

STATEMENT
A Highway to Point Fortin
2010-2023

I have been authorized by Cabinet to make the following Statement..

Madam speaker, the national multi-lane, international standard high network dates back to the 60's in the post-independence era in Beetham Port of Spain. This major ambitious infrastructure development was undertaken in stages and in phases over the various decades. In all instances Madam Speaker, these major projects have been advanced through the expenditure of substantial sums of money and usually included a not insignificant portion of many annual development budgets. The process for the construction of this Highway, Madam Speaker

from San Fernando to Pt Fortin was initiated by a previous PNM Government, (the Manning Administration of 2007-2010). The north-south highway artery had reached Golconda by 2010. The next leg was to be onwards from there to Pt Fortin. Finally Point was going to get this highway, its modern day connection to San Fernando.

Madam Speaker, the Pt Fortin highway exercise was initiated through the process of invitation of tenders in early 2010.

However, although tenders were received in April 2010, the contract was not awarded by the PNM prior to the May 24 General Election since the bids received were significantly higher than the engineer's estimate of TTD\$3.6Billion. A proper review and revision was called for and was anticipated. Madam Speaker this did not happen.

On March 4th, 2011, the UNC government, through NIDCO, awarded a Design-Build Contract to a Brazilian firm Construtora OAS SA simply called (“OAS”) for the lump sum of approximately TTD\$5.2Billion. This was \$1.6 billion more than the original engineer’s estimate.

A few weeks after the UNC came into office and met this project on the table for consideration of an award of a contract for continuation of construction, an interested group of known high level Brazilian executives of OAS, flew by Dassault private jet, from Rio de Janeiro Brazil to Durban in South Africa, in pursuit of the said contract. Those executives then travelled by car to Johannesburg for the singular purpose Madam Speaker of meeting a member of the Cabinet of Trinidad and Tobago, a Minister responsible for and involved in the decision of this

project. Madam Speaker this secret meeting between the UNC Minister responsible for the project and the OAS took place at the Michael Angelo Towers in Johannesburg during the FIFA World Cup in South Africa.

No member of the UNC government has ever acknowledged that this meeting took place nor has any one of them ever attempted to explain what was the purpose and outcome of this trans-Atlantic secret meeting on the eve of an award of this multi-billion dollar contract which was hurriedly wrapped up here in Trinidad and Tobago, after the World Cup.

Madam Speaker, this Contract was governed by the FIDIC Yellow Book. One of the major benefits of utilising FIDIC terms and conditions is that, these terms and conditions are standard

and internationally recognised. A party should only, with very good reason, amend the terms and conditions of FIDIC.

Despite this Madam Speaker, the former UNC government, upon initiating the contract, changed the standard and accepted advance payment terms from 10% to 20% of the contract sum. This upward amendment immediately resulted in OAS receiving approximately, TTD\$856million, as opposed to, TTD\$428million as an advance.

Another major issue Madam Speaker at inception was that all payments made to OAS for activities under the Letter of Intent, which totalled TTD\$236.4million, should have been deducted from the Advance Payment. However, these sums were not deducted.

So even before construction began, before the ground was scratched the former government provided OAS with over TTD\$1 Billion of taxpayers' funds.

Madam Speaker, this contract, the project, should have been completed in March 2015. It was a 4 year contract, to provide a 4-lane divided highway with full grade separated Interchanges. It included 8 such Interchanges as well as 8 river bridges. It was far from being completed Madam Speaker when the UNC demitted office in early September 2015. Work had come to a virtual halt and unpaid local contractors were bawling and turning to the new government for help.

Madam Speaker the UNC government chose to pay OAS, and others, via cash transfers from the Ministry of Finance, up to 2014, putting a strain on the country's available cash. This

method of funding of the largest contract ever awarded in this country also ensured that there was to be no oversight in payment and procedure.

Madam Speaker When the PNM came into office in September 2015, over TTD\$5 Billion had already been spent with only 49% of the construction being completed by OAS. This despite the then government officials telling the population, over and over, that it was on budget and on time.

