

**OFFICE OF THE CONTRACTOR-GENERAL OF  
JAMAICA**

**Report of Special Investigation**

**Concerning the Allegation of the Award of Contracts to be Performed in the North  
East St. Catherine Constituency by the National Works Agency (NWA) and Rural  
Agricultural Development Authority (RADA)**

**Ministry of Transport and Works and the Ministry of Agriculture and Fisheries**

## **INTRODUCTION**

The Office of the Contractor-General (OCG), acting on behalf of the Contractor General, and pursuant, particularly, to Sections 4, 15, and 16 of the Contractor General Act (1983), commenced an Investigation into the allegations concerning the award of certain contracts by the National Works Agency (NWA) and the Rural Agricultural Development Authority (RADA) in the North East St. Catherine Constituency.

The referenced Investigation was commenced on 2009 June 15 and was guided, in part, by the receipt of a letter, which was dated 2009 June 12, from the People's National Party (PNP). The letter from the PNP was received by the OCG on 2009 July 15.

The referenced letter was addressed to Bishop Herro Blair, the Political Ombudsman and was copied to the Contractor General.

One of the issues which was raised in the letter from the PNP related to the “...*procurement of contractual services by the NWA and RADA within the last several weeks...*” and the confirmation of whether or not the said “*services*” were “*properly procured*”.

Having regard to the content of the letter, the OCG responded in writing to Mrs. Angela Brown-Burke, the signatory of the letter and the PNP Vice President and Campaign Manager for the North-East St. Catherine By-Election, on 2009 June 15.

The OCG's letter was also copied and sent via fax to Bishop Herro Blair, the Political Ombudsman. The full text of the OCG's letter is reproduced hereunder as follows:

*"June 15, 2009*

*Mrs. Angela Brown-Burke  
Vice President and Campaign Manager – NE St. Catherine By-Election  
People's National Party  
People's National Party Headquarters  
89 Old Hope Road  
Kingston 6*

*Dear Mrs. Brown-Burke:*

*Re: Concerns Regarding the Comingling of State Funds with Political Campaigning in North East (NE) St. Catherine*

*We write with reference to your letter of the 12<sup>th</sup> instant, in the captioned regard, which was directed to Bishop Herro Blair, the Political Ombudsman. Your letter, which was copied to the Office of the Contractor General (OCG), was faxed to and received by the OCG at 9:29 AM this morning.*

*You have raised a number of issues in your letter for address. One of the issues relates to the "procurement of contractual services by the NWA and RADA within the last several weeks" to confirm whether or not the said "services" were "properly procured".*

*In keeping with its mandate under Section 4 (1) of the Contractor General Act, this will advise that the OCG will take the requisite steps to ascertain the following:*

- 1. The material particulars of any Government contracts which may have been awarded by the NWA and RADA for the procurement of works to be performed in NE St. Catherine or for the supply of services or goods therein;*
- 2. Whether such contracts were awarded in compliance with the provisions of the Contractor General Act and applicable Government procurement procedures;*

*The OCG's enquiry will be confined to contracts which were awarded between January 1 and June 12, 2009.*

*By way of copy of this letter to the Political Ombudsman, I will so advise.*

*Respectfully yours,*

*Greg Christie*

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*Greg Christie  
Contractor General*

*Copy: Bishop Herro Blair, Political Ombudsman"*

Consequently, by way of letters which were dated 2009 June 16, written OCG statutory requisitions were directed to the following persons:

1. Dr. Alwin Hales, Permanent Secretary, Ministry of Transport and Works and the Government Accounting Officer for the National Works Agency (NWA);
2. Mr. Donovan Stanberry, Permanent Secretary, Ministry of Agriculture and Fisheries and the Government Accounting Officer for the Rural Agricultural Development Authority (RADA).

The written requisitions required that the OCG be furnished, *inter alia*, with full particulars of all contracts which had been awarded by the National Works Agency (NWA) and the Rural Agricultural Development Authority (RADA) to any Contractor during the period of 2009 January 1 to 2009 June 12, where any such contract was and/or is to be performed primarily in the North East St. Catherine Constituency.

The written requisitions were issued, *inter alia*, pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act and required that respondents provide accurate and truthful responses to the OCG, and have same sworn before a Justice of the Peace.

The OCG considered the referenced procedure to be necessary in order to secure the integrity and evidentiary cogency of the information which was to be elicited from respondents. The implications of the subject requirements also served to place significant gravity upon the responses as well as upon the supporting documents which were required to be provided by the respondents.

## **FINDINGS**

### **Response from RADA**

The sworn and written response of the Chief Executive Officer of RADA, Mr. Al Powell, which was dated 2009 July 27, revealed that two contracts were “...carried out in N.E. St. Catherine during the period in question, valuing a total of \$3,085,000.00...”

The letter from Mr. Al Powell, also indicated that:

*“It should be mentioned that although we have a responsibility to ensure that farm roads are properly maintained to support agricultural production, RADA does not have the technical competence to deal with road contracts and repairs. The practice is to ask the National Works Agency (NWA) or the Parish Council to deal with the road repairs.*

*Usually we would advance funds to the Parish Council or NWA with the understanding that they would undertake the procurement process and carry out the work consistent with Government procurement guidelines. Bills are then returned to the office in order to clear the remittance.”*

By way of a Microsoft Excel Spreadsheet, which was submitted to the OCG, under cover of the letter from Mr. Al Powell, it was indicated that three (3) contracts were reported as having been awarded by RADA and/or by the St. Catherine Parish Council, for and on behalf of RADA, during the period of 2009 January 1 to 2009 June 12.

