

INTERNATIONAL COMPETITIVENESS: GOVERNMENT POLICY AND THE DEVELOPMENT OF COMPETITIVE INDUSTRIES

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ABSTRACT. For countries such as Trinidad and Tobago the process of development is dependent on competitiveness. Competitiveness is best effected by government policy. The conceptual frame of reference for this paper lies in competitive advantage theory and specifically the role of government policy in the creation of national competitive advantage. This is based on the work of Michael E. Porter (Porter 1990) and as adapted to research on Trinidad and Tobago (Ishmael 2008). The role of governmental procurement policy is seen as being key to the process of developing competitive advantage. The paper specifically focuses on the form of such a policy and the mechanism for its implementation (legislation). The approach undertaken is based on prior academic and policy work that was separately undertaken; and which later provided the impetus for the unique perspective of utilising procurement policy as a means of facilitating competitive advantage.

INTRODUCTION

The theoretical concept of competitiveness

For us the theoretical concept of competitive advantage can be defined as:

The ability of a nation through its human potential to maximise its industrial and resource advantages, leading to a sustained and favourable return on its industrial activity. Such a return may not be measured in volume, but in profit. (Ishmael, 2005, p 63).

In order to develop competitive advantage the role of the state has to be in the realm of policy formulation and implementation.

A key focus for the development of competitiveness policy has been a focus on cluster policy (Ishmael, 2008, p 460). In particular, it has been stated by the European Commission Enterprise Directorate General that:

.....it frequently occurs that support for the emergence of new clusters in high tech areas is more a top-down strategic decision than one based on bottom-up 'natural growth' processes. The type of public support also varies on a scale from hands-on involvement (e.g cluster management, financial support for clusters) to more hands off support (e.g. market promotion). (Enterprise Directorate-General, 2006, p. 3).

Furthermore, the current trend in modern academic research into the nature of clusters (Porter, 1998, p. 332) suggests that expertise and assets under the control of a small developing country should be concentrated. The very nature of a control mechanism conceptually lies in the realm of a policy framework and strategy as well as an implementation mechanism. This control mechanism does not necessarily lie in the realm of geographically isolated cluster policies (Ishmael, 2008, p. 461).

For our purposes here, the concept of a cluster as a unique industrial sector of economic activity with its related and supporting industries and institutions is a concept that is not overly important to the role of government policy in creating or rather facilitating competitive advantage. The key issue is that government policy must recognise what concepts are unique in defining a nation's economic relationship with the rest of the world.

The Concept of Smallness

The concept of smallness is one that has been subject to many varying interpretations. These variations have been based primarily on the physical characteristics of smallness as applied to small developing countries. These physical characteristics touch on landmass and include population size and Gross Domestic Product (GDP) (Gonzales, Caribbean Regional Negotiation Mechanism (CRNM) 2000).

The work of Gonzales has established that population criteria for smallness ranges from 1.5 million to 12 million. What Gonzales' work suggests (Gonzales, CRNM, 2000, p. 8) is that as global trade has increased the evaluative trend has been to increase the population size criteria applied to defining small countries. This is as a result of the fact that as global trade and populations have increased, the divide between the rich and poor countries have also increased. The slowdown in the transfer of technology from north to south, the reduction in the flow of aid and the reduction in the flow of trade between developed and

developing countries has increased the vulnerability of small developing countries (Peretz et al 2001). From the reviews of the literature as discussed here, Trinidad and Tobago, with its small landmass and population below 1.3 million people, is a small developing country.

Arising out of this aspect of smallness, it is obvious that the Trinidad and Tobago economy and its associated industries are, in and of themselves, incapable of developing the related and supporting industrial linkages to create competitive sectors independent of a supportive government policy. What is needed therefore is a top down approach to the facilitation and in the case of a small country such as Trinidad and Tobago, the creation of competitive advantage through an adequately formulated policy that is aimed at fostering the development of competitive advantage.

The Concept of Openness

Openness is a concept that defines the pre-disposition of a society to engage the rest of the world in economic activity (Ishmael, 2005, p. 79.). It is a cultural phenomenon, as suggested in the concept of the historical and evolutionary aspect of the origin of an industry within a society – à la Porter (Porter, 1990, pp 179-273). In other instances openness is viewed from a policy standpoint as a global pre-disposition or globalisation (Gonzales 2000).

In the case of policy, openness has been evaluated as a phenomenon that is tied to trade liberalisation (Gonzales, 2000, p. 3) and hence as a statistical construct of trade versus its ratio to Gross Domestic Product. In such circumstances and according to Gonzales, the generation of more sustainable economic stability within small developing countries, is based on increased market access in a more secure and predictable manner. In these circumstances openness is policy determined. It relates to the functional aspects of a nation's economic orientation in such a manner as to facilitate trade between that country and the rest of the world.

Fundamentally, such a measure can only indicate the 'vulnerability' of a small developing country's market to the rest of the world. Statistically, a small developing country's trade with the rest of the world will be inconsequential, as compared to global trade.

For small developing countries as well there is the other dimension apart from the policy dimension. That dimension is that of the historical dimension as hinted to by Porter, in his historical factor assertion, as it

relates to the importance of history in the formation of an industry with a competitive advantage (Porter, 1990, pp 179-273).

In summary and for our purposes here, openness is a key component in the formulation of a policy regime for the facilitation of competitive advantage within industries in small developing countries. Any policy construct and its associated legislative regime must seek to supplement the limitations of smallness as it affects innovative capacity and competitiveness development within small economies by allowing for the inflow of foreign influences to enhance the development of a competitive economy.

The Context for Government Policy

From the discussion so far in this paper it is obvious that the question of competitiveness development is one that has been focused in the literature on cluster development. The research on Trinidad and Tobago suggests that there are no competitive sectors or there associated clusters outside of the energy sector (Ishmael 2005). Accordingly, in order to develop competitive sectors, Government Policy should focus on:

- 1) the facilitation of the development of new clusters that are not based on geographic isolation models but which are unique to a nation's historically open economic environment; while expanding opportunities that can be gained from already existing open cluster relationships;
- 2) the facilitation of the development of advanced knowledge based factors required for the competitive advantage of local industrial sectors;
- 3) the emphasising of the unique history and economic culture of successful local industry as key components of clusters;
- 4) the facilitation of the creation among the local labour force of an orientation towards advanced knowledge based economic activity; and
- 5) the expansion of the product and market scope within a small developing country's manufacturing sector (Ishmael, 2008, pp 458- 472).

