

TRINIDAD AND TOBAGO TRANSPARENCY INSTITUTE

KEYNOTE ADDRESS

“Unveiling the Public Procurement and Disposal of Public Property Act, 2015 – Its Impact and Implications”

Distinguished Members of the Trinidad and Tobago Transparency Institute

Ladies and Gentlemen, Good Afternoon.

Thank you for the invitation to speak at this Special General Meeting of the Trinidad and Tobago Transparency Institute on the theme “Unveiling the Public Procurement and Disposal of Public Property Act, 2015 – Its Impact and Implications”.

This theme is most appropriate, at this time, to prompt deliberate reflection, dialogue and collective action on the part of all of us as stakeholders given the momentous, much needed and long anticipated action that was taken on April 26, 2023 to fully proclaim the Public Procurement and Disposal of Public Property Act, 2015, as amended.

The impact and implications of this Act, the 10 supporting Regulations as well as, the General Handbooks and Guidelines created by the OPR are as profound as they are extensive. And, they are driven primarily by the far-reaching objects of the Act (Section) 5 which gives prime importance to the principles of good governance, efficiency, fairness, equity and public confidence, local industry development, sustainable procurement and sustainable development.

As taxpayers, we are all keen to make sure that public funds are effectively utilised by the Government in furtherance of the country’s development and the wellbeing of all citizens, and this Act sets us firmly on the path towards this end.

In the nearly six months since full proclamation, public bodies have had to contend with the new requirements for conducting the business of public procurement and disposal of public property and the resulting convulsions associated with this major departure from the 'business as usual' approach to public spending. Suppliers and contractors have also encountered their own annoyances associated in the main with the requirements for being registered and pre-qualified on the Procurement Depository to participate in public procurement activities.

However, this notwithstanding, I would urge all stakeholders to see the change as positive, as laying the foundation for promoting greater efficiency, effectiveness and transparency in public spending, and to be very deliberate and reasoned in embracing the new system. The way we perceive the change will shape the strategy we adopt. The current system is still in its early stages, but it is here to stay, and at the OPR, we accept that there are issues to be addressed and efficiencies still to be gained as we gather more experience in implementation. These teething problems are a normal part of the development process. However, the benefits to Trinidad and Tobago as the system progresses and matures, and the potential sustainability of such benefits far outweigh these early challenges.

Successful experiences around the world demonstrate that stakeholder engagement and collective action by the public and private sectors supported by effective regulatory oversight can strengthen the efficiency and integrity of public spending. At the OPR, we are committed to building effective partnerships and forging this complementarity.

Indeed, full proclamation of the Act represented an important milestone in Trinidad and Tobago's development and presents us with the best opportunity now to build a fundamentally new and different culture to drive public sector performance that is rooted in good governance principles. This new culture is one that commits resolutely to utilising public money efficiently, and in which maximising the value created for taxpayers' is paramount. Accounting Officers and procurement professionals across the public sector must champion the objects of the Act and rethink the value added dimension of their procurement spend with a fundamentally different perspective, while suppliers and contractors must be invested partners in the delivery of quality goods and services within agreed timeframes and budgets.

According to the World Bank, Governments around the world spend an estimated US\$9.5 trillion in public contracts every year. Moreover, in many developing countries, public procurement is a major catalyst for economic and social capital growth, representing approximately 15 to 22 percent of Gross Domestic Product.

Here in Trinidad and Tobago, the OPR estimates that in 2022 the value of public procurement contracts in the Central Government only, amounted to approximately TT\$9 Billion which represented 4% of GDP and 17% of Government Expenditure. But, we know that this figure will be far higher when public contracts awarded by State Enterprises and Statutory Bodies are taken into account. If indeed the total value were to be in the range of 15 to 22 percent of GDP, then we can easily have between \$30 billion to \$40 billion being expended in the system on an annual basis. But, this is just a rough estimate. Over the next full year of operations under the Act, the OPR will collect the data that will allow for more in-depth analysis of the value and nature of public contracts and the performance of the system using key indicators aligned with the Objects of the Act.

Any analysis of performance of the procurement system must be juxtaposed against performance on the International Corruption Perception Index. In 2022, Trinidad and Tobago recorded a score of 42/100 (A score of 100 being very clean and 0 highly corrupt) and a Global Ranking of 77 among 180 countries. Based on the data used to compile the CPI, the Act has the potential to impact the CPI score in the areas of improving access to information on public procurement, reducing bureaucracy, improving efficiency, offering redress, providing protection from victimisation and ultimately establishing strict penalties for breaches of the Act.

Impact on Public Procurement Practices

Full proclamation has had the immediate impact of repealing the Central Tenders Board Act, 1961 thereby moving away from a centralised to decentralised procurement system, which emphasizes equity in opportunities and resources. This change has resulted in many challenges for public bodies, many of whom do not have the human resource capacity in terms of personnel with the requisite qualifications, experience and competency to function optimally.

