



**OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA**

**Special Report of Enquiry**

**Conducted into the Circumstances Surrounding the Alleged Contractual Agreements between the Petroleum Corporation of Jamaica (PCJ) and Caribbean Protective Security Management and Services Company Ltd.**

**The Former Ministry of Industry, Technology, Energy and Commerce (MITEC)**

**Ministry of Energy and Mining**

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#### EXECUTIVE SUMMARY

On 2009 September 23, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to the provisions which are contained in Sections 15(1) and 16 of the Contractor General Act, initiated an Enquiry into the circumstances surrounding the alleged contractual agreements between the Petroleum Corporation of Jamaica (PCJ) and Caribbean Protective Security Management and Services Company Limited.

Section 15 (1) of the 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 license;
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licenses”.

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 investigation is warranted”*.

The OCG’s decision to commence the formal Enquiry followed, *inter alia*, upon the publication of two (2) articles in the Daily Gleaner newspaper, which were dated 2009 September 16 and 2009 September 23, respectively.

The publications drew the attention of the OCG to the alleged payment of J\$2 million by the PCJ, in 2006, to a security firm, which was known as Caribbean Protective Security Management and Services Company Ltd., for services which were rendered at a community centre that was located in Santa Cruz, St. Elizabeth.

In the first article, which was dated 2009 September 16, and which was entitled *“Parliamentary committee livid with PCJ”*, it was reported, *inter alia*, as follows:

***“PRESSURE IS mounting on the Petroleum Corporation of Jamaica (PCJ) as another parliamentary committee castigated the agency for a questionable transaction at the agency three years ago.***

*Members of Parliament’s Public Accounts Committee (PAC) were livid yesterday when technocrats from the Ministry of Mining and Energy failed to provide a clear explanation about how a \$2-million payment was made in 2006 to a security company for providing services at a community centre in Santa Cruz, St Elizabeth.*

*Auditor General Pamela Munroe – Ellis disclosed that her audit found that the PCJ had no affiliation with the community centre yet sums were paid to the security firm.*

*Robert Martin, deputy financial secretary, suggested that an incident like this should be investigated by the Office of the Contractor General ...”<sup>1</sup>*

In the second article, which was dated 2009 September 23, and which was entitled “*PCJ searches for evidence- Company does forensic audit in the midst of \$2- million payments*”, it was reported, *inter alia*, as follows:

***“MORE DETAILS have emerged concerning the controversial \$2 million paid by the Petroleum Corporation of Jamaica (PCJ) in 2006 to a security firm for services at a community centre in Santa Cruz, St Elizabeth.***

*A PCJ document responding to a query by Auditor General Pamela Monroe – Ellis about the corporation’s interest in the community centre said the government entity’s budget had a provision for community outreach programmes.*

*According to the PCJ, in 2006, a charitable organization, Rainbow of Hope Limited, was undertaking a community-outreach programme.*

*The exercise included the erection of perimeter fencing and replacement of two gates at the community centre.*

*The security company is listed as Caribbean Protective Security Management and Services Company whose principals were Rodney Chin and Joseph Blackwood.*

*Rainbow of Hope Limited, the charitable entity, had as its principals Joseph Blackwood, Colleen Nicole Wright and Donovan Williamson...”<sup>2</sup>*

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<sup>1</sup>Daily Gleaner. “*Parliamentary committee livid with PCJ*”. 2009 September 16. <http://jamaica-gleaner.com/gleaner/20090916/lead/lead9.html>

<sup>2</sup>Daily Gleaner. “*PCJ searches for evidence- Company does forensic audit in the midst of \$2- million payments*” 2009 September 23. <http://jamaica-gleaner.com/gleaner/20090923/lead/lead5.html>

The allegations, which were contained in the above referenced articles, alluded, *inter alia*, to (a) impropriety; (b) a lack of transparency; (c) a lack of fairness; (d) cronyism in the award of Government contracts; (e) a breach of applicable Government Procurement Procedures; (f) mismanagement; and (g) a breach of the applicable Public Service administrative and accounting procedures.

Consequently, these allegations and inferences, amongst others, raised several concerns for the OCG, especially in light of (a) the OCG's previous Findings, Conclusions, Referrals and Recommendations that were revealed in its Special Report of Investigation, which was conducted into the circumstances surrounding the award of contracts, by the PCJ, for the 4M Energy Saving and Light Bulb Distribution Project, and which was formally submitted, by the OCG, to the relevant authorities on 2008 February 8 (b) the arrest on 2008 February 26, on criminal charges, in relation to matters that were associated with the said 4M Energy Saving and Light Bulb Distribution Project contract awards, of at least two (2) of the persons who were named in one (1) of the referenced newspaper reports, namely Mr. Rodney Chin and Ms. Colleen Nicole Wright, and (c) the perceived absence of adherence to the Government contract award principles which are enshrined in Section 4 (1) of the Contractor General Act.

Section 4 (1) of the Act requires, *inter alia*, that GOJ contracts should be awarded "*impartially and on merit*" and that the circumstances of award should "*not involve impropriety or irregularity*".

Having regard to the foregoing, the OCG's Enquiry primarily sought to determine, *inter alia*, the following:

1. The extent, if any, to which the PCJ had an interest in Rainbow of Hope Ltd.
2. Whether there was impropriety and/or irregularity involved in the process which was used, by the PCJ, to approve the alleged request for assistance from Rainbow of Hope Ltd.

3. The nature of the relationship, if any, between and among executives and/or officials at the PCJ and the principals of Caribbean Protective Security Management and Services Company Ltd. and the proprietors of Rainbow of Hope Ltd.
4. The procurement process which was employed by the PCJ in the award, implementation, execution and/or variation of the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd.
5. Whether there was any *prima facie* evidence that would suggest impropriety on the part of any individual and/or entity which contributed to the award (or non-award ) of the contract to Caribbean Protective Security Management and Services Company Ltd.
6. Whether there were any breaches of the GOJ's Public Sector Procurement Procedures and/or applicable laws on the part of the PCJ and/or anyone acting on its behalf, in the facilitation, procurement, award, implementation, execution and/or variation of the referenced contract; and
7. Whether the process which led to the award of the contract to Caribbean Protective Security Management and Services Company Ltd. was fair, impartial, transparent and devoid of irregularity and impropriety.

At the commencement of its Enquiry on 2009 September 23, the OCG, by way of a letter of even date, wrote to Dr. Ruth Potopsingh, the then PCJ Group Managing Director, to inform her of the OCG's decision to launch an Enquiry into the circumstances surrounding the alleged contractual agreements between the PCJ and Caribbean Protective Security Management and Services Ltd.

In furtherance of the OCG's Enquiry, the OCG, on the said date, dispatched a three (3) person Audit Team, to the offices of the PCJ, to review and requisition the files and other relevant documentation and/or information which were related to the matter.

The Terms of Reference of the OCG's Enquiry into the circumstances surrounding the alleged contractual agreements between the PCJ and Caribbean Protective Security Management and Services Ltd. 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 by, *inter alia*, the Contractor General Act, the GPPH (2001 May), the Financial Administration and Audit Act (FAA Act), the Public Bodies Management and Accountability Act (PBMA), as well as the Corruption Prevention Act.

The OCG was also guided by the expressed provisions which are contained in Section 21 of the Contractor General Act. Section 21 specifically 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 competent authority to take such disciplinary or other proceedings as may be appropriate against that officer or member.

The Findings of the OCG's Enquiry into the circumstances surrounding the alleged contractual agreements between the PCJ and Caribbean Protective Security Management and Services Company Ltd. are premised primarily upon an analysis of the statements and the documents which were provided by the respondents who were requisitioned herein.

### **Summary of Key Findings and Conclusions**

The OCG found that in the Meeting of the Public Accounts Committee (PAC) of the Parliament of Jamaica, which was held on 2009 September 15, it was revealed that a security contract was awarded to Caribbean Protective Security Management and Services Company Ltd., to provide security services at a community centre which was located in Santa Cruz, St. Elizabeth.

In this regard, Mrs. Hillary Alexander, Permanent Secretary, in the Ministry of Energy and Mining (MEM), in her response to the concerns which were raised by the PAC on 2009 September 15, stated, *inter alia*, the following:

*“... The subject of this query was investigated by the group internal auditor. **The security services were provided for safeguarding this building...and the cost of the services was absorbed by the PCJ.***

Further, Dr. Ruth Potopsingh, in her response to the OCG’s Requisition, which was dated 2010 February 16, stated, *inter alia*, as follows:

*“The extent of my knowledge of the alleged contract(s) which was/ were awarded to Caribbean Protective Security Management and Services Company Limited to provide security services for and/or on behalf of the Petroleum Corporation of Jamaica (PCJ) is from the findings of the Auditor General on the Appropriation and other Accounts of Jamaica for the Financial Year ended 31<sup>st</sup> March 2008. **The Group Internal Auditor (PCJ) first reported that services were procured in regard to the provision of security services at a community centre in Santa Cruz between August 1 and December 31, 2006.** The information concerning these payments to Caribbean Protective Security Management and Services Company Ltd. was obtained from payment records in PCJ. **No documented contracts between the PCJ and this company have been found**”<sup>3</sup>(.OCG Emphasis)*

The Accounts Payable Vouchers of the PCJ revealed, *inter alia*, that the PCJ made fourteen (14) payments to Caribbean Protective Security Management and Services Company Ltd. The referenced payments were made over the period of 2006 May 29 to 2007 April 11, and had an aggregate total value of J\$3,828,580.40.

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<sup>3</sup> Dr. Ruth Potopsingh. Response to OCG’s Requisition. 2010 February 16.



Of the sum stated above, J\$2,648,650.80 was paid, by the PCJ, for services which were described as being for the provision of 'Armed Security Officers' and J\$971,889.60 was paid for services which were described as being for the provision of 'Unarmed Security Officers'.

A further J\$208,040.00 was paid to Caribbean Protective Security Management and Services Company Ltd., by the PCJ, for the acquisition of a 'computer printer for MCST'.

The OCG found that the referenced payment, which was made for the acquisition of a computer printer, appears to have nothing to do with the provision of security services. In point of fact, the OCG found that the invoice that was dated 2006 May 25, which was presented by Caribbean Protective Security Management and Services Company Ltd. to the PCJ, and which was signed by Mr. Joseph Blackwood, Director, indicated that the PCJ was being charged for the following items:

1. Tablet PC;
2. HP 24 X Combo DVD/ CDRW Multibay II Drive;
3. HP External Multibay II Cradle;
4. Cannon IP90 Mobile Printer.

Based upon the foregoing, the OCG found that the PCJ purchased a computer and related equipment from Caribbean Protective Security Management and Services Company Ltd. It is instructive to note, however, that the OCG found that the documents, which were on the PCJ files, did not indicate (a) whether the PCJ received the above referenced items, (b) the reasons for the purchase of the items and/or (c) the location at which the items were delivered.

Further, based upon the documents which were made available to the OCG, and considering the nature of the services which were purportedly being provided by Caribbean Protective Security Management and Services Company Ltd., the OCG is unable to verify the necessity of the procurement and the rationale for its approval.

The OCG's position is also buttressed by the inability on the part of the Accounting and Accountable Officers of the PCJ to clearly account for the contracting of Caribbean Protective Security Management and Services Company Ltd.

The OCG was provided with copies of the PCJ cheques, which were made payable to Caribbean Protective Security Management and Services Company Ltd., for the period of 2006 June to 2007 April.

A review of the referenced cheques, which were reportedly drawn from the PCJ's Account, revealed, *inter alia*, the following;

1. Cheques totalling J\$4,149,264.00 were made payable to Caribbean Protective Security Management and Services Company Ltd.
2. There was a distinct disparity between the total amount which was paid to Caribbean Protective Security Management and Services Company Ltd. and the total amount which was detailed in the Accounts Payable Records of the PCJ.

In this regard, the cheques revealed that a total of J\$4,149,264.00 was paid to Caribbean Protective Security Management and Services Company Ltd.; however, the Accounts Payable Records of the PCJ and the invoices on the PCJ files, indicated that a total of J\$3,828,580.40 was to be paid.

3. Consequently, the OCG found that Caribbean Protective Security Management and Services Company Ltd. was paid a total of J\$320,683.60 more than that which was invoiced.

The OCG also found that there was a lack of documentation and poor methods of records keeping, on the part of the PCJ, specifically with respect to the payments and invoices for the referenced contract.

Having regard to the foregoing, and based upon the documents which were made available to the OCG, by the PCJ, it is instructive to note that the OCG is unable to verify and/or state the reasons for the apparent overpayment that was made to Caribbean Protective Security Management and Services Company Ltd.

With respect to the procurement process which was utilized by the PCJ in the award of the contract to Caribbean Protective Security Management and Services Company Ltd., it is instructive to note that the PCJ, in its Quarterly Contract Award (QCA) Reports, reported that it utilized the Sole Source Procurement Methodology.

However, the OCG did not find any evidence to indicate that the then Accounting Officer, Dr. Jean Dixon, the then Permanent Secretary, in the former Ministry of Industry, Technology, Energy and Commerce (MITEC), approved the use of the Sole Source Procurement Methodology for the award of the referenced contracts.

Consequently, the OCG found that the foregoing amounts to a breach of Section 2.1.3.4 of the GPPH (2001 May).

Further, it should be noted that notwithstanding the representations of the PCJ in its QCA Reports, with respect to the procurement process which was utilized in the award of the referenced contract, the OCG found that Dr. Ruth Potopsingh, the then PCJ Group Managing Director, in her response to the OCG's Requisition, which was dated 2010 February 16, stated, *inter alia*, as follows:

*"I am not aware of how the PCJ or any other Public Body on its behalf, went about getting proposals for and/or quotations from Caribbean Protective Security Management and Services company Ltd. for the provision of security services. **There is no evidence that the public sector procurement procedures were followed and no evidence of any competing proposals and/or quotations.**"*<sup>4</sup> (OCG Emphasis)

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<sup>4</sup> Dr. Ruth Potopsingh. Response to the OCG's Requisition. 2010 February 16.

Based upon the documents which were presented to the OCG, by the PCJ, the OCG also found that there was no written contract between the PCJ and Caribbean Protective Security Management and Services Company Ltd. for the referenced contract.

Therefore, the OCG found that the referenced contract did not receive the approval of the Accounting Officer, nor was the Head of the PCJ, the Group Managing Director, aware of its award.

Consequently, the OCG has concluded that in the contracting of Caribbean Protective Security Management and Services Company Ltd., the PCJ has shown scant regard for the Government Procurement Guidelines and, in particular, the Contractor General Act, specifically Section 4(1).

Further, based upon Dr. Potopsingh's representations, to the OCG, invoices with respect to the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. were approved by Mr. Rodney Salmon, the then Director of Administration/ Corporate Secretary. In this regard, Dr. Potopsingh stated, *inter alia*, as follows:

*“Not having seen any documented contracts between the PCJ and Caribbean Protective Security Management and Services Company Ltd., **and not having seen any evidence that any such contracts were subjected to public sector procurement procedures, I am unable to state the names of the officers who approved the contracts, but I am able to state that the related invoices were approved by the then Director of Administration/ Corporate Secretary**”<sup>5</sup>(OCG Emphasis)*

The OCG found no evidence to suggest that (a) a 'Request for Proposals' was prepared by the PCJ, (b) quotations were sought by the PCJ, or (c) that the GOJ Public Sector Procurement Guidelines were utilized in the execution of the referenced procurement.

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<sup>5</sup> Dr. Ruth Potopsingh. Response to the OCG's Requisition. 2010 February 16.

It is instructive to note that Papineau Consulting Inc. conducted a Special Audit Report with respect, *inter alia*, to (a) procurement breaches and (b) the alleged contract(s) which was/were awarded to Caribbean Protective Security Management and Services Company Ltd., by the PCJ, in 2009 October.