In order to pursue these objectives there must be an appropriate policy direction and focus. In this regard there are many possible approaches, including industrial policy as one focus or for that matter the use of fiscal

incentives. All of which have been attempted previously by the Government of Trinidad and Tobago as well as other small developing countries. In most instances the results have been without the desired effect at best or at worst with no sustainable beneficial effect at all. What should therefore be the policy vehicle for facilitating competitive advantage in small developing countries? The view here is that approach should be procurement policy.

The rationale for procurement policy as a mechanism for creating competitive advantage

The Government of Trinidad and Tobago started a review of its procurement practices in 2005; primarily as a result of the fact that the current procurement regime, established under the Central Tenders' Board Act was seen as not being able to meet the present and prevailing needs of state procurement requirements. This author was a part of an inter-ministerial team that reviewed the existing procurement regime and made recommendations for the formulation of a new procurement policy.

That procurement policy proposed a new administrative body and increased the scope and range of authority of that body to provide oversight of government procurement activity. That original draft policy did not include as part of its scope the use of procurement policy as a mechanism for the facilitation of competitive advantage.

The utilisation of this draft procurement policy as a mechanism for creating competitive advantage is based on the rationale that in the Trinidad and Tobago economy, the largest single consumer and customer for local industry is the Government of Trinidad and Tobago. Accordingly, in an economy in which the Government has traditionally played a significant role in developing new sectors of industrial activity through its ownership of state enterprises; it is conceptually feasible in the context of a procurement policy, to utilise that policy to influence the development of competitive advantage by focusing on the development of an innovative culture within local industry by setting the highest possible standards for the creation of a competitive culture in those industries through the use of government procurement policy.

PART I

PROCUREMENT POLICY – A CONTEXT AND FRAMEWORK

The Republic of Trinidad and Tobago is a country located in the Southern Caribbean Sea. It consists of a land area of 5,128 square kilometres and a population of approximately 1,229,000 people. It is located 11km from the South American continent at its closest point. It is a former English Crown Colony, independent since August 31st 1962 and is a Westminster type parliamentary democracy. The population growth rate is -0.102% (2009 est.). The national currency is the Trinidad and Tobago or \$TT Dollar. The rate of exchange is \$1US Dollar to \$6.35 TT Dollars (Central Intelligence Agency, Undated).

The national budget of Trinidad and Tobago for fiscal year 2009 was TT\$44,206.30 million dollars. For fiscal year 2008 the budget was TT\$36,477.0 million dollars. This equates to a total budgetary allocation of TT\$80,683.3 million for fiscal years 2008 and 2009 combined. The fiscal year runs from October 1st of one year to September 30th of the following year. The Government of Trinidad and Tobago extends across approximately thirty eight (38) ministries and departments and forty two (42) wholly owned state companies (Trinidad and Tobago Ministry of Finance, Undated).

The total amount spent by the government on procurement from 1st January 2008 to 1st June 2009 was approximately TT\$57,860.77 million dollars. Government procurement for this period amounted to 71% of total budgetary allocations for fiscal years 2008 and 2009.

The Gross Domestic Product for Trinidad and Tobago for 2008 was approximately TT\$155,000 million. Government's budget for fiscal year 2008 amounts to 23.53% of Gross Domestic Product for 2008. It is therefore apparent that the Government of Trinidad and Tobago is a significant player in the economy of Trinidad and Tobago, with a significant portion of the national budget being allocated to the procurement of goods and services.

The Government of Trinidad and Tobago is therefore a significant player in the economy and can therefore have a significant effect on the economy.

Exports and the state of local industry

Available data suggests that non energy sector exports for 2008 amounted to 13.6% of total exports (Caribbean Money Market Brokers, May 2009), declining by 31.3 percent over the previous year. This translates into TT\$1,031.7 million (Ministry of Finance, 2009) in exports for the period reported. Therefore, as it pertains to manufacturing it is

obvious that this sector within the Trinidad and Tobago economy is underperforming.

As it pertains to services there is no information as to what percentage of the Services GDP is actually exported. In fact the nature of the services sector is largely internally directed and there is little or no data on the true nature of services exports from Trinidad and Tobago.

In light of the nature of the manufacturing and services sectors in Trinidad and Tobago, it is believed that government procurement policy can provide the impetus for the creation of competitive manufacturing firms and likewise competitive services firms as well. This is by virtue of the fact that the government through such a policy can set standards for the technology requirements, cost and labour requirements if necessary for the goods and services it procures. This has the potential to radically reform the innovative culture within the economy of any small country; this is especially where such a prior innovative culture is not that pervasive.

PART II

PROCUREMENT POLICY AND INDUSTRIAL COMPETITIVE ADVANTAGE

Public Procurement is the process of acquiring property and services using public money. In Trinidad and Tobago the Central Tenders Board Act 1961 is the regime under which procurement for Government ministries and their associated departments is governed.

Initially the rationale for reviewing the procurement regime in Trinidad and Tobago was based on the fact that the Central Tenders Board Act did not cover procurement for some state owned enterprises. It also did not cater for the modern procurement methodologies such as Build Own Lease and Transfer (BOLT) and Build Own Operate and Transfer (BOOT). In today's contemporary world, it is felt that a new mechanism

embodying the principles of greater accountability and transparency in respect of a government's management of the public purse was required.

Therefore, flowing from these principles, this paper argues that the government as the largest customer in the Trinidad and Tobago economy has the responsibility to utilise its role as a customer to set the highest standards for industry; therefore fostering the creation of more competitive firms and industry clusters.

Setting Competitive Standards: Prequalification

Competition is the key factor in any process that fosters the development of a competitive sector. The first requirement is the formulation of a prequalification process that allows for the selection of the best suppliers. Competition to meet the standards for selection at the prequalification stage would lead to higher standards among firms in the industry sector which is to service the particular procurement contract.