Moreover, the Act now brings within the ambit of the regulatory framework all Agencies using public funds. No longer is there a sole procuring body for Government, instead each public body (through its Procurement Officer) is now required to conduct its procurement and disposal actions in accordance with the requirements of the Act. For those public bodies that previously did not fall under the ambit of the CTB Act, the urgent requirement is to bring their internal systems in alignment with the Act.

Importantly, as well, the Act and the Regulations have engineered a fundamental shift whereby public procurement is now considered more as a strategic development tool and less of an administrative function.

Implications for Wider Governance Reform

The World Bank emphasizes that public procurement reform, as envisaged in the Act, is an important tool for strengthening and supporting governance reform and better public sector performance across the region. It is one of a government's most effective tools for sustainable public sector reform since it is at the core of translating public policy into tangible results for citizens, delivering essential services, and implementing projects and programmes. In so doing, it links the public financial system directly with economic and social outcomes.

Transparency and Corruption Detection

This equitable and fair approach promulgated in the Act can only be realised in the espoused principle of transparency.

The United Nations (UN) agrees that transparency supports trust in a procurement system and promotes integrity in that system by making it difficult to conceal irregularities and malpractices. Additionally, transparency allows equal access to information for all participants in the public procurement process, thus promoting fair competition and easier detection of corruption. This must be complemented by the development of an effective public reporting framework, where public bodies provide access to information on all procurement activities.

The Act effectively mandates that relevant information on the public procurement process must be made available in the public domain whilst protecting the legitimate need for confidentiality of proprietary information. The Act establishes mechanisms for disseminating pertinent details, such as the publication of planned procurement activities, pursuant to section 27 of the Act, and the publicising of notices of award of contracts or framework agreements, pursuant to section 36, for example.

Several countries have acknowledged that proactive disclosure of public documents play an important role in holding government officials to account, as well as incentivising competition. In Chile, transparency is also considered an important driver of economic growth post the Pinochet regime. In 2003, the Government established an electronic public procurement system, ChileCompra, to increase the transparency of state spending.

Transparency and SME Development

Disclosure measures introduced by the Act ensure that suppliers and contractors, including SMEs, are aware of possible procurement opportunities, thereby levelling the playing field for acquiring government business. Specifically for SMEs, a fair and transparent public procurement system is a proven way to build capacity and competitiveness. This, in turn, enhances the competitive bidding process leading to greater efficiency and value creation in the public spend.

Conversely, a lack of transparency in public procurement has been found to hamper those outcomes and stifle opportunities to maximise the benefits of public procurement for SMEs, Government and the broader civil society alike (Kaspar & Puddephatt, March 2012).

As an example of how SMEs benefit from an efficient public procurement regime, in the UK, after the supply2.gov.uk website opened up the public procurement market to SMEs, a quantitative survey of suppliers using the website was conducted in 2007 which found that 43 percent believed that **supply2.gov** had saved them time in either searching for or applying for public sector contracts, while around a third of users considered that **supply2.gov** had made it easier to bid for public sector work and increased the number of contracts they were likely to bid for.

Transparency and Accountability of Government and Public Bodies

Through the more effective public procurement reporting frameworks mandated by the Act, public bodies will have the opportunity to identify areas of common spend and take advantage of opportunities for collaboration and aggregation, thus benefiting from economies of scale. Implementing these transparency measures ensures visibility of the flow of public funds, from the beginning of the budgeting process throughout the public procurement cycle.

To this end, public bodies must ensure the attainment of value for money in every transaction, where due consideration of the acquisition cost or purchase price of an item must be given, as well as other cost factors such as operation and maintenance costs that contribute to the total cost of ownership of the item. Ensuring value for money in procurement is key to ensuring the optimum utilisation of scarce budgetary resources.

Measuring and comparing costs across the public sector will ensure that goods and services being offered in the public procurement arena are cost-efficient and where cost discrepancies exist, lead to improved decision making and management, which can result in increased value received from public spending.

Additionally, how public procurement is used to synergise the implementation of other policies affecting fair trade, the environment, climate, local development, sustainability and human capital development must be integrated into a wider cross-sector procurement strategy. This presents real opportunities for increased co-ordination, strategic planning, and cross-sector procurement to eliminate silos in policy development and execution, leading to increased public procurement efficiency.

However, this will require all stakeholders (inclusive of civil society bodies and NGOs) to contribute not only to the national discussion but to commit to participate, champion and support these initiatives over its long-term implementation in the national interest.

Public body reporting frameworks of procurement activities are mandated by the Act and can be used as a vehicle for transparency and accountability by using metrics which over time measure the effectiveness and efficiency of Government spending in relation to:

- a) Driving economic growth which inspires innovation to emerging challenges and global policies.
- b) Achieving complementary objectives like digitalisation, diversification, healthy populations etc
- c) Realising global targets and development goals to which Trinidad and Tobago has committed such as the SDGs

Another prime area to be impacted would be that of building integrity and public trust within the public service. This can be achieved through the professionalisation of the procurement, inventory, and asset management functions to international standards.

Accordingly, the Act mandates capacity building and the development of standards as a key component of public procurement reform. However, professionalisation takes time, resources, innovation and a willingness to transition to the new regime. It also requires conscious management to balance the growth of the profession whilst still providing an uninterrupted, efficient and effective service to the public.

