



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Conducted into the Allegations of Improper Procurement Practices at the Sugar Company of Jamaica (SCJ)

Ministry of Agriculture & Fisheries

Table of Contents

Executive Summary.....	02
Terms of Reference.....	27
Methodology.....	29
Findings.....	36
<i>The Allegations.....</i>	<i>(36)</i>
<i>Quarterly Contracts Award (QCA) Report Analysis.....</i>	<i>(41)</i>
<i>Approvals for the use of the Sole Source Procurement Methodology.....</i>	<i>(59)</i>
<i>Advance Payments.....</i>	<i>(61)</i>
<i>Role of Mr. John Gayle.....</i>	<i>(66)</i>
<i>The Allegations with respect to Mr. John Gayle.....</i>	<i>(71)</i>
<i>Relationship between the Named Parties.....</i>	<i>(91)</i>
<i>Was there any Impropriety?.....</i>	<i>(94)</i>
Conclusions	104
Special Note.....	111
Recommendations	113

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EXECUTIVE SUMMARY

On 2009 September 4, 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 Investigation into allegations of improper procurement practices at the Sugar Company of Jamaica (SCJ).

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 licence;*
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.*

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

The OCG's decision to commence the formal Investigation followed upon its receipt of certain documentation from the Prime Minister, the Honourable Bruce Golding.

On 2009 September 3, under cover of an official Complimentary Slip, the Prime Minister, the Honourable Bruce Golding, submitted, to the Contractor General, Greg Christie, documentation with regard to certain specified transactions which were alleged to have been conducted and/or negotiated with vendors or third parties which are based in Louisiana, Florida and Jamaica.

The referenced transactions allegedly involved "*fraudulent activities*" which were said to be related to the procurement of certain equipment by the SCJ.

Among the referenced documentation, which were submitted by the Prime Minister, was a letter, which was dated 2008 February 19, which was addressed to the Chairman of the Board of Directors of the SCJ, Mr. Robert Levy, and which was signed by "*A Very Concerned Taxpayer*".

In the referenced letter, which had the caption "*Combine Sugarcane Harvester*", the Concerned Taxpayer stated, *inter alia*, as follows:

*"You will recall our telephone discussion on the above ending with **my promise** to let you have copies of the sales invoice from the original supplier. These are attached.*

*You will observe that these middle men paid **US\$161,860.00** for the four (4) units and sold them to Sugar Company of Jamaica (SCJ) for **JA\$31.0M** or **US\$456,000.00** making **US\$294,140.00 profit =182%**. This level of profiteering is consistent with the **tractors and cane carts you bought recently. Is this not of concern to you? It is to me.**"¹*

¹ Concerned Taxpayer. Letter to Mr. Robert Levy. 2008 February 19

Below is an extract of certain allegations, which were made in other pieces of documentation, which were submitted to the OCG, by the Prime Minister, the Honourable Bruce Golding on 2009 September 3:

1. *“Fraudulent activities took place in the purchasing of equipment for the SCJ by Mr. John Gayle in his former capacity as coordinator for factory services at the Sugar Industry Institute...*
2. *Mr. Gayle is alleged to have conspired with Tyres R US, Tyre Warehouse, Partek Trading Limited (Jamaica) and P. Factor (Miami) businesses which are operated by brothers Andrew Buddan, Bryan Buddan and Hans Buddan to defraud the SCJ and by extension the GOJ.*
3. *The procurement process was circumvented by advance payments being made to Partek as money owing to them. Partek then used the money to purchase the items, marked it up and then debited the account as a creditor.”²*

Further, the referenced documentation detailed four (4) specific cases in which it was alleged that the “*fraudulent activities*” occurred. These are as follows:

1. *“Case #1*
John Gayle went to Louisiana in 2006, negotiated with John Deere Thibodaux for the purchase of six (6) harvesters on behalf of the SCJ. The purchase of these harvesters was done by Mr. Hans Buddan of P. Factor (Miami) who then shipped them to Mr. Andrew Buddan of Tyres R US (Jamaica). Partek Trading Ltd. operated by Mr. Bryan Buddan then sold the harvesters to the SCJ.

² Documentation submitted to the OCG from the Prime Minister. 2009 September 3

Four of the six harvesters were purchased for US\$161,860.000 [sic] and then sold to the SCJ for J431.0 million or US\$456,000.00. The Buddans made a profit of US\$294,140.00...

2. Case # 2

Mr. Gayle went to Florida and negotiated twelve (12) infield trailers and eight (8) tractors. These were 20 years old. P. Factor (Miami) paid US\$3000 each for the infield trailers and through the same process described above, sold them to the SCJ for US\$15,000 each.

The tractors were bought for US\$5000 each and sold to the SCJ for US\$25,000 each.

3. Case # 3

Seventeen trailers were bought in Florida for US\$15,000 each. Purchase of these trailers was [sic] done by Hans Buddan and then shipped to Tyres R US. The price at which these trailers were sold to the SCJ has not been determined.

4. Case # 4

Equipment costing US\$229,000.00 were identified at a factory in Florida and purchased by Partek then sold to the SCJ. The price at which these equipment were sold to SCJ has not been determined.”³

The concerns and allegations, which were contained in the letter of complaint and attached documentation, alluded to, *inter alia*, (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 applicable Public Service administrative and accounting procedures.

³ Documentation submitted to the OCG from the Prime Minister. 2009 September 3

Consequently, these allegations and inferences, *inter alia*, raised several concerns for the OCG, especially in light of the perceived absence of an 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*”.

The OCG’s Investigation primarily sought to determine, *inter alia*, the following:

- (a) Whether there was compliance with the provisions of the Contractor General Act (1983) and the Government of Jamaica Procurement Procedures Handbook (GPPH-2001 May) by the SCJ.
- (b) The merits of the allegations, which have been made, that Mr. John Gayle conspired with Tyres-R-US, Tyre Warehouse, Partek Trading Limited (Jamaica) and P. Factor (Miami) – businesses which are operated by brothers Andrew Buddan, Brian Buddan and Hans Buddan to defraud the SCJ and, by extension, the GOJ.
- (c) Whether the process which led to the award of the contracts to the named companies was fair, impartial, and transparent and whether the contracts were awarded on merit.

At the commencement of its Investigation on 2009 September 4, the OCG undertook a preliminary review of (a) the allegations which were contained in the referenced documentation; and (b) the Quarterly Contract Award Reports (QCA) which were submitted to the OCG, by the SCJ, for the years 2006 to 2009. This was done in an effort to inform the direction of the Investigation as well as to determine the most efficacious method by which to proceed.

The Terms of Reference of the OCG's Investigation into the allegations of improper procurement practices at the SCJ 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, the Public Bodies Management and Accountability Act, the Staff Orders for the Public Service (2004), 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.

It is also instructive to note that letters were directed on 2009 September 4, by the Contractor General, to the Minister of Agriculture and Fisheries, the Hon. Dr. Christopher Tufton, the Permanent Secretary in the Minister of Agriculture and Fisheries, Mr. Donovan Stanberry, the Chairman of SCJ, Mr. Robert Levy, the then Chairman of SCJ Holdings Limited, Mr. Aubyn Hill, and the then General Manager, SCJ Holdings Limited, Mr. John Gayle, to formally advise them of the commencement of the OCG's Investigation into the allegations of improper procurement practices at the SCJ.

A preliminary Requisition/Questionnaire, which was dated 2009 September 11, was sent by the Contractor General to Mr. Donovan Stanberry, Permanent Secretary, Ministry of Agriculture and Fisheries (MAF).

Further Requisitions/Questionnaires were subsequently directed to other Public Officials, who were considered material to the Investigation.

Where it was deemed necessary, Follow-up Requisitions were directed to a number of Respondents in an effort to clarify certain issues which were identified in their initial declarations and responses. These Follow-up Requisitions were also designed, *inter alia*, to clarify any discrepancy in the information which was supplied by the Respondents.