Madam Speaker the contract was in trouble from the start and OAS began to run into serious difficulties early in 2015. They defaulted on paying subcontractors and were late in paying workers. Their difficulties continued with worsening effect and they subsequently demobilised in December 2015, with the site being almost completely abandoned. There were protests by

workers for non-payment of salaries, lawsuits by third parties and repossession of equipment.

Against this backdrop, Madam Speaker the international newsreels confirmed that OAS had filed for Judicial Reorganisation in Brazil on the 31st March, 2015, whereby it sought bankruptcy protection. In law, and under the contract, OAS was considered to be bankrupt from March 31st, 2015.

By March 2015, therefore Madam Speaker, the project was in dire difficulties and the former government should have been pursuing ways and means to terminate the contract with OAS to protect the public interest. Under FIDIC there are various ways to terminate, with varying degrees of complication and potential litigation.

However Madam Speaker, virtually all commercial contracts allow for automatic termination upon a party becoming and declaring bankruptcy. The relevant clause existed in our contract here Madam Speaker. Under the FIDIC contract, the UNC government could have, and was required to immediately invoke Clause 15(2)(e) and terminate OAS on the ground that it was bankrupt. This is probably the simplest and least contentious form of termination under FIDIC and OAS would not have been able to make any justifiable claim against the Government for wrongful termination. The public money and the public interest would have been easily protected.

However Madam Speaker, what was discovered, upon review ,was that, on September 4th, 2015, (that being the last working day before the General Elections of September 7th, 2015,) the

UNC government, rather than use this opportunity to terminate the contract in a clean, cost-effective, responsible and non-contentious manner, secretly entered into a written agreement with OAS whereby the government waived the ability to terminate the contract on the grounds of OAS' bankruptcy. Instead, on September 4th, 2015 the UNC government, reaffirmed in writing, their desire to keep a company that was bankrupt in Brazil, as their preferred contractor for the Point Fortin Highway. Madam Speaker this was done against the advice of NIDCO's consultants.

On September 4th, 2015 the former government entered into a written agreement with OAS called Addendum No. 2 whereby they expressly recognised that OAS was bankrupt, and stated, that they could invoke Clause 15.2(e) of the FIDIC contract

immediately terminating the Contract. However, despite this, they proceeded secretly to give up this right of termination and waived all claims against OAS, thus releasing and discharging OAS from any liability to Trinidad and Tobago. This curious action Madam Speaker paved the way for The Government of Trinidad and Tobago to stand to lose over nine hundred million dollars in bonds that secured the state's interest in the event of bankruptcy of the contractor.

Madam Speaker this action by the UNC government, on the day before a General Election, was very questionable and they have never explained their conduct. Not one of them has ever attempted to provide a plausible explanation as to why they were so generous and protective of a disgraced Brazilian contractor.

Madam Speaker, additionally, they removed from OAS' responsibility, substantial sections of the Highway, with an intention to award the construction of these unbuilt parts of the Highway to other contactors, at an additional cost to the taxpayer. Madam Speaker, they removed 26% of the Highway works, worth \$1.5 billion dollars, from OAS' contract, but surprisingly, still agreed to pay OAS the full \$5 billion for the reduced scope of works that remained with OAS.

Further Madam Speaker, in a curious attempt at what they have described as "**value engineering**", they also removed 4 interchanges and replaced them with roundabouts and reduced 4 lanes to 2 lanes on the Siparia to Mon Desir segment of the Highway. So whilst the value of the product was being significantly reduced by the removal of interchanges and lanes,

the costs were escalating. The estimated cost to complete the Highway was in excess of \$8 billion dollars by the time a new government was elected to office.

Madam Speaker, they also agreed to a new completion date of May 28th, 2016, one year after the original completion date, with no known penalty applied.

To summarise Madam Speaker, on September 4th, 2015 when OAS was in bankruptcy, and was experiencing severe difficulty in meeting its obligations to local suppliers, subcontractors and its workers, rather than terminate OAS, the former government agreed to allow OAS to continue with the contract, for roughly the same sum they were originally contracted for, i.e. \$5Billion. The UNC government went further, and burdened tax payers with the additional expenses of over \$2 billion to pay new

contractors to complete the portion of the Highway excised from OAS' contract.

