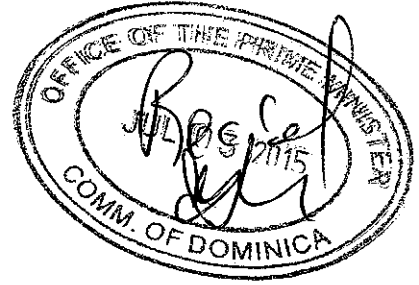


Joint Consultative Committee On the Construction Sector:
Dominica Association of Professional Engineers
Builders and Contractors Association Of Dominica
Dominica Society Of Architects

3rd July 2015

Hon. Roosevelt Skerrit
Prime Minister and Minister of Finance
5th Floor, Financial Centre, Kennedy Avenue, Roseau
Commonwealth of Dominica.



Attn. Mr Steve Ferrol
Cabinet Secretary:

Re: The Public Procurement and Contract Administration Act.
JCCCS Open Letter

Dominica News Online's article of 6th June 2015 under the caption 'Design contract signed for Roseau and Portsmouth upgrade' reports a major public procurement undertaking as follows: "The Government of Dominica and the NSG management and Technical Services Ltd on Friday 5th June 2015, signed, a US\$2.1 million contract for the design of the Roseau and Portsmouth Enhancement Project." It is apparent that this procurement was entered into by a process of direct negotiations.

What is interesting about this procurement event is that it contravened many provisions of an enacted and enforceable public procurement legislation including that:

1. It was not advertised through the designated media (Sec 41), and
2. Opportunities to participate were not given to the wider public (Sec 3, 34).

As a result,

- Consulting professionals in the local Architectural and Engineering disciplines have been shut out of an opportunity for work in a very difficult economic environment.
- The Government of Dominica did not allow itself, and the country by extension, to have the opportunity to receive expressions of interest including diverse technical proposals and offers from a varied range of technical professions, including consortia of local and international experts, from which the economically best technical solution could be obtained.
- The government and therefore taxpayers have lost an opportunity to get the best value from the market of competent technical professionals.

It must be noted that this is not the first or only procurement event which contravenes the provisions of the current legislation.

Since the coming into force on the 21st January 2015 of the Public Procurement and Contract Administration Act, no. 11 of 2012, very little public procurement has complied with the provisions of the Act. In fact, if anything, it appears that the government of the Commonwealth of Dominica has exhibited an utter disregard to the provisions of the Act in every possible area.

The Joint Consultative Committee on the Construction Sector (JCCCS) view this matter as a matter of grave concern with regard to the rule of law and justice in this state.

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Re: The Public Procurement and Contract Administration Act.

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It may be recalled that there were several attempts by both the Dominica Association of Professional Engineers (DAPE) and the Builders and Contractors Association of Dominica (BCAD) to collaborate with the public sector on the implementation of the Act since 2013. Despite several private sector calls to dialogue, training and consultations, the public sector never accommodated any of the private sector's many requests between the passage of the Act and the date of its coming into force two years later. We also requested collaboration in drawing up of the regulations and have requested draft regulations on several occasions, but to no avail.

While we understand that there may be difficulties with the implementation of the Act in some areas, it is very disturbing that our government, who enacted the Act at the end of 2012 after about 3 years of drafting, and two years of post-enactment for implementation, could so callously disregard the provisions of law in the country. Further, it has so far failed to give a hearing to sections of the private sector which continue to have concerns about the Act itself, and the lack of regulations to govern its implementation.

We note the Prime Minister's announcement that a consultant, hired to draft the regulations governing the Act, had found seemingly critical issues in the legislation that precluded the drafting of suitable regulations. Since we are not privy to the consultant's submission, we are not in a position to offer any comments on the findings. However, we believe that it is imperative that there is some further public disclosure and consultation on the present situation.

There are many provisions in the current legislation that we would want to remain, or be enhanced, given that they speak quite loudly to achieving the laudable purposes to the Act set out under Section 3, (a) to (i). Of prime concern to us is the realisation of transparency, competition, greater public participation, increased public confidence, fair and equitable treatment of those who participate in public procurement, and obtaining best value for taxpayers. Some of these provisions include:

- The efficiency with which the current Act, even with shortcomings, regularises the procurement process, making the open procurement process the norm and providing clear means for restricted procurement when the open procurement method is not appropriate or possible in the circumstance (Sec 33-40).
- Provision for development of lists under Section 10 to enable invitation of persons and entities for restricted procurement.
- The clarity of procedure with which awards are to be made (Sec 53-61).

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Notwithstanding, we too had had some issues with the present legislations which we, through two of our member organisations, had brought to the attention of the Ministry of Finance and the Members of Parliament up to the final reading of the bill. Some of these include:

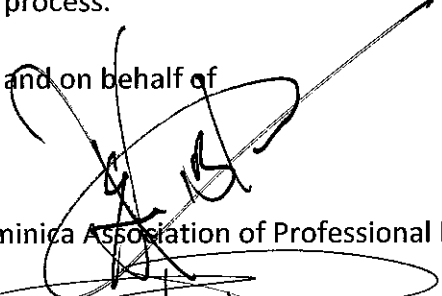
- the lack of provisions for advertising procurement activities in local print (Sec 41),
- the lack of provisions for dealing with bidder initiated procurement procedures and private-public partnerships in public procurement,
- Tightening up of provisions under Part V – Procurement Procedures - to ensure competition (Sec 33-40).
- An over generous list of areas exempted under the Act (Sec 21),
- Clear referencing errors in the Act.

We therefore attached these concerns for your consideration as a subject for further consultation, along with the areas which we desire to remain as part of the legislation.

We therefore once again requested broad private sector consultation on the proposed amendment to public procurement legislation, including the proposed regulations, in a timely way and manner that will allow the consultative process to be meaningful and beneficial to the country as a whole.

At a budget review meeting on the 29th May 2015 with a grouping of private sector representatives, it was indicated that the first draft of the revised Act and regulations would be submitted in June 2015. Given that, we further request that these drafts be made available to us for initial review before the commencement of consultation. We would encourage the highlighting of the changes proposed by the consultant as well as the rationale for these changes. We strongly suggest that this consultation begin as early as possible, preferably in July 2015, and we will therefore make available representatives from the JCCCS to participate in the process.

For and on behalf of



Dominica Association of Professional Engineers



Builders and Contractors Association of Dominica



Dominica Society of Architects.

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