The Pre-qualification mechanism should consist of:

1. The categorisation of providers into: a) National Service Conglomerates, which are large local providers of goods or services and that are registered companies under the laws of Trinidad and Tobago and have gross sales in excess of TT\$100 million Dollars; b) Multinational Service Providers, which are large international firms providing specialized services, the quality of which can be attested to by recognised international professional bodies; c) Company Providers which are registered local companies with gross yearly incomes of less than TT\$100million dollars but more than TT\$1million; and d) Small and Micro Enterprise Providers; that include sole traders and small companies with less than twenty five employees.
2. Checking providers' compliance with any legal and regulatory requirements that are applicable to commercial entities in their sectors that are operating in Trinidad and Tobago.
3. There should be a requirement that providers invest in research

and development that is specifically geared to primary research. This research requirement should be tied to an incentive to provide financial support to allow providers to market and patent any such systems that they develop.

4. There is a need for Government to constantly maintain efficiency and be accountable for its management of public money. In doing so, government must undertake to utilise systems that maximise efficiencies that would accrue maximum savings during each procurement cycle.

Rationalisation for the categorisation of Providers

In order to appropriately prequalify providers of goods and services to Government, it would be necessary to classify them according to size and sector of activity. For example, some services that Government would require are those for specialised construction services; in that regard, where government required the construction of large office complexes or sports arenas a National Service Conglomerate or Multinational Service Provider may be a more suitable provider of such service.

In certain circumstances where highly specialised equipment is being procured they may only be a few providers, all of whom may be categorised as Multinational Service Providers. The latter classification is a nomenclature simply to identify large scale providers that are external to Trinidad and Tobago but have the capacity to provide high end specialised goods.

The important component of the categorisation of providers is to allow the state as part of its standard pre-qualification process to identify providers that have the capacity to supply high quality goods and services at the best prices.

Categorisation of suppliers will also allow for different requirements to be met by different suppliers in order to complete the prequalification process. The rationale for this approach is simply that different degrees of 'spend' by the government would necessarily require different levels of due diligence. A provider of catering services to a government department for a meeting would not be required to conform to the same degree of due diligence as a provider of a TT\$1,000 million dollar sporting facility.

The categorisation process should also allow for the re- categorisation or

de-categorisation of providers depending on their performance and any negative change in their status. De-categorisation will occur where such providers are no longer operating in their prequalified sector of activity or have ceased operations or been merged with or taken over by another company or firm. De-categorisation would also occur where such providers become bankrupt or are convicted of illegal acts.

Rationalisation for requiring legislative and regulatory compliance

This is a key requirement for the development of competitive industries via the use of Government Policy. Companies and firms operating within Trinidad and Tobago's jurisdiction will obviously be required to comply with the various tax, labour and other laws that are applicable. The Government will also have a moral obligation to conduct due diligence into the various practices of external service, works and goods providers that are not operating within the local jurisdiction. The most effective aspect of this requirement is that all providers of specialised equipment be required as a policy to contract with the government to provide technological transfer.

A key necessity for the building of competitive advantage within a nation is the development of knowledge and adaptive technologies. In the case of highly specialised and expensive items of spend, it may not be practical to require the transfer of the technology utilised for example to build a complete naval patrol vessel; nor would such a requirement be practical. What might be appropriate, to continue the example, is the transfer of the knowledge of the adaptive systems used for specialised hull or engine designs.

Such knowledge will not only help locals maintain such high spend items but where necessary provide the impetus for directing local research and design in a similar area.

Rationalisation for requiring research

It is recognised that being able to provide a mechanism for the transfer of new process technology can be a way of facilitating competitive advantage; however, the most effective way of creating and sustaining competitive advantage is through primary research. Therefore, government should require as well that all local pre-qualified providers of goods and services should institute a primary research and development programme.

The openness of the Trinidad and Tobago economy as well as the lack of industry clusters to support such research and development often negates the economics of doing any research by local firms. Government should undertake to provide adequate support for any pre-qualified provider who has identified an area of research and development that shows potential for the development of new technologies and marketable products.

Rationalisation for Government maintaining efficiency

There are numerous modern techniques and mechanisms for the procurement of goods and services. These systems include 'Design Finance Construct' (DFC) and 'Build Own Lease Transfer' (BOLT) as well as 'Build Own Operate and Transfer' (BOOT). Another very effective mechanism is part of an e-Procurement regime and is often referred to as e-Auctions.

In Trinidad and Tobago various public agencies have been able to accrue significant savings over their historic spend through use of the e-Auction process. The use of such mechanisms for suitable commodities and services is a mechanism by which Government, through its procurement can maximise value for money.

The creation of a new procurement regime to foster competitiveness will require a new electronic based regime. Any such electronic system will need to focus on transparency and likewise the implementation of appropriate mechanisms in order to maximise efficiency. It will also need to stipulate the electronic pre-registration of contractors and include a system of appeals, complaints and criminal penalties for non-compliance.

PART III

PROCUREMENT- LEGISLATIVE FRAMEWORK FOR COMPETITIVENESS

Draft Procurement Policy

In small developing countries such as Trinidad and Tobago the need to create export competitive industries requires government policy that is facilitative of competitiveness, rather than selective of winners. The

legislative framework proposed here will effectively modernize the procurement regime and create export competitive industries.

Benefits of the New Procurement System

A new legislative framework must facilitate:

1. The use and application of electronic trading and project management systems, if not specifically mentioning them;
2. Receipt of sector-specific committee monitoring reports;
3. Timely Operational Reports;
4. Submission of annual reports to the government (Ministry of Finance, 2008).

The new policy focuses on the efficient allocation of contracts. This along with the monitoring of contract execution will be the impetus for fostering competitive advantage in small developing countries.

The competitive advantage of local industry can be facilitated through a specific and efficient dispute resolution mechanism.

