

FIFTH

REPORT
FROM

THE PUBLIC ACCOUNTS
COMMITTEE

EXAMINATION
OF

The Audited Financial Statements of the Office of
Procurement Regulation (OPR) for the Financial
Years 2018 to 2020.

Public Accounts Committee

The Public Accounts Committee (PAC) established by the Constitution of the Republic of Trinidad and Tobago in accordance with Section 119(4) is mandated to consider and report to the House of Representatives on:

'(a) appropriation accounts of moneys expended out of sums granted by Parliament to meet the public expenditure of Trinidad and Tobago;

(b) such other accounts as may be referred to the Committee by the House of Representatives or as are authorized or required to be considered by the committee under any other enactment; and

(c) the report of the Auditor General on any such accounts.'

Current membership

Mr. Davendranath Tancoo, MP	Chairman
Ms. Jearlean John	Vice- Chairman
Mrs. Ayanna Webster-Roy, MP	Member
Mr. Adrian Leonce, MP	Member
Mrs. Paula Gopee-Scoon	Member
Dr. Amery Browne ¹	Member
Mr. Roger Monroe, MP	Member
Mrs. Charrise Seepersad	Member

Committee Staff

The current staff members serving the Committee are:

Ms. Keiba Jacob	Secretary to the Committee
Ms. Hema Bhagaloo	Assistant Secretary to the Committee
Ms. Khisha Peterkin	Assistant Secretary to the Committee
Mr. Justin Jarrette	Graduate Research Assistant
Ms. Rebecca Rafeek	Procedural Officer Intern
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Publication

An electronic copy of this report can be found on the Parliament website:

http://www.ttparliament.org/committee_business.php?mid=19&id=335&pid=29

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Date Laid in HOR:

Date Laid in Senate:

¹ Dr. Amery Browne was appointed in lieu of Mr. Randall Mitchell with effect from January 12, 2021.

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Members of the Public Accounts Committee

TWELFTH PARLIAMENT, REPUBLIC OF TRINIDAD AND TOBAGO



Mr. Davendranath Tancoo, MP
Chairman



Ms. Jearlean John
Vice- Chairman



Mrs. Ayanna Webster-Roy, MP
Member



Mr. Adrian Leonce, MP
Member



Mrs. Paula Gopee-Scoon
Member



Mrs. Charrise Seepersad
Member



Mr. Roger Monroe, MP
Member



Dr. Amery Browne
Member

Executive Summary

The Public Accounts Committee (PAC) is the Parliamentary Financial Oversight Committee tasked with the responsibility of examining the Report of the Auditor General and Audited Accounts of Statutory Authorities and Bodies. The Committee presents its Fifth Report of the Twelfth Parliament which details its ***examination of the Audited Financial Statements of the Office of Procurement Regulation (OPR) for the financial years 2018 to 2020*** highlighting its findings.

This report sets out the issues, observations, endorsements and recommendations made by the Committee to improve the OPR's operations.

During this inquiry, the following issues arose:

- Constraints on the fulfilment of the OPR's mandate;
- Government Subvention;
- Strategic Plan;
- Internal Audit;
- Risk Management;
- Human Resources;
- The OPR's Outreach Initiatives; and
- Whistleblowing.

Based on the Committee's examination, the following observations were made:

- i. The Committee is hopeful that the OPR will be able to assume its full mandate as soon as possible. The parallel functioning of both the OPR and the CTB creates a risk of overlapping responsibilities and initiatives. While transition periods between entities in cases such as this are not uncommon or irregular, it is possible that this may represent a less than efficient use of budgetary allocation if it continues into the medium to long term;*
- ii. The Committee acknowledges the gradual increase in budgetary allocations released to the OPR since it began its operations in 2018 and progressively took on more aspects of its mandate. The Committee anticipates that funding will increase as the needs and requirements of the Office grow in order to fulfil its mandate;*
- iii. The Internal Audit function is key for the detection of accounting inadequacies. The Committee is therefore keen on seeing the OPR's Internal Audit Unit established, staffed and operationalized in the shortest possible timeframe;*
- iv. A fully adequate staff complement for the Internal Audit Unit is especially important given that "limited human resources relative to expected workload" was identified as one of the OPR's weaknesses by the August 2021 SWOT analysis;*

- v. ***The Committee notes the link between the issues of the OPR’s Risk Management and Internal Audit functions. The fact that the former will depend on the latter for its review illustrates how urgent it is to have both functions fully developed and implemented. This would contribute to the Learning and Growth theme of the OPR’s Strategic Objectives by facilitating possible continuous improvement in the implementation of the Risk Management Policy;***
- vi. ***The Committee is concerned about the lack of preparedness of many public bodies for the implementation of the Act and Regulations. It is hoped that those entities will immediately avail themselves of the advice and training provided by the OPR to ensure a smooth transition; and***
- vii. ***This is another illustration of the urgent need to have full proclamation of the Act. Full implementation of whistleblowing procedures will help to building confidence and buy-in to the country’s new procurement landscape in keeping with the Strategic Outcome “increased public trust and confidence in procurement, retention and disposal of public property” as identified in the OPR’s Strategic Plan.***

Based on the Committee’s examination, the following endorsements were made:

- i. ***The Committee welcomes the initiatives undertaken by the OPR from 2018 to 2020 given the constraints due to the partial proclamation of the Act; and***
- ii. ***The Committee welcomes the OPR’s plans to create awareness of public procurement among the youth. The return of all students and pupils to physical classes further to the easing of certain pandemic-related restrictions will provide the OPR with an opportunity to start the rollout of its school-based awareness campaign – even if only on a small scale at the outset.***

Based on the Committee’s examination the following recommendations were proposed:

- i. ***The OPR should report to Parliament on the conclusions of the review of its Strategic Plan by August 15, 2022 including the following:***
 - a. ***The identification and assessment of the Office’s core processes which are crucial to effective service delivery under the theme Internal Processes;***
 - b. ***The specific measures to be implemented to further strengthen the OPR’s efficient use of financial resources in accordance with the Finance theme of the Strategic Plan; and***
 - c. ***A description of planned initiatives for the entity’s continuous improvement in keeping with the Learning and Growth theme.***
- ii. ***The OPR should report to Parliament on its plans for the establishment of an Internal Audit Unit, including the following by August 15, 2022:***
 - a. ***the Unit’s estimated staffing needs;***

- b. the funding that would be necessary to establish and then operate the Unit;*
 - c. the timeline for the start and completion of the Unit's development; and*
 - d. the constraints which may slow down the establishment of the Unit.*
- iii. The OPR should provide Parliament with a status update on the pending completion of the Enterprise Risk Management Framework by August 15, 2022 and provide a copy of the Framework upon completion;*
- iv. The OPR should submit to Parliament a copy of its Risk Management Policy, which is estimated to be due for completion by December 2022, as soon as it is completed;*
- v. The OPR should report to Parliament on the following by August 15, 2022:*
 - a. The status of the recruitment of a Policy Officer and initiatives to the fill all other vacant posts;*
 - b. Confirmation of whether the posts for which interviews were on hold as at November 26, 2021 were delayed because they relate to functions corresponding to parts of the Act that were not yet proclaimed or whether there were other reasons;*
 - c. The efforts being made to ensure succession planning is duly developed; and*
 - d. The status of the October 2021 RFP for "Consultancy Services for A Job Evaluation Exercise and Development of a Compensation Structure", including the estimated timeline for the completion of the consultant's work.*
- vi. The OPR should report to Parliament on the following by August 15, 2022:*
 - a. Its assessment of the degree of participation of public bodies as well as suppliers and contractors in its stakeholder awareness workshops; and*
 - b. An overview of the type of feedback, if any, received from workshops participants and the ways in which this perspective may be used going forward.*
- vii. The OPR should submit to Parliament a brief overview of the types of status updates received after informing relevant officers of potential whistleblowing concerns, including a general assessment of the degree of responsiveness observed, by August 15, 2022.*

Introduction

The PAC of the Twelfth Republican Parliament was established by resolutions of the House of Representatives and the Senate at the sittings held on Monday November 9, 2020 and Tuesday November 17, 2020 respectively.

The Constitution of the Republic of Trinidad and Tobago mandates that the Committee shall consider and report to the House on appropriation accounts of monies expended out of sums granted by Parliament to meet the public expenditure of Trinidad and Tobago and the report of the Auditor General on any such accounts.

In addition to the Committee's powers entrenched in the Constitution, Standing Orders 111 of the House of Representatives and 101 of the Senate also empower the Committee, inter alia, to:

1. Send for persons, papers and records;
2. Have meetings whether or not the House is sitting;
3. Meet in various locations;
4. Report from time to time; and
5. Communicate with any other Committee on matters of common interest.

Election of the Chairman and Vice-Chairman

In accordance with section 119(2) of the Constitution, the Chairman must be a member of the Opposition in the House. At the first meeting held on Wednesday November 18, 2020 Mr. Davendranath Tancoo was elected Chairman of the Committee and Ms. Jearlean John was elected Vice-Chairman of the Committee.

Establishment of Quorum

The Committee is required by the Standing Orders to have a quorum so that any decisions made by the Members during the meetings can be considered valid. A quorum of three (3) Members, inclusive of the Chair or Vice-Chairman, with representatives from each House was agreed to by the Committee at its First Meeting.

The Inquiry Process

The Inquiry Process outlines steps taken by the PAC in developing the findings and recommendations of its examination of the Audited Financial Statements of the Office of Procurement Regulation (OPR) for the years 2018 to 2020.

The Inquiry Process included the following steps:

1. Examined the Audited Financial Statements of the OPR and identified issues of concern.
2. Questions were sent for written response to the OPR and the Ministry of Finance (MOF) based on the issues identified in the Audited Financial Statements on November 3, 2021. The responses were received on November 29, 2021.
3. A public hearing was held and representatives of the OPR and the MOF (see Appendix I) were invited to discuss the issues and provide evidence on January 12, 2022.
4. Questions were sent for additional information based on the issues discussed at the public hearings to the OPR on January 24, 2022. The responses were received on February 08, 2022.
5. The Committee's findings and recommendations will be reported to Parliament upon conclusion of the inquiry.
6. The Report will be transmitted to the MOF as the Minister with oversight of the OPR for written response within sixty (60) days in accordance with Standing Order 110(6) of the House of Representatives and 100(6) of the Senate.
7. Subsequent follow-up will be carried out to monitor progress in the implementation of the Committee's recommendations.

Profile – Office of Procurement Regulation (OPR)

Background: Office of Procurement Regulation²

The Office of Procurement Regulation (the OPR) is a body corporate established pursuant to an Act of Parliament, namely the Public Procurement and Disposal of Public Property Act, 2015 (the Act). Ultimately, the OPR is intended to replace the currently functioning Central Tenders Board (CTB), and the Act and resultant guidelines will replace the existing procurement regulations and procedures in Trinidad and Tobago.

The Act aims to provide for public procurement and for the retention and disposal of public property in accordance with the principles of good governance, namely accountability, integrity, transparency, and value for money. The Act also seeks to promote local industry development, sustainable procurement and sustainable development.

Though the Act was assented to on January 14, 2015, it comes into operation on a date to be fixed by the President of the Republic of Trinidad and Tobago by proclamation. However, to allow for the establishment of the OPR, the appointment of the Members of the Board, the performance of certain key functions of the OPR, and the drafting of Regulations, the Act was partially proclaimed by way of Legal Notice 150 of 2015³.

Vision

The catalyst for transformation through best practice in procurement, retention and disposal of public property.

Mission

To engender public confidence in the transformation of Procurement, Retention and Disposal of Public Property, through:

- i. An empowered, effective and dedicated workforce
- ii. Good governance and compliance
- iii. Capacity development
- iv. Leveraging technology

Procurement Regulator and Chairman

- Mr. Moonilal Lalchan

² Office of the Procurement Regulation Website, Who We Are, accessed April 27, 2022: <https://oprtt.org/about/>

³ Legal Notice 150 of 2015 <https://www.ttlawcourts.org/index.php/component/attachments/download/4087>

Senior Management

- Delrene Liverpool-Young - Corporate Secretary
- Stasha Mahabir - Executive Assistant to the Chairman/Procurement Regulator
- Aleem Baksh - Head, Information Communication Technology
- Pastora Brown - Head, Procurement Policy Development
- Maurissa De La Rosa - Head, Procurement Capacity Development
- Joy Joseph-Lara - Head, Property Disposal
- Lindy-Ann Mitchell - Head, Legal
- Nadira Mohammed - Head, Finance
- Sharda Nanan - Head, Audit and Investigations
- Tamara Roy - Head, Corporate Communications
- Kymberly St. Bernard - Head, Human Resources & Administration

Minister of Finance: Honourable Colm Imbert, MP⁴

Minister in the Ministry of Finance: Honourable Brian Manning, MP⁵

Permanent Secretary: Mrs. Michelle Durham Kissoon⁶

⁴ Trinidad and Tobago Gazette No. 158 of 2020 dated September 9, 2020: <http://news.gov.tt/sites/default/files/E-Gazette/Gazette%202020/Gazettes/Gazette%20No.%20158%20of%202020.pdf>

⁵ Ibid

⁶ Ministry of Finance website, Permanent Secretaries, accessed April 27, 2022: <https://www.finance.gov.tt/our-people/permanent-secretaries/>

Background: Auditor General

Role and Function⁷

The Auditor General is required by law to examine and report annually to Parliament on the accounts of Ministries, Departments, Regional Health Authorities, Regional Corporations and such State Controlled Enterprises and Statutory Boards for which the Auditor General is the statutory auditor. The portfolio also includes the audit of:

- The accounts of projects funded partly or wholly by International Lending Agencies
- All pensions, gratuities and other separation benefits paid by the State in accordance with the Pensions Acts and other Agreements; and
- The grant of credit on the Exchequer Account in accordance with the requirements of section 18 of the Exchequer and Audit Act, chapter 69:01

The audit services take the form of financial audits, compliance audits and value for money audits intended to promote:

- Accountability
- Adherence to laws and regulations
- Economy, efficiency and effectiveness in the collection, disbursement and use of funds and other resources.

Duties and Powers of the Auditor General⁸

The duties and powers of the Auditor General are defined in the Exchequer and Audit Act Chapter 69:01 of the laws of Trinidad and Tobago. Part III of the Exchequer and Audit Act specifies these duties listed here under:

7. The Auditor General shall not be capable while holding the said office of holding any other office of emolument in the service of the State.
8. (1) Save as is otherwise provided for in the Constitution the provisions of the law and regulations in force relating to the public service shall apply to the Auditor General.
(2) Where the Auditor General is removed from office under the Constitution the Minister shall make a full statement of the reasons therefore at the first opportunity to Parliament.
9. (1) The Auditor General shall examine, inquire into and audit the accounts of all accounting officers and receivers of revenue and all persons entrusted with the assessment of, collection,

⁷ Auditor General's Department, *Appointment, Role and Function*, accessed April 27, 2022:

<http://www.auditorgeneral.gov.tt/content/appointment-role-and-function>

⁸ Exchequer and Audit Act Chapter 69:01, accessed April 27, 2022:

http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/69.01.pdf

receipt, custody, issue of payment of public moneys, or with the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other State property.