The Findings of the OCG's Investigation into the allegations of improper procurement practices at the SCJ are premised primarily upon an analysis of the sworn statements and the documents which were provided by the Respondents who were requisitioned by the OCG during the course of the Investigation.

The Findings of the OCG's Investigation have revealed that the companies, (a) Partek Trading Ltd., (b) P. Factor Trading, and (c) Tyre Warehouse Ltd., as alleged, are operated by the Buddan brothers, namely, Mr. Andrew Buddan, Mr. Brian Buddan and Mr. Hans Buddan.

Based upon the OCG's analysis of the Quarterly Contracts Award (QCA) Reports, which were submitted to the OCG by the SCJ, for the period of 2006 May to 2010 May 27, the OCG found that the SCJ has awarded contracts to (a) Partek Trading Ltd., (b) P. Factor Trading, and (c) Tyre Warehouse Ltd.

Further, based upon the OCG's analysis of the National Contracts Commission's (NCC's) Contract Analysis Database, the SCJ awarded a contract to Tyres-R-US Ltd. on 2007 January 17, for the purchase of used mechanical harvesters. This contract had a value of J\$37,426,200.00.

It is instructive to note that Mr. Donovan Stanberry, Permanent Secretary, MAF, in his response to the OCG's Requisition, which was dated 2009 October 14, stated, *inter alia*, that "*The Sugar Company of Jamaica Ltd (SCJ) started trading with Partek Trading Ltd from SCJ's inception in*

January 1994. P Factor Trading is a company registered in Florida and was introduced to SCJ by Partek Trading. Tyre Warehouse Ltd is also one of our Suppliers. In all instances contact was initiated through our Purchasing Department in the normal course of business.”⁴

Having regard to the foregoing, the OCG found that (a) Partek Trading Ltd., (b) P. Factor Trading, (c) Tyres-R-Us Ltd. and (d) Tyre Warehouse Ltd. have all been awarded contracts by the SCJ.

Summary of Key Findings and Conclusions

Based upon the documents which have been reviewed, as well as the sworn written statements which have been received from the representatives of the MAF and the SCJ, the OCG has arrived at the following considered Findings and Conclusions:

1. The allegations against Mr. John Gayle spoke specifically to the conduct of “*fraudulent activities*” prior to 2009 July, when Mr. John Gayle assumed position of the General Manager of the SCJ Holdings Ltd.

Having regard to the foregoing, the OCG narrowed its Investigation to the period of 2006 January to 2009 June. It is instructive to note that Mr. Donovan Stanberry, Permanent Secretary, MAF, informed the OCG that, during the referenced period, Mr. John Gayle was not authorised to approve the (a) award and (b) variation of contracts for and on behalf of the SCJ. However, during the referenced period, Mr. John Gayle was authorised to (a) negotiate and (b) implement contracts which were awarded by the SCJ.

2. The OCG has concluded that the companies, which were allegedly involved in the “*fraudulent activities*”, namely (a) Tyres-R-US Ltd., (b) Partek Trading Ltd., (c) P. Factor

⁴ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 1

and (d) Tyre Warehouse Ltd., are in fact operated by the brothers, Mr. Andrew Buddan, Mr. Hans Buddan and Mr. Brian Buddan.

3. The OCG is unable to definitively state that Mr. John Gayle ‘conspired’ with (a) Tyres-R-US Ltd., (b) Partek Trading Ltd., (c) P. Factor and (d) Tyre Warehouse Ltd. and/or the Buddan Brothers namely, Mr. Andrew Buddan, Mr. Hans Buddan and Mr. Brian Buddan.

This is premised upon the fact that the OCG has not seen sufficient *prima facie* evidence to suggest that the named parties colluded and conspired to defraud the SCJ.

4. In the first instant, it was alleged that “*John Gayle went to Louisiana in 2006, negotiated with John Deere Thibodaux for the purchase of six (6) harvesters on behalf of the SCJ. The purchase of these harvesters was done by Mr. Hans Buddan of P. Factor (Miami) who then shipped them to Mr. Andrew Buddan of Tyres R US (Jamaica). Partek Trading Ltd. operated by Mr. Bryan Buddan then sold the harvesters to the SCJ...*”⁵

However, contrary to the foregoing allegations, the OCG found that the SCJ reportedly utilised the Open Tender Procurement Methodology to award the contract to Tyres-R-US Ltd. for the supply of six (6) harvesters. The referenced tender exercise was initiated on 2006 December and was publicly advertised.

The referenced contract was valued at J\$37,426,200.00, and following the approval of the Procurement Committee, the NCC on 2007 January 17 and the Cabinet on 2007 February 7, the contract was awarded to Tyres-R-US Ltd.

5. Based strictly upon the procurement process, which was utilised by the SCJ, the OCG has concluded that the process which led to the award of the contract to Tyres-R-US Ltd. appears, on the face of it, to have been fair, impartial and transparent.

⁵ Documentation submitted to the OCG from the Prime Minister. 2009 September 3

This is premised upon the fact that (a) the bids were solicited from suppliers of the requisite equipment, (b) the SCJ conducted a comparative analysis of the bids which were submitted to it, and (c) approval was sought and granted by the NCC and the Cabinet for the award of the contract to Tyres-R-US Ltd. As such, in the OCG's considered opinion, the SCJ undertook a competitive bidding exercise and sought and obtained the requisite approvals.

However, prior to the conduct of the Open Tender exercise, the SCJ received an offer from Tyres-R-US Ltd., for the supply of harvesters, sometime in 2006 October. Upon the receipt of the referenced offer, the representatives of the SCJ visited the premises of John Deere Thibodaux, along with representatives of Tyres-R-US Ltd. and examined the harvesters which were being offered. After the inspection of the harvesters by Mr. Wray Mendez and Mr. John Gayle, they informed the SCJ Board of Directors that the referenced equipment was suitable for the SCJ's use.

Consequently, the SCJ Board of Directors instructed that an Open Tender exercise should be conducted. This tender exercise was undertaken in 2006 December and Tyres-R-US Ltd. was subsequently evaluated as the preferred bidder.

Based upon the foregoing, the OCG has concluded that the above detailed circumstances have raised questions about the propriety and regularity of the tender process which led to the award of the contract to Tyres-R-US Ltd. In this regard, the questions which are raised include, *inter alia*, the following:

- (a) Did the SCJ after meeting with Tyres-R-US Ltd. tailor the specifications in the 2006 December tender document to mirror the harvesters which Tyres-R-US Ltd. had presented to it in 2006 October?

- (b) Having already presented the harvesters to the SCJ, was Tyres-R-US Ltd. given an unfair advantage in allocating twenty (20) out of a possible one hundred (100) points for 'Delivery Time' in the evaluation criteria for the tenders?

In light of the fact that (a) Tyres-R-US Ltd. approached the SCJ with regard to the said harvesters prior to the tender exercise in 2006 December and (b) the SCJ examined the harvesters which were being offered by Tyres-R-US Ltd. prior to the tender exercise, the OCG hereby concludes that questions may be raised with respect to the propriety and regularity of the bidding process which led to the award of the contract to Tyres-R-US Ltd.

It should be noted, however, that irrespective of the foregoing questions which may be raised about the propriety and/or irregularity of the bidding process, the OCG has not found any evidence to indicate that the award of the contract to Tyres-R-US Ltd. was unmeritorious.

6. The OCG was only able to compare the offers which were actually received by the SCJ in response to the tender invitation. In this regard, Tyres-R-US Ltd. provided the SCJ with the most cost-effective offer as it submitted a bid of J\$37,426,200.00, while MAPEX submitted a bid of \$51,039,548.00. However, it should be noted that based upon the OCG's calculations of prices stated in the Evaluation Report, the total bid price for MAPEX should have been \$51,039,547.50 and not \$51,039,548.00.
7. The OCG also sought to ascertain the merits of the allegations that the "*...procurement process was circumvented by advance payments being made to Partek as money owing to them.*"

In this regard, the OCG's Investigation revealed that the SCJ has made several advance payments to (a) Partek Trading Ltd. and (b) P Factor. In point of fact, Partek Trading Ltd. was paid a total of US\$150,000.00 and J\$2,244,722.00 between 2007 February and 2008

June. On the other hand, P. Factor was paid US\$150,000.00 and J\$3,015,600.00 between 2008 January and June.