The aggregated value of the three (3) works contracts, which were awarded by RADA and/or by the St. Catherine Parish Council, for and on behalf of RADA, and as reported to the OCG, was J\$3,085,000.

In each instance, the contracts were awarded using the Sole Source Methodology and were all below the J\$3 million threshold. Consequently, according to the Revised Handbook of Public Sector Procurement Procedures, the contract awards did not require prior written approval from the National Contracts Commission (NCC).

The summary particulars of the three (3) contracts which were awarded by RADA and/or by the St. Catherine Parish Council, for and on behalf of RADA, are as follows:

1. *“Repair of Area Extension Office at Pear Tree Grove”* – awarded on 2009 February 23, in the sum of J\$85,000.00;
2. *“Road Restoration- Johncrow Spring to Top Mountain – Cleaning and surface”* – awarded on 2009 May 15, in the sum of J\$509,900.00
3. *“Road Restoration- Johncrow Spring to Top Mountain complete repairs”* – awarded on 2009 May 21 in the sum of J\$2,490,100.00

In a Report to Mr. Al Powell, the Chief Executive Officer of RADA, from Mr. Everton Ricketts, the Assistant Superintendent, Road and Works, St. Catherine Parish Council, which was dated 2009 June 27, regarding the *“Work carried out on the Johncrow Spring to Top Mountain Farm Road”*, it was revealed that:

*“The total amount spent on this road was three million dollars (\$ 3,000,000.00)... The method of selecting the contractor for this project was done by **Sole Sourcing**. This method was chosen to expedite the repairs to this road which was heavily scoured in many areas. This condition made it difficult to traverse and had to be remedied in the shortest possible time.”<sup>1</sup>*

All three (3) contracts were fully executed and completed by 2009 June 5 and the relevant Contractors were found to have been duly registered with the NCC at the time that the contracts were awarded. (See Table 1 on Page 16).

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<sup>1</sup> Report from Mr. Everton Ricketts to Mr. Al Powell re: Work carried out on the Johncrow Spring to Top Mountain Farm Road.

It must be noted that Section S-2040 (D) and (E) of the Revised Handbook of Public Sector Procurement Procedures, provides as follows:

**“D. SOLE SOURCE**

*Sole Source means there is only one provider of the particular good, service or work.*

*Use of this method may be justified when:*

- i. The procurement is of a “sensitive” nature.*
- ii. A procuring entity receives an unsolicited proposal that it considers meritorious.*
- iii. A particular supplier or contractor has exclusive rights in respect of goods, services or work.*
- iv. Standardizing equipment available only from a single proprietary source; i.e. the procuring entity has procured goods, equipment or technology from a supplier or contractor and additional supply must be procured from that supplier or contractor for reason of standardization (follow-on procurement).*
- v. For the purposes of research, experiment, study or development.*

**E. DIRECT CONTRACTING**

*Direct contracting means only one contractor is invited to participate. Use of this method may be justified when:*

- i. In response to a catastrophic event, making it impractical to use other methods of procurement because of the time involved in using those methods.*

ii. *For the purposes of research, experiment, study or development.*

iii. *In emergency circumstances.*

***The Head of the Procuring Entity may approve sole source/direct contracting up to J\$3M. Contract values above this threshold will require the pre-approval of the NCC.***

***Procurement by sole source or direct contracting methods must be justified according to the terms above. The justification must form part of the record of the procurement.”<sup>2</sup>***

It must be noted that of the three (3) contracts which were reported to the OCG, by RADA, one (1) was approved by the Parish Manager and the remaining two (2) contracts were approved by the Secretary Manager of the St. Catherine Parish Council.

It must be highlighted that Section S-1020 (B) – 5 of the Revised Handbook of Public Sector Procurement Procedures, provides that:

*“5. Accounting Officers*

*Pursuant to the Financial Administration and Audit Act, Accounting Officers are accountable to the Minister of Finance for the propriety of procurement expenditure affected by their portfolio entities. Accounting Officers are advised that unless prior written permission is received from the Ministry of Finance, strict compliance with the procedures contained in this Handbook shall be enforced. Non-adherence will be addressed in accordance with the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Public Service Regulations.”*

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<sup>2</sup> Section S-2040 (E) of the Revised Handbook of Public Sector Procurement Procedures.

Additionally, Section 16 (2) of the Financial Administration and Audit Act states, *inter alia*, that:

*“An accounting officer shall be responsible for the financial administration of the department specified in the designation under subsection (1) and shall be accountable to the Minister for (a) the assessment and collection of, and accounting for, all the moneys lawfully receivable by his department ... (and) (c) making any payment required to be made in relation to such appropriation.”*

### **Response from the MTW**

In his sworn and written response to the OCG, which was dated 2009 July 14, Dr. Alwin Hales, the Permanent Secretary in the Ministry of Transport and Works, indicated as follows:

*“1.1 As outlined in **Appendix 1** the following five (5) Civil Works Contracts were awarded in the Constituency of North Eastern St. Catherine by the National Works Agency (NWA) during the period January 1, 2009 to June 12, 2009:*