In this regard, the referenced report determined, *inter alia*, that:

1. *“Most approvals for paying invoices only had one signature and the majority of PCJ expenditures were approved by the former Director of Administration or the former Financial Controller”.*
2. *“General expenditures identified as problematic related to Grants & Donations where a multitude of donations were made monthly by PCJ to public and private organizations. Many payments were made for loans and grants to PCJ employees, for numerous reasons. However, there were no written criteria used as the basis to authorize donations, loans and grants”.*
3. *“Questionable expenditures for security services were identified, relating to one specific security firm in 2006-07 for a Santa Cruz Community Centre...”*
4. *“The amount paid by PCJ to this security firm was in excess of \$5 million. No contracts or documents were ever found to justify or support these expenditures other than the brief invoices”.*
5. The PCJ manager who was responsible for security services did not (a) authorize these expenditures; (b) was unable to provide contracts, documentation or support for the justification of these security services and (c) was unaware of the purpose for which they were required.

6. Most contracts were awarded using the Sole Source Procurement Methodology without any justification being provided. One (1) competitively awarded contract was reviewed; however, doubts were raised with respect to the competitiveness of the process.

The following are problems which were identified with respect to the contracts that were reviewed:

- i. *“lack of competitiveness*
  - ii. *awarding work without written contracts,*
  - iii. *awarding work without knowing the cost of the work*
  - iv. *change orders to work description without prior approval*
  - v. *making payments without proper approvals of PCJ officials*
  - vi. *making payments on invoices without details of the work completed”*
7. *“There was no written manual or written guidelines on the practices and procedures of the PCJ Accounts Unit relating to how it should handle and process expenditures and revenues. There was no written directive on the process to authorize and record information in the financial records of PCJ...”<sup>6</sup>*

Having regard to the information which was presented, to the OCG, the OCG also thought it prudent to conduct a company search on the website of the Companies Office of Jamaica (COJ) for the companies Rainbow of Hope Ltd. and Caribbean Protective Security Management and Services Company Ltd. This was undertaken, by the OCG, in order to ascertain further and better particulars of the referenced companies.

In this regard, the referenced search for Rainbow of Hope Ltd. revealed, *inter alia*, the following:

- The company was incorporated on Wednesday, 2006 February 22;

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<sup>6</sup> Papineau Consulting Inc. Audit Report. 2009 October

- Listed as its Directors were Mr. Joseph Blackwood, Mr. Donovan Williamson and Ms. Coleen Wright.

The search with respect to Caribbean Protective Security Management and Services Company Ltd. revealed, *inter alia*, the following information:

- The company was incorporated on Friday, 2006 May 19;
- Listed as its Directors and Shareholders were Mr. Joseph Blackwood and Mr. Rodney Chin. Mr. Chin was also listed as the majority shareholder of the company.

It is instructive to note that Mr. Rodney Chin, who is mentioned above as a Director and Shareholder of Caribbean Protective Security Management and Services Company Ltd., was also highlighted in the OCG's Special Report of Investigation, which was conducted into the circumstances surrounding the procurement of contracts for the 4M Energy Saving and Light Bulb Distribution Project.

In this regard, Mr. Chin was found to be the sole Director of Universal Management and Development Company (UMD), the company which was reported as having received the bulk of the payments from the PCJ, in relation to the referenced Project.

It is instructive to note that UMD, like Caribbean Protective Security Management and Services Company Ltd. and Rainbow of Hope Ltd., was incorporated in 2006.

Further, it is instructive to note that Ms. Coleen Wright, who is listed as a Director of Rainbow of Hope Ltd. is currently before the courts facing a number of criminal charges which were brought against her with respect to her alleged involvement with the 4M Energy Saving and Light Bulb Distribution Project.

On 2008 February 26, Mr. Rodney Chin was arrested and taken into custody and was subsequently charged in connection with certain matters that were associated with the said 4M Energy Saving and Light Bulb Distribution Project; however, the referenced charges, against Mr. Chin, were subsequently dropped by the Director of Public Prosecutions (DPP), Ms. Paula Llewellyn, who assumed office on 2008 March 5.

Of note is the fact that Ms. Wright, during the referenced period, was employed to the PCJ. The employment contract of Ms. Wright was for a period of two (2) years commencing on 2006 May 1.

It is instructive to note that the referenced community centre, at which Rainbow of Hope Ltd. was conducting an outreach project, and at which Caribbean Protective Security Management and Services Company Ltd. was alleged to have been providing security services, at the expense of PCJ, is one which is located in Santa Cruz, St. Elizabeth. This is an area within the St. Elizabeth North Eastern Constituency for which Mr. Kern Spencer is the Member of Parliament. During the referenced period, Mr. Kern Spencer was also the Junior Minister in the parent Ministry of the PCJ, MITEC.

The OCG, in its Special Report of Investigation, found *prima facie* evidence of corruption in the selection of contractors, inclusive of UMD, on the part of Mr. Kern Spencer. It is instructive to note that Mr. Kern Spencer is also currently before the courts, along with Ms. Coleen Wright, facing charges with respect to the 4M Energy Saving and Light Bulb Distribution Project.

Further, the OCG also found that on a PCJ "*Payment Voucher*", it was revealed that on 2006 July 17, Ms. Coleen Wright collected and signed for a cheque which was drawn for the benefit of the Caribbean Protective Security Management and Services Company Ltd.

Having regard to the relationship, which was identified by the OCG, with the above referenced individuals, the OCG, at this juncture, must highlight that there are glaring similarities between the findings of this Enquiry and those of the findings, which have been detailed in the OCG's



Special Investigation Report, which was conducted into the circumstances surrounding the procurement of contracts for the 4M Energy Saving and Light Bulb Distribution Project.

In this regard, the OCG has identified similarities with respect to (a) the procurement process at the PCJ during the referenced period (b) the breakdown in the financial and administrative management of the PCJ and (c) the award of contracts in an irregular and improper manner to companies which were associated, whether directly and/or indirectly, with Ms. Coleen Wright and Mr. Rodney Chin.

It should also be noted that the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. was granted within the same time period as those of the PCJ contracts which were awarded for the 4M Energy Saving and Light Bulb Distribution Project.

Based upon the documents which have been reviewed, as well as the sworn written statements which have been received from Dr. Ruth Potopsingh, the then PCJ Group Managing Director, and Mrs. Hillary Alexander, the Permanent Secretary in the MEM, the OCG has arrived at the following considered Findings and Conclusions:

1. The OCG has concluded that the PCJ breached various provisions of the GPPH (2001 May); the breaches include, *inter alia*, the following:
  - a. The PCJ failed to facilitate a competitive tender process in the award of the contract to Caribbean Protective Security Management and Services Company Ltd. for security services. As such, the PCJ breached Section 4.5 of the GPPH (2001 May).
  - b. The PCJ did not prepare a detailed 'Request for Proposal' and/or any other tender document with respect to the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. Consequently, the OCG has concluded that the PCJ breached Section 6.1 of the GPPH (2001 May).

- c. The PCJ failed to disclose and/or publish the procurement opportunity with respect to the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. As such, the OCG has concluded that the PCJ breached Section 2.5.3 of the GPPH (2001 May).
- d. The PCJ also acted in contravention of Section 2.11 of the GPPH (2001 May), which highlights the reporting requirements of a Public Body and states, *inter alia*, that the procuring entity apprise the portfolio Ministry of all procurements effected by the entity.

The OCG has not seen any evidence to indicate that the contract, which was awarded to Caribbean Protective Security Management and Services Company Ltd., was reported in accordance with the above provision of the GPPH (2001 May).

- e. The OCG has concluded that the PCJ breached Section 2.1.3.4 of the GPPH (2001 May). This is premised upon the fact that the PCJ asserted, in its QCA Reports, that the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. was awarded via the Sole Source Procurement Methodology.

In the OCG's considered opinion, the nature of the referenced procurement, cannot be described and/or justified as (a) a procurement of a sensitive nature, (b) the result of a meritorious unsolicited proposal, (c) a matter of compelling urgency, and (e) requires the need for expert services.

- 2. The OCG has concluded that the process which led to the award of the contract to Caribbean Protective Security Management and Services Company Ltd. lacked transparency, as there was an absence of appropriate documentation to illustrate the process which led to the award of the subject contract.

3. Based upon the fact that the PCJ purchased a computer and related accessories from Caribbean Protective Security Management and Services Company Ltd., the OCG has concluded that the referenced purchase was highly irregular and questionable at best.

The foregoing circumstances points to mismanagement in the disbursement of public funds, on the part of the Accountable Officer who signed off on same, and can be viewed as *prima facie* evidence of a breach of the FAA Act.

4. The OCG has concluded that there was no probity and/or equity involved in the process which led to the award of the contract to Caribbean Protective Security Management and Services Company Ltd.
5. The OCG is unable to verify whether the PCJ obtained 'value for money' in the award of the contract to Caribbean Protective Security Management and Services Company Ltd. This is premised upon the fact that there was no competitive tender process and/or no comparative estimate.
6. Based upon the cheques which were issued to Caribbean Protective Security Management and Services Company Ltd., the PCJ paid a total of J\$4,149,264.00. However, the PCJ reported, to the OCG, in its QCA Reports that two (2) contracts were awarded to Caribbean Protective Security Management and Services Company Ltd. on 2006 September 15 and 2006 August 14, in the amount of J\$716,400.00 and J\$419,760.00 respectively. The OCG found that the cheque amount is far more than that which was reported to the OCG in the aforementioned QCA Reports.

Having regard to the foregoing, the contracts which were reported on the QCA Reports and the absence of a written contract, several questions may be raised. These include, *inter alia*, the following:

- a. That either the PCJ failed to report, to the OCG, any other contract which may have been awarded to Caribbean Protective Security Management Services and Company Ltd.;
  - b. That there was a variation to the contracts which were reported to the OCG in the QCA Reports;
  - c. That the contracts were splintered in order to avoid the scrutiny of the NCC, which at the time, reviewed contracts valued at \$4 million and above.
7. The OCG has not seen any documentary evidence to indicate which entity, whether the PCJ and/or the then MITEC, and/or which individual was responsible for engaging, either directly or indirectly, the services of Caribbean Protective Security Management and Services Company Ltd.

In point of fact, the OCG has seen no written contract and has only seen (a) PCJ cheques which were made payable to Caribbean Protective Security Management and Services Company Ltd., (b) invoices from Caribbean Protective Security Management and Services Company Ltd. and (c) PCJ payment vouchers. Further, there was no competitive bidding process involved in the selection of Caribbean Protective Security Management and Services Company Ltd.

Based upon the foregoing, the OCG has concluded that the process which was utilized by the PCJ to select Caribbean Protective Security Management and Services Company Ltd. was not impartial and non-discriminatory.

8. The OCG has concluded that during the referenced period, Caribbean Protective Security Management and Services Company Ltd. was not an approved and/or registered GOJ contractor and, as such, was ineligible to be engaged in any contractual agreement with the GOJ, through the PCJ. The PCJ's award of contracts to Caribbean Protective Security

Management and Services Company Ltd. was, therefore, in contravention of Section 2.6 of the GPPH (2001 May).

9. The OCG has concluded that the process which led to the award of a contract to Caribbean Protective Security Management and Services Company Ltd. was irregular and improper.
10. The OCG has concluded that the lack of documented records on the subject procurement points to a lack of transparency in the management of the disbursement of public funds and public administration as it pertains to the procurement activities at the PCJ. The impact of this, in the considered opinion of the OCG, is dire and grave, since the lack of transparency inevitably creates an atmosphere for corruption to thrive and negatively impacts on the ethos of good governance.
11. The OCG found that there was an apparent overpayment of J\$320,683.60 to Caribbean Protective Security Management and Services Company Ltd. In this regard, cheques totalling J\$4,149,264.00 were made payable to Caribbean Protective Security Management and Services Company Ltd. However, the invoices which were presented to the PCJ and the Accounts Payable records of the PCJ indicated that J\$3,828,580.40 was to be paid.

Having regard to the foregoing, the OCG has concluded that the Accountable Officers of the PCJ have failed in their respective duties pursuant to Section 16 (2) of the FAA Act. These individuals, in accordance with Section 24F of the FAA Act, were vested with the authority and responsibility, *inter alia*, to make commitments and payments and, in accordance with Section 19C of the Act, they were authorized and were held responsible to certify and approve the payment of vouchers.

12. The OCG has concluded that the PCJ, specifically during the period which is under review, demonstrated a blatant disregard for the provisions that have been established to

govern the public sector procurement process as well as to facilitate equity and transparency in the use and appropriation of public funds.

The OCG has also discerned from the extracts of the PAC meeting, that there have been significant inefficiencies in respect of the Governance of the PCJ operations. Further, during the period which is under review, the OCG has concluded that there were no effective guidelines and/or measures which promoted scrupulous checks, balances and accountability.

13. The OCG has not seen any evidence to indicate that the PCJ had established protocols and guidelines for the provision of monetary assistance and/or grants for community based programmes, or that there was a defined process which was used by the PCJ in the approval of requests for assistance during the period under review.

In this regard, the OCG is unable to conclude that the PCJ breached any internal procedures in approving the alleged request which was said to have been made by Rainbow of Hope Ltd.

14. The OCG has not been able to determine who and/or what entity made the initial request, of the PCJ, for assistance at the community centre. Further, the OCG found that the PCJ did not have an interest in the referenced community centre.

Having regard to the foregoing, the question must then be asked, why did the PCJ feel compelled to make payments to Caribbean Protective Security Management and Services Company Ltd. for the provision of security services?

15. The OCG has concluded that based upon (a) the absence of documentation with respect to the processing of the alleged request from Rainbow of Hope Ltd. and (b) the lack of documentation with respect to the approval process for the said alleged request, that there was impropriety and irregularity involved in the process which led to the PCJ's involvement in the Project.

16. The OCG found that while employed to the PCJ, Ms. Coleen Wright was also a Director of Rainbow of Hope Ltd. The OCG also found that Ms. Wright, on 2006 July 17, signed for a cheque for Caribbean Protective Security Management and Services Company Ltd.

Having regard to the foregoing, and (a) the lack of documentation on the part of the PCJ with respect to the processing of the alleged request from Rainbow of Hope Ltd., (b) the absence of established protocols and guidelines for the provision of monetary assistance and/or grants for community based programmes, and (c) the irregular award of a contract to Caribbean Protective Security Management and Services Company Ltd., and the ambiguities surrounding the award of the said contract, the OCG has concluded that, among other things, the foregoing circumstances have raised critical questions with respect to a possible conflict of interest.

17. In light of the findings of the OCG's Investigation Report into the circumstances surrounding the procurement of contracts for the 4M Energy Saving and Light Bulb Distribution Project; and the involvement of Ms. Coleen Wright and Mr. Rodney Chin with Rainbow of Hope Ltd. and Caribbean Protective Security Management and Services Company Ltd. respectively, in the instant matter, the OCG has concluded that it is past coincidence that among the key actors who were involved in this matter – a matter that is fraught with irregularities, improprieties and breaches of the provisions of the GPPH (May 2001), the FAA Act and the Contractor General Act, are persons who are among the principal actors who were involved with, and/or who were criminally implicated in, the 4M Energy Saving and Light Bulb Distribution Project.

In the foregoing regard, it is instructive to note that both Mr. Chin and Ms. Wright were arrested on 2008 February 26, with respect to certain alleged fraudulent activities which were associated with certain contracts that were awarded by the PCJ in respect of the 4M Energy Saving and Light Bulb Distribution Project. However, and as was previously indicated, the charges that were brought against Mr. Chin were subsequently dropped by the DPP.