(2) The Auditor General shall satisfy himself that -

- a) all reasonable precautions have been taken to safeguard the collection of public moneys and that the laws, directions and instructions relating thereto have been duly observed;
- b) all issues and payments were made in accordance with proper authority and that all payments were properly chargeable and are supported by sufficient vouchers or proof of payment;
- c) all money expended has been applied to the purpose or purposes for which the same was granted by Parliament and that such expenditure conforms to the authority which governs it and has been incurred with due regard to the avoidance of waste and extravagance;
- d) essential records are maintained and the rules and procedures framed and applied are sufficient to safeguard the control of stores and other State property.

Auditor General: Ms. Lorelly Pujadas⁹

⁹ Auditor General's Department website, *Profile of the Auditor General*, accessed April 27, 2022:
<http://www.auditorgeneral.gov.tt/content/profile-auditor-general>

Issues and Recommendations

During the examination of Audited Financial Statements of the OPR for the financial years 2018 to 2020, the following issues were identified, observations and endorsements made and recommendations proposed:

1. Constraints on the Fulfilment of the OPR's Mandate

The OPR was unable to achieve all aspects of its mandate as a result of the partial proclamation of the Public Procurement and Disposal of Public Property Act, 2015. The Act was assented to in January 2015¹⁰. It was then partially proclaimed in July of that year¹¹. The OPR's Board was installed in January 2018 and staff was taken on board in July 2018.

In the absence of full proclamation of the Act, since beginning operations in 2018, the OPR has not been able to fully replace its predecessor entity, the Central Tenders Board (CTB), whose responsibility according to Article 4 of the Central Tenders Board Act Chap 71:91 was:

- a) to act for, in the name and on behalf of the Government and the statutory bodies to which this Act applies, in inviting, considering and accepting or rejecting offers for the supply 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 of the statutory bodies; and
- b) to dispose of surplus or unserviceable articles belonging to the Government or any of the statutory bodies.

In accordance with the proclaimed sections of the Act, the OPR was able to make progress in areas such as establishing procurement information repositories, promoting the use of technology in public procurement and the retention and disposal of public property and sharing best practices via its outreach campaigns.

Although the OPR began certain preparatory work in anticipation of the proclamation of the remaining aspects of the Act, the lack of full proclamation presented the following challenges:

- the inability to fully implement the Act and compel compliance by public bodies;
- the inability of the OPR to investigate and audit procurement activities within public bodies;

¹⁰ Parliament of Trinidad and Tobago website, *The Public Procurement and Disposal of Property Act, 2015*, accessed March 2, 2022: <http://www.ttparliament.org/legislations/a2015-01.pdf>

¹¹ Legal Notice No. 150 dated July 30, 2015 accessed April 27, 2022: <http://www.ttparliament.org/legislations/ln2015-150.pdf>

- Restricted ability to independently address whistleblowing complaints;
- The lack of authority to request information from public bodies for the preparation of annual reports on contracts awarded by public bodies, transactions for the disposal of public property for submission to the Speaker of the House of Representatives;
- Limited regulatory function regarding the retention and disposal of public property;
- The inability to approve Special Handbooks and Guidelines pursuant to sections 30 and 54 of the Act; and
- The inability to approve Annual Procurement Plans submitted by Public Bodies.

Further, the negative effect of partial proclamation of the Act on staff morale was highlighted as a weakness by the August 2021 OPR SWOT analysis. This SWOT analysis will be addressed further as it relates to other issues throughout this Report.

Until the OPR begins to fully assume its mandate, the CTB continues to function. This means that both the CTB and the OPR will receive budgetary allocations to fulfil their respective mandates.

The annual budget allocations to the 2 entities during the period under review were as follows:

YEAR	CTB	OPR	CHANGE (%)	
			CTB	OPR
2020 ¹²	6,628,977	17,960,000	-5.1%	21%
2019 ¹³	6,983,136	14,840,000	-4.3%	11.9%
2018 ¹⁴	7,294,832	13,266,639		

Endorsement:

- iii. The Committee welcomes the initiatives undertaken by the OPR from 2018 to 2020 given the constraints due to the partial proclamation of the Act.*

Observation:

- viii. The Committee is hopeful that the OPR will be able to assume its full mandate as soon as possible. The parallel functioning of both the OPR and the CTB creates a risk of overlapping responsibilities and initiatives. While transition periods between entities in*

¹² Ministry of Finance, *Draft Estimates of Recurrent Expenditure FY 2022*, accessed April 27, 2022:

<https://www.finance.gov.tt/wp-content/uploads/2021/10/Numbered-Draft-Estimates-Details-of-Recurrent-Expenditure-2022.pdf>

¹³ Ministry of Finance, *Draft Estimates of Recurrent Expenditure FY 2021*, accessed April 27, 2022:

<https://www.finance.gov.tt/wp-content/uploads/2020/10/Draft-Estimates-of-Recurrent-Expenditure-2021-3.pdf>

¹⁴ Ministry of Finance, *Draft Estimates of Recurrent Expenditure FY 2020*, accessed April 27, 2022:

<https://www.finance.gov.tt/wp-content/uploads/2020/01/Estimates-of-Recurrent-Expenditure-2020.pdf>

cases such as this are not uncommon or irregular, it is possible that this may represent a less than efficient use of budgetary allocation if it continues into the medium to long term.

2. Government Subvention

The OPR's expenditure was less than the amount of the Government Subvention allocated to it in FY 2018, 2019 and 2020. The August 2021 OPR SWOT analysis identified adequate and stable current levels of funding as one of the organisation's strengths¹⁵. There was excess funding carried forward in each of those years. As discussed at Issue 1 above, the funding released to the OPR has steadily increased since 2018. This reflects the fact that the Office's needs increased as it continued to develop the pursuit of its mandate¹⁶, even if its current overall expenditure was less than the full amount allocated. The OPR's funding via Government Subvention from the MOF was always released in accordance with the Office's needs. This was evidenced by the reduction in Subvention Receivables as seen in the Audited Financial Statements.

Observation:

- i. ***The Committee acknowledges the gradual increase in budgetary allocations released to the OPR since it began its operations in 2018 and progressively took on more aspects of its mandate. The Committee anticipates that funding will increase as the needs and requirements of the Office grow in order to fulfil its mandate.***

3. Strategic Plan

Review of the OPR's Strategic Plan 2020-2022 revealed weaknesses that need to be addressed. The Strategic Plan is crucial to driving all aspects of the OPR's operations and to treating issues affecting the entity.

The Office's three-year Strategic Plan was adopted in January 2020. The Strategic Objectives of the Plan were categorised under four (4) themes:

- i. **Stakeholder Engagement** which entailed the OPR measuring its performance from the perspective of what its stakeholders would expect from the organization.
- ii. **Internal Processes** which sought to identify the core processes that were crucial to effective service delivery.
- iii. **Finance**, which focused on effective use of financial resources, including the development of a robust financial management system.

¹⁵ Written submission from the OPR dated November 26, 2021, Appendix 5.

¹⁶ Ibid, page 59.

- iv. ***Learning & Growth***, which entailed the OPR’s continuous improvement towards the fulfilment of its vision, which is to be “the catalyst for transformation through best practice in procurement, retention and disposal of public property”¹⁷. This involved, for example, the development and implementation of a performance management system.

The OPR indicated in its written submission dated February 8, 2022 that as part of the ongoing monitoring of the Strategic Plan, a review was due to be completed by March 31, 2022. The OPR further explained in the same written submission that, in August 2021 based on initial observations of the Plan, it reviewed and updated its August 2021 SWOT analysis – previously mentioned under Issue 1 of this Report – Constraints on the Fulfilment of the OPR’s Mandate.

Recommendation:

- viii. ***The OPR should report to Parliament on the conclusions of the review of its Strategic Plan by August 15, 2022 including the following:***
 - a. ***The identification and assessment of the Office’s core processes which are crucial to effective service delivery under the theme Internal Processes;***
 - b. ***The specific measures to be implemented to further strengthen the OPR’s efficient use of financial resources in accordance with the Finance theme of the Strategic Plan; and***
 - c. ***A description of planned initiatives for the entity’s continuous improvement in keeping with the Learning and Growth theme.***

4. Internal Audit

The OPR did not have an Internal Audit Unit. As defined by the Institute of Internal Auditors (IIA), the internal audit function is:

"An independent, objective assurance and consulting activity (which) helps an organization to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes."¹⁸

¹⁷ Office of Procurement Regulation Strategic Plan 2020-2022, pages 16-17.

¹⁸ The Institute of Internal Auditors (IIA) website, accessed April 27, 2022: <https://global.theiia.org/about/about-internal-auditing/pages/about-internal-auditing.aspx>

In monitoring and assessing organizational risk and controls, Internal Auditors provide cross-cutting advice to help management make the most well informed decisions possible to improve systems and processes¹⁹.

The establishment of an Internal Unit was being considered by the OPR's Audit Committee. Factors including funding and staffing were being considered. Until such a unit is established, Internal Audit initiatives were conducted by a combination of the OPR's Audit and Investigation Unit, OPR department Managers, the Regulator and the Board. The OPR's External Auditors also verified that the OPR's Finance Department complied with the International Accounting Standard and that accounting practices are carried out in accordance with Generally Accepted Accounting Principles (GAAP).

Observations:

- i. The Internal Audit function is key for the detection of accounting inadequacies. The Committee is therefore keen on seeing the OPR's Internal Audit Unit established, staffed and operationalized in the shortest possible timeframe; and*
- ii. A fully adequate staff complement for the Internal Audit Unit is especially important given that "limited human resources relative to expected workload" was identified as one of the OPR's weaknesses by the August 2021 SWOT analysis.*

Recommendation:

- i. The OPR should report to Parliament on its plans for the establishment of an Internal Audit Unit, including the following by August 15, 2022:*
 - a. the Unit's estimated staffing needs;*
 - b. the funding that would be necessary to establish and then operate the Unit;*
 - c. the timeline for the start and completion of the Unit's development; and*
 - d. the constraints which may slow down the establishment of the Unit.*

5. Risk Management

The OPR did not have a Risk Management Policy. In its written submission dated November 26, 2021, the OPR indicated that it was in the process of conducting a risk assessment exercise across the OPR's departments. In its written submission dated February 8, 2022, the OPR further indicated that once this exercised was completed, an Enterprise Risk Management Framework would be developed in-house by June 2022. The ERM Framework will establish, for example, long-term strategic objectives and decisions, compliance and regulatory issues and financial

¹⁹ Chartered Institute of Internal Auditors, *What is Internal Audit?*, accessed April 27, 2022: <https://www.iaa.org.uk/about-us/what-is-internal-audit/#Assessing>

management and controls. This would then be followed by the completion of a Risk Management Policy by December 2022.

The principal risks associated with the pursuit of the OPR's mandate included the following²⁰:

- Security risks due to the nature of OPR activities;
- Stakeholders' resistance to change;
- Loss of public confidence due to the 2020 amendments to the procurement legislation;
- Delayed proclamation creating uncertainty and affecting public perception and staff morale leading to attrition
- Persons with the appropriate skills not suitably placed at public bodies
- Inadequate funding in the future
- The challenges in sourcing foreign exchange

In the absence of a Risk Management Policy, the following measures were taken to mitigate against risks:

- Ensuring policies, procedures and processes were well defined;
- Ensuring adequate segregation of duties between functions;
- Delegation of authority;
- Hiring adequately trained staff who are knowledgeable in their areas of expertise;
- Development of checklists for various activities as a control mechanism;
- Board oversight and the appointment of Board committees as and when required; and
- Sourcing external guidance/training when required

In the absence of an Internal Audit Unit, the organisation is unable to conduct its annual review of the OPR's ERM Framework. The Unit, once established will be responsible for evaluating and improving the effectiveness of risk management.

Observation:

- i. The Committee notes the link between the issues of the OPR's Risk Management and Internal Audit functions. The fact that the former will depend on the latter for its review illustrates how urgent it is to have both functions fully developed and implemented. This would contribute to the Learning and Growth theme of the OPR's Strategic Objectives by facilitating possible continuous improvement in the implementation of the Risk Management Policy.***

²⁰ Written submission from the OPR dated November 26, 2021, pages 33-34.

Recommendations:

- i. The OPR should provide Parliament with a status update on the pending completion of the Enterprise Risk Management Framework by August 15, 2022 and provide a copy of the Framework upon completion; and*
- ii. The OPR should submit to Parliament a copy of its Risk Management Policy, which is estimated to be due for completion by December 2022, as soon as it is completed.*

6. Human Resources

Staffing

The OPR was short-staffed in certain administrative and operational areas. Limited human resources relative to expected workload was identified as one of the OPR's weaknesses by the August 2021 SWOT analysis. Staff shortages delayed some of the Office's work. Numerous handbooks, guidelines, procedural forms and templates in addition to the development of an Enterprise Risk Management System and other important projects were not completed. The need to development and implement the OPR's Risk Management function was discussed at Issue 5 above.

The OPR's efforts to recruit staff were slowed by COVID-19 restrictions. The effect of the staff shortage was further worsened by the resignation of a highly qualified and experienced policy officer. This took away from one of the OPR's strengths of highly qualified staff and leaders, as listed in the August 2021 SWOT analysis. The OPR expected that this specific vacancy would be filled by March 31, 2022.

The issue of staff departure raises the need for succession planning. At the public hearing on January 12, 2022 the OPR highlighted that the August 2021 SWOT analysis had highlighted the lack of succession planning as a weakness.

The Committee noted that, according to the list of OPR vacancies in the November 26, 2022 written submission (appendix 6), interviews were not held for all vacant posts. There were also several posts for which interviews were on hold, including for the posts of Administrative Officer, Legal Counsel, and Legal Officer.

Remuneration

The need to improve compensation packages was identified as one of the Office's weaknesses in the SWOT analysis. The OPR acknowledged that, pursuant to section 18(2) of the Act, "the staff of the Office shall be appointed on such terms and conditions as the Office may determine". In its written submission dated February 08, 2022, the OPR indicated its intention to implement

compensation packages that would attract and retain high-performing staff. To this end, in October 2021 the OPR issued a Request for Proposal for, “*Consultancy Services for A Job Evaluation Exercise and Development of a Compensation Structure*”. The goal of the consultancy was to implement a revised compensation and benefits plan inclusive of competitive pay and benefits.

Recommendation:

- i. The OPR should report to Parliament on the following by August 15, 2022:**
 - a. The status of the recruitment of a Policy Officer and initiatives to the fill all other vacant posts;**
 - b. Confirmation of whether the posts for which interviews were on hold as at November 26, 2021 were delayed because they relate to functions corresponding to parts of the Act that were not yet proclaimed or whether there were other reasons;**
 - c. The efforts being made to ensure succession planning is duly developed; and**
 - d. The status of the October 2021 RFP for “Consultancy Services for A Job Evaluation Exercise and Development of a Compensation Structure”, including the estimated timeline for the completion of the consultant’s work.**

7. The OPR’s Outreach Initiatives

Public Body and Key Stakeholder Awareness

There was room for greater buy-in from public bodies to the OPR’s several outreach initiatives. One of the OPR’s strategic objective is to “*Develop and implement a comprehensive and sustainable awareness program in relation to the Act and its supporting Regulations, Handbooks, and Guidelines*”. As indicated at Issue 5 – Risk Management of this Report, stakeholders’ resistance to change and the negative effect of delayed proclamation of the Act on public perception were identified among the risks facing the OPR in the pursuit of its mandate. To mitigate against these risks, the OPR’s 2020-2022 Strategic Plan identified “increased public trust, confidence in procurement, retention and disposal of public property” as key strategic outcomes.

