

# OFFICE OF THE CONTRACTOR-GENERAL OF JAMAICA

## Special Report of Investigation

### The Award of a Security Contract for the Provision of Landside Security Services to Protection and Security Limited

Norman Manley International Airport (NMIAL)

Airports Authority of Jamaica (AAJ)

Ministry of Transport, Works and Housing

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**Ministry of Transport, Works and Housing**

#### **EXECUTIVE SUMMARY**

On 2010 May 6, the Office of the Contractor-General (OCG), acting on behalf of the Contractor-General, and pursuant to Sections 15(1) and 16 of the Contractor General Act, announced its intention to commence an Investigation, by way of a Media Release, into the recommendation for the award of a contract to Protection and Security Limited for the provision of Landside Security Services at the Norman Manley International Airport Limited (NMIAL).

Subsequent to the launch of the OCG's Investigation, the referenced recommendation for the award of the contract was approved and was thereafter formalized and consummated on 2010 July 7 to take effect on 2010 July 10 for a period of three (3) years.

Section 15 (1) of the Contractor General Act provides that:

*“...a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters-*

- (a) *the registration of contractors;*
- (b) *tender procedures relating to contracts awarded by public bodies;*
- (c) *the award of any government contract;*
- (d) *the implementation of the terms of any government contract;*
- (e) *the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) *the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.*

Section 16 of the Contractor General Act expressly provides that “*An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such an investigation is warranted*”.

The OCG’s decision to commence the Investigation was prompted by, *inter alia*, the following:

1. The fact that the principal of Protection and Security Limited, Mr. Dennis Morgan, was then a serving member of the Board of Directors of the Airports Authority of Jamaica (AAJ).
2. The seemingly wide void which existed between the NMIAL’s Comparable Estimate of \$198,458,716.95, for the contract, and the contract bid amount which was proposed by Protection and Security Limited of \$149,940,000.00. The bids which were proposed by the other four (4) bidders were \$184,856,001.00, \$187,157,250.00, \$207,281,867.72 and \$209,619,615.00, respectively.
3. The fact that the OCG had on several previous occasions expressed to the Parliament and the Government of Jamaica, in unequivocal and very strong terms, the inherent dangers which exist and the inescapable perception of a conflict of

interest which arises when a Public Body awards a Government contract to a Contractor in which a Board Member of the awarding Public Body has a pecuniary interest.

4. The fact that the OCG had in at least four (4) of its Reports of Special Investigation, but to no avail, made the following verbatim Recommendation to the present Administration:

*“That the Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest”.*<sup>1</sup>

5. The OCG’s receipt of a Letter of Complaint, which was dated 2010 May 4, from Guardsman Limited, one of the bidders for the referenced Government contract. In its letter, Guardsman Limited alleged, *inter alia*, that (a) “...*the Shareholder and Chief Executive Officer of Protection & Security Limited is a member of the Board of Directors for Norman Manley International Airport*”, (b) “... *Protection & Security having a member on the Board of Norman Manley International Airport would have privileged information about the tender process which would not be available to outsiders, and as such presents a conflict of interest*”, and (c) “...*the awarding of Government Contracts to serving (Public Body) Board members violates the edict of the Prime Minister*”.<sup>2</sup>

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<sup>1</sup> OCG’s Media Release which was dated 2010 May 6.

<sup>2</sup> Letter of Complaint from Guardsman Limited, which was dated 2010 May 4.

The OCG, in its Preliminary Enquiry into the matter, also found that the National Contracts Commission (NCC) on 2010 February 24, endorsed the recommendation, by the NMIAL, for the award of the contract to Protection and Security Limited, in the sum of \$149,940,000.00, and, approval was reportedly received by the Infrastructure Committee of the Cabinet on 2010 May 3.

Further, in response to an OCG email of 2010 May 5, on even date Mr. Earl Richards, the President of the AAJ, advised that “...*the AAJ is waiting (sic) confirmation of Cabinet’s decision as we were advised that the matter would have been considered last Monday. It is proposed to award the contract shortly after being advised of the decision of Cabinet*”.<sup>3</sup>

The OCG was further informed by a News Report which was published in the Daily Gleaner, which was dated 2010 May 7, by way of an article, which was entitled “***OCG to probe award of airport security contract***” of, *inter alia*, the following:

***“...Morgan told The Gleaner yesterday that he maintained “a Chinese curtain” between his business and his role on the board of NMIA.***

***“I acted in total accordance with what is ethical and normal practice, he said.”***

*...He said he was “in no way” worried about the investigation that has been launched by Christie and **added that he at no point had access to classified information in the bidding process.***

*“I have no idea. I just didn’t participate in any of that. **In fact, it was the attorney that called me two days ago and told me that we won.** I did not know any of that, Morgan said.*

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<sup>3</sup> Email from Mr. Earl Richards, President, AAJ, which was dated 2010 May 5.

Although NMIA contracted Protection and Security, by virtue of it falling under the AAJ, **the bids had to be approved by the board of the AAJ.**

Mark Hart, who chairs the AAJ board, told **The Gleaner** the team he leads was “extremely confident that all procedures have been complied with”...

...Kenny Benjamin, CEO of Guardsman Group, told **The Gleaner** his company, which has held the airport security contract for at least five years, had poured resources into having its personnel receive specifically required qualifications for the job. He claimed those qualifications did not form part of the criteria in the bidding process despite being required under international agreements.”<sup>4</sup>

(OCG’s Emphasis)

The foregoing concerns and allegations alluded to, *inter alia*, the possible: (a) lack of transparency; (b) irregularity; and (c) conflict of interest, which may have led to the recommendation and the subsequent award of the contract to Protection and Security Limited for the provision of Landside Security Services at the NMIAL.

The OCG, by way of a letter which was dated 2010 May 10, formally informed Mr. Michael Henry, M.P., the then Minister of Transport and Works (MTW), Dr. Alwin Hales, the then Permanent Secretary in the MTW, the Chairmen of the Boards of the AAJ and the NMIAL, Mr. Mark Hart and Mr. William Shagoury, Mr. Earl Richards, President, AAJ, Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL and Mr. Dennis Morgan, then Director, AAJ Board of Directors, of, *inter alia*, the OCG’s decision to commence an Investigation into the circumstances surrounding the recommendation for the award of contract for the provision of Landside Security Services at the NMIAL.

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<sup>4</sup> Gleaner article entitled “OCG to probe award of airport security contract” which was published on 2010 May 7.

In the referenced letter, the OCG outlined the parameters of its formal Statutory Investigation which included, *inter alia*, the following:

1. *“Particulars of the pre-contract activities of the NMIA/AAJ and whether the circumstances surrounding the recommendation for the award of the security contract to Protection and Security Limited complied with, inter alia, the provisions and/or requirements of:*
  - a. *The Contractor General Act, 1983, and, in particular, whether the recommendation for the award of the contract was impartial, based upon merit and was premised upon circumstances which did not involve impropriety and/or irregularity;*
  - b. *The applicable Government Procurement Procedures;*
  - c. *The Financial Administration and Audit Act; and*
  - d. *The Public Bodies Management and Accountability Act.*
2. *A determination of the factors/considerations and rates which informed the NMIA in arriving at its Comparable Estimate of \$198,458,716.95 versus those factors/considerations and rates which were employed by Protection and Security Limited in arriving at its proposed bid amount of \$149,940,000;*
3. *A review of the procedures and processes which led to the recommendation for the award of the referenced contract to Protection and Security Limited; and*
4. *The extent, if any, of the involvement of officers/officials of the NMIA/AAJ in informing and/or influencing (a) the provisions and requirements of the Tender Document and (b) the recommendation for the award of the contract to Protection and Security Limited.”*<sup>5</sup>

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<sup>5</sup> OCG’s Notice of Commencement of Investigation Letter to the respective parties at the NMIA and the AAJ, which was dated 2010 May 10.

The Terms of Reference of the OCG's Investigation were primarily developed in accordance with the provisions which are contained in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor-General Act. Additionally, the OCG was guided by the recognition of the very important responsibilities which are imposed upon Public Officials and Officers pursuant to the applicable GOJ Public Sector Procurement Procedures.

The OCG, was also guided by Section 21 of the Contractor-General Act, which mandates that a Contractor-General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, evidence of a breach of duty, misconduct or criminal offence on the part of an officer or member of a Public Body and, if so, to refer same to the appropriate authority.

The Findings of the OCG's Investigation into the recommendation for the award of contract to Protection and Security Limited for the provision of Landside Security Services to the NMIAL and the subsequent award of same, are premised primarily upon an analysis of the sworn statements and the documentary evidence which were provided by the Respondents who were requisitioned by the OCG, during the course of the Investigation.

### **Summary of Key Findings**

Based upon a comprehensive review of, *inter alia*, the sworn written statements and enclosed documentary evidence which were furnished to the OCG by certain named Public Officials/Officers in the AAJ and the NMIAL, other Public Officials/Officers of interest who were statutorily requisitioned by the OCG, and other applicable legislation and documentation which were reviewed, the OCG is detailing, hereunder, a list of certain key Findings of the Investigation:



1. The OCG found that the NMIAL made available for issuance a Request for Proposal (RFP) to prospective bidders on 2009 March 30, by way of the Open Tender Procurement Methodology.

Of import, is the fact that the OCG found that (a) the RFP was in keeping with the respective provisions of the Revised GOJ Public Sector Procurement Procedures (2008 December), (b) the RFP was approved by the management of the AAJ/NMIAL and (c) reportedly, the Boards of Directors did not receive a copy of same for approval and/or consideration prior to the issuance of same.

2. The OCG found that the deadline for the submission of the bids was 2009 April 30, at which time the following five (5) Security Companies/Firms submitted a bid at the close of tender for the provision of Landside Security Services at the NMIAL:

- i. Guardsman Limited;
- ii. Ranger Protection and Security Company Limited;
- iii. Port Security Corps;
- iv. Atlas Group Limited; and
- v. Protection and Security Limited.

3. The OCG found that prospective bidders were invited to submit a bid for one or both of two (2) packages for Landside Security Services, as follows:

- i. Package 1 – Security Guard Services; or
- ii. Package 2 – Restricted Area Pass Processing.

However, the OCG was advised by the NMIAL that a decision was taken by the NMIAL Board of Directors to withdraw Package 2, as a result of “... *an agreement made between the union and NMIA in August 2009 stemming from the*

*restructuring of the Aviation Security Department, that the function of the processing of Restricted Area Passes would remain in house and not be outsourced...”*

The OCG found that the referenced decision was valid pursuant to Clause 3.4.2 of the RFP, which outlined that the entity reserved the right to “...*treat separately with each package set out in Appendix 1 at its own discretion and in its own best interest.*”

In this regard, and despite the withdrawal of Package 2, the instructions of the RFP permitted the continuation of the tender process, and hence the NMIAL had the right to evaluate the proposals for the provision of “*Landside Security Services: Security Guard Services*”, separately.

4. The OCG found that on 2009 October 1, the then AAJ Board of Directors approved the recommendation of the NMIAL’s Evaluation Committee to award the contract to Protection and Security Limited, in the amount of \$149,940,000.00, for the provision of Landside Security Services for a three (3) year period, and that this approval was subsequently ‘ratified’ by the NMIAL’s Board of Directors.

It is instructive to note that the OCG, having reviewed the results of the evaluation process, found that the proposed contract value which was submitted by Protection and Security Limited was the lowest evaluated and was in fact the criterion which gave the referenced bid the advantage over the other prospective proposals.

5. The OCG found that all the requisite approvals were received from the respective Authorities for the provision of Landside Security Services at the NMIAL, in accordance with the provisions of the Revised GOJ Public Sector Procurement

Procedures (December 2008), namely, the approval of the Procurement Committee, the Boards of Directors, the NCC and the Cabinet of Jamaica.

6. The OCG found that the contract for the provision of Landside Security Services, which was consummated between the NMIAL and Protection and Security Limited, on 2010 July 7, became effective on 2010 July 10.
7. The OCG found that, in accordance with the deadline for submission of the bids on 2009 April 30, the rates which would have been applicable to the tender period were in keeping with the Minimum Wage (Industrial Security Guards) Order, 2008, as the 2009 amendments to the Minimum Wage (Industrial Security Guards) Order, were not effected until 2009 May 11.

In this regard, the OCG found that the GOJ's Minimum Wage Act for Industrial Security Guards, for the period 2008 January 29 (amended 2008 March 17) to 2009 May 6, provided that the minimum wages for Industrial Security Guards, were as follows:

- i. For work which was done during any period not exceeding (i) 8 hours on a normal working day; or (ii) 40 hours in any week, the Security Guard was required to be paid a minimum of \$137.50 per hour;
- ii. For work which was done during any period in excess of 8 hours on a normal working day or in excess of 40 hours in any week, the Security Guard was required to be paid a minimum of \$206.25 per hour; and
- iii. For work which was done during any period on a rest day or a public holiday, the Security Guard was required to be paid a minimum of \$275.00 per hour.

The OCG noted that the rates which were proposed by Protection and Security Limited were above the applicable minimum wages for “Industrial Security Guards” and in keeping with Paragraph 10, of the 1982 Principal Order, which states that “*Nothing in this Order shall be construed as preventing the payment of wages at rates higher than the rates fixed by this Order.*”

8. The OCG found that serving Directors on any Public Body Board are required, pursuant to the provisions of Section 17 (2) of the Public Bodies Management and Accountability Act, to disclose the nature of any private interest during Board Meetings, and that any such person, having disclosed an interest, is required to refrain from participating in any deliberation of the Board with respect to that matter.

Upon a review of the Minutes of the Meetings of the then AAJ Board of Directors, the NMIAL Board of Directors and the Financial and Audit Committee, which is a sub-committee of the AAJ Board of Directors, the OCG found, *inter alia*, the following to be of interest:

- i. The then Boards of the AAJ and the NMIAL were appointed independently of each other.
- ii. The referenced Public Body Boards are required to review, and consider for approval, recommendations for procurements which are submitted either by the Management or a Board Sub-Committee in which matters such as project priority, budget, financing and applicable procurement process are taken into account.
- iii. That Mr. Dennis Morgan was appointed to and served on the Board of Directors of the AAJ since 2007 October 18.

- iv. That Mr. Morgan also served as a member of the Finance Committee of the AAJ, which is a Sub-Committee of the AAJ Board of Directors.
- v. That Mr. Dennis Morgan had declared his interest in Protection and Security Limited during certain official meetings of the AAJ Board of Directors.
- vi. That members of the then Boards of Directors of the AAJ and the NMIAL, including Mr. Dennis Morgan, would have been privy to the relevant Minutes of Board meetings and any submitted reports.
- vii. That the procurement concerning the provision of Landside Security Services was discussed, or its status inquired about, at a number of Board meetings at which Mr. Morgan was present when the matter of the procurement was discussed.
- viii. That the report of the Evaluation Committee was not submitted to the Board, however, the Evaluation Report was discussed in detail at a meeting of the Finance and Audit Committee, which was held on 2009 August 27. The Minutes of the referenced Meeting indicated that Mr. Morgan was not present.
- ix. That both the then Permanent Secretary in the Ministry of Transport and Works and the President of the AAJ attested to the fact that “...*Mr Morgan did not participate in any meeting which involved deliberations/decisions on the Landside Security procurement; however, in other meetings he attended, he would have been made aware of the general status of the procurement in respect of the stage at which it had reached in the procurement process.*”

- x. Mr. Earl Richards, the President of the AAJ indicated, in his sworn response to the OCG, that as a member of the Finance and Audit Committee “...Mr. Morgan together with other appointed members oversee the financial affairs of the organisation, inclusive of procurement, and ensure compliance with the requirements of the Public Bodies Management and Accountability Act.”
9. Based upon the examination of certain sworn statements which were made by Mr. Earl Richards, President, AAJ, Dr. Alwin Hales, the then Permanent Secretary of the MTW, and Mr. Dennis Morgan, Director of Protection and Security Limited and a then serving member of the AAJ Board of Directors, the OCG found the following to be of particular interest as it relates to Mr. Morgan’s alleged participation in discussions which were held by the referenced AAJ Board of Directors, regarding the provision of Landside Security Services at the NMIAL.
- i. Mr. Morgan indicated to the OCG that once the issue at hand was raised in any Board Meeting he would remind the Board of his interest in Protection and Security Limited and “... would leave the room so that the deliberations could take place in my absence.” However, Mr. Richards in his sworn testimony to the OCG stated that although Mr. Morgan did not participate in any meeting which involved deliberations/decisions on the procurement for the provision of Landside Security Services, “...in other meetings he attended, he would have been made aware of the general status of the procurement in respect of the stage at which it had reached in the procurement process.”
- ii. At the same time, Mr. Earl Richards indicated, in his sworn testimony to the OCG that “*The procurement concerning the provision of Landside Security Services was discussed, or its status inquired about at a number of Board meetings.*” Mr. Morgan was present at one or more Board

meetings when the matter of the procurement was discussed and/or approved.” It is instructive to note that the referenced quote was corroborated by Dr. Alwin Hales, the then Permanent Secretary in the MTW, in his sworn testimony to the OCG, which was dated 2010 June 25

It is instructive to note that the OCG has found no evidence to suggest that Mr. Morgan had not been in receipt of the Minutes of Meetings of the then Board of Directors pertaining to discussions which were held with respect to the procurement for the provision of Landside Security Services.

10. The OCG found that with respect to the variance which existed between the NMIAL’s Comparable Estimate of \$198,458,716.95 and the contract value which was proposed by Protection and Security Limited, in the amount of \$149,940,000.00, that the referenced proposed contract value was 24.5% below the Comparable Estimate.

It is instructive to note that the proposed contract sums which were submitted by the other prospective bidders exhibited a significant variance between the contract sum which was proposed by Protection and Security Limited and the NMIAL’s Comparable Estimate. The contract values which were proposed by the prospective bidders were either below, albeit by a marginal difference, or above the NMIAL’s Comparable Estimate, as follows:

- i. \$184,856,001.00 as proposed by Ranger Protection & Security Limited was 6.9% below the Comparable Estimate;
- ii. \$187,157,250.00 as amended by the NMIAL and accepted by Guardsman Limited was 5.7 % below the Comparable Estimate;
- iii. \$207,281,867.72 as proposed by Port Security Corp was 4.4 % above the Comparable Estimate; and

- iv. \$209,619,615.00 as proposed by Atlas Protection Limited was 5.6% above the Comparable Estimate.

11. The OCG, in its effort to ascertain whether Mr. Dennis Morgan may have been privy to any information based on his position as a then serving member of the AAJ Board of Directors, with respect to the Procurement/Security Budget of the NMIAL, found the following information to be of interest based upon certain sworn testimonies which were perused:

- i. That the Procurement Budget and Plan for the AAJ and the NMIAL are subsumed into the organization's annual expenditure/cash flow budget. The security budget for NMIAL for the fiscal year 2009/2010 was calculated at \$187,986,047 and for the fiscal year 2010/2011 at \$188,029,331.00.
- ii. That for the fiscal year 2010/2011 budget of \$188,029,331.04, the NMIAL allocated a total of \$55,175,270.38 for Landside Security Services.

The OCG finds it of import to reiterate that the contract for the provision of Landside Security Services was consummated on 2010 July 7 and took effect on 2010 July 10 for a three-year period. Based upon the rates which were proposed by Protection and Security Limited, the referenced contract had an estimated annual value of \$49,980,000.00 as was proposed.

- iii. The 'Security Budget' was reportedly prepared by the Director of Aviation Security and was revised by the Management of the NMIAL and approved by the Boards of Directors.
- iv. That NMIAL had conducted its own investigation into the 'low rates' which were proposed by Protection and Security Limited.



- v. The rates which were proposed by Protection and Security Limited, upon investigation by the NMIAL, were not in violation of the minimum wage applicable to the Industry.
- vi. Mr. Morgan asserted that he did not see nor did he attempt to see the procurement budget/plan nor the Comparable Estimate for the provision of Landside Security Services at the NMIAL.
- vii. That whilst the OCG has found no evidence to suggest that Mr. Morgan had not been privy to the Procurement Budget for the provision of Landside Security Services at the NMIAL, and the NMIAL's Comparable Estimate for same, the OCG has found by way of sworn statements, which were made by Mr. Earl Richards, that "...*the Board of Directors is privy to the aggregate cost for security* (which does not separate airside from landside security costs) as is contained in the approved budget. The comparable estimate was not shared with the Board nor any member of the Board."

12. It is instructive to note, however, that Mr. Earl Richards also provided the OCG with a spreadsheet which was entitled "***BUDGET DETAILS 2010/2011 NMIA AIRPORTS LIMITED***" which represented a breakdown of, *inter alia*, the rates and budgeted amounts for Landside Security Services at the NMIAL for the fiscal year 2010/2011. Of note, the OCG was in not in receipt of such a spreadsheet for the fiscal year 2009/2010.

The OCG found that although the bids were submitted during the fiscal year 2009/2010, and the fact that there was no identified revision required by the NMIAL, the proposed rates would have remained applicable in the fiscal year 2010/2011, prior to the effective date of the Security Contract. Further, the OCG found that the budget of \$187,986,047, which was allotted for the fiscal year

2009/2010, was only \$43,284.04 below the 2010/2011 fiscal budget of \$188,029,331.04.

In this regard, and quite interestingly, the OCG conducted a comparative analysis of the proposed annual rates which were submitted to the NMIAL by the other prospective bidders against the NMIAL's 2010/2011 fiscal budget of \$55,175,269.50 and found that only the proposed rate by Protection and Security Limited was below the referenced NMIAL's budget and fell below same by approximately 9.42%.

13. The OCG, in its efforts to ascertain the veracity of the allegation which suggested that any Security Provider which was required and/or engaged for the provision of Landside Security Services should be certified and that the assigned Security Officer(s) should be in receipt of 'special training', examined the various sworn testimonies which were received, and found the following to be of significant interest:

- i. That Landside Security Officers are not required to operate in, and/or have access to the aerodrome or the airside during the course of duty.
- ii. As indicated by Lt. Cdr. John McFarlane, Director of Aviation Security of the NMIAL, the OCG has found that the qualification requirements for Aviation Security Services would not necessarily apply to security personnel employed for Landside Security Services on the basis that such Security Officers are not required to provide Security Services on the aerodrome and/or have airside access.

Further, and in keeping with the NMIAL's Security Training Programme, the OCG has found that Landside Security Services applied to the areas which include the ticketing concourse, the car park and any other gate

control and security patrolling where the non-travelling public has free access, which are “...standard industry requirements for all security providers...”

- iii. That the provisions of the International Civil Aviation Organisation (ICAO) Convention, The Civil Aviation Regulations 2004 (as amended), in particular the Twentieth Schedule of the Regulations, and the National Civil Aviation Security Programme (NCASP), promulgated by the Jamaica Civil Aviation Authority, set out the requirements for Aviation Security and the standards for Airport Operators.

Of note, the Director of Aviation Security of the NMIAL, stated, *inter alia*, that “...*In summary, these standards speak to the prevention of unauthorised access to aircraft and aviation assets to prevent acts of unlawful interference. The regulations and NCASP establish the training requirement and standard for aviation security officers who control access to or work within restricted areas on the “airside”...*”

- iv. That a “*training programme*”, which was reviewed by the JCAA, defined the difference between landside and airside security. The OCG must note that although the Director General of the JCAA indicated that the referenced security programme went through a review process and that the programme is consistent with the requirements for security officers working on landside and airside of an aerodrome, no documentary evidence was submitted to the OCG, by the JCAA, to suggest that approval was granted, pursuant to Sections 20.011 and 20.014 of the Twentieth Schedule of the Civil Aviation Regulations.

14. Further, and in keeping with the provisions of the Civil Aviation Regulations (2004), the OCG found the following:

- i. That the NMIAL, as an aerodrome operator, is required by law to submit a security programme to the JCAA for approval. This enables the aerodrome operator to allow access to security personnel to ensure the safety and security of all persons, property and related aviation support facilities against acts of unlawful interference.
- ii. That the Security Programme of the NMIAL is required to, *inter alia*, define and detail the description of landside, airside and restricted security areas in accordance with the Civil Aviation Regulations (2004) and the requirements of the National Civil Aviation Security Programme.
- iii. That the referenced Civil Aviation Act and Regulations govern the required standard for Aviation Security Officers who control access to or work within restricted areas on the aerodrome.

That there is, in fact, no specific regulatory standards for the provision of Landside Security Services, except that an aerodrome operator “...shall not operate the aerodrome specified in his aerodrome license unless he has submitted, for such aerodrome, a proposed Aerodrome Operator Security Programme, which meet the requirements of these Regulations for acceptance and subsequent approval by the Authority.” The OCG found that the Twentieth Schedule of the Regulations details all of the requirements which are to be contained in the proposed Aerodrome Operator Security Programme.

15. The OCG found, and based upon the calculation of the payments which were made to Protection and Security Limited, since the commencement of the services on 2010 July 10 through to 2011 July 31, that the NMIAL was found to have paid the referenced company a total of \$57,069,267.88.

It is instructive to note that the Security Services contract became effective on 2010 July 10, for which the NMIAL's budget for the security services for the fiscal year 2010/2011 amounted to \$55,175,270.38.

However, the OCG found that the variance in the amount paid to Protection and Security Limited, within the referenced first year, could be contributed to the increase in the Minimum Wages for Industrial Security Guards as the cheque which was paid to the referenced company on 2011 June 3 for '*unpaid fees*' was for the period 2011 February 28 to May 15. Of note, this was the same date on which the amendments to the referenced minimum wages came into effect.

In this regard, the OCG found that as at 2011 July 31 (the first year of payment), the NMIAL paid Protection and Security Limited in accordance with the rates which were outlined in the contract which was consummated on 2010 July 7 and based upon the referenced minimum wage increases.

16. The OCG found, in keeping with the provisions of Section 17 of the Public Body Management and Accountability Act (2001), that Mr. Morgan was required to (a) disclose his interest at a Board Meeting and (b) remove himself from any deliberations with respect to the procurement opportunity to which he had a private interest. The OCG found that although several Minutes of the then AAJ Board Meetings revealed that Mr. Morgan had in fact disclosed his interest, there was no evidence to suggest that Mr. Morgan had removed himself from the meeting during such deliberations or that he did not so do.

In point of fact, in the meeting of 2010 October 1, in which the then AAJ's Board of Directors' approval was sought, the Minutes of the referenced Meeting indicated that Mr. Morgan was present and was in the midst of the deliberations and declared his interest in his private company. It is instructive to note that the referenced meeting did not in any way indicate that Mr. Morgan had been

requested by the Board of Directors to leave the meeting and/or that Mr. Morgan had excused himself from the said meeting.

17. Further, and pursuant to Section 18 of the Public Bodies Management and Accountability Act (2001), the OCG found that irrespective of the testimonies which were received, and which suggested that Mr. Morgan was absent from the Finance and Audit Committee Meeting of 2009 August 27, in which the procurement opportunity was discussed in detail, and hence did not participate in such deliberations, Mr. Morgan would have been automatically deemed to have consented to the passing of any resolution or any action taken by the Board, as a result of any such decisions which were passed onto the then AAJ Board of Directors from the referenced sub-committee of the Board, unless within seven (7) days he had (1) caused written notice of his dissent to be appended to the minutes of the meeting; or (2) delivered such notice to the registered office of the body or sends such notice by registered mail addressed to that office.

Upon a review of the Minutes of the Meetings of the then AAJ Board of Directors, the OCG has found no evidence to suggest that Mr. Morgan had in fact given the then Board of Directors and/or the Management of the AAJ and/or the NMIAL any form of notice in writing and there was no such attachment of same. Further, the OCG was not provided with any such notice which was received by mail or otherwise from any of the Authorities in the AAJ and/or the NMIAL who were requisitioned.

18. Having regard to the foregoing, the OCG has found (a) by the admission of Mr. Dennis Morgan, *inter alia*, that there is a clear private interest attending the referenced matter; and (b) that while it was disclosed that 'due care' was taken against Mr. Morgan's disclosure, no evidence was provided to indicate the extent of any such 'due care' or that the matter was reviewed at any 'appropriate' level and a decision taken with respect to the possible effect and/or influence which the

said disclosure could have on the objectivity and propriety of the procurement opportunity.

19. The OCG has found that Mr. Morgan's involvement in and/or association with a private company which submitted a bid for the provision of Landside Security Services at the NMIAL, and his likelihood of being privy to information regarding the said procurement opportunity, has created not only a possible perception of a conflict of interest situation but may have also comprised the fairness and integrity of the entire contract award process.

20. Despite the apparent lack of good corporate governance practices, the OCG is neither seized with nor has it been presented with sufficient documentary evidence to suggest that Mr. Dennis Morgan acted in direct contravention of the provisions of Section 17(2)(b) of the Public Bodies Management and Accountability Act (2001) or that he scrupulously adhered to the referenced provisions of the Act.

### **Conclusions**

Based upon the sworn responses which were received from certain Public Officials/Officers within the AAJ, the NMIAL, the JCAA and the Director of Protection and Security Limited, the OCG has arrived at the following considered Conclusions:

1. The OCG found that the NMIAL utilized the Open Tender Procurement Methodology, in which the following five (5) Security Companies/Firms submitted a bid at the close of tender on 2009 April 30, for the provision of Landside Security Services at the NMIAL:

- i. Guardsman Limited;
- ii. Ranger Protection and Security Company Limited;

- iii. Port Security Corps;
- iv. Atlas Group Limited; and
- v. Protection and Security Limited.

The OCG concludes that the use of the referenced procurement methodology was appropriate pursuant to Sub-Section S-2040 of the Revised GOJ Public Sector Procurement Procedures (2008 December), which is applicable to contracts which are above J\$30 million in value.

2. The OCG has concluded that the tender which was submitted by Protection and Security Limited was evaluated as the lowest financially responsive tender, in the amount of J\$149,940,000.00, for the three-year period, and was subsequently awarded.
3. The OCG has concluded that the proposed contract value which was submitted by Protection and Security Limited was 24.5% below the NMIAL's Comparable Estimate of \$198,458,716.95, as opposed to the other potential bidders whose proposed contract values ranged from approximately 4% to 6% above or below the NMIAL's Comparable Estimate.
4. The OCG has concluded that the bid that was submitted by Protection and Security Limited met the eligibility and qualification requirements in accordance with the instructions which were outlined in the Request for Proposal (RFP).
5. The OCG has concluded that the content of the RFP was in keeping with the respective provisions of the GOJ Public Sector Procurement Procedures (2008 December) and the standards which are established by the JCAA.

It is instructive to note that the RFP was reportedly approved by the management of the AAJ/NMIAL. The OCG found no evidence to suggest that the Board of



Directors of the AAJ and/or the NMIAL had been in receipt of a copy of the RFP for approval and/or consideration prior to the issuance of same.

6. The OCG has found and concluded that the decision by the NMIAL to proceed with the procurement for the provision of “*Landside Security Services: Security Guard Services*”, after withdrawing Package 2, “*Landside Security Services: Restricted Area Pass Processing*” which was jointly tendered, was valid, pursuant to the provisions of the RFP which stated that the Procuring Entity had the right to “*...treat separately with each package set out in Appendix 1 at its own discretion and in its own best interest.*”
7. The OCG has found and concluded that the NMIAL had been in receipt of the requisite approvals from the respective Authorities for the provision of Landside Security Services at the NMIAL, pursuant to the provisions of the Revised GOJ Public Sector Procurement Procedures (December 2008).

The OCG has seen evidence, *inter alia*, of (i) the approval of the then AAJ Board of Directors which was received on 2009 October 1, and which was subsequently ratified by the NMIAL Board of Directors, (ii) the respective endorsements of the NMIAL’s Procurement Committee and the National Contracts Commission on 2010 January 18 and 2010 February 24, respectively, and (iii) the approval of the Cabinet which was received on 2010 May 3.

8. The OCG has concluded that regardless of the fact that the NMIAL has its separate Board of Directors, it was the then AAJ Board of Directors which had deliberated upon and approved the recommendation to award a contract to Protection and Security Limited for the provision of Landside Security Services at the NMIAL.

The OCG has found and concluded that the then NMIAL Board of Directors had only ‘ratified’ the decision of the AAJ Board of Directors without any in-depth analysis of same.

In this regard, the OCG concludes that Mr. Morgan’s position, as a then serving member of the AAJ Board of Directors, should have been treated with the highest level of ethics and due care on the part of the Chairman of the Board, the management and administration of the AAJ and the NMIAL.

The OCG would like to point out that irrespective of the assertions of the then Accounting Officer in the MTW, the Accountable Officers in the AAJ and the NMIAL and Mr. Morgan, that he (Mr. Morgan) had declared his interest in the private company in several Board meetings, the OCG has found no evidence in such Minutes to suggest that Mr. Morgan had in fact removed himself and/or was requested to leave such meetings, at which he was reportedly present.

9. The OCG has also found and concluded that Mr. Dennis Morgan was a member of the Finance and Audit Committee, which is a sub-committee of the then AAJ Board of Directors. In this regard, Mr. Earl Richards, President, AAJ, indicated, *inter alia*, that “...*Mr. Morgan together with other appointed members oversee the financial affairs of the organization, inclusive of procurement, and ensure compliance with the requirements of the Public Bodies Management and Accountability Act.*”

The OCG found that Mr. Morgan, though reportedly absent from the Finance and Audit Committee meeting in which the evaluation of the bids was deliberated upon, was present in other meetings in which the status of the approval of the procurement opportunity was discussed. In point of fact, Mr. Earl Richards, President, AAJ, advised the OCG that Mr. Morgan “...*would have been made*

*aware of the general status of the procurement in respect of the stage at which it had reached in the procurement process.”*

The OCG has concluded that such practices of the AAJ and the NMIAL are unacceptable and may have comprised the integrity and fairness of the entire process, having particular regard to the perception of a conflict of interest and the unwarranted and debilitating effects that such a conflict of interest can have on a procurement exercise.