18. The OCG has concluded that during the period which is under review, there were significant governance deficiencies in the operations of the PCJ, specifically as it relates to (a) the contract award process and (b) the expenditure process.

**Special Note**

It is instructive to note that the PCJ was brought before the PAC, on 2009 September 15, based upon the findings which were detailed in the Auditor General's Report for the financial year 2006 – 2007.

Consequently, the PCJ, on 2009 November, prepared several comments, to the Auditor General's Report, in which it acknowledged the following:

1. *“In 2006, a charitable organization, Rainbow of Hope Limited, was undertaking a community outreach programme, which included erecting perimeter fencing and replacing two gates at the Community Centre...*
2. *A request was made by the charitable organization to the former Chairman of the PCJ for the Corporation's assistance with the project...*
3. *The request for assistance was approved by the then Chairman...*
4. *The related payments including those for security services were approved by the then Director for Administration.*
5. *The PCJ was unable to locate evidence of these transactions having been concluded within the approved GOJ Procurement Guidelines.”<sup>7</sup>*

Having acknowledged the following, the PCJ noted that it had undertaken several actions, since 2006, which were geared towards strengthening internal controls and raising capacity and

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<sup>7</sup> PCJ. “Comments on Auditor General's Report- Financial Year 2006-2007”. 2009 November



knowledge of the GOJ Procurement Rules. In this regard, the PCJ noted, *inter alia*, that it took the following actions:

1. “ *Internal controls have been significantly strengthened with the following actions:*

(a) *The PCJ has established a panel of A and B signatories for all cheques. Previously cheques could be signed by any two signatories.*

(b) *An Accounting Manual has been approved and is in the process of being implemented.*

(c) *The Procurement Committee has been reconstituted.*

(d) *A letter was sent to all managers and technical officers regarding adherence to procurement procedures.*

(e) *The PCJ has reviewed its Limits of Authority which will ensure greater control over expenditure. This is in the final stages of approval.*

(f) *The Group Managing Director and the Group Chief Financial Officer now approve all payments...*

(g) *Most recently, members of the PCJ management have undergone procurement training in September 2009, and further sessions are to follow.*

(h) *Two senior accounting officers involved in this matter are no longer employed to the PCJ (between March 2008 and 2009).”<sup>8</sup>*

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<sup>8</sup> PCJ. “*Comments on Auditor General’s Report- Financial Year 2006-2007*”. 2009 November

## Referrals

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor General Act. **Section 21 of the Contractor General Act** provides as follows:

**“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)

Having regard to those of the several Findings, Conclusions and concerns of the OCG which have been set out herein and, having regard, in particular, to (a) the significant governance deficiencies which have been identified in the operations of the PCJ, inclusive of the highly irregular contract award and expenditure processes which have been exhibited by the entity during the period which is under review; (b) the PCJ’s flagrant breaches of the GPPH (2001 May) and the Contractor General Act; (c) the absence of transparency, merit and competition in the PCJ’s award of the subject contract to Caribbean Protective Security Management and Services Company Ltd.; (d) the absence of appropriate or satisfactory documentation and explanations to evidence or to explain the process or the rationale that led to the award of the subject contract to Caribbean Protective Security Management and Services Company Ltd.; (e) the curious, unexplained and un-accounted for purchase by the PCJ of computer related equipment from Caribbean Protective Security Management and Services Company Ltd.; (f) the PCJ’s apparent and unexplained overpayment of \$320,683.60 to Caribbean Protective Security Management and Services Company Ltd.; (g) the curious and alarming inability of the PCJ to satisfactorily establish whether the referenced security services and computer equipment purchase contract was in fact performed by Caribbean Protective Security Management and Services Company Ltd. although significant payments were made by the PCJ in relation to same; (h) the serious irregularities that were identified in the PCJ’s failure to report the full particulars of the referenced contract award, in its Quarterly Contract Award (QCA) Reports, to the OCG;

(i) the absence of documentation with respect to the processing of the alleged request which was made to the PCJ by Rainbow of Hope Ltd., an entity in respect of which the PCJ had no interest; (j) the absence, at the PCJ, of established protocols and guidelines for the provision of monetary assistance and/or grants for community based programmes; (k) the fact that Ms. Coleen Wright, while employed to the PCJ, was also a Director of Rainbow of Hope Ltd. and, while being so employed on 2006 July 17, signed to receive a PCJ cheque which was drawn for the benefit of the Caribbean Protective Security Management and Services Company Ltd.; (l) the involvement of Ms. Coleen Wright and Mr. Rodney Chin as directors of Rainbow of Hope Ltd. and Caribbean Protective Security Management and Services Company Ltd., respectively; (m) the fact that Mr. Rodney Chin was listed as the majority shareholder of Caribbean Protective Security Management and Services Company Ltd.; (n) the fact that that both Mr. Chin and Ms. Wright were arrested on 2008 February 26 and subsequently had charges brought against them with respect to certain alleged fraudulent and other activities that were associated with certain contracts which were awarded, by the PCJ, during the same period which is under review, in respect of the 4M Energy Saving and Light Bulb Distribution Project (NB. the charges against Mr. Chin were subsequently dropped); and (o) the fact that among the key actors who were involved in this matter – a matter which is fraught with irregularities, improprieties and breaches of the provisions of the GPPH (2001 May), the FAA Act and the Contractor General Act, are persons who were among the principal actors who were involved with, and/or who were criminally implicated in, the 4M Energy Saving and Light Bulb Distribution Project; the OCG is compelled to conclude that the referenced circumstances are such that they have raised, among other things, and at the very minimum, an evidentiary inference of the possibility of an unlawful criminal conspiracy in relation to what is undoubtedly a highly irregular, improper and suspicious, and potentially illicit, fraudulent and corrupt, award of the herein-referenced contract to Caribbean Protective Security Management and Services Company Ltd. In the premises, it is the considered view of the OCG that the matter is one which warrants immediate and further investigation by the country's criminal law enforcement authorities.

1. Consequently, and pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Commissioner of Police for such

further action as he may deem to be appropriate having regard to all of the circumstances of the case.

2. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is also hereby formally referring a copy of this Report to the Auditor General, and to the Financial Secretary, for them to take such action as either or both of them may deem to be appropriate, having regard to all of the circumstances of the matter, and on the basis that there is evidence which is recorded herein which would suggest that there was a breach of duty or duties on the part of the Accounting Officer, and/or on the part of one or more of the Accountable Officers of the PCJ, and that one or more of the said Officers may have contravened, *inter alia*, the provisions of the Financial Administration and Audit Act. The matter is being referred to the Auditor General particularly in light of the provisions which are contained in Sections 2, 16, 19, 20, and 24 of the Financial Administration and Audit Act.

In referring the matter as aforesaid, the OCG is cognizant of the fact that the Auditor General has already conducted her own Audit into the referenced matter. However, the OCG has also deemed it prudent to refer the matter in light of the remedial and other related actions which have already been reportedly taken by the PCJ with respect to (a) its procurement activities, (b) its management and disbursement of public funds and (c) its termination of the services of Dr. Ruth Potopsingh, the then PCJ Group Managing Director and Mr. Rodney Salmon, the then PCJ Director of Administration/Corporate Secretary.

3. In light of the questions and concerns which were raised by the PAC regarding the matter which is the subject of this OCG Enquiry, and the Findings, Conclusions and concerns of the OCG which have been detailed herein, the OCG is also hereby formally referring a copy of this Report to the Chairman of the PAC to facilitate any further action which the PAC might, in its discretion, deem to be appropriate in this matter.

## 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’s Emphasis)

1. The OCG has found that there were several breaches of the procurement guidelines, by the PCJ, specifically during the period of 2006 to 2007. The procurement breaches which have been identified include, *inter alia*, (a) securing the requisite approvals of the Accounting Officer and the NCC for the use of the Sole Source Procurement Methodology and, (b) utilizing the provisions of the then GOJ procurement guidelines, which were contained in the GPPH (2001 May).

It is instructive to note that this Enquiry has identified that during the period which is under review, not only were there poor procurement practices at the PCJ, but there was an apparent ‘loose’ management system especially with respect to the expenditure of public funds. Further, there was an absence of proper mechanisms and adequate checks and balances to govern the operations of the PCJ. This allowed for poor governance, improper activities and evident mismanagement.

While there are breaches, which have been identified herein, it should be noted that the then applicable rules, which were contained in the GPPH (2001 May), did not impose any criminal sanctions for breaches of the GPPH. In point of fact, criminal sanctions for breaches of the Government Procurement Rules were not imposed until 2008 December 12, effective with the promulgation of Section 40 of the 2008 Public Sector Procurement Regulations.

The OCG recognizes that the PCJ, as asserted by its Accounting Officer, Mrs. Hillary Alexander in the PAC Meeting, which was held on 2009 September 15, has since taken steps to remedy some of the defects, in its operations, which had been highlighted by the Special Audit Report, which was prepared by Papineau Consulting Inc., and the OCG's 4M Energy Saving Light Bulb Distribution Project Special Report of Investigation.

Nonetheless, in the circumstances, the OCG feels compelled to recommend that the PCJ and its Accounting and Accountable Officers should ensure scrupulous compliance, with the Revised Handbook of Public Sector Procurement Procedures (RHPP 2010 October) which came into effect on 2011 January 2, particularly with respect to the following matters:

- (a) Securing the requisite approvals from the Public Body's Procurement Committee, its Accounting Officer/Head of Entity, the NCC, and the Cabinet, as applicable, in conformance with the requirements which are detailed in Appendix 6 of Volume 2 of 4 of the RHPP;
- (b) Securing the relevant approvals from the Accounting Officer/Head of Entity and the NCC as applicable, in conformance with the requirements of Section 1.1.4 of Volume 2 of 4 of the RHPP;
- (c) Recognizing the oversight and the functional responsibilities of, *inter alia*, the NCC, the OCG, the PCJ's Procurement Committee, and the PCJ's Accounting and Accountable Officers, pursuant, *inter alia*, to Section 2 of Volume 1 of 4 of the PHHP, and adhering to the requirements thereof;
- (d) Promoting competition in the procurement process, while ensuring that PCJ procurement opportunities are open to all appropriately registered and qualified contractors, in conformance with the requirements which are detailed in Section 1.1.2 of Volume 2 of 4 of the RHPP;

- (e) Recognizing and setting in place measures to prevent a conflict of interest situation, in conformance with section 4 of Volume 1 of 4 of the RHPP; and
  - (f) Observing the provisions which highlight the eligibility and qualifications requirement which ought to be satisfied to validate the participation of a contractor in the GOJ procurement process, which are detailed in Section 1.3.1 of Volume 2 of 4 of the RHPP.
2. The OCG strongly recommends that procuring entities should plan their procurement activities in accordance with the Procurement Cycle, inclusive of the employment and application of an approved Procurement Plan. In this regard, contracts which are to be awarded should be properly packaged, tendered, evaluated and awarded within a specified timeframe, hence removing the need, *inter alia*, to rush the procurement process.
  3. The OCG recommends that Accounting and Accountable Officers should be more proactive in the procurement activities of Public Bodies and ensure that contracts which are awarded should be consistent with the full application of the Procurement Guidelines and must be, and appear to be, awarded fairly, impartially and without any form of irregularity or impropriety.
  4. The OCG recommends that the Accounting and/or Accountable Officers should take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, and checks and balances, within their portfolio, in an effort to mitigate against any possibility of deviations from the RHPP by the institution's management and procurement staff.
  5. The OCG recommends that in accordance with, *inter alia*, the Public Bodies Management and Accountability Act and the Financial Administration and Audit Act, the Cabinet, Accounting and Accountable Officers and Members of the Board of Directors of

Public Bodies should, at all times, ensure that the principles of good corporate governance are adhered to and promoted within the Public Sector.

In this regard, the OCG is of the considered opinion that within the respective organizations of the Public Sector, there should be adequate checks and balances mechanisms which are designed to promote transparency, integrity and probity in the management and administration of the affairs of the State.

Further, and at all times, the highest ethical standards should be promoted and where a conflict of interest is likely to occur and/or appears to have occurred, the Public Body should promptly take the requisite corrective actions to mitigate such conflicts and/or the consequences of same.

6. The OCG is recommending that Public Officers and/or Officials, who are engaged by the GOJ, adhere to the strictest practices of professional ethics and conduct whilst in the employ of the GOJ.
7. In instances where the Government of Jamaica procurement guidelines are breached, the responsible agency should seek to remedy the breach in an expeditious and effective manner as opposed to continuing with the implementation of the project in violation of applicable Government procurement procedures and other regulations or laws.
8. It is recommended that frequent reviews of the accounting, procurement and public administration management practices at the PCJ and the MEM be undertaken by the Public Administration and Appropriations Committee of the House of Representatives, the Auditor General and the Ministry of Finance and the Public Service.

The reviews should be conducted to ensure that adequate procedures, systems, checks and balances are not only implemented, but are aggressively enforced to secure a radically improved level of compliance on the part of Public Bodies and Public Officials with relevant Government approved procedures, regulations and laws.



9. The OCG strongly recommends that the PCJ ensures that contracts which are awarded by it are awarded in a manner which is consistent with the GOJ procurement guidelines and, in the application of same, be awarded fairly, impartially and without impropriety and/or irregularity, pursuant to Section 4 of the Contractor General Act.
  
10. The OCG recommends that the PCJ implements an effective and efficient records keeping/filing system which will address the entity's inefficiencies in maintaining proper documentation. This will further facilitate greater levels of transparency in the entity's use of public funds and public administration.
  
11. The OCG recommends that the PCJ establish and implement a formal system of approval and design protocols and guidelines for the provision of monetary assistance and/or grants by the entity for Outreach and other related projects.

## **TERMS OF REFERENCE**

### ***Primary Objectives***

The primary aim of the OCG's Enquiry was to determine, *inter alia*, the following:

1. Whether there was compliance, on the part of the PCJ, with the provisions of the Contractor General Act (1983) and the Government of Jamaica Procurement Procedures Handbook (GPPH- 2001 May).
2. The merits of the allegation, which have been made, that J\$2 Million was paid, by the PCJ, to Caribbean Protective Security Management and Services Company Ltd.

### ***Specific Objectives***

The Enquiry also had the following specific objectives:

1. Ascertain the extent, if any, to which the PCJ had an interest in Rainbow of Hope Ltd.
2. Determine whether there was impropriety and/or irregularity involved in the process which was used, by the PCJ, to approve the alleged request for assistance from Rainbow of Hope Ltd.
3. Ascertain the nature of the relationship, if any, between and among Officers and/or Officials at the PCJ and the principals of Caribbean Protective Security Management and Services Company Ltd. and the proprietors of Rainbow of Hope Ltd.
4. Identify the procurement process which was employed by the PCJ in the award, implementation, execution and/or variation of the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd.

5. Determine whether there was any *prima facie* evidence that would suggest impropriety on the part of any individual and/or entity which contributed to the award (or non-award ) of the contract to Caribbean Protective Security Management and Services Company Ltd.
6. Determine whether there were any breaches of the GOJ's Public Sector Procurement Procedures and/or applicable laws on the part of the PCJ and/or anyone acting on its behalf, in the facilitation, procurement, award, implementation, execution and/or variation of the referenced contract.
7. Determine whether the process which led to the award of the contract to Caribbean Protective Security Management and Services Company Ltd. was fair, impartial, transparent and devoid of irregularity and impropriety.

## **METHODOLOGY**

The OCG, in the conduct of its Enquiries, 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 by the 1983 Contractor General Act.

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 Emphasis).

The Terms of Reference of the OCG’s Enquiry into the circumstances surrounding the alleged contractual agreements between the PCJ and Caribbean Protective Security Management and Services Company Ltd. were primarily developed in accordance with those of the mandates of the Contractor General as are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act.