- 1. Construction of R/R Wall (Williamsfield – Glengoffe)*
- 2. Patching of Roadway & Cleaning and Bushing of side drains (Cheesefield Road)*
- 3. Drain Cleaning (Natural Bridge Area)*
- 4. Construction of R/R Wall (Troja-Sports Park) Bagbie*
- 5. Construction of R/R Wall & Laying of Plastic Pipe (Williamsfield Glengoffe)*

*1.2 The Table below list the documents contained in **Appendix 2 – 6** as supporting documentation to the award of the five (5) contracts in **Appendix 1.**”*

<b>“Appendix No.</b>	<b>Contract Description</b>	<b>Description of Documents</b>
<b>2</b>	<b>Construction of R/R Wall(Williamsfield – Glengoffe) \$2,315,650.00</b>	<ul style="list-style-type: none"> <li>• <i>Contract Agreement dated March 9, 2009</i></li> <li>• <i>Memorandum dated February 19, 2009 from Mr. Douglas Moodie, Parish Manager to Milton Hodelin, Chief Executive Officer (CEO) with the justification for the emergency works and the approval from the CEO dated February 20, 2009</i></li> <li>• <i>Transmittal Form Approved by Mr. Milton Hodelin, CEO March 31, 2009</i></li> </ul>
<b>3</b>	<b>Patching of Roadway &amp; Cleaning and Bushing of side drains (Cheesefield Road) \$6,229,674.00</b>	<ul style="list-style-type: none"> <li>• <i>Contract Agreement dated March 10, 2009</i></li> <li>• <i>Invitation to Tender Notice</i></li> <li>• <i>The Transmittal Form duly approved by Mr. Milton Hodelin, CEO March 16, 2009</i></li> <li>• <i>Report on Quotations received on February 16, 2009 and submitted to the Procurement Committee of the NWA</i></li> </ul>
<b>4</b>	<b>Drain Cleaning (Natural Bridge Area) \$2,495,000.00</b>	<ul style="list-style-type: none"> <li>• <i>Contract Agreement dated June 1, 2009</i></li> <li>• <i>Submission of before and after pictures of the work areas</i></li> <li>• <i>Transmittal Form duly approved by Mr. Patrick Wong, CEO June 15, 2009</i></li> </ul>
<b>5</b>	<b>Construction of R/R Wall (Troja-Sports Park) at Bagbie \$849,271.50</b>	<ul style="list-style-type: none"> <li>• <i>Contract Agreement dated June 4, 2009</i></li> <li>• <i>Transmittal Form duly authorized by Mr. Earl Patterson, Snr. Director June 3, 2009</i></li> <li>• <i>Invitation to Tender Notice</i></li> <li>• <i>Report on Quotations received on May 27, 2009 and submitted to the Procurement Committee of NWA</i></li> </ul>
<b>6</b>	<b>Construction of R/R Wall &amp; Laying of Plastic Pipe (Williamsfield Glengoffe) \$3,650,117.35</b>	<ul style="list-style-type: none"> <li>• <i>Contract Agreement dated June 4, 2009</i></li> <li>• <i>Transmittal Form approved by Mr. Earl Patterson, Snr. Director June 3, 2009</i></li> <li>• <i>Report on Quotations received on May 27, 2009 and submitted to the Procurement Committee of NWA”</i></li> </ul>

As it pertains to any other information which could have been considered useful to the Investigation, Dr. Hales indicated the following to the OCG:

*“2.1 As can be seen from **Appendices 2, 3, 5 and 6** the four (4) contracts were funded from the **Constituency Development Fund (CDF)**. However the policy of this Ministry is to partner with the private and public sectors in the financing of roads works in order to carry out more repairs with the limited financial resources. In this regard there is a programme called **CDF Matching Funds** where the Members of Parliament contribute to the repair of the roads in their areas by sharing the cost of the repair with the Ministry. The Member of Parliament of North Eastern St. Catherine therefore provided \$6.7 Million out of the total cost of \$13.04 Million for the financing of the four (4) contracts.*

*2.2 The Ministry has been having discussions with the National Works Agency (NWA) to arrive at an appropriate protocol for the implementation of the Revised Government of Jamaica Handbook of Public Sector Procurement Procedures, especially as it relates to the Award of Contracts for Emergency Works.”*

All five (5) contracts were fully executed and completed by 2009 June 24 and the relevant Contractors were found to have been duly registered with the NCC at the time that the contracts were awarded. (See **Table 1 on Page 16**).

### **Relevant Provisions of the Public Sector Procurement Regulations (2008)**

It is instructive to note the following provisions of Sections 7, 8, 39 and 40 of the Public Sector Procurement Regulations (2008), which are used in conjunction with the Revised Handbook of Public Sector Procurement Procedures and which are applicable to any breach of the said Procurement Guidelines.