10. The OCG has concluded that the rates which were proposed by Protection and Security Limited, for the provision of Landside Security Services, were above the then applicable 2008 amended Minimum Wages for “Industrial Security Guards” and in keeping with Paragraph 10, of the 1982 Principal Order, which states that *“Nothing in this Order shall be construed as preventing the payment of wages at rates higher than the rates fixed by this Order.”*
11. The OCG has concluded that the allegation which indicated that special training was required for any Security Guard employed to provide Landside Security Services at the NMIAL, pursuant to the provisions of the *“...**Jamaica Civil Aviation Act 1966, Amended 2004, and the Jamaica Civil Aviation Regulations, 2004...**”*, was misunderstood with the requirements for Aviation Security Services as detailed in the referenced legislation.

The OCG notes that the referenced legislation does not in any way provide a distinction between ‘landside’ and ‘airside’ security services. However, the law explicitly states the provisions for any security personnel employed to the aerodrome and/or who would require any form of ‘airside’ access in the conduct of such duties.

Based upon the sworn testimonies which were received from the Accountable Officers in the AAJ and the NMIAL, and the provisions of the Civil Aviation Regulations (2004), the OCG found the NMIAL, as Jamaica's aerodrome operator, is required to submit a 'Security Programme', which is required to meet the provisions of the Twentieth Schedule of the Civil Aviation Regulations (2004), and submitted to the JCAA for approval.

The OCG found that a Training Programme was submitted to the JCAA by the Director of Aviation Security of the NMIAL and had, in fact, been reviewed by the JCAA.

The OCG must note that although the Director General of the JCAA indicated that the referenced security programme went through a review process and that the said programme was consistent with the requirements for security officers working on landside and airside of an aerodrome, no documentary evidence was submitted to the OCG by the JCAA to suggest that approval was granted by the Authority, pursuant to Sections 20.011 and 20.014 of the Twentieth Schedule of the Civil Aviation Regulations.

Notwithstanding same, the OCG has concluded that the qualification requirements for Landside Security Services differ from that which is required for Aviation Security Services. In this regard, the OCG is of the view, and in keeping with the description of landside security services and the areas of the airport that such Security Officers are required to have access to, that (a) no special training requirements were needed for such Security Officers pursuant to the NMIAL's Security Training Programme which was submitted to the OCG for review; and (b) such Security Firms were not required to be certified with the JCAA as Aviation Security Providers.

12. The OCG has concluded that the overall evaluation results illustrated that Protection and Security Limited was the successful bidder as a result of its financial proposal.

Of note, however, is the fact that the OCG found no direct correlation between the fact that Mr. Morgan served on the AAJ Board of Directors and the fact that Protection and Security proposed the lowest evaluated tender.

Notwithstanding the foregoing, and considering the compendium of facts, the OCG is of the view that the circumstances remain highly undesirable, in light of the following:

- i. That as a then serving member of the Board of Directors, Mr. Morgan was placed at an advantageous position in which he could have access to information, which included, amongst other things, (a) the Procurement and Security Budgets for both the NMIAL and the AAJ, (b) the Minutes of the then AAJ Board of Directors Meetings, and (c) any other information which may be directly related to the provision of Security Services at the AAJ and the NMIAL;
- ii. The fact that Mr. Morgan was aware that the procurement opportunity was being considered to be competitively tendered prior to the issuance of the RFP;
- iii. That although the rates which were proposed by Protection and Security Limited were above the applicable amendments to the Minimum Wages for Industrial Security Guards, there was still a 24.5% variance which existed between that which was proposed by Protection and Security and the NMIAL's Comparable Estimate, especially when compared to other proposed contract values; and

- iv. Having regard to the fact that the effective date of the Security Contract which was awarded to Mr. Dennis Morgan's private company was 2010 July 10, and that the budget for Landside Security Services at the NMIAL for the fiscal year 2010/2011 amounted to \$55,175,269.50, the OCG found that the contract value which was proposed by Protection and Security Limited, in the sum of \$49,480,000.00, was the only figure which was below the referenced NMIAL's Fiscal Budget by 9.42%, as opposed to the other prospective bidders in the Security Industry which were above the referenced budget between a range of 10% to 25%.
13. The OCG has concluded that as at 2011 July 31 (the first year of payments made to Protection and Security Limited), the NMIAL paid Protection and Security Limited in accordance with the rates which were outlined in the contract which was consummated on 2010 July 7 and in keeping with the amendments to the Minimum Wages for Industrial Security Guards (2011) which became effective on 2011 February 28.
14. The OCG has concluded that any Board of Directors which permits a Director to be present in a meeting during which discussions are being held regarding a procurement opportunity in which the said Director has a private interest, without excusing himself or being requested to leave the said meeting, is (a) tantamount to unethical conduct and would amount to a conflict of interest on the part of any such Director and (b) a lack of good corporate governance on the part of such a Board of Directors.

Having regard to the foregoing, and based upon the documentary evidence which has been presented, the OCG has made the following conclusions:

- i. Mr. Dennis Morgan had declared his private interest in the company, Protection and Security Limited, during the conduct of several Meetings

of the then AAJ Board of Directors, pursuant to the requirements of Section 17 (2) (a) of the Public Bodies Management and Accountability Act.

- ii. There is no evidence to suggest that Mr. Dennis Morgan had been requested by any of the then members of the AAJ Board of Directors to leave any of the Meetings which were held by the AAJ Board of Directors and/or the Financial and Audit Committee (a sub-committee of the AAJ Board of Directors) in which the procurement opportunity was being discussed and/or that Mr. Morgan had excused himself from same.

Most importantly, the OCG found, based upon the Minutes of the Meeting of the AAJ Board of Directors which was held on 2010 October 1, the very meeting in which the said Board was required to approve the recommendation for the award of the contract for the provision of Landside Security Services, that Mr. Morgan was present during the course of such deliberations and had again verbally declared his interest in the procurement opportunity.

The OCG has found no evidence to suggest that Mr. Morgan had been requested by the Board to leave the referenced meeting and/or had, in fact, excused himself from same subsequent to declaring his interest.

In this regard, the OCG is neither seized with nor has it been presented with sufficient documentary evidence to suggest that Mr. Dennis Morgan acted in direct contravention of the provisions of Section 17(2) (b) of the Public Bodies Management and Accountability Act (2001) or that he scrupulously adhered to the referenced provisions of the Act.

- iii. Mr. Morgan was aware of the NMIAL's decision to tender for the provision of Landside Security Services prior to the preparation of the RFP and the issuance of same to the other prospective bidders. The Minutes of the Meeting of the then AAJ Board of Directors, which was held on 2009 January 27, in which Mr. Morgan was present, expressly stated that the procurement opportunity was discussed. However, the referenced Minutes did not indicate that Mr. Morgan was requested to leave the meeting and/or that he had excused himself from the said meeting.
  
- iv. The OCG has concluded that the mere presence of Mr. Dennis Morgan, being a then serving member of the AAJ Board of Directors, in the meeting of 2009 October 1 and/or any other meeting in which the procurement opportunity was discussed, may have brought into question the degree of objectivity, perceived fairness and propriety of the pre-tender and award process which the Board was later required to deliberate upon and approve.

### **Recommendations**

Section 20 (1) of the Contractor-General Act mandates that *“after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore of the result of that Investigation **and make such Recommendations as he considers necessary in respect of the matter which was investigated.**”* (OCG Emphasis)

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following considered Recommendations:



1. The OCG is hereby recommending that Public Bodies scope and price their Comparable Estimates using informed data, rates and/or calculations in an effort to ensure that there is not a large variance between (a) the Comparable Estimate, (b) the allocated Budget for the referenced procurement and (c) the proposed contract values which are being offered by prospective bidders.
2. That all Public Officers/Officials who are involved in any aspect of the procurement of any goods, works and/or services are duly advised of the applicable provisions and sanctions for a breach of Section 17 (2) (b) of the Public Bodies Management and Accountability Act, in the case of Board Members, and the provisions of Sub-Section S-1040 of the GOJ Public Sector Procurement Guidelines (2008 December), inclusive of the Public Sector Procurement Regulations (2008).
3. In instances where a member of the Public Body Board or any other Public Official/Officer finds himself/herself in a probable conflict of interest scenario, it is recommended that the individual not only makes the necessary and principled disclosures with the intent to remove himself/herself from the conflict of interest situation, but also withdraws himself/herself entirely from the process. Further, and in order to guard against any perceived shortcomings in the practice of making disclosures of interest, the OCG is hereby recommending that Public Officers/Officials make such declarations in writing and that same form a part of the record for the procurement under consideration.
4. Heads of Ministries, Departments and Agencies who are aware that a Public Officer/Official is in a conflict of interest situation are strongly recommended to take the necessary action, in accordance with applicable administrative procedures, to remove such an officer from the situation. Such an action will ensure legitimacy and good governance in the management and administration of the Government Procurement and Contracting System.

5. The OCG also respectfully recommends that all Appointees of the Board of Directors of any Public Body are fully made aware of their responsibilities and obligations under the provisions that are contained in the Public Bodies Management and Accountability Act, the recently issued Corporate Governance Framework for Public Bodies and all other applicable legislations.
  
6. The OCG recommends that in instances where a Public Body and/or a duly registered company or body corporate, whose policies are influenced by the GOJ and/or any duly authorized agency of the GOJ, is administered, controlled and/or managed by a parent Ministry, Statutory Authority or otherwise, and consists of a separate and distinct Board of Directors, such a Public Body Board of Directors should be required to conduct in-depth deliberations into matters relating to, *inter alia*, Government contracting, irrespective of any other deliberations which are conducted by the parent Ministry, Statutory Authority or otherwise.

The OCG is, therefore, recommending that an expressed display of due care and diligence be exhibited by the Boards of Directors of Public Bodies and not simply the 'ratification' of the decisions of the said parent Entity.

The OCG is of the view that the foregoing will promote greater transparency within the Government contracting system, underscore the principles of good corporate governance and will lend itself to the fostering of increased accountability upon the Boards of Directors of Public Bodies for the affairs of the Public Body.

Therefore, the OCG is of the view that in a system such as the one which is the subject of this Investigation, which has two (2) separate Boards of Directors, **each** Board of Directors should, at a minimum, undertake its own in-depth analysis of the procurement process which is under consideration.

Given the foregoing, the OCG further recommends that the Boards of Directors of **all** Public Bodies be thorough in their deliberations, particularly as they relate to Government contracting, in an effort to ensure that contracts which are being recommended for award, by the respective Public Bodies, are in keeping with the Laws of the Jamaica, and the policies and procedures which govern such awards.

7. The OCG feels compelled to strongly recommend, again, as it has in previous Investigation Reports, that Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.

The OCG strongly opines that serving members on the Board of Directors of all Public Bodies should not be allowed to tender competitively on any procurement opportunities which are being undertaken by the said Public Body.

In this respect, the OCG recommends that serving members on any Public Body Board of Directors be mandated, to not only disclose a private interest in Board Meetings but, to disclose their interests to the Portfolio Minister, and the relevant Accounting and Accountable Officers, when being appointed, so as to ensure full disclosure and transparency in the affairs of the public sector.

## **TERMS OF REFERENCE**

The primary aim of the Investigation was to ascertain whether there was compliance with the provisions of the Contractor General Act (1983), the Public Bodies Management and Accountability Act, the Revised Government of Jamaica (GOJ) Public Sector Procurement Procedures (2008, November) and the applicable GOJ Public Sector Procurement Regulations (2008), in the tender process which led to the award of a contract to Protection and Security Limited, for the provision of Landside Security Services at the NMIAL.

### ***Specific Objectives***

The specific objectives of the Investigation are as follows:

1. To identify the procurement process which was utilized by the NMIAL for the award of a contract to Protection and Security Limited for the provision of Landside Security Services at the NMIAL.
2. To ascertain whether there were any breaches of the Revised GOJ Public Sector Procurement Procedures (2008, November) and the GOJ Public Sector Procurement Regulations (2008) in the award of a contract to Protection and Security Limited for the provision of Landside Security Services at the NMIAL.
3. To ascertain whether there is any *prima facie* evidence that would indicate any level of impropriety and/or irregularity, on the part of any individual and/or entity, acting on behalf of the AAJ and/or the NMIAL, which may have led to the award of a contract to Protection and Security Limited for the provision of Landside Security Services at the NMIAL.

4. To ascertain whether the approval process, which led to the award of a contract to Protection and Security Limited, was tainted by any irregularity and/or impropriety and to determine whether the award of the contract was in keeping with the strictures of the Revised GOJ Public Sector Procurement Procedures (2008 December) and the requirements of the Public Bodies Management and Accountability Act (2001).
  
5. To ascertain whether the overall tender process which led to the award of a contract to Protection and Security Limited for the provision of Landside Security Services at the NMIAL, was fair, impartial, transparent and in keeping with the provisions of the Contractor General Act, the applicable GOJ Public Sector Procurement Procedures and/or any other governing Laws of Jamaica.
  
6. To ascertain (a) whether there was any *prima facie* evidence of a conflict of interest on the part of Mr. Dennis Morgan, who served as a Director on the AAJ Board of Directors at the time in which his private company, Protection and Security Limited, was awarded a contract by the NMIAL, and (b) whether such a conflict of interest, if any, influenced the said procurement opportunity.

## **METHODOLOGY**

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures have been developed and adopted pursuant to the powers which are conferred upon a Contractor-General pursuant to the Contractor-General Act (1983).

It is instructive to note that Section 17 (1) of the Contractor-General Act empowers a Contractor-General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG’s Emphasis)

The Terms of Reference of the OCG’s Investigation into the recommendation for the award of a contract to Protection and Security Limited for the provision of Landside Security Services, were primarily developed in accordance with those of the mandates of the Contractor-General which are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor-General Act.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed upon the Boards of Directors, Public Officials and Public Officers under the provisions of the Public Bodies Management and Accountability Act, the Financial Administration and Audit Act, the Contractor General Act, the Revised GOJ Public Sector Procurement Procedures (2008 December) and the Staff Orders for the Public Sector, amongst other applicable legislation.

In addition, the OCG was guided by Section 21 of the Contractor-General Act which provides that **“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”** (OCG Emphasis)

The initial Requisitions/Questionnaires, which were dated 2010 June 4, were sent from the OCG to the following Public Officials/Officers:

1. Mr. Earl Richards, President, AAJ;
2. Dr. Alwin Hales, the then Permanent Secretary, MTW;
3. Lt. Cmdr. John McFarlane, Director, Aviation Security, NMIAL; and
4. Mr. Dennis Morgan, Director, AAJ & Protection and Security Limited

‘Follow-up’ Requisitions were directed to certain Public Officials/Officers in an effort to clarify certain issues which were identified in their initial sworn written statements and declarations. The ‘Follow-up’ Requisitions were also designed to, *inter alia*, clarify any discrepancies in the information which had been previously provided by the Respondents.

The Requisitions/Questions which were utilized by the OCG included specific questions that were designed to elucidate critical information from Respondents on the matters which were being investigated.

However, in an effort to not limit and/or exclude the disclosure of information which was germane to the Investigation, but which might not have been specifically requisitioned by the OCG, the OCG asked all Respondents the following question:

*“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”*

**Very importantly, the form of written Requisition, which was utilized by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.**

The Requisitions were issued pursuant to the powers that are reserved to the Contractor-General under the Contractor-General Act and, in particular, Sections 4, 15, 17, 18 and 29 thereof. The Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that **Section 18 (2) of the Contractor-General Act** provides that, *“Subject as aforesaid, a Contractor-General may summon before him and examine on oath –*

- a) any person who has made representations to him; or*
- b) any officer, member or employee of a public body or any other person who, in the opinion of the Contractor-General is able to furnish information relating to the Investigation,*

**and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.”** (OCG Emphasis).

Further, **Section 18 (3) of the Contractor-General Act** provides that, **“For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of**



witnesses and the production of documents". (OCG Emphasis)

**Section 2 (1) of the Voluntary Declarations Act** provides that, "*In any case when by any statute made or to be made, any oath or affidavit might, but for the passing of this Act, be required to be taken or made by any person or persons on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful to substitute a declaration in lieu thereof before any Justice; and every such Justice is hereby empowered to take and subscribe the same.*" (OCG Emphasis)

**Section 7 of the Voluntary Declarations Act** provides that, "*In all cases when a declaration in lieu of an oath or affidavit shall have been substituted by this Act, or by virtue of any power or authority hereby given, or when a declaration is directed or authorized to be made and subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath, heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule.*"

**Section 8 of the Perjury Act** provides, *inter alia*, that, "*Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-*

*(a) in a voluntary declaration; or ....*

*(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,*

*shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine*".

The material import of the foregoing, *inter alia*, is that the sworn and written evidence that is provided to a Contractor General, in response to his Statutory Requisitions, during

the course of his Investigations, is (a) provided in accordance with certain specified provisions of the Statutory Laws of Jamaica, and (b) provided in such a manner that if any part thereof is materially false, the person who has provided same would have, *prima facie*, committed the offence of Perjury under Section 8 of the Perjury Act and, as will be seen, would have also, *prima facie*, committed a criminal offence under Section 29 (a) of the Contractor General Act.

The OCG considers the above-referenced evidence-gathering procedures to be necessary in order to secure, *inter alia*, the integrity and evidentiary cogency of the information which is to be elicited from Respondents. The implications of the subject requirements also serve to place significant gravity upon the responses as well as upon the supporting documents which are required to be provided by Respondents.

**It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there is no question as to what has been represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.**

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned or cautioned that should they mislead, resist, obstruct or hinder a Contractor General in the execution of his functions, or fail to provide a complete, accurate and truthful response to any of the Requisitions or questions which were set out in its Requisition, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act.

**Section 29 of the Contractor General Act** provides as follows:

*“Every person who -*

*(a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or*

*(b) without lawful justification or excuse -*

*i. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*

*ii. fails to comply with any lawful requirement of a Contractor General or any other person under this Act; or*

*(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection, shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”*

Further, in addition to the **sworn** written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents should submit documentary evidence to substantiate the statements that were made.

Finally, all Respondents were advised, in writing, of their rights under Section 18 (5) of the Contractor General Act. Section 18 (5) of the Act provides that *“No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.”*

Requisitions/Questionnaires were directed by the OCG to the Public Officials/Officers who are listed below. In addition, comprehensive reviews of certain relevant information were undertaken by the OCG to assist it in its Investigation. Details of these are also summarized below.

1. The following Public Officials/Officers were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:
  - a. Mr. Earl Richards, President, AAJ;
  - b. Dr. Alwin Hales, the then Permanent Secretary, MTW;
  - c. Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL;
  - d. Mr. Dennis Morgan, Director, Protection and Security Limited and then serving member of the AAJ Board of Directors; and
  - e. Lt. Col. Oscar Derby, Director General, Jamaica Civil Aviation Authority.
  
2. A Follow-up Requisition/Questionnaire, requesting clarification on certain issues, was directed by the OCG to the following Public Officers:
  - a. Mr. Earl Richards, President, AAJ; and
  - b. Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL.

The OCG conducted a detailed review and cross-referencing of the **sworn** certified statements, supporting documents and the records which were submitted by the referenced Public Officials/Officers in their respective responses to the OCG's Statutory Requisitions.

## **FINDINGS**

### **The Pre-Contract Process**

#### ***The Tender Advertisement***

The OCG commenced monitoring the procurement opportunity for the provision of Landside Security Services at the NMIAL, by way of a review of an advertisement which was published in the Daily Gleaner on 2009 March 30. The referenced advertisement invited “...eligible Contractors i.e. designated **Safety and Security Services** in the category of **Goods and Services Contractors** on the National Contracts Commission Register of Public Sector Contractors and in the possession of a valid Tax Compliance Certificate, to submit Proposals...”<sup>6</sup>

The referenced advertisement further stated, *inter alia*, that “The services to be performed consist but are not necessarily limited to the following:

- *Provision of Security Supervisors and unarmed, armed and canine equipped Guards assigned to duties in Traffic Control, Car Park Operations, Gate Access Control, and Perimeter Patrols.*
- *Supply suitably qualified personnel to undertake day to day issuing and control of Restricted Area Passes.”*

In the conduct of its monitoring exercise, the OCG, by way of several email correspondence and formal letters to a Mrs. Verona Vacianna, Legal Officer, AAJ/NMIAL, offered guidance with respect to the tender process prior to the close of the

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<sup>6</sup> Advertisement in the Daily Gleaner entitled ‘Request for Proposals’ which was dated 2009 March 24.

tender period.<sup>7</sup> As a result of the OCG's guidance, four (4) Addenda were issued by the NMIAL, with respect to certain ambiguities which were identified in the tender document by the OCG, pursuant to the requirements of the then applicable GOJ Public Sector Procurement Procedures (2008 December) and the provisions of the Contractor General Act.

### ***The Request for Proposal (RFP)***

The OCG found that the NMIAL issued a Request for Proposal (RFP) to prospective bidders on 2009 March 30. Upon a comprehensive review of the RFP, and based upon the allegations which were made by Guardsman Limited, one of the bidders which were involved in the instant procurement activity, the OCG considered the following Clauses to be of import, as it relates to the instructions which were given to all the prospective bidders:

i. Clause 1.3 – Procurement Methodology

*“The method chosen for this exercise is the Open Tender in accordance with the Government of Jamaica Public Sector Procurement Guidelines.”*

ii. Clause 1.7 – Eligibility Requirements

*“(a) in order for their Proposals to be eligible for consideration, Proposers must:*

- 1. be registered with the National Contracts Committee (NCC) in the category of “Safety and Security Services” under “Goods and Service Contractors”*
- 2. be in possession of a valid NCC Certificate;*
- 3. be in possession of a valid Tax Compliance Certificate (TCC); and*

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<sup>7</sup> Emails between Ms. Veronica Vacianna and the OCG, which were dated 2009 April 16 and 2009 April 29. Letter from the OCG which was dated 2009 April 28.

4. *be in possession of a valid license to operate a private security entity in Jamaica granted under the Private Security Regulation Authority Act.*

*(b) Failure to submit copies of a valid NCC Certificate, TCC and proof of registration and certification by the Private Security Regulation Authority with each Proposal will result in the rejection of the Proposal except in cases where the requirement is specifically waived by the procuring entity.*

*(c) Any of the following causes may be considered as sufficient for the disqualification of a Proposer and the rejection of its Proposal:*

- 1. Submission of more than one (1) Proposal for the same work by an individual, firm, partnership or corporation under the same or different names. For the purposes of this sub-paragraph, firms, partnerships or corporations under common control may be considered to be the same entity;*
- 2. Evidence of collusion between or among Proposers;*
- 3. Being in arrears on any existing contract with NMIAL/Airports Authority of Jamaica (AAJ) or in litigation with NMIAL/AAJ or having defaulted on a previous contract with NMIAL/AAJ;*
- 4. Poor, defective or otherwise unsatisfactory performance of work for NMIAL or any other party on prior projects which in the judgment and sole discretion of NMIAL raises doubts as to the Proposer's ability to properly perform the Services; or*
- 5. Any other cause which in the judgment and sole discretion of NMIAL is sufficient to justify disqualification of the Proposer or the rejection of its Proposal."*

iii. Clause 2.1.2 – General Guidance

*"All Proposer representations to NMIAL, whether verbal or written, must be*

*factual and will be relied upon by NMIAL in its evaluation.”*

iv. Clause 2.3.1 - Period of Validity

*“The pricing, terms and conditions stated in the Proposer’s Proposal must remain valid and irrevocable for a period of one hundred and twenty (120) days from the specified Proposal Due Date...”*

v. Clause 2.8 – Proposal Preparation

*“All responses must comply with these instructions. Failure to comply may result in that Proposal being disqualified from consideration by NMIAL.*

*2.8.1. A duly authorized officer of the Proposer must sign and submit the Proposal, with the appropriate company seal/stamp affixed. Submitted Proposal must include the “Declaration Form” and “Disclaimer”...*

*2.8.2. The Proposer shall name the person(s) authorized to negotiate on the Proposer’s behalf and state their designations.*

***2.8.3. Arithmetic errors can be a basis for the disqualification of a Proposal. All totals must be equal to the sum of component costs.***

*2.8.4. Notwithstanding Clause 2.8.3, in the event that there is a discrepancy NMIAL will use the sum of the individual costs as the Proposed Contract Sum.”...*

*2.8.9. To be qualified for award of Contract, Proposers shall provide evidence satisfactory to NMIAL of their capability and adequacy of resources to carry out the Contract effectively. Proposals shall include the following information:*



- i. *Copies of original documents defining the constitution or legal status, place of registration, principal place of business and written power of attorney of the signatory of the Proposal to commit the Proposer;*
- ii. *Performance of contracts of a similar nature and volume over the past three (3) years and details of other work in hand and contractual commitments;*
- iii. *The names and addresses for a minimum of three (3) customers for whom the Proposer has provided similar services within the last eighteen (18) months. The Proposer should include a brief description of the scope of the services provided the customer and the duration of the contract. NMIAL may contact some or all of the references provided in order to determine the Proposer's performance record.*
- iv. *The qualification and experience of key personnel proposed for administration and execution of the Contract.*
- v. *Reports on the financial standing of the Proposer including profit and loss statements and balance sheets for the past three (3) years together with the most recent audited financials.*
- vi. *Evidence of access to lines of credit and availability of other financial resources*
- vii. *References from the Proposer's bankers.*
- viii. *Proposal of work methods and schedule, in sufficient detail to demonstrate the adequacy of the Proposer's proposals to meet the Technical Specification and the requirements of the Contract."*

vi. Clause 2.18.1 – Knowledge of Requirements

*“The Proposer shall carefully review all documents referenced and made a part of the Proposal Documents to ensure that all information required to properly respond has been submitted or made available and all requirements are priced in the Proposal. **Failure to examine any document, specification, or instruction will be at the Proposer's sole risk.** The Proposer shall be responsible for*

*knowledge of all items and conditions contained in their Proposals and in this RFP, including any NMIAL issued clarifications, modifications, amendments or Addenda.”*

vii. Clauses 3.1.1 and 3.1.2 – Responsiveness to the Proposal Document

*“The Proposal will be considered to be substantially responsive if it conforms to all the terms and conditions of the Request for Proposals without material deviations. NMIAL’s determination of the Proposal’s responsiveness is to be based on the contents of the Proposal itself without recourse to other sources.*

***In evaluating the Proposals, NMIAL will consider any deviations to the Specifications. Any deviation which in the sole opinion of NMIAL renders a Proposal non-responsive shall result in the Proposer’s Proposal being rejected”.***

viii. Clause 3.2.2 – Evaluation Methodology

*“In order to obtain the most advantageous offer for NMIAL, **NMIAL reserves the right at its sole discretion to accept any portion or all items proposed, if deemed in the best interest of NMIAL.**”*

ix. Clause 3.4.1 and 3.4.2 – Rejection of Proposal

*“NMIAL is not obliged to accept the lowest priced Proposal and **reserves the right to reject or accept any or all Proposals or to annul the Proposal evaluation process and reject all Proposals at any time prior to Award of Contract** without incurring any liability to the affected Proposer or Proposers or any obligation to inform the affected Proposer or Proposers of the grounds for NMIAL’s action.*

*NMIAL reserves the right to treat separately with each package...at its own discretion and in its own best interest.”*

The OCG noted that the particulars of the RFP were in keeping with the respective provisions of the Revised GOJ Public Sector Procurement Procedures (2008 December).

It is instructive to note that while the *'Instructions to Proposers'*, which was outlined in the referenced RFP, required that bidders be certified by the Private Security Regulatory Authority (PSRA), there was no qualification requirement to be certified by the Jamaica Civil Aviation Authority (JCAA) and/or any other Authority.

### ***Approval Process for the RFP***

In an effort to ascertain whether the referenced RFP was approved by the AAJ and/or the NMIAL prior to the issuance of same, the OCG, by way of its Follow-Up Requisition to Mr. Earl Richards, President, AAJ, which was dated 2011 March 31, posed the following question:

*“Please indicate whether the Board of Directors of the AAJ and/or the NMIA played a role in the preparation of the Request for Proposal (RFP) for the procurement for the provision of Landside Security Services. If yes, please provide full particulars of such role and further indicate whether any form of a recommendation was received by any of the Boards of Directors in regard to the referenced procurement. In addition, please provide a copy of the approval(s) which was/were granted by the NMIA and the AAJ with respect to the RFP and indicate the extent to which such approval(s) was/were influenced by the stated recommendation(s).”<sup>8</sup>*

Mr. Earl Richards, in his response to the referenced OCG Follow-Up Requisition, which was dated 2011 April 26, stated the following:

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<sup>8</sup> OCG Requisition to Mr. Earl Richards, President, AAJ, which was dated 2011 March 31.

**“RESPONSE # 5**

**The AAJ and NMIAL Boards did not play a role in the preparation of the Request for Proposal (RFP) for the procurement for the provision of Landside Security Services.** Consistent with the general practice, this function was executed by a responsible officer within the management of NMIAL. **The RFP was not circulated to the Board, nor was its contents the subject of a discussion at Board meetings.** The Board, however, gave its general endorsement for the landside Security services to be tendered.

Concerning approval granted by the AAJ and the NMIAL with respect to the RFP, **the final RFP document was approved by management of AAJ/NMIAL prior to its distribution to prospective tenderers.**<sup>9</sup> (OCG’s Emphasis)

Having regard to the foregoing assertions of Mr. Earl Richards, the OCG found that the RFP was approved by the management of the AAJ/NMIAL and that the then Boards of Directors of the AAJ and the NMIA did not receive a copy of same for its approval and/or prior to the issuance of the referenced RFP.

***Tender Closing and Opening***

Pursuant to the requirements of the RFP, the OCG found that the deadline for the submission of the bids was 2009 April 30.

A copy of the Bid Opening Record revealed that five (5) bids were received, prior to the referenced deadline for submission, from the following companies:

1. Guardsman Limited;

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<sup>9</sup> Sworn Response from Mr. Earl Richards, President, AAJ, which was dated 2011 April 26.

2. Ranger Protection and Security Company Limited;
3. Port Security Corps;
4. Atlas Group Limited; and
5. Protection and Security Limited.

It is instructive to note that the Bid Opening Record revealed that the Comparable Estimate which was being used by the Public Body, against the costs proposed by each of the bidders, was “\$192,544,584.50 inclusive of GCT”.

Upon a review of the submission to the respective Sector Committee, which was prepared by the NMIAL, the OCG found that among the tender documents that were attached, the NMIAL had also prepared a “*REPORT AND RECOMMENDATIONS – REQUEST FOR PROPOSALS FOR PROVISION OF LANDSIDE SECURITY SERVICES*” which reported, *inter alia*, that (a) each proposal was opened, read publicly, and checked for compliance with the RFP’s mandatory submission requirements; and (b) all five (5) bids which were submitted were deemed to be responsive.

Having regard to the foregoing, the OCG found that the five (5) bids had proceeded to the evaluation stage.

It is instructive to note that based upon a review of the National Contracts Commission (NCC) Transmittal Form, which was signed by the Chairperson of the Sector Committee on 2010 February 9, the OCG found that the Comparable Estimate which was recorded thereon differed from that which was recorded on the Bid Opening Record.

In this regard, the Comparable Estimate which was recorded on the referenced NCC Transmittal Form was \$198,458,716.95, as opposed to “\$192,544,584.50 (*inclusive of GCT*)” which was inserted on the Bid Opening Record. The foregoing represented a difference of \$5,914,132.45 between the two (2) recorded figures.

Consequently, and in an effort to clarify the disparity between the Comparable Estimates which were reported on the Bid Opening Record and the NCC Transmittal Form, the OCG, by way of a Follow-Up Requisition that was addressed to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 July 29, posed the following question:

*“Upon a review of the Bid Opening Record and the NCC Transmittal Form, the OCG noted that the Comparable Estimate which was recorded differed on the respective documents. The Bid Opening Record indicated that the Comparable Estimate totalled \$192,544,584.50 (inclusive of GCT) whilst \$198,458,716.95 was recorded on the NCC Transmittal Form. This represented a difference of \$5,914,132.55.*

*In this regard, please account for the difference in the figures and confirm the correct Comparable Estimate.”<sup>10</sup>*

Lt. Cdr. John McFarlane, in his response to the OCG’s Statutory Requisition, which was dated 2011 August 26, stated the following:

*“In determining the original estimated costs, the rates charged by the existing contractor was reduced by approximately 11% and used as the base rate. Upon review, and in consideration of industry norms and the fact that those rates had been in force for approximately two years prior, that reduction was revised to approximately 8%. The correct comparable estimate is \$198,458,716.95.”<sup>11</sup>*

Based upon the foregoing, the OCG found that the NMIAL’s Comparable Estimate which was reported on the NCC Transmittal Form, in the sum of “\$198,458,716.95”, was

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<sup>10</sup> OCG’s Statutory Requisition which was addressed to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 July 29. Question #2

<sup>11</sup> Response from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 August 26.

the correct and applicable Comparable Estimate.