The Terms of Reference of the Enquiry, 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, *inter alia*, upon Public Officials and Public Officers by applicable Government Procurement Procedures, the Contractor General Act, the Financial Administration and Audit Act (FAA Act), the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

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)

A preliminary Requisition/Questionnaire, which was dated 2010 January 26, was sent by the OCG to Dr. Ruth Potopsingh, the then Group Managing Director of the PCJ.

A Further Requisition/Questionnaire was subsequently directed to Mrs. Hillary Alexander, Permanent Secretary in the MEM.

The Requisitions/Questions which were utilised 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 utilised 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, under 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 ....

(b) 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.



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

1. The following Public Officials were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:
  - a. Dr. Ruth Potopsingh, the then Group Managing Director, PCJ; and
  - b. Mrs. Hillary Alexander, the Permanent Secretary, MEM.
2. A Follow-up Requisition/Questionnaire, requesting clarification on certain issues, was directed by the OCG to the following Public Official:
  - a. Dr. Ruth Potopsingh, the then Group Managing Director, PCJ.
3. The OCG, on 2009 September 23, dispatched, to the corporate offices of the PCJ, a three (3) person OCG Audit Team to review and requisition the files and other relevant documentation and/or information which were related to the matter.
4. The OCG conducted a review of the Hansard for the Public Accounts Committee Meeting, which was held on 2009 September 15, at which representatives of the PCJ were in attendance.
5. The OCG conducted a review of the Special Audit Report, which was conducted by Papineau Consulting Inc., and which was dated 2009 October, with respect to the PCJ and the Petroleum Company of Jamaica.
6. The OCG also conducted a review of the Accounts Payable Transactions of the PCJ for the period of 2006 February through to 2007 October, with specific regard to Caribbean Protective Security Management and Services Company Ltd.

7. A detailed review of (a) the financial statements of the PCJ, (b) copies of the PCJ cheques which were made payable to Caribbean Protective Security Management and Services Company Ltd., (c) copies of the PCJ payment vouchers and (d) the invoices which were submitted by Caribbean Protective Security Management and Services Company Ltd. to the PCJ, was also undertaken.

## FINDINGS

### **The Allegations**

By way of the publication of two (2) articles in the Daily Gleaner Newspaper, the OCG was made aware of the alleged payment of J\$2 million, by the PCJ in 2006, to a security firm, which was known as Caribbean Protective Security Management and Services Company Ltd., for services which were rendered at a community centre in Santa Cruz, St. Elizabeth.

The first article, which was dated 2009 September 16, and which was entitled “*Parliamentary committee livid with PCJ*” reported, *inter alia*, as follows:

***“PRESSURE IS mounting on the Petroleum Corporation of Jamaica (PCJ) as another parliamentary committee castigated the agency for a questionable transaction at the agency three years ago.***

*Members of Parliament’s Public Accounts Committee (PAC) were livid yesterday when technocrats from the Ministry of Mining and Energy failed to provide a clear explanation about how a \$2-million payment was made in 2006 to a security company for providing services at a community centre in Santa Cruz, St Elizabeth.*

*Auditor General Pamela Munroe – Ellis disclosed that her audit found that the PCJ had no affiliation with the community centre yet sums were paid to the security firm.*

*Robert Martin, deputy financial secretary, suggested that an incident like this should be investigated by the Office of the Contractor General ...”<sup>9</sup>*

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<sup>9</sup>Daily Gleaner. “*Parliamentary committee livid with PCJ*”. 2009 September 16. <http://jamaica-gleaner.com/gleaner/20090916/lead/lead9.html>

The second article, which was dated 2009 September 23, and which was entitled “*PCJ searches for evidence -Company does forensic audit in the midst of \$2- million payments*” reported, *inter alia*, as follows:

***“MORE DETAILS have emerged concerning the controversial \$2 million paid by the Petroleum Corporation of Jamaica (PCJ) in 2006 to a security firm for services at a community centre in Santa Cruz, St Elizabeth.***

*A PCJ document responding to a query by Auditor General Pamela Monroe – Ellis about the corporation’s interest in the community centre said the government entity’s budget had a provision for community outreach programmes.*

*According to the PCJ, in 2006, a charitable organization, Rainbow of Hope Limited, was undertaking a community-outreach programme.*

*The exercise included the erection of perimeter fencing and replacement of two gates at the community centre.*

*The security company is listed as Caribbean Protective Security Management and Services Company whose principals were Rodney Chin and Joseph Blackwood.*

*Rainbow of Hope Limited, the charitable entity, had as its principals Joseph Blackwood, Colleen Nicole Wright and Donovan Williamson...”<sup>10</sup>*

Based upon the foregoing, the OCG noted that concerns were raised with respect to the involvement of the PCJ in a project that involved the companies Rainbow of Hope Ltd. and Caribbean Protective Security Management and Services Company Ltd.

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<sup>10</sup> Daily Gleaner. “*PCJ searches for evidence- Company does forensic audit in the midst of \$2- million payments*” 2009 September 23. <http://jamaica-gleaner.com/gleaner/20090923/lead/lead5.html>

## Public Accounts Committee (PAC) Meeting of 2009 September 15

Based upon the foregoing Media articles, the OCG deemed it prudent to review the Hansard of the PAC Meeting, which was held on 2009 September 15. In the referenced Meeting, concerns related to the costs that were associated with security services which were incurred at the community centre in Santa Cruz, St. Elizabeth, were discussed.

The Hansard reflected that Mrs. Pamela Munroe-Ellis, Auditor General, stated that as it pertains to the PCJ and the above mentioned concerns, the Audit was unable to determine the interest of the PCJ and/or the Ministry in the matter.

Mrs. Hillary Alexander, Permanent Secretary, in the MEM, in her response to the concerns which were raised by the PAC stated, *inter alia*, the following:

*“... The subject of this query was investigated by the group internal auditor. **The security services were provided for safeguarding this building...and the cost of the services was absorbed by the PCJ.**”*

*Subsequently, several things have happened. The PCJ has taken steps to improve their internal control substantially and the extent of their actions has been detailed in the report that was submitted. Disciplinary action was taken and the services of two senior finance officers have been terminated. The Board of Directors has established a cheque- signing policy in keeping with the Ministry of Finance’s guideline of September 2008...”*(OCG Emphasis)

Dr. Omar Davies, Chairman of the PAC, requested that Mrs. Alexander provide a response to the query with respect to the PCJ’s interest in the referenced community centre.

Mrs. Alexander, however, requested that Mr. Nigel Logan, the then PCJ Group Chief Financial Officer, respond to that effect. In this regard, Mr. Nigel Logan stated, *inter alia*, as follows:

*“... the services were paid for by PCJ but it is clear that it was a breakdown in terms of – the services were procured by an officer in the PCJ but it is not apparent that the work that was done or the services provided really had anything to do with the PCJ and so it was regarded as a breach.”*

Dr. Omar Davies also posed the question as to who contracted the security company and how was the bill presented to the PCJ.

Mr. Nigel Logan, in his response stated, *inter alia*, that he was uncertain as to how the bill was presented to the PCJ. However, he indicated that both an Officer and a Senior Officer approved the invoices when they were presented to the PCJ. Mr. Nigel Logan also stated that there was construction taking place at the community centre and that the security services were provided to secure the materials.

Dr. Morais Guy, Member of Parliament for Central St. Mary, remarked that he was of the opinion that something was “*amiss*” and, subsequently, put forward the following assertions:

*“The PCJ, as we have been told, has no interest i.e. ownership in the community centre. They were not the contractor or responsible for paying the contractor who was doing the renovation, but we are being told in this committee that the PCJ paid for security services to ensure that the material stored for the contractor to do the contract on that particular community centre was paid by the PCJ. I need to get and I am sure the committee needs to get through this maze as to what actually happened. Because telling us that a senior officer made that or initialled that payment, secondly, that that senior officer along with another one is no longer with the corporation, doesn’t basically give us any idea as to what is happening. What is PCJ’s role in this community centre?”*

Mr. Neville Andrew Gallimore, Member of Parliament for St. Andrew West Rural, questioned whether Mr. Logan was able to identify who requested the services of the security company to protect the materials and, further, who was responsible for the construction that was taking place at the subject community centre.

Mr. Michael Peart, Member of Parliament for South Manchester, also raised concerns during the sitting of the referenced meeting. Mr. Peart questioned, *inter alia*, the nature of the work that was being conducted on the community centre and by whom, the name of the contractor that was conducting the works and the name of the contractor who provided the security services.

Mrs. Alexander, in response to the questions which were raised by Mr. Gallimore and Mr. Peart stated, *inter alia*, that “...*I don’t have all of that information at this point in time other than to say that it is the subject of a forensic audit. The reports have yet to be submitted.*”

Dr. Omar Davies requested that Mr. Nigel Logan provide further information on the matter.

In this regard, Mr. Logan stated that “*We were only told that it was to secure material at a construction site at the community centre. We don’t have any documentation...**the name of the company is Caribbean Protective Security Management and Services Company. The only documentation that we have really is the invoices that we received which were paid.***” (OCG Emphasis)

When asked, by Dr. Davies, who approved the payment of the invoices, Mr. Logan responded that the then Director of Administration had approved the invoices for payment.

Mr. Logan further stated that the approval was granted by way of a signature and no explanation had accompanied it.

Resulting from the Accounting and Accountable Officers’ inability to provide answers to the questions and concerns, which were raised by the Committee Members, the Chairman requested that Mr. Logan and Mrs. Alexander return, before the Committee, in a week to provide a more fulsome report on the issues, specifically with respect to “ *...who was carrying out the construction, who made the request...how was this security firm selected, was there a bidding process, how were the rates determined, who verified that the services were provided, what was the value of what was being secured...*”

It should be noted, however, that the referenced follow-up meeting was not convened as scheduled.

Based upon the foregoing, the OCG found, *inter alia*, the following:

1. Caribbean Protective Security Management and Services Company Ltd. was contracted to provide security services at a community centre in Santa Cruz, St. Elizabeth.
2. The costs of providing the security services were absorbed by the PCJ.
3. According to Mr. Nigel Logan, the then PCJ Group Chief Financial Officer, the services were procured by an Officer of the PCJ; however, it is not apparent that (a) the work was done and (b) the services had anything to do with the PCJ.
4. Both an Officer and Senior Officer of the PCJ approved the invoices for payment.
5. The only documentation which the PCJ had were the invoices which were paid, and that the then PCJ Director of Administration approved the invoices without any justification being provided for same.

#### **Accounts Payable Vouchers – PCJ**

Having regard to the foregoing, the OCG, by way of a letter, which was dated 2009 September 23, wrote to Dr. Ruth Potopsingh, the then PCJ Group Managing Director, and requested that the complete file(s) pertaining to the alleged PCJ contract, which was awarded to Caribbean Protective Security Management and Services Company Ltd., and documentation pertaining to the PCJ's involvement with Rainbow of Hope Ltd., be made available to the OCG's Audit Team for review.

It should be noted that the files with respect to the subject matter had little documentation. Upon a review of the foregoing requested files, the following, *inter alia*, was revealed:



**TABLE 1**

<b>PETROLEUM CORPORATION OF JAMAICA</b>								
<b>REVIEW OF PCJ ACCOUNTS PAYABLE VOUCHERS 2006 APRIL- 2007 OCTOBER</b>								
<b>FOR CARIBBEAN PROTECTIVE SECURITY MANAGEMENT &amp; SERVICES COMPANY LIMITED</b>								
<b>Date of Invoice</b>	<b>Invoice Number</b>	<b>Date Paid</b>	<b>Account Payment was charged to</b>	<b>Description of Service</b>	<b>Location on Invoice</b>	<b>Rate \$</b>	<b>Period</b>	<b>Amount \$</b>
May 25, 2006	06052501	May 29, 2006	Contribution to Government	Computer Qprinter for MCST	-			208,040.00
May 10, 2006	100	June 1, 2006	Security Services	Armed Security Officers	None Seen	250.00 per hour	April 4, 2006 to April 30, 2006	608,130.00
May 22, 2006	101	June 1, 2006	Security Services	Armed Security Officers	None Seen	250.00 per hour	May 1, 2006 to May 31, 2006	671,040.00
June 26, 2006	603	July 12, 2006	Security Services	Armed Security Officers	None Seen	310.00 per hour	June 1, 2006 to June 30, 2006	260,028.00
August 23, 2006	802	September 4, 2006	Security Services	Armed Security Officers	None Seen	310.00 per hour	August 1, 2006 to August 31, 2006	286,030.80
	805			Unarmed Security Officers	Santa Cruz Community Centre	220.00 per hour	August 1, 2006 to August 31, 2006	202,989.60
September 25, 2006	905	October 20, 2006	Security Services	Unarmed Security Officers	Santa Cruz Community Centre	220.00 per hour	September 1, 2006 to September 30, 2006	184,536.00
November 2, 2006	1005	November 8, 2006	Security Services	Unarmed Security Officers	Santa Cruz Community Centre	220.00 per hour	October 1, 2006 to October 30, 2006	196,838.40
November 29, 2006	1105	December 8, 2006	Security Services	Unarmed Security Officers	Santa Cruz Community Centre	220.00 per hour	November 1, 2006 to November 30, 2006	184,536.00
November 29, 2006	1101	December 8, 2006	Security Services	Armed Security Officers	None Seen	310.00 per hour	November 1, 2006 to November 30, 2006	260,028.00
November 29, 2006	1013A	December 8, 2006	Security Services	Armed Security Officers	None Seen	310.00 per hour	October 16, 2006	8,667.60
December 20, 2006	1202	January 2, 2007	Security Services	Unarmed Security Officers	Santa Cruz Community Centre	220.00 per hour	December 1, 2006 to December 31, 2006	202,989.60
December 20, 2006	1201	January 2, 2007	Security Services	Armed Security Officers	None Seen	310.00 per hour	December 1, 2006 to December 31, 2006	286,030.80
March 26, 2007	1520	April 11, 2007	Security Services	Armed Security Officers	None Seen	310.00 per hour	March 1, 2007 to March 31, 2007	268,695.60
<b>Total</b>								<b>3,828,580.40</b>

It is instructive to note that the OCG found invoices, which were submitted by Caribbean Protective Security Management and Services Company Ltd., to the PCJ, for the above referenced amounts.

The above table provides an overview of the Accounts Payable Vouchers of the PCJ with respect to Caribbean Protective Security Management and Services Company Ltd. The table shows that the PCJ made fourteen (14) payments to Caribbean Protective Security Management and Services Company Ltd. in the aggregate amount of J\$3,828,580.40 over the period of 2006 May 29 to 2007 April 11.

Of the sum stated above, J\$2,648,650.80 was paid, by the PCJ, for services which were described as being for the provision of '*Armed Security Officers*' and J\$971,889.60 was paid for services which were described as being for the provision of '*Unarmed Security Officers*'.

A further J\$208,040.00 was paid to Caribbean Protective Security Management and Services Company Ltd., by the PCJ, for the acquisition of a '*computer printer for MCST*'.

It is instructive to note that the OCG found that the referenced payment, which was made for the acquisition of a computer printer, appears to have nothing to do with the provision of security services. In point of fact, the OCG found that the invoice, dated 2006 May 25, which was presented by Caribbean Protective Security Management and Services Company Ltd. to the PCJ, and which was signed by Mr. Joseph Blackwood, Director, indicated that the PCJ was being charged for the following items:

1. Tablet PC;
2. HP 24 X Combo DVD/ CDRW Multibay II Drive;
3. HP External Multibay II Cradle;
4. Cannon IP90 Mobile Printer.

Based upon the foregoing, the OCG found that the PCJ purchased a computer and related equipment from Caribbean Protective Security Management and Services Ltd.

It is instructive to note, however, that the OCG found that the documents, which were on the PCJ files, did not indicate (a) whether the PCJ received the above referenced items, (b) the reasons for the purchase of the items and/or (c) the location at which the items were delivered.