Improving Service Delivery and Increasing Public Confidence

A well-managed and transparent procurement system can benefit the society as much as a poorly managed and corrupt system can harm it.

It can make service delivery more efficient and equitable. In so doing, it has the potential to transform the lives of citizens by improving the value obtained from scarce public resources .

Further, the Act encourages mechanisms for establishing public confidence by setting penalties for breaches. We recognize the need for clear and visible enforcement of these rules and the application of penalties or convictions where appropriate. Moreover, our new system also allows the application of procurement rules to be monitored and challenged and supports accountability for decisions taken. These mechanisms include:

- OPR's Whistleblowing Platform (SpeakUp) pursuant to Part V Investigation and Enforcement of the Act
- OPR's Challenge Procedure pursuant to Part V Challenge Proceedings of the Act
- OPR's Ineligibility Procedure pursuant to Part VII Section 58 of the Act, and
- OPR's Complaints Procedure pursuant to Section 41 of the Act.

These measures are fundamental to strengthening systems for transparency, efficiency, and equity.

Public Procurement and Socio-Economic Development

The objects of the Act directly link public procurement with socio economic and environmental outcomes in the context of sustainable development, local content development and sustainable goods and services.

Effective national procurement policies and systems have also had the added benefits of serving to attract foreign investment and spur local economic development, particularly through employment generation.

One of the main tenets of the Act revolves around local industry development and local content expansion as critical elements of socio-economic development strategy. In reality, procurements in national markets creates job opportunities, stimulates economic activity, improves living standards and facilitates technology transfer and capacity development.

Future Outlook and Enablers

While full proclamation of the Act is a crucial milestone in the process of public procurement reform, procurement systems cannot operate in isolation. Effective implementation must be part of a coherent and coordinated effort supported by appropriate systems, institutions, and individuals with the human resource capacity.

The OPR has a key role in providing strategic direction and structuring a cohesive approach to the operationalisation of the Act. However, there must also be coordinated and integrative action to improve public financial management generally, develop policy and planning systems and strengthen programme and project selection, development and implementation.

The current Act provides for a competitive, efficient and transparent procurement system. We anticipate that the Act and Regulations will continue to evolve as implementation progresses and the needs of the country are assessed against legislative requirements even while we strive to maintain a balance between limiting the choices of actors (reducing corruption and promoting uniformity of process) and providing an environment where public procurement can be carried out more strategically and efficiently.

Integration of technology in the procurement system is also part of the OPR's plan. There has been a tremendous amount of investment in electronic Government Procurement (eGP) systems globally and the benefits are undeniable. Platforms range from basic informational procurement portals, which are essentially procurement notice boards to transactional platforms. They include business models that benefit from the aggregation of demand and increased savings, such as framework agreements (e.g., Chile, Colombia, Panama) and reverse auctions (for example Brazil and Paraguay). In consultation with key stakeholders, the OPR intends to develop and pursue a technology strategy that includes rolling out eGP initiatives within the next two years.

In closing, I want to underscore two points:

1. Transforming the way public bodies undertake procurement is neither an easy nor a swift process. It will not happen overnight. At the core, is a culture change that gives primacy to the objects of the Act.
2. Successful public procurement reform cannot exist in a vacuum. While it is critical, by itself it is not sufficient. Essentially, it must operate in an eco-system of various national entities and systems working in unison to strengthen public financial management and public sector performance to deliver targeted development outcomes. The experience of Uganda points to some instructive lessons for us as we move forward:
 - Public procurement reform should be an integral part of a broader programme of reform, including integration with complementary efforts to improve other aspects of financial management, so that procurement is mainstreamed in the public financial management system.
 - an effective system of monitoring and evaluation, based on reliable and comprehensive statistical data covering the value and type of procurements transacted and the procurement process itself is a key requirement. Such data, together with the findings of procurement audits and special investigations in response to complaints and other information, provide an important means of detecting anomalies and malpractices which demonstrate that transparency and integrity have been compromised. The monitoring and evaluation system should also determine the risks and vulnerable points at each stage of the procurement process.
 - Once malpractices have been identified, they must be corrected and mechanisms put in place to prevent recurrence. Where regulations have been deliberately flouted, sanctions must be applied rigorously; otherwise there is a serious danger that the law will become a dead letter, bearing little relationship to actual practice.

And, finally Ladies and gentlemen, I want to end with assurances. At the OPR, we guard very fiercely the independence and the authority bestowed on us by the Act to regulate public procurement and disposal of public property activities. We fully understand the responsibility that has been entrusted to us and the importance of this reform effort to Trinidad and Tobago and we are committed to fulfilling our mandate with openness, fairness and equity. And, while

we must be sensitive to the convulsions being experienced in this initial stage, we also remain resolute that these cannot translate into any non-compliance with the Act and the Regulations.

The OPR stands on the principles of good governance and we are determined to play our part in support of the higher purpose of the sustainable development of our country.

Thank you kindly for this opportunity and I wish you success as you continue your proceedings this afternoon.