Having regard to the foregoing, the OCG sought to ascertain whether the SCJ requested and received an advance payment surety prior to the payments being made to the referenced contractors.

In this regard, it is instructive to note that Mr. Donovan Stanberry, Permanent Secretary, MAF, in his response to the OCG's Requisition, which was dated 2009 February 26, stated, *inter alia*, that "**I am advised by the SCJ that it did not request, neither did it receive surety for the advance payments made to Partek and/or P. Factor, as Partek was a long established supplier to SCJ.** Indeed, in conducting procurement in this manner the SCJ has never suffered any loss, as its suppliers are traditionally long standing and reputable entities."⁶ (OCG Emphasis)

Further, the former President of the SCJ, Dr. Richard Harrison, in his response to the OCG's Requisition, which was dated 2010 March 12, informed the OCG as follows:

"I am aware that some advanced payments were made to the referenced contractor; however, I cannot recall the details

The rationale for making the payment was to facilitate the timely delivery of the goods given the tight timelines under which we operated and in particular, the need to have factories and field equipment prepared for the crop...

Advanced payments are usually authorized by the Board of Directors after consultation with the Chairman Mr. Maurice Jackson, Chief Financial Officer and myself.⁷ (OCG Emphasis)

⁶ Mr. Donovan Stanberry. Response to the OCG's Requisition. 2010 February 26

⁷ Dr. Richard Harrison. Response to the OCG's Requisition. 2010 March 12. Question 1

Dr. Richard Harrison, in his response to the OCG's Requisition, which was dated 2010 March 12, also informed the OCG that "*The decision to request surety from a Supplier is based on the relationship between the company and SCJ and an assessment of the risk involved in making the advanced payments.*"⁸ (OCG Emphasis)

Having regard to the foregoing, the OCG found that the SCJ did not request and/or receive an advance payment security from Partek Trading Ltd. and/or P Factor Trading. As such, the OCG found that the SCJ breached Section 6.1.33 of the GPPH (2001 May).

Section 6.1.33 of the GPPH (2001 May) provides that:

*"Where advance payments are to be made, these will only be allowed upon presentation of an advance payment security. No advance payment shall be made without provision of a surety in the full value of the advance."*⁹

8. Based upon the representations which have been made to the OCG, the OCG has concluded that Mr. John Gayle was not involved in the initial negotiations for the purchase of trailers and equipment in Florida on behalf of the SCJ.

Mr. Donovan Stanberry, in his response to the OCG's Requisition, which was dated 2009 October 14, stated, *inter alia*, as follows:

"...the SCJ Board was advised on June 25, 2007 of the availability of factory spares,(see copy of Board Minutes – Attachment No. 8), viz. centrifugal baskets spares, in Florida, consequent on the dismantling of a sugar factory in South Florida.
Upon receiving this advice, and conscious that the SCJ was already late in procuring spare parts for the start of the 2007/08 crop in December and against the background of the severe financial constraints being faced by the company, the Chairman dispatched a

⁸ Dr. Richard Harrison. Response to the OCG's Requisition. 2010 March 12. Question 5

⁹ GPPH. Section 6.1.33. 2001 May.

team comprising Mr. Josh Jadoo, a Director of the SCJ Board, Mr. James Dawkins (Director of Engineering Services- SCJ) and Lt. Colonel Richard Sadler (retired) (Chairman's Assistant) to follow up on this lead. (OCG Emphasis)

While pursuing the centrifugal baskets in Florida, the team became aware of the availability of 30- ton cane trailers which the SCJ also required. The team was advised that due to the interest of other purchasers in these equipment & parts an immediate deposit was required to secure them...

The aforementioned visit transpired whilst Mr. John Gayle (Director Agricultural Services) was on leave. *Upon his return, he undertook a review of the specs relating to the cane trailers, since he had direct responsibility for agricultural operations. He expressed some reservations in relation to the specs for the cane trailers which prompted another visit to Florida. A team comprising Mr. John Gayle, Mr. Josh Jadoo and Lt. Col. Richard Sadler was dispatched to Florida to review the suitability of the cane trailers. The team after discussions with the vendor and SCJ's appointed agent, agreed on some modifications.”¹⁰ (OCG Emphasis)*

Of import is the fact that Mr. John Gayle was not a member of the team which was sent to negotiate on behalf of the SCJ for the acquisition of the equipment. Further, subsequent to the referenced trip, the SCJ acquired spares and equipment from Alquip Agricultural Equipment Supply, Inc. which had the rights to dispose of the equipment and parts.

The referenced transaction, it is alleged, occurred while Mr. John Gayle was on leave, and he only became involved after he raised concerns with regard to the specifications of the equipment which was being purchased. As such, contrary to the allegations, Mr. Gayle only became involved in the transaction after the SCJ had already contracted Partek Trading Ltd. to handle the acquisition of the equipment from Alquip Agricultural Equipment Supply, Inc.

¹⁰ Donovan Stanberry. Response to the OCG's Requisition. 2009 October 14. Question 5

9. Partek Trading Ltd. was appointed an agent by the SCJ to handle the acquisition of equipment from Alquip Agricultural Equipment Supply, Inc. In this regard, Mr. Maurice Jackson, Chief Financial Officer, SCJ, in his response to the OCG's Requisition, which was dated 2010 February 26 stated, *inter alia*, that “...**Partek was asked to act as its agent in all aspects of the arrangements.**”¹¹

Further, Partek Trading Ltd. paid the initial deposit of US\$100,000.00 on behalf of the SCJ to Alquip Agricultural Equipment Supply, Inc. and appointed P Factor Trading to execute the transaction on its behalf.

Mr. Maurice Jackson, in his response to the OCG's Requisition, which was dated 2010 February 26, also stated, *inter alia*, as follows:

- i. “*The initial cost of each trailer was agreed with the vendor/owner at US\$14,000 as is where is. Estimated cost delivered to SCJ was approximately \$1,870,000.00.*”
- ii. *Partek &/or its representative in Florida is to be **reimbursed** for agreed expenditure in modifying and making the units road worthy and shipping to Jamaica and for delivery to SCJ. They are also to be paid a commission of 5% for their services.*
- iii. *SCJ agreed to pay the amount discussed and indicated by the vendor/owner plus any costs incurred to receive the trailer in Jamaica. **There is to be no mark-up on the vendors [sic] price and Partek is entitled to an agreed commission of 5%.***
(OCG Emphasis)
- iv. *Final payment was \$1,975,193”¹²*

¹¹ Maurice Jackson. Response to the OCG's Requisition. 2010 February 26. Question 4

¹² Maurice Jackson. Response to the OCG's Requisition. 2010 February 26. Question 9

However, it is instructive to note that the OCG has concluded that the referenced commission payment of J\$1,975,193.00 was not reported to the OCG on the QCA Reports which were submitted by the SCJ for 2007.

The payment of the referenced commission, and what appears to be the failure on the part of the SCJ to report same, to the OCG, on the prescribed QCA reporting form, is a matter in respect of which the OCG will be seeking further particulars from the SCJ's and the MAF's Accounting Officer, Mr. Donovan Stanberry.

The OCG is obliged to pursue this matter in light of the fact that the SCJ is lawfully required to submit, to the OCG, via its QCA Reports, the particulars of all contracts which were awarded by it within the relevant QCA contract value ranges. Consequently, a failure, on the part of the SCJ to report same, would constitute a *prima facie* breach of Section 29(b) (ii) of the Contractor General Act.

Section 29(b) (ii) of the Contractor-General Act provides, *inter alia*, as follows:

“Every person who –

... (b) without lawful justification or excuse –

i. ...