Any new system should permit subcontracting of services by contract awardees of government procurement contracts where such subcontracting permits greater efficiency; where the sub contracts are awarded via competitive bidding procedures; and where the National Procurement Agency has oversight of the sub contracted firm.

Key to this new system will be the use of incentive and award procedures for the early and successful completion of projects and the fulfilment of contracts with innovative and new indigenous technologies, where appropriate. Any such new system will have to make allowances for emergency procurement. Accordingly, under the Bill, the President will have the authority to make regulations to provide for selective tendering where necessary.

The National Procurement Agency (NPA)

The draft policy proposes a body to be called the National Procurement Agency (NPA). The NPA will be granted a wide scope of authority, with oversight being provided through the Parliament and the line Minister.

The NPA will adopt new innovative methodologies such as e-procurement including e-registration as a critical component of the new process.

The components of the new system are:

1. Electronic registration of providers;
2. Establishment of an electronic database of suppliers/contractors/consultants;
3. Formulation of criteria for the pre-qualification, implementation assessment and post-project evaluation of suppliers/contractors/consultants;
4. Formulation of a process for feedback and consultation;
5. Formulation of criteria for the de-registration and removal of suppliers/contractors/consultants from the database due to non-compliance with procedures or standards;
6. Formulation of criteria for sole selective and selective tendering;
7. Classification of contractors – small, medium, large and sector-specific;
8. Maintenance and publication of a database of all available tenders;
9. Establishment of a transparent system with electronic protocols to facilitate the receipt of offers/bids or tenders and proposals;
10. Publication of awards made;
11. Listing of existing contracts to be assumed and continued;
12. Adjudication of disputes, claims of inequity and other complaints;
13. Assessment of the roles and functions of personnel;
14. Establishment of minimum standards of skills and competencies for technical and professional officers; and
15. Promotion of public awareness of the procurement process.
16. The National Procurement Agency (NPA) will be required to undertake a periodic review of the implementation and management of the procurement processes of reporting agencies. An agency that is subject to a negative report of the Board, may appeal the findings of such a report via the appeal mechanism.

Operational Scope of the New Regime

The National Procurement Agency (NPA) should be headed by a Chairman. The NPA will also have powers to subpoena information and compel testimony. It will be responsible administratively through its Chairman to the Parliament via the Cabinet and the Minister responsible for procurement oversight. The NPA will implement and manage the new procurement regime as provided for by the legislation as well as the associated regulations made by the President.

The NPA will be required to conduct pre-award process and post-award implementation financial and management audits related to the award of contracts in respect of the procurement process.

The initiation of the procurement process would be the responsibility of the procuring agency under criteria to be established. As well the accounting officer of every agency shall be mandated to provide the required information to the NPA in the manner, form, and time prescribed by the regulations to be made by the President.

The accounting officers, chairmen and other chief executives of state agencies where applicable, will be obligated under the policy to report to the NPA on the procurement procedures undertaken by their ministries, agencies or companies, during the particular financial year. The policy contemplates that there will be consequences for non compliance with the requirement of reporting by the responsible officers.

The National Procurement Agency – Structure

The NPA should consist of a Board comprising: a Chairman, Chief Executive Officer and nine other permanent Board members appointed by the President. The Chief Executive Officer will be an ex officio member of the Board. The Chairman of the Board of the National Procurement Agency would be a person appointed by the President. Such an individual would be required to have the requisite experience and/or combination of qualifications and experience commensurate with the functions and duties of the office. The functions of the Chairman will be:

- a) To set the policy of the Board in compliance with the law and applicable regulations;

- b) To prepare reports for the Minister for submission to Cabinet and Parliament;
- c) To preside over and moderate the meetings of the Board of the National Procurement Agency;
- d) To set the Agenda for meetings of the Board of the National Procurement Agency;
- e) To make recommendations on the terms and conditions of persons to be employed by the Secretariat of the National Procurement Agency;
- f) To advise the President on the persons to serve as temporary Board members; and
- g) To receive and approve operational reports from reporting agencies.

The Policy will also call for the President to appoint such number of other members as temporary members to serve for interim periods in order to provide the Board with additional expertise as necessary. The policy calls for any appointed temporary member to serve for a period of one year and to be re-appointed for a subsequent period of one year on the advice of the Minister. All other members of the Board shall be appointed for a period of 5 years from the date of their appointment and all members so appointed shall be eligible for re-appointment.

The policy calls for the Board of the National Procurement Agency to be supported by an Administrative Secretariat.

Administrative Secretariat

The policy calls for the Administrative Secretariat to be the Administrative arm of the National Procurement Agency and shall facilitate the work and functions of the National Procurement Agency.

In the absence or incapacity of the Chairman, any member of the Board can be appointed by the President to act as Chairman of the National Procurement Agency. Any such acting appointment shall not exceed a period of one year.

There shall be a Chief Executive Officer who shall be the head of the Administrative Secretariat of the National Procurement Agency. His functions shall be:

- a) The accounting officer of the National Procurement Agency;
- b) To assist the Chairman at his direction in the co-ordination of the technical work of the Secretariat of the National Procurement Agency in fulfilment of the Board's mandate
- c) To co-ordinate the work of sector committees set up under the ambit of the Board to assist in its functions; and
- d) To select persons to be considered for employment by the National Procurement Agency in the Administrative Secretariat.

The Chief Executive Officer shall be an employee of the National Procurement Agency and shall be appointed by the Board on such terms and conditions as are negotiated between the Board and the person after consultation with the Chief Personnel Officer.

The members of the Board of the National Procurement Agency shall be removed from office only for cause, including *inter alia* misbehaviour in public office and/or failure to perform the duties of their office.

Sector Committees

The Minister, on the advice of the Chairman of the Board of the National Procurement Agency, may establish such number of sector committees as is necessary to assist the Board of the National Procurement Agency in providing oversight of procurement practices to any Governmental or Statutory Body that is covered by the new framework.

A Transparent Process

Transparency should be an inherent characteristic of all rules, procedures, plans, actions and decisions relating to procurement. Disclosure is the mechanism by which agencies make their procurement activities visible and transparent. The NPA will be required to grant access to the public in

respect of relevant information regarding bids, tenders and contracts - this will be the subject of subordinate legislation in the form of regulations.