***The Evaluation Criteria***

Appended to the RFP was an Evaluation Matrix which outlined to the bidders the criteria and the associated weightings which would be used to evaluate the respective responses. The referenced Evaluation Matrix provided as follows:

<i>Particulars</i>		<i>Proposers</i>		
<i>Description</i>		<i>Company X</i>	<i>Company Y</i>	<i>Company Z</i>
	<b><i>POINTS</i></b>	<b><i>SCORES</i></b>		
<b><u>PRELIMINARY EVALUATION</u></b>				
<b><u>Proposal Qualification Checklist</u></b>				
<i>Cover Letter</i>	<i>Y/N</i>			
<i>Executive Summary</i>	<i>Y/N</i>			
<i>Declaration Form</i>	<i>Y/N</i>			
<i>Disclaimer</i>	<i>Y/N</i>			
<i>Tax ID &amp; TCC</i>	<i>Y/N</i>			
<i>NCC Certification</i>	<i>Y/N</i>			
<i>Technical Proposal</i>	<i>Y/N</i>			
<i>Financial Proposal</i>	<i>Y/N</i>			
<b><u>A. Proposer Stability &amp; Financial Status</u></b>				
<i>Years in Business</i>	<i>8</i>			
<i>Statement of Experience and Qualification</i>	<i>4</i>			
<i>Financial Health and Stability</i>	<i>8</i>			
<b><u>B. Technical Quality</u></b>				
<i>Resources to be used</i>	<i>20</i>			
<i>Reliability of Staff (trained experienced staff to be assigned)</i>	<i>20</i>			
<i>Capacity (current coverage in relation to company resources)</i>	<i>20</i>			
<b><u>C. Proposer Service and Customer Support</u></b>				
<i>Customer References (letters of recommendation)</i>	<i>10</i>			

<i>minimum 3)</i>				
<i>Quality of References</i>	<i>5</i>			
<i>Statement of Service Policies</i>	<i>5</i>			
<b>TOTAL SCORES</b>	<b>100</b>	<b>0</b>	<b>0</b>	<b>0</b>

Appendix VIII of the RFP outlined the Evaluation Methodology which was to be used to evaluate the bids, as follows:

***“The minimum required score for the Preliminary Technical Evaluation is seventy (70) points.***

***The Technical Evaluation will be awarded based upon the following allocation:***

***2. Technical Specification (60 points)***

*A detailed evaluation based on the technical quality of the proposed Goods and Services will be conducted to determine the extent to which the Proposal meets the NMIAL’s specifications...*

***3. Stability and Financial Status (20 points)***

- a) This criterion will be based on the Technical Proposal...*
- b) NMIAL Airports Limited will use the following financial Ratios to measure the financial stability of Proposers.*

*Debt Ratio Acid Test Ratio*

- c) Years in business will be evaluated as follows:*

- a. 5 years and over 100%*
- b. Below 5 years 50%*

*Of the maximum allocated score on evaluation sheet*

***4. Services and Customer Support (20 points)***

*This criterion will be based on responses to the Technical Proposal...and*



*include product demonstration, site visits to the Contractor and/or Contractor's customer's location(s), if applicable.*

***The Final Evaluation will comprise a full assessment of the Technical Proposals.***<sup>12</sup>

The RFP further outlined a “**GENERAL EVALUATION FORMULA**” which detailed the following:

*“The **Technical Score** will be scored using the following formula, where:*

*Qt is the score of the Technical Proposal*

*t = Technical weighting (70%)*

*TP is total points (out of 100) for Technical Proposal,*

$$Qt = TP / 100 \times t$$

*The **Financial Score** will be scored using the following formula, where:*

*Cf is the score of the Financial Proposal;*

*c = Cost weighting (30%)*

*Flow is the lowest Proposal price; and*

*F is the Proposal price of the Proposal under consideration,*

$$Cf = c \times Flow / F$$

$$Total\ Score = Qt + Cf$$

***Total Score***

***Total Score = Technical Score + Financial Score***

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<sup>12</sup> Appendix VIII of the RFP for the provision of Landside Security Services.

### **1. Award Criteria**

*The Proposal obtaining the highest score will be invited for negotiations.”<sup>13</sup>*

Appendices VI - B and VI - C of the RFP detailed the desired requirements for both the Technical and Financial Proposal, as follows:

*“The Technical Proposal should comprise the following:*

- 1. Corporate Profile and Qualifications, which shall include the following:*
  - (a) Profile of Principal Management personnel*
  - (b) Industry experience;*
  - (c) Industry track record;*
  - (d) Audited financial statements for the last two (2) years.*
- 2. List of customers, giving statements, for the last two (2) years.*
- 3. Resources to be used, which shall include but not limited to the following:*
  - (a) Supervisors*
  - (b) Guards – unarmed and armed*
  - (c) Canine*
  - (d) Vehicles*
  - (e) Weapons*
- 4. Reliability of Service, which shall include:*
  - (a) Adequate experienced and trained staff;*
  - (b) Training policy and practice*
  - (c) Outside resources*
  - (d) Contingency plans to avert compromised service*
- 5. Insurance Coverage capability*
- 6. Key Project Resource Persons;*
- 7. Proposer’s Operational Procedures and Controls.*

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<sup>13</sup> Appendix VI - A of the RFP for the provision of Landside Security Services.

*The Financial Proposal should comprise the items listed below:*

- 1. Total Cost Summary*
- 2. Detailed Cost Summary, which shall include the priced Bill of Quantities.*
- 3. All Taxes”<sup>14</sup>*

The OCG noted very carefully the evaluation criteria and the requirements for eligibility and qualification in an effort to compare the proposals which were submitted by the prospective bidders and the subsequent scores which were attained.

### ***The Results of the Evaluation***

The OCG found that the members of the NMIAL’s Evaluation Committee held a meeting, on 2009 May 27, at which time the tender for the Provision of Landside Security Services was considered. Upon a review of the “*Notes of Landside Security Proposal Evaluation Meeting...*”, which was prepared for the referenced meeting, the OCG noted the following:

*“Cdr MacFarlane outlined that the purpose of the meeting was to review the Proposals submitted by five (5) companies in response to NMIAL’s Request for Proposals for Landside Security Services. **He explained that Landside Security meant everything that did not require entrance to an airside restricted area on the Airport.** He explained that the Car Parks, Gates to limited Restricted Areas, Perimeter on the dual carriage, the Energy Centre and the Incinerator were the main areas.*

*The Proposers had also been invited to provide a Proposal for persons to undertake Restricted Area Pass processing, a function being undertaken by NMIAL staff but that was now to be contracted out. Cdr McFarlane added that*

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<sup>14</sup> Appendices VI - B and VI - C of the RFP.

*the Proposal was therefore to address these two (2) components.*

*Cdr McFarlane advised that the Request for Proposal included clear instructions as to how the Proposals should be submitted...*

*Cdr McFarlane indicated that the Proposals received were to have a number of required components to make them [sic] compliant. The components were:*

- ✓ Declaration and Proposal Forms*
- ✓ Executive Summary*
- ✓ Valid Tax Compliance Certificate*
- ✓ National Contracts Commission Certificate*
- ✓ Valid Private Security Licence*
- ✓ Disclaimer and*
- ✓ Responses...*

*He outlined that the Proposers were also required to provide the following:*

- ✓ Copies of original documents defining the legal status*
- ✓ Principal Place of Business and written power of attorney of the signatory of the Proposal*
- ✓ Performance of contracts of a similar nature and volume over the past three (3) years*
- ✓ Names and address for a minimum of three (3) customers from whom the Proposer has provided similar services within the last eighteen (18) months.*
- ✓ Qualifications and experiences of key personnel proposed for administration and execution of the Contract*
- ✓ Audited reports on the financial standing of the Proposer including profit and loss statements and balance sheets for the past three (3) years.*
- ✓ Evidence of access to lines of credit*
- ✓ References from the Proposer's bankers*

*He added that the following should be provided:*

- ✓ *Organizational Chart and Staffing Plan*
- ✓ *The proposed number of workers per shift and any additional support which may be provided*
- ✓ *A Transition and Operational Plan*

*Cdr McFarlane made reference to Paragraph 2.10.9...which reads; “Proposals not satisfying the mandatory requirements in the specifications and instructions to Proposers shall be deemed non-compliant and the Proposal shall not receive consideration” He added that the Evaluators should ensure that all the requirements are satisfied.*

*Cdr McFarlane advised that this Technical Evaluation panel would not be looking at the financial side of the proposal, but would be looking at the technical side to make a determination and rank the Proposals. The Financial Evaluation would be undertaken by NMIAL’s Finance Department. He added that one of the requirements at the Proposal opening was that all Proposals should be opened one by one and be read out and recorded. He indicated that this was done on April 30, 2009 at 2:15 p.m....*

### **Technical Specifications**

*Cdr McFarlane outlined...that the Technical Specifications were to:*

- ✓ *Supply Supervisors, unarmed, armed and canine equipped Security Guards*
- ✓ *Ensure guards adhere to Standard Operating Procedures*
- ✓ *Carry out security searches as required*
- ✓ *Ensure guards are briefed and [sic] procedures pertaining to performance of duties*
- ✓ *Ensure guards assigned to premises are reasonably rotated*
- ✓ *Ensure guards do not undertake duties in excess of twelve hours...*

**Forms of Agreement**

*Cdr McFarlane advised that the Forms of Agreement must be in each of the Proposals. He added that the form outlines the Proposer's agreement and willingness to enter into a contract with NMIA.*

**Proposal Application Form**

*The Proposal Application Form outlines the Proposer's provision of security services and the duration.*

**Declaration Form**

*Declares that the information provided by the Proposer is true and correct.*

**Disclaimer**

*Outlines that the information provided is accurate and states that NMIA will not be liable as to the accuracy or completeness of the document.*

**Evaluation – Appendix 6A**

*The first preliminary evaluation establishes that the Proposers have submitted all the documentation required*

**Formula for Evaluation**

*Cdr McFarlane indicated that he was seeking to separate the Technical Specification from the Financial Specification.*

*He explained that to achieve the separation the Finance Department was asked to evaluate the financials and the Evaluation Team the Technical Specification.*

**Technical Proposal – Appendix VI B, Page 43**

*This should comprise of seven critical areas namely:*

- ✓ Profile and Qualifications*

- ✓ *List of Customers*
- ✓ *Resources to be used*
- ✓ *Reliability of Service*
- ✓ *Insurance Coverage Capability*
- ✓ *Key Project Resource Persons*
- ✓ *Proposer's Operational Procedures and Controls*

*The attached Evaluation Matrix completed by each Evaluator, shows the scores attained by each Proposer.”<sup>15</sup>*

Upon a review of the submission which was made to the Sector Committee by the NMIAL, the OCG found that a document which was entitled “*REPORT AND RECOMMENDATIONS: REQUEST FOR PROPOSALS FOR PROVISION OF LANDSIDE SECURITY SERVICES*”, stated, *inter alia*, the following:

***“Evaluation of the Proposals***

1. *An Evaluation Committee comprising three managers from the Security and Operations Departments of NMIAL and two external independent security professionals, listed below, reviewed the Technical proposals...*
  - a. *Lt Cdr John McFarlane, Director Aviation Security*
  - b. *Mrs. Vivette Webber McLaughlin, Assistant Manager Security*
  - c. *Mr. Christopher Powell, Operations Manager*
  - d. *Capt. John Ulett, General Manager, Security Administrators Ltd.*
  - e. *Major Brian Creary*
  
2. *The Financial Proposals were reviewed by two managers from the Finance Department of AAJ/NMIA...*
  - a. *Mr. Dervin Aiken*

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<sup>15</sup> The NMIAL Evaluation Committee Meeting “*Notes of Landside Security Proposal Evaluation Meeting...*”, which was held on 2009 May 27.

b. *Mr. Allan Bucknol*

3. *Each proposal was evaluated and assigned scores based on the evaluation criteria set out in Appendices VI A, VI B, VI C, and VIII of the Request for Proposals...*

### ***Responsiveness of Proposals***

*After perusal of each submitted proposal, all were deemed to be responsive...*

### ***Scoring of Proposals***

1. ...
2. *Protection and Security Limited emerged as the overall lead proposal, with a score of 89.50. Guardsman Limited emerged as the second ranking with a score of 87.30*

### ***Recommendation***

1. *On October 1, 2009 the Board of NMIAL approved the recommendation that a contract for three years for Package 1 – “Landside Security Services: Security Guard Services” be awarded to Protection and Security Limited in the amount of One Hundred and Forty Nine Million Nine Hundred Forty Thousand Dollars (\$149,940,000.00) subject to revision set out in Paragraph 9 below.*
2. *The Board approved a further recommended [sic] that Package 2 – **“Landside Security Services: Restricted Area Pass Processing” be withdrawn and therefore not awarded.** This recommendation follows an agreement made between the union and NMIA in August 2009 stemming from the restructuring of the Aviation Security Department, that the function of the processing of Restricted Area Passes would remain in house and not be out-sourced. The*



*right to award separate Packages or withdraw any Package is provided for in the RFP.*

***Proposal Sum Revision***

- 1. In May 2009, subsequent to the invitation for proposals and receipt of the proposals, the Government of Jamaica increased the mandatory minimum wage applicable to Security Guards by ten percent. It will therefore be necessary to adjust the tender sum appropriately.*
- 2. On the basis that the tender sum comprises administrative, management and operational overheads in addition to pay and allowances for the guards, the Board approved the recommendation that the successful bidder be permitted, following negotiations, to increase the tender sum proposed by no more than seven percent.*

***NCC Approval***

- The approval of the National Contracts Commission is requested for a three-year contract to be awarded to Protection and Security Limited in the amount of One Hundred and Forty Nine Million Nine Hundred Forty Thousand Dollars (\$149,940,000.00) subject to revision ... in respect of Package 1 – “Landside Security Services: Security Guard Services.”***
- No request is made in respect of Package 2 – “Landside Security Services: Restricted Area Pass Processing” as this Package has been withdrawn.”**<sup>16</sup>  
(OCG’s Emphasis)*

Based upon the foregoing, the OCG found the following:

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<sup>16</sup> NMIAL’s Submission to the Sector Committee, which included a document which was entitled ‘Report and Recommendations: Request for Proposals for Provision of Landside Security Services’.

1. That prospective bidders were invited to submit a bid for one or both of two (2) packages for Landside Security Services, as follows:
  - i. Package 1 – Security Guard Services; or
  - ii. Package 2 – Restricted Area Pass Processing.
2. That approval was received for the award of a contract for Package 1 (the provision of Landside Security Services) by the NMIAL, while Package 2 (Landside Security Services: Restricted Area Pass Processing) was withdrawn on the recommendation of the NMIAL Board of Directors.

The recommendation to withdraw Package 2 (Landside Security Services: Restricted Area Pass Processing) was based upon an agreement which was made between the Union and the NMIAL in 2009 August, stemming from the restructuring of the Aviation Security Department, that the function of the processing of Restricted Area Passes would remain in-house and not be out-sourced.

3. That the Procuring Entity, in accordance with Clause 3.4.2 of the RFP, reserved the right to “...*treat separately with each package set out in Appendix 1 at its own discretion and in its own best interest.*”

In this regard, and despite the withdrawal of Package 2 (Landside Security Services: Restricted Area Pass Processing), the instructions of the RFP permitted the continuation of the tender process, and hence, the NMIAL reserved the right to evaluate the proposals for the provision of “*Landside Security Services: Security Guard Services*”, on a separate basis.

4. That on 2009 October 1, the NMIAL Board of Directors approved the recommendation of the NMIAL’s Evaluation Committee to award the contract to

Protection and Security Limited, in the amount of \$149,940,000.00, for the provision of Landside Security Services for a three (3) year period.

Mr. Earl Richards, President, AAJ, and Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, in their responses to the OCG, which were dated 2010 June 25 & 2010 June 28, respectively, provided the OCG with an “EVALUATION SUMMARY”, which was dated 2009 March, and which was also appended to the NMIAL’s submission to the Sector Committee.

The referenced document, which was presented in a tabular format, provided a breakdown of the individual and aggregate scores which were given to each evaluated proposal, in accordance with the evaluation criteria and associated weightings as outlined in the RFP, as follows:

**“TECHNICAL SUBSET**

<b>TECHNICAL ANALYSIS SCORES - CONSOLIDATED</b>						
		<i>Atlas</i>	<i>Guardsman</i>	<i>Ports Security Corps</i>	<i>Protection and Security</i>	<i>Ranger Security</i>
<b>A. Proposer Stability &amp; Financial Status</b>	<b>20</b>					
<i>Years in Business</i>	8	8.00	8.00	8.00	8.00	8.00
<i>Statement of Experience and Qualification</i>	4	3.20	3.60	1.60	3.40	3.60
<i>Financial Health and Stability</i>	8	7.68	7.68	0.00	8.00	6.24
<b>B. Technical Quality</b>	<b>60</b>					
<i>Resources to be used</i>	20	14.60	15.60	7.80	15.60	9.60
<i>Reliability of Staff (trained experienced staff to be assigned)</i>	20	17.20	18.60	10.60	15.80	14.20
<i>Capacity (current coverage in relation to company resources)</i>	20	17.20	17.20	10.00	15.00	9.60
<b>C. Proposer Service and Customer Support</b>	<b>20</b>			-	-	
<i>Customer References (letters and recommendation minimum 3)</i>	10	8.20	10.00	-	10.00	-
<i>Quality of References</i>	5	2.80	4.60	-	5.00	-
<i>Statement of Service Policies</i>	5	4.20	2.60	0.20	4.00	1.20
<b>TOTAL SCORES</b>	<b>100</b>	<b>83.08</b>	<b>87.88</b>	<b>38.20</b>	<b>84.80</b>	<b>52.44</b>

**FINANCIAL SUBSET**

<b>FINANCIAL ANALYSIS SCORES</b>						
		<i>Atlas</i>	<i>Guardsman</i>	<i>Ports Security Corps</i>	<i>Protection and Security</i>	<i>Ranger Security</i>
<b>Actual Financials</b>						
<i>Debt Ratio - Actual</i>		0.97	0.78	Not Provided	0.51	0.90
<i>Acid Test Ratio</i>		1.255	1.0583	Not Provided	1.7818	0.9541
<i>Proposal Price (\$M)</i>		\$181.34	\$187.16	\$207.28	\$149.94	\$170.62
<b>Comparison of Company's Financials</b>						
<i>Debt Ratio</i>		90.00%	90.00%	Not Provided	100.00%	90.00%
<i>Acid Test Ratio</i>		100.00%	100.00%	Not Provided	100.00%	70.00%
<i>Proposal Price Ratios</i>		82.69%	80.11%	72.34%	100.00%	87.88%
<b>Relative Financial Strength</b>						
	<b>Weighting</b>					
<i>Debt Ratio</i>	<b>40.00%</b>	36.00%	36.00%	0.00%	40.00%	36.00%
<i>Acid Test Ratio</i>	<b>60.00%</b>	60.00%	60.00%		60.00%	42.00%
<b>Overall Financial Rating</b>		<b>96.00%</b>	<b>96.00%</b>	<b>0.00%</b>	<b>100.00%</b>	<b>78.00%</b>
<b>Cost Proposal Ratios</b>	<b>100.00%</b>	82.69%	80.11%	72.34%	100.00%	87.88%

The 'Technical Analysis Scores', which are detailed above, illustrate that Guardsman Limited received the highest technical score of 87.88 out of 100 points, Protection and

Security Limited was second with a score of 84.80 and Atlas Protection Limited attained a score of 83.08.

The '*Financial Analysis Scores*', which are also detailed above, illustrate that Protection and Security Limited attained the highest cost proposal ratio of 100%, Ranger Security received a ratio of 87.88% and Atlas Protection was third with a calculated ratio of 82.69%.

The table below represents the overall percentages based upon the associated Technical and Financial weightings which were outlined in the RFP:

<i>AGGREGATE TECHNICAL EVALUATION SCORES</i>						
		<i>Atlas</i>	<i>Guardsman</i>	<i>Ports Security Corps</i>	<i>Protection and Security</i>	<i>Ranger Security</i>
<i>AGGREGATE EVALUATION SCORE</i>	<i>Weighting</i>					
<i>Technical</i>	<i>70.00%</i>	<i>58.16</i>	<i>61.52</i>	<i>26.74</i>	<i>59.36</i>	<i>36.71</i>
<i>Financial</i>	<i>30.00%</i>	<i>24.81</i>	<i>24.03</i>	<i>21.70</i>	<i>30.00</i>	<i>26.36</i>
<i>FINAL EVALUATED SCORE</i>		<b><i>82.96</i></b>	<b><i>85.55</i></b>	<b><i>48.44</i></b>	<b><i>89.36</i></b>	<b><i>63.07</i></b>
<i>RANKING</i>		<b><i>3</i></b>	<b><i>2</i></b>	<b><i>5</i></b>	<b><i>1</i></b>	<b><i>4</i></b>

Based upon the foregoing tabular representation, Guardsman Limited was the most technically responsive of the bidders and received a percentage score of 61.52% out of the allotted 70% for the Technical Evaluation, whilst Protection and Security Limited attained the second highest score of 59.36%.

It is instructive to note that the '*Aggregate Technical Evaluation Scores*' table also revealed the Financial Evaluation Scores which were allotted a 30% weighting. The table above further illustrates that of the five (5) bidders, Protection and Security Limited was the most financially responsive. Of the allotted 30% for the Financial Evaluation,

Protection and Security Limited scored full marks of 30%, Ranger Security received the second highest weighted percentage score of 26.36%, whilst Atlas Security received the third highest percentage score of 24.81%.

Based upon the foregoing scores, the OCG found that out of a total possible score of 100%, Protection and Security Limited received an aggregated percentage score of 89.36%, Guardsman Limited received the second highest percentage score of 85.55%, and Atlas Protection Limited received the third highest percentage score of 82.96%.

### ***Occurrences during the Evaluation Process***

Under the cover of a letter, which was dated 2010 June 25, Mr. Earl Richards, President, AAJ, in his response to an OCG Statutory Requisition, which was dated 2010 June 4, appended a copy of a letter from Guardsman Limited, which was dated 2009 May 4, and which was addressed to the Chairman of the NMIAL Procurement Committee.

The referenced letter stated, *inter alia*, the following:

*“Further to the submission of our Tender for the captioned services, we wish to advise that the calculations for Package 1 – Security Services, was incorrect.*

*This was due to the Traffic Control post being calculated at one (1) Unarmed Guard instead of seven (7). The net effect of this omission is a total of...(J\$42,464,250.00) over the three (3) year period. This amounts to a total contract value for three (3) years (inclusive of GCT) of ...(\$198,005,293.13)...”<sup>17</sup>*

By way of a letter, which was dated “2009 January 20”, from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, to a Mrs. Valerie Juggan-Brown, Managing

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<sup>17</sup> Letter from Guardsman Limited to the Chairman of the NMIAL Procurement Committee, which was dated 2009 May 9.

Director, Guardsman Limited, the following calculation errors and amendments were brought to the fore:

*“Upon a perusal of your proposal for the provision of Landside Security Services as contained in the captioned RFP, we have identified that your proposal was submitted on the basis of one (1) Officer undertaking Traffic Control Duties, instead of the seven (7) required by the RFP.*

*One [sic] the basis that you provide the seven (7) as required, your tender sum would change as follows:*

	<b>Package 1</b>	<b>Package 2</b>	<b>Total</b>
<b>Original Proposal</b>	\$144,693,000.00	\$10,848,043.13	\$155,541,043.13
<b>Revised Proposal</b>	\$187,157,250.00	\$10,848,043.13	\$198,005,293.13

*These calculations are inclusive of GCT calculated at a rate of 16.5%.*

*Please confirm that you are prepared to stand by this revised proposal sum of One Hundred Ninety Eight Million, Five Thousand, Two Hundred and Ninety Three Dollars and Thirteen Cents (\$198,005,293.13) (inclusive of GCT at 16.5%).”<sup>18</sup>*

Mr. David Whittaker, General Manager, Guardsman Limited, responded, in writing, to the foregoing letter on 2010 February 2, and stated, *inter alia*, the following:

*“Further to your letter dated January 20, 2010, requesting confirmation of our commitment to stand by our revised amounts tendered, we hereby confirm the following amounts:*

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<sup>18</sup> Letter from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, to a Mrs. Valerie Juggan-Brown, Managing Director, Guardsman Limited, which was dated “2009 January 20”.



**Package #1**                    **\$187,157,250.00**  
**Package #2**                    **\$10,848,043.13**

**TOTAL CONTRACT VALUE:- \$198,005,293.13**

*This was the amount quoted in our revised proposal.”*

The OCG conducted a review of the financial proposal which was submitted by Guardsman Limited and confirmed the arithmetic error which was identified by the NMIAL.

It is instructive to note that the OCG found that Protection and Security Limited initially accepted a request from the NMIAL to extend the Tender Validity Period, under the cover of a letter which was dated 2010 January 14. The referenced letter, which was addressed to Lt. Cdr. John McFarlane, in response to the NMIAL’s letter of 2010 January 12, stated, *inter alia*, that “...*Protection & Security Limited will accept an extension of the tender validity period to January 31, 2010 and all the attendant obligation of surety on the same terms and conditions stipulated in the RFP issued on March 30, 2009.*”<sup>19</sup>

The OCG found, based upon a review of three (3) other letters, which were provided by Mr. Earl Richards, President, AAJ, in his response to the OCG’s Statutory Requisition of 2010 June 25, that extensions of the tender validity period for the referenced procurement opportunity were requested by the NMIAL and were accepted by Protection and Security Limited on 2010 February 16, 2010 April 7 and 2010 April 30, respectively.

Based upon the foregoing, the final date of expiration of the tender validity period, as evidenced by the OCG, was 2010 May 31.

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<sup>19</sup> Letter from a Mr. Richard Porteous, Business Development Manager, Protection and Security Limited, which was dated 2010 January 14.

### *The Validity of the Evaluation Process*

Having regard to the recommendation which was made to award the contract to Protection and Security Limited, and in an effort to ascertain whether the successful bidder had satisfied all the eligibility and qualification requirements in accordance with the RFP, the OCG, by way of its Statutory Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 4, posed, *inter alia*, the following question:

*“Please indicate whether you were involved in any way with the evaluation of the bids and the recommendation which was made to award the contract to Protection and Security Limited to provide Landside Security Services. If yes, please provide responses to the following:*

*(a) Did Protection and Security Limited satisfy all the eligibility requirements and the evaluation criteria for the provision of Landside Security Services? If not, please indicate which requirement and/or criterion was/were not satisfied. Please provide relevant justifications for the company qualifying, irrespective of same...”<sup>20</sup>*

Lt. Cdr. John McFarlane, in his response to the referenced OCG Statutory Requisition, which was dated 2010 June 28, answered in the affirmative to the foregoing questions.

It must be noted that the OCG sought to ascertain whether there was a specific evaluation criterion which may have given the successful bidder an advantage over the other potential bidders. As such, by way of its Statutory Requisition to Lt. Cdr. John McFarlane, Director, Security Aviation, NMIAL, which was dated 2010 June 4, the OCG posed the following question:

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<sup>20</sup> OCG Statutory Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 4. Questions #8- 8(a)

*“...Based on the results of the evaluation, please indicate which element of the evaluation criteria, whether technical and/or financial criterion, gave Protection and Security Limited an advantage over the other bidders.”<sup>21</sup>*

Lt. Cdr. John McFarlane, in his response to the foregoing question, which was dated 2010 June 28, stated the following:

**“The financial proposal submitted by Protection & Security Ltd provided the advantage over the other bidders.”<sup>22</sup>** (OCG’s Emphasis)

Having regard to the foregoing, and in keeping with the financial evaluation of the bids, the OCG found that the proposed contract value which was submitted by Protection and Security Limited was the lowest evaluated and, as such, gave the bid the advantage over the other prospective proposals.

### ***The Approval Process***

The Minutes of the Meeting of the then AAJ Board of Directors, which was held on 2009 October 1, stated, *inter alia*, the following:

*“The recommended tenderer was Protection and Security Services for a contract sum J\$149,940.00m which was the lowest rate among the tenderers. After extensive discussions the Finance Committee approved the proposal. The Board was now been [sic] asked to approve the recommendation.*

**Director Dennis Morgan declared his interest in the successful tender. He declared further that at no time during the process did he have any discussions with any member of the committee to influence their decision.**

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<sup>21</sup> OCG Statutory Requisition to Lt. Cdr. John McFarlane, Director, Security Aviation, NMIAL, which was dated 2010 June 4. Questions #8(b)

<sup>22</sup> Response from Lt. Cdr. John McFarlane, which was dated 2010 June 28. Response #8(b)

*The Chairman enquired if the management of AAJ/NMIA and members of the Board who were involved in the selection process could attest to the fact that the evaluation and recommendation were conducted in a free and fair manner. Mr. Deidrick responded in the affirmative. The President and other members of the Board present concurred.*

**The Board approved the recommendation for the award of the contract to Protection and Security Services Ltd.** ”<sup>23</sup> (OCG’s Emphasis)

It is instructive to note that upon a review of the Minutes of the Meeting of NMIAL’s Board of Directors which was held on 2009 October 27, the OCG found that the referenced NMIAL Board of Directors ratified the decisions pertinent to the operations of NMIAL’s Airport Limited, which were discussed and agreed upon in the AAJ’s Board of Directors meeting of 2009 October 1.

The OCG noted a letter from Lt. Cdr. John McFarlane to Dr. Alwin Hales, Permanent Secretary, MTW, which was dated 2009 October 26, and which was captioned “*Award of Contract – Landside Security Services – NMIAL*”. The referenced letter stated, *inter alia*, that “...we now seek the assistance of the Ministry of Transport & Works for this proposal to be tabled at the next meeting of the National Contracts Commission’s Sector Committee.”<sup>24</sup>

The OCG found, by way of a Procurement Committee Endorsement Form, that the Procurement Committee endorsed the award of contract on 2010 January 18. The referenced Endorsement Form revealed that Protection and Security Limited was the recommended bidder, in the amount of \$149,940,000.00. The comments on the referenced Endorsement Form stated that “*Tender completed for Package 1 only.*

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<sup>23</sup> Minutes of the Meeting of the AAJ Board of Directors which was held on 2009 October 1.

<sup>24</sup> Letter from Lt. Cdr John McFarlane, Director, Aviation Security, NMIAL, which was dated 2009 October 26.

*Package 2 was not awarded...**Protection & Security submitted the lowest tender which was also most technically responsive.***” (OCG’s Emphasis)

The OCG found that Mr. Altius Williams, the then Acting Permanent Secretary in the Ministry of Transport and Works, wrote to Mr. Mervis Edghill, Chairman of the Port Authority of Jamaica (PAJ) Sector Committee, on 2010 January 20, with respect to the award of a contract for the provision of Landside Security Services at the NMIAL, and recommended that Protection and Security Limited be awarded same, in the amount of J\$149,940,000.00.

The OCG further noted that the PAJ Sector Committee, by way of a letter which was dated 2010 February 9, wrote to Mrs. Shirley Tyndall, the then Chairman, NCC, and stated, *inter alia*, the following:

*“At the Sector Committee Meeting held on Tuesday, January 19, 2010, the Committee noted that the lowest tender was submitted by Guardsman Limited, in the sum of ... (J\$155,541,043.13) for both packages; with \$144,693,000.00 being for package 1. The Committee subsequently sought clarification from the NMIA’s representative regarding the disparity with the sum presented on the transmittal form (\$187,157,250.00), and was informed that **Guardsman had indicated that they had made an error in their submission and had sought to amend their initial proposal.***

*The Committee was concerned, as the tender procedure prohibited the submission of a second tender price after the opening of the tenders. Consequently, clarification was sought from the NMIA’s representative to determine whether or not the tenderer had indeed made an error in accordance with the contract, and if the calculations were consistent with the method for correcting bids...*

**A response was received on February 5, 2010 from the NMIA...which indicates that Guardsman is not prepared to stand by their original tender sum, and as such, the bid from Guardsman is deemed non-responsive.**

*On that basis, the Committee recommends the award of a contract to Protection & Security Limited, in the amount of...(J\$149,940,000.00), for the provision of Landside Security Services (Package 1), for the Norman Manley International Airport, for a period of three (3) years.”<sup>25</sup> (OCG’s Emphasis)*

Upon a review of the NCC Transmittal Form, the OCG noted that the ‘Points Scored’ for the three (3) lowest responsive bidders, were as follows:

1. Protection and Security Limited – 89.36
2. Ranger Security & Protection Co. Ltd. – 64.03
3. Guardsman Limited – 87.03

The OCG found that the foregoing representations on the NCC Transmittal Form differed from the scores which were allocated to Ranger Security and Guardsman Limited as the ‘Final Evaluated Score’ as per the Evaluation Summary, which was dated 2009 March. The referenced Evaluation Summary, as mentioned above, indicated the final evaluated scores to be as follows:

1. Protection and Security Limited – 89.36;
2. Ranger Security & Protection Co. Limited. – 63.07; and
3. Guardsman Limited – 85.55.

The OCG, however, noted that irrespective of the disparity in the allocated scores, as evidenced by the NCC Transmittal Form and the Evaluation Summary, the lowest evaluated bid was, in fact, submitted by Protection and Security Limited.

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<sup>25</sup> Letter from the PAJ Sector Committee to the Chairman of the NCC, Mrs. Shirley Tyndall, which was dated 2010 February 9.