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

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.”

10. The OCG found that Partek Trading Ltd. submitted an “*unsolicited proposal*” to the SCJ which resulted in the SCJ purchasing used harvesters via the Sole Source Procurement Methodology.

In this respect, Mr. Donovan Stanberry, in his response to the OCG's Requisition, which was dated 2009 October 14, stated, *inter alia*, that "**In respect to the Harvester Used Parts items in the referenced list, these, were the subject of an unsolicited proposal made to the company.** SCJ was also looking for these parts and accepted the offer after evaluating alternative solutions (report available on file for inspection). The company found the offer to be economically beneficial as these parts could not be sourced anywhere else in Jamaica."¹³ (OCG Emphasis)

Further, Mr. Donovan Stanberry, in his response to the OCG's Requisition, which was dated 2010 February 26, stated, *inter alia*, as follows:

*"The parts in question are used parts, which Partek Trading Ltd would have cannibalized from old harvesters. **In the particular instance, Partek personnel through telephone calls sought to interest SCJ's operators at the local level in these parts.** It is not unusual for suppliers to directly contact technical personnel at the estate level. **After this telephone contact was made, consultations ensued with the Purchasing Dept., after which the parts in question were inspected to ascertain suitability. Upon being satisfied that these parts were suitable an "Internal Purchase Requisition" was triggered and a formal quotation sought from the Supplier...***

We are unable to be specific on the dates of contact as the services of some of the personnel who worked in the Tractor & Transport departments were terminated via redundancy in December 2008...

Each individual quotation was assessed by the purchasing Manager Mr. Lincoln Morris in the usual manner that all purchases of this nature are done.** At this stage of the process the **Purchasing Manager carries out an assessment to determine price

¹³ Donovan Stanberry. Response to the OCG's Requisition. 2009 October 14. Question 5

validity and ensure that goods / services are procured at a minimum; in this regard consideration is given to alternate sources of supply.

This being an unsolicited and unique business opportunity, there were no other offers and as far as the company was aware, no other supplier in Jamaica had used harvester parts available for sale at that time...¹⁴ (OCG Emphasis)

11. The OCG has concluded that several of the contracts were reportedly awarded to Partek Trading Ltd., via the Sole Source Procurement Methodology. Having regard to the foregoing, the OCG sought to ascertain whether the requisite approvals, from the Accounting Officer and the NCC, were sought and/or obtained for the use of the Sole Source Procurement Methodology.

In this regard, Mr. Donovan Stanberry, in his response to the OCG's Requisition, which was dated 2009 October 14, stated, *inter alia*, that "Not applicable...This matter was not referred to my attention for Sole Sourcing procurement approval. It is not customary for the SCJ to bypass the Accounting Officer...This matter was not referred to the NCC for Sole Sourcing procurement approval. It is not customary for the SCJ to bypass the NCC."¹⁵ (OCG Emphasis)

It is instructive to note that Mr. Stanberry, in his response to the OCG's Requisition. also indicated that the Chairman of the Board of Directors of the SCJ, Mr. Robert Levy, had approved the transaction. In this regard, Mr. Donovan Stanberry stated that "It should be noted, that the exigencies surrounding this procurement warranted the taking of on the spot decisions after consultations with the Chairman. The matter was brought to a subsequent Board meeting for information/ratification."¹⁶

¹⁴ Mr. Donovan Stanberry. Response to the OCG's Follow-up Requisition. 2010 February 26. Question 2

¹⁵ Donovan Stanberry. Response to the OCG's Requisition. 2009 October 14. Question 5

¹⁶ Donovan Stanberry. Response to the OCG's Requisition. 2009 October 14. Question 5

Consequently, the OCG has concluded that several of the contracts, which were awarded to Partek Trading Ltd., via the Sole Source Method of Procurement, were awarded in breach of Section 2.1.3.4 of the GPPH (May 2001). Section 2.1.3.4 of the GPPH (May 2001), provides, *inter alia*, that:

“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.”¹⁷

12. The OCG has not seen any *prima facie* evidence to suggest that there was impropriety on the part of any individual or entity which contributed to the award (or non-award) of the contracts to (a) Partek Trading Ltd., (b) P Factor, (c) Tyre Warehouse Ltd. and (d) Tyres-R-US Ltd.

Special Note

It is instructive to note that by way of a letter, which was dated 2010 June 3, the SCJ informed the OCG, *inter alia*, as follows:

“This letter serves to inform and confirm that the assets of the Sugar Company of Jamaica Limited (SCJ) have been divested and/or transferred as of July 31, 2009. The assets of SCJ and the operations of the sugar factories previously owned by that company are now the responsibility of SCJ Holdings Limited trading as Sugar Divestment Enterprise (SDE).

During the period following closure to the end of December 2009, SCJ continued to facilitate the operations of SCJ Holdings Limited to enable that company to put in place proper purchasing systems, including the issuing of purchase orders. SCJ Limited has therefore signed and submitted its last Quarterly Report which covers the period October 1, 2009 to

¹⁷ GPPH. Section 2.1.3.4. 2001 May.

December 31, 2009 and the company is now in the process of being wound up.”¹⁸ (OCG Emphasis)

Further, it is instructive to note that on 2010 July 13, the Jamaica Information Service (JIS) published an article, which was entitled “*Gov’t Finalising US\$9 Million Sale of Last 3 Sugar Factories*”¹⁹.

In the referenced article, it was reported, *inter alia*, that “*The Government’s Sugar Divestment Team (SDT) is to finalise a deal soon with China’s COMPLANT International Sugar Industry Company, for the sale of its three remaining sugar factories - Frome, Monymusk and Bernard Lodge - following Monday’s (July 12) green light from the Cabinet.*”²⁰

Having regard to the foregoing and, in particular, the Findings and Conclusions which are detailed herein, the OCG has deemed it prudent to direct its Recommendations to SCJ Holdings Ltd. and the Ministry of Agriculture (MAF), for the benefit of itself and its respective portfolio Public Bodies.

In light of the foregoing, and having regard to the Findings and Conclusion which are discussed in greater detail in this Report, the OCG has respectfully made the following considered Recommendations.

¹⁸ SCJ. Letter to the OCG. 2010 June 3

¹⁹ JIS. “*Gov’t Finalising US\$9 Million Sale of Last 3 Sugar Factories*” 2010 July 13

²⁰ JIS. “*Gov’t Finalising US\$9 Million Sale of Last 3 Sugar Factories*” 2010 July 13

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 breaches of the procurement guidelines, by the SCJ, with respect to (a) securing the requisite approvals of the Accounting Officer and the NCC for the use of the Sole Source Procurement Methodology and, (b) securing advance payment sureties.

It is instructive to note that this is the second instance, in the space of a year, in which the OCG, via a Report of Special Investigation, has identified procurement breaches on the part of a Public Body entity in respect of which the MAF’s Permanent Secretary has Accounting Officer portfolio responsibilities.

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 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.

In the circumstances, the OCG recommends that the MAF and its Accounting Officer should ensure scrupulous compliance, by its respective portfolio Public Bodies, with the Revised Handbook of Public Sector Procurement Procedures (2010 October) which came into effect on January 2, 2011, 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) Securing the requisite contract security where advance payments are made, in conformance with the requirements of Section A7.6.3 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 the 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. The OCG also recommends that the Auditor General conducts an exhaustive Investigation and/or audit into the financial affairs of the SCJ and SCJ Holdings Ltd. The OCG believes that such an exhaustive Investigation is also required in light of the divestment of the remaining GOJ sugar assets.
8. The OCG remains concerned that the **unsolicited proposal** mechanism is a corruption enabling device which can be utilized by unscrupulous Public Officials to direct lucrative multi-million dollar State contracts to connected, undeserving or desired contractors. This can be easily accomplished by influential but corrupt Public Officials who are willing to clandestinely conspire with a contractor to have the contractor approach the State with what appears to be a unique contracting proposal.