Developing Competitiveness

In order to develop competitive local industries, domestic suppliers, as a matter of policy, should be entitled to state funding for research and development where their services or goods are deemed to be essential to government's operations. The NPA will review the performance of local supplier firms to determine which ones are in need of support. Also where such firms respond positively to government's support they will be included on a list of suppliers for selective tendering. This would be a procedural requirement and would not be legislated.

Appeal Mechanisms

The new policy calls for an appeal mechanism for dealing with complaints from potential suppliers and other stakeholders. Such appeals shall be made to a separate tribunal established by the NPA, but operating independently of its procurement function, and which will utilize a system of formal hearings.

Social Responsibilities

The new system envisions the establishment of a website to disseminate information and provide access to information related to specific procurement projects and their implementation. The website will be accessible to all stakeholders. The interests of stakeholders would be protected by the observance of fair-play, open competition and efficiency in the operations of the new procurement regime.

Penalties

Under the new policy any individual who knowingly submits to the NPA or causes to be submitted to the NPA, any document or report that misrepresents in a material way, any substantive element necessary to evaluate accurately the scope and effect of procurement undertaken on any project or initiative to which it refers; would be guilty of an offence.

Such an individual upon conviction would be subject to a penalty to be fixed by a fine and/or a term of imprisonment.

Any employee or member of the Board of the NPA who in breach of the policy, discloses any confidential information, report, or correspondence, would under the policy be guilty of an offence, and would upon conviction, be liable to fine and/or imprisonment.

Any person who attempts to bribe, solicit, blackmail or otherwise induce an employee of the National Procurement Agency to divulge any information pertinent to any agency or entity under the National Procurement Agency's purview, shall be guilty of an offence under the new Bill, and would, upon conviction, be liable to a fine and/or imprisonment.

Any natural or legal person who participates in any anti-competitive activity with a view to perverting the procurement process will be guilty of an offence and subject to criminal penalties under the new proposed legislation. Where such a person is convicted of an offence, such a person would be liable to a fine equivalent to a fixed multiple of the value of the contract awarded or, where a contract has not been awarded, to a fine equivalent to a fixed multiple of the value of the bid entered by such person.

Under the applicable proposed legislation, any natural or legal person who refuses to comply with any subpoena of the Board within the time stated by such subpoena would in appropriate circumstances be subject to coercive penalties until such time as the subpoena is complied with. An appeal from such a decision would lie to a Judge in Chambers of the Supreme Court. Where a fine is ordered to be paid, that fine shall be set at such fixed amount and applied for each day that the subpoena is not complied with by the person subject to the subpoena.

PART IV

OPERATIONALISING THE NEW REGIME

In order to maintain the independence of the National Procurement Agency there is a need to shield its administrative functions from the wider Public Service. Accordingly an Administrative Secretariat would need to be independent.

This section reviews the proposed structure for an Administrative

Secretariat, which is intended to be the Administrative Division of the National Procurement Agency.

The role and structure of the Secretariat is recommended, as a minimum, to be as follows:

1. The Administrative Secretariat reports to the Chairman on issues of Policy.
2. On matters related to administration/technical issues the Chief Executive Officer has oversight and responsibility.
3. The technical staff of the secretariat shall comprise:
 - a. One Accountant – FCCA certified or trained in Forensic Accounting.
 - b. One Manager Legal Affairs- 10 years experience as an Attorney.
 - c. One Project Management expert – Project Management Institute Certified.
 - d. One Software Programmer
 - e. One Computer Systems Analyst
 - f. One Information Technology Manager
 - g. Three Business Analysts-ACCA, MBA or Msc. in Financial Management
 - h. Three Legal Officers – Attorneys at Law
 - i. Three Research Specialists – trained in a field related to: Economics, Social Science, business, law, accounts, finance or with requisite experience.
 - j. One Human Resource Officer
 - k. One facilities Manager
 - l. Three Executive Secretaries – To service the Chairman, Chief Executive Office and The Board as an entity.
 - m. Three filing clerks.
 - n. Five Clerk typists.

- o. Two drivers
- p. One maid
- q. Two Messengers
- r. Three cleaners

The NPA Secretariat will need to be both dynamic in one respect and in another it must be effective and have the range of resources to allow it to carry out its key support function as it pertains to the work of the NPA.

The Secretariat will provide the key support to the Board and its Sector Committees as they pursue their technical evaluations and deliberations as it relates to the assessment work being undertaken by the Sector Committees and The Board.

CONCLUSION

The approach outlined in this paper represents the fusion of academic research undertaken by this author as well as policy work conducted but not implemented by the Government of Trinidad and Tobago for the reform of the state's procurement regime. These concepts provide the impetus for the development of a competitive policy that will advance the development of competitive advantage in small developing countries.

The key commonality among all small developing countries is that the state is the largest single procurer of goods and services within the local economy. Therefore, procurement policy as a mechanism for building

competitive advantage is not simply an academic concept, it is in fact a logical focus for the development of competitiveness policy.

It is believed that as it pertains to procurement reform in small developing countries, the proposals made here for Trinidad and Tobago will be applicable to other small developing countries as a means of developing competitiveness in local indigenous industries.

The intention of this paper was not simply to put forward a theoretical framework but more importantly to outline a comprehensive, practical workable and coherent methodology that would allow government policy to build competitiveness locally and later to facilitate its expansion internationally. These policy prescriptions though based on work undertaken for the reform of the procurement regime in Trinidad and Tobago; do not represent any actual existing regime that has been actually implemented. It is a rationalisation based on the lessons learnt both in the conduct of the policy formulation exercise for the reform of state procurement practices as well as the prior academic work conducted on Trinidad and Tobago's competitive advantage.

Procurement policy is seen here as the best mechanism for facilitating the required level of interaction between the state as an actor in the economy and the other non state actors that are critical to the development of competitiveness. Procurement policy to be effective requires an institutional as well as a legislative structure and a reward system. It requires a mechanism that is transparent and that establishes an even playing field, while putting adequate inducements for participants to reduce costs and maximise productivity. It is hoped that what has been offered here will achieve these goals and lead, where implemented, to greater competitiveness of the local economy, not only in Trinidad and Tobago but elsewhere.