To achieve these outcomes, the OPR devised several strategies. One of the strategies was a Public Body and Key Stakeholder Awareness Campaign with specific focus on e-learning workshops using the Learning Management System developed by the OPR. This campaign aimed to promote knowledge of the Act, Regulations and implementation of best practices at public bodies. The OPR worked with the Institute of Chartered Accountants (ICA) and the Institute of Internal Auditors (IIA) to raise awareness and understanding of the requirements of the Act among public bodies and suppliers / contractors. The OPR reported that 200 public bodies, 500 suppliers / contractors, 200 legal officers and 100 auditors attended the workshops. Despite this

participation, the OPR's Readiness Assessment Survey of January and August 2020, which aimed to assess entities' progress towards compliance with the Act, revealed public bodies' general unpreparedness for the implementation of the Act and its related Regulations.

Code of Ethics for Public Bodies

The OPR's initiatives to set ethical standards for public bodies, suppliers and contractors were delayed until full proclamation of the Act. The Code of Ethics Handbook was completed and published for public reference. The OPR also held stakeholder sensitization sessions. However, the OPR was awaiting full proclamation of the Act so that its Audit and Investigation Unit could assume its role of verifying adherence to the Code of Ethics as provided by section 13 (1) (h) of the Act.

The Wider Public and the Youth

The OPR developed a procurement and disposal of public property activity book for use in schools. A General Public Awareness Campaign was also being prepared. This would entail the OPR conducting sessions in primary and secondary schools with the use of the activity book it²¹. The OPR intended to begin visiting schools nationwide subject to COVID-19 restrictions and approval from the Ministry of Education.

The Office was also planning to carry out a general public education mass media campaign regarding integrity and transparency, accountability and value for money in relation to the Act.

Endorsement:

- i. The Committee welcomes the OPR's plans to create awareness of public procurement among the youth. The return of all students and pupils to physical classes further to the easing of certain pandemic-related restrictions will provide the OPR with an opportunity to start the rollout of its school-based awareness campaign – even if only on a small scale at the outset.***

Observation:

- i. The Committee is concerned about the lack of preparedness of many public bodies for the implementation of the Act and Regulations. It is hoped that those entities will immediately avail themselves of the advice and training provided by the OPR to ensure a smooth transition.***

Recommendation:

- i. The OPR should report to Parliament on the following by August 15, 2022:***

²¹ Written submission from the OPR dated February 8, 2021, page 18.

- a. Its assessment of the degree of participation of public bodies as well as suppliers and contractors in its stakeholder awareness workshops; and*
- b. An overview of the type of feedback, if any, received from workshops participants and the ways in which this perspective may be used going forward.*

8. Whistleblowing

The OPR established a whistleblowing system but it could not reach full effectiveness due to the partial proclamation of the Act. As the OPR's Whistleblowing Policy was approved, the Office took steps to build up its whistleblowing infrastructure. Software for the confidential submission of complaints was installed, staff training was conducted, a whistleblowing reporting officer was appointed and guidelines were developed. In addition, the OPR developed a public information campaign to educate all stakeholders about using the Whistleblowing system and illustrating how doing so would be beneficial²².

However, as the Act has not been fully proclaimed, the OPR was not able to implement its whistleblowing procedures. The Office was unable to investigate any complaints that may have been received. The OPR did, however, inform the Ministry, Department or Agency in question of the issues at hand so that that Ministers, Permanent Secretaries or other Accounting Officers could get involved and help to deal with the concerns raised and keep the Office informed of relevant progress²³.

Observation:

- i. This is another illustration of the urgent need to have full proclamation of the Act. Full implementation of whistleblowing procedures will help to building confidence and buy-in to the country's new procurement landscape in keeping with the Strategic Outcome "increased public trust and confidence in procurement, retention and disposal of public property" as identified in the OPR's Strategic Plan.*

Recommendation:

- i. The OPR should submit to Parliament a brief overview of the types of status updates received after informing relevant officers of potential whistleblowing concerns, including a general assessment of the degree of responsiveness observed, by August 15, 2022.*

²² Written submission from the OPR dated November 26, 2021, page 77.

²³ Written submission from the OPR dated February 8, 2022, page 12.

Concluding Remarks

Due to the Act not being fully proclaimed, some of the Office's work was on hold. There were also certain key and inter-related functions such as Risk Management and Internal Audit that needed to be developed. In spite of this, the Committee was encouraged by the initiative shown by the staff, management and Board of the OPR in getting the organisation off to as good a start as could be expected given the context. The OPR continues to face challenges but the adoption of the Procurement Regulations and the impending full proclamation of the Act will empower it to reach its full intended potential.

The OPR's core values of integrity, transparency, accountability and value for money mirror the concerns that the PAC is mandated to examine. As the Office proceeds to grow into its mandate when the Act is fully proclaimed, it is crucial that these core values remain the guide for all initiatives.

According to the United Nations²⁴, public procurement is of great importance in developing countries. This is because the public sector is often highly involved in such countries' economies. This reality is even more acute in times of crisis when efficiency of resource allocation in unpredictable circumstances is even more of a priority. The OPR therefore was very important both before and since the onset of the COVID-19 pandemic.

The OPR's schools-based awareness campaign is a step in the right direction to change the existing procurement culture in Trinidad and Tobago. The Office's vision of being a "catalyst for transformation" in terms of procurement, retention and disposal of public property stands to benefit greatly from these youth-related initiatives. The current school aged generation will be tomorrow's suppliers, contractors and public officers. With early adoption of an ethical viewpoint, compliance should be easier to achieve in future.

The Committee reiterates its hope that the full transition from the Central Tenders Board to the OPR will be completed in the quickest practicable timeframe once the Act is proclaimed. Finally, the Committee further reiterates the need for public bodies to align themselves with the incoming regime for the procurement, retention and disposal of public property.

²⁴ United Nations – Conference of States Parties to the UN Convention against Corruption, Good practices in the prevention of corruption in public procurement, accessed April 27, 2022: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2011-August-22-24/V1183638e.pdf#page=17>

This Committee respectfully submits this Report for the consideration of the Parliament.

Mr. Davendranath Tancoo, MP
Chairman
Sgd.

Ms. Jearlean John
Vice - Chairman
Sgd.

Mrs. Ayanna Webster-Roy, MP
Member
Sgd.

Mr. Adrian Leonce, MP
Member
Sgd.

Mrs. Paula Gopee-Scoon
Member
Sgd.

Mrs. Charrise Seepersad
Member
Sgd.

Mr. Roger Monroe, MP
Member
Sgd.

Dr. Amery Browne
Member
Sgd.

Appendix I - Witnesses

At the public hearing held on January 12, 2022, the witnesses attending on behalf of the Office of Procurement Regulation and the Ministry of Finance were:

Office of Procurement Regulation (OPR)

- Mr. Moonilal Lalchan - Chairman and Procurement Regulator
- Mr. Robby Bhola - Deputy Chairman
- Mrs. Tracey Rojas - Board Member
- Ms. Nadine Bushell - Board Member
- Mrs. Delrene Liverpool-Young - Corporate Secretary
- Ms. Lindy Ann Mitchell - Head, Legal
- Ms. Kymberly St. Bernard - Head, HR & Administration
- Ms. Nadira Mohammed - Head, Finance

Ministry of Finance (MOF)

- Mrs. Michelle Durham-Kissoon - Permanent Secretary
- Ms. Yvonne Neemacharan - Deputy Permanent Secretary (Ag.)
- Mr. Jonathan Soo Hon - Senior State Counsel

**THE PUBLIC ACCOUNTS COMMITTEE –
SECOND SESSION, TWELFH PARLIAMENT
MINUTES OF THE SEVENTH MEETING HELD VIRTUALLY ON WEDNESDAY JANUARY 12, 2022 AT
10:04 A.M.**

Present were:

Mr. Davendranath Tancoo	-	Member
Ms. Jearlean John	-	Member
Mr. Adrian Leonce	-	Member
Ms. Charrise Seepersad	-	Member
Dr. Amery Browne	-	Member
Mr. Roger Monroe	-	Member
Ms. Hema Bhagaloo	-	Assistant Secretary
Ms. Khisha Peterkin	-	Assistant Secretary
Mr. Justin Jarrette	-	Graduate Research Assistant
Ms. Rebecca Rafeek	-	Procedural Officer Intern

Excused were:

Mrs. Ayanna Webster-Roy	-	Member
Mrs. Paula Gopee-Scoon	-	Member

COMMENCEMENT

- 1.1 At 10:04 a.m., the Chairman called the meeting to order and welcomed those present. The Chairman informed Members that Mrs. Webster-Roy and Mrs. Gopee-Scoon asked to be excused from the Meeting

EXAMINATION OF THE MINUTES OF THE SIXTH MEETING

- 2.1 The Committee examined the Minutes of the Sixth (6th) Meeting held on Wednesday December 8, 2021.
- 2.2 There being no omissions or corrections, the Minutes were confirmed on a motion moved by Ms. Charrise Seepersad and seconded by Mr. Adrian Leonce.

MATTERS ARISING FROM THE MINUTES OF THE SIXTH MEETING

- 3.1 With reference to item 4.3, the Chairman informed Members that:
- i. the determination of the Committee's work programme would be discussed after the public hearing. A discussion ensued. Members agreed that the Committee's proposed work programme be considered after the public hearing; and
 - ii. the responses from the Auditor General's Department and the Ministry of Finance were received by the Secretariat and uploaded to the Rotunda (e – repository).
- 3.2 With reference to item 9.3, the Chairman informed Members that the responses to the questions for additional information from the Ministry of Trade and Industry and the Trinidad and Tobago Fair Trading Commission (TTFTC) were received by the Secretariat and used to draft the Committee's Fourth Report. The responses were uploaded to the rotunda (e-repository).

PRE-HEARING DISCUSSIONS RE: OFFICE OF PROCUREMENT REGULATION (OPR)

- 4.1 The Chairman reminded Members that the purpose of the virtual public hearing was to examine the Audited Financial Statements of the Office of Procurement Regulation (OPR) for the financial years 2018 to 2020.
- 4.2 The Chairman outlined the remit of the inquiry.
- 4.3 The Chairman invited Members to review the Issues Paper based on the written submission received from the Office of Procurement Regulation (OPR).
- 4.4 The Chairman invited Members to raise any issues or questions on the examination into the Audited Financial Statements of the Office of Procurement Regulation (OPR) for the financial years 2018 to 2020. Members discussed the issues of concern and the general approach for the public hearing.

SUSPENSION

- 5.1 There being no further business for discussion *in camera*, the Chairman suspended the meeting at 10:15 a.m.

AN EXAMINATION OF THE AUDITED FINANCIAL STATEMENTS OF THE OFFICE OF PROCUREMENT REGULATION (OPR) FOR THE FINANCIAL YEARS 2018 TO 2020.

- 6.1 The Chairman called the public meeting to order at 10:32 a.m.

6.2 The following officials joined the meeting:

Office of Procurement Regulation (OPR)

- Mr. Moonilal Lalchan - Chairman and Procurement Regulator
- Mr. Robby Bhola - Deputy Chairman
- Mrs. Tracey Rojas - Board Member
- Ms. Nadine Bushell - Board Member
- Mrs. Delrene Liverpool-Young - Corporate Secretary
- Ms. Lindy Ann Mitchell - Head, Legal
- Ms. Kymberly St. Bernard - Head, HR & Administration
- Ms. Nadira Mohammed - Head, Finance

Ministry of Finance (MOF)

- Mrs. Michelle Durham-Kissoon - Permanent Secretary
- Ms. Yvonne Neemacharan - Deputy Permanent Secretary (Ag.)
- Mr. Jonathan Soo Hon - Senior State Counsel

6.3 Key Topics Discussed:

1. The mandate and achievements of the OPR;
2. The independence of the OPR;
3. The status of Government funding received by the OPR;
4. The project funding received by the OPR from non-governmental sources including the Inter-American Development Bank (IDB) and the European Commission (EC);
5. The funding provided to the OPR and the training initiatives facilitated by the Judiciary and the Caribbean Court of Justice (CCJ);
6. The possible conflict of interest with regards to the OPR's involvement in the disposal of property on behalf of the state whereas the Office is also mandated to conduct audits and investigations of the very same disposal activity;
7. The status of the draft regulations being prepared by the OPR, which include the retention and disposal of personal property;
8. The status of the regulations being drafted by the MOF with respect to Real Property;
9. The time lapse between the partial proclamation of the Public Procurement and Disposal of Property Act (the Act) in July 2015 and the appointment of the first Board of the OPR in January 2018;
10. The status of the full proclamation of the Act;

11. The public and key stakeholder consultations and other deliberations that were conducted before the Public Procurement and Disposal of Property Regulations were presented to Parliament for affirmative resolution;
12. The inability of the OPR to achieve all aspects of its mandate as a result of the Act not fully proclaimed;
13. The possibility of the OPR conducting investigations under the Central Tenders Board Act in the interim;
14. The establishment of a central OPR database of pre-qualified contractors;
15. The training of procurement officers at public bodies in the use of this database;
16. The development of Handbooks and Guidelines for public officers;
17. The status of public entities' preparedness for the implementation of the Act;
18. The Learning Management System developed by the OPR to provide online training;
19. The OPR's collaboration with the Institute of Chartered Accountants (ICA) and the Institute of Internal Auditors (IIA) to highlight the requirements of the Act;
20. The OPR's human resource needs;
21. The OPR's potential to play a role in changing the existing culture regarding procurement;
22. The OPR's sensitisation plans and upcoming public education mass media campaign regarding integrity and transparency, accountability and value for money;
23. The training initiatives provided to OPR personnel in areas such as strategic planning, corporate governance and information technology;
24. The status of the development of the OPR's succession planning strategies to ensure that skills are not lost when key staff leaves the Office;
25. The OPR's estimation of the sums spent by the public bodies which did not respond to the Readiness Assessment Survey;
26. The OPR's intention to allow a transitional period for public bodies to become fully compliant with certain aspects of the Act once the Act is fully proclaimed;
27. The OPR's right of audit under the Act;
28. The findings of research by the Organisation for Economic Cooperation and Development (OECD) and the European Union (EU) on the losses of public funds incurred as a result of corrupt procurement-related practices;
29. The potential losses that could be avoided in Trinidad and Tobago once the Regulations are adopted and the Act is fully proclaimed; and
30. The rollout of the OPR's Code of Ethics for public bodies and Code of Ethics for suppliers and contractors.

Please see the verbatim notes for the detailed oral submission by the witnesses.

- 7.1 The Chairman thanked the representatives from the OPR and the MOF for attending the virtual meeting and they were excused.

SUSPENSION

- 8.1 At 12:16 p.m., the Chairman suspended the public meeting to resume for a post- mortem discussion with Members only.