Section 7 of the Public Sector Procurement Regulations (2008) provides that:

*“Tender Proceedings for prospective government contracts shall be conducted according to the procedures outlined in the Handbook, as amended from time to time, and more particularly for the purposes of these Regulations the procedures as regards –*

- (a) invitations to tender;*
- (b) qualification of suppliers;*
- (c) requirements for the publicizing of bid Opportunities and Contracts;*
- (d) receipt and opening of bids;*
- (e) bid validity; and*
- (f) bid evaluation.”*

Section 8 of the Public Sector Procurement Regulations (2008) provides that:

*“ (1) The purpose of this Part is to establish the structure and content of contracts for the procurement of general services, goods and works in the public sector; and such procedures apply to all such procurement of general services, goods and works.*

*(2) The following procurement methods apply to procurement of general services, goods and works –*

- (a) open tendering (the default method);*
- (b) selective tendering;*
- (c) limited tendering; and*
- (d) direct contracting or sole source.*

*(3) Each method shall be utilized in accordance with the thresholds and established criteria through circulars by the Ministry responsible for Finance and as prescribed in the Handbook.”*

Section 39 of the Public Sector Procurement Regulations 2008 provides that:

*“A person who -*

- (a) contravenes any provision of these Regulations;*
- (b) aids, abets, counsels or procures the contravention of any such provision;*
- (c) is knowingly involved in or is a party to any such contravention;*
- (d) conspires with any other person to contravene any such provision,*  
*is liable in damages for any loss caused to any other person by such conduct.*

Section 40 of the Public Sector Procurement Regulations 2008 provides, *inter alia*, that:

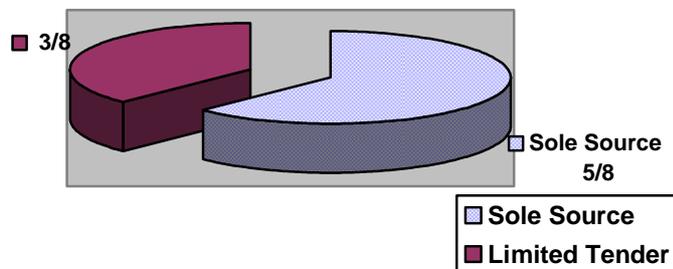
*“A person who -*

- (a) contravenes these Regulations; or*
- (b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate’s Court, **to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both...**”*

### Further Analysis of the RADA and NWA Contract Award Particulars

The sworn and documented information that was furnished to the OCG, in response to its formal statutory requisitions, reveals that a total of eight (8) works contracts were awarded by the NWA, RADA and/or by the St. Catherine Parish Council, on behalf of RADA, for the period of 2009 January 1 to 2009 June 12. The eight (8) works contracts had an aggregated total value of J\$18,624,712.85. (See Table 1 on Page 16).

#### Procurement Methodology Employed:



Of the eight (8) works contracts which were awarded during the period which is under review, three (3) of the contracts were awarded via the Limited Tender Methodology and the remaining five (5) contracts were awarded via the Sole Source methodology.

The three (3) contracts which were awarded via the Limited Tender Methodology were awarded by the NWA. It was also reported to the OCG that the tenders for the three (3) contracts which were awarded via the Limited Tender Methodology were invited between the following periods, respectively:

1. Patching of Roadway & Cleaning and bushing of side drains (Cheesefield Road)- invited between the period of 2009 February 2 and 2009 February 16;
2. Construction of R/R Wall (Troja-Sports Park) @ Bagbie – invited between the period of 2009 May 9 and 2009 May 27;

3. Construction of R/R Wall & Laying of Plastic Pipe (Williamsfield - Glengoffe) – invited between the period of 2009 May 21 and 2009 May 27.

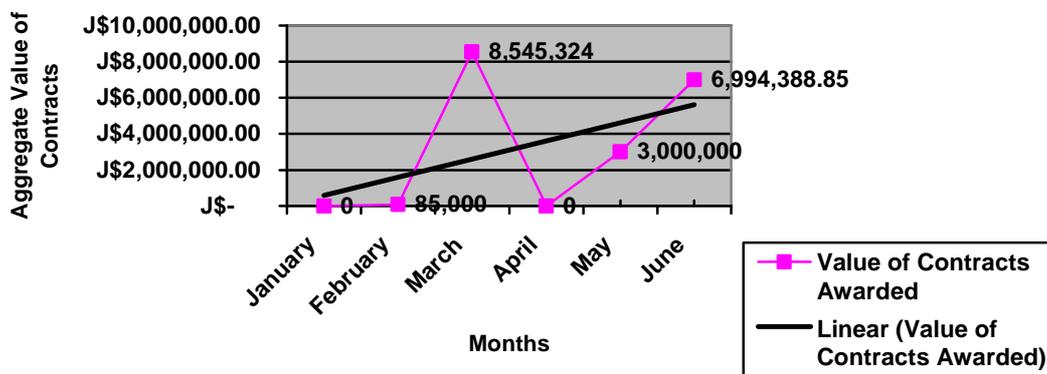
With regard to the three (3) contracts which were awarded via the Limited Tender Methodology, it was further reported on the Spreadsheet, that was provided by the Ministry of Transport & Works, that the NWA had invited the requisite minimum of three (3) quotations that are needed to fulfil the requirements of the **Ministry of Finance and the Public Service’s Circular No. 38 “Re: Increased Approval Thresholds for Public Sector Procurement”, which is dated 2008 October 31.**

The Ministry of Finance and the Public Service’s Circular No. 38 provides, *inter alia*, as follows:

**“Limited Tendering**

*The Head of Procuring Entity may approve the use of the limited tender method for contract values up to J\$10,000,000.00. All contracts above this threshold will require the prior written approval of the National Contracts Commission (NCC). The request for permission to utilize the limited tender methodology must include the selection of a minimum of three (3) contractors and the criteria for selection.”<sup>3</sup>*