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APPENDIX
MODEL - DRAFT PROCUREMENT LEGISLATION FOR
COMPETITIVE ADVANTAGE IN INDUSTRY

A Bill to Provide for the Establishment of a National
Procurement Agency and for Matters Connected therewith

Commencement. [Day and Year of Passage]

Short Title. 1. This Bill may be cited as the Procurement Bill.

PRELIMINARY

Interpretation. 2. In this Bill –

“articles” means all goods, materials, stores, vehicles,
machinery, equipment and things of all kinds;

“procurement” means the approved procedures,
policies and practices related to the acquisition of
goods and services;

“Board” means the Board of the National Procurement
Agency established under section 4 of this Bill;

“Committee” means a Sector Committee of the Board
established under section 6 of the Bill;

“Supplier” is a company incorporated under the Companies Act, a foreign firm or corporation or a local or foreign partnership, sole trader, sole practitioner or individual contractor;

“Government” means the Government of Trinidad and Tobago;

“governmental body” includes: Cabinet, ministries, state enterprises, statutory bodies, the Office of the Ombudsman, the Office of the Director of Public Prosecutions, and Protective Services; but does not include: the Parliament, the Office of the President, and the Judiciary;

“statutory body” means any municipality, municipal council, board, commission or similar body corporate established and incorporated by an Act;

“Minister” means the Minister to whom responsibility for Procurement is assigned;

“project” includes any works or undertakings;

“relative” means the father, mother, brother, sister, son or daughter of a person or a person’s spouse and includes the spouse of a son or daughter of such a person;

“ works” means buildings and engineering works of all kinds;

“service” means any service provided to Government under a contract for service.

“person” shall include any legal person.

“accounting officer,” shall refer to any person who has Responsibility for the administration of the finances of any governmental body or statutory body.

Application

First Schedule.

3. (1) This Bill applies to such of the statutory bodies as are set out in the First Schedule to this Bill notwithstanding any general or special power or authority vested in such governmental body either by an Act or by virtue of its incorporation.

(2) The President may, by Order published in the *Gazette*, amend the First Schedule to this Bill by adding thereto or deleting therefrom a governmental body or statutory body.

PART I
ESTABLISHMENT, FUNCTIONS AND PROCEDURE
OF THE AGENCY

Establishment
of the
Agency

4. (1) There is hereby established a National
Procurement Agency which shall have the sole
and exclusive authority in accordance with
this Bill—

(a) to act for, in the name and on behalf of the Government, governmental body or statutory body to which this Bill applies, in inviting, considering and accepting or rejecting offers for the procurement by Government or any governmental and statutory body of articles or for the undertaking of works or any services in connection therewith, necessary for carrying out the functions of the Government or any governmental body or statutory body under this Bill;

(b) to dispose of surplus or unserviceable articles belonging to the Government or any governmental body or statutory body;

(c) to manage activities related to the fulfilment of the procurement process in subsection (1)(a) of this section.

(2) The Board shall have such other functions and duties as the President may by order prescribe from time to time.

(3) The Board shall have the authority to subpoena witnesses and evidence from any governmental body or statutory body or any supplier of works, articles or services; or any person employed by or is an agent of any supplier or governmental body or statutory body under this Bill.

(4) Pursuant to subsection (3), where any party that is subject to a subpoena fails to comply with such subpoena, the Board may, subject to a court order, fine such party a sum of five thousand dollars for each day the subpoena is not complied with.

(5) The Board shall have the authority to require Accounting Officers, Chairmen and Chief Executive Officers of all governmental bodies or statutory bodies to submit an annual report to the Board on the procurement activities of such governmental bodies or statutory bodies.

Composition
of Board.

5. (1) The Board shall be composed of the Chairman and nine other members consisting of –
- (a) five members appointed by the President on the advice of the Minister;
 - (b) two members appointed by the President who shall be either attorneys-at-law, accountants or economists; and
 - (c) two other members appointed by the President on the advice of the leader of the Opposition.

(2) The President shall, subject to the affirmative resolution of Parliament, appoint the Chairman of the Board and the Chief Executive Officer of the Administrative Secretariat.

(3) The Chairman shall be responsible for the submission of an annual report on the activities of the Board to the Minister.

(4) The Chief Executive Officer shall be an ex officio member of the Board and the accounting officer of the Administrative Secretariat.

Composition of
Sector

Committees. 6. (1) There shall be such number of Sector Committees as the Board deems necessary.

(2) A Sector Committee shall comprise a maximum of eight members appointed by the Board on the advice of the Chairman.

(3) Any Sector Committee that is established shall be headed by a Director.

(4) The Director of a Sector Committee shall be appointed by the Board on the advice of the Chairman from among the members of the Sector Committee.

Role of Sector

Committees 7. (1) A Sector Committee shall have responsibility for assisting the Board with the evaluation and certification of compliance with established legislative and procedural requirements relevant to the fulfilment of procurement contracts under the authority of the Board.

(2) A Sector Committee shall make recommendations to the Chairman on any matter referred to it.

(3) (a) The Board may reject any recommendation made to it by a Sector Committee; and

(b) where such rejection is made, the Chairman shall certify to the Minister the Board's reasons for rejecting such recommendation.

Qualification
of members
of Sector
Committees.

8. The Director and members of the Board shall be persons suitably qualified to advise on the technical aspects relevant to procurement in the sector for which it has oversight.

Tenure
of Office.

9. (1) An officer of the Board, except the Chief Executive Officer, shall hold office for a term of five years.

(2) A member of the Board including the Chairman vacates his office -

(a) automatically where he has held it for five years;

(b) by written notice of resignation addressed by him to the President;

(c) where he is absent from at least three consecutive meetings of the Board without leave of the President;

(d) where otherwise by virtue of any circumstance he would be disqualified from being a member of the Parliament of the Republic of Trinidad and Tobago; and

(e) where by virtue of a motion being passed in the House of Representatives for removal of the Board or any member thereof for non performance of their duties under this Bill.