It must be noted that the NCC, by way of a letter which was dated 2010 March 1, and which was addressed to Dr. Alwin Hales, the then Permanent Secretary in the MTW, stated, *inter alia*, the following:

*“Please refer to the submission dated 2010 January 20 made by the **Ministry of Transport & Works** to the Sector Committee at the **Port Authority of Jamaica** on the **2010 January 19** regarding the contract award relating to the above project. The National Contracts Commission having considered the matter at its meeting on **2010 February 24** has endorsed the recommendation of the Sector Committee to award the contract to **Protection and Security Limited** in the sum of...(J\$149,940,000.00).*

*Please submit the contract for the approval of Cabinet.”<sup>26</sup>*

The OCG, by way of a Follow-up Requisition to Mr. Earl Richards, President, AAJ, which was dated 2011 March 31, posed the following question:

*“Please provide a copy of the approval(s) which was/were granted by the Cabinet, if any, in regard to the procurement for the provision of Landside Security Services.”<sup>27</sup>*

Mr. Earl Richards, in his response to the foregoing question, which was dated 2011 April 26, stated the following:

*“NMIAL is not in possession of direct correspondence from Cabinet concerning the approval of the referenced procurement. However, enclosed ...is a copy of the letter received from the Ministry of Transport and Works, dated 2010 May 7,*

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<sup>26</sup> Letter from the NCC, which was dated 2010 March 1.

<sup>27</sup> OCG Requisition which was addressed to Mr. Earl Richards, President, AAJ, which was dated 2011 March 31. Question #2

*which conveyed Cabinet's approval for the award of the Landside and Security Services Contract to Protection and Security Limited.”<sup>28</sup>*

Attached to the foregoing response from Mr. Earl Richards was a letter, which was sent for and on behalf of the then Permanent Secretary in the MTW, by a Mr. Winston Farquharson, Acting Policy Officer, MTW, that was addressed to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 May 7.

The referenced letter stated the following:

*“Please be advised that Cabinet by way of Decision No. 17/10 dated May 03, 2010 noted and approved the recommendation of the Subcommittee for the Airports Authority of Jamaica/NMIA Airports Limited to award a contract to Protection and Security Limited in the amount of **J\$149,940,000.00** for the provision of landside security services at the Norman Manley International Airport for a period of three (3) years.”<sup>29</sup>*

Having regard to the foregoing, the OCG found that all of the requisite approvals were received from the respective Authorities for the tender for the provision of Landside Security Services at the NMIAL, in accordance with the provisions of the Revised GOJ Public Sector Procurement Procedures (December 2008).

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<sup>28</sup> Response from Mr. Earl Richards, President, AAJ, in his response to the OCG's Statutory Requisition, which was dated 2011 April 11. Response #2

<sup>29</sup> Extract from Cabinet Decision. Letter, which was sent for and on behalf of the Permanent Secretary in the MTW, by a Mr. Winston Farquharson, Acting Policy Officer, MTW, to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 May 7.



## The Contract Award Process

The successful bidder, Protection and Security Limited, was notified of the award of contract, by way of a letter, which was dated 2010 June 10, and which was signed by Mr. Paul Hall, Senior Vice President, Operations, NMIAL. The OCG noted that the referenced letter was copied to, amongst other, Mr. Earl Richards, President, AAJ, and Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL.

The referenced letter stated, *inter alia*, the following:

*“We wish to advise that your bid was successful and that Cabinet had granted approval for the award of a contract to Protection and Security Ltd. for a period of three years on the terms and conditions contained in the RFP and your proposal.*

*We will be submitting to you a draft contract within 72 hours, which we ask that you review to allow for final form of Agreement to be dispatched for due execution during the course of next week...*

*We shall also require that prior to assuming duties, your officers who are to be assigned duty at Norman Manley International Airport be subject to orientation and training in the specific functions and duties and procedures that they will be required to undertake. In this regard, we shall arrange a suitable time during which this orientation and training will be conducted by our Aviation Security Department.*

*We expect that the signing of the agreement, submission of insurances, licenses etc and training will be concluded in time so that you may commence duty at*

*Norman Manley International Airport on Saturday 2010 July 10 at 7:00 a.m.*”<sup>30</sup>

It must be noted that the OCG, by way of a Follow-up Requisition, which was addressed to Mr. Earl Richards, President, AAJ, which was dated 2011 March 31, questioned whether a contract had been signed between the NMIAL and/or the AAJ and Protection and Security Limited.

Mr. Earl Richards, in his sworn response to the foregoing question, which was dated 2011 April 26, stated that “*A contract was duly executed between NMIAL and Protection and Security Limited on 2010 July 7.*”<sup>31</sup>

The OCG evidenced a copy of the referenced contract which was in fact consummated between NMIAL and Protection and Security Limited on 2010 July 7.

Under the signed contract, the referenced parties agreed to, *inter alia*, the following terms and conditions:

**“WHEREAS**

*NMIAL requires the services of security guards to perform duties at its premises located at **NORMAN MANLEY INTERNATIONAL AIRPORT...***

**AND**

*The Contractor is the operator of a security business formed for the purpose of providing security services in respect of premises owned or managed by third parties and has agreed to provide the security guard service required by NMIAL.*

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<sup>30</sup> NMIAL’s Letter of Notification to the successful bidder, Protection and Security Limited, which was dated 2010 June 10.

<sup>31</sup> Response from Mr. Earl Richards, President, AAJ, in his response to the OCG’s Statutory Requisition, which was dated 2011 April 26. Response #3

*NOW THEREFORE in consideration of the mutual covenants and Agreements herein contained, NMIAL and the Contractor each agree as follows:*

**1. COMMENCEMENT AND TERM**

*This Agreement shall take effect at 07:00 a.m. on the 10<sup>th</sup> day of July 2010 for a period of thirty six (36) months terminating at 07:00 a.m. on the 10<sup>th</sup> [sic] day of July 2013 unless earlier terminated by the parties as provided for in this Agreement.*

**2. OPTION TO RENEW**

*An option to renew this Agreement will only be exercised in the event that any new tender process succeeding the expiry or earlier termination of this Agreement is incomplete. Where this is the case the Agreement will be extended monthly or as NMIAL shall deem fit.*

**3. AUTHORIZED REPRESENTATIVES**

*Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by NMIAL or the Contractor may be taken or executed by the officials who have executed this Agreement or their authorized representatives. For the purpose of this Agreement, the authorized representative for NMIAL is **Lt. Cdr. John McFarlane** and the authorized representative for the Contractor is Richard Porteous unless otherwise notified in writing...*

**CORRUPT OR FRAUDULENT PRACTICES**

**The Government of Jamaica requires that participants in its procurement processes observe the highest standard of ethics during the procurement execution and implementation of all Agreements.** *In light of this policy, each party hereby undertakes to ensure that in the performance of this Agreement, all*

*necessary actions be taken to ensure that no conflict of interests arise.*"<sup>32</sup>

Pursuant to Appendix 2 of the referenced contract, which outlined the 'Schedule of Rates', the parties agreed to the following payment terms:

<i>"Category</i>	<i>Hourly Rate per Guard</i>
<i>Unarmed Guards</i>	<i>\$215.00</i>
<i>Armed Guards</i>	<i>\$300.00</i>
<i>Canine and Handler</i>	<i>\$270.00</i>

*These rates are doubled for work done on Jamaican national public holidays*"<sup>33</sup>

The OCG has noted that the referenced Contract, in general, clearly outlined the responsibilities and obligations of the 'Contractor' and the NMIAL, and also highlighted the fact that the parties agreed to ensure that the "...highest standard of ethics during the procurement execution and implementation..." would be employed.

The OCG found the foregoing Clause to be of particular interest given certain circumstances which surrounded the award of the contract to Protection and Security Limited. It is instructive to note that the applicable GOJ Public Sector Procurement Guidelines also required that the highest standard of ethics be practiced during the pre-contract stages of any procurement process.

It is instructive to note that while the OCG found that the contract award process was generally in keeping with the provisions of the applicable GOJ Public Sector Procurement Guidelines (2008 December), there remains significant concern having regard to, at a minimum, the presence of Mr. Morgan at the then AAJ Board of Directors meeting of 2009 October 1, at which time the recommendation for the award of the

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<sup>32</sup> Contract consummated between NMIAL and Protection and Security Limited on 2010 July 7.

<sup>33</sup> Appendix 2 of the Contract.

contract was deliberated upon by the referenced Board.

The OCG has found that Mr. Morgan's involvement and/or association with a private company which submitted a bid for the provision of Landside Security Services at the NMIAL, and his likelihood of being privy to information regarding the said procurement opportunity, have created not only a possible conflict of interest situation but may have also compromised the perceived fairness and integrity of the entire contract award process.

## **The Validity of the Security Rates proposed by Protection and Security Limited**

In a further attempt to ascertain whether the recommendation to award the contract to Protection and Security Limited was fair and based upon merit, the OCG enquired into the validity of the rates which were proposed by the said company, having particular regard to the fact that rates which were proffered by Protection and Security Limited have amounted to a contract value which is 24.5% below the NMIAL's Comparable Estimate.

The OCG, in its Statutory Requisition to Mr. Dennis Morgan, Director, Protection and Security Limited, and a serving member of the AAJ Board of Directors, which was dated 2010 June 4, posed, *inter alia*, the following questions:

*“Please provide an Executive Summary detailing the following information in regard to the rates which were charged, which were detailed in your bid, for the provision of Landside Security Services at the NMIA:*

- a) What were the rates which were charged by Protection and Security Limited in regard to the referenced procurement;*
- b) What informed your rates for bid [sic] for the provision of Landside Security Services?*
- c) Are the rates that were applied to the tender different from what is normally charged by Protection and Security Limited for a project of this nature? If yes, what is the rationale for same and by how much do the rates vary;*
- d) Were the rates which were applied by Protection and Security Limited in the bid document in keeping with those which were approved by the GOJ and the Private Security Regulations Authority (PSRA)?*

- e) *Please provide a schedule illustrating a breakdown of the company's cash flow projections for the three (3) year contract period.*"<sup>34</sup>

Mr. Dennis Morgan, in his response to the referenced OCG Statutory Requisition, which was dated 2010 July 2, stated, *inter alia*, the following:

*"Question 9*

- a) **The rate charged is \$215.00, per hour, per unarmed security officer on normal days and \$430.00, per hour, per unarmed security officer on public holidays. For armed security officers, the rate charged is \$300.00, per hour on normal days and \$600.00, per hour, on public holidays. Lastly, for security officers with a canine the rate charged is \$270.00, per hour, on normal days and \$540.00, per hour, on public holidays.**
- b) *Rates are determined using the number of guards assigned to a particular location, coupled with whether they are armed, unarmed or require a canine.*
- c) *This bid was made on the 30<sup>th</sup> April, 2009. The said rates were consistent with rates being used by P&S at that time. By way of illustration, the said rates were used in tenders submitted to The National Works Agency, The National Environment & Planning Agency and the Development Bank of Jamaica on the 8<sup>th</sup> April, 2009, the 15<sup>th</sup> April, 2009 and the 28<sup>th</sup> April, 2009, respectively.*
- d) *This bid was made on the 30<sup>th</sup> April, 2009 and at that time, **it was in keeping with the prescribed rate requirement of the Government of Jamaica and the Private Security Regulations Authority...***

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<sup>34</sup> OCG Statutory Requisition to Mr. Dennis Morgan, Director of Protection and Security Limited and Director on the AAJ Board of Directors, which was dated 2010 June 4. Questions #9

e) *I have attached ... a schedule showing the margins of profit, for the three (3) year contract period which shows, anticipated income, generated by this contract, for P&S.*" <sup>35</sup>(OCG's Emphasis)

Attached to Mr. Morgan's response to the OCG's Statutory Requisition were, *inter alia*, two (2) tables which outlined (a) the type of service required, (b) the rate per hour, (c) the annual cost for each and (d) the total cost for the three (3) year period.

The NMIAL's Contract Cost Schedule outlined that the proposed cost for the provision of Landside Security Services for the three (3) year period was \$149,940,000.00 at an annual rate of \$49,980,000.00.

Based upon the foregoing, the OCG found the following:

1. Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, who was involved in the evaluation of the bids, was satisfied that Protection and Security Limited had met all the eligibility requirements and the evaluation criteria for the provision of Landside Security Services.
2. That the financial subset of the evaluation was the criterion that gave the successful bidder, Protection and Security Limited, the advantage over the other bidders.
3. The rates which were used by Protection and Security Limited, in the instant tender, were comparable to those rates which had been used by the company in response to other Tender Invitations which were issued by the Government of Jamaica.

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<sup>35</sup> Response from Mr. Dennis Morgan to the OCG's Statutory Requisition, which was dated 2010 July 2. Responses # 9



## ***GOJ Minimum Wage for Security Guards***

Mr. Dennis Morgan, in his response to the OCG's Statutory Requisition, which was dated 2010 July 2, indicated that the rates which were used were in keeping with the "...prescribed rate requirement of the Government of Jamaica and the Private Security Regulations Authority."<sup>36</sup>

Based upon the fact that the deadline for submission of the bids was 2009 April 30, the OCG found that the rates which would have been applicable to the tender period would have been in keeping with the Minimum Wage (Industrial Security Guards) Order, 2008. It must be noted that amendments to the Minimum Wage (Industrial Security Guards) Order were effected on 2009 May 11.

The referenced Minimum Wage (Industrial Security Guards) Order, 2008, stated, *inter alia*, that "This Order may be cited as the Minimum Wage (Industrial Security Guards) (Amendment) (No.2) Order, 2008, and shall be read and construed as one with the Minimum Wage (Industrial Security Guards) Order, 1982, (hereinafter referred to as the principal Order) and all amendments thereto, and shall come into operation on the 17<sup>th</sup> day of March, 2008."

It is instructive to note that the 1982 Principal Order, which, *inter alia*, outlines the minimum wage for Industrial Security Guards, provides as follows:

"4. With effect from the 6th day of January, 1997, the minimum wage for industrial security guards is hereby fixed at the rate of—

(a) \$40.50 per hour for work done during any period not exceed—

(i) 8 hours on a normal working day: or

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<sup>36</sup> Response from Mr. Dennis Morgan, Director of AAJ Board of Directors and Protection & Security Limited, which was dated 2010 July 2. Question 9(d)

(ii) 40 hours in any week:

(b) \$60.75 per hour for work done during any period in excess of 8 hours on a normal working day or in excess of 40 hours in any week:

(c) \$81.00 per hour for work done during any period on a rest day or a public holiday.

5. Any period during which an industrial security guard, acting on the instructions of his employer, waits at any place in order to be available to perform any of his duties whenever he is required to do so shall be reckoned, for the purposes of paragraph 4, as a period during which work is done by that security guard...

10. Nothing in this Order shall be construed as preventing the payment of wages at rates higher than the rates fixed by this Order.”

The amended Order for the period in which the subject tender process was undertaken, which was gazetted on 2008 January 29, stated as follows:

*“Paragraph 4 of the principal Order is amended-*

*(a) by deleting the words "29th day of January, 2007" and substituting therefor the words " 29th day of January, 2008";*

*(b) in sub-paragraph (a) by deleting the numerals "\$117.50" and substituting therefor the numerals "\$137.50";*

*(c) in sub-paragraph (b) by deleting the numerals "\$176.25" and substituting therefor the numerals \$205.75"; and*

*(d) in sub-paragraph (c) by deleting the numerals "\$235.00" and substituting therefor the numerals "\$275.00".”*

The foregoing Order was further amended, and was dated 2008 March 17, in which, *inter alia*, Paragraph 4 now reads: *“Paragraph 4 of the principal Order is amended in*

*subparagraph (b) by deleting the numerals “\$205.75” and substituting therefor the numerals “\$206.25”.*”

It is instructive to reiterate the rates which were proposed by Protection and Security Limited for the provision of Landside Security Services, and which were alluded to by Mr. Dennis Morgan, in his response to the OCG’s Statutory Requisition. The rates as indicated by Mr. Dennis Morgan are as follows:

*“The rate charged is \$215.00, per hour, per unarmed security officer on normal days and \$430.00, per hour, per unarmed security officer on public holidays. For armed security officers, the rate charged is \$300.00, per hour on normal days and \$600.00, per hour, on public holidays. Lastly, for security officers with a canine the rate charged is \$270.00, per hour, on normal days and \$540.00, per hour, on public holidays.”<sup>37</sup>*

Based upon the GOJ’s Minimum Wage Act for Industrial Security Guards, the OCG found that for the period 2008 January 29 (amended 2008 March 17) to 2009 May 6, the minimum wages for Industrial Security Guards were as follows:

- i. For work which was done during any period not exceeding (i) 8 hours on a normal working day; or (ii) 40 hours in any week, the Security Guard was required to be paid a minimum of \$137.50 per hour;
- ii. For work which was done during any period in excess of 8 hours on a normal working day or in excess of 40 hours in any week, the Security Guard was required to be paid a minimum of \$206.25 per hour; and

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<sup>37</sup> Response from Mr. Dennis Morgan, Director of AAJ Board of Directors and Protection & Security Limited, which was dated 2010 July 2. Question 9(a)

- iii. For work which was done during any period on a rest day or a public holiday, the Security Guard was required to be paid a minimum of \$275.00 per hour.

The OCG noted that the rates which were proposed by Protection and Security Limited were above the applicable minimum wages for “Industrial Security Guards” and were in keeping with Paragraph 10, of the 1982 Principal Order, which states that “*Nothing in this Order shall be construed as preventing the payment of wages at rates higher than the rates fixed by this Order.*”

**The Authorizing Boards, Committees & Sub-Committees within the AAJ and the NMIAL**

***The Board of Directors at the AAJ and the NMIAL***

The OCG, in its Statutory Requisition to Dr. Alwin Hales, the then Permanent Secretary, MTW, which was dated 2010 June 4, posed the following question:

*“Please provide an Executive Summary detailing the following:*

- a) A list of all the Board Members of the AAJ and the NMIA as at January 1, 2009 to present;*
- b) The date(s) each member was appointed to the respective Boards;*
- c) The reporting relationship, if any, between the respective Boards and/or any of its members; and*
- d) The overall internal procedures which govern the Board of Directors’ involvement, if any, in the procurement process?”<sup>38</sup>*

Dr, Alwin Hales, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 28, stated the following:

**“RESPONSE # 6**

- a) As at January 1, 2009 the following persons were members of the Board of Directors of AAJ:*

*Mr. Mark Hart, Chairman*

*Mr. Charles Heholt, Deputy Chairman & Chairman, Project sub-committee*

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<sup>38</sup> OCG Statutory Requisition to Dr. Alwin Hales, the then Permanent Secretary, Ministry of Transport and Works, which was dated 2010 June 4. Question #6.

*Mr. William Shagoury, Chairman, NMIA Limited*

*Mr. Earl Richards,*

*Mr. Marcus James, Chairman, Finance Committee*

*Mr. Ransford Braham*

**Mr. Dennis P. Morgan**

*Mrs. Fay Hutchinson*

*Ms. Valerie Simpson (Permanent Secretary's Representative)*

*Pursuant to Section 3(2) (Second Schedule) of the Airports Authority Act, the Honourable Minister of Transport and Works approved the appointment of the Board (inclusive of all members listed) of the AAJ on October 18, 2007 for a period of three years.*

*As at January 1, 2009, the following persons were members of the Board of Directors of NMIA Airports Limited:*

*Mr. William Shagoury, Chairman*

*Mr. Charles Heholt*

*Mr. Earl Richards*

*Mr. Mark Hart*

*Mr. Paul Hall*

*The Permanent Secretary MTW or Representative*

*By way of letter approved by the Honourable Minister...the Board of the NMIA (inclusive of all members listed above) was initially named on October 8, 2008.*

*The Companies Office of Jamaica, through its customer service representative Sanchez Samuels, confirmed that the individuals named above are appointed as Directors of the Board of NMIAL with effect from October 8, 2008.*

*Additionally, Mrs. Lisa-Kaye Allen Henry was appointed as Company Secretary with effect from January 1, 2005.*

- b) All members of the AAJ Board were appointed in 2007 October and all members of the NMIAL Board were appointed in 2008 October.*
- c) To the best of my knowledge, **the Boards of the AAJ and the NMIAL are independently appointed.***
- d) In general, **the Board reviews and considers for approval recommendations for procurements** submitted either by the Management or a Board sub-Committee. In considering such submissions **the Board may take into account such matters as project priority, budget, financing and applicable procurement process.**<sup>39</sup> (OCG's Emphasis)*

The OCG, in its Statutory Requisitions which were addressed to the then Permanent Secretary in the MTW, Dr. Alwin Hales, and Mr. Earl Richards, President, AAJ, in his capacity as the Accountable Officer, and which were dated 2010 June 4, respectively, questioned whether both individuals were aware that Mr. Dennis Morgan was an appointed member of the then Board of Directors of the AAJ and/or the NMIAL, and further sought to ascertain the following information:

“... ”

- a) The date(s) on which he was appointed to and/or served on the Board of Directors of the AAJ and/or the NMIA;*
- b) His role(s) and responsibilities as an appointed and/or serving member of the Board of Directors of the AAJ and/or the NMIA;*

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<sup>39</sup> Response from Dr. Alwin Hales, the then Permanent Secretary, Ministry of Transport & Works, which was dated 2010 June 25. Response #6

- c) *Was the procurement for the provision of Laneside Security Services discussed at any of the Board meeting(s) which was/were held? If yes, please indicate whether Mr. Morgan was present at any Board Meeting(s) at which the approval and/or recommendation for the referenced procurement was granted and/or whether he was involved and/or present at any Board meeting at which time the approval and/or recommendation for the procurement was discussed; and*
- d) *Are Board members privy to any documentation in regard to the referenced procurement... ”<sup>40</sup>*

Mr. Earl Richards, President, AAJ, in his response to the foregoing OCG Statutory Requisition, which was dated 2010 June 25, stated the following:

**RESPONSE # 2**

*Yes, **Mr. Morgan is a duly appointed member of the Board of Directors of the AAJ.** He is not a member of the Board of NMIAL. He serves only in the capacity of Director on the AAJ Board.*

*With respect to questions 1a - 1d, please note the following:*

- a) *Mr. Morgan was appointed to and served on the Board of Directors of the AAJ effective 2007 October 18.*
- b) *Schedule 2 of the Airports Authority Act establishes a Board of Directors with responsibility for the policy and general administration of the affairs of the Authority. **The Board collectively directs the company's affairs, whilst***

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<sup>40</sup> The OCG, in its Statutory Requisitions which were addressed to the then Permanent Secretary, MTW, Dr. Alwin Hales and Mr. Earl Richards, President, AAJ, and which were dated 2010 June 4. Question #2



meeting the appropriate interests of its shareholder and stakeholders. In addition to business and financial issues, its members deal with challenges and issues relating to corporate governance, corporate social responsibility and corporate ethics.

- c) The procurement concerning the provision of Landside Security Services was discussed, or its status inquired about at a number of Board meetings. Mr. Morgan was present at one or more Board meetings when the matter of the procurement was discussed and/or approved. To the best of my knowledge and recollection, Mr. Morgan never participated in any discussion regarding the recommendation or approval of the procurement and on each pertinent occasion he declared his interest as a principal in one of the companies that submitted a bid.
- d) Board members, including Mr. Morgan, would have been privy to the relevant minutes of Board meetings and any submitted reports (Board Papers) pertaining to the procurement. It is to be noted however that neither the report of the Evaluation Committee nor any other special report on the procurement was submitted to the Board. The Evaluation Report was discussed in detail at a meeting of the Finance and Audit Committee at which Mr. Morgan was absent.<sup>41</sup> (OCG's Emphasis)

Dr. Alwin Hales, in his response to the foregoing OCG Statutory Requisition, which was dated 2010 June 25, stated the following:

**“RESPONSE # 3**

*By way of Letter of appointment dated October 18, 2007...Mr. Morgan was*

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<sup>41</sup> Response from Mr. Earl Richards, President, AAJ, to the OCG's Statutory Requisition, which was dated 2010 June 25. Response #2

appointed member of the Board of Directors of the AAJ. **He is not a member of the Board of NMIAL.** He serves only in the capacity of Director on the AAJ Board.

With respect to questions 1a, 1b and 1d, please note the following provided by way of AAJ's letter dated 25 June 2010...

- a) Mr. Morgan was appointed to and served on the Board of Directors of the AAJ effective 2007 October 18.
  
- b) **Schedule 2 of the Airports Authority Act establishes a Board of Directors with responsibility for the policy and general administration of the affairs of the Authority. The Board collectively directs the Authority's affairs, whilst meeting the appropriate interests of its shareholder and stakeholders.** In addition to business and financial issues, its members deal with challenges and issues relating to corporate governance, corporate social responsibility and corporate ethics. **As advised by the AAJ, Mr. Morgan also serves as a member of the Finance Committee as [sic] sub-committee of the AAJ Board.**
  
- c) **Information provided by the Ministry's representative on the Board states "The procurement concerning the provision of Landside Security Services was discussed, or its status inquired about, at a number of Board meetings. Mr. Morgan was present at one or more Board meetings when the matter of the procurement was discussed and/or approved. To the best of my knowledge and recollection, Mr. Morgan never participated in any discussion regarding the recommendation or approval of the procurement and on each pertinent occasion he declared his interest as a principal in one of the companies that submitted a bid."**

- d) *Board members, including Mr. Morgan, would have been privy to the relevant minutes of Board meetings. **The report of the Evaluation Committee was not submitted to the Board. The Evaluation Report was discussed in detail at a meeting of the Finance and Audit Committee at which Mr. Morgan was absent.***<sup>42</sup>

The OCG, in its Statutory Requisition which was addressed to Dr. Alwin Hales, the then Permanent Secretary, MTW, and which was dated 2010 June 4, also sought to ascertain from Dr. Hales whether he was aware that Mr. Morgan was the principal of Protection and Security Limited, in which he was further required to provide responses to the following:

“... ”

- a) *The circumstances under which you became aware of such;*  
b) *The date on which you became aware;*  
c) *The particulars of the disclosure(s) that was/were made to you; and*  
d) *The names and titles of the person(s) who informed you of same.*<sup>43</sup>

Dr. Alwin Hales, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 25, stated the following:

**“RESPONSE #4**

- a) **I became aware of the fact that Mr. Morgan is a Principal in Protection and Security Limited while reviewing the Cabinet Submission which was prepared in regard to the award of the contract.**

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<sup>42</sup> Response from Dr. Alwin Hales, the then Permanent Secretary, MTW, to the OCG’s Statutory Requisition, which was dated 2010 June 25. Response #3.

<sup>43</sup> The OCG, in its Statutory Requisitions which was addressed to Dr. Alwin Hales, the then Permanent Secretary, MTW, and which was dated 2010 June 4. Question #4.

- b) *The date I became aware of this fact was April 28, 2010.*
- c) *As is required, the Directors of the Company were stated in the Cabinet Submission that was prepared, regarding the award of the contract. **The Submission also stated that “Mr. Dennis Morgan being a Director of the Board of the AAJ declared his interest in this project at the meeting of the Board of the AAJ held on Thursday, October 1, 2009.”**<sup>44</sup> (OCG’s Emphasis)*

In an effort to ascertain whether Mr. Morgan had served on any other Sub-Committees in the AAJ and/or the NMIA, the OCG, in its Requisition to Mr. Earl Richards, President, AAJ, which was dated 2010 June 4, posed the following questions:

*“Is/Was Mr. Morgan a member and/or representative of any other Committee and/or sub-committee of the Board of the NMIA and/or AAJ? If yes, please provide the following information:*

- a. *The date(s) on which he became a member of the Committee(s) and/or sub-committee(s);*
- b. *His role(s) and responsibilities as a member of the Committee(s) and/or sub-committee(s); and*
- c. *Was the procurement for the provision of Landside Security Services discussed at any of the Committee(s) and/or sub-committee(s)? Is yes, please indicate whether Mr. Morgan was present at any of the Committee(s) and/or sub-committee(s) at which the referenced procurement was discussed.”*<sup>45</sup>

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<sup>44</sup> Response from Dr. Alwin Hales, the then Permanent Secretary, Ministry of Transport & Works, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 25. Responses #4

<sup>45</sup> The OCG’s Requisition to Mr. Earl Richards, President, AAJ, which was dated 2010 June 4. Question #3

Mr. Earl Richards, President, AAJ, in his sworn response to the OCG's Statutory Requisition, which was dated 2010 June 25, stated the following:

**“RESPONSE # 3**

*Yes, Mr. Morgan is a member of the Finance and Audit Committee of the AAJ Board of Directors. With respect to questions 3a – 3c, please note the following:*

- a) **Mr. Morgan was appointed as a member of the AAJ's Finance and Audit Committee on 2007 November 27.**
  
- b) *As a member of the Finance and Audit Committee, **Mr. Morgan together with other appointed members oversee the financial affairs of the organisation, inclusive of procurement, and ensure compliance with the requirements of the Public Bodies Management and Accountability Act.***
  
- c) **The procurement for the provision of Landside Security Services was discussed at meetings of the Finance and Audit Committee of which Mr. Morgan is a member...Mr Morgan did not participate in any meeting which involved deliberations/decisions on the Landside Security procurement; however, in other meetings he attended, he would have been made aware of the general status of the procurement in respect of the stage at which it had reached in the procurement process”.**<sup>46</sup> (OCG's Emphasis)

It is instructive to note that upon a review of the Minutes of the Meetings of the Finance and Audit Committee, which is a Sub-Committee of the Board of Directors of the AAJ and the NMIAL, the meeting in which Dr. Alwin Hales stated, in his response to the

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<sup>46</sup> Response from Mr. Earl Richards, President, AAJ, in his response to the OCG's Statutory Requisition, which was dated 2010 June 25. Responses #2

OCG, that the Evaluation of the Bids was discussed in detail, was held on 2009 August 27. In point of fact, the OCG confirmed that Mr. Morgan was not present at the referenced Meeting.

By way of the Minutes of the Meeting of the Board of Directors of the AAJ, which was dated 2007 November 27, it was reported that the “...members of the new Board, as well as the Executive Management team were asked to introduce themselves...”<sup>47</sup>

The referenced Minutes of the Meeting of the Board of Directors of the AAJ, also outlined the introduction of the new members, inclusive of Mr. Dennis Morgan who identified himself as “...Finance & Management own and operate a security firm Protection and Security Limited, Chairman of NSWMA.”<sup>48</sup>

Based upon the above sworn responses and the particulars of the referenced Minutes, the OCG also found the following information to be of interest:

- i. The Boards of the AAJ and the NMIAL were independently appointed.
- ii. The referenced Public Body Boards are required to review and to consider for approval the recommendations for procurements which are submitted either by the Management or a Board Sub-Committee in which matters such as project priority, budget, financing and applicable procurement process are taken into account.
- iii. That Mr. Dennis Morgan was appointed to and served on the Board of Directors of the AAJ effective 2007 October 18.

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<sup>47</sup> Minutes of the Meeting of the Board of Directors of the AAJ, which was dated 2007 November 27.

<sup>48</sup> Minutes of the Meeting of the Board of Directors of the AAJ, which was dated 2007 November 27.