Madam Speaker, against this background the new PNM government moved to have OAS properly terminated despite all that was done by the UNC to jeopardize the ability of NIDCO to terminate OAS. NIDCO was eventually able to terminate OAS on July 6, 2016, fifteen months after the bankruptcy protection clause was triggered. In the period leading up to this termination, OAS had effectively and openly abandoned the project, it was selling off equipment, it had informed NIDCO that it was scaling down its workforce, workers were protesting for unpaid wages, sub-contractors were claiming hundreds of millions of dollars from OAS, work was not taking place in any meaningful way and OAS and NIDCO had substantial

disagreements as to monies being owed, delays and quality of work.

Madam Speaker, NIDCO terminated OAS based on the advice of the Engineer that OAS was unable to proceed with the works required by the contract. NIDCO immediately commenced drawing down the advance payment and performance securities in the total sum of US\$139,572,877. It is irrefutable that had clause 15.2(e) not been removed, the termination of OAS would have been clean and simple on the basis that OAS was subject to judicial reorganization.

The PNM government took action in Courts in many parts of the world, including the UK and New York, to pursue the various bonds and letters of credit that had been taken out by OAS in favour of NIDCO, to secure the taxpayer's interest. The

Government was able to successfully recover approximately \$970 million via these bonds and letters of credit and we utilized this money in the completion of the Point Fortin Highway.

Madam Speaker We fought for the return of public money. We won in the courts and we built the highway.

Madam Speaker, the indelible and undisputed question remains, what was the benefit to be gained by the people of Trinidad and Tobago by annulling a clause designed to protect us from bankruptcy or judicial management when dealing with a contractor which had gone bankrupt or under judicial management. The question remains, Madam Speaker why? Why the secrecy especially coming from people who now from the Opposition benches want total openness and instant public

accounting and public reporting on any and all events, sometimes even before they occur.

The drawing down on the advance payment and performance securities was met with resistance by some of the institutions that had issued them and by OAS. NIDCO pursued these matters in courts in various jurisdictions abroad. NIDCO was successful by order of the courts, including the Supreme Court of England and Wales. The Court even directed that the money recovered in the interim must only be used to carry on the project.

Madam Speaker, unfortunately, along the way, there was a decision delivered by a tribunal of arbitrators in a London Court of International Arbitration (LCIA), an arbitration matter between OAS and NIDCO on April 16, 2022 that went against

NIDCO. Fortunately we did not give up and NIDCO appealed the arbitration to our High Court and on December 14, 2022 Justice Seepersad upheld NIDCO's argument that the Arbitration Tribunal had gotten it wrong and he set aside the Award issued by the Tribunal and remitted the matter back to the panel for reconsideration. In his judgement Madam Speaker the Judge indicated that NIDCO had properly terminated the contract with OAS.

It was our view that the public needs to know a number of things:-

1. By what process, advice and documentation was it determined that the billion dollar contract must be amended to grant an \$852million waiver to OAS?
2. Who authorized the amendment of the contract?

3. What was the specific purpose and benefit to be had and by whom?
4. Who actually carried out these instructions?
5. What was the role of the Ministry of Works and Transport and the Board of NIDCO, the Consultant and the Management in effecting the amendment and its consequent waiver?

Madam Speaker, with these questions and more, to be answered it follows that the public, through its representatives in this House, must seek and obtain answers from all persons involved or associated with this scandal.

Madam Speaker This is even more necessary since, in recent times, attempts have been made to give opportunity to persons to put misinformation on the Parliamentary record.

Today as I make this statement: a paper entitled “the Saga of the Sir Solomon Hochoy Highway Extension to Point Fortin Project: From 2010 to 2023 - An Account of the Development and Execution of the Largest Infrastructure Development Project Implemented in Trinidad and Tobago” has been laid in this House and referred to the Joint Select Committee on Land and Physical Infrastructure. These documents have been laid for the Committee on Land and Physical Infrastructure for urgent detailed examination.

Madam Speaker I thank you and my colleagues for your attention.