(3) A member of the Board who has vacated his office under subsection (2)(a) to (2)(d) above, shall be eligible for reappointment.

(4) The Chief Executive Officer shall hold office on terms and conditions to be negotiated with the Chief Personnel Officer.

Acting

Appointments. 10. (1) An acting appointment to the post of Chairman may be made by the President on the advice of the Minister from among any member of the Board other than the Chief Executive Officer and such appointment may be for a period not to exceed one year.

(2) An acting appointment to the post of Chief Executive Officer shall be at the discretion of the Minister and shall not exceed one year.

Payment of
remuneration
to members
of the Board
and of

committees. 11. The President may direct that such remuneration as he may determine shall be paid –

(a) to the Chairman and members of the Board; and

(b) to members of a Sector Committee and the Director of any sector committee that is established.

Filling of
vacancies
of the
membership

of the Board. 12. Where by reason of death, illness, absence, resignation or otherwise of a member, a vacancy occurs in the membership of the Board, the President shall, on the advice of the Minister, appoint some other person to be a member of the Board for the unexpired term of the member whose office so becomes vacant; but so long as a quorum is present at any meeting, the Board shall be deemed to be duly constituted notwithstanding any vacancy in the membership of the Board.

Leave of
absence of
members

of the Board. 13. (1) The President may grant leave of absence to any member of the Board.

(2) The President may appoint a person in the place of any member of the Board who is temporarily absent from Trinidad and Tobago or unable to perform his duties by reason of illness or other cause.

Meetings of Board
and Sector Committee

to be Chaired. 14. (1) Meetings of the Board shall be Chaired by

the Chairman.

(2) Except in the prolonged absence of the Chairman, from meetings of the Board, any member of the Board with the exception of the Chief Executive Officer can be selected from among its number by the members present to Chair a meeting of the Board.

(3) Any person acting under subsection (2) of this section shall have the authority of the Chairman.

15. (1) Meetings of a Sector Committee shall be Chaired by the Director.

(2) Where the Director is absent from a meeting of the Sector Committee the Committee shall appoint someone from among its number to Chair its meeting.

Meetings of
the Board
and sector

committee. 16. (1) The Board and any Sector Committee established shall meet as often as may be necessary or expedient for conducting its business but at least once in every month.

(2) Except in such cases as may be determined by the Chairman in the Case of the Board and the Director in the case of a Sector Committee, notices of meetings together with any agenda shall be circulated to members at least forty-eight hours before the time fixed for such meetings.

(3) A member of the Board or Sector Committee, who is a member of a company or other body, or is a partner or is in the employment of a person or a company or other body, or is married to or who is or whose husband or wife is a relative of, a person who has submitted an offer for the supply of articles or for the undertaking of work or any services in connection therewith which is the subject of consideration by the Board, shall disclose the fact and shall not take part in the consideration or discussion of, or vote on any question relating to such offer.

(4) If any person fails to comply with the provisions of subsection (3), he is guilty of an offence and liable on conviction to a fine one hundred thousand dollars and imprisonment for five years.

(5) Minutes of each meeting in proper form shall be kept by both the Board and Sector Committees and shall be confirmed by both the Board and the Sector Committees and certified by the Chairman for the Board and the Director for each Sector Committee at the next succeeding meeting.

(6) Copies of the minutes of the Board shall be certified by the Chairman and shall be forwarded to the Minister.

(7) Copies of the minutes of a Sector Committee shall be certified by the Director and shall be forwarded to the Chairman.

Quorum. 17. (1) At any meeting of the Board or a Sector Committee, five persons including the Chairman in relation to the Board; and five persons including the Director in relation to a Sector Committee, shall comprise a quorum.

Decisions

of the Board. 18. (1) Decisions of the Board shall be taken at meetings or, in cases where the Chairman shall so direct, by the circulation of papers among the members.

(2) Where papers are circulated among the members, the Chairman may direct that the papers shall not be circulated to any member, who through illness, interest, absence from the country or otherwise, is in the opinion of the Chairman, incapacitated from voting.

(3) The decisions of the Board shall be by a majority of votes and for that purpose the Chairman shall have both an original and a casting vote.

(4) All decisions of the Board related to the award of contracts and the delisting of suppliers must be notified to

the relevant parties within 30 days of the date on which such decisions were taken.

(5) Subsection (3) of this section shall apply in like manner to decisions of a Sector Committee.

Method of
recording
decisions of
the Board.

19. Any document purporting to record a decision of the Board and signed by the Chairman and any Notification in the *Gazette* purporting to record a decision of the Board, are admissible in evidence as *prima facie* proof of the decision recorded.

Method of
making
decisions of
the Sector
Committee.

20. Decisions of Sector Committees shall be taken at meetings and shall be by majority vote certified by the Director.

Method of
recording
decisions
of the Sector
Committee

21. All decisions of a Sector Committee shall be confidential and shall not be admissible in evidence in any court.

Opening of

Tenders.

22. (1) The Board shall advise the Minister on the standards and mechanisms to be utilised for the tendering by providers for contracts to be awarded by government and governmental bodies;

(2) any mechanism utilised for tendering under sub section (1) of this section shall include a list of approved suppliers for each sector; and

(3) The Minister shall lay before the President that advice of the Board and the President by Order published in the Gazette may amend the Regulations accordingly.

Request
for
invitation
of offers
to be in
writing.

23. (1) Where any governmental body or statutory body is to undertake any procurement of goods, services, or works which is in aggregate in excess of One Million Dollars, it shall notify to the Board the details of the procurement to be undertaken.

(2) Pursuant to sub section (1) of this section the Board shall evaluate the procurement of any such governmental body or statutory body to ensure compliance with the regulations under this Bill.

(3) Where the Board approves procurement by a

governmental body or statutory body it shall cause to be published in the Gazette and any available and appropriate medium including any electronic medium the details of that approval.

(4) The Board shall be responsible for overseeing the implementation of any approved procurement contract to ensure its implementation results in the expected outcomes as stipulated by the contract.