- iv. That Mr. Dennis Morgan also served as a member of the Finance Committee which is a Sub-Committee of the AAJ Board of Directors.
- v. That Mr. Dennis Morgan had declared his interest in Protection and Security Limited during certain official meetings of the AAJ Board of Directors.
- vi. That the then members of the Boards of Directors of the AAJ and NMIAL, including Mr. Dennis Morgan, would have been privy to the relevant minutes of the Board meetings and the reports which were submitted to the respective Boards.
- vii. That matters concerning the tender exercise for the provision of Landside Security Services were discussed, or its status enquired about, at a number of the meetings of the then AAJ Board of Directors at which Mr. Dennis Morgan was present.
- viii. That the report of the Evaluation Committee was not submitted to the Board. However, the Evaluation Report was discussed in detail at a meeting of the Finance and Audit Committee, which was held on 2009 August 27. **The Minutes of the referenced Meeting indicated that Mr. Morgan was not present.**
- ix. That both the then Permanent Secretary, Dr. Alwin Hales, and the President of the AAJ, Mr. Earl Richards, attested to the fact that “...*Mr Morgan did not participate in any meeting which involved deliberations/decisions on the Landside Security procurement; **however, in other meetings he attended, he would have been made aware of the general status of the procurement in respect of the stage at which it had reached in the procurement process.***”<sup>49</sup>

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<sup>49</sup> Response from Mr. Earl Richards, President, AAJ, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 25. Responses #2&3

- x. The President of the AAJ indicated, in his sworn response to the OCG, that as a member of the Finance and Audit Committee “**...Mr. Morgan together with other appointed members oversee the financial affairs of the organisation, inclusive of procurement, and ensure compliance with the requirements of the Public Bodies Management and Accountability Act.**”

It is instructive to note that the OCG, in its Statutory Requisition to Mr. Dennis Morgan, which was dated 2010 June 4, posed, *inter alia*, the following question:

*“If ... you are/were a serving member of the Board of Directors at the NMIA and/or the AAJ, please indicate whether you are/were aware of Section 17 (2) of the Public Bodies Management and Accountability Act which provides that, “A director who is directly or indirectly interested in any matter which is being dealt with by the board- (a) shall disclose the nature of his interest at a board meeting; (b) shall not take part in any deliberation of the board with respect to that matter.” If yes, please provide responses to the following:*

- a) When did you become aware of the referenced provision of law?*
- b) In light of the referenced provision of law, what measures did you take to disclose your private interests at the respective Board meetings? and*
- c) Did you disclose your private interest(s) at any of the Board meetings of the NMIA and/or AAJ?”<sup>50</sup>*

Mr. Dennis Morgan, in his sworn response to the OCG, which was dated 2010 July 2, stated the following:

*“Question 6*

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<sup>50</sup> OCG Statutory Requisition, which was addressed to Mr. Dennis Morgan, in his capacity as a then Director, AAJ Board of Directors, and which was dated 2010 June 4. Question #6



- a. *I was not aware of the referenced section until raised by you.*
- b. *At the first meeting of the board of directors I attended after being named as a director, when introducing myself, I stated that I was involved in the security business and specifically that I was the director and principal shareholder of P&S. In addition I would, at all subsequent board meetings at which the provision of landside security services was raised, remind the board of directors of my interest in P&S and I would leave the room so that the deliberations could take place in my absence.*

*Further, as a member of the Finance and Audit Committee, which comprises only members of the board of directors, I did not attend the meeting at which the provision of landside security services was scheduled to be discussed. In addition, as with board meetings, in the event that the provision of landside security services was raised at a committee meeting, at which I was already in attendance, I would remind the committee of my interest and leave the room so that the deliberations could take place in my absence.*

- c. *I disclosed my interest in P&S at the first meeting that I attended as a member of the board of directors and at each subsequent meeting at which to topic of security was raised.”<sup>51</sup> (OCG’s Emphasis)*

Mr. Earl Richards, President, AAJ, was asked a similar question in his Statutory Requisition of 2010 June 4. In his response to the OCG, which was dated 2010 June 25, Mr. Earl Richards stated the following:

*“I am aware of the provisions of the Act. With regard to items 12: a) and b), please note below:*

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<sup>51</sup> Response from Mr. Dennis Morgan, Director, AAJ Board of Directors & Protection and Security Limited, which was dated 2010 July 2. Response #6

- a) *I have been generally aware of the said provisions for some time and I recently took the opportunity to review the Section in question.*
- b) *No specific measures are taken at meetings to address the disclosure of private interest, however, I am satisfied that all AAJ and NMIAL Board members are aware of the requirement to declare interest in any instance where a conflict of interest could arise.*<sup>52</sup>

Based upon the foregoing, the OCG found that serving Directors on any Public Body Board are required, pursuant to the provisions of Section 17 (2) of the Public Bodies Management and Accountability Act, to disclose the nature of any private interest during Board Meetings, and that any such person having disclosed an interest is required to refrain from participating in any deliberation of the Board with respect to that matter.

Mr. Morgan, in his sworn response to the OCG's Requisition, indicated that he only became aware of the referenced provision of the Public Bodies Management and Accountability Act upon the OCG's Requisition to him.

However, the OCG has found that this contradicts the foregoing statement which was made by Mr. Earl Richards, in which he informed the OCG that *"No specific measures are taken at meetings to address the disclosure of private interest, however, I am satisfied that all AAJ and NMIAL Board members are aware of the requirement to declare interest in any instance where a conflict of interest could arise."*

Further, the OCG found certain sworn statements which were made by Mr. Earl Richards, Dr. Alwin Hales and Mr. Dennis Morgan to be of particular interest as it relates to Mr. Morgan's alleged participation in discussions which were held with the AAJ Board of Directors in regard to the provision of Landside Security Services at the NMIAL.

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<sup>52</sup> Response from Mr. Earl Richards, Director & CEO, AAJ, which was dated 2010 June 25. Response #12

It is instructive to note that Mr. Morgan indicated to the OCG that once the issue at hand was raised in any Board Meeting he would remind the Board of his interest in Protection and Security Limited and **“... would leave the room so that the deliberations could take place in my absence.”**

However, Mr. Earl Richards, in his sworn testimony to the OCG, stated that although Mr. Morgan did not participate in any meeting which involved deliberations/decisions on the procurement for the provision of Landside Security Services, **“...in other meetings he attended, he would have been made aware of the general status of the procurement in respect of the stage at which it had reached in the procurement process.”**

At the same time, Mr. Richards indicated, in his sworn testimony to the OCG that **“The procurement concerning the provision of Landside Security Services was discussed, or its status inquired about at a number of Board meetings. Mr. Morgan was present at one or more Board meetings when the matter of the procurement was discussed and/or approved.”** It is instructive to note that the referenced quote was corroborated by the Permanent Secretary in the MTW, Dr. Alwin Hales, in his sworn testimony to the OCG, which was dated 2010 June 25.

Having regard to the foregoing, the OCG found the following to be of interest as it relates to Mr. Morgan’s involvement and/or association with the procurement opportunity:

1. Mr. Morgan was present at several Board Meetings in which the procurement opportunity to which he had submitted a bid was discussed and deliberated;
2. Mr. Morgan, whilst purportedly unaware of Section 17(2) of the Public Bodies Management and Accountability Act, indicated that he had (a) disclosed his interest in each meeting, (b) did not participate in any discussions/deliberations regarding the procurement of Landside Security Services, and (c) reported that he left the room upon such discussions/deliberations; and

3. Despite the fact that Mr. Morgan declared that he did not participate in any such discussions/deliberations pertaining to the subject matter, it was reported by Mr. Earl Richards, President, AAJ and Dr. Alwin Hales, the then Permanent Secretary, MTW, to the OCG, that Mr. Morgan was made aware of the “...*general status of the procurement in respect of the stage at which it had reached in the procurement process.*”

It is instructive to note that the OCG has seen no evidence to suggest that Mr. Morgan had not been in receipt of the Minutes of Meetings of the AAJ Board of Directors pertaining to discussions which were held with respect to the procurement for the provision of Landside Security Services.

Mr. Dennis Morgan’s involvement as a serving member of the AAJ Board of Directors

In an effort to have a clear understanding of the involvement, if any, of Mr. Dennis Morgan, as a then Director of the AAJ Board of Directors and Principal, Protection and Security Limited, in the award of the contract to Protection and Security Limited, for the provision of Landside Security Services at the NMIAL, the OCG requisitioned Mr. Morgan, by way of its Statutory Requisition, which was dated 2010 June 4.

In this regard, the OCG posed the following questions:

*“What is/was the extent of your official involvement in the recommendation for the award of a contract to Protection and Security Limited for the provision of Landside Security Services at the NMIA?”*

*Are/Were you a duly appointed and/or serving member of the Board of Directors at the NMIA and/or the AAJ? If yes, please provide the following information:*

- a) *The date(s) on which you were appointed to and/or served on the Board of Directors of the AAJ and/or the NMIA;*
- b) *Your role(s) and responsibilities as an appointed and/or serving member of the Board of Directors of the AAJ and/or the NMIA;*
- c) *Was the procurement for the provision of Landside Security Services discussed at any of the Board meeting(s) which was/were held? If yes, please indicate whether you were present at any Board Meeting(s) at which the approval and/or recommendation for the referenced procurement was granted and/or whether you were involved and/or present at any Board meeting at which time the approval and/or recommendation for the procurement was discussed; and*
- d) *Are Board members privy to any documentation in regard to the referenced procurement? If yes, were you privy to such documentation?*<sup>53</sup>

Mr. Morgan, in his response to the referenced OCG Statutory Requisition, which was dated 2010 July 2, stated the following:

*“Question 1*

- a. *I had no official involvement in the recommendation for the award of a contract to P&S for the provision of landside security services at the Norman Manley International Airport (hereinafter called the “NMIA”).*

*Question 2*

- a. ***I was appointed as a member of the board of directors of the Airports Authority of Jamaica (hereinafter referred to as the “AAJ”) on the 18<sup>th</sup>***

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<sup>53</sup> OCG Statutory Requisition, which was addressed to Mr. Dennis Morgan, in his capacity as a then Director, AAJ Board of Directors, and which was dated 2010 June 4. Question #6

**October, 2007. I am not a member of the board of directors of the NMIA.**

- b. *As a member of the board of directors of the AAJ, I am called upon, together with my fellow directors, to make decisions which assist the AAJ in achieving its goal of developing a modern, safe and profitable airport system that is environmentally responsible, provides world-class services and contributes substantially to the national economy, while promoting the expansion of air transport and its related industries.*
- c. **I am aware that the provision of landside security services was discussed at board meetings of the AAJ.**

**Whereas I was present at board meetings at which the approval and/or recommendation for the referenced procurement was discussed and/or approved, I did not participate in any of the deliberations as I would, on all occasions on which the matter was raised, reminded the board of directors of my interest in P&S and leave the room, so that the deliberation could take place in my absence.**

- d. **I am not aware whether board members are privy to any documentation in regard to the referenced procurement as, having declared my interest, I did not see or attempt to see any documents in reference to the provision of landside security services.**<sup>54</sup> (OCG's Emphasis)

Mr. Earl Richards, President, AAJ, in his response to the OCG's Statutory Requisition, which was dated 2010 June 25, provided the OCG with a copy of the Minutes of the

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<sup>54</sup> Response from Mr. Dennis Morgan, Director, AAJ Board of Directors & Protection and Security Limited, which was dated 2010 July 2. Response #

Meetings of the then Board of Directors for both the AAJ and the NMIAL, at which the referenced procurement opportunity was discussed.

Upon a review of the referenced Minutes of the Meetings of the then AAJ Board of Directors, the OCG found that the procurement opportunity was deliberated upon, and discussed on 2009 October 1 and 2009 November 24, respectively.

The OCG's review of the Minutes of the Meetings of the then NMIAL Board of Directors, revealed that during the said period, the NMIAL Board had met on 2009 October 27 and 2009 November 24. The referenced Minutes indicated that the NMIAL Board of Directors "ratified" the decisions which were taken by the AAJ Board of Directors, as follows:

1. By way of the Minutes of the Meeting of the then Board of Directors of NMIAL, which was dated 2009 October 27, the OCG noted that the one-page Minutes, stated, *inter alia*, that "*The Board ratified the decisions pertinent to the operations of NMIA Airports Limited discussed and agreed at the AAJ Board of Directors meeting of 2009 October 01 and October 27...*"
2. Further, by way of the Minutes of Meeting of the Board of Directors of NMIAL, which was dated 2009 November 24, the OCG noted that the one-page Minutes, stated that "*The Board ratified the decisions pertinent to the operations of NMIA Airports Limited discussed and agreed at the AAJ Board of Directors meeting of 2009 November 24.*"

The OCG has noted Mr. Morgan's disclosure that he was not a member of the NMIAL Board of Directors but that he was aware that the procurement opportunity was discussed in the meetings of the AAJ Board of Directors. The OCG has observed from the Minutes of the then NMIAL Board of Directors that the NMIAL Board 'ratified' the recommendations which were made to it by the AAJ Board of Directors.

The OCG also noted that the referenced meeting of the then NMIAL Board of Directors of 2009 October 29 had commenced at 11:51 a.m. and was adjourned at 11:57 a.m. A similar time period was observed for the referenced meeting of 2009 November 24, which had commenced at 5:00 p.m. and which had been adjourned at 5:12 p.m. In point of fact, this was observed for the majority of the Minutes of the NMIAL Board of Directors' Meetings which were provided to the OCG.

Therefore, the OCG opines that, based upon the short time span between the commencement of the NMIAL's Board Meetings and its adjournment, the '*ratification*' of the decisions of the then AAJ Board of Directors by the NMIAL Board of Directors could not have involved any in-depth analysis and, as such, the OCG has found that the justification, rationalization and viewpoint of the then AAJ Board of Directors was heavily relied upon by the NMIAL Board.

On a general note, and to buttress the OCG's Findings and concerns in this regard, the OCG found, based upon a review of the fifteen (15) Minutes of the Meetings of the then NMIAL Board of Directors, inclusive of the Minutes of an Annual General Meeting, between the period of 2009 January 27 and 2010 April 27, that the time duration of the referenced meetings were peculiarly short. In point of fact, the OCG found that the duration of the Meetings ranged between four (4) minutes and twenty-seven (27) minutes, at best.

It must be reiterated that certain of the referenced Minutes of the Meetings of the then NMIAL Board of Directors indicated that the decisions of the AAJ Board of Directors, pertaining to the operations of the NMIAL, in most instances, were simply reported as follows:

***“The Board ratified the decisions pertinent to the operations of the NMIA Airports Limited discussed and agreed at the AAJ Board of Directors...”***



The foregoing was evidenced in nine (9) of the fifteen (15) Minutes of the Meetings of the then NMIAL Board of Directors which were provided to the OCG.

Given the lawful fiduciary duties which are imposed upon Public Body Boards of Directors, the OCG is gravely concerned as to the level of due care, scrutiny, objectivity and independent review which was brought to bear upon the operational affairs of the NMIAL, by its then Board of Directors, given the brevity and the lack of depth of discussions as evidenced by the Minutes.

The OCG found that Mr. Morgan's attempt to disassociate himself entirely from the approval process cannot be substantiated on the basis that he served on the AAJ Board of Directors and not the NMIAL Board of Directors. The OCG noted that Mr. Morgan was present at the Meeting of the then AAJ Board of Directors, which was held on 2009 October 1, in which the Minutes indicated, *inter alia*, that "*After extensive discussions the Finance Committee approved the proposal. The Board was now been [sic] asked to approve the recommendation.*"

The OCG noted that the referenced Minutes of the Meeting of the then AAJ Board of Directors also outlined that during the deliberations of the AAJ Board of Directors, Mr. Morgan had again "*...declared his interest in the successful tender. He declared further that at no time during the process did he have any discussions with any member of the committee to influence their decision.*"

The Minutes of the referenced Meeting of the then AAJ Board of Directors did not indicate that Mr. Morgan had removed himself from the deliberations which were being undertaken with respect to the recommendation for the award of contract to Protection and Security Limited, a private company in which Mr. Morgan had a pecuniary interest and which had submitted a bid to the NMIAL.

Further, the OCG noted that Mr. Dennis Morgan was also present at the Meeting of the then AAJ Board of Directors, which was held on 2009 January 27, which Director Earl Richards stated, *inter alia*, that “...tender documents were being prepared to invite competitive bids for security services the Landside areas such as Car park, Gates and other non-restricted areas.”

Having regard to the foregoing, the OCG found that Mr. Morgan was informed prior to the commencement of the tender period, and particularly during the period when the tender documents were being prepared, that the procurement was to be put to competitive tender.

### ***The Finance & Audit Committee***

The OCG, in its Statutory Requisition, which was addressed to Mr. Dennis Morgan, in his capacity as a then Director of the AAJ Board of Directors, and which was dated 2010 June 4, posed the following questions:

*“Are/Were you a member and/or representative of any other Committee(s) and/or sub-committee(s) of the Board at the NMIA and/or AAJ? If yes, please provide the following information:*

- a. The date(s) on which you became a member of the Committee(s) and/or sub-committee(s);*
- b. Your role(s) and responsibilities as a member of the Committee(s) and/or sub-committee(s); and*
- c. Were you advised by any Public Official/Officer of the Committee(s) and/or sub-committee(s) of the procurement for the provision of Landside Security*

*Services? If yes, please provide full particulars of the information which was disclosed.”<sup>55</sup>*

Mr. Dennis Morgan, in his response to the OCG’s Statutory Requisition, which was dated 2010 July 2, stated, *inter alia*, the following:

“*Question 3*

- a. ***I am a member of the Finance and Audit Committee and I was appointed as a member of the same on the 27<sup>th</sup> November, 2007.***
- b. *As a member of the Finance and Audit Committee, I am called upon, together with the fellow members, to ensure that financial matters, pertinent to the AAJ, are handled in a responsible manner.*
- c. *I did not discuss or attempt to discuss the procurement for the provision of landside security services with any Public Official/Officer of the committee.”<sup>56</sup> (OCG’s Emphasis)*

The OCG also required that Mr. Earl Richards, President, AAJ, indicate whether he was aware that Mr. Morgan had served on any other Committees and/or Sub-committees within the AAJ and/or the NMIAL. In his response to the OCG, which was dated 2010 June 25, Mr. Richards confirmed that “*Mr. Morgan is a member of the Finance and Audit Committee of the AAJ Board of Directors.*”

Mr. Earl Richards, in his response to the OCG, also provided a copy of the Minutes of the Finance and Audit Committee. Upon a comprehensive review of the Minutes of the referenced Committee, the OCG identified the following:

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<sup>55</sup> OCG Statutory Requisition, which was addressed to Mr. Dennis Morgan, in his capacity as a Director, AAJ Board of Directors, and which was dated 2010 June 4. Question #3

<sup>56</sup> Response from Mr. Dennis Morgan, Director, AAJ Board of Directors & Protection and Security Limited, which was dated 2010 July 2. Response #3

1. In the AAJ Special Finance and Audit Committee Meeting, which was held on 2009 August 27, the Minutes indicated that Lt. Cdr. John MacFarlane was asked by the Chairman to make a presentation in which the following, *inter alia*, was reported:

*“An updated Report and Recommendations to reflect the decision that Package 2: “Landside Security Services: Restricted Area Pass Processing” be withdrawn instead of being deferred as reflected in the initial submission dated July 2009.*

*The meeting was informed that the Tender was in accordance with Government of Jamaica procurement requirements and the Office of the Contractor General. Five companies submitted tenders out of a total of eleven companies which collected packages. At the tender opening, Guardsman Limited was the lowest cost however Guardsman resubmitted their proposal due to an arithmetic error resulting in an understatement of approximately \$30m, arising from the use of an incorrect multiplier of one guard at a station instead of the required guard of seven at the same location. The new submission from Guardsman Limited was accepted.*

*Based on the overall ranking Protection and Security was the most successful bid, with Guardsman being the second most successful and Ports Security Corps Limited the least successful.*

*Chairman James enquired as to the special focus on customer services standard especially in relations to the Airports Operations and related to a personal experience. Cmdr. McFarlane responded to the query by referring to the standard operating procedures and the recent efforts aimed at improving the customer relations within the department, as well as various training programmes being implemented. Chairman James acknowledged the effort however encouraged that the programme be intensified...*

*Director Simpson enquired whether due care during the evaluations of the tender, especially in light of the successful tender has some affiliation with a member of the Board of Directors. To this Cmdr. McFarlane responded that due care was taken.*

*Mr. Bucknol enquired whether any errors were identified in the work of the evaluation committee and how such error would be treated if identified. To this Mr. Deidrick responded that indeed there existed a line item in the Balance Sheet of one of the tenders, which if treated in the normal course would have distorted the financial results, and in discussion with Cmdr. McFarlane the appropriate treatment was done.*

*Chairman James and Director Simpson stated that it is imperative that evidence of the evaluation is available and that Cmdr. McFarlane make this available to the Board...<sup>57</sup> (OCG's Emphasis)*

The referenced Minutes revealed that Mr. Dennis Morgan was absent from the meeting of the Finance & Audit Committee.

2. The Minutes of the AAJ Finance & Audit Committee Meeting, which was held on 2010 January 19, reported, *inter alia*, that “*With respect to the Security Contract, the document had been taken to the Sector Committee. It will then be submitted to the National Contracts Commission and the Cabinet.*”<sup>58</sup>

The Minutes of the meeting of the Finance and Audit Committee revealed that Mr. Dennis Morgan was in attendance.

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<sup>57</sup> Minutes of the AAJ Special Finance & Audit Committee Meeting, which was held on 2009 August 27.

<sup>58</sup> Minutes of the AAJ Finance & Audit Committee Meeting, which was held on 2010 January 19.

3. The Minutes of the AAJ Finance & Audit Committee Meeting, which was held on 2010 March 23, reported, *inter alia*, that “...*The Security Contract was now with the Ministry of Finance.*”<sup>59</sup>

The Minutes of the meeting of the Finance and Audit Committee revealed that Mr. Dennis Morgan was in attendance.

4. The Minutes of the AAJ Finance & Audit Committee Meeting, which was held on 2010 April 27, reported, *inter alia*, the following:

*“Regarding the security contract Mr. Bucknol advised that he had spoken with Cmdr. McFarlane who advised that this was still with the Ministry of Finance and he, Cmdr. McFarlane, had submitted to the Ministry a copy of the Tender Validity Extension which had been requested. Cmdr. McFarlane had advised that due to the urgency, he assumed that this matter would have gone to Cabinet yesterday, April 26.*

*Mr. Bucknor advised that the current security contractor would have been given a one month contract extension to provide security services at NMIAL.”*<sup>60</sup>

The Minutes of the meeting of the Finance and Audit Committee revealed that Mr. Dennis Morgan was absent from the referenced meeting.

In an effort to clarify certain information which was outlined in the abovementioned Minutes of the AAJ Finance & Audit Committee, the OCG requisitioned Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, by way of its Statutory Requisition, which was dated 2011 July 29, and posed the following question:

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<sup>59</sup> Minutes of the AAJ Finance & Audit Committee Meeting, which was held on 2010 March 23.

<sup>60</sup> Minutes of the AAJ Finance & Audit Committee Meeting, which was held on 2010 April 27.

*“Upon a review of the Special Finance & Audit Committee Meeting which was held on August 27, 2009, to which you were present, the following was stated:*

*“Mr. Bucknol enquired whether any errors were identified in the work of the evaluation committee and how such errors would be treated if identified. To this Mr. Deidrick responded that indeed there existed a line item in the Balance Sheet of one of the tenders, which if treated in the normal course would have distorted the financial results, and in discussion with Cmdr. McFarlane the appropriate treatment was done.”*

*Having regard to the foregoing, please provide an Executive Summary outlining the full particulars of this occurrence which took place during the financial evaluation. The Executive Summary should include, inter alia: (a) the specific tender which was not evaluated in the ‘normal course’; (b) what decision was taken by you to resolve the occurrence and the reason for same; (c) explain in what way would the issue have distorted the financial results, if the normal course was undertaken and (d) whether, in your opinion, you believe that the modification to the evaluation of that tender would have affected the fairness of the results.”<sup>61</sup>*

Lt. Cdr. John McFarlane, in his response to the OCG’s Statutory Requisition, which was dated 2011 August 26, stated, *inter alia*, the following:

*“In evaluating the Financial Statements included in the tender of Ranger Security, the Balance Sheet disclosed Directors’ Loans of \$67M as Current Liabilities whereas in the Balance Sheet of the other bidders this item is classified as Long Term Liabilities. With this disclosure being under Current Liabilities, the Acid Test Ratio would be distorted. Thus, instead of showing a negative ratio of 0.9541, it would have, when adjusted, shown a positive ratio of 2.84. This in turn*

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<sup>61</sup> OCG Statutory Requisition, which was addressed to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, and which was dated 2011 July 29. Question #6

*would have changed the relative Financial Strength from 78% to 96%, thus yielding a Financial Health and Stability Index of 7.68 instead of 6.24. The Technical Evaluation Score would move from 36.71 to 37.2, resulting in a Final Re-Evaluated Score of 65.04 as against 64.03.*

***This final score does not affect the resulting relative position of Ranger Security against the other bidders, and therefore does not affect the fairness of the result...***<sup>62</sup> (OCG's Emphasis)

Based upon the foregoing, and although it has been represented that Mr. Morgan was not present at the Finance and Audit Committee Meeting of 2009 August 27, in which the deliberations were being undertaken with respect to the evaluation of the bids for the provision of Landside Security Services, the OCG has found that Mr. Morgan was present at other Finance and Audit Committee meetings in which the Security Contract was being discussed with respect to the status of the approval process for same.

Notwithstanding the representations which were made by Cdr. John McFarlane, in the referenced AAJ Special Finance and Audit Committee Meeting of 2009 August 27, that "due care was taken" in the evaluation the bids, the OCG has not seen any evidence which would attest to the 'due care' which may have been undertaken by the AAJ and/or the NMIAL to guard against any possible undue influence which may have resulted from Mr. Morgan's position as a then serving member of the AAJ Board of Directors and the Finance and Audit Committee.

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<sup>62</sup> Response from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 August 26. Response #6



## **Issues Surrounding the NMIAL's Comparable Estimate**

One of the concerns which prompted the OCG's decision to commence its Investigation was the seemingly wide void which existed between the NMIAL's Comparable Estimate of \$198,458,716.95<sup>63</sup> and the cost which was proposed by the successful bidder, Protection and Security Limited, in the amount of \$149,940,000.00, for the three-year period.

Having regard to the NMIAL's Comparable Estimate of \$198,458,716.95 and the contract value which was proposed by Protection and Security Limited, in the amount of \$149,940,000.00, the OCG found that the referenced proposed contract value was **24.5%** below the Comparable Estimate.

Significantly also, was the fact that the proposed contract sums which were submitted by the other prospective bidders exhibited a significant variance between the contract sum which was proposed by Protection and Security Limited and the NMIAL's Comparable Estimate. The contract values which were proposed by the prospective bidders were either below, albeit by a marginal difference, or above the NMIAL's Comparable Estimate, as follows:

- v. \$184,856,001.00 as proposed by Ranger Protection & Security Limited was 6.9% below the Comparable Estimate;
- vi. \$187,157,250.00 as amended by the NMIAL and accepted by Guardsman Limited was 5.7 % below the Comparable Estimate;
- vii. \$207,281,867.72 as proposed by Port Security Corp was 4.4 % above the Comparable Estimate; and
- viii. \$209,619,615.00 as proposed by Atlas Protection Limited was 5.6% above the Comparable Estimate.

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<sup>63</sup> NCC Transmittal Form, which was prepared by Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL.

Mr. Earl Richards, President, AAJ, provided the OCG with a breakdown of the Comparable Estimate, in his response to the OCG's Statutory Requisition, which was dated 2010 June 25. The referenced breakdown was presented in the form of three (3) tables, which were entitled "*Contracted Security Costs – Landside: NMIA ESTIMATED COSTS*", as follows:

<i>Contracted Security Costs – Landside</i>						
<i>NMIA ESTIMATED COSTS</i>						
<i>Locations</i>	<i>0700hrs-1900hrs</i>			<i>1900hrs-0700hrs</i>		
	<i>Nos.</i>	<i>Rate</i>	<i>Total</i>	<i>Nos.</i>	<i>Rate</i>	<i>Total</i>
<u><i>Unarmed</i></u>	18			17.33		
<i>Gate #7</i>	2	226	5,424	2	226	5,424
<i>Gate #7c</i>	1	226	2,712	0.33	226	895
<i>Energy Centre</i>	1	226	2,712	1	226	2,712
<i>Traffic Control</i>	7	226	18,984	7	226	18,984
<i>VIP Car Park</i>	1	226	2,712	1	226	2,712
<i>Car Park 57</i>	1	226	2,712	1	226	2,712
<i>Car Park 14</i>	2	226	5,424	2	226	5,424
<i>Readi-Lot Car Park</i>	1	226	2,712	1	226	2,712
<i>Tenant's Admin Block</i>	1	226	2,712	1	226	2,712
<i>Public Car Park</i>	1	226	2,712	1	226	2,712
<u><i>Canine / Armed</i></u>	7			7		
<i>Dual Carriageway Patrol</i>	1	331	3,972	1	331	3,972
<i>Perimeter Fence Patrol (Flying Club</i>	1	331	3,972	1	331	3,972
<i>Cargo Village</i>	2	331	7,944	2	331	7,944
<i>Incinerator</i>	1	331	3,972	1	331	3,972
<i>Public Car Park</i>	2	331	7,944	2	331	7,944
<i>Shifts Totals</i>	25		76,620	24.33		74,803
<i>Supervisor Traffic</i>		234	-		234	-
<i>Supervisor Static Guards</i>		234	-		234	-
<i>Gross Shift Costs</i>	25		76,620	24		74,803

The OCG noted that the estimated costs, for the provision of Landside Security Services, were calculated by NMIAL on a 24-hr time period at the following rates: \$226 for Unarmed, \$331 for Canine/Handler and \$234 for Supervisor Guards for a total of 25 Security Guards between 0700-1900 hrs and 24 Security Guards between 1900-0700 hrs.

<i>Holidays</i>	<i>Persons</i>	<i>Days</i>	<i>Hrs/Day</i>	<i>Rate</i>	
<i>Officers</i>	<i>35.33</i>	<i>10</i>	<i>12</i>	<i>226.00</i>	<i>958,149.60</i>
<i>Canine/Armed</i>	<i>14</i>	<i>10</i>	<i>12</i>	<i>331.00</i>	<i>556,080.00</i>
					<i>1,514,229.60</i>

Based upon the above table, Public Holidays were estimated by the NMIAL on a 12-hr time period for the same rates as regular working days.

<b>Total Contracted Security Costs - Landside</b>			
<i>Daily Costs</i>		<i>151,422.96</i>	
<i>Annual Costs</i>		<i>55,269,380.40</i>	
<i>Holidays Costs</i>		<i>1,514,229.60</i>	
		<i>56,783,610.00</i>	
<b><i>Aggregate 3-yr costs</i></b>		<b><i>170,350,830.00</i></b>	<b><i>With GCT</i></b>
			<b><i>198,458,716.95</i></b>

It is instructive to note that based upon the NMIAL's Comparable Estimate for the three-year period, the annual estimate amounts to \$66,152,905.65.

The OCG, in an effort to ascertain information with respect to the Procurement Budget for the provision of Landside Security Services at the NMIAL, requested, in its Requisition to Mr. Earl Richards, President, AAJ, a copy of the Procurement Budget and Plan for the NMIAL and the AAJ, for the 2009/2010 and 2010/2011 fiscal years.

Mr. Earl Richards, President, AAJ, in his response to the OCG's Requisition, which was dated 2010 June 25, indicated that "*The Procurement Budget and Plan for the NMIAL and the AAJ are subsumed in the organization's annual Expenditure/Cash Flow Budget for the separate entities...*"<sup>64</sup> Mr. Richards provided the OCG with two (2) spreadsheets, which represented the Budgets for both the AAJ and the NMIAL for the 2009/2010 and 2010/2011 fiscal years.

Upon a review of the referenced Budgets which were provided, the OCG noted the following:

1. Fiscal year 2009/2010 – Budgeted Security expenses for the NMIAL amounted to J\$187,986,047.
2. Fiscal year 2010/2011 – The monthly breakdown for security services at the NMIAL for the fiscal year amounted to \$15,669,111.00 and was calculated at \$188,029,331.00 for the year.

Mr. Richards also provided the OCG with a spreadsheet which was entitled "***BUDGET DETAILS 2010/2011 NMIA AIRPORTS LIMITED***" which represented a breakdown of, *inter alia*, the rates and budgeted amounts for Landside Security Services at the NMIAL for the fiscal year 2010/2011. Of note, the OCG was in not in receipt of such a spreadsheet for the fiscal year 2009/2010.

The breakdown of security expenses for the fiscal year 2010/2011 was represented on the referenced spreadsheet for Landside Security Services, as follows:

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<sup>64</sup> Mr. Earl Richards, President, AAJ, in his response to the OCG Requisition, which was dated 2010 June 25. Response #15

<b>60095</b>	<b>Security</b>					188,029,331.04
<b># of Shifts</b>	<b>Hrs per Shift</b>		<b># of Officers</b>	<b>Rate</b>		
		<b>Landside Security</b>				
1	12	Guardsman Ltd (7 Canine x 1 x 12hr shift x 355 days)	7	J\$357.00		11,422,879.02
1	12	Holiday (7 Canine x 1 x 12 hr shift x 10 days)	7	J\$357.00		643,542.48
1	12	Guardsman Ltd (8 Canine x 1 x 12hr shift x 355 days)	8	J\$357.00		13,054,718.88
1	12	Holiday (8 Canine x 1 x 12 hr shift x 10 days)	8	J\$357.00		735,477.12
1	12	Guardsman Ltd (1 Senior Guard x 2 x 12hr shift x 355 days)	1	J\$252.00		1,151,886.96
1	12	Holiday (1 Senior Guard x 2 x 12 hr shift x 10 days)	1	J\$252.00		64,895.04
2	12	Guardsman Ltd (9 Regular Guards x 2 x 12hr shift x 355 days)	9	J\$244.00		20,075,744.16
2	12	Holiday (9 Regular Guards x 2 x 12 hr shift x 10 days)	9	J\$244.00		1,131,027.84
2	12	Guardsman Armed Guard (1 x 2 x 12 hr shift x 355 days)	1	J\$357.00		3,263,679.28
2	12	Holiday (1 Armed Guard x 2 x 12 hr shift x 10 days)	1	J\$357.00		183,869.72
3	8	PSC AntiHarrassment Officer (1 x 3 x 8 hr shift...)	1	J\$357.00		3,263,679.28
3	8	Holiday (1 PSC AntiHarrassment Officer x 3 shift...)	1	J\$357.00		183,869.72

**\*The OCG noted that there was a 7.3% mark up on the actual amounts to give the final figure.**

Based upon the foregoing tabular representation, the OCG noted that of the fiscal year 2010/2011 budget of \$188,029,331.04, the NMIAL allocated a total of \$55,175,269.50 for the provision of Landside Security Services.

It is instructive to note and reiterate that the contract for the Provision of Landside Security Services was consummated on 2010 July 7 to take effect on 2010 July 10 for a three-year period.

Based upon the rates which were provided in the contract and the applicable minimum wage industry standards for security guards, the proposed annual contract value of \$49,980,000.00 by Protection and Security Limited would have remained applicable.