It is the OCG's considered position that all such proposals must be tested for propriety, legitimacy, cost-effectiveness, quality, value for money and competitiveness in the open market place.

Consequently, the OCG recommends that Public Bodies, through their respective Accounting and Accountable Officers, should pay keen attention to, and ensure compliance with, Section 1.2 of Volume 2 of 4 of the RHPP, which dictates how unsolicited proposals should be treated and, in particular, with respect to price testing and competitive bidding.

9. Finally, while the OCG's Investigation has not unearthed any *prima facie* evidence of corruption, the nature of the allegations which triggered the OCG's Investigation requires that the OCG should remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption.

The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that "*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*".

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

TERMS OF REFERENCE

Primary Objectives

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

1. Whether there was compliance with the provisions of the Contractor General Act (1983) and the Government of Jamaica Procurement Procedures Handbook (GPPH-2001 May) by the SCJ.
2. The merits of the allegations, which have been made, that Mr. John Gayle conspired with Tyres-R-US, Tyre Warehouse, Partek Trading Limited (Jamaica) and P. Factor (Miami) businesses which are operated by brothers Andrew Buddan, Brian Buddan and Hans Buddan to defraud the SCJ and, by extension, the GOJ.

Specific Objectives

The Investigation also had the following specific objectives:

1. Identify the procurement process which was employed by the SCJ and/or by anyone acting on its behalf, in the award, implementation, execution and/or variation of the contracts which were awarded to Tyres-R-US, Tyre Warehouse, Partek Trading Limited (Jamaica) and P. Factor (Miami).
2. Determine whether there were any breaches of the Government's Procurement Procedures or applicable laws on the part of the SCJ and/or anyone acting on its behalf, in the facilitation, procurement, award, implementation, execution and/or variation of the referenced contracts.

3. Determine whether the process which led to the award of the contracts for the purchase of specified equipment was fair, impartial, transparent and devoid of irregularity or impropriety.

4. Determine whether there was any *prima facie* evidence that would suggest impropriety on the part of any individual or entity which contributed to the award (or non-award) of the contracts to Tyres-R-US, Tyre Warehouse, Partek Trading Limited (Jamaica) and P. Factor (Miami).

METHODOLOGY

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures have been developed and adopted pursuant to the powers which are conferred upon a Contractor General 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 Investigation into the allegations of improper procurement practices at the SCJ 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 Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed, *inter alia*, upon Public Officials and Public Officers by applicable Government Procurement Procedures, the Contractor General Act, the Financial Administration and Audit 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 set of Requisitions/Questionnaires, which was dated 2009 September 11, was sent by the Contractor General to the then Permanent Secretary, Mr. Donovan Stanberry, Ministry of Agriculture and Fisheries (MAF).

Further Requisitions/Questionnaires were subsequently directed to other Public Officials, and other persons and/or entities that were considered material to the Investigation.

Where it was deemed necessary, Follow-up Requisitions were directed to a number of Respondents in an effort to clarify certain issues which were identified in their initial declarations and responses. These Follow-up Requisitions were also designed, *inter alia*, to clarify any discrepancies in the information which was supplied by the Respondents.

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*

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- 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 –*
 - iii. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*
 - iv. fails to comply with any lawful requirement of a Contractor General or any other person under this Act; or*
- (c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,*

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”

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

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

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

1. The following Public Officials were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:
 - (a) Mr. Donovan Stanberry, Permanent Secretary, Ministry of Agriculture and Fisheries;
 - (b) Mr. John Gayle, Chief Operating Officer (the then General Manger), SCJ Holdings Limited;
 - (c) Mr. Maurice Jackson, Chief Financial Officer, SCJ;

- (d) Dr. Richard Harrison, the former President, SCJ.
2. A Follow-up Requisition/Questionnaire, requesting clarification on certain issues, was directed by the OCG to the following Public Official:
- (a) Mr. Donovan Stanberry, Permanent Secretary, Ministry of Agriculture and Fisheries.
3. The following Individuals were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:
- (a) Mr. Andrew Buddan, Director, Partek Trading Ltd.;
- (b) Mr. Brian Buddan, Director, Partek Trading Ltd.
4. A detailed review of the **sworn** certified statements, supporting documents and the records which were provided by the Respondents to the OCG's Requisitions was undertaken.

FINDINGS

The Allegations

On 2009 September 3, under the cover of an official Complimentary Slip, the Prime Minister, the Honourable Bruce Golding, submitted, to the OCG, documentation regarding certain specified transactions, which were alleged to have been conducted and/or negotiated with vendors or third parties, which are based in Louisiana, Florida and Jamaica.

The referenced transactions allegedly involved “*fraudulent activities*” which were said to be related to the procurement of certain equipment by the SCJ.

Below is an extract of certain allegations which were made in the referenced documentation:

1. *“Fraudulent activities took place in the purchasing of equipment for the SCJ by Mr. John Gayle in his former capacity as coordinator for factory services at the Sugar Industry Institute...*
2. *Mr. Gayle is alleged to have conspired with Tyres R US, Tyre Warehouse, Partek Trading Limited (Jamaica) and P. Factor (Miami) businesses which are operated by brothers Andrew Buddan, Bryan [sic] Buddan and Hans Buddan to defraud the SCJ and by extension the GOJ.*
3. *The procurement process was circumvented by advance payments being made to Partek as money owing to them. Partek then used the money to purchase the items, marked it up and then debited the account as a creditor.”²¹*

²¹ Documentation submitted to the OCG from the Prime Minister. 2009 September 3

Further, the documents which were submitted to the OCG by the Prime Minister, the Honourable Bruce Golding, provided four (4) specified cases in which the alleged “*fraudulent activities*” occurred.

These cases are as follows:

1. Case #1

John Gayle went to Louisiana in 2006, negotiated with John Deere Thibodaux for the purchase of six (6) harvesters on behalf of the SCJ. The purchase of these harvesters was done by Mr. Hans Buddan of P. Factor (Miami) who then shipped them to Mr. Andrew Buddan of Tyres R US (Jamaica). Partek Trading Ltd. operated by Mr. Bryan [sic] Buddan then sold the harvesters to the SCJ.

*Four of the six harvesters were purchased for **US\$161,860.000** [sic] and then sold to the SCJ for **J431.0 million** or **US\$456,000.00**. The Buddans made a profit of **US\$294,140.00...***

2. Case # 2

Mr. Gayle went to Florida and negotiated twelve (12) infield trailers and eight (8) tractors. These were 20 years old. P. Factor (Miami) paid US\$3000 each for the infield trailers and through the same process described above, sold them to the SCJ for US\$15,000 each.

The tractors were bought for US\$5000 each and sold to the SCJ for US\$25,000 each.

3. Case # 3

Seventeen trailers were bought in Florida for US\$15,000 each. Purchase of these trailers was done by Hans Buddan and then shipped to Tyres R US. The price at which these trailers were sold to the SCJ has not been determined.

4. Case # 4

Equipment costing US\$229,000.00 were identified at a factory in Florida and purchased by Partek then sold to the SCJ. The price at which these equipment were sold to SCJ has not been determined.”²²

It is also instructive to note that included among the documentation, which was submitted, to the OCG, by the Prime Minister, the Honourable Bruce Golding, on 2009 September 3, was a list of the companies, which were allegedly connected to the referenced “*fraudulent activities*”.

In this regard, the OCG found that the companies, which were allegedly involved in the “*fraudulent activities*”, were (a) Partek Trading Ltd., (b) P. Factor Trading, (c) Tyres- R-US Ltd., and (d) Tyre Warehouse Ltd.

