
- **issue Guidelines, Special Guidelines and Model Handbooks**
- **approve for each procurement entity special guidelines and handbooks in relation to public procurement and the retention and disposal of public property**

Handbooks are for for the purposes of ensuring compliance with the Act and are prepared by the procuring entity and submitted to the Office of Procurement Regulation for approval.

The Complexity of the Problem from an Institutional Perspective

Public Bodies Under the Act	No of
Ministries	21
Division of Ministries	
Statutory Boards	15
Regional Corporations	14
Regional Corporation Districts	106
State Enterprises 100% Owned	59
State Enterprises Majority Owned	6
State Enterprise less than 50%	3
Indirectly Owned Majority Subsidiary	6
Tobago House of Assembly	
Departments	12
Regional Health Authorities	5
The Office of the President;	
The Parliament;	
The Judiciary	

Corruption and Global Competitiveness Ranking of TT

T&T's corruption is perceived to be worse than Jamaica and Cuba's, with almost no improvement for many years according to the Corruption Perception Index (CPI). World Bank Governance indicators show deterioration in Control of Corruption

T&T global competitive index has deteriorated from a score of 4.0 with a rank of 84/144 in 2012, to score of 3.9 with a rank of 89/140 in 2016.

Private Bodies Subject to the Act

Public Money is at the centre of the procurement process. All entities that use public money come under the Act.

Thus a private entity receiving a benefit or performing the function or providing the service and receiving public monies for so doing is subject to the Act—

This means that all non-profit organisations receiving public monies are subject to the provisions of the Act

The Basic Elements Required for Implementation

1. There are four aspects to the implementation of the public procurement reforms that must be managed in parallel:
 - a. Establishing the Office of Procurement Regulation
 - b. Establishing the Review Board envisaged under the Amendment Bill
 - c. Readyng public procuring entities
 - d. Planning and overseeing the dissolution of the Central Tenders Board
 - e. Readyng the contractor and supplier communities for implementation
 - f. Educating private sector entities using public money as to their responsibilities under the Act
 - g. Informing contractors and supplier as ttheir responsibilities under the Act

Implementation Activities to Date

In November of 2014 cabinet engaged the UNDP to augment the internal audit control mechanisms and improve capacity in the procuring agency irrespective of the content and enactment of new procurement legislation.

In January of 2015 Cabinet approved the setting up of a Steering Committee which included a communication sub-committee, an HR sub committee, and a legal sub-committee to support the implementation of the procurement Act

In February 9th of 2015 the PSCSG prepared a paper in preparation for the meeting with the Ministry of Finance and the Economy. The paper dealt specifically with the setting up of the OPR and the preparation of regulations

The PSCSG –Positions and Recommendations as at February 10th 2015

- (1)The Act can be proclaimed in part. There is precedent for this. In this regard, the Office should be immediately established.
- (2) A committee of stake holders chaired by the Regulator should be established. The PSCSG should be represented on that committee
- (3) Consultants should be engaged to advise the committee of stake holders
- (4)The UNDP should continue to play the role of advising on the requirements of the consulting team.
- (5)Since this is a change management process, there should be at least one person as a consultant who has managed such a process in the Caribbean and understand the requirements of the procurement process

Positions and Recommendations (cont'd)

(6) The proclamation of Act No 1 of 2015 partial or otherwise,

(7) The identification of staffing requirements for the OPR and the approval of its budget.

(8) The passing of regulations by Parliament should be completed before the general elections of 2015

(9) The process of establishing the Board of the OPR will take time. In the interim it will be necessary to have a committee working on regulations, staffing and budget requirements. This committee should preferably not be chaired by an individual in the public service

Implementation Activities (cont'd)

On March 12th 2015 Cabinet approved the establishment of an Oversight Committee. The PSCSG had two representatives on that committee.

The Oversight Committee reviewed all documents from the UNDP and the Steering Committee

The Oversight Committee is now disbanded

Achievements To Date

The achievements to date :-

- (1) A review of the Internal Control Framework and Model Procurement Handbook developed by UNDP
- (2) Drafting Job Specifications for the Procurement Regulator and Deputy Regulator by UNDP and Oversight Committee
- (3) Developed salary ranges for the post of Regulator and Deputy Regulator Oversight Committee and UNDP
- (4) Developed procurement procedure for the engagement of Regulator and Deputy Regulator Oversight Committee
- (5) Readyng Public Procurement entities (UNDP)

Achievements To Date (cont'd)

The PSCSG advocated for a transparent process for procuring the Regulator and Deputy Regulator and an expansion of the job requirements as specified in the Act

“It is necessary to go beyond the minimum experience and training as identified in the Procurement Act 2015. The function of the Regulator is primarily to manage the OPR. There is no requirement for the Regulator to have managerial experience or skills in the Act. The proposed Regulator should have managed an entity similar to the Office of Procurement Regulations (OPR) for a period in excess of 5 years. In this regard the Act should be appended to the job description” These recommendations were sent to Cabinet for approval.

Achievements To Date (cont'd)

An important aspect of the work of the Oversight Committee was to achieve with the concurrence of the President, a transparent procurement process for the selection of the Regulator and the Deputy Regulator. The committee met with the President and he concurred with the approach outlined.

The approach was :

- (a) To have the Cabinet approve the job specifications and salary ranges for the Regulator and Deputy Regulator
- (b) With the approval of the President allow the UNDP to advertise internationally for both post positions. The evaluation process to take place locally and a short list developed for the President.

The Way Forward

- (1) Reinstate with amendments the Oversight Committee and the administrative structure for Implementation. The Oversight Committee should include members from the PSCSG, the National Union of Government & Federated Workers (NUGFW), The Director of Contracts, a past head of the Civil Service, a legal advisor
- (2) Develop in detail a Program of Works with clearly defined milestones and resources for the Implementation of the procurement legislation.
- (3) Through UNDP engage a full time project manager from the Caribbean who understands the processes to head the Implementation Committee
- (4) Immediate approval by Cabinet Approval of the Internal Control Frame Work, salaries remunerations and accommodation for staff of the OPR.
- (5) Amendments to the Exchequer and Audit Act.
- (6) Amendments to the Arbitration Act