**Contract Award by Month and Aggregated Value ( \$ )**



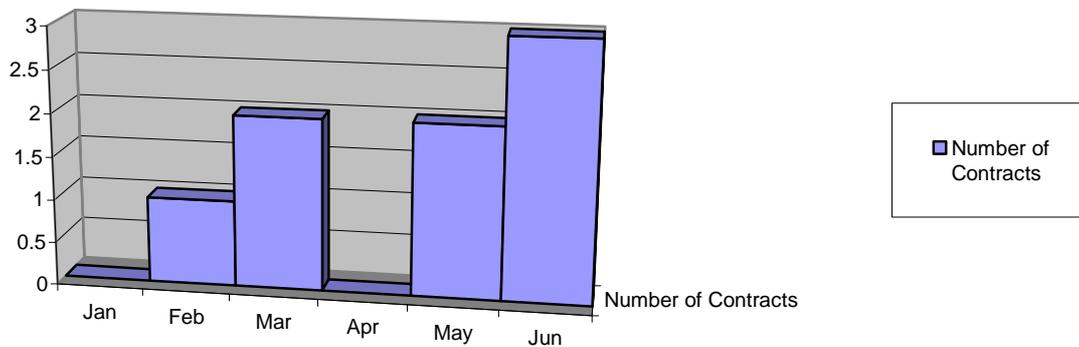
<sup>3</sup> Circular No. 38 – Re: Increased Approval Thresholds for Public Sector Procurement

The table below details the particulars of the contracts which were awarded for each month during the period of 2009 January 1 to 2009 June 12:

Table 1 – List of Contracts Awarded for the Period of 2009 January 1 to 2009 June 12

#	Procuring Entity	Date of Award of Contract	Type of Contract	Procurement Methodology	Name of Contractor	Description of Contract	Value of Contract	Date of Completion of Contract
1	NWA	2009-03-09	Works	Sole Source (Emergency Procurement) (No Procurement Committee approval)	Valentine Dunkley & Associates  (Contractor registered with the NCC)	Construction of R/R (Rubble Reinforcement) Wall (Williamsfield - Glengoffe)	\$2,315,650.00	2009-04-13
2	NWA	2009-03-10	Works	Limited Tender	Brighton Engineers  (Contractor registered with the NCC)	Patching of Roadway & Cleaning and bushing of side drains (Cheesefield Road)	\$6,229,674.00	2009-04-13
3	NWA	2009-06-01	Works	Sole Source (Emergency Procurement) (No Procurement Committee approval)	Valentine Dunkley & Associates  (Contractor registered with the NCC)	Drain Cleaning (Natural Bridge area)	\$2,495,000.00	2009-06-14
4	NWA	2009-06-04	Works	Limited Tender	Valentine Dunkley & Associates  (Contractor registered with the NCC)	Construction of R/R (Rubble Reinforcement) Wall (Troja-Sports Park) @ Bagbie	\$849,271.50	2009-06-24
5	NWA	2009-06-04	Works	Limited Tender	Valentine Dunkley & Associates  (Contractor registered with the NCC)	Construction of R/R (Rubble Reinforcement) Wall & Laying of Plastic Pipe (Williamsfield - Glengoffe)	\$3,650,117.35	2009-06-24
6	RADA	2009-02-23	Works	Sole Source (No Procurement Committee approval)	Errol Nelson  (Contractor not required to be registered with the NCC)	Repair of Area Extension Office at Pear Tree Grove (Labour only)	\$85,000.00	2009-03-12
7	St. Catherine Parish Council on behalf of RADA	2009-05-15	Works	Sole Source (No Procurement Committee approval)	L.C. Construction on behalf of St. Catherine Parish Council  (Contractor registered with the NCC)	Road Restoration-Johncrow Spring to Top Mountain – Cleaning and Surface	\$509,900.00	2009-05-21
8	St. Catherine Parish Council on behalf of RADA	2009-05-21	Works	Sole Source (No Procurement Committee approval)	L.C. Construction on behalf of St. Catherine Parish Council  (Contractor registered with the NCC)	Road Restoration-Johncrow Spring to Top Mountain complete repairs	\$2,490,100.00	2009-06-05

### Number of Contracts Awarded by Month



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Between the period of 2009 February to March, the variance between the aggregated value of the contracts which were awarded in the two months is J\$8,460,324.00. No contracts were awarded by either the NWA or by the St. Catherine Parish Council, on behalf of RADA, for the month of 2009 April. Thereafter, a total of five (5) contracts were collectively awarded by the NWA and by the St. Catherine Parish Council, on behalf of RADA, during the period of 2009 May 1 to 2009 June 12.

The five (5) contracts which were awarded by the NWA and by the St. Catherine Parish Council, on behalf of RADA, during the period of 2009 May 1 to 2009 June 12, had an aggregated value of J\$9,994,388.85. The variance between the aggregated value of the contracts which were awarded in 2009 May and those which were awarded between 2009 June 1 through to 2009 June 12 is J\$3,994,388.85 (increase).

### Contracts Awarded via Emergency Procurement Procedures

Two (2) of the contracts which were awarded by the NWA were reported as having been awarded using the Emergency Procurement Procedures methodology. The two (2)

contracts in question were awarded by the NWA via the use of the Sole Source method of procurement.

The two (2) contracts which were awarded via the Emergency Procurement Procedures were as follows:

<b>Name of Contractor</b>	<b>Date of Contract Award</b>	<b>Value of Contract</b>
Valentine Dunkley & Associates	2009-03-09	\$2,315,650.00
Valentine Dunkley & Associates	2009-06-01	\$2,495,000.00

**Total Value**

**\$4,810,650.00**

In each instance, the contracts which were awarded via the Emergency Procurement Procedures received the requisite approval of the Chief Executive Officer of the NWA, as is required by Section S-2040 (F) of the Revised Handbook of Public Sector Procurement Procedures, which became effective 2008 December 10.