POST-MORTEM DISCUSSION

- 9.1 At 12:17 p.m. the Chairman resumed the meeting.
- 9.2 The Chairman sought Members' views on the public hearing. A discussion ensued.
- 9.3 The Committee agreed that additional questions would be sent to the OPR.
[Please see Appendix]

DETERMINATION OF WORK PROGRAMME

- 10.1 The Chairman invited Members to review the proposed work programme for the Second Session, Twelfth Parliament that was uploaded to the Rotunda (e-repository) for consideration. A discussion ensued.
- 10.2 The Committee agreed to the following:
- i. The Secretariat would send the following to Members via email:
 - The proposed work programme;
 - The list of entities under the purview of the Committee;
 - The written responses received from the Auditor General's Department and the MOF with regard to the status of the outstanding financial statements of the entities under the purview of the Committee.
 - ii. Members were to review the proposed work programme and list of entities under the purview of the Committee and indicate their preference/ suggestions for inquiry topics to the Secretariat by email by Friday January 21, 2022;
 - iii. At the Eighth Meeting of the Committee, the Work Programme would be finalised.

ADJOURNMENT

- 11.1 There being no other business, the Chairman thanked the Members for their attendance and the meeting was adjourned to February 9, 2022 at 10:00 a.m. The committee will

conduct an inquiry into the Audited Financial Statements of the National Insurance Board of Trinidad and Tobago for the financial years 2014 to 2020.

11.2 The adjournment was taken at 12:34 p.m.

We certify that these Minutes are true and correct.

CHAIRMAN

SECRETARY

January 12, 2022

Request for Additional Information – Questions to the OPR

General Questions

Based on Response to Question 4

1. Using the following scale of 1 = Poor, 2 = Fair, 3 = Good, 4 = Very Good, and 5 = Excellent, provide a rating on the effectiveness of the operations of the Office of Procurement Regulation's Health and Safety Policy, with regard to the COVID-19 pandemic.

Based on Response to Question 4a

2. Using the following scale of 1 = Poor, 2 = Fair, 3 = Good, 4 = Very Good, and 5 = Excellent, provide a rating on the effectiveness of the operations of the Office of Procurement Regulation in the achievement of its mandate.

Based on Response to Question 4b

The OPR noted that procurement activities were conducted utilizing an electronic bid submission process.

3. How has the shift to an electronic bid submission system affected the delivery of services by the OPR?
4. How many bid submissions have been received through the electronic system for the financial year since its establishment versus how many submissions received in the previous fiscal year?

Based on Response to Question 6

The OPR stated that in accordance with its mandated functions under section 13 of the Public Procurement and Disposal of Property Act, 41 Handbooks, Guidelines and procedural templates published on the website thus far, including Preparation of Special Guidelines for Approval.

1. What is the status of the approval of the Special Guidelines? Have they been approved? If not, what is the projected timeline for the Special Guidelines approval and publication?

The OPR states that in further accordance of its mandate, several public bodies have submitted and continue to submit their documents for review and feedback (regarding section 13(e), the special guidelines and handbooks in relation to public procurement and the retention and disposal of public property)

1. What public bodies have submitted such documents for review?
2. What is the process for public bodies to submit their documents for review?
3. Is there any follow-up by the OPR after the documents have been reviewed to ensure compliance?
4. What are the outcomes of the review and feedback?

In relation to OPR's function under section 13(f), which is to promote the use of technology in public procurement and the retention and disposal of public property, the OPR stated that they continue to advise that electronic document management systems should be implemented and a procedure for online bid submissions to be disseminated.

1. Who are the entities that the OPR advised on the implementation of electronic document management systems?
2. Does the OPR have a procedure to follow-up on this advice?

In relation to OPR's function under section 13(g) of the Act, which is to provide best practice advice in the conduct of procurement activities, including the promotion of electronic transactions, the OPR stated it responded to 680 stakeholder queries and held 262 stakeholder sessions.

1. Briefly state the effectiveness of the stakeholder sessions.

In relation to OPR's function under section 13(h) of the Act, which is to audit and review the system of procurement and disposal of public property to ensure compliance with the objectives of the Act, the OPR stated that an audit and investigation team are on board and that a Code of Ethics has been developed for public bodies and suppliers.

1. What is the status of the Code of Ethics for public bodies and suppliers? What entities have been given the said Code of Ethics?
2. Does the OPR have a follow-up procedure in place to ensure that the Code of Ethics is being complied with?

The OPR has a function under section 13(j) of the Act which is to review procurement practices and delivery systems on an annual basis to identify best practices. The OPR stated on full proclamation of the Act this function will be an ongoing activity, facilitated by annual reports from public bodies, as well as by audits and investigations conduct by the OPR.

1. What is the status of this function?
2. Are any measures in place by the OPR to fulfil this function?
3. What has been achieved to date with this function?

Regarding the OPR's function under section 13(l) of the Act which is to promote the awareness of public bodies and the public to issues relating to public procurement and disposal of public property, the OPR stated that it held consultations and workshops in 2018 and 2019 respectively.

1. Does the OPR plan on hosting any more consultations and workshops in the future? If so, when?
2. How does the OPR determine the effectiveness of these consultations and workshops to ensure it is achieving its mandate?

In relation to the OPR's function under section 13(m) of the Act which is to undertake research and surveys with respect to public procurement and disposal of public property, the OPR stated that Readiness Assessment checklist was sent to all public bodies and responses were collated.

1. When was the Readiness Assessment checklist sent to all public bodies?
2. What are the steps to be taken after the collation of responses?

Regarding the OPR's function to investigate any suspected breach of the Act under section 13(n), the OPR stated that it has received 17 whistle-blower complaints to date and have forwarded them to the relevant line Ministers for action.

1. What is the status of these whistle – blower complaints?
2. What are the steps to be taken with regard to suspected breach of the Act?

Regarding the OPR's function under section 13(p) of the Act which is to create and publish standard form contracts for public procurement and disposal of public property, the OPR stated that 41 Handbooks, Guidelines and procedural templates published on the website thus far.

1. Who is in charge of creating the Handbooks, Guidelines and procedural templates?
2. How often were these documents reviewed?
3. Is there any procedure followed by the OPR to determine the effectiveness of these documents?
4. Are milestones being achieved?
5. What were the achievements to date of the publication of the 41 Handbooks, Guidelines and procedural templates?

Based on Response to Question 8a

In response to the challenges faced by the OPR, it was noted that sensitization campaigns were conducted with Public Bodies and Supplier and Contractors.

1. What stakeholders participated in these campaigns?
2. How many stakeholders are projected to be engaged in sensitization campaigns for fiscal 2022?

The OPR also noted that they continue to engage and partner with key external stakeholders who share a similar legislative mandate.

1. What are the names of the key external stakeholders that the OPR has been engaged with?
2. What is the extent of this engagement?
3. Has the OPR identified any additional stakeholders it intends to partner with in the future?

Based on Response to Question 1

On page 21 of the OPR's response, it was noted that as part of the ongoing monitoring of the Strategic Plan, the OPR was in the process of conducting a periodic review of the plan.

1. When is the review expected to be completed?
2. If completed, what preliminary observations and conclusions have been gathered?

Based on Response to Question 2

Page 22 of the OPR's response stated that the cost for the development of the strategic plan was \$95,000.00

1. Provide a breakdown of the expenditure associated with the development of the Strategic Plan.

Based on Response to Question 5

In an effort to increase public trust and confidence, the OPR noted that they engaged in a school-based General Public Awareness Campaign, in primary and secondary schools.

1. What schools participated in the Public Awareness Campaign?
2. How does the OPR monitor and evaluate the performance of its campaign in increasing public awareness?
3. What public bodies have participated in the Key Stakeholder Awareness Campaign?

Based on Response to Question 6

The OPR noted that they had developed a number of guides in the form of handbooks which they have made available on their website.

1. What is the cost associated with the development of each handbook?
2. What is the timeframe for the development of a handbook?
3. How many handbooks and guides currently exist in draft form?
 - a. What is the expected completion date for these guides?

The adoption of the Regulations, Handbooks and Guidelines of the Act was stated to have been implemented by 50% of Public Bodies, with the achievement of 100% by Q4 2020/2021.

1. Provide an update on the adoption of the Regulations, Handbooks and Guidelines of the Act by Public Bodies.

The approved Whistleblowing Policy document was noted as being published and the requisite software was procured and installed.

1. What entity was contracted for the supply and installation of the system?
2. What was the cost associated with the supply and installation of the system?
3. What were the costs associated with the development of the Policy document?
4. What entity/entities were consulted for the development of the Policy document?

On page 28 of the OPR's response, the adoption of a framework with procedures and processes for the retention and disposal of personal public property was stated as being adopted by 50% of the Public Bodies by Q4 2019/2020, with 100% projected for Q4 2020/2021.

1. Provide an update on the percentage of Public Bodies that have adopted the framework to date.

70% of staff at Public Bodies were noted as having received accredited procurement training.

1. What is the timeframe for the completion of the training of staff of Public Bodies?

With regard to the development of a framework for evaluation of standardized training programs, the desired outcome sought to have all Training Organizations adhering to Standards of Adoption of OPR standards, by accrediting bodies.

1. What percentage of Training organizations are currently offering compliance courses?
2. What percentage of OPR approved courses are published by the Accreditation Council of Trinidad and Tobago?

Based on Response to Question 7

One of the stated benefits of improving the Corruption Perception Index was an increase in foreign direct investment.

1. Does the OPR track the rate of foreign direct investment?
 - a. If yes, provide data relating to the trends in FDI in Trinidad and Tobago for the period 2018 to present.

Based on Response to Question 10

In October 2021, the OPR issued a Request for Proposal for consultancy services for a job evaluation exercise and development compensation structure, towards the implementation of a revised compensation and benefits plan.

1. Who was selected for the consultancy service job and at what cost?
2. How long will the consultants be engaged for?
3. How many proposals have been received thus far?
4. Provide details on the total costs for the implementation of the Local Area Network.
 - a. What entity was contracted for the supply and implementation of the Local Area Network?

Issue: Risk Management

pages 33 -43

Based on Response to Question 2

The OPR stated that they were engaged in a risk assessment exercise, with an expected completion period of 3rd quarter, 2021.

1. Provide an update on the completion of the risk assessment.

Based on Response to Question 4

1. Has the OPR identified any external stakeholders to assist in the development of its risk management policy?
 - a. If yes, provide details.
2. What is the expected timeframe for the completion of the risk management policy?
3. What measures are currently in place to facilitate risk management in the absence of such a policy?

Based on Response to Question 5

The OPR noted that its enterprise risk management framework was in development.

1. What is the expected timeframe for the completion of the framework?
2. What measures are currently in place to facilitate enterprise risk management in the absence of such a framework?

“Once implemented, the framework will be reviewed annually.”

3. Who will have responsibility for the annual review of the framework?

Issue: Human Resources

pages 45-51

Based on Response to Question 1b

There was also a delay in the preparation of guides, procedural forms and templates related to the procurement of works due to the resignation of a key member of staff.

1. Provide details on the aforementioned vacant position and when it is expected to be filled.
2. Have these positions been advertised?
 - a. If yes, what is the expected date to have the positions filled?
 - b. If no, when does the OPR intend to advertise to fill these vacancies?

Issue: Property Plant and Equipment

pages 55-56

Based on Response to Question 1

“No assessment of market value has been undertaken on property plant and equipment.”

1. Does the OPR have any plans for the conduct of such an assessment? If yes, provide details.

Issue: Accounts payable and accruals

pages 56-58

Based on Response to Question 8

“The accrual balance will be reduced when all conditions for payment are satisfied. This will include submission of invoices or outstanding information from suppliers.”

1. How many of the OPR’s suppliers currently have invoices or outstanding information to submit?
2. What penalties can be incurred for failing to submit the outstanding information?

Issue: Operations

pages 60-61

Based on Response to Question 1

Towards ensuring transparency and accountability in the Operations of the OPR, it was stated that the company publishes monthly reports, Stewardship reports and their audited financial statements to their website.

1. Are there plans for the publishing of Whistleblowing reports in the future on the company’s website?

The OPR stated that they do not currently have an Internal Fraud Policy currently.

1. In the absence of such a policy, what measures are implemented currently to monitor fraud in the OPR?
2. Does the OPR have plans for the development of such a policy?
 - a. If yes, provide details on its development thus far.

The OPR does not have an Internal Audit Unit. The OPR utilises External Auditors in the absence of the Internal Audit Unit to verify that the OPRs Finance Department maintains and complies with the International Accounting Standard and ensures that accounting practices are carried out in accordance with GAAP (Generally Accepted Accounting Principles)²⁵.

Possible Questions to the OPR:

1. Who currently performs the Internal Audit function for the OPR?
 - a. What are the terms of engagement?
2. If no entity has been engaged for this function, how are internal controls assessed in the absence of a formal IA function?
3. Does the OPR plan to establish an Internal Audit Unit?
 - a. If yes, provide details on the plan for establishment.

²⁵ Page 44 of the The Office of Procurement Regulation's Response to the Public Accounts Committee - An Inquiry Proposal into the Audited Financial Statements of the Office of Procurement Regulation for financial years 2018 to 2020.

VERBATIM NOTES OF THE SEVENTH VIRTUAL MEETING OF THE PUBLIC ACCOUNTS COMMITTEE HELD (IN PUBLIC) ON WEDNESDAY, JANUARY 12, 2022, AT 10.30 A.M.

PRESENT

Mr. Davendranath Tancoo	Chairman
Ms. Jearlean John	Vice-Chairman
Ms. Charrise Seepersad	Member
Mr. Adrian Leonce	Member
Mr. Roger Monroe	Member
Dr. Amery Browne	Member
Ms. Keiba Jacob Mottley	Secretary
Ms. Hema Bhagaloo	Assistant Secretary
Mr. Justin Jarrette	Graduate Research Assistant

ABSENT

Mrs. Ayanna Webster-Roy	Member
Mrs. Paula Gopee-Scoon	Member

OFFICE OF PROCUREMENT REGULATION

Mr. Moonilal Lalchan	Chairman and Procurement Regulator
Mr. Robby Bhola	Deputy Chairman
Mrs. Tracey Rojas	Board Member
Ms. Nadine Bushell	Board Member
Mrs. Delrene Liverpool-Young	Corporate Secretary
Ms. Lindy Ann Mitchell	Head, Legal
Ms. Kymberly St. Bernard	Head, HR & Administration
Ms. Nadira Mohammed	Head, Finance

MINISTRY OF FINANCE

Mrs. Michelle Durham-Kissoon	Permanent Secretary
Ms. Yvonne Neemacharan	Deputy Permanent Secretary (Ag.)
Mr. Johnathan Soo Hon	Senior State Counsel

10.30 a.m.

Mr. Chairman: A pleasant good morning all, and welcome to the officials from the Ministry of Finance and the Office of Public Procurement Regulation. My name is Davendranath Tancoo and I am the Chairman of the Public Accounts Committee.

The Public Accounts Committee, the PAC, has a mandate to consider and report to the House on:

- (a) Appropriation accounts of moneys expended out of sums granted by Parliament to meet the public expenditure of Trinidad and Tobago;
- (b) Such other accounts as may be referred to the Committee by the

- House of Representatives, or as are authorized or required to be considered by the Committee under any other enactment;
- (c) The report of the Auditor General on any such accounts; and
 - (d) Whether policy is carried out efficiently, effectively and economically and whether expenditure conforms to the Authority which governs it.