Having regard to the foregoing, the OCG sought to verify the allegations that (a) Partek Trading Ltd., (b) P. Factor Trading, (c) Tyres-R-US Ltd. and (d) Tyre Warehouse Ltd. “*...are operated by brothers Andrew Buddan, Bryan [sic] Buddan and Hans Buddan...*”²³

A search of the website of the Companies Office of Jamaica (ORC), as at 2009 September 10, revealed, *inter alia*, the following:

²² Documentation submitted to the OCG from the Prime Minister. 2009 September 3

²³ Documentation submitted to the OCG from the Prime Minister. 2009 September 3

COMPANY	SHAREHOLDERS	INCORPORATION DATE
Tyres-R-US Ltd.	Andrew Buddan Eudel Buddan Ruby Buddan Sarah Young	1996 September 2
Tyre Warehouse Ltd.	Andrew Buddan Brian Buddan Eudel Buddan Hans Buddan Ruby Buddan Donna Buddan-Crider	1990 March 29
Partek Trading Ltd.	Brian Buddan Hans Buddan	1998 June 9
P. Factor Trading	Not registered in Jamaica	-

Further, it is instructive to note that the OCG in its Requisitions, which were addressed to Mr. Brian Buddan and Mr. Andrew Buddan, which were dated 2010 March 3, asked, *inter alia*, the following questions:

“Please provide an Executive Summary detailing the relationship, if any, between Partek Trading Ltd., Tyres R Us Ltd. Tyre Warehouse Ltd. and P Factor Trading. The summary should include:

- i. The date(s) of incorporation of all four (4) companies;*
- ii. A statement as to the correlation, if any, between the companies, and the circumstances relating to the same;*

iii. A statement as to the core business operations of all four (4) companies.”²⁴

In his response to the OCG’s Requisition, which was dated 2010 March 18, Mr. Brian Buddan stated, *inter alia*, as follows:

“I Brian Buddan am the Managing Director for Partek Trading Limited, Andrew Buddan is the Managing Director for Tyres R Us/Tyre Warehouse Limited, Hans Buddan is the Managing Director for P Factor Trading Incorporated.

I am not aware of the dates of incorporation of Tyres R Us/Tyre Warehouse and P Factor Trading Incorporation. Partek Trading Limited was incorporated in Jamaica June 18, 1998, (refer to certificate of registration #59725).

The correlation between companies is that all three (3) Managing Directors are brothers.

Tyres R Us Ltd./Tyre Warehouse Ltd. deals in the sale of tyres, batteries and vehicle rims. Partek Trading Ltd. deals in the sale of Factory/Agricultural and Commercial new and used equipment and spares.

P Factor Inc. is a general purchasing company based in Miami, Florida.”²⁵

In his response to the OCG’s Requisition, which was dated 2010 March 22, Mr. Andrew Buddan stated, *inter alia*, as follows:

“I, Andrew Buddan, am brother of Brian Buddan, Managing Director of Partek Trading...

²⁴ OCG Requisition to Mr. Andrew Buddan & Mr. Brian Buddan. 2010 March 3. Question 1

²⁵ Brian Buddan. Response to the OCG’s Requisition. 2010 March 18. Question 1

I, Andrew Buddan, am brother of Hans Buddan, President of P-Factor Trading Incorporated...

Tyre Warehouse Limited was incorporated on 29th of March 1990.

Tyres-R-Us Limited was incorporated on the 2nd September, 1996.

Tyres-R-Us Limited is an importer and distributor of automotive products and is registered with the National Contracts Commission.

Tyre Warehouse Limited is the retailer of products imported by Tyres-R-Us Limited.

Tyres-R-Us Limited, on occasion, purchases goods from and sells goods to, Partek Trading Limited.

P-Factor Trading Incorporated, on occasion, purchases goods and services on behalf of Tyres-R-Us Limited.

*The correlation between the companies is that they are all owned by brothers.*²⁶

Based upon the foregoing, the OCG found that the companies, (a) Partek Trading Ltd., (b) P. Factor Trading, (c) Tyres-R-US Ltd. and (d) Tyre Warehouse Ltd., as alleged, are operated by the Buddan brothers, namely, Mr. Andrew Buddan, Mr. Brian Buddan and Mr. Hans Buddan.

Quarterly Contracts Award (QCA) Report Analysis

The OCG conducted an analysis of the QCA Reports, which were submitted to the OCG, by the SCJ, for the period of 2006 May to 2010 May 27. Detailed below are the OCG's findings in respect of the total contracts which were reportedly awarded by the SCJ to (a) Tyre

²⁶ Andre Buddan. Response to the OCG's Requisition. 2010 March 22. Question 1

Warehouse Ltd., (b) Partek Trading Ltd., (c) P. Factor Trading Ltd. and (d) Tyres-R-US Ltd. over the referenced period.

It is instructive to note that the applicable value range for the contracts which were awarded between 2006 and the third (3rd) quarter of 2008 is J\$250,000.00 to J\$3,999,999.99. As at the fourth (4th) quarter of 2008 the applicable value range was elevated to J\$275,001.00 to J\$10,000,000.00.

COMPANY	TOTAL CONTRACTS AWARDED	TOTAL CONTRACT SUM (J\$)
Tyre Warehouse Ltd.	1	310,500.00
P. Factor Trading	15	34,748,436.00
Partek Trading Ltd.	229	285,370,950.00
Tyres-R-US Ltd.	-	-

It is instructive to note that the OCG in its Requisition, which was dated 2009 September 11, that was addressed to Mr. Donovan Stanberry, Permanent Secretary, MAF, asked, *inter alia*, the following questions:

“A review of the Quarterly Contracts Award (QCA) Reports which were submitted to the OCG, by the Sugar Company of Jamaica (SCJ), for the period 2006 April to 2009 June, revealed that several contracts have been awarded to the following companies:

- A. Partek Trading Ltd.;*
- B. P Factor Trading;*
- C. Tyre Warehouse Ltd.*

i. Who, and/or what entity(s) initially initiated contact with each of the contractors which are listed above? Please provide answers to the following

questions and, where possible, provide documentary evidence to substantiate your assertions/responses:

(a) The rationale and purpose for initiating contact in regard to the same;

(b) The name(s) of the entity(ies) and/or individual(s) and the title(s) of the individual(s) who initiated contact, the circumstances relating to same, as well as the date(s) on which such interactions took place;

(c) The name(s) of the contractor representative(s) who was/were approached;

(d) Any other particulars that are pertinent to the negotiation of the contract(s) which was/were negotiated with the referenced contractors.

ii. How did the SCJ, and/or any other Public Body(ies) acting on its behalf go about getting proposals and/or quotations from the referenced contractors?

iii. Please provide the name(s) and title(s) of the SCJ Official(s), Officer(s), Employee(s) and/or anyone acting on its behalf that approved the contract(s) which was/were awarded to each of the listed contractors.”²⁷

In his response to the OCG’s Requisition, which was dated 2009 October 14, Mr. Donovan Stanberry provided, *inter alia*, the following information:

i. “The Sugar Company of Jamaica Ltd (SCJ) started trading with Partek Trading Ltd from SCJ’s inception in January 1994. P Factor Trading is a company registered in Florida and was introduced to SCJ by Partek Trading. Tyre Warehouse Ltd is also one of our Suppliers. In all instances contact was initiated through our Purchasing Department in the normal course of business.

²⁷ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 1

(a) Contact was established in the normal course of business to source parts, equipment and materials for the company's business.

(b) Contact is normally established by the Purchasing Department. Purchasing Managers during the period were Mr. Glenroy Miller (January 2006 to August 2006), Mr. Lincoln Morris (September 2006 to Dec. 2008); other persons were employed at various periods within the department as follows:

Mr. Lloyd Francis – Snr. Purchasing Officer

Mr. Clifford Hastings –Snr. Purchasing Clerk

Mr. Cecil Goulbourne - Purchasing Clerk

The circumstances and reason for contact is in pursuit of the normal course of business. Because of the nature and size of business and the significant number of transactions during the review period, various media of communication were employed. Where initial contact is made via fax, letters or e-mail these are available on file.