Further, based upon the documents which were made available to the OCG for review, and considering the nature of the services which were purportedly being provided by Caribbean Protective Security Management and Services Company Ltd., the OCG is unable to verify the necessity of the procurement and the rationale for its approval.

The OCG's position is also buttressed by the inability on the part of the Accounting and Accountable Officers of the PCJ to clearly account for the contracting of Caribbean Protective Security Management and Services Company Ltd.

It is instructive to note that the OCG was provided with copies of the cheques that were drawn on the PCJ's account and which were made payable to Caribbean Protective Security Management and Services Company Ltd. for the period of 2006 June to 2007 April.

**TABLE 2**

<b>PCJ CHEQUES MADE PAYABLE TO CARIBBEAN PROTECTIVE SECURITY MANAGEMENT &amp; SERVICES COMPANY LTD.</b>			
<b>Number</b>	<b>Cheque Number</b>	<b>Cheque Date</b>	<b>Amount (\$)</b>
1	062208	June 1, 2006	1,279,170.00
2	063341	July 12, 2006	260,028.00
3	065060	September 4, 2006	489,020.40
4	066017	October 20, 2006	444,564.00
5	066340	November 8, 2006	465, 534.00
6	067110	December 8, 2006	453,231.60
7	067514	January 2, 2007	489,020.40
8	069837	April 11, 2007	268, 695.60
<b>TOTAL</b>			<b>\$4,149,264.00</b>

It is of importance that the OCG point out that Table 2, which highlights the cheques which were issued by the PCJ, reflects a disparity between the total amount which was paid to Caribbean Protective Security Management and Services Company Ltd. and the total amount which is displayed in Table 1, as evidenced by the Accounts Payable Vouchers.

It is instructive to note that the amounts, which were displayed in Table 1, were reconciled with the amounts on the invoices which were presented by Caribbean Protective Security Management and Services Company Ltd.

Consequently, the OCG found that Caribbean Protective Security Management and Services Company Ltd. was paid a total of J\$320,683.60 more than that which was invoiced.

The OCG also found that there was a lack of documentation and poor methods of records keeping, on the part of the PCJ, with respect to payments and invoices for the referenced contract.

Having regard to the foregoing, and based upon the documents, which were made available to the OCG, by the PCJ, it is instructive to note that the OCG is unable to verify and/or state the reasons for the apparent overpayment that was made to Caribbean Protective Security Management and Services Company Ltd.

It is instructive to note that Section 16 (2) of the FAA Act states that “*An accounting officer shall be responsible for the financial administration of the department specified in a designation under subsection (1) and shall be accountable to the Minister for (a) the assessment and collection of, and accounting for, all the moneys lawfully receivable by his department, ... (and) (c) making any payment required to be made in relation to such appropriation*”.

Pursuant to Section 2 (1) of the FAA Act, the Accountable Officers of the PCJ, at the time, would have included Dr. Ruth Potopsingh, the then Group Managing Director, Mr. Henoy Russell, the then Financial Controller, Mr. Rodney Salmon, the then Director of Administration and Corporate Secretary of the Board of Directors of the PCJ, and Dr. Jean Dixon, by virtue of

her being appointed, at the time, by the Minister as the Accounting Officer for the Ministry of Energy, Mining and Telecommunications (MEMT), formerly the Ministry of Industry, Technology, Energy and Commerce (MITEC).

These individuals, in accordance with Section 24F of the FAA Act, were vested with the authority and responsibility, *inter alia*, to make commitments and payments and, in accordance with Section 19C of the Act, they were authorised and were held responsible to certify and approve the payment of vouchers.

Section 20 (1) of the FAA Act is instructive on the sanctions which may be imposed upon Accounting Officers, Accountable Officers and Officers who may be found to have failed in their fiduciary duties. An “*Officer*” is defined in Section 2.1 of the Act as “*any person in the employ of Government*”.

**Section 20 (1) Financial Audit and Administration Act** provides as follows:

*“20. (1) If it appears to the Financial Secretary upon a report by the Auditor-General that any person who is or was an officer-*

- (a) has failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible;*
- (b) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched; or*
- (c) is or was responsible for any deficiency in, or for the loss or destruction of, any public moneys, stamps, securities, stores, or other Government property, and if, within a period specified by the Financial Secretary, an explanation satisfactory to him is not furnished with regard to such failure to collect, improper payment, payment not duly vouched, deficiency, loss or destruction, as the case may be, the Financial Secretary may surcharge against the said person the amount not collected or such improper payment, payment not duly vouched, deficiency, loss or the value of the property destroyed, as the case may be, or such lesser amount as the Financial Secretary may determine.”*

In so far as the responsibilities that are imposed by law upon the Board of Directors of the PCJ are concerned, it being a “*Public Body*”, it is also instructive to record the provisions which are contained in Sections 6, 17 and 25 of the Public Bodies Management and Accountability Act.:

**Section 6 of the Public Bodies Management and Accountability Act** provides as follows:

*“6. Every board shall-*

*(a) take such steps as are necessary-*

*(i) for the efficient and effective management of the public body;*

*(ii) to ensure the accountability of all persons who manage the resources of the public body;*

*(b) develop adequate information, control, evaluation and reporting systems within the body;*

*(c) develop specific and measurable objectives and performance targets for that body”.*

**Section 17 of the Public Bodies Management and Accountability Act** provides as follows:

*“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”.*

**Section 25 (1) and (2) of the Public Bodies Management and Accountability Act** provide as follows:

*“(1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-*

*(a) section 4 (acquisition of shares and payment of dividends);*

*(b) section 5 (exercise of borrowing powers);*

*(c) section 6 (corporate governance);*

*(d) section 14 (general duties of auditors);*

*(e) section 15 (failure to furnish information to auditor);*

*(f) section 20 (levels of emoluments);*

(g) *section 21 (restriction on formation of new companies), the Court may exercise any of the powers referred to in subsection (2).*

(2) *The Court may-*

- (a) *order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or*
- (b) *grant an injunction restraining that person from engaging in conduct described in subsection (1)".*

It is instructive to note that the employment contract of Mr. Rodney Salmon, the then PCJ Director of Administration/Corporate Secretary, was terminated prior to the commencement of this Enquiry.

Further, the employment contract of Dr. Ruth Potopsingh, the then PCJ Group Managing Director, was terminated in 2010 April, subsequent to the PCJ's review of the Special Audit Report which was prepared by Papineau Consulting Inc.

Based upon the foregoing, the OCG found, *inter alia*, the following:

1. The Accounts Payable Vouchers of the PCJ (2006 April to 2007 October) revealed that J\$3,828,580.40 was paid to Caribbean Protective Security Management and Services Company Ltd.
2. The invoices, which were submitted by Caribbean Protective Security Management and Services Company Ltd., to the PCJ, reflect that a total of J\$3,828,580.40 was billed to the PCJ.
3. The PCJ was billed a total of J\$208,040.00 for '*computer printer for MCST*', by Caribbean Protective Security Management and Services Company Ltd. The OCG found that, based upon the invoice for the referenced amount, the PCJ purchased computer

related equipment from Caribbean Protective Security Management and Services Company Ltd.

However, based upon the nature of the services which were being provided by Caribbean Protective Security Management and Services Company Ltd., the OCG is unable to verify the necessity of the procurement and has seen no justification and/or rationale for its approval.

4. Based upon the copies of the cheques, which were made payable to Caribbean Protective Security Management and Services Company Ltd., a total of J\$4,149,264.00 was paid by the PCJ.
5. The OCG found that there was a difference of J\$320,683.60 between the total amount on the cheques which were made payable to Caribbean Protective Security Management and Services Company Ltd. and the total amount which was detailed in (a) the Accounts Payable Vouchers of the PCJ and (b) the invoices which were submitted by Caribbean Protective Security Management and Services Company Ltd.
6. The OCG found that there was a lack of documentation and poor methods of record keeping, on the part of the PCJ and, as such, is unable to verify and/or state the reasons for the apparent overpayment that was made to Caribbean Protective Security Management and Services Company Ltd.

### **Quarterly Contract Award (QCA) Reports**

The OCG, pursuant to Section 4 (4) of the Contractor General Act (1983), requires that all Public Bodies must submit in the OCG's prescribed form of Quarterly Contract Award (QCA) Reports, the particulars of all contracts that are awarded by them, between the value of J\$250,000.00 and J\$3,999,999.99, commencing with contracts that are awarded as at 2006 May 1. Section 4 (4) of the Contractor General Act mandates that:



*“...the Contractor-General shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the grant, issue, suspension or revocation of any prescribed licence and such other information in relation thereto as the Contractor-General considers desirable.”*

In recognition of the foregoing, the OCG undertook a review of the QCA Reports, which were submitted by the PCJ, in respect of contracts which were awarded, during the period which is under review, to Caribbean Protective Security Management and Services Company Ltd.

The OCG’s QCA Consolidated Report Database indicated that two (2) contracts were reported, by the PCJ, to have been awarded on 2006 September 15 and 2006 August 14, to Caribbean Protective Security Management and Services Company Ltd. The contracts were reported by the PCJ to have been in the amounts of J\$716,400.00 and J\$419,760.00 respectively.

Further, the contracts were reportedly awarded via the Sole Source Procurement Methodology. However, the Report indicated that the Procurement Committee did not approve the referenced contracts.

It is of import to highlight Section 2.1.3.4 of the GPPH (2001) which stipulates, *inter alia*, that *“Sole Source or direct contracting is a form of limited tendering where only one contractor is invited to participate. Use of this method may be justified when procurement is of a “sensitive” nature, when the procuring entity receives an unsolicited proposal that it considers to be meritorious, in the case of follow-on procurements, when there is unusual and compelling urgency, industrial mobilization, where there is need for highly specialized expert services, pursuant to external agency agreement or treaties, or where it is otherwise in the public interest...”*

*Procurement effected through the use of sole source or direct contracting methods must contain justification for its use in the record of the procurement...*

*Sole Source or Direct Contracting Procurement method must have prior written approval from Accounting Officers for Contracts less than \$1M... All Sole Source or Direct Contracting greater than \$1 M must receive prior written approval from the NCC through the Accounting Officer". (OCG Emphasis)*

Having regard to the foregoing, it is instructive to note that the OCG did not find any evidence to indicate that the then Accounting Officer, Dr. Jean Dixon, the then Permanent Secretary, MITEC, approved the use of the Sole Source Procurement Methodology for the award of the referenced contracts.

Consequently, the OCG found that the foregoing amounts to a breach of Section 2.1.3.4 of the GPPH (2001 May).

Based upon the QCA Reports, which were submitted to the OCG, by the PCJ, the OCG also found that the procurement Committee did not approve the referenced contracts.

It is instructive to note that based upon the cheques which were made payable to Caribbean Protective Security Management and Services Company Ltd., the PCJ paid a total of J\$4,149,264.00, with respect to security services. However, the referenced amount is far more than that which was reported to the OCG in the aforementioned QCA Report.

Having regard to the amount (J\$4,149,264.00), which was paid to Caribbean Protective Security Management and Services Company Ltd., the OCG thought it prudent to note that the actual contract sum could not be verified because of the absence of (a) a written contract and (b) relevant documentation.

Nonetheless, taking into consideration the amount which was paid, it should be noted that the OCG did not find any evidence to suggest that the NCC's approval was sought and/or granted for the use of the Sole Source Procurement Methodology to award the referenced contract.

It is also instructive to note that a check of the NCC database of Approved GOJ Registered Contractors, made by the OCG, revealed that, as at 2006, Caribbean Protective Security Management and Services Company Ltd. was not an approved contractor. The PCJ was, therefore, found to have been in breach of Section 2.6 of the GPPH (2001 May).

Section 2.6 of the GPPH (2001 May) requires, *inter alia*, that contractors who are desirous of participating in public sector procurement opportunities must be registered with the NCC.

It is instructive to note that Circular No. 6, which was entitled to “*Registration Threshold for Public Sector Contractors*”, and which was dated 2007 February 12, waived the requirement for the registration of public sector contractors with respect to contracts up to a value of J\$275,000.00.

However, having regard to the amount (J\$4,149,264.00), which was paid to Caribbean Protective Security Management and Services Company Ltd., the OCG found that the foregoing waiver would not have been applicable in the instant matter.

### **Dr. Ruth Potopsingh’s Account of the Referenced Contract**

The OCG, on 2010 January 26, requested, by means of a formal Requisition, that Dr. Ruth Potopsingh, the then PCJ Group Managing Director, respond to questions surrounding the alleged contractual agreements between the PCJ and Caribbean Protective Security Management and Services Ltd.

Dr. Ruth Potopsingh, in her subsequent response to the OCG’s Requisition, which was dated 2010 February 16, stated, *inter alia*, as follows:

*“The extent of my knowledge of the alleged contract(s) which was/ were awarded to Caribbean Protective Security Management and Services Company Limited to provide security services for and/or on behalf of the Petroleum Corporation of Jamaica (PCJ) is from the findings of the Auditor General on the Appropriation and other Accounts of Jamaica for*

*the Financial Year ended 31<sup>st</sup> March 2008. **The Group Internal Auditor (PCJ) first reported that services were procured in regard to the provision of security services at a community centre in Santa Cruz between August 1 and December 31, 2006.** The information concerning these payments to Caribbean Protective Security Management and Services Company Ltd. was obtained from payment records in PCJ. **No documented contracts between the PCJ and this company have been found**”<sup>11</sup> (OCG Emphasis)*

In response to the OCG’s question about her knowledge of the agreement(s) and/or arrangement(s) which was/were entered into with Rainbow of Hope Limited, Dr. Potopsingh stated, *inter alia*, as follows:

*“Between **May and June of 2006 a company known as Rainbow of Hope made a request of the Petroleum Corporation of Jamaica (PCJ) for support with the fencing of the Santa Cruz Community centre. The then Chairman of the Board of Directors granted the request and then Director of Administration/ Corporate Secretary approved the invoices submitted for the supply of fencing materials for that purpose.** As far as I can determine, this was undertaken as a community outreach project, and was not the subject of any other agreement or arrangement with Rainbow of Hope...” (OCG Emphasis)*

In addition, Dr. Potopsingh supported her response by submitting, to the OCG, two (2) letters.

The OCG found that one of the referenced letters was signed by Mr. Donovan Williamson, Managing Director, Rainbow of Hope Ltd. and was dated 2006 June 20. In the referenced letter, Mr. Williamson indicated to Dr. John Cooke, the then Chairman of the PCJ Board of Directors, that Rainbow of Hope Ltd. was “...requesting that the two-ten feet gates be changed to two-sixteen feet gates”...<sup>12</sup>

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<sup>11</sup> Dr. Ruth Potopsingh. Response to OCG’s Requisition. 2010 February 16.

<sup>12</sup> Rainbow of Hope Ltd. Letter to the then Chairman of the Board of Directors of the PCJ, Dr. John Cooke. 2006 June 20.

The second letter was written in response to the foregoing letter and was sent by Ms. Sheila A. Budram, Executive Assistant to the Chairman of the Board of Directors. This letter was dated 2006 June 23 and advised that Mr. Williamson's request as per the letter, which was dated 2006 June 20, had been granted.

The OCG in its Requisition, which was dated 2010 January 26, asked Dr. Potopsingh to provide the name(s) and title(s) of the PCJ Official(s), Officer(s), Employee(s) and/or anyone acting on its behalf, who approved the contract(s) which was/were awarded to Caribbean Protective Security Management and Services Company Ltd.