It must be noted that Section S-2040 (F) of the Revised Handbook of Public Sector Procurement Procedures provides as follows:

**“F. CONTRACTING UNDER EMERGENCY CIRCUMSTANCES**

*An emergency contract is one awarded:*

- i) for the repairs or remedial action necessary to preserve health, safety, property;*
- ii ) to avoid significant public inconvenience;*
- iii) in cases of sudden, unexpected or pressing necessity or exigency.*

*Where an emergency situation exists as defined above, the Procuring Entity shall utilize the Direct Contracting provisions. **The Head of the Procuring Entity must give approval for the issuing of emergency contracts. (OCG Emphasis)***

*Contracts awarded under emergency circumstances above J\$5M must be reported to the National Contracts Commission and also to the Contractor General in the QCA Report within the month in which the award was made, along with full justification for the procurement.”*

### **Procurement Committee Approvals**

Of the eight (8) contracts which were reported to the OCG, only three (3) were reported as having received the approval of the procuring entities' Procurement Committee.

It must, however, be noted that amongst the five (5) contracts which reportedly did not receive Procurement Committee Approval are the two (2) contracts which were awarded by the NWA using the Emergency Procurement Procedures and the three (3) which were awarded by RADA and/or by the St. Catherine Parish Council, acting on behalf of RADA, using the Sole Source procurement methodology.

It must also be recorded that Section S-2040 VI – Procurement of Works - of the Revised Handbook of Public Sector Procurement Procedures, which became effective 2008 December 10, requires, in its **expressed** terms, that non-Sole Source or non-Direct Contracting procurement values above the monetary threshold of J\$1 Million must, at a minimum, be “...endorsed (or recommended) by the Procurement Committee” and approved by the Accounting Officer/Head of the procuring entity or by the Accounting Officer.

However, a detailed examination of the rules of the Revised Handbook of Public Sector Procurement Procedures, as they pertain particularly to Works contracts, reveal that there is some ambiguity as it relates to the role and function of the Procurement Committee in so far as the Sole Source or Direct Contracting methods of procurement are concerned.

No reference whatsoever, regarding the role of the Procurement Committee, is made in the Procurement Procedures, as they pertain to Works contracts, in respect of Sole Source or Direct Contracting procurements. In point of fact, no reference is made in the said Procedures, as they pertain to Works contracts, to Sole Source or Direct Contracting procurements which exceed J\$100,000 in value.

For clarity, reproduced overleaf, is a ‘snapshot’ of the table which details the ‘*Procurement Methods for Works*’ as is embodied in Section S-2040 VI of the Revised Handbook of Public Sector Procurement Procedures.

**VI. PROCUREMENT METHODS FOR WORKS**

<u>Threshold</u>	<u>Procurement Method</u>	<u>Procedures</u>
Contracts above J\$30 million	Open Tender	<ul style="list-style-type: none"> <li>- Invite tenders through general advertisement in a national daily circulated newspaper from registered contractors;</li> <li>- Tender security/bid bond is required;</li> <li>- Evaluation is carried out by an Evaluation Committee;</li> <li>- The Procurement Committee makes recommendation for award;</li> <li>- The award recommendation is approved by the Accounting Officer;</li> <li>- Award recommendation is endorsed by Sector Committee and NCC;</li> <li>- Award recommendation is approved by Cabinet.</li> </ul>
Contracts above J\$10 million to J\$30 million	Selective Tender	<ul style="list-style-type: none"> <li>- Invite tenders through general advertisement in a nationally circulated newspaper from registered contractors;</li> <li>- Tender security/bid bond is required;</li> <li>- Evaluation is carried out by an Evaluation Committee;</li> <li>- The Procurement Committee makes recommendation for award;</li> <li>- The award recommendation is approved by the Accounting Officer;</li> <li>- Award recommendation is endorsed by Sector Committee and NCC.</li> </ul>
Contracts above J\$3 million to J\$10 million	Selective tender	<ul style="list-style-type: none"> <li>- Invite tenders through posting opportunity on procuring entity's website, the electronic notice board and at a National Works Agency Parish Office/Parish Council Office where the work will be undertaken from registered contractors;</li> <li>- Evaluation is carried out by an Evaluation Committee;</li> <li>- Award recommendation is endorsed by the Procurement Committee;</li> <li>- The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>- There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>
Contracts above J\$1 million to J\$3 million	Limited Tender	<ul style="list-style-type: none"> <li>- Invite a minimum of five registered contractors to quote;</li> <li>- Evaluation is carried out by an Evaluation Committee;</li> <li>- Award recommendation is endorsed by the Procurement Committee;</li> <li>- The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>- There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>

Contracts above JS\$275,000 to JS\$1 million	Limited Tender	<ul style="list-style-type: none"> <li>- Invite three registered contractors to quote;</li> <li>- Evaluation is carried out by an Evaluation Committee;</li> <li>- The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>- There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>
Contracts above JS\$100,000 to JS\$275,000	Limited Tender	<ul style="list-style-type: none"> <li>- Invite three contractors to quote;</li> <li>- Contractors are not required to be registered with the NCC;</li> <li>- The contract is approved by the Accounting Officer/Head of the procuring entity;</li> <li>- There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>
Contracts up to JS\$100,000.00	Direct Contracting	<ul style="list-style-type: none"> <li>- Any supplier;</li> <li>- No need for NCC registration;</li> <li>- Only one quotation required.</li> </ul>

## CONCLUSIONS

Based upon the documentary evidence which was provided to the OCG, there appears to be some deviation from the procurement guidelines in respect of the contracts which have been awarded by RADA and/or by the St. Catherine Parish Council, acting on behalf of RADA, in one (1) instance, for the period of 2009 January 1 through to 2009 June 12.

