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By email only

**Submission to the Joint Select Committee of Parliament
on
The Public Procurement and Disposal of Public Property (Amendment) Bill, 2015**

My name is Afra Martin Raymond and I am a Chartered Surveyor, being a Fellow of the Royal Institution of Chartered Surveyors. I am Managing Director of Raymond & Pierre Limited – Chartered Valuation Surveyors, Real Estate Agents and Property Consultants. I am past President of the Institute of Surveyors of Trinidad & Tobago (2009-2010) and the Immediate past-President of the Joint Consultative Council for the Construction Industry (2010-2015).

This submission is being made in my personal capacity and does not represent the position of Raymond & Pierre Limited, the ISTT or the JCC.

This JSC was established on 13th November 2015 to obtain and consider views on The Public Procurement and Disposal of Public Property (Amendment) Bill, 2015 (The Bill).

The preparation of The Bill and the invitation to submit comments on it is an accelerated process to address the perceived shortcomings of the Public Procurement & Disposal of Public Property Act (The Act). One fully appreciates the motivation for this choice of process, given the urgent need to properly control the high levels of waste and theft of Public Money. These comments are submitted in accordance with the mandate of the JSC, but I have also taken the opportunity to submit for consideration three proposals to increase the effectiveness of this important new law.

The Bill proposes three amendments to The Act with which I wish to treat -

Tribunal for removal of the Regulator

S.12 A (2) (a) should be amended to specify that the Tribunal be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. That apart, the proposal is acceptable, since would create an independent Tribunal which ought to add confidence to this process.

Public Procurement Review Board

This is proposed to be established as stipulated at Ss.51 (a) through (m) and this is also acceptable as it would provide a further layer of oversight before the Courts can be involved.

Disposal of Public Property

The proposed Part VI A, which sets out S.57 A, treating with 'State Lands' is acceptable, subject to these three points -

- **OPR acting for the Government/State** - S. 13 (1) (o), which stipulates one of the functions of the OPR as being to - *"...(o) act for, in the name and on behalf of the State to dispose of real property owned by the Government in such manner as the Government may consider appropriate and desirable;..."* is an unacceptable anomaly in three respects. Firstly, it proposes the idea that 'Government' could actually own anything, when in fact those properties are held by the State and its Agencies. Secondly, this arrangement is one which would be impossible for the OPR to satisfactorily superintend, since it would be performing the agency functions itself. Thirdly, this sub-section creates an avenue within which the Government could instruct the OPR, which would be in fundamental conflict with the independence of the OPR as stipulated at S.13 (2) (b) -

"...(2) In the exercise of its functions, the Office shall—

(b) not be subject to the direction or control of any other person or authority in the performance of its functions, but shall be accountable to the Parliament..."

S. 13 (1) (o) should therefore be deleted.

- **Government to Government Agreements** are covered in S. 7 (2), which contains a serious loophole in terms of the disposal of Public Property -

"7... (2) To the extent that this Act conflicts with an obligation of the State under or arising out of the following:

- (a) a treaty or other form of agreement to which Trinidad and Tobago is a party with one or more States or entity within a State;*
- (b) an agreement entered into by the Government of Trinidad and Tobago with an international financing institution; or*
- (c) an agreement for technical or other cooperation between the Government of Trinidad and Tobago and the Government of a foreign State, the requirements of the treaty or agreement shall prevail **except that the procurement of goods, works or services shall be governed by this Act** and shall promote the socio-economic policies of Trinidad and Tobago and shall adhere to the objects of this Act..."* (emphasis mine)

This means that The Act would only be effective if the Government to Government Agreement were in relation to the procurement of goods, works or services. As such, this represents an unacceptable gap through which Public Property could be disposed without the complete oversight of The Act as intended and specified in the 'objects clause'.

The provisions of S.7 (2) should therefore be extended to include 'disposal of Public Property', so as to properly safeguard our country's assets.

- **Acquisition of Property** is an aspect of procurement which is not covered in The Act and that is a significant oversight, given that these processes by which the State acquires property can involve great sums of Public Money. The latest and most egregious example of this is in relation to the HDC's controversial 2012 purchase of 'Eden Gardens', which was the subject of a formal and detailed JCC Report, which can be viewed at <http://www.jcc.org.tt/edengardens.htm>. In that case the State used its discretion to bypass the option to compulsorily purchase the property for an estimated \$35M and proceeded to pay unknown beneficiaries \$175M for a parcel of land which had been transferred for \$5M, less than three years previously. The Act is intended to provide an effective framework to govern procurement, yet it excludes the procurement of real property. That is an oversight which should be rectified, in my view.

Land acquisitions by the State can proceed either via private treaty or compulsorily, under the 1994 Land Acquisition Act. The issue of improper practice arises when the State uses its discretion to opt for a more expensive private treaty solution, when a significantly cheaper and lawful acquisition can be done via the compulsory route. My proposal is that land acquisitions should only proceed if the State pays the lower price between the two options.

I trust that these comments and proposals will receive due consideration. Please note that if requested, I am willing to give oral evidence before the Joint Select Committee (JSC).

I believe all the items in this submission to be true and correct.

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