Following upon this request, Dr. Potopsingh stated, *inter alia*, as follows:

*“Not having seen any documented contracts between the PCJ and Caribbean Protective Security Management and Services Company Ltd., **and not having seen any evidence that any such contracts were subjected to public sector procurement procedures, I am unable to state the names of the officers who approved the contracts, but I am able to state that the related invoices were approved by the then Director of Administration/ Corporate Secretary**”<sup>13</sup>(OCG Emphasis)*

Based upon the foregoing, and having regard to the documents which were presented to the OCG, by the PCJ, the OCG found that there was no written contract between the PCJ and Caribbean Protective Security Management and Services Company Ltd.

Further, based upon Dr. Potopsingh's representations to the OCG, invoices with respect to the contract, which was awarded to Caribbean Protective Security Management and Services Company Ltd., were approved by the then PCJ Director of Administration/Corporate Secretary, Mr. Rodney Salmon.

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<sup>13</sup> Dr. Ruth Potopsingh. Response to OCG's Requisition. 2010 February 16.

Dr. Potopsingh was also asked, by the OCG, to provide details on how the PCJ and/or any other Public Body(ies) acting on its behalf, went about getting proposals and/or quotations from Caribbean Protective Security Management and Services Company Ltd. for the provision of security services.

In her response, which was dated 2010 February 16, Dr. Potopsingh stated, *inter alia*, as follows:

*“I am not aware of how the PCJ or any other Public Body on its behalf, went about getting proposals for and/or quotations from Caribbean Protective Security Management and Services company Ltd. for the provision of security services. **There is no evidence that the public sector procurement procedures were followed and no evidence of any competing proposals and/or quotations.**”*<sup>14</sup> (OCG Emphasis)

The OCG also asked Dr. Potopsingh whether a detailed ‘Request For Proposal’, outlining the criteria for selection and the conditions of the agreement for the provision of security services was prepared by the PCJ with respect of the referenced procurement opportunity.

In response to the foregoing question, Dr. Potopsingh stated, *inter alia*, that “As far as I am aware, the PCJ issued no Requests for Proposals.”<sup>15</sup>

In addition, Dr. Potopsingh stated that “In light of the fact that no proposals were requested or received, there was no evaluation of proposals”<sup>16</sup>.

The OCG also requested that Dr. Potopsingh indicate whether she, in any way, facilitated the award, implementation, execution and/or variation of any contract(s) which was/ were awarded to Caribbean Protective Security Management and Services Company Ltd.

In her response, which was dated 2010 February 16, Dr. Potopsingh stated, *inter alia*, as follows:

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<sup>14</sup> Dr. Ruth Potopsingh. Response to OCG’s Requisition. 2010 February 16.

<sup>15</sup> Dr. Ruth Potopsingh. Response to OCG’s Requisition. 2010 February 16.

<sup>16</sup> Dr. Ruth Potopsingh. Response to OCG’s Requisition. 2010 February 16.

*“I did not in any way facilitate the award, implementation, execution and/or variation of any of the contracts which were awarded to Caribbean Protective Security Management and Services Company Ltd.”<sup>17</sup>*

In addition, the OCG questioned whether Dr. Potopsingh, in any way, facilitated and/or approved the agreement(s) and/or arrangement(s) which was/were entered into with Rainbow of Hope Ltd. In this regard, Dr. Potopsingh indicated that *“I did not in any way facilitate and/or approve any agreement and/or arrangement with Rainbow of Hope Limited”*.<sup>18</sup>

Dr. Potopsingh also stated that *“I am not aware of any agreements and/ or arrangements entered into with Rainbow of Hope Limited other than the two letters which are attached”*.<sup>19</sup>

It is instructive to note that Dr. Potopsingh added, in her response to the OCG’s Requisition, that *“A physical check was carried out at the Santa Cruz Community Centre by PCJ’s Group Internal Audit department at my request and it was observed that a fencing project had in fact been undertaken”*.<sup>20</sup>

### **Special Audit Report which was prepared by Papineau Consulting Inc.**

The OCG, on 2010 February 18, sent a Requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, requesting a copy of the final draft of the forensic audit report which was undertaken by Papineau Consulting Inc.

In this regard, Mrs. Alexander submitted same under cover of a letter, which was dated 2010 February 19, and stated, *inter alia*, as follows:

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<sup>17</sup> Dr. Ruth Potopsingh. Response to OCG’s Requisition. 2010 February 16.

<sup>18</sup> Dr. Ruth Potopsingh. Response to OCG’s Requisition. 2010 February 16.

<sup>19</sup> Dr. Ruth Potopsingh. Response to OCG’s Requisition. 2010 February 16.

<sup>20</sup> Dr. Ruth Potopsingh. Response to OCG’s Requisition. 2010 February 16.

*“...the Group Managing Director, PCJ had prepared a response to the Audit. The PCJ also prepared a report which was forwarded by the Ministry of Energy and Mining in November 2009 to the Public Administration and Appropriation Committee (PAAC) [sic]...”<sup>21</sup>*

The OCG conducted a review of the Special Audit Report, which was dated 2009 October, and which was conducted by Papineau Consulting Inc. Detailed below are some of the findings with respect to certain procedural and procurement breaches, by the PCJ, which were observed by the Auditors.

The referenced report stated that the audit examined five (5) months of the PCJ’s expenditures for the fiscal year 2006-07, and included an examination of (a) whether same were managed with prudence and probity (b) whether the expenditures were reasonable and appropriate and (c) whether the practices and procedures, which were utilized by the PCJ, were sufficient to properly manage the PCJ’s expenditures.

It is important to note, however, that in detailing the ‘*Limitation in Scope*’ the Audit Report stated, *inter alia*, as follows:

*“The audit and preliminary investigations specifically tried not to examine matters that were related to the 4M Energy Saving and Light Bulb Distribution Project and refrained from pursuing matters identified during this special audit that were associated with that project. This scope limitation was applied as the 4M Energy Saving and Light Bulb Distribution Project had been investigated by the Office of the Contractor General of Jamaica, the Auditor General Department of Jamaica and the Ministry of Energy, Mining and Telecommunications”.*<sup>22</sup>

The Special Audit Report also listed time constraints and the lack of availability of the requested information as other limitations which were experienced during the conduct of the audit by Papineau Consulting Inc.

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<sup>21</sup> Mrs. Hillary Alexander. Response to the OCG’s Requisition. 2010 February, 19.

<sup>22</sup> Papineau Consulting Inc. Special Audit Report. 2009 October.



Key Findings of the Special Audit Report which was conducted by Papineau Consulting Inc.

Below are some of the key findings, which were detailed in the Special Audit Report, with respect to (a) procurement breaches and (b) the alleged contract(s) which was/were awarded to Caribbean Protective Security Management and Services Company Ltd. by the PCJ.

1. *“The audit determined that in many instances only the invoice or bill from the supplier or contractor was presented to the PCJ Accounts Unit for payment of goods and services as requisition and purchase orders were frequently not used. Most approvals for paying invoices only had one signature and the majority of PCJ expenditures were approved by the former Director of Administration or the former Financial Controller”.*
2. *“General expenditures identified as problematic related to Grants & Donations where a multitude of donations were made monthly by PCJ to public and private organizations. Many payments were made for loans and grants to PCJ employees, for numerous reasons. However, there were no written criteria used as the basis to authorize donations, loans and grants”.*
3. *“Questionable expenditures for security services were identified, relating to one specific security firm in 2006-07 for a Santa Cruz Community Centre...”*
4. *“The amount paid by PCJ to this **security firm was in excess of \$5 million.** No contracts or documents were ever found to justify or support these expenditures other than the brief invoices”.*(OCG Emphasis)
5. The PCJ manager who was responsible for security services did not (a) authorize these expenditures; (b) was unable to provide contracts, documentation or support for the justification of these security services and (c) was unaware of the purpose for which they were required.

6. Several contracts were examined for the 2006-07 fiscal year to determine if the PCJ was managing its contracting practices with prudence and probity. A few sole source contracts and one competitive contract were examined. The examination showed serious issues relating to (a) poor contracting practices and processes, (b) lack of written contracts and (c) the lack of transparency and objectivity in the awarding of contracts

Most contracts were awarded using the Sole Source Procurement Methodology without any justification being provided. One (1) competitively awarded contract was reviewed; however, doubts were raised with respect to the competitiveness of the process.

The following are problems which were identified with respect to the contracts that were reviewed:

- i. *“lack of competitiveness*
  - ii. *awarding work without written contracts,*
  - iii. *awarding work without knowing the cost of the work*
  - iv. *change orders to work description without prior approval*
  - v. *making payments without proper approvals of PCJ officials*
  - vi. *making payments on invoices without details of the work completed”*
7. *“There was no written manual or written guidelines on the practices and procedures of the PCJ Accounts Unit relating to how it should handle and process expenditures and revenues. There was no written directive on the process to authorize and record information in the financial records of PCJ. Without written manuals and guidelines of practices and procedures the organization is exposed to errors and improper handling of its activities. The corporation was [therefore] vulnerable to permitting inconsistencies in the practices and procedures and to possible abuse of its resources”.*
8. *“There was a high concentration of responsibility at the PCJ over the majority of its expenditures, revenues and other financial transactions and the recording of all its financial transactions. These specific areas fell under the direct responsibility of one*

*individual, the former Director of Administration. He was responsible for all the administrative aspects of the operation of the PCJ Resource Centre building, all aspect relating to any properties of PCJ as well as the capital assets and many of the other financial transactions of the organisation. He was responsible for Human Resources... through the Manager of HR. He was also responsible for the recording of the financial transactions into the accounting system of PCJ as the Accounts Unit through the Financial Controller reported to him”.*

*“The extent of significant findings, issues and the governance deficiencies in the operations at PCJ raises serious concerns of the lack of oversight and the lack of proper governance over the PCJ by the GMD and the Board of Directors over the . Most of the problems and issues identified in the audit report are linked to areas under the responsibility of the former PCJ Director of Administration and the former PCJ Financial Controller”.*

### **Companies Office of Jamaica (COJ) Company Search**

#### *Rainbow of Hope Limited*

The OCG undertook a company search, on the website of the COJ, for the company Rainbow of Hope Ltd. In this regard the following, *inter alia*, was revealed:

- The company was incorporated on Wednesday, 2006 February 22;
- Listed as its Directors were Mr. Joseph Blackwood, Mr. Donovan Williamson and Ms. Coleen Wright.

#### *Caribbean Protective Security Management and Services Company Ltd.*

A similar search which was conducted, by the OCG, revealed, *inter alia*, the following information with respect to Caribbean Protective Security Management and Services Company Ltd.:

- The company was incorporated on Friday, 2006 May 19;
- Listed as its Directors and Shareholders were Mr. Joseph Blackwood and Mr. Rodney Chin. Mr. Rodney Chin was also listed as the majority shareholder of the company.

It is of import to highlight that Mr. Rodney Chin, who is mentioned above as a Director and Shareholder of Caribbean Protective Security Management and Services Company Limited, was also highlighted in the OCG's Special Report of Investigation, which was conducted into the circumstances surrounding the procurement of contracts for the 4M Energy Saving and Light Bulb Distribution Project, and which was formally submitted, by the OCG, to the relevant authorities on 2008 February 8.

In this regard, Mr. Chin was found to be the sole Director of Universal Management and Development Company (UMD), the company which was reported as having received the bulk of the payments from the PCJ, in relation to the referenced Project.

It is instructive to note that UMD, like Caribbean Protective Security Management and Services Company Ltd and Rainbow of Hope Ltd., was incorporated in 2006.

Further, it is instructive to note that Ms. Coleen Wright, who is listed as a Director of Rainbow of Hope Ltd. is currently before the courts facing charges with respect to the 4M Energy Saving and Light Bulb Distribution Project.

On 2008 February 26, Mr. Rodney Chin was arrested and was subsequently charged with respect to his involvement in the 4M Energy Saving and Light Bulb Distribution Project; however, the charges were subsequently dropped by the Director of Public Prosecutions (DPP), Ms. Paula Llewellyn, who assumed office on 2008 March 5.

Of note is the fact that Ms. Wright, during the referenced period, was employed to the PCJ. The employment contract of Ms. Wright was for a period of two (2) years commencing on 2006 May 1.

It is instructive to note that the referenced community centre, at which Rainbow of Hope Ltd. was conducting an outreach project, and at which Caribbean Protective Security Management and Services Company Ltd. was providing security services, at the expense of PCJ, is located in Santa Cruz, St. Elizabeth. This is an area within the St. Elizabeth North Eastern Constituency for which Mr. Kern Spencer is the Member of Parliament. During the referenced period, Mr. Kern Spencer was also Junior Minister in the parent Ministry of the PCJ, MITEC.

The OCG, in its Special Report of Investigation, found *prima facie* evidence of corruption in the selection of contractors, inclusive of UMD, on the part of Mr. Kern Spencer. It is instructive to note that Mr. Kern Spencer is also currently before the courts, along with Ms. Coleen Wright, facing charges with respect to the 4M Energy Saving and Light Bulb Distribution Project.

With respect to the subject Enquiry, the OCG found that on a PCJ “*Payment Voucher*”, it was revealed that on 2006 July 17, Ms. Coleen Wright collected and signed for a cheque which was drawn for the benefit of the Caribbean Protective Security Management and Services Company Ltd.

Having regard to the previous relationship, which was identified by the OCG, with the above referenced individuals, the OCG, at this juncture, feels compelled to highlight the glaring similarities between the findings of this Enquiry and those of the findings, which have been detailed in the OCG’s Special Investigation Report, which was conducted into the circumstances surrounding the procurement of contracts for the 4M Energy Saving and Light Bulb Distribution Project.

In this regard, the OCG has identified similarities with respect to (a) the procurement process at the PCJ during the referenced period (b) the breakdown in the financial and administrative management of the PCJ and (c) the award of contracts in an irregular and improper manner to companies with which Ms. Coleen Wright and Mr. Rodney Chin are associated.

It should also be noted that the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. was granted within the same time period as those as

the contracts which were awarded for the 4M Energy Saving and Light Bulb Distribution Project.

The procurement breaches which were highlighted in the OCG's Special Report of Investigation, which was conducted into the circumstances surrounding the procurement of contracts for the 4M Energy Saving and Light Bulb Distribution Project include, *inter alia*, the following:

1. *“The procurement method which was utilised by Mr. Kern Spencer, in selecting the contractors for the provision of goods, works and services on the 4M Project is contrary to that which is outlined in the GPPH. Although the method of contracting which was utilized by Mr. Kern Spencer, viz. direct contracting, is akin to the Sole Source methodology, it was not subjected to the same considerations and requirements as are stipulated within the GPPH or the Ministry of Finance & Planning Circular No.17, which is dated 2007 May 15 and which is entitled Public Sector Procurement Policy & Procedural Guidelines for Sole Sourcing.*
2. *There was, in fact, a breach of the procurement process in the awarding of contracts to UMD, CCMN and all the other contractors who were engaged by Mr. Kern Spencer on the 4M Project. The OCG has seen no evidence of competitive tendering and/or approval from the PCJ or MITEC procurement committees, nor from the NCC, for any of the contractors/suppliers who were paid by the PCJ. There is evidence to suggest that remedial action to correct the procurement breach for the contracting of project management services was initiated by MITEC in 2007 January. However, no action was actually undertaken to remedy the breach since, in the end, UMD was allowed to continue its performance of the contract under the Project.*
3. *It is evident that the implementation of the 4M Project was not subject to the Ministry's normal internal controls. From our findings, we can conclude that:*
  - i. *Neither the Ministry nor PCJ was aware of the means by which the suppliers/contractors were initially contracted.*

- ii. *Payments have been made by an agency of the Ministry to contractors/suppliers who were not properly procured and tentative remedial action, albeit that it was not undertaken until seven months after, was never carried through.*
- iii. *Neither the Ministry nor the PCJ was willing to accept responsibility for the implementation of the Project months after it was in progress.*
- iv. *There is an over-expenditure of approximately J\$167 Million, including outstanding payments totalling J\$143 Million, which did not have the approval of the Board of PCJ nor of its Group Managing Director, Dr. Ruth Potopsingh.”*

Having regard to the foregoing, it is instructive to note that the OCG, in its Enquiry into the circumstances surrounding the award of a contract to Caribbean Protective Security Management and Services Company Ltd., found the following similarities with the state of affairs at the PCJ with respect specifically to (a) its procurement process and (b) its expenditure process:

1. Neither the then Group Managing Director nor the Accounting Officer was able to provide the OCG with detailed information with respect to (a) the contracting of Caribbean Protective Security Management and Services Company Ltd. and (b) the donation which was made to Rainbow of Hope Ltd.
2. Payments were made to Caribbean Protective Security Management and Services Company Ltd.; however, the OCG has not seen any documentary evidence to indicate that such payments were approved by the then Group Managing Director, Accounting Officer or the Board of Directors of the PCJ.