Formal
contract to
be entered

into. 24. (1) Where the Board approves the Procurement of articles, goods or services by a Governmental Body or Statutory Body the person whose offer has been accepted and the Governmental Body or Statutory Body shall enter into a formal contract for the supply of the articles or the undertaking of the works or services, as the case may be.

(2) A formal contract shall be in such form, and contain such terms, conditions and provisions, as the Board may determine.

(3) The Board shall cause to be published in the *Gazette* and by every appropriate means of media including electronic media the name of the person or body to whom the contract is awarded, the amount of the tender and the date on which the

award was made and all relevant and non confidential information relevant to the award of the contract.

Power of
Board to
Require

Security. 25. The Board may require every supplier to whom any contract is awarded to provide security in such form and to such extent as the Board may determine.

Scope
of
Authority
of the

Board. 26. In the exercise of its powers and the performance of its duties, the Board shall be independent in its decision making and shall not be subject to any general or specific direction as to its deliberations or decisions.

No personal
liability shall
attach to the

Board. 27. No member of the Board or of any Sector Committee is personally liable for any act or omission of the Board or Sector Committee done or omitted in good faith in the course of the operations of the Board or Sector Committee; and any sums of money, damages or costs that are recovered against the Board or any Sector Committee for anything done or omitted as aforesaid shall be paid out of the consolidated fund.

Regul-
ations.

28. (1) The President may make such Regulations as may appear to him to be necessary or expedient for the proper carrying out of the intent and provisions of this Bill and, without limiting the generality of the foregoing, may make Regulations—

- (a) prescribing the procedure to be adopted by the Board in the exercise of the authority vested in it by this Bill;
- (b) prescribing the mechanisms to be used in making offers;
- (c) prescribing the periods for which advertisements should be published and fixing the responsibility for the cost thereof;
- (d) prescribing the forms of contract to be used;;
- (e) prescribing the procedure to be adopted in disposing of unserviceable articles or surplus stores and the limits within which they can be disposed of by prescribed officers of statutory bodies;
- (f) for establishing Governmental Body or Statutory Body special committees to deal with departmental contracts or special items or services, the value of which does not exceed an amount, if any, fixed by this Bill; and

(2) Regulations made under subsection (1) may provide, for the contravention thereof or non-compliance therewith, a penalty on conviction of a fine of fifty thousand dollars, or imprisonment for Five Years or both such fine and

such imprisonment.

PART II FAIR COMPETITION AND TRANSPARENCY

Achieving

Competitive

Standards. 29. (1) The Board shall have the authority to evaluate any production, process and acquisition methods utilised by any supplier of any articles, works or services provided to any governmental body or statutory body under any procurement contract covered by this Bill.

(2) Where any such evaluation takes place under subsection (1) the Board may recommend any appropriate mechanism to aid suppliers in improving the standard and quality of any articles, works or services so provided to the Minister.

30. Any recommendation of the Board made to the Minister under section 29 may be approved by the Minister as a term and condition for inclusion in any contract entered into with any service provider in subsequent procurement contracts, subject to the affirmative resolution of Parliament.

Board

Members

Subject to

penalties. 31. (1) Any member of the Board that solicits, receives or accepts any form of financial or material inducement or suborns the facilitation, reception or acceptance of any bribe by any person, shall be guilty of an offence.

(2) Where any person is convicted of an offence under subsection (1) he shall be liable to five years imprisonment and to a fine of five Hundred Thousand Dollars.

(3) This section shall apply to the members of Sector Committees and the Administrative Secretariat in like manner as to the Board.

Suppliers

Subject

to

penalties. 32. (1) Any supplier or person that attempts via any inducement, blackmail or threat to influence a decision of the Board to award a contract shall be guilty of an offence.

(2) where any person is convicted of an offence under subsection (1) he shall be liable to a term of ten years imprisonment and to a fine of a multiple of ten times the value of the contract.

Private companies

to whom

contracts

are to

be

awarded. 33. (1) Without prejudice to any other section of this Bill or to any other law, the Board shall be required to authorise any contract, the execution or management of which is to be undertaken by a private supplier on behalf of, or in association with the Government.

(2) Where a contract is to be awarded as in subsection (1) the Minister shall seek the approval of Cabinet for the funding arrangements to be entered into for the execution of the contract.

(3) In accordance with subsection (1) the Board shall require the appointment of an accounting officer within any private supplier, where such supplier is not a sole trader or sole service provider.

(4) Any person so appointed under subsection (3) will be accountable to the Board or its agent for the implementation of the contract.

(5) Any supplier, with the approval of the Board, may award sub contracts to facilitate the implementation of any contract or award.

Delisting

of suppliers. 34. (1) Where a supplier or one of its officers is convicted of an offence under this Bill, that supplier may be delisted by

the Board from the list of approved suppliers.

(2) Any supplier delisted under subsection (1) shall not be eligible for re-listing for a period of five years.

(3) Any substantive change in circumstances that relates to the majority ownership or financial stability of a supplier under this Bill is a material issue that may be considered by the Board for the delisting of such a supplier.

Exceptions for

Emergencies. 35. (1) (a) Where there exists an emergency as defined by any act ; or

(b) where there exists within a governmental or statutory body the need to undertake any procurement critical to the maintenance or repair of any infrastructure or service;

(c) the Minister shall have the authority to approve all related expenditure as governed by this section

(2) The details of any procurement approved by the Minister under subsection (1) of this section shall be subject to regulations made under this Bill .

Right of

Appeal. 36. (1) Where section 18 (4) of this Bill applies there shall be

a right of appeal to the Board.

(2) Where an appeal lies before the Board under this section, such appeal shall be conducted in an open forum with all parties thereto having the right to legal representation.

(3) Where subsection (2) of this section applies the President shall make regulations as to the procedures and rules that will govern any appeal conducted under this section.

(4) A decision of the Board on appeal shall be subject to review by a judge in chambers.

(5) In reviewing any decision of the Board under this section the court may amend or void any decision of the Board or any part thereof, or where the court deems it appropriate in the interest of Justice exercise its judicial discretion to substitute its own award or remedy for that of the Board.