

Thursday, 7th December 2017

Is The Government Averse To Working In A Structured Way With The Local Private Sector?

By letter dated 28th November 2017¹, the Builders and Contractors Association of Dominica (BCAD) wrote to the Hon Prime Minister, through the Cabinet Secretary, to record its concerns about a procurement and contract award event reported in the press². By this letter, we requested an urgent audience with the Prime Minister to “*discuss our concerns, to help us understand the situation surrounding the procurement event and award of contract referred to above, and to further discuss and finalise the mode by which the local sector is engaged in the rebuilding of Dominica, not just after the ravages of Hurricane Maria, but collaboratively in setting the foundation to building a more resilient nation.*”

We have had no response to our letter or request for a meeting, despite our follow-up with three emails on 29th, 30th November and 1st December 2017, and via *WhatsApp* messenger on 1st December 2017. Regrettably, the lack of response to organised private sector efforts to engage the Government on issues of concern and national importance has become this Administration’s *modus operandi* over the years. The Dominica Business Forum (DBF) reported in its 23rd November 2017 press conference that it had not received any response from its letters and proposals to the Government, including its position paper of 30th October 2017. There has been no change since – the DBF has still not received any subsequent response. There is on record several other times when the DBF’s or its constituent members’ request for dialogue or consultation on matters of concern have not been responded to by the Government.

Why is the Administration ignoring legitimate concerns of the private sector?

What Are The Private Sector’s Concerns With The Award Of The Contract? The Issues At Hand.

In the reported award of a major housing contract by the Government, the Builders and Contractors Association (BCAD) and indeed the Engineers, Architects and the wider DBF are concerned about:

1. *Absence of Local Opportunity*: That, notwithstanding BCAD’s and JCCCS’ efforts³ over the last two and a half years to engage and collaborate with the

¹ Attached for reference

² Barbadian Firm Lands Major Contract in Dominica, Dominica News Online (DNO) an article dated 24th November 2017; Maloney Lands major Dominica contract, Barbados Today (Barbados today.bb) 23rd November 2017.

³ We note and refer to our letters of 15th June 2015, 22nd September 2015, Governments’ letter of 6th January 2016, our letter of 1st February 2016, our meeting of 4th April 2016, our pre-budget presentation of 28th June 2017, and our appendix dated 18th October 2017 to DBF position paper of 30th October 2017.

Government of Dominica on delivery of housing, the local construction sector was not contacted or given an opportunity to be engaged in delivery of housing post-Tropical Storm Erika, and now post-Hurricane Maria.

2. *Small Housing Contractors Deprived of Work*: That, having acknowledged that housing construction is the backbone of the construction sector as well as the daily bread and butter of the vast majority of our construction workers, smaller builders and contractors, draftsmen, and even architects and engineers, this reported contract award does not seem to lend itself to providing opportunities for small contractors and the smaller construction professionals. We are further concerned that, as with the post-Erika housing programmes, efforts to harness resources and opportunities to encourage a structured growth of the sub-sector in order to prepare the sector to export resilient housing construction in the region are not being given sufficient consideration.
3. *Downstream Private Sector Businesses deprived of work and opportunity*: Given that the available information suggests that the majority of the building elements normally procured and constructed here from local suppliers is being imported as precast concrete floors, walls, roofs, etc., we are concerned that there will be little opportunity for local value added or trade by downstream local businesses such as hardware stores, aggregate suppliers, etc. This concern is even more acute given the significant loss in employment post-Hurricane Maria, and possible evolving in even further loss of jobs. The Government appears to have failed to use construction as a tool under this major procurement event to create employment and boost the economy in this critical period in our history.
4. *Construction Sector Deprived of Structured Training*: That the public sector housing programmes remains a vast untapped opportunity to provide urgently needed training and competency certification of not only construction employees, but also other persons and the youth, in an area which would greatly alleviate the increased unemployment situation created by the destruction and looting in the wake of Hurricane Maria.
5. *Transparency & Procurement Economy*: That it appears that Government efforts to seek housing solution for as many as 1000 houses did not involve any transparent or open procurement method, as is required by current laws, that would seek to maximise the use of scarce resources, encourage competition, and provide an opportunity to a broad cross-section of the business community to provide these services to the State.

The Engineers, Architects, Builders and Contractors, and the rest of the private sector firms have no difficulty in having any Barbadian, Caribbean or other non-national firm obtaining work in Dominica in a fair and transparent way. The records show that we continually embrace the opportunity for partnerships and collaborations with

these firms even when the Government has not given us the opportunity to initiate these alliances.

Why is the Government so averse to Transparency and Economy in the Public Procurement? Is CREAD a Fake Transparency Body?

The Construction Sector led the way in requiring transparency in public procurement for many years now, the merits of which the rest of the private sector has now begun to acknowledge.

Two major reasons have been repeatedly put forward by the current Administration as reasons why it cannot implement the machinery under the Public Procurement Act:

1. It would deprive small local private sector firms opportunity for access to government work.
2. The machinery under the procurement Act (PPCA Act #11 of 2012) is too costly.