The OCG has also not seen any documentary evidence that the then Group Managing Director, Accounting Officer or the Board of Directors of the PCJ, was aware of such payments.

3. There was an apparent overpayment of J\$320,683.60 to Caribbean Protective Security Management and Services Company Ltd. In this regard, cheques totalling J\$4,149,264.00 were made payable to Caribbean Protective Security Management and Services Company Ltd.

However, the invoices which were submitted by Caribbean Protective Security Management and Services Company Ltd. and which were on the records of the PCJ, indicated that J\$3,828,580.40 was to be paid.

4. The OCG found that there were procurement breaches in the award of contracts to Caribbean Protective Security Management and Services Company Ltd.
5. Checks which were made by the OCG, with the NCC, revealed that, as at 2006, Caribbean Protective Security Management and Services Company Ltd. was not an approved contractor.
6. Based upon the assertions of Dr. Ruth Potopsingh, and the lack of documentation, the OCG has not seen any evidence to indicate that a written contract existed between the PCJ and Caribbean Protective Security Management and Services Company Ltd.
7. The OCG, based upon the documents which were reviewed, has not seen any evidence to indicate that the contract, which was awarded to Caribbean Protective Security Management and Services Company Ltd., was subjected to a competitive tender process and, by extension, the parameters of the GOJ procurement guidelines.

Consequently, the OCG found that the PCJ breached Section 2.4 of the GPPH (2001 May). Section 2.4 of the GPPH (2001 May), provides, *inter alia*, as follows:

*“Procuring entities should employ competitive procedures best suited to the circumstances of the contract action, as guided by this Handbook, and consistent with the need to fulfill GOJ's requirements efficiently and effectively.”*



8. The OCG has not seen any evidence to indicate that the PCJ conducted any formal process to solicit proposals and/or quotations from Caribbean Protective Security Management and Services Company Ltd. and/or any other company.

Consequently, and having regard to the over J\$4 Million which was paid to Caribbean Protective Security Management and Services Company Ltd., the OCG found that the PCJ breached Section 4.5 of GPPH (2001 May), which provides, *inter alia*, that where the estimated value is equal to or greater than \$4 Million, but less than \$15 Million, goods shall be procured on the basis of the selective tender procurement methodology by national advertisement.

9. Based upon a review of the documents, the OCG found that there was no evidence to indicate that a detailed ‘Request for Proposal’, which outlined the criteria for selection and the conditions for the agreement for the provision of security services, was prepared and utilized by the PCJ. Consequently, the OCG found that the PCJ breached Section 6.1 of GPPH (2001 May), which provides, *inter alia*, as follows:

*“Procuring entities shall ensure that tender documents contain all the necessary information for the particular procurement. The minimum information that must be included, together with guidance notes, is listed in the paragraphs that follow. The level of detail required will depend on the value and complexity of the procurement. For the simpler and smaller procurements the documentation will be reduced although all the points listed below should be considered.”*

10. In failing to disclose and or publish the procurement opportunity and provide public accessibility to the opportunity, the OCG found that the PCJ breached Section 2.5.3 of the GPPH (2001 May).

*“Advertising and other publication guidelines are contained in the procedures at the various contract value threshold levels. As a general rule and pursuant to Cabinet Directive, public sector advertising shall be coordinated through the Jamaica*

*Information Service (JIS). As such, all advertisements to be placed in national media shall be forwarded to the JIS for facilitation of publication. Procuring entities are responsible for effecting payment to the JIS, in accordance with the terms and conditions of the GOJ/JIS Framework Agreement.”*

11. The OCG also found that the PCJ has acted in contravention of Section 2.11 of the GPPH (2001), which highlights the reporting requirement of a Public Body and states, *inter alia*, that the procuring entity apprise the portfolio Ministry of all procurements effected by the entity.

The OCG has not seen any evidence to indicate that the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. was reported in accordance with the above procedure.

12. The OCG is unable to verify whether the PCJ obtained ‘value for money’ in the subject procurement since no quotations were requested and a comparable estimate was not seen.

#### **The extent of the PCJ’s interest, if any, in Rainbow of Hope Ltd.**

Based upon the sworn statement which was provided by Dr. Potopsingh, in her response to the OCG’s Requisition of 2010 January 26, the company, which is known as Rainbow of Hope Ltd., requested, of the PCJ, support with the fencing of a Community Centre in Santa Cruz.

This request was subsequently approved by Dr. John Cooke, the then Chairman of the Board of Directors and, thereafter, the invoices for same were approved by Mr. Rodney Salmon, the then Director of Administration/ Corporate Secretary.

It was also Dr. Potopsingh’s opinion that the aforementioned was undertaken as a community outreach project and that the project was not the subject of any other agreement or arrangement with Rainbow of Hope Ltd.

During the PAC's Meeting, which was held on 2009 September 15, Mr. Nigel Logan, the then PCJ Group Chief Financial Officer, expressed the point that "...*the services were procured by an officer in the PCJ but it is not apparent that the work that was done or the services provided really had anything to do with the PCJ and so it was regarded as a breach*".

Throughout the duration of the PAC's Meeting, neither Mrs. Hilary Alexander nor Mr. Nigel Logan, in their respective capacities as Permanent Secretary in the MEM and the then PCJ Group Chief Financial Officer, could definitively state the interest of the PCJ in (a) Rainbow of Hope Ltd. and (b) the community centre which is located in Santa Cruz, St. Elizabeth at which security services was being provided by Caribbean Protective Security Management and Services Company Ltd.

Mr. Nigel Logan indicated in the referenced meeting that there was no documentation available on the matter and that the only documentation, which was available to him, were the invoices that were received, by the PCJ, for payment.

However, it must be pointed out that the OCG has not seen any evidence of a request being made by Rainbow of Hope Ltd. for assistance, from the PCJ, in providing security services at the location.

It is instructive to note that whereas a follow up letter was seen, by the OCG, which stated, *inter alia*, that "...*Rainbow of Hope is requesting that the two-ten feet gates be changed to two-sixteen feet gates...*"<sup>23</sup>, no initial correspondence has been seen with respect to a request of the PCJ, from Rainbow of Hope Ltd., for assistance in the erection of a fence. As such, the OCG is unable to confirm that:

- i. Such a request was actually made; and
- ii. The initial request was made by Rainbow of Hope Ltd.

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<sup>23</sup> Rainbow of Hope Ltd. Letter to the then Chairman of the Board of Directors of the PCJ, Dr. John Cooke. 2006 June 20.

Further, with respect to the approval of donation/grants for outreach projects, the OCG found that there were no documented approval process and/or guidelines for the handling of same.

It is instructive to note that the Special Audit Report, which was dated 2009 October and which was prepared by Papineau Consulting Inc., found that the PCJ had no formal and/or official means of approving and processing applications for the provision of grants and donations.

The referenced report indicated that, in several instances, payments were seen for loans and grants to PCJ employees for a plethora of reasons; however, there were no written criteria which were utilized by the PCJ to authorize donations, loans and/or grants.

The referenced Special Audit Report suggested that the absence of written manuals or guidelines on the practices and procedures of the PCJ Accounts Unit, relating to the handling of expenditures and revenue, leaves the PCJ vulnerable to errors, improper handling of its activities, openness to inconsistencies and possible abuse of its resources.

## SPECIAL NOTE

It is instructive to note that the PCJ was brought before the PAC, on 2009 September 15, based upon the findings which were detailed in the Auditor General's Report for the financial year 2006- 2007.

Consequently, the PCJ, on 2009 November, prepared several comments, to the Auditor General's Report, in which it acknowledged the following:

1. *"In 2006, a charitable organization, Rainbow of Hope Limited, was undertaking a community outreach programme, which included erecting perimeter fencing and replacing two gates at the Community Centre..."*
2. *A request was made by the charitable organization to the former Chairman of the PCJ for the Corporation's assistance with the project...*
3. *The request for assistance was approved by the then Chairman...*
4. *The related payments including those for security services were approved by the then Director for Administration.*
5. *The PCJ was unable to locate evidence of these transactions having been concluded within the approved GOJ Procurement Guidelines.*"<sup>24</sup>

Having acknowledged the following, the PCJ noted that it had undertaken several actions, since 2006, which were geared towards strengthening internal controls and raising capacity and knowledge of the GOJ Procurement Rules. In this regard, the PCJ noted, *inter alia*, that it took the following actions:

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<sup>24</sup> PCJ. "*Comments on Auditor General's Report- Financial Year 2006-2007*". 2009 November

2. *“ Internal controls have been significantly strengthened with the following actions:*

*(a) The PCJ has established a panel of A and B signatories for all cheques. Previously cheques could be signed by any two signatories.*

*(b) An Accounting Manual has been approved and is in the process of being implemented.*

*(c) The Procurement Committee has been reconstituted.*

*(d) A letter was sent to all managers and technical officers regarding adherence to procurement procedures.*

*(e) The PCJ has reviewed its Limits of Authority which will ensure greater control over expenditure. This is in the final stages of approval.*

*(f) The Group Managing Director and the Group Chief Financial Officer now approve all payments...*

*(g) Most recently, members of the PCJ management have undergone procurement training in September 2009, and further sessions are to follow.*

*(h) Two senior accounting officers involved in this matter are no longer employed to the PCJ (between March 2008 and 2009).”<sup>25</sup>*

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<sup>25</sup> PCJ. *“Comments on Auditor General’s Report- Financial Year 2006-2007”*. 2009 November

## CONCLUSIONS

Based upon the documents which have been reviewed as well as the sworn testimony which has been received from the representatives of the PCJ and the MEM, the OCG has arrived at the following considered Conclusions:

1. The OCG has concluded that the PCJ breached various provisions of the GPPH (2001 May); the breaches include, *inter alia*, the following:
  - a. The PCJ failed to facilitate a competitive tender process in the award of the contract to Caribbean Protective Security Management and Services Company Ltd. for security services. As such, the PCJ breached Section 4.5 of the GPPH (2001 May).
  - b. The PCJ did not prepare a detailed 'Request for Proposal' and/or any other tender document with respect to the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. Consequently, the OCG has concluded that the PCJ breached Section 6.1 of the GPPH (2001 May).
  - c. The PCJ failed to disclose and/or publish the procurement opportunity with respect to the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. As such, the OCG concluded that the PCJ breached Section 2.5.3 of the GPPH (2001 May).
  - d. The PCJ also acted in contravention of Section 2.11 of the GPPH (2001 May), which highlights the reporting requirements of a public body and states, *inter alia*, that the procuring entity apprise the portfolio Ministry of all procurements effected by the entity.

The OCG has not seen any evidence to indicate that the contract, which was awarded to Caribbean Protective Security Management and Services Company Ltd., was reported in accordance with the above referenced provision of the GPPH (2001 May).

- e. The OCG has concluded that the PCJ breached Section 2.1.3.4 of the GPPH (2001 May). This is premised upon the fact that the PCJ asserted, in its QCA Reports, that the contract which was awarded to Caribbean Protective Security Management and Services Company Ltd. was awarded via the Sole Source Procurement Methodology.

In the OCG's considered opinion, the nature of the referenced procurement, cannot be described and/or justified as (a) a procurement of a sensitive nature, (b) the result of a meritorious unsolicited proposal, (c) a matter of compelling urgency, and (e) requires the need for expert services.

2. The OCG has concluded that the process which led to the award of the contract to Caribbean Protective Security Management and Services Company Ltd. lacked transparency, as there was an absence of appropriate documentation to illustrate the process which led to the award of the subject contract.
3. Based upon the fact that the PCJ purchased a computer and related accessories from Caribbean Protective Security Management and Services Company Ltd., the OCG has concluded that the referenced purchase was highly irregular and questionable at best.

The foregoing circumstances points to mismanagement in the disbursement of public funds, on the part of the Accountable Officer who signed off on same, and can be viewed as *prima facie* evidence of a breach of the FAA Act.

4. The OCG has concluded that there was no probity and/or equity involved in the process which led to the award of the contract to Caribbean Protective Security Management and Services Company Ltd.
5. The OCG is unable to verify whether the PCJ obtained 'value for money' in the award of the contract to Caribbean Protective Security Management and Services Company Ltd. This is premised upon the fact that there was no competitive tender process and/or no comparable estimate.



6. Based upon the cheques which were issued to Caribbean Protective Security Management and Services Company Ltd., the PCJ paid a total of J\$4,149,264.00. However, the PCJ reported, to the OCG, in its QCA Reports that two (2) contracts were awarded to Caribbean Protective Security Management and Services Company Ltd. on 2006 September 15 and 2006 August 14, in the amount of J\$716,400.00 and J\$419,760.00 respectively. The cheque amount is far more than that which was reported to the OCG in the aforementioned QCA Reports.

Having regard to the foregoing, the contracts which were reported on the QCA Reports and the absence of a written contract, several questions may be raised. These include, *inter alia*, the following:

- a. That either the PCJ failed to report, to the OCG, any other contract which may have been awarded to Caribbean Protective Security Management Services and Company Ltd.;
  - b. That there was a variation to the contract which were reported to the OCG in the QCA Reports;
  - c. That the contract were splintered in order to avoid the scrutiny of the NCC, which at the time, reviewed contracts valued at \$4million and above.
7. The OCG has not seen any documentary evidence to indicate which entity, whether the PCJ and/or the then MITEC, and/or which individual was responsible for engaging, either directly or indirectly, the services of Caribbean Protective Security Management and Services Company Ltd.

In point of fact, the OCG has not seen any written contract and has only seen (a) PCJ cheques which were made payable to Caribbean Protective Security Management and Services Company Ltd., (b) invoices from Caribbean Protective Security Management and Services Company Ltd. and (c) PCJ payment vouchers. Further, there was no competitive bidding

process involved in the selection of Caribbean Protective Security Management and Services Company Ltd.

Based upon the foregoing, the OCG has concluded that the process which was utilized by the PCJ to select Caribbean Protective Security Management and Services Company Ltd. was not impartial and non-discriminatory.

8. The OCG has concluded that during the referenced period, Caribbean Protective Security Management and Services Company Ltd. was not an approved and/or registered GOJ contractor and, as such, was ineligible to be engaged in any contractual agreement with the GOJ, through the PCJ. The PCJ's award of contract to Caribbean Protective Security Management and Services Company Ltd. was, therefore, in contravention of Section 2.6 of the GPPH (2001 May).
9. The OCG has concluded that the process which led to the award of a contract to Caribbean Protective Security Management and Services Company Ltd. was irregular and improper.
10. The OCG has concluded that the lack of documented records on the subject procurement points to a lack of transparency in the management of the disbursement of public funds and public administration as it pertains to the procurement activities at the PCJ. The impact of this, in the considered opinion of the OCG, is dire and grave, since the lack of transparency inevitably creates an atmosphere for corruption to thrive and negatively impacts on the ethos of good governance.
11. The OCG found that there was an apparent overpayment of J\$320,683.60 to Caribbean Protective Security Management and Services Company Ltd. In this regard, cheques totalling J\$4,149,264.00 were made payable to Caribbean Protective Security Management and Services Company Ltd.