The purpose of this meeting is for the Public Accounts Committee to conduct an examination of the Audited Financial Statements of the Office of Procurement Regulation for the financial years 2018 to 2020 to assess whether expenditure conforms to the authority which governs it; to hear the challenges being faced by the key stakeholders in an attempt to determine some of the possible solutions to these challenges, and to assist the Office of Procurement Regulation in achieving the efficient delivery of services while fulfilling its mandate in an efficient, effective, and economic manner.

Based on the issues identified by your Committee the following key stakeholders have been invited to today's session, the Ministry of Finance, and the Office of Procurement Regulation. Please note that this virtual meeting is being broadcast live on Parliament's Channel 11, on Radio 105.5 FM and on Parliament's YouTube Channel *ParlView*. As always, participants are advised to have your microphones on mute until recognized by the Chair. And you can use your hand symbols on your programme, on Zoom, to advise if you are interested in commenting or raising issues or clarifications as we move forward.

I want to invite members of the Public Accounts Committee to introduce themselves to the panel here today. May I begin with Ms. John?

[Introductions made]

Mr. Chairman: Can I ask Members of the Ministry of Finance to introduce yourselves as well, beginning with the Permanent Secretary in the Ministry of Finance.

[Introductions made]

Mr. Chairman: Thank you all from the Ministry of Finance. I would like to have members of the Office of Procurement Regulation introduce themselves beginning with the Chairman.

[Introductions made]

Mr. Chairman: Thank you all members for attending today's session. I want to then move on to asking the Permanent Secretary in the Ministry of Finance to make a brief opening statement. Mrs. Michelle Durham-Kissoon, the floor is yours.

Mrs. Durham-Kissoon: Thank you for inviting me to make an opening statement Chairman. The Office of Procurement Regulation hold significant authority and power under the parent legislation Act No. 1 of 2015. As defined in section 13(1) which sets out the functions of the office, section 13(2)(b) and section 14(1). Of the three sections referenced here the Ministry of Finance, as the line Ministry, is mindful of section 13(2)(b) in particular that prescribes that:

"...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."

I also use this opportunity to highlight section 14(1) of the Act which sets out the scope or the powers of the office over public bodies, which include the Ministry of Finance. In keeping with section 21 of the Act which states that:

"...funds of the Office shall consist of moneys appropriated by Parliament for the purposes of the Office."

The Office of Procurement Regulation is a line Item in the Estimates and Expenditure under the Ministry of Finance. Therefore, the Ministry of Finance has, over the period 2018 to 2020, appropriated sums for the operations of the Office of Procurement Regulation. Thank you, Chairman.

Mr. Chairman: Thank you. May I ask, and hereby invite, the Chairman and Procurement Regulator, Mr. Lalchan to make some brief opening remarks?

Mr. Lalchan: Thank you very much again, Chairman. It is indeed a privilege this morning for us to be appearing before the Committee to give an account for our stewardship over the last—and coincidentally today January 12th, makes it exactly four years since the first Board of the OPR was appointed. And may I say that we have had a very successful four years. Most of the items that PS would have mentioned in terms of 13(1) of the Act which sets out our mandate, we would have been able to complete a substantial portion of that, and also have all our audited financial statements audited in time. And we are looking forward, based on some of the questions that were raised in preparation for this meeting, to enlighten the Committee and the public in terms of our stewardship over the last four years. Thank you very much.

Mr. Chairman: Thank you, Chairman. I will initiate the questions and then my colleagues will join in thereafter. I recommend that if anyone else wants to intervene when questions are asked feel free to do so. The objective of this session is to try to provide as much clarification and understanding of the operations of your organization as much as possible. Okay.

If I may begin. I want to congratulate you—and it is an odd way to begin this interrogation as it were of your financials—but I want to congratulate you for having provided a significant amount of information to this Committee. I think since I have been here which is a relatively short period of time of a little bit more than a year, this has been the most comprehensive submission that we have received as a Committee, bar none. So I want to begin by congratulating the Office of Procurement Regulation for the amount of work that it has done so far over the period in persecuting and prosecuting your mandate.

I notice that in your submissions you gave yourself an excellent rating in being able to fulfil your mandate. And I want endorse that. So I start off with that, that a substantial amount of information is actually in the public domain based on what you have provided here and based on what I have seen on your website. But there are also other issues and other queries that emanate from this.

I want to start by asking if you are of the view, Chairman, that sufficient funding has been provided to you for the fulfillment of your role and the exercise of the duties and responsibilities assigned to the OPR? Are you of the view that you have received sufficient funding for full execution of your portfolio?

Mr. Lalchan: Yes. And I would say very much so, Chair. We have been fully funded from day one. And so far we have been operating with a surplus for all the years under review. And even for this present fiscal there is sufficient funding that we have received. In fact, we have received all our funding up until the end of December of 2021. So I would say the answer is yes.

Additionally, just for the information of the Committee a number of projects that we would have undertaken was funded by external agencies for example, the IADB, the European Commission. And that was significant, and many of the training opportunities that we have benefited from, we got funded and free from the Caribbean Court of Justice and also the Judiciary

in Trinidad which was substantial. So we must say thanks to them. So yes, we are fully funded at this stage.

Mr. Chairman: All right. Chairman, the effect of what you have set out to do is of critical importance to dealing with things like corruption, allegations of corruption et cetera. So I think it was mentioned by the Ministry of Finance that your organization is completely independent, but you report to the Parliament. Can I confirm that?

Mr. Lalchan: That is confirmed.

Mr. Chairman: Okay. So your role then as the Procurement Regulator and working at the Office of Procurement Regulation is to do two things if I am to gauge this legislation correctly. It is to use the public funds to establish procedures for the execution of projects with the intention being to establish procedures for the disposal and acquisition of public property. Is that correct?

Mr. Lalchan: That is— We were supposed to be acting for and on behalf of the State in terms of disposal of real and personal property under section 13(1)(o). Although when the Board took up office one of our mandates in addition to the others is to conduct audit and investigation on those matters. And therefore, we saw it as a potential conflict to be engaged in the disposal of these property and also coming at the back end and actually auditing. So we did go to the Ministry of Finance and said that that is one of the areas we believe should not be under the purview of the office, however, we recommend another organization within the state sector should be responsible for that, but subject to the guidelines and handbooks, that we will develop that will give those guidelines as to how that particular part of the operation should be conducted. And in fact, we have included in the draft regulations some regulations as it relates to the whole issue of retention and disposal of public property, but this only relates to personal property. The real property regulation still needs to be drafted by the Ministry of Finance. So that is how we envisage it to take place.

Mr. Chairman: Thank you Chairman. Just building on what you just mentioned to me, the regulations are now before the Parliament, agreed? The organization has been—this legislation was passed, the legislation that set up your organization based on the Public Procurement and Disposal of Public Property Act 2015 was in fact approved in 2015. But only in 2018, my understanding is only from 2018 that you began the roll-out of your organization. Correct? With the appointment of the Board?

Mr. Lalchan: Absolutely, and the parts of the Act that were partially proclaimed in July of 2015 gave us certain mandates in terms of the setting up of the operations of the OPR and so on. So the first board actually was yes, appointed in January 12th of 2018. And thereby we set out to give effect to the areas that were under the purview of the office under section 13(1) and probably at some stage we can give some more details insofar as where we are with those sections.

Mr. Chairman: All right Chairman, I am curious just to find out if once the board was established, because you could not really have executed much until a board was actually in place. But once the board was established the regulations which implemented the Act should have been a matter of great priority. We are now in 2022, the board was set up in 2018 and we are only now in Parliament having received the regulations. Can you advise what would have caused, or what was the reason for such a substantial delay in bringing the regulations which would have given teeth to your board to do quite a few things?

Mr. Lalchan: So when the board was appointed first of all we had to get the funding and so on, office spaces, and actually recruit staff. So the first set of funding I believe was done in March, the office space was in April, and the first set of employees that came on board was July. And then, we had to get a consultant on board and that is where the consultant came through the IADB free of charge to us—was on board. I believe it would have been around July/August of 2018.

One of the things that we sought to do is to have public consultation, and therefore, we had sessions in San Fernando, Port of Spain, and in Tobago in terms of soliciting the information that we require to draft those regulations. Together with the consultant, we visited these persons and we invited all the stakeholders including organizations like the JCC, we had consultation with the Institute of Chartered Accountants, with the institute of Internal Auditors, with a number of businesses like the Manufacturers Association, Chambers of Commerce's and so on, and also suppliers and contractors.

And therefore, the first set of draft regulations were actually completed I believe the date was November 21st or 23rd of 2018. Thereafter, it went through a number of stages culminated in the present final submission to Parliament. So there were a number of areas that needed clarification. So we would have submitted to the Ministry of Finance in November of 2018.

Mr. Chairman: So, question to the Ministry of Finance, Madam Permanent Secretary. If we have regulations, because the regulations are what really gave teeth to your board. If we have regulations that would have been submitted in 2018 to the Ministry of Finance, can Ministry of Finance indicate what would have been the reason for the delay? Because we now have funding that would have been presented and prepared and brought forward. We have a board that would have been put in place. And we have draft regulations submitted in November 2018. Can the Ministry of Finance explain why is it that from 2018 to November/December 2021, that time frame lapse between when regulations were provided in draft form and when regulations actually came to Parliament to allow the Board to have some teeth? Madam PS.

Mrs. Durham-Kissoon: Thank you, Chairman. I do not have the timeline before me but the initial suite of regulations were laid in Parliament in July 2021. What happened, from November 2018 as Chairman just indicated there was a series of consultations including the Ministry of Finance and a team from the Ministry of Finance, we undertook a review which were submitted for the office to comment. Another batch, another draft was submitted where we again deliberated and resubmitted to the office. Subsequently to that then we of course would have to go through the process as all regulations, submissions to Cabinet, and the deliberations at the Legislative Review Committee, all right. So that was the process that had to be undertaken once comments were fine-tuned by the Ministry of Finance, then the process for—the whole LRC process took place after that. And the package was initially laid in July 2021.

Mr. Chairman: Thank you very much, Madam PS. My concern is that this legislation was ruled as critical at the point in time when it was passed. The involvement of the board, the need for the board to have teeth to actually implement some of the programmes that it had come up with, even up to today is still being installed. I want to ask the Chairman of the Office of the Procurement Regulator, I want ask him if he thinks that is the fact it has taken so long for the regulations have come—well it still has not yet been approved by Parliament. So you are still operating without regulations, but has that absence of regulations affected the ability of the office of your institution to completely and effectively undertake its mandate?

Mr. Lalchan: I would say partly, not fully. And I would explain why I say that. When we were appointed in January of 2018 all we were given was the Act and that was it. So we had to actually go through the Act in preparation for getting fully proclaimed. So even though in the early days if we did have the regulations in place there are other things that we would have had to do as a board to get fully proclaimed. For example, with the whole advent of the Central Tenders Board going away with the full proclamation, we had to get the different stakeholders in terms of the public bodies ready for this full proclamation. That means a substantial amount of training. So far, we have had 265 public consultations in terms of rolling out what is required. That is one of the areas in terms of educating the public and bringing them up to speed as to what is required. One of the substantial areas is in terms of prequalification of contractors and suppliers. Now, going forward, there would be one database of prequalified contractors held by the Office of Procurement Regulation. That is to avoid different treatments for different contractors and suppliers and so on.

We had to actually set up that database. That database now is fully operationalized and we have over 450 I believe contractors have already come in. So that would have taken some time and we only got that operationalized at December of—more like—just now, September of 2021. That took a lot of time because we had to consult with all the suppliers and contractors and the public bodies. We also had to train public bodies in terms of how do they go about utilizing this database to actually do the necessary in terms of prequalification.

And then we had to literally train a number of the officers. So now under section 61 each public body has to have a named procurement officer and that person has to be trained and brought up to speed as to how they are going to execute the different functions. We literally had to write the handbooks and guidelines. And so far we have delivered 41 of those handbooks and guidelines. Those handbooks and guidelines had to actually go through a process again of dealing with the different suppliers and contractors, the public bodies, getting the different nuances and so on sorted out. And once completed and written approved by the OPR, we had now to go through the process of actually bringing the named procurement officer up to speed.

So we had a number of consultation sessions again, San Fernando, Port of Spain, Tobago, where we would have brought them up to speed. So it was not just a matter of the regulations but a number of bits and pieces under section 13(1) had to be put in place. We had to have meetings with like, for example, the Accreditation Council to look at accrediting our programme in terms of what is required of a procurement officer. You have different levels, you have the senior, the manager is the senior, the junior and so on.

So what does it take to get these people ready, trained, and up to speed? And would have taken some time. All those have been completed. So it was not only the regulation but all the bits and pieces under section 13(1)(o) had to be put in place to prepare for the role out of this particular Act.

Mr. Chairman: Thank you, Chair. The question though is whether you think at all that the absence of the regulations so far to date, whether that has impacted the ability of your board to fully execute its mandate.

Mr. Lalchan: Absolutely, and I would say the answer is yes. And I will give you an example. So far, we have gotten 18 requests for investigations in terms of certain issues that persons would have faced. And that would have stymied our progress in terms of ability to either conduct an audit or an investigation, although we have a full team on board and trained to do audit and investigation.

So the process we would have observed is to take those, look at it, review it internally by our audit and investigation team. We did not have the powers to do the audit and investigation, but what we could do is to assimilate a report coming out of the information that has been provided to us and write the various Government Ministers, and PSs, and all 18 for their action.

Now, if we had the powers under the Act and the regulations that would have been a different story. We could have actually conducted it and taken it if we believed that some offence was conducted in those areas, pass it through the DPP and so on. So the answer is yes, it did stymie our operationalization.

Mr. Chairman: Thank you very much, Sir, for your frankness in this matter because it has raised a serious issue and concern for me as a public officer, as I am sure it has raised with other members of my Committee and as well with your organization.

11.00 a.m.

Based on what you have said, you have tried to work as much—you have tried to do as much as you can do as an organization while you wait on the regulations. But while that has been happening, millions and billions of dollars have been spent on the award of contracts, et cetera.

I have here submitted by you, the Readiness Assessment Checklist Report of the Office of Procurement Regulation, dated April 2021. Now, this would have been prepared on the basis of your assessment or your request for information from I believe it was 314, 3-1-4 public bodies, in terms of their readiness. So this is what—this data is what would have told you whether you have efficiently—you would have done your part in preparing documentation, but whether agencies of the Government would have sufficiently been prepared for this legislation that exists now, in law, for this legislation and whether or not they have in place the relevant requirements to ensure transparency and accountability for the procurement, retention and disposal of public property. And I want—I am raising that rather than asking questions because I want the listening audience to be aware of what this report says. I will ask you if in fact, before I go there, I want to find out if this is the latest Readiness Assessment Checklist Report? This is the one from April 2021. Is this the most recent assessment that you have?

Mr. Lalchan: That is the most recent one that we have compiled.