The OCG found that although the bids were submitted during the fiscal year 2009/2010, and the fact that there was no identified revision required by the NMIAL, the proposed rates would have remained applicable in the fiscal year 2010/2011, prior to the effective date of the Security Contract. Further, the OCG found that the budget of \$187,986,047 which was allotted for the fiscal year 2009/2010 was only \$43,284.04 below the 2010/2011 fiscal budget of \$188,029,331.04.

In this regard, the OCG conducted a comparative analysis of the proposed annual rates which were submitted to the NMIAL by the other prospective bidders against the NMIAL's 2010/2011 fiscal budget of \$55,175,269.50 and that which was proposed by Protection and Security Limited. Based upon the comparative analysis, the OCG found the following:

1. The annual contract value, based upon the financial proposal of Ranger Protection & Security Limited, would amount to \$61,618,667.00, and is, therefore, 11.6 % above the referenced budget;
2. The annual contract value, based upon the financial proposal of Guardsman Limited, would amount to \$62,385,750.00, and is, therefore, 13.06 % above the referenced budget;

3. The annual contract value, based upon the financial proposal of Port Security Corp, would amount to \$69,093,955.91, and is, therefore, 25.22% above the referenced budget;
4. The annual contract value, based upon the financial proposal of Atlas Protection Limited, would amount to \$69,873,205.80, and is, therefore, 26.63% above the referenced budget; and
5. The annual contract value, based upon the financial proposal of Protection and Security Limited, would amount to \$49,980,000.00, and is, therefore, 9.42% below the referenced budget.

Having regard to the above percentage variances, the OCG found that only the proposed contract sum from Protection and Security Limited fell below the NMIAL's 2010/2011 fiscal budget.

The OCG, by way of its Statutory Requisition to Mr. Earl Richards, President, AAJ, which was dated 2010 June 4, posed the following question:

*“Please provide the basis upon which the NMIA arrived at its comparable estimate for the provision of Landside Security Services. In addition, please provide the following information:*

- a) The name(s) and title(s) of the person(s) who prepared the comparable estimate;*
- b) Was the comparable estimate used as the basis for comparing the proposed prices during the financial evaluation of the bids; and*

- c) *Were you privy to the comparable estimate during the preparation stage? If yes, please indicate your involvement, if any, in the preparation and/or the approval of same.*<sup>65</sup>

Mr. Earl Richards, President, AAJ, in his response to the OCG's Requisition, which was dated 2010 June 25, stated the following:

*"The comparable estimate was prepared based on the manning levels and the stipulated hours of work set out in Appendix 1 of the RFP for the provision of the service. The Appendix is titled "Description of required service and Technical Specifications. Current contractual rates were used in the computation with provision for increases over the three years.*

*With respect to questions 17a – 17c, please note the following responses to each:*

- a. *The comparable estimate was prepared by Lt Cdr John McFarlane, Director of Aviation Security.*
- b. *No. The bid prices were compared as against each other and as against the required components of the RFP.*
- c. *No, I was not privy to the comparable estimate during the preparation stage.*<sup>66</sup>

It is instructive to note that the OCG, by way of its Statutory Requisition to Mr. Earl Richards, President, AAJ, which was dated 2010 June 4, also posed the following question:

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<sup>65</sup> OCG Statutory Requisition to Mr. Earl Richards, President, AAJ, which was dated 2010 June 4. Question #17.

<sup>66</sup> Response to the OCG's Requisition from Mr. Earl Richards, President, AAJ, which was dated 2010 June 25. Response #17.



*“The OCG’s records indicate that the NMIA’s Comparable Estimate for the provision of Landside Security Services was \$198,458,716.95. Given the seemingly wide void which existed between the referenced comparable estimate and the contract value which was proposed by Protection and Security Limited in the amount of \$149,940,000.00, in comparison with the proposed values from the other potential bidders which were valued at \$184,856,001.00, \$187,157,250.00, \$207,281,867.72 and \$209,619,615.00 respectively, please provide responses to the following questions:*

- a) Is the Board of Directors at the NMIA and/or the AAJ privy to the procurement budget/plan and/or the comparable estimate for the provision of Landside Security Services?*
  
- b) Based on your response in Questions #3 and #6 above, if Mr. Dennis Morgan is a serving member of the Board of Directors and/or a representative/member of a sub-committee of the Board at the AAJ/NMIA, please indicate whether you are aware of any other Public Official/Officer who may have advised him of the referenced comparable estimate?*
  
- c) Did Mr. Morgan consult you at anytime in regard to the procurement for the provision of Landside Security Services? If yes, please provide full particulars of the information which was disclosed.”<sup>67</sup>*

Mr. Earl Richards, President, AAJ, in his response to the OCG Requisition, which was dated 2010 June 25, stated the following:

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<sup>67</sup> The OCG, by way of its Statutory Requisition to Mr. Earl Richards, President, AAJ, which was dated 2010 June 4. Question #18

**“RESPONSE # 18**

- a. **The Board of Directors is privy to the aggregate cost for security (which does not separate airside from landside security costs) as is contained in the approved budget.** *The comparable estimate was not shared with the Board nor any member of the Board.*
- b. *To my knowledge, Mr. Morgan was not advised nor aware of the comparable estimate*
- c. *No.* <sup>68</sup> (OCG’s Emphasis)

The OCG, by way of its Statutory Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 4, posed the following question:

*“The OCG’s records indicate that the NMIA’s Comparable Estimate for the provision of Landside Security Services was \$198,458,716.95. Given the seemingly wide void which existed between the referenced comparable estimate and the contract value which was proposed by Protection and Security Limited in the amount of \$149,940,000.00, in comparison with the proposed values from the other bidders, please provide responses to the following questions:*

- a) *Is the Board of Directors at the NMIA and/or the AAJ privy to the procurement budget/plan and/or the comparable estimate for the provision of Landside Security Services?*
- b) *Were you privy to the procurement budget/plan and/or the comparable estimate for the provision of Landside Security Services?*

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<sup>68</sup> Response to the OCG’s Requisition from Mr. Earl Richards, President, AAJ, which was dated 2010 June 25. Response #18

c) *Did you advise any member of the NMIA/AAJ Board of Directors of the referenced comparable estimate?*

d) *Did Mr. Morgan consult you at anytime in regard to the procurement for the provision of Landside Security Services? If yes, please provide full particulars of the information which was disclosed.”<sup>69</sup>*

Lt. Cdr. John McFarlane, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 28, stated the following:

***“Response 11a***

*I do not know if the Board is aware of the actual details of the security budget, but they formed part of the security budget submitted by me, revised by Management and subsequently approved by the Board. I do not know the extent to which the Board “drilled down” to the detailed components of the aggregate budget.*

***Response 11b***

*Yes*

***Response 11c***

*At no time did I discuss [sic] the security budget, any aspect of the detailed components thereof, or the comparable estimate, with any Board Member other than what would have arisen during the August 27, 2009 meeting of the Finance Committee of the Board. As I recall, the quantum of the comparable estimate did not arise at that meeting, but it was asked whether and confirmed that a comparable estimate had been prepared.*

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<sup>69</sup> The OCG, by way of its Statutory Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 4. Question #11

***Response 11d***

*No*<sup>70</sup>

It is instructive to note that Mr. Earl Richards, in his response to the OCG's Statutory Requisition of 2011 April 26, advised the OCG that "*The Finance and Audit Committee of the Board reports directly to the AAJ Board.*"<sup>71</sup>

The OCG, in an effort to ascertain whether Mr. Dennis Morgan, in his capacity as a serving member of the AAJ Board of Directors, had, in any possible way, been exposed to the Comparable Estimate, prior to and/or during the tender process, posed the following question to Mr. Morgan, by way of its Statutory Requisition, which was dated 2010 June 4:

*"The bid amount which was provided by your private company, Protection and Security Limited, in regard to the provision of Landside Security Services, was reported as being below the NMIA's Comparable Estimate. In this regard, please provide responses to the following:*

- a) Were you privy to the procurement budget/plan and/or the referenced comparable estimate for the provision of Landside Security Services? If yes, please provide full particulars as to how you became privy to this particular information.*
  
- b) Did any Public Official/Officer at the AAJ/NMIA or any other Public Official/Officer, advise you of the referenced comparable estimate? If yes, please provide the names and titles of the person(s) and the particulars of the information which was disclosed.*

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<sup>70</sup> Response from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 July 28. Response #11

<sup>71</sup> Response from Mr. Earl Richards, President, AAJ, which was dated 2011 April 26. Question #11

- c) *Did you consult any Public Official/Officer within the NMIA and/or AAJ in regard to the procurement for the provision of Landside Security Services? If yes, please provide the names and titles of the person(s) who was/were consulted.*<sup>72</sup>

Mr. Dennis Morgan, in his response to the OCG's Statutory Requisition, which was dated 2010 July 2, stated the following:

*"Question 10*

- a. *I did not see or attempt to see the procurement budget/plan and/or the comparable estimate for the provision of landside security services.*
- b. *I did not discuss or attempt to discuss the comparable estimate for the provision of landside security services with any Public Official/Officer at the AAJ or NMIA.*
- c. *I did not consult with or attempt to consult with any Public Official/Officer at the AAJ or NMIA regarding the procurement for the provision of landside security services.*<sup>73</sup>

The OCG, by way of a Follow-Up Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 July 29, in an effort to reconcile the disparity between the Comparable Estimate and the contract value which was proposed by Protection and Security Limited, posed the following question:

*"In your response to Question No. 8 of the OCG's Statutory Requisition, which*

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<sup>72</sup> OCG Statutory Requisition to Mr. Dennis Morgan, Director of Protection and Security Limited and then Director on the AAJ Board of Directors, which was dated 2010 June 4. Questions #9

<sup>73</sup> Mr. Dennis Morgan, in his response to the OCG's Statutory Requisition, which was dated 2010 July 2. Response #10

was dated June 28, 2010, you indicated, inter alia, that you were involved in the evaluation of the bids and the recommendation which was made to award the contract to Protection and Security Limited to provide Laneside Security Services at the NMIA.

In this regard, please provide a detailed account for the difference between the Comparable Estimate which was prepared by the NMIAL and the proposed cost and breakdown of the tender which was submitted by Protection and Security Limited in an effort to reconcile the disparity in the proposed cost of \$149,940,000.00 and the correct Comparable Estimate of the NMIA... ”<sup>74</sup>

Lt. Cdr. John McFarlane, in his response to the referenced OCG Follow-Up Requisition, which was dated 2011 August 26, stated the following:

*“In reviewing the proposals, Protection & Security was found compliant in all respects, and therefore not precluded from further evaluation. **Their low tender sum, when compared to our estimate, other bidders’ proposals, and industry norms, was cause for investigation, particularly with respect to performance expectations.** Upon investigation, it was found that the sums paid by them to their Security Guards elsewhere, while being below the general industry average, was not in violation of the minimum wage applicable to the industry. Our investigations further identified that they had been successful in gaining other security contracts and had been delivering satisfactory performance in those cases. It was therefore not considered risky to accept their proposal for competitive evaluation.”<sup>75</sup> (OCG’s Emphasis)*

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<sup>74</sup> OCG’s Follow-Up Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 July 29. Questions #3

<sup>75</sup> Response from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 August 26. Response #3.

Based upon the foregoing sworn testimonies, the OCG found the following to be of interest:

- i. That the Procurement Budget and Plan for the AAJ and the NMIAL are subsumed into the organization's annual expenditure/cash flow budget. The security budget for NMIAL for the fiscal year 2009/2010 was calculated at \$187,986,047 and for the fiscal year 2010/2011 at \$188,029,331.00.
- ii. That of the \$188,029,331.04 which was allocated for the 2010/2011 fiscal year budget, the NMIAL had allocated a total of \$55,175,270.38 for the provision of Landside Security Services.

The OCG noted that the contract with Protection and Security Limited was consummated on 2010 July 7, to take effect on 2010 July 10, for a three-year period. Based upon the rates which were proposed by Protection and Security Limited, the referenced contract had an annual value of \$49,980,000.00.

- iii. The 'Security Budget' was reportedly prepared by the Director of Aviation Security and revised by the Management of NMIAL and approved by the Board of Directors.
- iv. That NMIAL had conducted its own investigation into the 'low rates' which were proposed by Protection and Security Limited.

It must be noted that, upon investigation by the NMIAL, the rates which were proposed by Protection and Security Limited were not in violation of the minimum wage applicable to the Security Industry.

- v. That Mr. Morgan asserted that he did not see nor did he attempt to see the procurement budget/plan nor the Comparable Estimate for the provision of Landside Security Services at the NMIAL.
  
- vi. Whilst the OCG has found no evidence to suggest that Mr. Morgan had not been privy to the Procurement Budget for the provision of Landside Security Services at the NMIAL, and the NMIAL's Comparable Estimate for same, the OCG has found, by way of the sworn statements which were made by Mr. Earl Richards, that "...the Board of Directors is privy to the aggregate cost for security (which does not separate airside from landside security costs) as is contained in the approved budget. The comparable estimate was not shared with the Board nor any member of the Board."



## **Training for Landside Security Services**

By way of an article that was published in the Daily Gleaner, which was dated 2010 May 7, and which was entitled “***OCG probe award of airport security contract***”, the OCG found, *inter alia*, that “...*Kenny Benjamin, CEO of Guardsman Group, told **The Gleaner** his company, which has held the airport security contract for at least five years, had poured resources into having its personnel receive specifically required qualifications for the job. He claimed those qualifications did not form part of the criteria in the bidding process despite being required under international agreements.*”<sup>76</sup>

On 2010 May 7, the OCG received a letter from a Mrs. Valerie Juggan-Brown, Director, Guardsman Limited, in which she enclosed a copy of the “...*Rules and Regulations that governs international airports, which would be applicable to the **Norman Manley International Airport.***”

The referenced enclosure outlined the following information:

*“With respect to the award of the contract to provide security services at the Norman Manley International Airport, **the body of persons making the decision was not sufficiently well advised as to realize that to make such an award would contravene the laws of the land,** inter alia, the **Jamaica Civil Aviation Act 1966, Amended 2004, and the Jamaica Civil Aviation Regulations, 2004.***

**At the outset, there are several requirements that must be met if entities intending to tender for the provision of security services at the Norman Manley International Airport are to be considered.**

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<sup>76</sup> Article in Daily Gleaner entitled “***OCG probe award of airport security contract***”, which was dated 2010 May 7.

*The main criterion is that such **entities must have a pool of Aviation Security Officers** as defined under Part V of the **Jamaica Civil Aviation Act 1966, Amended 2004**; under Interpretations –*

***Aviation Security Guard** means a person who is trained in accordance with the provisions of the relevant regulations made hereunder;*

*It is the **Jamaica Civil Aviation Regulations, 2004 (JCARS)** that goes into details about the workings of civil aviation in Jamaica, and it defines the training as –*

***Approved Training** – Training carried out under special curricula and supervision approved by the Authority.*

***The Jamaica Civil Aviation Authority (JCAA) has determined that each entity involved in the provision of security services at any aerodrome in Jamaica must have an approved training regime in place.***

- ✓ *The JCAA has promulgated the syllabus to be used and the standards to be met; a course of training developed by the International Civil Aviation Organization (ICAO) is the basis of this course of training, and is named 123/Basic.*
- ✓ *In order to have a course approved by the JCAA, an entity must submit their training material to them for vetting and approval.*
- ✓ *Entities must also have their instructors approved by the JCAA. The course of training is specialized, and only ICAO/JCAA approved instructors may deliver it. Candidates must have successfully completed a trainers' course hosted by ICAO or the JCAA, and then be signed off by the JCAA.*

- ✓ *In order to have the training approved by the JCAA, an entity must have their facilities and equipment inspected by the JCAA to determine compliance with international standards.*

**JCARS, Part XIII, Section 117.41** states:

*An aerodrome operator shall ensure that all persons performing duties or providing services at his aerodrome are trained in accordance with the standards...set out in his Aerodrome Operator's Manual.*

*The standard in the Aerodrome Operator's Manual is the 123/Basic.*

**Under the TWENTIETH SCHEDULE (Regulations 165,166,167) AVIATION SECURITY**

**20.027 Aviation Security Officers and Aviation Screening Officers**

- (a) *An aerodrome operator shall provide aviation security officers ... in the number and in a manner adequate to support –*

- (1) *His Aerodrome Operator Security Programme;*

- (b) *An aerodrome operator shall ensure that an aviation security officer ... employed by him –*

- (3) *Has completed a training programme that meets the requirements in subparagraph (g).*

- (g) *The training programme required by subparagraph (b)(3) shall include training in –*

- (1) *The ... treatment of persons subject to inspection, detention, search, arrest, and other aviation security activities; and*
- (3) *Any other area the Authority determines necessary.*

*The 123/Basic is the training programme referred to in subparagraph (g).*

**20.028 Employer Responsibility for Aviation Security Officers**

*(a) An aerodrome operator shall not employ any person as an aviation security officer ... unless*

*(1) Such person meets the requirements of these Regulations;*

*(2) Such person has been trained in accordance with the requirements of these Regulations;*

*(b) An aerodrome operator shall ensure that –*

*(2) Initial and recurrent training on aviation security is received by each aviation security officer ... in his employ.*

***This means that NMIA Airports Ltd. is barred by law from employing any person or entity that does not meet the standards set by the JCAA to provide security services on their behalf.***

*In light of the foregoing, the following points are relevant:*

1. ***The entity awarded the contract does not have personnel that have been trained to the standard required by law, does not have AVSEC personnel;***

2. *The entity awarded does not have an approved training programme to train AVSEC personnel as required by law;*
3. *The entity awarded does not have approved instructors to train AVSEC personnel as required by law; and*
4. *The entity awarded does not have approved training facilities; and*
5. *NMIA Airports Ltd. is prohibited by law from employing any entity that is not in compliance with the law to provide security services on their behalf.*

*The relevant parties to the decision may not have been aware of the relevant legislation and so made an ill-informed decision.*

*The tender process for the contract for the provision of security services at the Norman Manley International airport was flawed in the beginning and this has lead [sic] to a flawed result.*

*The deciding body should therefore have considered the ability of the entities participating in the tender to field AVSEC officers according to the law in addition to other criteria.*

*The provision of security services at international airports is not merely a local matter but is impacted by international treaties and conventions to which Jamaica is signatory and have ratified.”<sup>77</sup> (OCG’s Emphasis)*

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<sup>77</sup> Letter which was received from a Mrs. Valerie Juggan-Brown, Director, Guardsman Limited, which was dated 2010 May 7.

Upon a review of The Civil Aviation Regulation (2004), the applicable law which governs the provision of Security Services at the NMIAL, the OCG noted the following provisions:

**166. - (1) No person shall operate an aerodrome, or an aircraft in commercial air transport service, unless that person has submitted a security programme to the Authority for approval and has received such approval for such security programme which shall meet the requirements of these Regulations.**

**(2) Every national air operator, and every aerodrome operator, prior to being granted a certificate to operate, shall prepare a security programme pursuant to the Twentieth Schedule the details of which shall be set forth in a security manual that shall be presented to the Authority for approval.**

(3) A foreign air operator shall not operate an enterprise, or an organization whose purpose is the movement of goods or passengers by air, within and through Jamaica, unless he has submitted a security programme, pursuant to the Twentieth Schedule, to the Authority for its approval.

(4) A Security Programme made under these Regulations which shall be signed by the applicant and in accordance with the Twentieth Schedule, shall provide for the safety and security for –

- (a) passengers, crew and their property;
- (b) other persons and property on or in the vicinity of the operations of the aircraft or aerodrome;
- (c) the aircraft;
- (d) the aerodrome;
- (e) air navigation installation; or
- (f) **related aviation support facilities, as the case might be.**

**(5) An air operator, aerodrome operator, regulated agent, or catering organization, shall adhere to the requirements, standards and procedures as set out in the Security Programme approved by the Authority for that operator, agent or organisation.**

167. - (1) An aerodrome operator shall include, as a part of his security programme, the following procedures and measures in accordance with the Twentieth Schedule –

(a) procedures to ensure that all persons, goods, and vehicles, entering airside areas, are screened to prevent the entry of weapons, munitions, explosives, or any other hazardous device or materials that could be used for criminal or terrorist purposes or to commit acts of violence or acts of unlawful interference with civil aviation;

(b) procedures to ensure that all passengers, carry-on baggage, cargo hold baggage, cargo and mail are screened to prevent the carrying on board of any weapons, explosives, or other hazardous devices or material intended for unlawful interference with civil aviation... ”<sup>78</sup> (OCG’s Emphasis)

The OCG also conducted a comprehensive review of the Twentieth Schedule of the Civil Aviation Regulation (2004), which detailed the provisions for Aviation Security on an aerodrome. The OCG took particular note of, *inter alia*, the requirements of an air operator’s Security Programme, as follows:

**“20.009        RESTRICTIONS ON SECURITY PROGRAMMES**

(a)    *An aerodrome operator shall not operate the aerodrome specified in his*

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<sup>78</sup> Section 166 and 167 of the Civil Aviation Regulation (2004)

*aerodrome license unless he has submitted, for such aerodrome, a proposed Aerodrome Operator Security Programme, which meet the requirements of these Regulations for acceptance and subsequent approval by the Authority.*

(f) *Where a person wishes his proposed security programme under this Regulation to be approved by the Authority he shall –*

*(1) submit a security programme in writing at least ninety days before the intended date of operations;*

*(2) pay the prescribed fee; and*

*(3) meet the requirements of these Regulations.*

(g) *A security programme under these Regulations shall be signed by the applicant and provide for the safety and security of –*

*(1) passengers, crew and their property;*

*(2) the aircraft; and*

*(3) related aviation support facilities, against acts of unlawful interference.*

#### **20.011 Acceptance of a Proposed Security Programme**

(a) *Where the Director General is satisfied that a proposed security programme submitted under 20.009, meets the requirements of these Regulations and does not conflict with the National Civil Aviation Security Programme, he may accept such proposed security programme.*

#### **20.012 Contents of an Aerodrome Security Programme**

(a) *An Aerodrome Operator Security Programme under 20.009 and 20.005 in respect of a licensed aerodrome Operator shall be designed to safeguard against acts of unlawful interference and shall include –*



- (1) *the objective of the security programme;*
- (2) *a description of the aerodrome;*
- (3) *composition and responsibilities of the Aerodrome Security Committee;*
- (4) *details of the security measures at the aerodrome;*
- (5) *duties and responsibilities of persons who are required by the nature of their duties to be resident at the aerodrome;*
- (6) *description of the security and communication procedures;*
- (7) *details of the procedures to be followed in response to acts of unlawful interference;*
- (8) *details of security training for staff;*
- (9) *recruitment of staff; and*
- (10) *such other matters as may be required by the Authority.*

**20.014 Approval of Aerodrome Security Programme**

- (a) *Upon a proposed Aerodrome Operator Security Programme submitted under 20.009 being accepted by the Authority under 20.011, an aerodrome Operator Security Programme is implemented and in full operation...*

**Appendix 1 to 20.012 Contents of an Aerodrome Aviation Security Programme**

**AERODROME OPERATOR SECURITY PROGRAMME**

**(CIVIL AVIATION SECURITY AT INTERNATIONAL AND DOMESTIC  
AERODROMES)**

**PROGRAMME OBJECTIVES**

*This Aerodrome Operator Security Programme is designed to meet the international Standards and Recommended Practices contained in Annex 17 to the*

*Convention of the International Civil Aviation Organization as well as related aviation security provisions found in Annexes 2, 6, 9, 10, 11, 13, 14 and 18.*

*The objective of the Aerodrome Operator Security Programme is to ensure that aviation security measures and responsibilities are clearly defined and understood by those who need to implement them. It shall clarify and detail all measures that are required to be implemented at the aerodrome to meet the requirements of the National Civil Aviation Security Programme.*

*An Aerodrome Operator Security Programme shall be produced and developed for each aerodrome within Jamaica. The programme shall be prepared by the aerodrome security officer in consultation with all aerodrome users and endorsed, signed and dated by the aerodrome manager.*

*The programme shall be drafted in accordance with the layout detailed herein and submitted to the Authority for approval...*

## **6. DESCRIPTION OF AERODROME**

*Landside, airside and security restricted areas – **The various airside and landside areas and sectors of the aerodrome shall be defined followed by a brief description.** The airside of the aerodrome shall be clearly marked and all security restricted areas indicated together with all control of access points. An accurate and to-scale location map and aerodrome plan shall be attached as an appendix.*

## **7. SECURITY MEASURES AT THE AERODROME**

### ***Aerodrome Security***

*Access control measures – Describe the control of access methods applied to the airside and restricted security areas, including details of the pass or permit system*

*as it pertains to persons and vehicles and the screening and searching procedures carried out. Describe the scope of background checks conducted on applicants for all types of passes issued. Describe what patrols are conducted of the landside, airside and restricted security areas including off aerodrome patrols of possible stand-off attack and surface-to-air missile launch sites...”*<sup>79</sup> (OCG’s Emphasis)

Having regard to the foregoing, the OCG found the following:

- i. That the NMIAL, as an aerodrome operator, is required by law to submit a security programme to the JCAA for approval. This enables the aerodrome operator to allow access to security personnel to ensure the safety and security of all persons, property and related aviation support facilities against acts of unlawful interference.
- ii. That the Security Programme of the NMIAL is required to, *inter alia*, define and detail the description of landside, airside and restricted security areas in accordance with the Civil Aviation Regulations (2004) and the requirements of the National Civil Aviation Security Programme.
- iii. That the referenced Civil Aviation Act and Regulations govern the required standard for Aviation Security Officers who control access to and/or work within restricted areas of the aerodrome.
- iv. That there is in fact no specific regulatory standards for the provision of Landside Security Services except that an aerodrome operator “...*shall not operate the aerodrome specified in his aerodrome license unless he has submitted, for such aerodrome, a proposed Aerodrome Operator Security Programme, which meet the requirements of these Regulations for acceptance and subsequent approval by*

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<sup>79</sup> Twentieth Schedule of the Civil Aviation Regulation (2004).

*the Authority.*” The OCG found that the Twentieth Schedule of the Regulations details all of the requirements which are to be contained in the proposed Aerodrome Operator Security Programme.

In an effort to have a fulsome understanding of the nature of Landside Security Services and whether there were any specific training procedures which were required for same, the OCG, by way of its Statutory Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 4, posed, *inter alia*, the following questions:

*“Please indicate what special provisions are required, if any, for a private company to tender on a procurement of this nature and also what requirements must be satisfied at a minimum for a bidder to qualify for the award of a contract.*

*Please indicate whether the NMIA, the AAJ, the Jamaica Civil Aviation Authority (JCAA) and/or any other governing body has/have special provisions whether via internal policy (ies) and procedures and/or the Laws of Jamaica which govern the provision of Landside Security and/or aviation safety and security related services. Please provide a copy, if any, of the internal policy (ies) and/or procedure(s) which govern the procurement for the provision of Landside Security Services.*

*If in your response to Question #3 above, there are special provisions which have to be adhered to and/or satisfied for a bidder to qualify for the award of a contract, please detail what steps were taken to ensure that the procurement for the provision of Landside Security Services was undertaken in accordance with the provisions of the Laws of Jamaica and/or internal policy (ies) and procedure(s) which preside over same.*”<sup>80</sup>

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<sup>80</sup> OCG’s Statutory Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 4. Questions # 2, 3 & 4.

Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, in his response to the referenced OCG Requisition, which was dated 2010 June 28, stated, *inter alia*, the following:

***“Response 2***

*The requirements for a company to tender on the RFP are listed in the Section 2.8.9 of the Landside Security RFP Document, a copy of which is set out below:*

***Extract from RFP for Landside Security Services, NMIA Airports Ltd.***

***Section 2.8.9***

*To be qualified for award of Contract, Proposers shall provide evidence satisfactory to NMIAL of their capability and adequacy of resources to carry out the Contract effectively. Proposals shall include the following information:*

- i. Copies of original documents defining the constitution or legal status, place of registration, principal place of business and written power of attorney of the signatory of the Proposal to commit the Proposer;*
- ii. Performance of contracts of a similar nature and volume over the past three (3) years and details of other work in hand and contractual commitments;*
- iii. The names and addresses for a minimum of three (3) customers for whom the Proposer has provided similar services within the last eighteen (18) months. The Proposer should include a brief description of the scope of the services provided to the customer and the duration of the contract. NMIAL may contact some or all of the references provided in order to determine the Proposer’s performance record.*
- iv. The qualification and experience of key personnel proposed for administration and execution of the Contract.*

- v. *Reports on the financial standing of the Proposer including profit and loss statements and balance sheets for the past three (3) years together with the most recent audited financials.*
- vi. *Evidence of access to lines of credit and availability of other financial resources*
- vii. *References from the Proposer's bankers.*
- viii. *Proposal of work methods and schedule, in sufficient detail to demonstrate the adequacy of the Proposer's proposals to meet the Technical Specification and the requirements of the Contract.*

### **Response 3**

1. *Annex 17 of the International Civil Aviation Organisation (ICAO) Convention, The Jamaica Civil Aviation Regulations 2004 (as amended) (JCARs), Schedule Twenty to the JCARs, and the National Civil Aviation Security Programme (NCASP) promulgated by the Jamaica Civil Aviation Authority set out the aviation security requirements and standards for Airport Operators. **In summary, these standards speak to the prevention of unauthorised access to aircraft and aviation assets to prevent acts of unlawful interference. The regulations and NCASP establish the training requirement and standard for aviation security officers who control access to or work within restricted areas on the "airside".***
2. ***There are no specific regulatory standards for the provision of landside security services, such as car park and traffic control duties that do not impinge on airside access.** The standard operating procedures for all duties, air and landside, as developed by NMIA and approved by the JCAA, are promulgated in the NMIA Airport Security Programme.*
3. *The process for the procurement of security services is governed by the procurement policy in force at NMIA.*

**Response 4**

*The requirements for eligibility were set out in the Bidding Document...During the tender opening the documents were examined to determine that all bids were compliant, and during the technical evaluation, they were examined for compliance with the technical requirements.*<sup>81</sup> (OCG's Emphasis)

The OCG, by way of its Statutory Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 4, also posed the following question:

*“Please indicate whether there are special training regimes which must be satisfied for a bidder to qualify in order to provide Landside Security Services and/or any other aviation safety and security related services at the NMIA and/or the AAJ. If yes, please provide answers to the following:*

- a) Outline in detail the special training regimes which must be satisfied in order to qualify;*
- b) Were the necessary actions taken to ensure that the provisions of the governing law and/or internal policy (ies) and procedures was/were adhered to and/or considered in the recommendation and/or approval for the award of contract to Protection and Security Limited to provide Landside Security Services;*
- c) Did Protection and Security Limited meet all the requirements of the respective governing laws and the other internal policy (ies) and/or*

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<sup>81</sup> Response from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 28. Responses #2, 3 & 4.

*procedures to qualify for the award of the contract for the provision of Landside Security Services?”<sup>82</sup>*

Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, in his response to the referenced OCG Requisition, which was dated 2010 June 28, stated, *inter alia*, the following:

***“Response 7a***

*The specified training pre-requirements for the provision of landside security services are set out in the Bidding Document...The required functions, which all relate to gate control and security patrolling, are standard industry requirements for all security providers. Once engaged, security guards are provided with orientation and familiarisation of the facility and its Standard Operating Procedures.*

***Response 7b***

*Yes*

***Response 7c***

*Yes”<sup>83</sup> (OCG’s Emphasis)*

Lt. Cdr. John McFarlane also appended to his response, as “*Appendix 6*”, an extract from the RFP, which was entitled “***DESCRIPTION OF REQUIRED SERVICE AND TECHNICAL SPECIFICATIONS***”, and which outlined, *inter alia*, the following:

***“a) Package 1 – Security Guard Services***

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<sup>82</sup> OCG’s Statutory Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 4. Question #7

<sup>83</sup> Response from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 28. Response #7



1. *To supply Supervisors who will monitor and supervise the activities of the guards;*
2. *To supply unarmed, armed and canine equipped Security Guards to undertake traffic control, car park access control, car park security, gate access control and perimeter patrols as required*
3. *To allow only authorized persons and vehicles to enter the car parks and restricted areas;*
4. *To log the movement of all vehicles and visitors to the car parks and restricted areas as required;*
5. *To ensure that the guards adhere to Standard Operating Procedures and other instructions prescribed by NMIAL from time to time;*
6. *To carry out security searches as required permitting only properly authorized items to leave the premises;*
7. *To ensure that guards are properly briefed and procedures pertaining to the performance of their duties are issued to them;*
8. *To ensure that the guards assigned to the premises are reasonably rotated unless otherwise specified by NMIAL, provided with approved break periods and replaced during such break periods.*
9. *To ensure that guards are [sic] do not undertake duties in excess of twelve continuous duty hours;*
10. *To ensure adequate insurance coverage for all guards;*
11. *To have appropriate public liability insurance cover;*
12. *To indemnify NMIAL if losses are established due to proven negligence.*

***b) Package 2 – Restricted Area Pass Processing***

1. *Supply suitably qualified personnel...to undertake day to day issuing and control of Restricted Area Passes...*
2. *Desirable qualifications for personnel assigned to Restricted Area Pass processing would include a tertiary level certificate or diploma, psychometric analysis, good customer service and communication skills, and clean positive*

vetting

***c) If a contract is awarded to your organization, the following will be required from and for all personnel assigned duties at NMIA under this contract:***

- 1. Current clean police record*
- 2. Full Employment history for previous seven years (all periods must be accounted for)*
- 3. Picture identification (valid driver's license, passport or National Identification Card))*
- 4. Obtain relevant restricted area passes from NMIAL*

***The successful Proposer will be required to comply with all applicable Regulations of the International Civil Aviation Organization (ICAO), Jamaica Civil Aviation Act and Regulations, National Civil Aviation Security Programme, NMIA Airport Security Programme and Standard Operating Procedures, and security related instructions issued by the Director, Aviation Security Department from time to time.***

***d) Service Standards***

- 1. All Guards and personnel supplied must possess and be able to provide on demand by the Client a valid current licence from the Private Security Regulation Authority*
- 2. All Guards assigned duty at NMIA must be fully literate (able to read, write and understand standard English)*
- 3. All Guards and Personnel must be able to write detailed reports of security breaches and other incidents occurring whilst on duty*
- 4. All guards and personnel supplied must at all times when reporting for duty wear clean, pressed uniform and clean shoes and socks (for men) / stockings (for women) (as applicable), acceptable to the client*

5. *All Guards and Personnel must report for duty in time to commence working at their assigned locations promptly at the beginning of their assigned shifts.*
6. *All Guards and personnel supplied must remain alert for the entire period of their assigned duty. Sleeping on duty will be cause for immediate termination of the services of that Guard or person from NMIA. More than three incidents found in any thirty-day period of Guards sleeping on duty will be cause for termination of the contract.*
7. *All Guards must be trained and competent in the principles of security duties, to include:*
  - a) *Person and vehicle Access Control measures at gates and entrances to security restricted areas*
  - b) *Search procedures for vehicles and persons entering and leaving security restricted areas*
  - c) *Principles of patrolling security restricted areas, to include area, car park and perimeter patrols.*
  - d) *Principles of profiling for and identifying persons and vehicles that may be involved in suspicious behavior*
  - e) *Principles of apprehending and detaining persons involved in illegal or unauthorised activities*
  - f) *Principles of self defense and first aid*
  - g) *Ability to use radio communication equipment consistent with standard radio procedures*
  - h) *Communication skills, to include the ability to communicate effectively, politely and firmly with persons seeking access to security restricted areas*
8. *Guards assigned duties in traffic control must have been trained in the principles of managing vehicular traffic flows in public spaces*

9. *Persons assigned duties of Supervisors must demonstrate the ability to properly monitor and supervise the posted guards.*<sup>84</sup>

To garner a better understanding of the Security Guard Training programme(s), policy(ies), procedure(s) and/or the applicable governing legislation(s) which is/are required for the provision of Landside Security Services at the NMIAL, the OCG requisitioned the Jamaica Civil Aviation Authority (JCAA), which is the local Aviation Regulatory Authority, to provide any such information which may govern the said services required.