However, the invoices which were presented to the PCJ and the Accounts Payable records of the PCJ indicated that J\$3,828,580.40 was to be paid.

Having regard to the foregoing, the OCG has concluded that the Accountable Officers of the PCJ have failed in their respective fiduciary duties pursuant to Section 16 (2) of the FAA Act.

These individuals, in accordance with Section 24F of the FAA Act, were vested with the authority and responsibility, *inter alia*, to make commitments and payments and, in accordance with Section 19C of the Act, they were authorized and were held responsible to certify and approve the payment of vouchers.

12. The OCG has concluded that the PCJ, specifically during the period which is under review, demonstrated a blatant disregard for the provisions that have been established to govern the public sector procurement process as well as to facilitate equity and transparency in the use and appropriation of public funds.

The OCG has also discerned from the extracts of the PAC meeting, that there have been significant inefficiencies in respect of the governance of the PCJ's operations. Further, during the period which is under review, the OCG has concluded that there were no effective guidelines and/or measures which promoted scrupulous checks, balances and accountability.

13. The OCG has concluded that in the contracting of Caribbean Protective Security Management and Services Company Ltd., the PCJ has shown scant regard for the Government Procurement Guidelines and, in particular, the Contractor General Act, specifically Section 4(1).

14. The OCG has not seen any evidence to indicate that the PCJ had established protocols and guidelines for the provision of monetary assistance and/or grants for community based programmes, or that there was a defined process which was used by the PCJ in the approval of requests for assistance during the period under review.

In this regard, the OCG is unable to conclude that the PCJ breached any internal procedures in approving the alleged request which was said to have been made by Rainbow of Hope Ltd.

15. The OCG has not been able to determine who and/or what entity made the initial request, of the PCJ, for assistance at the community centre. Further, the OCG found that the PCJ did not have an interest in the referenced community centre. Having regard to the foregoing, the question must then be asked, why did the PCJ feel compelled to make payments to Caribbean Protective Security Management and Services Company Ltd. for the provision of security services?
16. The OCG has concluded that based upon (a) the absence of documentation with respect to the processing of the alleged request from Rainbow of Hope Ltd. and (b) the lack of documentation with respect to the approval process for the said alleged request, that there was impropriety and irregularity involved in the process which led to the PCJ's involvement in the Project.
17. The OCG found that while employed to the PCJ, Ms. Coleen Wright was also a Director of Rainbow of Hope Ltd. The OCG also found that Ms. Wright, on 2006 July 17, signed for a cheque for Caribbean Protective Security Management and Services Company Ltd.

Having regard to the foregoing, and (a) the lack of documentation on the part of the PCJ with respect to the processing of the alleged request from Rainbow of Hope Ltd., (b) the absence of established protocols and guidelines for the provision of monetary assistance and/or grants for community based programmes, and (c) the irregular award of a contract to Caribbean Protective Security Management and Services Company Ltd., and the ambiguities surrounding the award of the said contract, the OCG has concluded that, among other things, the foregoing circumstances have raised critical questions with respect to a possible conflict of interest.

18. In light of the findings of the OCG's Investigation Report into the circumstances surrounding the procurement of contracts for the 4M Energy Saving and Light Bulb Distribution Project; and the involvement of Ms. Coleen Wright and Mr. Rodney Chin with Rainbow of Hope Ltd. and Caribbean Protective Security Management and Services Company Ltd. respectively, in the instant matter, the OCG has concluded that it is past coincidence that among the key

actors that were involved in this matter – a matter that is fraught with irregularities, improprieties and breaches of the provisions of the GPPH (May 2001), the FAA Act and the Contractor General Act, are persons who are among the principal actors who were involved with, and/or who were criminally implicated, in the 4M Energy Saving and Light Bulb Distribution Project.

In the foregoing regard, it is instructive to note that both Mr. Chin and Ms. Wright were arrested on 2008 February 26, with respect to certain alleged fraudulent activities that were associated with certain contracts that were awarded by the PCJ in respect of the 4M Energy Saving and Light Bulb Distribution Project. However, and as was previously indicated, the charges that were brought against Mr. Chin were subsequently dropped by the DPP.

19. The OCG has concluded that during the period which is under review, there were significant governance deficiencies in the operations of the PCJ, specifically as it relates to (a) the contract award process and (b) the expenditure process.

## REFERRALS

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor General Act. **Section 21 of the Contractor General Act** provides as follows:

**“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)

Having regard to those of the several Findings, Conclusions and concerns of the OCG which have been set out herein and, having regard, in particular, to (a) the significant governance deficiencies which have been identified in the operations of the PCJ, inclusive of the highly irregular contract award and expenditure processes which have been exhibited by the entity during the period which is under review; (b) the PCJ’s flagrant breaches of the GPPH (2001 May) and the Contractor General Act; (c) the absence of transparency, merit and competition in the PCJ’s award of the subject contract to Caribbean Protective Security Management and Services Company Ltd.; (d) the absence of appropriate or satisfactory documentation and explanations to evidence or to explain the process or the rationale that led to the award of the subject contract to Caribbean Protective Security Management and Services Company Ltd.; (e) the curious, unexplained and un-accounted for purchase by the PCJ of computer related equipment from Caribbean Protective Security Management and Services Company Ltd.; (f) the PCJ’s apparent and unexplained overpayment of \$320,683.60 to Caribbean Protective Security Management and Services Company Ltd.; (g) the curious and alarming inability of the PCJ to satisfactorily establish whether the referenced security services and computer equipment purchase contract was in fact performed by Caribbean Protective Security Management and Services Company Ltd. although significant payments were made by the PCJ in relation to same; (h) the serious irregularities that were identified in the PCJ’s failure to report the full particulars of the referenced contract award, in its Quarterly Contract Award (QCA) Reports, to the OCG;

(i) the absence of documentation with respect to the processing of the alleged request which was made to the PCJ by Rainbow of Hope Ltd., an entity in respect of which the PCJ had no interest; (j) the absence, at the PCJ, of established protocols and guidelines for the provision of monetary assistance and/or grants for community based programmes; (k) the fact that Ms. Coleen Wright, while employed to the PCJ, was also a Director of Rainbow of Hope Ltd. and, while being so employed on 2006 July 17 signed to receive a PCJ cheque which was drawn for the benefit of the Caribbean Protective Security Management and Services Company Ltd.; (l) the involvement of Ms. Coleen Wright and Mr. Rodney Chin as directors of Rainbow of Hope Ltd. and Caribbean Protective Security Management and Services Company Ltd., respectively; (m) the fact that Mr. Rodney Chin was listed as the majority shareholder of Caribbean Protective Security Management and Services Company Ltd.; (n) the fact that that both Mr. Chin and Ms. Wright were arrested on 2008 February 26 and subsequently had charges brought against them with respect to certain alleged fraudulent and other activities that were associated with certain contracts which were awarded, by the PCJ, during the same period which is under review, in respect of the 4M Energy Saving and Light Bulb Distribution Project (NB. the charges against Mr. Chin were subsequently dropped); and (o) the fact that among the key actors who were involved in this matter – a matter which is fraught with irregularities, improprieties and breaches of the provisions of the GPPH (2001 May), the FAA Act and the Contractor General Act, are persons who were among the principal actors who were involved with, and/or who were criminally implicated in, the 4M Energy Saving and Light Bulb Distribution Project; the OCG is compelled to conclude that the referenced circumstances are such that they have raised, among other things, and at the very minimum, an evidentiary inference of the possibility of an unlawful criminal conspiracy in relation to what is undoubtedly a highly irregular, improper and suspicious, and potentially illicit, fraudulent and corrupt, award of the herein-referenced contract to Caribbean Protective Security Management and Services Company Ltd. In the premises, it is the considered view of the OCG that the matter is one which warrants immediate and further investigation by the country's criminal law enforcement authorities.

1. Consequently, and pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Commissioner of Police for such

further action as he may deem to be appropriate having regard to all of the circumstances of the case.

2. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is also hereby formally referring a copy of this Report to the Auditor General, and to the Financial Secretary, for them to take such action as either or both of them may deem to be appropriate, having regard to all of the circumstances of the matter, and on the basis that there is evidence which is recorded herein which would suggest that there was a breach of duty or duties on the part of the Accounting Officer, and/or on the part of one or more of the Accountable Officers of the PCJ, and that one or more of the said Officers may have contravened, *inter alia*, the provisions of the Financial Administration and Audit Act. The matter is being referred to the Auditor General particularly in light of the provisions which are contained in Sections 2, 16, 19, 20, and 24 of the Financial Administration and Audit Act.

In referring the matter as aforesaid, the OCG is cognizant of the fact that the Auditor General has already conducted her own Audit into the referenced matter. However, the OCG has also deemed it prudent to refer the matter in light of the remedial and other related actions which have already been reportedly taken by the PCJ with respect to (a) its procurement activities, (b) its management and disbursement of public funds and (c) its termination of the services of Dr. Ruth Potopsingh, the then PCJ Group Managing Director and Mr. Rodney Salmon, the then PCJ Director of Administration/Corporate Secretary.

3. In light of the questions and concerns which were raised by the PAC regarding the matter which is the subject of this OCG Enquiry, and the Findings, Conclusions and concerns of the OCG which have been detailed herein, the OCG is also hereby formally referring a copy of this Report to the Chairman of the PAC to facilitate any further action which the PAC might, in its discretion, deem to be appropriate in this matter.



## 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’s Emphasis)

1. The OCG has found that there were several breaches of the procurement guidelines, by the PCJ, specifically during the period of 2006 to 2007. The procurement breaches which have been identified include, *inter alia*, (a) securing the requisite approvals of the Accounting Officer and the NCC for the use of the Sole Source Procurement Methodology and, (b) utilizing the provisions of the then GOJ procurement guidelines, which were contained in the GPPH (2001 May).

It is instructive to note that this Enquiry has identified that during the period which is under review, not only were there poor procurement practices at the PCJ, but there was an apparent ‘loose’ management system especially with respect to the expenditure of public funds. Further, there was an absence of proper mechanisms and adequate checks and balances to govern the operations of the PCJ. This allowed for poor governance, improper activities and evident mismanagement.

While there are breaches, which have been identified herein, it should be noted that the then applicable rules, which were contained in the GPPH (2001 May), did not impose any criminal sanctions for breaches of the GPPH. In point of fact, criminal sanctions for breaches of the Government Procurement Rules were not imposed until 2008 December 12, effective with the promulgation of Section 40 of the 2008 Public Sector Procurement Regulations.

The OCG recognizes that the PCJ, as asserted by its Accounting Officer, Mrs. Hillary Alexander in the PAC Meeting, which was held on 2009 September 15, has since taken steps to remedy some of the defects, in its operations, which had been highlighted by the Special

Audit Report, which was prepared by Papineau Consulting Inc., and the OCG's 4M Energy Saving Light Bulb Distribution Project Special Report of Investigation.

Nonetheless, in the circumstances, the OCG feels compelled to recommend that the PCJ and its Accounting and Accountable Officers should ensure scrupulous compliance, with the Revised Handbook of Public Sector Procurement Procedures (RHPP 2010 October) which came into effect on 2011 January 2, particularly with respect to the following matters:

- (a) Securing the requisite approvals from the Public Body's Procurement Committee, its Accounting Officer/Head of Entity, the NCC, and the Cabinet, as applicable, in conformance with the requirements which are detailed in Appendix 6 of Volume 2 of 4 of the RHPP;
- (b) Securing the relevant approvals from the Accounting Officer/Head of Entity and the NCC as applicable, in conformance with the requirements of Section 1.1.4 of Volume 2 of 4 of the RHPP;
- (c) Recognizing the oversight and the functional responsibilities of, *inter alia*, the NCC, the OCG, the PCJ's Procurement Committee, and the PCJ's Accounting and Accountable Officers, pursuant, *inter alia*, to Section 2 of Volume 1 of 4 of the PHHP, and adhering to the requirements thereof;
- (d) Promoting competition in the procurement process, while ensuring that PCJ procurement opportunities are open to all appropriately registered and qualified contractors, in conformance with the requirements which are detailed in Section 1.1.2 of Volume 2 of 4 of the RHPP;
- (e) Recognizing and setting in place measures to prevent a conflict of interest situation, in conformance with section 4 of Volume 1 of 4 of the RHPP; and

- (f) Observing the provisions which highlight the eligibility and qualifications requirement which ought to be satisfied to validate the participation of a contractor in the GOJ procurement process, which are detailed in Section 1.3.1 of Volume 2 of 4 of the RHPP.
2. The OCG strongly recommends that procuring entities should plan their procurement activities in accordance with the Procurement Cycle, inclusive of the employment and application of an approved Procurement Plan. In this regard, contracts which are to be awarded should be properly packaged, tendered, evaluated and awarded within a specified timeframe, hence removing the need, *inter alia*, to rush the procurement process.
  3. The OCG recommends that Accounting and Accountable Officers should be more proactive in the procurement activities of Public Bodies and ensure that contracts which are awarded should be consistent with the full application of the Procurement Guidelines and must be, and appear to be, awarded fairly, impartially and without any form of irregularity or impropriety.
  4. The OCG recommends that the Accounting and/or Accountable Officers should take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, and checks and balances, within their portfolio, in an effort to mitigate against any possibility of deviations from the RHPP by the institution's management and procurement staff.
  5. The OCG recommends that in accordance with, *inter alia*, the Public Bodies Management and Accountability Act and the Financial Administration and Audit Act, the Cabinet, Accounting and Accountable Officers and Members of the Board of Directors of Public Bodies should, at all times, ensure that the principles of good corporate governance are adhered to and promoted within the Public Sector.

In this regard, the OCG is of the considered opinion that within the respective organizations of the Public Sector, there should be adequate checks and balances mechanisms which are designed to promote transparency, integrity and probity in the management and administration of the affairs of the State.

Further, and at all times, the highest ethical standards should be promoted and where a conflict of interest is likely to occur and/or appears to have occurred, the Public Body should promptly take the requisite corrective actions to mitigate such conflicts and/or the consequences of same.

6. The OCG is recommending that Public Officers and/or Officials, who are engaged by the GOJ, adhere to the strictest practices of professional ethics and conduct whilst in the employ of the GOJ.
7. In instances where the Government of Jamaica procurement guidelines are breached, the responsible agency should seek to remedy the breach in an expeditious and effective manner as opposed to continuing with the implementation of the project in violation of applicable Government procurement procedures and other regulations or laws.
8. It is recommended that frequent reviews of the accounting, procurement and public administration management practices at the PCJ and the MEM be undertaken by the Public Administration and Appropriations Committee of the House of Representatives, the Auditor General and the Ministry of Finance and the Public Service.

The reviews should be conducted to ensure that adequate procedures, systems, checks and balances are not only implemented, but are aggressively enforced to secure a radically improved level of compliance on the part of Public Bodies and Public Officials with relevant Government approved procedures, regulations and laws.

9. The OCG strongly recommends that the PCJ ensures that contracts which are awarded by it are awarded in a manner which is consistent with the GOJ procurement guidelines and, in the application of same, be awarded fairly, impartially and without impropriety and/or irregularity, pursuant to Section 4 of the Contractor General Act.

10. The OCG recommends that the PCJ implements an effective and efficient records keeping/filing system which will address the entity's inefficiencies in maintaining proper documentation. This will further facilitate greater levels of transparency in the entity's use of public funds and public administration.
  
11. The OCG recommends that the PCJ establish and implement a formal system of approval and design protocols and guidelines for the provision of monetary assistance and/or grants by the entity for Outreach and other related projects.