Mr. Chairman: And I am sure like me, this would have given you great cause for concern, because what this told me is out of 314 bodies, which were asked to report on their state of readiness for the implementation of the Public Procurement, Retention and Disposal of Public Property Act, passed in 2015, which is what we are trying to roll out now, which is to prevent corruption, which is to encourage transparency and accountability. That out of 314 organizations to which you would have expected responses, only 20 provided responses. That is what this Readiness Assessment Checklist Report says. The vast majority, 296 entities did not submit at all a report to the Office of the Procurement Regulator indicating whether they had documentation, personnel, support, financing, to implement the legislation, or any of the guidelines, any of the procedures, any of the protocols that you would have prepared in the last four years. 296 out of 314—that is 93.6 per cent did not even have the courtesy to respond to the Office of the Procurement Regulator.

So whilst, Sir, you are doing a phenomenal job in putting in place the documentation, it appears to me that public bodies, Government agencies are not in fact, either being respectful of your office or whether they are in fact willing to supply information as required by law to you. Maybe the regulations will help but I am deeply concerned as a public officer as I am sure you

are, I am deeply concerned that billions of dollars have been spent by these organizations and there are no mechanisms in place for ensuring transparency, accountability and the absence of corruption in the procurement, retention and disposal of public property. I raise that because there several—I mean, this report is damning, this report is damning. Over 84 per cent of the organizations do not even have an organizational structure and delegation of authority for a public procurement officer. The figures are frightening—34 out of 314 organizations, only 34 have recruited and developed and retained competent individuals to oversee the implementation of this regulation—of these documents that you have provided. Twenty out of the 314 do not have persons who are capable of maintaining stores.

What I am seeing here by this assessment report, and I congratulate you for providing it because this is a true representation of what exists outside, what exists in the state sector, which is that a large number of state enterprises—314, only 20 out of 314 had the courtesy to respond. And—sorry, 70 responded, out of the 70 out of 340, only 20 had any sort of procurement code of conduct in place; that is frightening. Mr. Chairman, do you agree that that is a serious issue of concern?

Mr. Lalchan: It is a definite area of concern but if I may say, Chair, that there was no—even though we made the request, there was no authority to compel them to respond, because that part of the Act was not proclaimed. But it is a little bit more troubling than what you would have highlighted, Chair, because the ones that we would have circulated and asked for responses in terms of their readiness assessment are just part of the overall public bodies. Because public bodies are also defined as those who use public money. And the funds, we did not circulate them, because we have to get that information from public bodies to tell us who they give funding to and that would have been a separate request we would have made to others outside of the core of what we defined as public bodies.

The second thing that we wanted to do is that even though we asked for the information on a voluntary basis, we wanted to get an idea of the tasks that we have to perform to bring them up to speed in terms of their readiness assessment. So what we do is that we develop our programmes, especially our outreach programme, to coincide with where the deficiencies are and to assist them in bringing them up to speed. So that was a twofold reason that we would have conducted the survey. So we still have a huge body of work to deal with those who fall under the definition of utilizing public money as a second way of the readiness assessment, so it does concern us.

Mr. Chairman: Chairman, I want to repeat that I am deeply concerned that organizations that have accounts from—that spend state money have not agreed. This is voluntary, but they should have been anxious to provide information to the Office of Procurement Regulation because they must know that this is coming into force, they must know that regulations are going to be approved which they must then comply. I commend you for your interest in prosecuting this matter, because of the fact that if the 93 per cent of the entities had supplied their information, you would have been able, I am sure, you would have been able to be advised as to how you can ensure that they can provide support, you can provide support to them to make sure that they come up to scratch. In the absence of that, we have a situation where we have funds being expended, but no desire by these entities, from my understanding, I am subject to correction—we have no desire from these entities to ensure that their structures are in place for

accountability and transparency. That is a deeply troubling issue. I have two of my colleagues who want to weigh in at this point. Ms. John, I yield to you.

Ms. John: Thank you very much, Chairman. Chairman of the OPR, I was a little bit concerned when you said the lack of regulations really did not hamper your operations because you were kind of on a parallel track of getting your internal business organized, and that is fine. But I still believe, here you are and without the regulations, you really cannot move ahead. Now, the fact is that you have also stated that you cannot compel these bodies to comply because the particular portion of the Act is yet to be announced, I mean, that—to be proclaimed—that is a very serious issue, so then, what then is your role? You understand? I mean, are you writing and asking because you are talking about the “knock on” effect.

But another troubling thing is the level of readiness, because notwithstanding—and I also want to commend you of the 265, consultations, et cetera, and the contractors who have signed up. What I want to know is that these are people with different levels of interest coming from different sectors, business interest with different activities, et cetera. How are you going to harmonize your activity and what you have to do in terms of your—the tools you are going to use for investigation? Because what I heard you say is that the 18 that—complaints that are before you, you are hamstrung for—to handle it because it would have meant you investigating and moving straight to the DPP. Is there a straight line from you to the DPP, or how are you then going to say, “I am satisfied that there is some level of wrongdoing” and then to go to the DPP, or is there a process you have laid out where you give people an opportunity to explain themselves? I just want to hear about that. How are you to harmonize?

And then that 18, I want to just reiterate that you said you have passed on to the Minister or the Ministry, how are you passing it on? Are you then—are you in a position to undertake any level of investigation and then say, “Minister, I cannot move further because I do not have the necessary tools in law but at least I want to give you a heads up as it were, I want to indicate to you that this is what we feel is happening”, so that the Ministers could get involved or whomever, the Permanent Secretary, I suppose, is the better person in that regard.

Mr. Lalchan: Thank you very much, member, for those questions. So the first one in terms of being hamstrung, you are quite right, we cannot conduct the level of investigation. But once we have the powers to conduct those investigations, we have a direct line to take it to the DPP, once we are satisfied that a breach of the Act in terms of an offence has been committed. So we pass on the file working—in fact, we have already met with the DPP and set up the relationship in terms of how do we get involved in—and he said that the one person in the DPP’s Office who we deal with is himself directly. So that has been done.

Now, in terms of the other, the 18 that were brought to our attention, what we do is that we look at the information that is provided. We assess the information in terms of best practice and what is required under the Act in terms of present legislation, because we cannot make a determination based on the new legislation until it is fully proclaimed. So based on what we know in terms of the present legislation, for example, the SEMP manual, and the operations of the Central Tenders Board and so on, what we would have done is to look at the information and say do we believe that they were in compliance with these different instructions and in most of the cases, there were causes for concern and in our letter to the various Ministries and Permanent Secretaries we will say, we believe there is a cause for concern A, B, C, D, E, based on the information that has been provided, without making a conclusion, and ask for them to conduct

the relevant internal investigation to determine if something went wrong, in fact. So that is how we deal with the 18 because we cannot make a determination, we do not have the necessary wherewithal under the Act to do the investigation. So those were the—

Ms. John: Sorry, Chairman, one last thing. So with that now, okay, so that will be a kind of inconclusive approach. I am not blaming you for that but I am just saying this is what you are doing. What happens when, if and when this—you have the tools in hand, are you then going to retrace your steps and see with these 18—or?

Mr. Lalchan: Well, based on the advice that we would have gotten under section 70 of the Act, section 70 provides a level of investigation that we conduct, but we cannot conduct it under the new legislation. For example, if there were certain contracts that were awarded under, for example the Central Tenders Board mandate, we can investigate it under the CTB Act, because that was what was in effect at the point in time but not under the new legislation. So that is how we will get the powers to investigate under the section 70 because we did solicit a senior counsel's advice on it.

Ms. John: Thank you, Chairman.

Mr. Lalchan: Welcome.

Mr. Chairman: If I may, just to build on that, before I open the floor to two of my other colleagues though, the Central Tenders Board Act under which you can only act now, was restricted in its applicability, restricted in the range of actions that could have taken, which is why this new piece of legislation was put in place. So therefore, what you are saying is that you are unable to maximize the use of the current piece of regulations or current piece of documentation, current piece of legislation, because of the fact that it has not yet been proclaimed. Is that correct to say, Sir?

Mr. Lalchan: That is correct, Chairman.

Mr. Chairman: Is that not very, very frightening that we are in 2022, after this Act has been passed in 2015, and board established, et cetera, and a lot of footwork has been done in preparing documentation, is it not frightening, that we still do not have the teeth to use the resources that have been waved at us through the Act, the new Act in 2015. We still do not have the teeth to implement that Act and therefore, we may have had the situation where the last—between 2015 and now, activities may have been allowed to get away, persons may have been allowed to get away with illicit activity because the regulations and the legislation has not been put in place, or is not updated enough to pick up on the failures that the old CTB legislation would have functioned under?

Mr. Lalchan: Chair, I would like to say that the regulations will give us the powers to do a lot more and also require a certain type of behavior from public bodies that will make a big difference in the country in terms of the whole issue of value for money, transparency, accountability and so on. So I agree that—

Mr. Chairman: Yeah, yeah, I agree, I agree with that Chair, sorry to interrupt, that the current legislation, once it is fully implemented, would give you substantial teeth and that is the concern that I have that it has not yet been fully implemented and therefore, we are operating under archaic legislation, which we already accept is not up to task, which is why we have the new legislation. Have you raised those concerns with the Ministry of Finance, in an effort in somehow or the other to encourage them to expedite the process?

Mr. Lalchan: Well, in all the discussions we have had at different levels within the Ministry of Finance and also at the LRC sessions and so on, we have indicated those. We have also, every time we get an opportunity in terms of the public domain in the press and so on, we reiterate that it is imperative that we get these regulations done as quickly as possible to give teeth to the OPR, so we have done it at the Ministry's level and also at the public level.

Mr. Chairman: Thank you. I have member Seepersad who wanted to ask some questions, Ma'am.

Ms. Seepersad: Thank you, Chairman. Chairman, like you, when I read the report, this is the Readiness Assessment Report, I am of the view that while all the other bits and pieces have been put in place, without the teeth of the legislation and the regulations, the tremendous work done by the Office of the procurement regulator really comes to naught. I mean, I am not discounting their work, do not get me wrong, but the effectiveness is really naught. As well as the fact that, 20 out of 314 entities which is six per cent, only have— are the only people that have developed and implemented the code of conduct, et cetera.

There are two questions that I have. How many other entities, Chairman, through you to the Procurement Regulator, do you—are targeted to fall under your office? Because you said the 314 were the Government entities, et cetera, and how many of those are ready, as well as, have you been given any indication as to when the regulations will be debated in Parliament and passed so that you can then now begin your real work?

Mr. Lalchan: Thank you very much, member, and through you Chair, the regulations, we are aware that it was placed on the Order Paper in the Senate yesterday. And it is on the Order Paper for the Lower House on Friday of this coming week. And it was actually laid in the Lower House on 13th of December, I believe, after it was laid on July the 2nd. So we feel confident based on the assurances and I have had discussions with both the Minister of Finance substantive and the junior Minister of Finance, in terms of taking it forward. So I feel confident that that has taken place.

But the other question I believe you had raised is in terms of the readiness. There are a number of organizations and I will give you a couple of examples, T&TEC—we just had a session with over 300 of T&TEC employees at all levels of the organization. We had a joint session recently with Heritage, NGC, Water and Sewerage Authority. A joint session in terms of how we can assist them in terms of development. We just got clarification from Caribbean Airlines that they have adopted our handbooks and guidelines certain of our handbooks and guidelines, the same for PLIPDECO. A number of Ministries actually started reporting and I can tell you, the Ministry of Labour has already started reporting on their quarterly contracts that they have been awarding. And SWMCOL is also another state enterprise that has been reporting.

So whereas it is voluntary, we have a number of organizations that have already started to operate as if the legislations are in place. So far, we have gotten over 600 requests for information and advice in terms of public procurement and I believe we would have put that in the report also. How do we do this? How do we do that? Are we doing this correctly, and so on? So there is some of the public bodies that are really inclined and moving forward, others, not so much because of their state of readiness, and so on. So I hope I would have given you a flavour as to where we are with this.

Ms. Seepersad: So Chairman, if I could just piggyback on that. So that if when you redo this readiness assessment report, it would look considerably better?

Mr. Lalchan: We are hoping that it will because of the number of interventions we would have had recently. And for example, again, we had a full session with the annual procurement plan, which is mandatory in terms of six weeks after the reading of the national budget. We have so far received 30 of those annual procurement plans that we are reviewing and we have a number of requests—so many requests came in in terms of the preparation of the annual procurement plan, that we are planning another session to roll out even another session in terms of the annual procurement plan, which is very essential in terms of giving the information to the public in terms of what contracts that will be awarded in the ensuing 12-month period. So we expect it to be better—would it be perfect? The answer is no, we have a lot of work still to do in terms of upskilling the different public bodies in respect of their readiness.

Ms. Seepersad: And one last question, given that the Act came into effect in 2015, and when the regulations are proclaimed, you will then have the wherewithal to do what you are supposed to do in a large measure, how are you going to deal with the backlog of issues, from 2015 come forward? Do you have a plan to deal with that? Or what are you going to do?

Mr. Lalchan: Well, it will be based on the nature of the issues that are coming forward. Those that would be requiring investigation, we do have the authority under the Act, if we do not have sufficient resources internally to conduct those investigations we can outsource some of it. So that will be that part of it.

In terms of challenge proceedings and ineligibility, those would not be retroactive, those are moving forward and we have the teams already trained to deal with the ineligibility and also the challenge proceedings. We did get as I mentioned training from the Judiciary and the Caribbean Court of Justice to prepare those committees to deal with hearings and procedures in terms of decision-making and so on.

Ms. Seepersad: Thank you very much.

Mr. Lalchan: Welcome.

Mr. Chairman: Member Leonce, you had some queries that you wanted to raise.

Mr. Leonce: Yes, thank you very much, Chair. Again, Chairman of the Office of Procurement Regulation, congratulations on your work. Actually, Ms. Seepersad would have brought some of the questions I had. I was really trying to find out after your report, which would have been about 10 months ago, what strategies that you had to improve the response, and if there was any expected change in the data. But as you would have just indicated, a number of agencies would have had a number of meetings and sessions and there is a lot of interest by a number of our public institutions in terms of getting themselves ready. How, in your view, would that impact your report that was 10 months ago and what strategies do you have to continue and improve your responses?

Mr. Lalchan: Thank you very much, member, and through you Chair, what we have done is to develop online training system that once we conduct a training session, for example, in terms of evaluation of contracts, annual procurement plans, as I mentioned, how do you prepare requests for proposals and so on, those sessions we actually had in Trinidad, in north and south and in Tobago, and we actually taped the sessions. So for example, questions come up—and we have frequently asked questions and so. When that comes up, we point these persons to those sessions. Depending on the amount of requests we get and we look at and we track it on a weekly on a daily basis, in terms of the common requests that we get, and we develop our training programme.

We have recently developed our learning management system. What our learning management system has is that we have put in place modules where any procurement person within the Ministries or the public bodies could come in and self-taught and be certified after a period of time. And we are also, we have recently rolled out our requirements for certification of the different levels. We had the procurement officers attend, the accounting officers attend and institutes of higher education in the country, through the accreditation council also attended, so we had over 300-and-something persons attend those sessions. Again, to bring them up to speed in terms of what is required but more importantly, how you can develop your staff and yourself by utilizing the resources that we have.

So what we intend to do is to have regular assessments done not only for the readiness but different areas of assessment and use that as a basis for developing our forward plan to make sure that we are keeping in touch with what is required by the different stakeholders. We also have a number of sessions with—like for example, the Contractors Association, the Manufacturers Association. And what we also did is to have sessions with the Institute of Chartered Accountants and internal auditors so that we highlighted then what is required under the Act so that they can start looking in at the public bodies to ask relevant questions in terms of their readiness assessment to take advantage of the Act and so on. So all those are strategies that we would have developed.