(c) Requests for quotations are normally sent by fax to the offices of Partek Trading and not to any specific individual. In the case of Partek Trading Ltd. to Ms. Paulette Brown and/or Mr. Brian Buddan; the contact representative for P Factor Trading is Mr. Hans Buddan; there is no specific individual for contact at Tyre Warehouse Ltd.

(d) No other pertinent information of which we are aware.

ii. Generally, requests for quotations are faxed to suppliers specifying technical and other requirements. However in addition, requests could also be initiated after inspections, visits or telephone calls or e-mail.

iii. *During the review period contracts were approved by the President/CEO, - Mr. Livingston Morrison –Jan. 2006 to July 2006; Dr. Richard Harrison –August 2006 to August 2009.*

The Chief Financial Officer, - Ms. Jacinth Bennett Jan. 2006 to June 2006; Mr. Maurice Jackson – July 2006 to present.”²⁸

With regard to the selection of (a) Partek Trading Ltd., (b) P. Factor Trading and (c) Tyre Warehouse Ltd., it is instructive to note that the OCG, in its Requisition, which was dated 2009 September 11, which was addressed to Mr. Donovan Stanberry, also asked, *inter alia*, the following questions:

“In regard to the selection of the referenced contractors, please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses:

(a) The criteria by which each contractor was assessed and/or evaluated;

(b) Detail the primary conditions of the agreement(s) and/or contract(s) which was/were to be satisfied by each contractor in each instance.”

In his response to the foregoing questions, which was dated 2009 October 14, Mr. Donovan Stanberry stated, *inter alia*, as follows:

(a) “Each Supplier is assessed based on competitiveness of prices, delivery, past performance, reliability, technical expertise (if required).

*(b) For all items purchased from these Suppliers there are supporting documents on individual files related to each transaction, which show the criteria used.”*²⁹

²⁸ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 1

The OCG's review of the QCA Reports, which were submitted by the SCJ for the fourth (4th) quarter of 2007, also revealed that several contracts were awarded to Partek Trading Ltd. using the Sole Source Procurement Methodology.

These included, *inter alia*, the following contracts:

Contracts Awarded to Partek Trading via Sole Source		
Date of Award	Value \$	Contract Description
October 5, 2007	2,706,032.00	Sps for Centrifugal Baskets (Used)
October 5, 2007	3,566,607.00	Sps for Centrifugal Baskets (Used)
October 5, 2007	2,141,877.00	Sps for Centrifugal Baskets (Used)
October 5, 2007	3,155,443.00	Sps for Centrifugal Baskets B (Used)
October 5, 2007	3,413,616.00	Sps for Centrifugal Baskets B (Used)
October 5, 2007	1,845,456.00	Sps for Centrifugal Baskets B (Used)
October 5, 2007	2,706,032.00	Sps for Centrifugal Baskets(Used)
October 5, 2007	1,960,200.00	Sps for Centrifugal Baskets C (Used)
October 8, 2007	3,748,284.00	Sps for Centrifugal Baskets C (Used)
November 16, 2007	3,644,731.00	Cane Cart 30 Ton (used)
November 16, 2007	3,644,731.00	30 Ton Cane Cart (used)
November 19, 2007	2,556,395.00	Harvester Used Parts
November 23, 2007	3,670,935.00	Used Parts Harvester
December 11, 2007	3,644,731.00	Double Axle Cane Trailer 30 Ton (used)
December 11, 2007	3,644,731.00	Double Axle Cane Cart 30 Ton (used)
December 11, 2007	3,644,731.00	Double Axle Cane Cart 30 Ton (used)
December 11, 2007	1,916,756.00	Double Axle Cane Cart 30 Ton (used)
December 11, 2007	1,861,588.00	Austof Chopper Harvesters Sps.
December 11, 2007	3,644,731.00	Double Axle, 30 Ton Tipping Tractor (used)

With regard to the foregoing contracts, the OCG in its Requisition, which was dated 2009 September 11, asked Mr. Donovan Stanberry the following questions:

- i. *“Who, and/or what entity(ies) initiated contact with Partek Trading Ltd. in each instance which has been detailed in the foregoing table? Please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses:*

²⁹ Donovan Stanberry. Response to the OCG's Requisition. 2009 October 14. Question 1

- (a) *The rationale and purpose for initiating contact in regard to the same;*
- (b) *The name(s) of the entity(ies) and/or individual(s) and the title(s) of the individual(s) who initiated contact, the circumstances relating to same, as well as the date(s) on which such interactions took place;*
- (c) *The name(s) of the Partek Trading Ltd. representative(s) who was/were approached;*
- (d) *The name(s) and title(s) of the SCJ Officer(s), Employee(s) and/or Official(s) who approved the contracts;*
- (e) *The criteria by which Partek Trading Ltd. was assessed and/or evaluated in each instance; ”³⁰*

In his response to the OCG’s Requisition, which was dated 2009 October 14, Mr. Stanberry stated, *inter alia*, as follows:

i. (a) and (b):

“The Sugar Company of Jamaica faces a tight deadline each year to secure parts for refurbishing the five factories in preparation for each crop, as well as to secure harvesting equipment for reaping cane from the six estates .

*Having regard to the perennial financial challenge to the enterprise, these parts & equipment are often sourced 2nd hand from whatever source is available. **In this instance, the SCJ Board was advised on June 25, 2007 of the availability of factory spares,(see copy of Board Minutes – Attachment No. 8), viz. centrifugal baskets***

³⁰ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 5

spares, in Florida, consequent on the dismantling of a sugar factory in South Florida.

Upon receiving this advice, and conscious that the SCJ was already late in procuring spare parts for the start of the 2007/08 crop in December and against the background of the severe financial constraints being faced by the company, the Chairman dispatched a team comprising Mr. Josh Jadoo, a Director of the SCJ Board, Mr. James Dawkins (Director of Engineering Services- SCJ) and Lt. Colonel Richard Sadler (retired) (Chairman's Assistant) to follow up on this lead. (OCG Emphasis)

While pursuing the centrifugal baskets in Florida, the team became aware of the availability of 30- ton cane trailers which the SCJ also required. The team was advised that due to the interest of other purchasers in these equipment & parts an immediate deposit was required to secure them. Given the exigencies of the situation, the team sought and obtained approval of the Chairman to engage Partek Trading Ltd who, through their representative in Florida, was in a better position to deal with the complexities of the purchase. Director Jadoo also sought and obtained the approval of the Chairman to confirm the arrangement to acquire the items from Alquip Agricultural Equipment Supply, Inc, a company in Florida who had the rights to dispose of the factory parts and equipment, with a commitment letter (see Attachment No. 7) pending finalization of the purchase arrangements by SCJ . In order to secure the company's interest, Partek a long standing business partner of SCJ, was asked by the SCJ Chairman to act as its agent in all aspects of the arrangements. This involved firming up the agreement to obtain possession after payment in full, oversee the execution and modifications of the said trailers and the shipping of all the items to Jamaica, on its behalf. Partek in turn, appointed P Factor, a company resident in Florida, to execute the same on their behalf.

The aforementioned visit transpired whilst Mr. John Gayle (Director Agricultural Services) was on leave. Upon his return, he undertook a review of the specs relating to the cane trailers, since he had direct responsibility for agricultural operations. He expressed some reservations in relation to the specs for the cane trailers which prompted

another visit to Florida. A team comprising Mr. John Gayle, Mr. Josh Jaddoo and Lt. Col. Richard Sadler was dispatched to Florida to review the suitability of the cane trailers. The team after discussions with the vendor and SCJ's appointed agent, agreed on some modifications.

It should be noted, that the exigencies surrounding this procurement warranted the taking of on the spot decisions after consultations with the Chairman. The matter was brought to a subsequent Board meeting for information/ratification. (OCG Emphasis)

(c) Mr. Brian Buddan, the owner/manager of the business.