If the Government is sincere about 1 above,

- a) Why has it not implemented the sections under the procurement act (section 10, 40) that would give small private firms and contractors a fair deal?
- b) Why, since Tropical Storm Erika has the government's procurement process for housing been aimed at taking away the bread and butter from our construction workers, small contractors, hardware stores and suppliers of local building materials?
- c) Why is that laudable goal under section 3 (d) of the Act set aside and abandoned: *"to foster and encourage broad participation in the procurement proceedings by persons in Dominica"*?

It is our view that the procurement effort under scrutiny which culminated in the award of a major contract for housing to a Barbadian firm, does nothing to protect or secure the interest of any construction worker, small contractor, engineer, architect or private sector firm in Dominica in a dignified way.

With respect to the cost of operating a procurement unit and machinery under the current procurement act (PPCA Act #11 of 2012) we note and refer to an article dated 22nd November 2017 on DNO⁴ in which the Prime Minister indicated that an executing agency called *CREAD* will be formed to *"coordinate reconstruction"* to *"the highest level of transparency and accountability ... as Dominica reconstructs ... after the ravages of Hurricane Maria"*. We are first concerned that in the wake of this pronouncement, the government seems to have ushered in a remarkable failure of

⁴ PM Skerrit highlights transparency as Dominica recovers from Maria, DNO, 22 Nov 2017.

a procurement event that did not seem to lend to this desirable level of accountability and transparency.

But our concern is also about the cost of operating of CREAD – EC\$ 3.5 million per year. Is this cost significantly above the projected cost of the machinery required to implement the Procurement Act? Is the purported benefit of a fly-by-night creature (CREAD) so much greater than the mechanism of Public Procurement Act, enacted by the laudable efforts of our honourable members of parliament for the benefit of the populace, that the Government sets the act aside for CREAD?

As early as June 2015, the Government indicated that it had a draft bill to replace what is claimed to be a cumbersome and expensive 2012 procurement Act. Why is it that in December 2017 the replacement bill has not yet been tabled in Parliament? Why is it that the draft bill is yet to be made available to the public for scrutiny?

The Private Sector is of the firm opinion that the issues have nothing to do with cost of implementation of the provisions under the act or providing opportunities for small local private sector firms and individuals. Rather the motives are far removed from these realities.

The credibility of the reasons put forward for the creation of CREAD is therefore extremely wanting. We are concerned that it is no more than a fake transparency body meant to suck out our scare resources and provide a platform to enable and justify less honourable activities.

We are Concerned about the Implications of the Tardiness of the High Court.

The High Court is the natural avenue to seek redress when there is a major issue between the Administrative Arm of government and its citizens. However, the confidence in the judicial system can be rapidly eroded when citizens do not perceive that the High Court provides a timely solution to matters of concern. This perception lends itself to settling matters by alternative means, and anarchy is afforded an opportunity to take centre stage.

The Constituent Members of the JCCCS made an application on 22nd June 2016 for a Judicial Review of a matter of public interest. The Court delayed in hearing the matter until 3rd October 2016. All written submissions on the matter were presented to the court between 2nd and 9th December 2016. Yet, a year later, the High Court has not seen it necessary to give a judgement on the matter. This tardiness of the Court in this situation is of even greater concern when one takes into consideration that :

1. The Judgement that the Court has to give is essentially permitting the Construction Sector to proceed with, or not to proceed, with the case,
2. That the works under Contract Award challenged, one of the subjects of the application, was allowed to be completed before the court made this ruling, and

3. The other subject of the application, the enforcement of the Public Procurement and Administration Act, #11 of 2012, is the reason why we are here today.

The JCCCS led by BCAD has asked its attorneys to write to the Honourable Chief Justice of the Eastern Caribbean Supreme Court, Dame Janice M. Pereira, DBE, on the matter.

Had the High Court given timely ruling,

1. we would not be discussing the Administration's right to implement an administrative repeal of an act of parliament,
2. transparency, financial management and accountability⁵ in public procurement and project implementation would likely not be as acute an issue.

It is of major concern therefore if citizens do not have timely rulings from the High Court in Dominica on applications to review the processes by which the Administrative arm of Government has undertaken any matter. There is a real concern that the judicial system available to citizens is impotent in as far as its ability to undertake judicial reviews in a reasonable timeframe given the exigencies of situations. Information suggests that in the past, judicial reviews were heard within a few days of the applications. One may not be unjustified in saying that there is very little recourse to justice in these matters if access to justice is so long delayed.

The Private Sector cannot take the matter to the High Court for redress; we have already done so but the court appears to have unreasonably delayed justice. The private sector therefore is, and for that matter the taxpayers as well are, left to consider other alternative options to resolve the issues surrounding public procurement such as inefficiency in the use of public funds, accountability, broad opportunity for participation and fairness, and transparency.

***Builders and Contractors Association of Dominica
Joint Consultative Council on the Construction Sector
Dominica Business Forum***

Roseau, 7 Dec 2017

⁵ PM Skerrit highlights transparency as Dominica recovers from Maria, DNO, 22 Nov 2017.