In this regard, the OCG by way of its Statutory Requisition, which was addressed to Lt. Col. Oscar Derby (ret'd.), Director General, JCAA, and which was dated 2011 July 25, posed, *inter alia*, the following questions:

1. *“Please indicate the role(s) and responsibility(ies) of the Jamaica Civil Aviation Authority (JCAA), if any, with respect to the provision of Security Services at the Airports Authority of Jamaica (AAJ) and/or the Norman Manley International Airports Limited (NMIAL).*
2. *Please indicate whether you are aware of the award of a contract to Protection and Security Limited for the provision of Landside Security Services at the NMIAL.*
3. *Please indicate whether the JCAA had a role and/or responsibility, along with the AAJ and/or the NMIAL, with respect to the provision of Landside Security Services at the NMIAL.*<sup>85</sup>

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<sup>84</sup> Appendix 1 of the RFP for Landside Security Services.

<sup>85</sup> OCG's Statutory Requisition to Lt. Col. Oscar Derby (ret'd.), Director General, JCAA, which was dated 2011 July 25. Questions #1-3

Lt. Col. Oscar Derby, in his response to the referenced OCG Statutory Requisition, which was dated 2011 August 8, stated, *inter alia*, the following:

*“...The JCAA is required by the Jamaica Civil Aviation Act to ensure Regulations are in place that incorporate the Standards and Recommended Practices (SARPS) of the International Civil Aviation Organization (ICAO) in respect of Aviation Security. These are in place and the JCAA is required to ensure compliance with these Regulations by all who provide such services to the aviation industry.*

*The JCAA does not recruit, select or hire individuals or companies to provide services but ensure persons so engaged meet the qualifications, certification and training required by Regulations.*

- 2) *The JCAA was made aware of Protection & Security Limited appointment to provide landside security services at the Norman Manley International Airport through a letter dated July 9, 2010 from NMIA Airports Limited Director, Aviation Security Lt. Cmdr. John McFarlane...*
- 3) *The JCAA indicated to NMIA Limited in a letter dated July 13, 2010 that the appointment of Protection & Security Limited to provide landside services would require the submission and approval of a training programme to be delivered to the employees; and NMIA was requested to indicate to the JCAA the types of services Protection and Security would be authorized to undertake... ”<sup>86</sup> (OCG’s Emphasis)*

Lt. Col. Oscar Derby, in his referenced response also advised the OCG, *inter alia*, that “...The JCAA requested training records and standard operating procedures from the

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<sup>86</sup> Response from Lt. Col. Oscar Derby, Director General, JCAA, which was dated 2011 August 8. Responses #1-3

*NMIA Airports Limited in a letter dated July 13, 2010. The Standard Operating Procedures were not received by the JCAA; however a training programme was submitted by NMIA Airports Limited in January 28, 2011 and went through a process of review... ”<sup>87</sup>*

Lt. Col. Oscar Derby, in his response to the referenced OCG Statutory Requisition, which was dated 2011 August 8, also appended the following correspondence between himself and Lt. Cdr. John McFarlane:

1. Letter from Lt. Cdr. John McFarlane to Lt. Col. Oscar Derby, which was dated 2010 July 9, stated, *inter alia*, the following:

*“This is to advise and confirm that following the evaluation of the tenders for the provision of Landside Security Services at the NMIA, Cabinet approved the award of the contract to Protection & Security Ltd.*

*Subsequently, a contract was finalized between Protection & Security Ltd and NMIA Airports Ltd on Wednesday, July 7, 2010, for commencement on Saturday, July 10, 2010. The existing contractor, Guardsman Ltd had previously been provided with one notice.*

***Orientation and familiarisation with the designated operational locations and the Standard Operating Procedures was undertaken on Thursday and Friday July 8 & 9, 2010 for all Protection & Security Ltd officers assigned to NMIA.***

*They will commence duties on Saturday July 10, 2010 at 07:00 hrs.”*  
(OCG’s Emphasis)

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<sup>87</sup> Response from Lt. Col. Oscar Derby, Director General, JCAA, which was dated 2011 August 8. Responses #4

2. Letter from Robert P. Hyatt, Senior Aviation Security Inspector, JCAA, who signed on behalf of Lt. Col. Oscar Derby, to Lt. Cdr. John McFarlane, which was dated 2010 July 13, and which stated, *inter alia*, the following:

**“The JCAA is requesting that you submit a copy of the training program that was administered to the new company Protection & Security Limited.** Additionally, kindly indicate the areas that Protection & Security Limited will be operating at NMIA and the type of services they will be required to deliver i.e. dog service, gate control etc.

*The requested information shall be submitted to the JCAA no later than July 26, 2010.”* (OCG’s Emphasis)

The OCG, by way of its Statutory Requisition, which was addressed to Lt. Col. Oscar Derby (ret’d.), Director General, JCAA, and which was dated 2011 July 25, also posed, *inter alia*, the following question:

*“Please indicate whether the JCAA is responsible for the approval of any standard operating procedures for the provision of any type of Security Service which is required at the AAJ and/or the NMIAL and, in particular, for the provision of Landside Security Services at the NMIAL.*

*If yes, please provide documentary evidence in regard to the approval(s) which was/were received by the JCAA for the provision of Landside Security Services at the NMIAL and/or provide an explanation with respect to how such operating procedures are approved.*

*Please provide a copy, if any, of the referenced ‘Standard Operating Procedures’*

*which was approved for Landside Security Services for the OCG's perusal.*"<sup>88</sup>

Lt. Col. Oscar Derby, in his response to the referenced OCG Statutory Requisition, which was dated 2011 August 8, stated, *inter alia*, the following:

*"The JCAA is required to approve standard operating procedures for the provision of any type of Security Service which is required at NMIA by virtue of the Civil Aviation Regulations, 2004 – 166 (1) and (4)(f). **The JCAA requested training records and standard operating procedures from NMIA Airports Limited in letter dated July 13, 2010. The Standard Operating Procedures were not received by the JCAA; however a training programme was submitted by NMIA Airports Limited in [sic] January 28, 2011 and went through a process of review...**"<sup>89</sup> (OCG's Emphasis)*

Of note, the OCG was also provided with a copy of the referenced email correspondence of 2011 January 28, and the subsequent response to same on 2011 February 3, between Lt. Cdr. John McFarlane, Director Aviation Security, NMIAL, and Mr. Robert Hyatt, Senior Aviation Security Inspector, regarding the submission of the NMIAL's Security Programme, as follows:

1. Email from Lt. Cdr. John McFarlane to Mr. Robert Hyatt on 2011 January 28, which states, *inter alia*: "Attached please find the revised Training Programme, for your review and approval..."
2. Email from Mr. Robert Hyatt to Lt. Cdr. John McFarlane on 2011 February 3, which states, *inter alia*, that "Based on the letter that was submitted to you in respect of this programme **your submission is incomplete**. You were requested to

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<sup>88</sup> OCG Statutory Requisition to Lt. Col. Oscar Derby (ret'd.), Director General, JCAA, which was dated 2011 July 25. Question #4

<sup>89</sup> Response from Lt. Col. Oscar Derby, Director General, JCAA, which was dated 2011 August 8. Response #4



*resubmit the Instructors Guide which would identify the slide numbers for each relevant areas and the slides with the numbers. Also the SOPs for the operational areas were required in the Instructors Guide. I discussed this with Sonja Phinn and she advised me that those changes were made. **However I have not seen those changes in your submission, therefore I am unable to approve this programme.***” (OCG’s Emphasis)

It is instructive to note that Lt. Col. Oscar Derby, in his response to the referenced OCG Statutory Requisition, which was dated 2011 August 8, also appended a copy of the aforementioned ‘*training programme*’.

Upon a review of the referenced ‘*training programme*’ the OCG found, *inter alia*, the following:

- i. The ‘programme goals’, particularly in relation to “*NMIAL’s Aviation Security Training Programme is conducted with a view to:*
  1. *Increasing general security awareness within the context of your airport environment...*
  2. *Sensitizing persons at all levels for the purpose of maintaining informed support for NMIA’s Preventative Security Programme...*”
- ii. That the “*...primary objective of aviation security is to assure the protection and safety of Passengers, crew, ground personnel, the general public, aircraft and facilities of an airport serving civil aviation, against acts of unlawful interference perpetrated on the ground or in flight.*”
- iii. That security measures are implemented, *inter alia*, in “*maintaining the integrity of the airside/landside boundary*”.

- iv. That airside barrier relates to the “...movement area of an airport, adjacent terrain and buildings or portions thereof, access to which is controlled.” Examples of this area include, *inter alia*, the departure lounge and ramp.
  
- v. The landside barrier related to that “...area of an airport and buildings to which the non-traveling [sic] public has free access.” Examples of this area were identified as the ticketing concourse and the car park.

The OCG, by way of its Statutory Requisition, which was addressed to Lt. Col. Oscar Derby (ret'd.), Director General, JCAA, which was dated 2011 July 25, posed, *inter alia*, the following questions:

*“Please provide a copy of the policy (ies), special provision(s) and/or applicable law(s) which govern(s) the provision of Landside Security Services at the NMIAL. If yes, please provide a copy of such procedures/policies/legislation.*

*Please indicate whether there are any industry standards which govern the provision of Landside Security Services and which have to be adhered to by the JCAA, the AAJ and/or the NMIAL. If yes, please indicate whether the JCAA, as the local Aviation Regulatory Authority, ensured that such standards were in fact adhered to and if no, provide a rational for the failure to abide by the said international standards. Please provide documentary evidence, where possible, to support your response.*

*Please indicate, to the best of your knowledge, whether security personnel who provide Landside Security Services at the NMIAL would be required, in any possible way, to be providing security services on the aerodrome and/or have airside access? If yes, please indicate whether such Landside Security Officers would require special training or if there is a specific policy/procedure which*

would govern such a practice.”<sup>90</sup>

Lt. Col. Oscar Derby, in his response to the referenced OCG Statutory Requisition, which was dated 2011 August 8, stated, *inter alia*, the following:

**“The provisions of aviation security regulations address aerodrome operators and does not distinguish between landside and airside – Civil Aviation Regulations, 2004 – 167 (1) (a)(b)...**

*Reference is made to the Civil Aviation Regulations, 2004 - 167 (1) (a)(b)*

**...The security training programme submitted by NMIA Airports Limited to the JCAA is consistent with the requirements for security officers working on landside and airside of an aerodrome...**<sup>91</sup> (OCG’s Emphasis)

It is instructive to note that the JCAA did not provide the OCG with any further documentation to suggest that the “*training programme*” which was submitted by NMIAL was approved. However, Lt. Col. Oscar Derby, in his referenced response to the OCG, advised the OCG that (a) the training programme went through a review process and (b) the security training programme which was submitted by NMIAL to JCAA was consistent with the requirements for security officers working on the landside and airside of an aerodrome.

The OCG also noted that Lt. Col. Oscar Derby, in his response which was dated 2011 August 8, informed the OCG that the JCAA did not receive the NMIAL’s Standard Operating Procedures. However, Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, in his response to the OCG, which was dated 2010 June 28, had stated, *inter*

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<sup>90</sup> OCG’s Statutory Requisition to Lt. Col. Oscar Derby (ret’d.), Director General, JCAA, which was dated 2011 July 25. Question #6-8

<sup>91</sup> Response from Lt. Col. Oscar Derby, Director General, JCAA, which was dated 2011 August 8. Response #6-8

*alia, that “The Standard Operating Procedures for all duties, air and landside, as developed by NMIA and approved by the JCAA, are promulgated in the NMIA Airport Security Programme.”<sup>92</sup>*

The OCG, in a Follow-Up Requisition to Lt. Cdr. John McFarlane, which was dated 2011 July 29, had requested that a copy of the approved Standard Operating Procedures be submitted to the OCG for review. A copy of same was provided to the OCG, in his response which was dated 2011 August 26.

The OCG, in an effort to ascertain the differences and similarities, if any, between Landside Security Services and Aviation Security Services, issued a Follow-Up Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 July 29. The referenced OCG Requisition requested a response to the following questions:

*“Please indicate, as the Director of Aviation Security, whether security personnel who provide Landside Security Services at the NMIAL would be required, in any possible way, to be providing security services on the aerodrome and/or have airside access? If yes, please indicate whether such Landside Security Officers would require special training or if there is a specific policy/procedure which would govern such a practice and provide a copy of such policy/procedure.*

*Further...please indicate whether the provision of Landside Security Services relate in any way to the provision of Aviation Security. If yes, please account for the differences and/or similarities and also account for the difference in the training regime and/or provisions for each of the requisite services at the NMIAL.”<sup>93</sup>*

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<sup>92</sup> Response from Lt. Cdr. John McFarlane, in his response to the OCG, which was dated 2010 June 28. Response #3

<sup>93</sup> OCG Follow-up Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 July 29. Questions #4 & 5

Lt. Cdr. John McFarlane, in his response to the OCG's Requisition, which was dated 2011 August 26, stated the following:

"Answer 4

**Security personnel contracted for landside duties are neither required to undertake nor schedule for duties on the airside at any time.** *In the event of any situation requiring emergency response airside, there will always be a concurrent need for the exercise of security controls on the landside, which controls are undertaken by the contracted landside security personnel.*

Answer 5

**Persons providing landside security services, such as those governing the management and control of vehicular movement, safety and security of car parks, control of access to security restricted areas not categorized as airside (Incinerator, Energy Centre, etc) do not need to be and are not trained as Aviation Security Officers.** *The discharge of their functions, however, impacts directly on passengers and the general public who use the car parks and traverse the public access roadways within the airport, and on staff who access offices in the security restricted area enclosing the Engineering, Maintenance and Planning Department, Fuel Farm, and Water and Sewage Treatment Plants. None of these facilities provide access to the airside. Their orientation and training are directly related to the provision and responsibilities of those duties.*"<sup>94</sup> (OCG's Emphasis)

It is instructive to note that Lt. Col. Oscar Derby, in his response to the referenced OCG Statutory Requisition, which was dated 2011 August 8, also provided the OCG with two (2) pieces of correspondence which were exchanged between the JCAA and Protection and Security Limited, as follows:

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<sup>94</sup> Response from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 August 26. Responses #4 &5

1. A letter which was addressed to “Col. Oscar Darby”, Director General, JCAA, from Mr. Dennis P. Morgan, in his capacity as a Director of Protection and Security Limited, which was dated 2009 December 30, and which stated, *inter alia*, the following:

**“We are interested in tendering for security services advertised by Air Jamaica Limited. The submission for this Tender is January 21, 2010.**

**One of the requirements is that Tenderers must be certified by the Jamaica Civil Aviation Authority (JCAA), International Civil Aviation Organization (ICAO) and Federal Aviation Administration (FAA).**

*We are therefore requesting your instructions and guidance on the procedures and requirements in order for our company to be certified by the above entities.” (OCG’s Emphasis)*

2. A letter which was addressed to Mr. Dennis P. Morgan, in his capacity as a Director of Protection and Security Limited, from Mr. Robert P. Hyatt, Senior Aviation Security Inspector, JCAA, for and on behalf of the Director General, which was dated 2010 January 6, and which stated, *inter alia*, the following:

*“The Jamaica Civil Aviation Authority met with representatives of the Protection and Security Limited on January 6, 2010 in regards to the company’s intent to become Certified Aviation Security providers.*

*The team from Protection and Security Limited were provided with the following information:*

- *Guidance document for the Aviation Security Certification for Contracted Security Companies Airport and Civil Aerodrome Deployment;*

- *A copy of the International Civil Aviation Organization (ICAO) Annex 17 Security Standards and Recommended Practices;*
- *The National Civil Aviation Security Programme (NCASP) Chapters 9 and 10;*
- *The generic Aerodrome security manual Admin and Table of Contents pages; and*
- *ICAO 123 Basic Security Programme introduction and modules handout.*

*The procedures for certification were discussed with the Protection and Security Limited team.*

*The JCAA awaits the submission of the relevant documents for the commencement of the certification process.”*

Having regard to the foregoing letters, albeit a separate procurement opportunity which was with respect to the provision of Security Services at Air Jamaica Ltd., the OCG found that Protection and Security Limited, prior to the Tender Opening for Landside Security Services on 2009 April 30, was not certified as an Aviation Security Provider and sought clarification on 2009 December 30 from the JCAA in respect of becoming certified for same.

It is instructive to note that Lt. Col. Oscar Derby, in his response to the referenced OCG Statutory Requisition, which was dated 2011 August 8, also advised the OCG, *inter alia*, that “...*The JCAA hosted a meeting with Protection & Security representatives on January 6, 2010 where information in furtherance of receiving certification to offer aviation security services was provided to Protection & Security by the JCAA...Protection & Security did not submit any documents to the JCAA in furtherance*

*of becoming certified to provide aviation security services and that position remains as of the date of this report (August 5, 2011).”<sup>95</sup>*

Having regard to the foregoing, the OCG found the following:

- i. That Landside Security Officers are not required to operate in and/or have access to the aerodrome or the airside during the course of duty.
- ii. As indicated by Lt. Cdr. John McFarlane, Director of Aviation Security of the NMIAL, the OCG has found that the qualification requirements for the provision of Aviation Security Services would not necessarily apply to security personnel employed for Landside Security Services on the basis that such Security Officers are not required to provide Security Services on the aerodrome and/or have airside access.

Further, and in keeping with the NMIAL’s Security Training Programme, the OCG has found that Landside Security Services, applied to the areas which include the ticketing concourse, the car park and any other gate control and security patrolling where the non-travelling public has free access, which are “...standard industry requirements for all security providers...”

- iii. That the provisions of the International Civil Aviation Organisation (ICAO) Convention, The Civil Aviation Regulations 2004 (as amended), in particular the Twentieth Schedule of the Regulations, and the National Civil Aviation Security Programme (NCASP) promulgated by the Jamaica Civil Aviation Authority, set out the requirements for Aviation Security and standards for Airport Operators.

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<sup>95</sup> Response from Lt. Col. Oscar Derby, Director General, JCAA, which was dated 2011 August 8. Response #11



Of note, the Director of Aviation Security of the NMIAL, stated, *inter alia*, that “...In summary, these standards speak to the prevention of unauthorised access to aircraft and aviation assets to prevent acts of unlawful interference. The regulations and NCASP establish the training requirement and standard for aviation security officers who control access to or work within restricted areas on the “airside”...”

- iv. That a “*training programme*” which was reviewed by the JCAA, defined the difference between landside and airside security. The OCG would like to note that although the Director General of the JCAA indicated that the referenced security programme went through a review process and that the programme is consistent with the requirements for security officers working on landside and airside of an aerodrome, no documentary evidence was submitted to the OCG by the JCAA to suggest that approval was granted, pursuant to Sections 20.011 and 20.014 of the Twentieth Schedule of the Civil Aviation Regulations.

**Payments made to Protection and Security Limited by the NMIAL**

Upon a review of the bid which was submitted by Protection and Security Limited, the OCG saw evidence of a proposed breakdown of the contract value for the provision of Landside Security Services (Package 1), as follows:

<i>SERVICE AREA</i>	<i>COST YEAR 1</i>	<i>COST YEAR 2</i>	<i>COST YEAR 3</i>	<i>CONTRACT COST</i>
<i>SERVICE AREA 1</i>	<i>49,980,000.00</i>	<i>49,980,000.00</i>	<i>49,980,000.00</i>	<i>149,940,000.00</i>

The OCG, by way of a Follow-up Requisition to Mr. Earl Richards, President, AAJ, which was dated 2011 March 31, posed the following question:

*“Please indicate whether payments have been made to Protection and Security Limited, for the provision of Landside Security Services, by the NMIA and/or the AAJ. If yes, please provide a copy of all payment records, receipts and/or invoices accordingly.”<sup>96</sup>*

Mr. Earl Richards, in his response to the OCG’s Statutory Requisition which was dated 2011 April 26, stated, *inter alia*, the following:

*“Payments have been made to Protection and Security Limited (PSL) in accordance with the conditions outlined in the contract. Since the commencement of the contract on 2010 July 10 and up to 2011 March 31, a total of \$39,282,759.23 has been paid to PSL...”<sup>97</sup>*

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<sup>96</sup> OCG’s Statutory Requisition to Mr. Earl Richards, President, AAJ, which was dated 2011 March 31. Question # 4

<sup>97</sup> Response from Mr. Earl Richards, President, AAJ, which was dated 2011 April 26. Response #4

Mr. Richard also submitted a copy of the respective “...invoices and associated cheque payments”<sup>98</sup> which were made from the commencement of the contract on 2010 July 10 to 2011 July 31.

In an effort to receive the particulars of all current payments up to 2011 July 31, the OCG in its Follow-Up Requisition to Lt. Cdr. John McFarlane, which was dated 2011 July 29, posed the following question:

*“Please provide a copy of all the payments, and associated payments records, which have been expended to Protection and Security Limited, from the period March 31, 2011 to July 31, 2011. In addition, please indicate, to the best of your knowledge, whether the payments made have been undertaken in accordance with the terms and conditions of the Security Contract which was signed between the NMIAL and Protection and Security Limited on July 7, 2010.”<sup>99</sup>*

Lt. John McFarlane, in his response to the OCG’s Statutory Requisition, which was dated 2010 August 26, provided the requested payments and associated records and stated, *inter alia*, that “All payments have been undertaken in accordance with the terms and conditions contained in the Agreement signed between NMIAL and Protection and Security Ltd on July 7, 2010.”<sup>100</sup>

The table below represents the referenced payments which were made as at 2011 July 31:

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<sup>98</sup> Response from Mr. Earl Richards, President, AAJ, which was dated 2011 April 26. Response #4

<sup>99</sup> OCG Follow-Up Requisition to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2011 July 29. Question #7

<sup>100</sup> Response from Lt. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 August 26. Response #7

<b>No.</b>	<b>Date</b>	<b>Details of Payment</b>	<b>Amount Paid</b>
1	27 July, 2010	PROTECTION & SEC – INV#176451 – SECURITY SVCS JULY 10-15, 2010	\$902,068.26
2	05 August, 2010	PROTECTION & SEC – INV#176536 – SECURITY SVC PROVIDED JULY 16-31, 2010	\$2,324,640.63
3	19 August, 2010	PROTECTION & SEC – INV#176639 FOR SVC PROVIDED FOR THE PERIOD AUGUST 1-15, 2010	\$2,533,107.93
4	03 September, 2010	PROTECTION & SECURITY – INV#176731 FOR SECURITY SVC RENDERED AUGUST 16-31, 2010	\$2,384,319.97
5	17 September, 2010	PROTECTION & SEC – INV#176835 - SECURITY SVC SEPT 1-15, 2010	\$2,200,534.59
6	01 October, 2010	PROTECTION & SECURITY – SECURITY SVC PROVIDED SEPT 16-30, 2010	\$2,203,199.66
7	21 October, 2010	PROTECTION & SEC – INV#177008 FOR SVC RENDERED OCT 1-15, 2010	\$2,217,617.57
8	04 November, 2010	PROTECTION & SEC – INV#177120 - SECURITY SVCS OCT 16-31, 2010	\$2,544,245.26
9	19 November, 2010	PROTECTION & SEC – INV#177213 SECURITY SVC NOV 1-15, 2010	\$2,202,120.07
10	03 December, 2010	PROTECTION & SEC – INV#177307 FOR SECURITY SVC RENDERED NOV 16-30, 2010	\$2,171,492.47
11	17 December, 2010	PROTECTION & SECURITY AMT FOR SECURITY SVC DEC 1-15, 2010	\$2,124,339.77
12	06 January, 2011	PROTECTION & SECURITY – INV#177541 FOR SECURITY SERVICES RENDERED DEC. 16-31, 2010	\$2,620,003.11
13	20 January, 2011	PROTECTION & SEC – INV#177642 FOR SERVICES PROVIDED ON JANUARY 1-15, 2011	\$2,262,293.39
14	03 February, 2011	PROTECTION & SEC – INV#177732 FOR SECURITY SERVICE PROVIDED FOR JANUARY 16-31, 2011	\$2,271,142.65
15	21 February, 2011	PROTECTION & SEC – INV#177823 FOR SECURITY SVC SUPPLIED FEB 1 – 15, 2011	\$2,137,549.21
16	03 March, 2011	PROTECTION & SEC – INV#177909 FOR SECURITY SERVICES RENDERED FOR FEB. 16-28, 2011	\$1,810,035.26

<b>No.</b>	<b>Date</b>	<b>Details of Payment</b>	<b>Amount Paid</b>
17	18 March, 2011	Prot & Security – Security serv rendered Mar 1-15, 2011 inv #178009	\$2,139,103.03
18	31 March, 2011	PROTECTION & SEC – INV#178102 SECURITY SVC RENDERED MAR. 16-31, 2011	\$2,234,946.40
19	21 April, 2011	PROTECTION & SEC – INV#178185 – FOR SECURITY SVCS APR 1-15	\$2,145,902.19
20	06 May, 2011	PROTECTION & SECURITY – SECURITY SVCS PROVIDED APR 16-30, 2011	\$2,424,226.38
21	19 May, 2011	PROTECTION & SEC – INV#178331 FOR SVC RENDERED MAY 1-15, 2011	\$2,109,705.94
22	01 June, 2011	PROTECTION & SEC – INV#178425 FOR SERVICE RENDERED MAY 15-31, 2011	\$2,630,254.31
23	03 June, 2011	PROTECTION & SEC – INV#178425 FOR SERVICES SVC RENDERED FEB 28 – MAY 31 (difference in rate for the period and public holiday)	\$993,560.17
24	17 June, 2011	PROTECTION & SEC – INV#178557 FOR SVC RENDERED JUNE 1-14, 2011	\$2,409,516.92
25	04 July, 2011	PROTECTION & SEC – SECURITY SERV RENDERED JUN 13-30, 2011	\$2,469,955.16
26	04 August, 2011	PROTECTION – INV#178796 SECURITY SVCS PROD. JULY 16-31, 2011	\$2,603,387.58
<b>TOTAL</b>			<b>\$57,069,267.88</b>

The OCG noted that a Tax Invoice was prepared and approved for the period 2011 July 1 – 15, in the amount of J\$2,422,890.42. However, a copy of the cheque for this period was not provided by the NMIAL.

Nonetheless, the table above reveals that between the period 2010 July 27 to 2011 July 31, approximately \$57,069,267.88 was paid to Protection and Security Limited for the provision of Landside Security Services. It is, therefore, of import to note that the contract value which was proposed by Protection and Security Limited, and agreed upon under the Contract, which became effective on 2010 June 10, was \$49,980,000.00 per annum.

It is also instructive to note that the rates which were approved and agreed to under the provisions of the Contract, Appendix 2, were as follows:

***“SCHEDULE OF RATES***

<b><i>Category</i></b>	<b><i>Hourly Rate per Guard</i></b>
<i>Unarmed Guards</i>	<i>\$215.00</i>
<i>Armed Guards</i>	<i>\$300.00</i>
<i>Canine and Handler</i>	<i>\$270.00”</i>

The OCG was provided with a cheque, which was dated 2011 June 3, in the amount of \$993,560.17, which indicated that payment was being made for the difference in the rates between the period 2011 February 28 to May 15. The OCG further noted that the payment records indicated that the rates were being paid at the following levels of increases: Unarmed \$17.88, Canine \$19.92 and Armed \$20.91, and for Public Holidays, the following increases were paid: Unarmed \$35.76, Canine \$39.84 and Armed \$41.82.

Based upon the foregoing, the OCG found that the amount which was paid to Protection and Security Limited, within the first year, was varied based upon the increase in the Minimum Wages for Industrial Security Guards as the cheque which was paid to the referenced company on 2011 June 3 for ‘*unpaid fees*’ was for the period 2011 February 28 to May 15. Of note, this was the same date on which the amendments to the referenced minimum wages came into effect.

It should be noted that Clause 5 of the Security Services Contract which was consummated with Protection and Security Limited, and which is entitled ***“GOVERNMENT MANDATED INCREASES IN WAGES AND BENEFITS”***, provided that *“Should there be a Government of Jamaica mandated increase in wages and benefits payable to security guards during the tenure of this Agreement, the parties hereby agree that the fees mentioned in Clause 4...will be renegotiated but shall in no event exceed the percentage increase promulgated as the mandated Government rate and*

*that such increase shall be agreed within 30 days of date of the increase mandated by the Government failing which this matter will be referred to arbitration pursuant to clause 12...”*

The Minimum Wage (Industrial Security Guards) (Amendment), 2011, which was dated 2011 February 1, and which came into operation on 2011 February 28, amended Paragraph 4 of the Principal Order, as follows:

*“...Paragraph 4 of the principal Order is amended –*

- (a) by deleting the words “1st day of June, 2009” and submitting therefor the words “28th day of February, 2011”;*
- (b) in sub-paragraph (a), by deleting the numerals “\$151.25” and substituting therefor the numerals “\$166.38”;*
- (c) in sub-paragraph (b), by deleting the numerals “\$226.87” and substituting therefor the numerals “\$249.57”; and*
- (d) in sub-paragraph (c), by deleting the numerals “\$302.50” and substituting therefor the numerals “\$332.76”.”*

It is instructive to note that the Security Services Contract became effective on 2010 July 10, and that the NMIAL’s budget for the security services for the fiscal year 2010/2011 amounted to \$55,175,270.38. Based upon the calculation of the payments which were made to Protection and Security Limited since the commencement of the services on 2010 July 10 to 2011 July 31, the NMIAL was found to have paid the referenced company a total of \$57,069,267.88.