Mr. Leonce: One other question, in your response to your strategic plan, you would have indicated about 50 per cent of persons, you would have rolled out your regulations, your handbooks and stuff. Has that programme continued and what is your percentage now?

Mr. Lalchan: We would have rolled out—it is difficult to say the percentage but we can always revert back to you on the percentage but we continue to have those rollout sessions on a predominantly weekly basis based on requests and then as I said before, if we have common requests, we have a massive rollout session, which for example, we would have done with the ATP and so.

Mr. Leonce: Okay and finally, in the absence of the regulations approval, which based on what we are saying it should be done soon, what follow up do you do from your submissions to the Ministers? You said that once you identify certain issues, you write to the Ministers and you suggest or recommend actions. What follow up does your organization do in terms of the issues and how to close off if these issues were resolved and if it is closed out?

11.30 a.m.

Mr. Lalchan: We request feedback and in some cases we would get feedback but we do not follow up to say on a regular basis, “Tell us what is happening with these investigations”, because really we do not have the powers. So out of courtesy, we follow up some of the issues, especially the high-profile ones and we did get resolutions for some of those.

Mr. Leonce: All right. Thanks a lot, Chair. And again, congratulations on your good work.

Mr. Chairman: Member Browne, I know that you had some questions that you wanted to raise, you can do so now.

Dr. Browne: Thank you very much, Chair. Good morning once again to the team that is responding. I want to begin by congratulating you and your team on the excellent work the office has done thus far and for your very transparent responses to the Committee, before today in your submissions and during the course of this morning’s meeting. I must say that your office appears to be fully up to the task at hand and I am tempted to recall some of the negativity and

the doom and gloom that surrounded the setting up period and there were so many concerns expressed. And some of those concerns were quite validly posited at the time and I want to say that you have done very well in the brief years since the initial establishment of this office in recruiting some very professional human resources that can serve this—has been serving and can serve this country extremely well.

I noted the exchanges a short while ago with respect to the readiness assessment report and it sort of reminded me of the importance of improving the overall appreciation and the interest in the best possible procurement procedures and across society, including within our public bodies there is not sufficient appreciation. I know there has been some public outreach work and direct work with officers, I feel more of that can be done because there is this overall culture against which I am sure you would find yourself pressing from time to time. I feel that there are some factors that could be improved as you continue interacting with public officeholders and, of course, these challenges are not limited to one political entity of one stripe or the other but include regional corporations, et cetera.

Chair, I know four years might seem a long time when you are in the organization but in terms of the history and set up, I do not think it is a long time at all. I want to ask you, with respect to your human resource capacity, the quality of professionals you have been able to attract, I am very impressed at this stage but are there areas of staffing that in your opinion require further strengthening? Can you share that a bit with the Committee at this time? The other thing I want to ask you is: To what extent have you been able to contribute to the regulations that are now before the Parliament, I understand due to the debated in a short while in the Lower House and then to the Senate? How have you and your team been able to contribute to the shaping of those regulations? And finally getting back to my initial point, I would appreciate your thoughts on how your work can impact on the overall culture of laissez-faire and cutting corners that seems to have become very much a part of this society. How can your public education and outreach efforts be further expanded as we move forward? I would appreciate your thoughts on these things. Thank you.

Mr. Lalchan: Thank you very much, member. And through you, Chair, allow me to take the last question first and there is a reason why I will want to handling that first. We believe that it is going to be a difficult climb to change the existing culture that we are constantly faced with on a regular basis. But what we did, and you would see as our—and I would like to read it. Our vision is to be:

“The catalyst for transformation through best practice in procurement, retention and disposal of public property.”

And it was very clearly stated that the catalyst for transformation—and that transformation you would see was not restricted to only the issue of procurement and disposal and retention of public property. We believe that if we get and when we get this whole issue of procurement right, that could be transformational to other areas, so we are trying to set the standards to do that.

One of the things that we have done and we are about to roll out—unfortunately the COVID-19 has impacted us severely. We are going to go on a major drive in our schools; primary schools and secondary schools. We have already developed the programme. We have printed over 1,000 booklets that teaches the kids about things like transparency, accountability, value for money, the proposition, and we are about to roll out that. We have had significant discussions with the Ministry of Education and we have taken on board all their comments and so. So once

COVID allows us, we will be embarking on that and it will be in the form of classroom interaction, competitions and also radio ads, television ads and so on, in terms of what we expect.

We also have a number of areas that we will be educating the public on in terms of the whole issue of integrity, transparency through a number of—we have about three radio ads and two television ads that we are developing. The radio ads have been completed. The television is soon to be completed. We could not tape it because of the COVID restrictions and could not get persons on board. So in terms of the culture, that is part of our mandate in terms of changing the culture, not only in procurement and disposal of public property and retention, but overall in society. So we believe we have an important role to play.

In terms of the regulations, the regulations were 100 per cent done by our internal resources together with our consultants and prepared and submitted to the Ministry of Finance and those were done in consultation with all the stakeholders I would have been mentioned before. So we were the ones that—and that was required, I believe, under section 63 of the Act that we prepared for consideration of the Ministry of Finance, the regulations. And that is why I said it would have been prepared and submitted in November of 2018.

In terms of the employees, there are some areas that we are presently—we had on hold pending the full proclamation and those areas had to do with the Secretariat. The Secretariat would be responsible for the actual hearings of the hearing proceedings and so on, and that team is now being put in place. We have the second part of the interview for the head of the Secretariat and some of the legal officers. We are about to give offers there. We do have a very good cadre of persons applying for these positions. Something about the Office of Procurement Regulation attracts a number of good candidates. In fact, sometimes we get in the hundreds of applicants and some very good applicants. So we are attracting the right level of persons and we will continue to do so.

As I said, the Secretariat is one of the areas. We have just recruited three audit and investigation, additional officers to deal with some of the issues that we have to deal with. And what we have done, and you would see it in our training details, we are training our employees to do things that otherwise we would have outsourced. For example, we had three of our officers trained in terms of the strategic planning; two of our board members in terms of corporate governance. Our IT sector, you would see the Internet, the intranet and our board portals, all were done internally by our internal resources. So we have trained up and upskilled our employees to deal with those issues. So those are some of the things that we are looking at. And presently, although it is not in place, we are now looking at our whole succession plan so that when key staff leaves, we will have persons ready to take over those roles from our internal resources.

We are also training our board members in terms of taking on the responsibility of hearing proceedings and so on. So all that has been put in place. So I hope I did do justice to your questions.

Dr. Browne: Very much so. Appreciated.

Mr. Chairman: Thank you, Chairman. If I may, I want continue my line of questioning. Would you be able to provide this Committee with any kind of indication as to how much money on average—I suspect that it may be a fluctuating figure. I am not sure even if you would be aware of the value. But much money on average is spent by these 314, plus the others that you have not yet engaged, entities? How much money would have been spent by those entities, bearing

in mind that so many of them have not provided you with any indication of how prepared they are to implement the regulations that are forthcoming? Do you have any idea of a dollar value?

Mr. Lalchan: We will—we can get that from the budget allocation. That is an easy place to get it from. Also, when we have requests for sensitization sessions on the state enterprises, one of the first things we ask them to do is to do a presentation to us in terms of their mandate, what they are required to do and also their budget allocations for the various procurement activities that they will undertake. But that would be, I would say, an incomplete list because it would only be the ones that we would have had the interaction with. So we can pull it from the budget, the annual statement.

We have been using a rule of thumb in terms of potentially out of the \$52 billion allocated in the national budget, about \$26 billion, if spent on procurement but that does not include some of the self-sufficient organizations like the FCBs, the Heritage, the NGCs and so on. So that would be a separate set of information we will have to get. That is probably something that we can look at through the budget and through asking the relevant state enterprises and public entities for the information. It is probably going to take us a while to pull.

Mr. Chairman: All right. So just for the viewing audience, on average, \$26 billion—just an average figure—falls under what would be considered your purview for the execution of contracts, the disposal of, retention and acquisition of public property, correct? On average \$26 billion per year?

Mr. Lalchan: Per year in terms of the whole issue of procurement, acquisition of assets, big constructions and so on.

Mr. Chairman: All right. I have raised that because I want to emphasize, and I actually now want to get—maybe you can respond or you may want your Head Legal to respond. What kind of action can be taken? I noticed in your—the same readiness report, this bone of contention that we have is really an issue of significant concern, is that public bodies are required to submit an annual procurement plan to the OPR by law under section 27(1)(a) of the Act—that is the Public Procurement and Disposal of Public Property Act—and they must do that within its fixed time frame but only four out of 314 had done that as at April 2021, based on your request. Only three—four out of 314. Mind you, we already indicated that there are other agencies which have not been brought into this ambit yet, so it is more than 314. But for now, for what we are looking at, only four out of 314 entities actually submitted what was required by law, an annual procurement plan to the OPR. Is there any legal recourse that the OPR can take to ensure that these entities and the other entities, in particular who have not complied, is there any action that the OPR can take to ensure compliance or is it that the Ministry of Finance must therefore take some sort of action? How do we fix this, Chairman?

Mr. Lalchan: Thank you, Chair. That part of the Act is not proclaimed and therefore they are no obligation. But we have actually increased those numbers and now we have received 30 since that report and since we would have rolled out the APP training session. So that part of the Act, unfortunately, is not proclaimed.

Mr. Chairman: So thank you for that. That only mildly alleviates my concern because now we have 30 of the 314. That is still not a substantial figure. Can the Ministry of Finance indicate what they are able to do, both in terms of ensuring that the entire Act is proclaimed as soon as possible and also in terms of ensuring that the entities that are required to provide information to the OPR do so in an expeditious manner so that the OPR can assist in filling in the gaps and clearing

the misconceptions and providing the legal and other frameworks to ensure that we have transparency, accountability and efficiency in the use of state resources? Can the Ministry of Finance advise what actions they are able to take to ensure that these things happen?

Mrs. Durham-Kissoon: Chairman—

Mr. Chairman: Or maybe Head, Legal. I am sorry, madam PS, you were speaking.

Mrs. Durham-Kissoon: I was about to explain, Chairman, as the Regulator has stated, that that Act is—that section of the Act is not proclaimed so when the debates conclude following from Friday, we expect that proclamation will be imminent. The Ministry of Finance does not have a role in this respect for taking any punitive action as regards to the obligations of public bodies under the Act. And I would allow the Head, Legal to bear me out here.

Mr. Chairman: Ms. Mitchell, just to follow up, just to remind you, what we are trying to figure out is how we can get—what actions can be taken at this point to ensure some level of compliance with the request for information by the OPR.

Ms. Mitchell: At this point in time, Chair, there is not—as the PS would have indicated and the Chairman, it is a section that is not yet proclaimed. However upon full proclamation, there is a provision under 27(2) whereby it is if the information is not forthcoming, an investigation can be undertaken by the OPR. Also, under the regulations, there is provision for non-compliance with an instruction that is given. So we expect that once it is the regulations are passed with the full proclamation of the Act, we will have the teeth that you referred to, to give effect to some of our powers.

Mr. Chairman: Is it of concern though that we may be in a situation where, God's willing, sometime this year the regulations are passed and the entire Act therefore is assented to and implemented that we have a flood of issues that now comes to OPR for attention because we have a substantial number of bodies? I understand what the OPR was trying to do. It was trying to prepare the agencies for the implementation of the Act so that you do not have, all of a sudden, all these agencies now down your throat trying to get clarifications as to how they have to—what they need to do, et cetera, in order to ensure that they comply with the law. But let me ask that question differently: What have you put in place—this would come back to the Chairman—what have you put in place to ensure that when the legislation is fully implemented now—well, not implemented—when it is fully assented to, when the regulations are approved and the rest of the Public Procurement and Disposal of Public Property Act is assented to, once that happens, what has the OPR put in place to ensure that at the quickest possible time we can have all of these entities which have failed to comply thus far, we can have them in full compliance with the law? Chairman?

Mr. Lalchan: Thank you very much, Chairman. There are some areas that we will look at in terms of allowing a transition period and I will give you an example. The database of pre-qualified contractors, we will allow the public bodies to use their existing database for a period of six months to allow a transition into the new system and be familiar with it, and so that is one of the areas. But some of the other areas that require immediate action, we will require the public bodies to take those immediate actions. There would be no transition period for those but based on some of the areas there will be a transition period and we will deal with it on a case-by-case basis, for example, the database and so on. But some of the things, in terms of the handbooks and guidelines, the ability of the office to develop those are proclaimed. So handbooks and guidelines were proclaimed. So we expect those 41 handbooks and guidelines, for persons to

adopt it on day one. So it will be on an individual case-by-case basis how we transition to the new law. For example, I believe the Central Tenders Board has a three-month transition to no longer be in existence after the full proclamation.

Mr. Chairman: Chair, the thing is that you have the documentation on hand. The question is: How do you then police the actual—how do you then ensure that these agencies have put it in place? Your readiness report has indicated that the vast majority—literally, the vast majority does not even have personnel in place yet designated as a procurement officer, somebody responsible for this agency. How then—what do you have in place to monitor, outside of asking them to submit information one year thereafter? How do you police the immediate implementation of these manuals that you have provided? How do you then police to make sure that what is there is actually in place?

Mr. Lalchan: We will be exercising our right to audit with the audit and investigations team and that right to audit is enshrined in the present Act and once proclaimed, we can utilize our trained officers. And it does not necessarily mean that we will only use auditors to do audit in terms of the readiness assessment. We can use some of our officers in the other areas which we plan to do to actually go and work with the organization. So that is how we plan to deal with it. In fact, I will give you an example—I hope the Chief Secretary does not mind, but we did meet with the THA last Friday for a session with all the secretaries and undersecretaries, and we have an invitation from the Chief Secretary to come to Tobago to conduct that assessment in terms of their readiness because they are one of the organizations that started this process a little while ago. And he wants us to come to literally do an audit on the THA and find out where they are in terms of readiness. So we are hoping to use our audit functions to do just that.

Mr. Chairman: Well, I commend the THA for that initiative because on the one hand, we see the THA at this point being—and the head of the THA at this point willing to submit themselves to audit but on other hand, we have all these agencies who seem to be unwilling to provide basic information. Just for my information and for the Committee, can you advise if section 36 of the Act has been proclaimed?

Mr. Lalchan: Section 36, let me just check that please, Chairman.

Mr. Chairman: That is the section that deals with the published—the requirement for published notices of award of procurement contracts—

Mr. Lalchan: No. That has not been proclaimed. However, I did mention before, Chair, that there are two organizations that off my head I could recall. The Ministry of Labour does it on quarterly basis and SWMCOL does it on a quarterly basis and those are doing it voluntarily.

Mr. Chairman: All right. So basically what you are saying is that you are quite challenged by the absence of the regulations and by the fact that these various sub-components, these various clauses of the Act have not in fact been proclaimed?