In the case of the NWA, two (2) contracts were awarded, in the North East St. Catherine Constituency, for the period of 2009 January 1 through to 2009 June 12, without the approval of the agency's Procurement Committee.

Therefore, some of the eight (8) contracts which were awarded by the NWA and by RADA and/or by the St. Catherine Parish Council, acting on behalf of RADA, do not, on the face of things, appear to have conformed with the requirements of the Revised Handbook of Public Sector Procurement Procedures, which became effective 2008 December 10 and the Public Sector Procurement Regulations (2008).

It is instructive to note that the two (2) contracts which were awarded by the NWA (in the respective values of J\$2,315,650 and J\$2,495,000), and which did not receive approval from the NWA's Procurement Committee, were awarded by way of the use of the Emergency Procurement Procedures and the Sole Source procurement methodology. (**See Table 1 on Page 16**).

However, due to the ambiguities which have been identified in the procurement guidelines in respect of the role of the Procurement Committee in Sole Source or Direct Contracting procurements, the OCG cannot definitively state that the two (2) above-referenced NWA Emergency procurements constituted a breach of the Revised Handbook of Public Sector Procurement Procedures. The OCG has held to this contention because the procurement guidelines do not **expressly** state whether or not Sole Source Works procurements of the above-referenced values, or for any value, should be subjected to the scrutiny and approval of a procuring entity's Procurement Committee.

It must be highlighted, however, that the other three (3) contracts that were awarded by the NWA by way of the use of the Limited Tender Methodology were all approved by the NWA's Procurement Committee.

The value of the contracts which were awarded by the NWA, using the Emergency Procurement Procedures, fell within the remit of the Accounting Officer's authority to utilize the Emergency Procurement Procedures, and had, in each instance, obtained the approval of the CEO of the NWA.

In the case of those contracts, which were awarded via the Sole Source Methodology, the value of these contracts fell within the monetary threshold for which the Head of the Procuring Entity is permitted to authorize such procurement, without the requirement of the NCC's approval.

However, as regards the contracts which were awarded by RADA and/or by the St. Catherine Parish Council, acting on behalf of RADA, one (1) of the Sole Source Contracts was approved by the Parish Manager. It is the OCG's considered opinion, that this approval cannot, without more, be considered as an approval which was granted by the Head of the Procuring Entity and would, therefore, not be in conformance with the requirements of the Revised Handbook of Public Sector Procurement Procedures and the Public Sector Procurement Regulations (2008).

The OCG recognises that an Accounting Officer may very well delegate different monetary approval levels within an entity's management structure, and that this may have been the case at RADA and/or the St. Catherine Parish Council. However, the OCG contends that in the strictest interpretation and application of the procurement guidelines, final approval, in this regard, ought to have been granted by the Accounting Officer/Head of Entity, which, in the instant matter, is the Permanent Secretary (Director General), the entity's CEO and/or the Secretary Manager of the Parish Council.

The OCG has also concluded that there appears to have been a splintering of the contracts which were awarded by the St. Catherine Parish Council, for and on behalf of RADA, to L.C. Construction Ltd., for the work which was to be carried out on the “*Johncrow Spring to Top Mountain farm road*”. This conclusion is premised upon the following Findings:

- i. The spreadsheet which details the award of contracts in the North East St. Catherine Constituency, as provided by Mr. Al Powell, the CEO of RADA, indicates that two (2) contracts were awarded to L.C. Construction Ltd. on 2009 May 15 and on 2009 May 21, approximately six (6) days between each contract award date, for road works at the same location;
- ii. One of the two (2) contracts is described as “*Road Restoration... Cleaning and surface*”, whilst the other contract is described as “*Road Restoration... complete repairs*”;
- iii. The Report from Mr. Everton Ricketts, the Assistant Superintendent, Roads and Works, St. Catherine Parish Council, to Mr. Al Powell, the CEO, RADA, details the scope of works and associated costs for the ‘*partial restoration of the Johncrow Spring to Top Mountain farm road*’, and indicated that the total amount spent was J\$3 Million;
- iv. The Report did not delineate between road works for “*Cleaning and surface*” as against those for “*complete repairs*”;
- v. The aggregate value of the two (2) contracts which were reported as having been awarded to L.C. Construction Ltd. was J\$3 Million.

## **RECOMMENDATIONS**

Subject to the comments which it has made in the Section which follows immediately hereafter, the OCG recommends that procuring entities must at all material times adhere to the requirements of the Revised Handbook of Public Sector Procurement Procedures and the attendant Public Sector Procurement Regulations (2008) which govern Government of Jamaica Procurements.

In particular, it is recommended that Procurement Committee approvals should be obtained for all procurements which are in excess of J\$1 Million, regardless of the procurement methodology which is being utilized.

Additionally, contracts which are awarded should be consistent with the full application of the Procurement Guidelines and must be, and appear to be, awarded fairly, impartially and without any form of irregularity or impropriety, in conformance with provisions that are contained in the Contractor General Act.