## **Possible Conflict of Interest**

The OCG found that Mr. Kenneth S. Benjamin, C.D., Executive Chairman, Guardsman Group Limited, wrote to Mr. Mark Hart, Chairman, NMIAL, by way of a letter which was dated 2010 May 4, which was captioned “*Letter of Appeal – Proposal for the Provision of Landside Security Services at NMIA, Thursday, April 30, 2009 Technical Proposal*”. The referenced letter stated, *inter alia*, the following:

*“Further to our conversation of even date this serves to confirm that **it has been brought to our attention that the Contract for Norman Manley International Airport (NMIA) for the provision of security guard services has been awarded to Protection & Security Limited. If this is correct, please be advised that the Shareholder and Chief Executive Officer of Protection & Security Limited is a member of the Board of Directors for Norman Manley International Airport.***

*We are the incumbent and the rates quoted in the tender document were the same rates used to provide the existing service and as such would be known to all members of the Board.*

*We find this to be unfair competition, as Protection & Security having a member on the Board of Norman Manley International Airport would have privileged information about the tender process which would not be available to outsiders, and as such presents a conflict of interest.*

*In addition, the awarding of Government Contracts to serving Board members violates the edict of the Prime Minister.*

*We are kindly appealing to your good office to investigate the foregoing on our behalf.” (OCG’s Emphasis)*



It is instructive to note that Sections 17 and 18 of the Public Bodies Management and Accountability Act (2001), provides as follows:

*“17.-(1) Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties-*

*(a) act honestly and in good faith in the best interests of the public body; and*

*(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.*

*(2) A director who is directly or indirectly interested in any matter which is being dealt with by the board-*

*(a) shall disclose the nature of his interest at a board meeting;*

*(b) shall not take part in any deliberation of the board with respect to that matter.*

*18. A director who was absent from a board meeting at which a resolution was passed or any other action was taken, shall be deemed to have consented thereto unless, within seven days after becoming aware of that resolution or action, as the case may be, the director-*

*(a) causes written notice of his dissent to be appended to the minutes of the meeting; or*

*(b) delivers such notice to the registered office of the body or sends such notice by registered mail addressed to that office.” (OCG’s Emphasis)*

Further, Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 December), provided, *inter alia*, the following:

## **“CONFLICT OF INTEREST**

**All personnel involved in handling a procurement process** are expected to observe the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders and to be free of interests or relationships that are actually or potentially detrimental to the best interests of GOJ **and shall not engage or participate in any transaction involving a company, its affiliates, divisions or subsidiaries in which they have even minor interests.**

Any GOJ personnel involved in a procurement process that has assumed, or is about to assume, a financial or other outside business relationship that might involve a conflict of interest, **must immediately inform their supervisors in writing** of the circumstances involved. **This information is to be reviewed at an appropriate level for a decision whether a conflict of interest is present,** and if so, what course of action will be taken.

A conflict of interest exists when a GOJ personnel involved in a procurement process:

1. *Has an outside interest that materially encroaches on time or attention that should be devoted to the affairs of GOJ;*
2. *Has a direct or indirect interest in or relationship with an outsider that is inherently unethical or that might be implied or construed to be, **or make possible personal gain due to the personnel’s ability to influence dealings, render the personnel partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the personnel’s judgment;***
3. **It is the duty of all staff and any other public employee directly or indirectly involved with the procurement process, especially in the preparation of bidding documents, evaluation, contract negotiations, contract management and payments to declare any potential conflicts of**

**interest.** *A conflict of interest will arise when the individual has a direct or indirect relationship with a bidder, consultant, contractor or supplier;*

4. *Takes personal advantage of an opportunity that properly belongs to GOJ;*
5. *Uses GOJ property without approval;*
6. *Discloses GOJ trade secrets or any other proprietary information to unauthorized persons.*

*All personnel involved in GOJ procurement process, found to be in violation of this policy will be subject to sanctions in accordance with the Laws of Jamaica.*

**Furthermore, bidders and consultants with potential conflicts of interest will also be considered ineligible to bid or submit a proposal.** *A conflict of interest will exist when a firm has been previously hired to provide services for the project design, preparation and implementation. This firm and all of its affiliates will not be eligible to provide goods, works or services for any contract that relate in whole or in part to earlier services provided by it.*

#### **IV. UNETHICAL CONDUCT**

*All involved in GOJ procurement process must comply with the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders.*

*No individual shall use his authority or office for personal gain. Personal gain includes accepting or requesting anything of material value from bidders, prospective bidders or suppliers for the individual, his or her spouse, parents, children or other close relatives, or for other persons from whom the individual might gain direct or indirect benefit of the gift.*

*An individual shall seek to maintain and enhance the reputation of the GOJ by:*

- *Maintaining the highest standards of honesty and integrity in all relationships both inside and outside the Procuring Entity in which he works...*
- **Conflict of interest - An individual shall declare any personal interest that may affect or might reasonably be deemed by others to affect impartiality in any matter relevant to their duties;**
- **Disclosure of personal relationships – an individual shall declare any relationship with a bidder, supplier, contractor or consultant and shall take no part in either the decision making process or the implementation of any contract where such a relationship exists.** *A personal relationship is defined as consanguinity or affinity. Disclosure may be made in writing or, in the context of a meeting, verbally. However, having made the disclosure the individual shall not sit in the meeting while deliberations on the subject matter are being conducted.*
- *Confidentiality and accuracy of information - An individual shall respect the confidentiality of information gained in the course of duty and shall not use such information for personal gain or for the unfair benefit of any bidder, supplier, contractor or consultant;*
- *Information given by an individual in the course of their duty shall be true, fair and not designed to mislead;*
- **Competition - All bidders, suppliers, contractors and consultants shall be treated with fairness and impartiality, and avoid any business arrangement that might prevent the effective operation of fair competition...**
- *Hospitality - An individual shall avoid any business hospitality that would be viewed by others as having an influence in making a government business decision as a result of accepting that hospitality;*
- *Reporting - All individuals have a moral and ethical responsibility to report any unethical conduct by a colleague, a bidder or a supplier to their superiors, oversight agencies, CG or to the auditors.*

- *Examples of Unethical Conduct - The following are examples of the type of conduct prohibited by this Code of Ethics:*
  - **Revealing confidential or “inside information” either directly or indirectly to any bidder or prospective bidder;**
  - **Discussing a procurement with any bidder or prospective bidder outside the official rules and procedures for conducting procurements;**
  - **Favouring or discriminating against any bidder, prospective bidder or consultant in the preparing of technical specifications, terms of reference or standards or the evaluation of bids and proposals;**
  - *Destroying, damaging, hiding, removing, or improperly changing any formal procurement document;*
  - *Accepting or requesting money, travel, meals, entertainment, gifts, favours, discounts or anything of material value from bidders or prospective bidders, suppliers, contractors or consultants;*
  - **Discussing or accepting future employment with a bidder or prospective bidder, suppliers, contractors or consultants;**
  - *Requesting any other person to violate the public procurement rules or procedures;*
  - **Ignoring evidence that the Code of Ethics has been violated;**
  - *Ignoring illegal or unethical activity by bidders or prospective bidders, suppliers, contractors or consultants including any offer of personal inducements or rewards.”*

Having regard to the foregoing, it is important to note that Mr. Earl Richards, President, AAJ, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 25, stated that **“Mr. Morgan spoke of his interest in the company only by way of**

***introducing himself in a concise manner**, similar to all other members present at the meeting.”<sup>101</sup> (OCG’s Emphasis)*

Therefore, and in order to satisfy the requirements of the provisions of Section 17 of the Public Bodies Management and Accountability Act (2001), Mr. Morgan was required to (1) disclose his interest at a Board Meeting and (2) remove himself from **any** deliberations with respect to the procurement opportunity to which he had a private interest.

The OCG found that although several Minutes of the then AAJ Board Meetings revealed that Mr. Morgan had disclosed his interest, there was no evidence to suggest that Mr. Morgan had in fact removed himself from the deliberations surrounding the procurement of Landside Security Services.

In point of fact, in the meeting of 2010 October 1, in which the then AAJ’s Board of Directors’ approval was sought, the Minutes of the referenced Meeting indicated that Mr. Morgan was present and was in the midst of the deliberations for the approval of the tender.

It is instructive to note also that the OCG has found that, at current, there are no policies, procedures and/or legislation which prevent a serving member of a Public Body Board of Directors and/or a company or business from participating competitively for a procurement opportunity which is being undertaken by the said Public Body.

Further, and pursuant to Section 18 of the Public Bodies Management and Accountability Act (2001), irrespective of the testimonies which were received and which suggested that Mr. Morgan was absent from the Finance and Audit Committee Meeting of 2009 August 27, in which the procurement opportunity was discussed in detail, and hence did not

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<sup>101</sup> Mr. Earl Richards, President, AAJ, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 25. Response #11(c)

participate in such deliberations, Mr. Morgan would have been automatically deemed to have consented to the passing of any resolution or any action taken by the Board, as a result of any such decisions which were passed onto the then AAJ Board of Directors from the referenced sub-committee of the Board, unless within seven (7) days he had (1) caused written notice of his dissent to be appended to the minutes of the meeting; or (2) delivered such notice to the registered office of the body or sends such notice by registered mail addressed to that office.

Upon a review of the Minutes of the Meetings of the then AAJ Board of Directors, the OCG has found no evidence to suggest that Mr. Morgan had in fact given the referenced Board of Directors and/or the Management of the AAJ and/or the NMIAL any form of notice in writing and there was no such attachment of same. Further, the OCG was not provided with any such notice which was received by mail or otherwise from any of the Authorities in the AAJ and/or the NMIAL who were requisitioned.

In keeping with Sub-Section S-1040 of the Revised Procurement Guidelines (2008 December), the OCG wishes to reiterate the following:

1. That all *“...personnel involved in handling a procurement process are expected to observe the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders and to be free of interests or relationships that are actually or potentially detrimental to the best interests of GOJ and shall not engage or participate in any transaction involving a company, its affiliates, divisions or subsidiaries in which they have even minor interests.”*
2. That any *“...GOJ personnel involved in a procurement process that has assumed, or is about to assume, a financial or other outside business relationship that might involve a conflict of interest, must immediately inform their supervisors in writing of the circumstances involved. This information is to be reviewed at an*

*appropriate level for a decision whether a conflict of interest is present, and if so, what course of action will be taken.”*

Having regard to the foregoing, the OCG has found (a) based upon the admission of Mr. Dennis Morgan, *inter alia*, that there is a clear private interest attending the referenced matter; (b) no evidence to indicate that Mr. Dennis Morgan had disclosed **in writing** his private interest in Protection & Security Limited; and (c) that while it was disclosed that ‘due care’ was taken against Mr. Morgan’s disclosure, no evidence was provided to indicate the extent of any such ‘due care’ or that the matter was reviewed at any ‘appropriate’ level or that a decision was taken with respect to the possible effect and/or influence which the said disclosure could have had on the objectivity and propriety of the procurement opportunity.

Having regard to the foregoing, it must be noted that the OCG, by way of its Statutory Requisition that was addressed to Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, which was dated 2010 June 4, posed the following question:

*“Please state whether you were aware that Mr. Dennis Morgan is/was the principal of Protection and Security Limited, prior to the recommendation for award which was granted? If yes, please indicate the following:*

- a) The circumstances under which you became aware of such;*
- b) The date on which you became aware;*
- c) The particulars of the disclosure that was/were made to you;*
- d) The names and titles of the person(s) who informed you of same; and*
- e) Given the conflict of interest scenario which would have occurred, what steps were taken by you in regard to same.”*

It is instructive to note that Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, in his response to the referenced OCG Requisition, which was dated 2010 June 28, stated, *inter alia*, the following:



**“Response 9**

*Yes*

**Response 9a**

*I met Mr. Morgan at the first Board Meeting of the newly appointed Boards (AAJ and NMIAL) on 27 November 2007, at which time he was introduced to the AAJ/NMIAL Senior Management Team. He informed us that he was the principal of a private security company, Protection & Security Ltd.*

**Response 9b**

*27 November 2007*

**Response 9c**

***In the meeting, at the beginning of which the Board Members were introduced to the Senior Management Team, the new Board Members were invited by the Chairman to introduce themselves. Mr. Morgan advised during that introduction that he was the principal of the private security company, Protection & Security Ltd.***

**Response 9D**

*Mr. Denis Morgan, Board Director, Airports Authority of Jamaica.*

**Response 9e**

***Following the opening of the bids, I sought clarification as to the eligibility of Protection & Security to bid, and was advised that as long as a declaration of interest was made and Mr. Morgan recused himself from taking part in any deliberations relating to the contract proceedings, then the company would be eligible to tender.***<sup>102</sup> (OCG’s Emphasis)

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<sup>102</sup> Response from Lt. Cdr. John McFarlane, Director, Aviation Security, NMIAL, in his response to the referenced OCG Requisition, which was dated 2010 June 28. Response #9

The OCG, in its Statutory Requisition to Mr. Earl Richards, President, AAJ, on even date, posed a similar question. Mr. Richards, in his response, which was dated 2010 June 25, stated the following:

**“RESPONSE # 8**

*Yes, I was aware that Mr. Morgan was the Principal of Protection and Security Ltd. during the procurement exercise.*

*a) I would have been informed during the introductions of members of the Board at its meeting on 2007 November 27, however, the company’s name and Mr. Morgan’s connection had no significance to me until Mr. Morgan declared interest in the company as a prospective bidder...*

*b) 2007 November 27*

*c) See a) above*

*d) See a) above”<sup>103</sup>*

Mr. Richards had further stated in his referenced response that “...*in other meetings he attended, he would have been made aware of the general status of the procurement in respect of the stage at which it had reached in the procurement process.*”<sup>104</sup>

Based upon the foregoing, the OCG has found that regardless of the statements which suggested that Mr. Morgan did not participate in the discussions, he was still being

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<sup>103</sup> Mr. Earl Richards, President, AAJ, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 25. Response #8.

<sup>104</sup> Mr. Earl Richards, President, AAJ, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 25. Response #3.

informed of, at a minimum, and as asserted by the President of the NMIAL, the ‘*general status*’ of the said procurement opportunity.

The OCG, by way of its Statutory Requisition to the then Permanent Secretary in the MTW, Dr. Alwin Hales, which was dated 2010 June 4, posed the following question:

*“If in your response...Mr. Morgan is/was a serving member of the Board of Directors of the NMIA and/or the AAJ, please state whether you were aware that Mr. Dennis Morgan is/was the principal of Protection and Security Limited? If yes, please indicate the following:*

- a) The circumstances under which you became aware of such;*
- b) The date on which you became aware;*
- c) The particulars of the disclosure(s) that was/were made to you; and*
- d) The names and titles of the person(s) who informed you of same.”<sup>105</sup>*

Dr. Alwin Hales, in his response to the OCG’s Statutory Requisition, which was dated 2010 June 25, stated the following:

**“RESPONSE #4**

- a) I became aware of the fact that Mr. Morgan is a Principal in Protection and Security Limited while reviewing the Cabinet Submission which was prepared in regard to the award of the contract.*
  
- b) The date I became aware of this fact was April 28, 2010.*

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<sup>105</sup> OCG’s Statutory Requisition to the then Permanent Secretary in the MTW, Dr. Alwin Hales, which was dated 2010 June 4. Question #4.

c) *As is required, the Directors of the Company were stated in the Cabinet Submission that was prepared, regarding the award of the contract. The Submission also stated that “Mr. Dennis Morgan being a Director of the Board of the AAJ declared his interest in this project at the meeting of the Board of the AAJ held on Thursday, October 1, 2009.”*<sup>106</sup>

It is instructive to note that Mr. Dennis Morgan, in the then AAJ Board of Directors Meeting of 2009 October 1, had indicated that “...at no time during the process did he have any discussions with any member of the committee to influence their decision.”

In addition, the OCG noted that by way of the published article in the Daily Gleaner of 2010 May 7, which was entitled “*OCG to probe award of airport security contract*” the OCG noted that Mr. Morgan informed the Gleaner that “...he maintained “a Chinese curtain” between his business and his role on the board of NMIA. “I acted in total accordance with what is ethical and normal practice, he said.””

Mr. Morgan, in several of his responses to the OCG, which was dated 2010 July 2, also indicated that “...with board meetings, in the event that the provision of landside security services was raised at a committee meeting, at which I was already in attendance, I would remind the committee of my interest and leave the room so that the deliberations could take place in my absence.”<sup>107</sup>(OCG’s Emphasis)

Having regard to the foregoing, and based upon the sworn testimonies which were adduced to the OCG, the OCG has found no evidence to suggest that Mr. Dennis Morgan had removed himself from any of the then Board Meetings and/or Sub-Committee Meetings at which he was present, and in which the procurement opportunity was discussed.

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<sup>106</sup> Response from Dr. Alwin Hales, then Permanent Secretary, MTW, which was dated 2010 June 25. Response #4

<sup>107</sup> Response from Mr. Dennis Morgan, Director, AAJ Board of Director, which was dated 2010 July 2. Response #6

Further, careful consideration must also be given to both the reality and perception of the impact which the presence of Mr. Morgan might have had on the objectivity of the process and the resultant undue influence which might have been brought to bear on the decisions of the members of the Board of the AAJ.

Upon a review of the Minutes of the Meeting of the then AAJ Board of Directors which was held on 2009 October 1, the then OCG noted that the Chairman, in the presence of Mr. Dennis Morgan, enquired into whether the Board Members could attest to the equity and fairness of the selection process. It must be noted that the referenced Minutes indicated that a Mr. Audley Deidrick, Vice President of Finance, answered in the affirmative whilst the *“President and other members of the Board present concurred.”*

Despite the foregoing, the OCG remains uncertain of the due care which was expressed to have been undertaken by the AAJ and/or the NMIAL, in regard to stymieing any perceived and/or real conflict of interest.

Further, it is the OCG’s considered opinion that permitting Mr. Dennis Morgan to be present or in the midst of any deliberations/discussions, irrespective of whether or not he, Mr. Morgan, contributed to such discussions, is improper and amounts to a lack of good corporate governance and proper ethical consideration on the part of the AAJ Board of Directors.

Despite the apparent lack of good corporate governance practices, the OCG is neither seized with nor has it been presented with sufficient documentary evidence to suggest that Mr. Dennis Morgan acted in direct contravention of the provisions of Section 17(2) (b) of the Public Bodies Management and Accountability Act (2001) or that he scrupulously adhered to the referenced provisions of the Act.

The OCG’s finding in this regard is predicated upon the fact that it has seen evidence that Mr. Dennis Morgan did in fact disclose his interest in the subject procurement matter,

However, the Minutes of the respective Boards, which were adduced, do not document Mr. Dennis Morgan as partaking in any deliberations beyond a disclosure of his interest in the matter. Further, the referenced Minutes of the then AAJ Board of Directors do not disclose whether or not Mr. Dennis Morgan removed himself from the room in all instances or whether he remained present during the course of the meetings at which time the procurement of Landside Security Services was discussed.

## CONCLUSIONS

Based upon the sworn responses which were received from certain Public Officials/Officers within the AAJ, the NMIAL, the JCAA and the Director of Protection and Security Limited, the OCG has arrived at the following considered Conclusions:

1. The OCG found that the NMIAL utilized the Open Tender Procurement Methodology, in which the following five (5) Security Companies/Firms submitted a bid at the close of tender on 2009 April 30, for the provision of Landside Security Services at the NMIAL:
  - i. Guardsman Limited;
  - ii. Ranger Protection and Security Company Limited;
  - iii. Port Security Corps;
  - iv. Atlas Group Limited; and
  - v. Protection and Security Limited.

The OCG concludes that the use of the referenced procurement methodology was appropriate pursuant to Sub-Section S-2040 of the Revised GOJ Public Sector Procurement Procedures (2008 December), which is applicable to contracts which are above J\$30 million in value.

2. The OCG has concluded that the tender which was submitted by Protection and Security Limited was evaluated as the lowest financially responsive tender, in the amount of J\$149,940,000.00, for the three-year period, and was subsequently awarded.
3. The OCG has concluded that the proposed contract value which was submitted by Protection and Security Limited was 24.5% below the NMIAL's Comparable Estimate of \$198,458,716.95, as opposed to the other potential bidders whose

proposed contract values ranged from approximately 4% to 6% above or below the NMIAL's Comparable Estimate.

4. The OCG has concluded that the bid that was submitted by Protection and Security Limited met the eligibility and qualification requirements in accordance with the instructions which were outlined in the Request for Proposal (RFP).
5. The OCG has concluded that the content of the RFP was in keeping with the respective provisions of the GOJ Public Sector Procurement Procedures (2008 December) and the standards which are established by the JCAA.

It is instructive to note that the RFP was reportedly approved by the management of the AAJ/NMIAL. The OCG found no evidence to suggest that the then Board of Directors of the AAJ and/or the NMIAL had been in receipt of a copy of the RFP for approval and/or consideration prior to the issuance of same.

6. The OCG has found and concluded that the decision by the NMIAL to proceed with the procurement for the provision of "*Landside Security Services: Security Guard Services*", after withdrawing Package 2, "*Landside Security Services: Restricted Area Pass Processing*" which was jointly tendered, was valid, pursuant to the provisions of the RFP which stated that the Procuring Entity had the right to "*...treat separately with each package set out in Appendix 1 at its own discretion and in its own best interest.*"
7. The OCG has found and concluded that the NMIAL had been in receipt of the requisite approvals from the respective Authorities for the provision of Landside Security Services at the NMIAL, pursuant to the provisions of the Revised GOJ Public Sector Procurement Procedures (December 2008).



The OCG has seen evidence, *inter alia*, of (i) the approval of the then AAJ Board of Directors which was received on 2009 October 1, and which was subsequently ratified by the then NMIAL Board of Directors, (ii) the respective endorsements of the NMIAL's Procurement Committee and the National Contracts Commission on 2010 January 18 and 2010 February 24, respectively, and (iii) the approval of the Cabinet which was received on 2010 May 3.

8. The OCG has concluded that regardless of the fact that the NMIAL has its separate Board of Directors, it was the then AAJ Board of Directors which had deliberated upon and approved the recommendation to award a contract to Protection and Security Limited for the provision of Landside Security Services at the NMIAL.

The OCG has found and concluded that the then NMIAL Board of Directors had only 'ratified' the decision of the then AAJ Board of Directors without any in-depth analysis of same.

In this regard, the OCG concludes that Mr. Morgan's position, as a then serving member of the AAJ Board of Directors, should have been treated with the highest level of ethics and due care on the part of the Chairman of the Board, the management and administration of the AAJ and the NMIAL.

The OCG would like to point out that irrespective of the assertions of the Accounting Officer in the MTW, the Accountable Officers in the AAJ and the NMIAL and Mr. Morgan, that he (Mr. Morgan) had declared his interest in the private company in several Board meetings, the OCG has found no evidence in such Minutes to suggest that Mr. Morgan had in fact removed himself and/or was requested to leave such meetings, at which he was reportedly present.

9. The OCG has also found and concluded that Mr. Dennis Morgan was a member of the Finance and Audit Committee, which is a sub-committee of the then AAJ Board of Directors. In this regard, Mr. Earl Richards, President, AAJ, indicated, *inter alia*, that “...Mr. Morgan together with other appointed members oversee the financial affairs of the organization, inclusive of procurement, and ensure compliance with the requirements of the Public Bodies Management and Accountability Act.”

The OCG found that Mr. Morgan, though reportedly absent from the Finance and Audit Committee meeting in which the evaluation of the bids was deliberated upon, was present in other meetings in which the status of the approval of the procurement opportunity was discussed. In point of fact, Mr. Earl Richards, President, AAJ, advised the OCG that Mr. Morgan “...would have been made aware of the general status of the procurement in respect of the stage at which it had reached in the procurement process.”

The OCG has concluded that such practices of the AAJ and the NMIAL are unacceptable and may have comprised the integrity and fairness of the entire process, having particular regard to the perception of a conflict of interest and the unwarranted and debilitating effects that such a conflict of interest can have on a procurement exercise.

10. The OCG has concluded that the rates which were proposed by Protection and Security Limited, for the provision of Landside Security Services, were above the then applicable 2008 amended Minimum Wages for “Industrial Security Guards” and in keeping with Paragraph 10, of the 1982 Principal Order, which states that “*Nothing in this Order shall be construed as preventing the payment of wages at rates higher than the rates fixed by this Order.*”

11. The OCG has concluded that the allegation which indicated that special training was required for any Security Guard employed to provide Landside Security Services at the NMIAL, pursuant to the provisions of the “...*Jamaica Civil Aviation Act 1966, Amended 2004, and the Jamaica Civil Aviation Regulations, 2004...*”, was misunderstood with the requirements for Aviation Security Services as detailed in the referenced legislation.

The OCG notes that the referenced legislation does not in any way provide a distinction between ‘landside’ and ‘airside’ security services. However, the law explicitly states the provisions for any security personnel employed to the aerodrome and/or who would require any form of ‘airside’ access in the conduct of such duties.

Based upon the sworn testimonies which were received from the Accountable Officers in the AAJ and the NMIAL, and the provisions of the Civil Aviation Regulations (2004), the OCG found the NMIAL, as Jamaica’s aerodrome operator, is required to submit a ‘Security Programme’, which is required to meet the provisions of the Twentieth Schedule of the Civil Aviation Regulations (2004), and submitted to the JCAA for approval.

The OCG found that a Training Programme was submitted to the JCAA by the Director of Aviation Security of the NMIAL and had, in fact, been reviewed by the JCAA.

The OCG must note that although the Director General of the JCAA indicated that the referenced security programme went through a review process and that the said programme was consistent with the requirements for security officers working on landside and airside of an aerodrome, no documentary evidence was submitted to the OCG by the JCAA to suggest that approval was granted by the

Authority, pursuant to Sections 20.011 and 20.014 of the Twentieth Schedule of the Civil Aviation Regulations.

Notwithstanding same, the OCG has concluded that the qualification requirements for Landside Security Services differ from that which is required for Aviation Security Services. In this regard, the OCG is of the view, and in keeping with the description of landside security services and the areas of the airport that such Security Officers are required to have access to, that (a) no special training requirements were needed for such Security Officers pursuant to the NMIAL's Security Training Programme which was submitted to the OCG for review; and (b) such Security Firms were not required to be certified with the JCAA as Aviation Security Providers.

12. The OCG has concluded that the overall evaluation results illustrated that Protection and Security Limited was the successful bidder as a result of its financial proposal.

Of note, however, is the fact that the OCG found no direct correlation between the fact that Mr. Morgan served on the then AAJ Board of Directors and the fact that Protection and Security proposed the lowest evaluated tender.

Notwithstanding, and considering the compendium of facts, the OCG is of the view that the circumstances remain highly undesirable, in light of the following:

- i. That as a then serving member of the Board of Directors, Mr. Morgan was placed at an advantageous position in which he could have access to information, which included, amongst other things, (a) the Procurement and Security Budgets for both the NMIAL and the AAJ, (b) the Minutes of the then AAJ Board of Directors Meetings, and (c) any other information

which may be directly related to the provision of Security Services at the AAJ and the NMIAL;

- ii. The fact that Mr. Morgan was aware that the procurement opportunity was being considered to be competitively tendered prior to the issuance of the RFP;
- iii. That although the rates which were proposed by Protection and Security Limited were above the applicable amendments to the Minimum Wages for Industrial Security Guards, there was still a 24.5% variance which existed between that which was proposed by Protection and Security and the NMIAL's Comparable Estimate, especially when compared to other proposed contract values; and
- iv. Having regard to the fact that the effective date of the Security Contract which was awarded to Mr. Dennis Morgan's private company was 2010 July 10, and that the budget for Landside Security Services at the NMIAL for the fiscal year 2010/2011 amounted to \$55,175,269.50, the OCG found that the contract value which was proposed by Protection and Security Limited, in the sum of \$49,480,000.00, was the only figure which was below the referenced NMIAL's Fiscal Budget by 9.42%, as opposed to the other prospective bidders in the Security Industry which were above the referenced budget between a range of 10% to 25%.

13. The OCG has concluded that as at 2011 July 31 (the first year of payments made to Protection and Security Limited), the NMIAL paid Protection and Security Limited in accordance with the rates which were outlined in the contract which was consummated on 2010 July 7 and in keeping with the amendments to the Minimum Wages for Industrial Security Guards (2011) which became effective on 2011 February 28.

14. The OCG has concluded that any Board of Directors which permits a Director to be present in a meeting during which discussions are being held regarding a procurement opportunity in which the said Director has a private interest, without excusing himself or being requested to leave the said meeting, is (a) tantamount to unethical conduct and would amount to a conflict of interest on the part of any such Director and (b) a lack of good corporate governance on the part of such a Board of Directors.

Having regard to the foregoing, and based upon the documentary evidence which has been presented, the OCG has made the following conclusions:

- i. Mr. Dennis Morgan had declared his private interest in the company, Protection and Security Limited, during the conduct of several Meetings of the then AAJ Board of Directors, pursuant to the requirements of Section 17 (2) (a) of the Public Bodies Management and Accountability Act.
- ii. There is no evidence to suggest that Mr. Dennis Morgan had been requested by any of the then members of the AAJ Board of Directors to leave any of the Meetings which were held by the then AAJ Board of Directors and/or the Financial and Audit Committee (a sub-committee of the AAJ Board of Directors) in which the procurement opportunity was being discussed and/or that Mr. Morgan had excused himself from same.

Most importantly, the OCG found, based on the Minutes of the Meeting of the then AAJ Board of Directors which was held on 2010 October 1, the very meeting in which the said Board was required to approve the recommendation for the award of the contract for the provision of Landside Security Services, that Mr. Morgan was present during the

course of such deliberations and had again verbally declared his interest in the procurement opportunity.

The OCG has found no evidence to suggest that Mr. Morgan had been requested by the Board to leave the referenced meeting and/or had, in fact, excused himself from same subsequent to declaring his interest.

In this regard, the OCG is neither seized with nor has it been presented with sufficient documentary evidence to suggest that Mr. Dennis Morgan acted in direct contravention of the provisions of Section 17(2) (b) of the Public Bodies Management and Accountability Act (2001) or that he scrupulously adhered to the referenced provisions of the Act.

- iii. Mr. Morgan was aware of the NMIAL's decision to tender for the provision of Landside Security Services prior to the preparation of the RFP and the issuance of same to the other prospective bidders. The Minutes of the Meeting of the then AAJ Board of Directors, which was held on 2009 January 27, in which Mr. Morgan was present, expressly stated that the procurement opportunity was discussed. However, the referenced Minutes did not indicate that Mr. Morgan was requested to leave the meeting and/or that he had excused himself from the said meeting.
- iv. The OCG has concluded that the mere presence of Mr. Dennis Morgan, being a then serving member of the AAJ Board of Directors, in the meeting of 2009 October 1 and/or any other meeting in which the procurement opportunity was discussed, may have brought into question the degree of objectivity, perceived fairness and propriety of the tender and award process which the Board was later required to deliberate upon and approve.

## **RECOMMENDATIONS**

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG Emphasis)

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following considered Recommendations:

1. The OCG is hereby recommending that Public Bodies scope and price their Comparable Estimates using informed data, rates and/or calculations in an effort to ensure that there is not a large variance between (a) the Comparable Estimate, (b) the allocated Budget for the referenced procurement and (c) the proposed contract values which are being offered by prospective bidders.
2. That all Public Officers/Officials who are involved in any aspect of the procurement of any goods, works and/or services are duly advised of the applicable provisions and sanctions for a breach of Section 17 (2) (b) of the Public Bodies Management and Accountability Act, in the case of Board Members, and the provisions of Sub-Section S-1040 of the GOJ Public Sector Procurement Guidelines (2008 December), inclusive of the Public Sector Procurement Regulations (2008).
3. In instances where a member of the Public Body Board or any other Public Official/Officer finds himself/herself in a probable conflict of interest scenario, it is recommended that the individual not only makes the necessary and principled disclosures with the intent to remove himself/herself from the conflict of interest situation, but also withdraws himself/herself entirely from the process. Further,



and in order to guard against any perceived shortcomings in the practice of making disclosures of interest, the OCG is hereby recommending that Public Officers/Officials make such declarations in writing and that same form a part of the record for the procurement under consideration.

4. Heads of Ministries, Departments and Agencies who are aware that a Public Officer/Official is in a conflict of interest situation are strongly recommended to take the necessary action, in accordance with applicable administrative procedures, to remove such an officer from the situation. Such an action will ensure legitimacy and good governance in the management and administration of the Government Procurement and Contracting System.
5. The OCG also respectfully recommends that all Appointees of the Board of Directors of any Public Body are fully made aware of their responsibilities and obligations under the provisions that are contained in the Public Bodies Management and Accountability Act, the recently issued Corporate Governance Framework for Public Bodies and all other applicable legislations.
6. The OCG recommends that in instances where a Public Body and/or a duly registered company or body corporate, whose policies are influenced by the GOJ and/or any duly authorized agency of the GOJ, is administered, controlled and/or managed by a parent Ministry, Statutory Authority or otherwise, and consists of a separate and distinct Board of Directors, such a Public Body Board of Directors should be required to conduct in-depth deliberations into matters relating to, *inter alia*, Government contracting, irrespective of any other deliberations which are conducted by the parent Ministry, Statutory Authority or otherwise.

The OCG is, therefore, recommending that an expressed display of due care and diligence be exhibited by the Boards of Directors of Public Bodies and not simply the 'ratification' of the decisions of the said parent Entity.

The OCG is of the view that the foregoing will promote greater transparency within the Government contracting system, underscore the principles of good corporate governance and will lend itself to the fostering of increased accountability upon the Boards of Directors of Public Bodies for the affairs of the Public Body.

Therefore, the OCG is of the view that in a system such as the one which is the subject of this Investigation, which has two (2) separate Boards of Directors, **each** Board of Directors should, at a minimum, undertake its own in-depth analysis of the procurement process which is under consideration.

Given the foregoing, the OCG further recommends that the Boards of Directors of **all** Public Bodies be thorough in their deliberations, particularly as they relate to Government contracting, in an effort to ensure that contracts which are being recommended for award, by the respective Public Bodies, are in keeping with the Laws of the Jamaica, and the policies and procedures which govern such awards.

7. The OCG feels compelled to strongly recommend, again, as it has in previous Investigation Reports, that Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.

The OCG strongly opines that serving members on the Board of Directors of all Public Bodies should not be allowed to tender competitively on any procurement opportunities which are being undertaken by the said Public Body.

In this respect, the OCG recommends that serving members on any Public Body Board of Directors be mandated, to not only disclose a private interest in Board Meetings but, to disclose their interests to the Portfolio Minister, and the relevant Accounting and Accountable Officers, when being appointed, so as to ensure full disclosure and transparency in the affairs of the public sector.