Mr. Lalchan: That statement could not be repeated again and again to really tell us that we really need the regulations to give effect to a number of things. And just to go back to a point, Chair, with the \$26 billion. What we have found out based on our research is that the OECD did a research document that mentioned that between 10 and 30 per cent of publicly funded operations, in terms of procurement, is lost through corrupt practices and that was also done by the EU. So at the back of the envelope, if we say 20 per cent of that 26 billion, potentially we can literally be saving on an annual basis, \$5.2 billion, just based on those statistical figures. So, yes, we really need the regulations as quickly as possible and full proclamation.

Mr. Chairman: Sir, you have highlighted in one sentence the reason why I am extremely concerned and we as a Committee are extremely concerned based on the readiness report and based on the fact that we have had quite a bit of time waiting on these regulations. I know one of my colleagues said that four years is not an inordinately long time and I agree with him. It is not a very long time for the creation of this entity but it is a substantial amount of money that could have leaked out at a point in time when this country cannot afford it. Hence the reason why I think the Ministry of Finance really needs to get a little bit more aggressively involved in ensuring that these entities—and I am not too sure I am in full agreement with the Permanent Secretary in terms of not having a role, but the Ministry of Finance is responsible for all accounts of the country, the Government expenditure generally. And therefore, these entities which spend Government money falls directly under the Ministry of Finance so that is why the Ministry of Finance is here today. And therefore, I would appeal to the Ministry of Finance to do whatever is required to ensure that between now—and even if the regulations take a couple of weeks or a couple more months to get—pass through the parliamentary system and to get assented to by the President, that as much can be done between then and now—between now and then to ensure readiness on the part of these 314-plus agencies that have not indicated a desire to bring their accounts to order or to bring their accounts to account.

I am appealing to the Ministry of Finance to put a bit more of an active hand in this to really allow the Office of Procurement Regulation to do what I think it is set up to do and from all accounts, you have done your part. You have put your structures in place but you are waiting on the teeth to ensure that this 5.2—I am very concerned about these kind of figures, at a point in time when we have persons doing without—we have resources collapse, we have various agencies that are unable to get sufficient resources to them.

Chairman, if I may ask one more question—I hear a sigh of relief. In relation to the OPR’s function under section 13(h) of the Act, which is to:

“audit and review the system of procurement and disposal of public property to ensure compliance with the objectives of the Act;”

The OPR stated that:

An audit and investigation team was established and a code of ethics had been developed for public bodies and suppliers.

I am trying to get engaged, Sir, if you can advise, what is the current state of that code of ethics?

Mr. Lalchan: Chair, with your permission, I will ask our Corporate Secretary who spearheaded that part of the drafting and approval of those code of ethics to give an update on where we are with it. I will ask Delrene Liverpool-Young.

Mrs. Liverpool-Young: Good afternoon to members of the Committee and to the Chairman. So we would have drafted two documents. We would have drafted a code of ethics for named procurement officers and public bodies, as well as a code of ethics for suppliers and contractors operating within the procurement framework. Thus far, we would have rolled out the two documents to both suppliers and contractors, as well as public bodies and those sensitization and rollout sessions are on the office’s website.

Mr. Chairman: All right. So that would be the code of ethics as different from a code of conduct, correct?

Mrs. Liverpool-Young: So what we actually call it is a guideline on conduct but—

Mr. Chairman: All right. Okay.

Mrs. Liverpool-Young:—within the document it speaks to ethical principles. So within the document we would touch on concern, for example, areas of conflict of interests.

Mr. Chairman: All right. I want to open the floor to find out if any of my colleagues have any further questions or issues that they would want to raise at this time.

Ms. John: Yes, Chairman, if I may? Thank you.

Mr. Chairman: Thank you, Ms. John.

Ms. John: Yes. I just wanted to know in terms of the—how the, Chairman—through you, how the Chairman is going to kind of consolidate or harmonize the processes with respect to auditing? How are you going to go across—because you have different organizations undertaking different activities, how are you going to harmonize this activity for—well, for your own management as it were?

12.00 noon

Mr. Lalchan: Thank you very much member, through you Chair. What we have done is to look at a risk-based approach in the initial stages to the audit of those organizations. So based on the high-risk, high-value items, you will be prioritizing those as one of the areas of identifying. Some of the larger organizations would require a different approach to auditing, as opposed to some of the smaller organizations.

For example, among the regional corporations we would have a standard approach, because their activities were more or less in line with one another, Regional Health Authority, Ministries. But within the Ministries you would have probably larger Ministries with larger spend and, therefore, those would be prioritized in terms of how we conduct those audits. So it would be based on a risk-based approach to identifying and conducting those audits. We have just completed our audit manual for use, and that would be reflected in the audit manual, how our selection criteria goes in terms of the sample testing for those organizations.

Ms. John: Chairman, one more question please. I am concerned, and I think other members have expressed the same concern, in terms of this level of readiness. Because when you have your regulations assented to, et cetera, now you have some specific timelines. You have said like three months—I do not know if those are in the law, I was just trying to look at it again—with respect to when folks are expected to comply. Currently, you are saying out of hundreds of organizations only two are voluntarily trying to submit their quarterly reports when, more or less, everybody should be trying to comply at this time, so they get used to it, given you are moving from zero to DPP. I think people do not quite understand the seriousness of what is being undertaken, you understand, in terms of getting us in line with—well I guess the value for money test, et cetera.

So, Chairman, is it possible that even at this time when everything looks imminent for a go, that one can send out—I know it is more work on top of work, but I suppose this is to help you, that you do not end up in a mess when you are ready to go to every single organization that you can identify, and kind of look at them and say, “Where are we now? You are here now”, specifically to the organization. You have 10 steps to complete, but of the 10, you have done three. You have six steps to complete, of the 10 you have done six, so you have four outstanding. So that we could give people some— *[Inaudible]*, so they know that already they are being managed and monitored, and you are really getting them ready. It is a long way to get people used to this level of management, especially by an external source.

Now I am not telling you how to do your business, but you say you write to the Minister

who, of course, is the overall head, but is it that you are also writing to what is known as the “accounting officer”, whether they be the PS or the Managing Director or the chairman of the board? Because I think when you are writing relative to the organization everybody with an interest perhaps in law ought to be written to, given the seriousness of this exercise to be undertaken by your board.

Mr. Lalchan: Member, you are quite right, and through you Chair, we do write. For example, if we are sending a note to the main procurement officer, we copy the accounting officer, and if we are sending it to the accounting officer, we copy the main procurement officer. We have had several sessions jointly with the accounting officer and the named procurement officers.

The reason why, and just to elaborate on the seriousness of the matter, once the Central Tenders Board goes away, all the organizations that depended on them to do their procurement activity and their disposal through the Board of Survey and so on, that goes away. If they are not ready to take up the mantle in terms of the procurement by appointing their procurement officers and so on, they would be without any props and, therefore, you can well find some of the procurement activities being stymied. That is what we are trying to avoid by making sure that Central Tenders Board goes away, you have to stand on your own two feet, you need to start thinking about those activities now, not when it happens on full proclamation. So that is the reason why I mentioned the CTB.

Mr. Chairman: Ms. John, any follow-up?

Ms. John: Yes, please, the last one, hold on. I had another question. With respect to the planned procurement activity coming after the budget is read, some folks, I mean, you cannot—a lot of times, not a lot—an organization is dynamic, so you might have the big work that you have planned for, but you will have other works which will maybe come available or come due based on what in contract they call a “forced merger” activity.

I have seen that you have made provision for that, it is there in the law, but in practice certainly—you know sometimes, it is just something you overlooked, or even in the scale of a contract, sometimes you are doing your scope of work and in your investigation you may have missed something, maybe in the soil test, et cetera. Is there provision for that? Is it that the organization would have to come to you in advance, make sure and come to you, to have the approval before they kind of do a variation or things like that?

Mr. Lalchan: No, that is not required. What is required is that once you have the funding and so on to do it, you have to now republish your annual procurement list of activities amended. So once you have a major amendment to your list, you have to republish it, and that is provided for in the main body of the Act.

Ms. John: No, it is not only that, Chairman. I am asking, in terms of a specific piece of work, if when you are doing the work something comes up, because things come up all the time. Meaning as I said, you might test your soil or you are going down and some event may have happened.

I took the time to look at the qualifications of the various members of the board, and I have to congratulate you. You have a well-qualified board also. I mean, with a vast array of experience and qualifications.

But I am just saying, when you start to do this work something will pop up, some area of activity that you had not catered for in your budget, but it is a material issue, where you will have to expend additional funding, that is what I am talking about. This wonderful thing they call “variation in contract”. They come back to you to give an explanation of that? Because this

generally is a work in progress now, the value of the contract is going to go up, but the contract is already awarded so you cannot go back out, because this contract is already assigned. What happens then?

Mr. Lalchan: They do not need to come to the OPR for approval. Within their handbooks and guidelines and our general guidelines there is provision as to how you deal with variation orders, and those would be based on their delegation of authority within the particular institute. For example, if you have delegation that needs to be taken straight up to the board level, the internal delegation of financial authority kicks in, in terms of approval. At the quarter, what we are requiring is that you report on the contract that was awarded, to whom it was awarded, the value of the contract's variation orders and reason for variation orders. So you have to report for that on a quarterly basis.

At the end of the year, you are also required to report against your annual procurement plan, and that report comes to the office in terms of how did you perform against what you said you were going to perform during the year in terms of your annual procurement plan. So we have two bites at the cherry.

Once it comes on a quarterly basis, that report is rolled up and presented to the Speaker of the House, President of the Senate in terms of the quarterly report. The annual report, in terms of the performance against your annual report with these variation orders, is also presented to Parliament. They do not have to seek our permission before, but they have to follow their delegation of authority and their handbooks and guidelines as approved by the OPR. So we approve those handbooks and guidelines. All handbooks and guidelines for the operation of the public bodies have to be approved by the office.

Ms. John: Chairman, just now, I want to follow that too. Chairman, but then I would say a function such as the Chief Construction Officer, to me, is in the line of fire. So I am just saying based on experience, that with respect to a variation that is not something all that substantial, because there will be some that are small, but some that are substantial. Maybe prior to even this, in terms of—instead of after the fact, I think when this thing is discovered, one should, out of an abundance of caution, flag it to the OPR, to say this has happened, this is coming, and so on. So we ensure everybody is on the same page, because this could create no end of difficulty, I believe, for the professionals within that activity.

Mr. Lalchan: A very good point member, and we will take it on board. I will give you an example of something that happened the last week of December. We got a report from one of our state agencies saying that we went out for a tender, the terms of reference were understated. It went through the entire process, they realized that they understated it by a certain magnitude, it was about \$17,000, and they asked for our recommendation in terms of what do we do as best practice.

Based on the information provided, we recommend that the best practice suggests that you go back out and retender the job, because it is something that was not done correctly in the first case.

Ms. John: That was wise Chairman, but you are talking about 17,000, I am telling you sometimes it could be 17 million. You understand?

Mr. Lalchan: Correct.

Ms. John: And one could make the allegation that it was deliberately done to favour someone. So I would say in a case like that, when it is just work sometimes, that one should come to you

before. I think maybe that is something you should consider for your handbook, that depending on the value, that it is brought to your attention and flagged early, not wait until after the fact approach, because I think people could get into trouble with these things.

Mr. Lalchan: We will take that on board. It is a good piece of advice member. Thank you very much.

Ms. John: You are welcome. Thank you, Chairman.

Mr. Chairman: Chairman, section 13(1) of the Act, the Public Procurement and Disposal of Public Property Act, allows the OPR, on in its own initiative, via subsection (n), so that would be subsection (13)(n), to investigate on its own initiative things that—or upon complaint from a member of the public, the things that may have come to their attention that they believe warrants some level of investigation or concern.

Given the issues raised before, so this is outside of whistle-blowing, but has the Commission, has your committee at all engaged in any such initiative? Have you on your own initiative, as the OPR, looked at any situation involving any of these public entities and the expenditure of state funds, because you think that there may be a potential for corruption or something that was not appropriately done? Has the OPR engaged separately, on its own initiative, any such investigation, and would you be in position to share that with us, the findings or would you prefer just to leave it as is, if it is still ongoing?

Mr. Lalchan: The answer is we have not investigated or caused to be investigated, because that part of the Act is not proclaimed. What we have done is that we have started developing files with particular information, and once it falls within our jurisdiction, once the Act is proclaimed, we have the information in a number of files already ready to start those discussions.

Mr. Chairman: Excellent. Any other questions from my colleagues? There being no indication of any such questions, Chairman and other members present, is there anything in addition that you would want to share with this Committee, including maybe your concerns or your recommendations for how we can proceed thereafter, to ensure that some of the serious issues that we have seen so far are addressed properly? I want to leave the floor open to you, Mr. Chairman, and then to the PS.

Mr. Lalchan: Thank you very much. I must say thanks again to the Chairman and the members of the Committee. As I normally close off these sessions when we have it with different agencies and so on, this Act has given the country a really big gift. If we are to make any significant change, we need to get this right, and we solicit the cooperation of everybody who will be looking on in the public domain.

We have to actually give effect to this Act, to leave a legacy for our children and our grandchildren and the generations to come. Somebody has to say in the future, that we did something right, and this is the opportunity to grasp it with both hands and make a big difference in our country, for the future of this country and our generation. So thanks again very much, and I appeal to all members of the public, if you believe that you can assist us in any way, please do not hesitate, come forward.

Mr. Chairman: Thank you, Chairman. Madam Permanent Secretary in the Ministry of Finance, I open the floor to you for closing remarks.

Mrs. Durham-Kissoon: Thank you Chairman for the opportunity. This has been a journey, a very effective journey. The Ministry of Finance has had a very fruitful relationship with the Office of Procurement Regulation and, in particular, the Regulator from the very inception. It has been a

partnership, and the office is I must say a very open and collaborative office. The Regulator and all staff are just a phone call away.

We at the Ministry of Finance we do not often say all that we do, but the Ministry of Finance has been working assiduously to facilitate all that has to be done to make this new procurement regime a reality within the prescripts of the Act. So thank you for the opportunity and thank you for your chairmanship, Mr. Chairman. Thank you.

Mr. Chairman: Thank you. On behalf of the Committee here, I want to thank both organizations for coming, being present here today, both the Ministry of Finance and this Office of Procurement Regulation, for your participation.

We remain extremely concerned by the lack of buy-in by so many of these state bodies, so many of these Government agencies in terms of what the Procurement Regulator has been trying to do, the Office of Procurement Regulation. I commend them on behalf of the Committee. I think we all agree that a substantial amount of work has been done, but we look forward to substantial buy-in from—maybe a little bit more aggression from the Ministry of Finance—to ensure that the possibility and the risk of what we consider to be, as was raised previously, the risk of graft or corruption of an average figure of about \$5.2 billion. That is a substantial amount of money. It is our hope—I am sure it is the national hope—that a lot more will be done very quickly to ensure that the regulations are in place, and that the legislation is fully assented to and implemented.

In that regard, I look forward to seeing both the Ministry of Finance and the Office of Procurement Regulation before us again. Hopefully at that point in time, we will be in a better frame of mind so that we would have a readiness assessment checklist report that says 100 per cent of the persons, of the entities requested information from would have complied and would have been in full compliance with the regulations and the laws governing public procurement.

Again, I thank you all very much, and on behalf of you all and the Committee here I want to thank members of the viewing audience for their presence. Thank you again. Have a good day everyone, be safe.

12.17 p.m.: *Meeting adjourned.*