The OCG also recommends that where there are queries, ambiguities and the need for clarification with regard to the application of the rules of the Revised Handbook of Public Sector Procurement Procedures, procuring entities should solicit the assistance of the Procurement Policy Implementation Unit (PPIU) of the Ministry of Finance and the Public Service.

The OCG further recommends that procuring entities should ensure scrupulous compliance with the Revised Handbook of Public Sector Procurement Procedures, particularly with respect to securing the requisite approvals from the Accounting Officer/Head of Entity in conformance with the requirements of Section S-1020 (B) – 5 of the Revised Handbook of Public Sector Procurement Procedures, which provides as follows:

*“5. Accounting Officers*

*Pursuant to the Financial Administration and Audit Act, Accounting Officers are accountable to the Minister of Finance for the propriety of procurement expenditure affected by their portfolio entities. Accounting Officers are advised that unless prior written permission is received from the Ministry of Finance, strict compliance with the procedures contained in this Handbook shall be enforced. Non-adherence will be addressed in accordance with the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Public Service Regulations.”*

Additionally, Section 16 (2) of the Financial Administration and Audit Act states, *inter alia*, that:

*“An accounting officer shall be responsible for the financial administration of the department specified in the designation under subsection (1) and shall be accountable to the Minister for (a) the assessment and collection of, and accounting for, all the moneys lawfully receivable by his department ... (and) (c) making any payment required to be made in relation to such appropriation.”*

The OCG also strongly recommends that procuring entities should plan their procurement activities in accordance with the Procurement Cycle, inclusive of the employment and application of an approved Procurement Plan. In this regard, contracts which are to be awarded should be properly packaged, tendered, evaluated and awarded within a specified timeframe, hence removing the appearance, *inter alia*, of the splintering of contracts.

## **SPECIAL RECOMMENDATIONS**

The OCG, in the conduct of this Investigation, which is among the first that is being undertaken pursuant to the Revised Handbook of Public Sector Procurement Procedures which became effective 2008 December 10, has, itself, been faced with a number of challenges which surround the application of the rules which are contained in the Revised Handbook.

The ambiguities which are referenced in this Report of Investigation have made it difficult to definitively establish breaches of the Procurement Guidelines and/or to recommend any of the applicable sanctions which are embodied in the new and interim Public Sector Procurement Regulations of 2008.

The OCG is obliged to reiterate, at this juncture, that the Ministry of Finance and the Public Service's Circular No.46, which was dated 2008 December 10, and through which the Revised Handbook of Public Sector Procurement Procedures was issued, advised specifically as follows:

*“Permanent Secretaries, Chief Executive Officers and Heads of Entities are hereby advised that via **Cabinet Decision No: 43 dated December 10, 2008** approval has been granted for the use of the Revised Handbook of Public Sector Procurement Procedures **for an interim period pending revision by the team and final approval by the Cabinet.**” (OCG Emphasis)*

The ambiguities, anomalies and contradictions which have been identified by the OCG in the interim Procurement Guidelines, underscore those of the OCG's prior documented representations which have been formally made to the Government of Jamaica, that the Guidelines are in a “*draft, rudimentary and widely admitted gestative state*” and that steps should, therefore, be urgently taken, *inter alia*, to:

1. Speedily complete the revision process.
2. Make the guidelines simple in construct, easy to read and easy to interpret; and
3. Ensure that the guidelines are so structured and are easily identified by chronological numeric assignment to facilitate, *inter alia*, their promulgation as regulations.

The OCG believes that it is untenable, unacceptable and unjust that Procurement Guidelines which are rudimentary in nature, ambiguous in import and which have been formally classified by the State as having been put into force **“for an interim period pending revision by the team and final approval by the Cabinet”**, should constitute the basis upon which criminal sanctions can be imposed upon unsuspecting Public Officers should the said Guidelines be deemed to have been “*contravened*” by them.

Further, given the fact that more than seven (7) months have elapsed since the interim Guidelines have been promulgated, the OCG is now gravely concerned about the negative and adverse impact that the said ambiguities, anomalies and contradictions, which are contained in the Guidelines, could potentially pose – not just for Public Sector procurements – but for the many well meaning and well intentioned Public Servants who are called upon each day to administer the rules.

It is primarily for these reasons, therefore, that the OCG is now obliged to respectfully call upon the Cabinet, and the Parliament of Jamaica, to urgently prosecute the outstanding revisions to the Guidelines to give effect, *inter alia*, to the prior recommendations of the OCG and, by so doing, to make the Guidelines complete, lucid, intelligible, certain and more congruent with the 1983 Contractor General Act and the new 2008 Public Sector Procurement Regulations.

Finally, the OCG feels constrained to express, again, its dissatisfaction with the unbelievably paltry and relatively infinitesimal criminal sanction of “a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both...”, which has been imposed by Section 40 of the new 2008 Public Sector Procurement Regulations, to deter and to criminally punish breaches of the Procurement Guidelines.

The OCG would respectfully submit that the referenced criminal sanction has made a mockery of the attempts by the State to curtail breaches of its Procurement Guidelines.

Consequently, the OCG recommends that, in completing the revision to the interim Guidelines – a process which is now long over-due, every effort should be made to ensure that the subject sanction is significantly strengthened both in terms of its provisions for the imposition of a monetary fine as well as in respect of its provisions regarding incarceration.