(d) Mr. Maurice Jackson, Chief Financial Officer

(e) Please refer to the response to 5 i (b) above. These spare parts & equipment were ordered through Partek Trading Ltd. and, after SCJ's inspection, from Alquip Agricultural Equipment Supply, Inc., which was in possession of the spare parts from the factory which was closed down. Partek Trading, a long standing business partner of SCJ, was asked to act as SCJ's agent in securing these parts. In turn Partek made an initial deposit of US\$100,000 to Alquip. Partek therefore entered the transaction when the management of SCJ deemed it beneficial to the company's interest in having that company act as its agent in all aspects of the arrangements, including overseeing the modification of the trailers and the shipping of the parts & equipment.

(f) **In respect to the Harvester Used Parts items in the referenced list, these, were the subject of an unsolicited proposal made to the company.** SCJ was also looking for these parts and accepted the offer after evaluating alternative solutions (report available on file for inspection). The company found the offer to be economically

beneficial as these parts could not be sourced anywhere else in Jamaica.”³¹ (OCG Emphasis)

With regard to the assertion of an ‘*unsolicited proposal*’, it is instructive to note that the OCG in its Follow-up Requisition, which was dated 2010 February 10, which was addressed to Mr. Donovan Stanberry asked, *inter alia*, the following questions:

“You have asserted that the purchase of the ‘Harvester Used Parts’ from Partek Trading Ltd. on November 19, 2007, was as a result of the submission of an unsolicited proposal. Kindly provide the following information with respect of your assertions:

- i. The date on which the referenced unsolicited proposal was submitted to the SCJ;*
- ii. Detail the circumstances surrounding the submission of the referenced unsolicited proposal;*
- iii. The name(s) and title(s) of the Partek Trading Ltd. Official(s) and/or Employee(s) who submitted the referenced proposal;*
- iv. The name(s) and title(s) of the Sugar Company of Jamaica (SCJ) Official(s) and/or Officer(s) who received the referenced proposal;*
- v. The name(s) and title(s) of the SCJ Official(s) and/or Officer(s) who evaluated the referenced proposal;*
- vi. The name(s) of the other company(ies) from which offers were submitted and which were included in the evaluation process with respect to the purchase of the ‘Harvester Used Parts’;*

³¹ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 5

vii. *The date(s) on which comparable offers were submitted to the SCJ;*

viii. *Any other particulars that are pertinent to the referenced proposal.*³²

In his response to the OCG's Requisition, which was dated 2010 February 26, Mr. Donovan Stanberry stated, *inter alia*, as follows:

- i. *“The parts in question are used parts, which Partek Trading Ltd would have cannibalized from old harvesters. **In the particular instance, Partek personnel through telephone calls sought to interest SCJ's operators at the local level in these parts.** It is not unusual for suppliers to directly contact technical personnel at the estate level. **After this telephone contact was made, consultations ensued with the Purchasing Dept., after which the parts in question were inspected to ascertain suitability. Upon being satisfied that these parts were suitable an “Internal Purchase Requisition” was triggered and a formal quotation sought from the Supplier...**”*

We are unable to be specific on the dates of contact as the services of some of the personnel who worked in the Tractor & Transport departments were terminated via redundancy in December 2008...

- ii. *As stated in question 2 (i) above.*
- iii. *Due to the fact that the initial contact was via telephone at the estate level and due to the termination of the employees since 2008, we are not in a position to say the name and title of the Partek Trading officials...*
- iv. *As stated, in question 2 (iii) above, the initial contact was made via telephone and SCJ cannot identify who the contact was made with since the employment*

³² OCG Follow-up Requisition to Mr. Donovan Stanberry. 2010 February 10. Question 2

of the officers in the Tractor and Transport Division has been terminated since the redundancy of 2008.

- v. *Each individual quotation was assessed by the purchasing Manager Mr. Lincoln Morris in the usual manner that all purchases of this nature are done. At this stage of the process the Purchasing Manager carries out an assessment to determine price validity and ensure that goods / services are procured at a minimum; in this regard consideration is given to alternate sources of supply.*

- vi. *This being an unsolicited and unique business opportunity, there were no other offers and as far as the company was aware, no other supplier in Jamaica had used harvester parts available for sale at that time.*

- vii. *N/A.*

- viii. *No.*³³ (OCG Emphasis)

Further, in an effort to verify the information with regard to the ‘*unsolicited proposal*’, the OCG in its Requisition, which was dated 2010 February 10, that was addressed to Mr. Maurice Jackson, Chief Financial Officer, SCJ, also asked, *inter alia*, the following questions:

“It has been reported that the SCJ received an unsolicited proposal for the supply of ‘Harvester Used Parts’ from Partek Trading Ltd. As such, subsequently, on November 19, 2007, a contract was awarded to Partek Trading Ltd. Kindly provide the following information with respect of the foregoing assertions:

- i. *State whether the report is accurate;*

³³ Mr. Donovan Stanberry. Response to the OCG’s Follow-up Requisition. 2010 February 26. Question 2

- ii. *The date on which the referenced unsolicited proposal was submitted to the SCJ;*
- iii. *Detail the circumstances surrounding the submission of the referenced proposal;*
- iv. *The name(s) and title(s) of the Partek Trading Ltd. Official(s) and/or Employee(s) who submitted the referenced proposal;*
- v. *The name(s) and title(s) of the SCJ Official(s) and/or Officer(s) who received the referenced proposal;*
- vi. *The name(s) and title(s) of the SCJ Official(s) and/or Officer(s) who evaluated the referenced proposal;*
- vii. *The name(s) of the other company(ies) from which offers were submitted and which were included in the evaluation process with respect to the purchase of the 'Harvester Used Parts';*
- viii. *The date(s) on which comparable offers were submitted to the SCJ;*
- ix. *Any other particulars that are pertinent to the referenced unsolicited proposal.*³⁴

In his response to the OCG's Requisition, which was dated 2010 February 26, Mr. Maurice Jackson stated, *inter alia*, as follows:

³⁴ OCG Requisition to Mr. Maurice Jackson. 2010 February 10. Question 8

- i. *“The contract (SCJ’s Purchase Order No 24104 dated November 19, 2007 shown at Attachment 4) issued to Partek, originated from an unsolicited offer from that company for used harvester parts.*

- ii. *The unsolicited proposal was initiated by telephone calls to local personnel primarily at Frome and Bernard Lodge Estates where there were harvesters in use, and not to one specific individual. It is not unusual for contact to initially take place at the local level when the estate’s operators need technical parts and equipment not readily available as a shelf item or, items of unique specification, as this ensures that such specifications are correctly decided and agreed prior to committing funds for their purchase. I am unable to be specific on the dates of contact as the services of some of those personnel, who work in the Tractor & Transport departments, were terminated via redundancy in December 2008; we confirm however that subsequent to Partek’s initial telephone contact, the supplier was requested to send written quotations to SCJ.*

- iii. *The parts in question are used, which Partek Trading Ltd would have cannibalized from old harvester(s). In the particular instance, Partek personnel through telephone calls sought to interest SCJ’s operations personnel at the local (Estate) level in these parts...After the initial telephone contact was made, SCJ Divisional representatives consulted with the Head Office Purchasing Dept. **This resulted in the parts in question being inspected to ascertain suitability for SCJ’s purpose. Upon being satisfied that they were suitable an “Internal Purchase Requisition” (IPR) was triggered and a formal quotation sought from the Supplier for that portion of the available parts required by SCJ...***

- iv. *Given the fact that the initial contact was by telephone and that the persons with whom contact was made are no longer with the company I am unable to state with certainty which official made contact with SCJ.*
- v. *...In each instance the quotation was assessed by the purchasing Manager Mr. Lincoln Morris in the usual manner all purchases of this nature are done...*
- vi. *This being an unsolicited and unique business opportunity, there were no other offers and as far as the company was aware, no other supplier in Jamaica had Used Harvesters parts available for sale at that time.*
- vii. *Not applicable.*
- viii. *The decision to purchase these parts was based on the fact that SCJ made use of an unusual business opportunity as these parts would not normally be available in Jamaica in the quantity and prices quoted. Consideration must also be given to the critical state of disrepair of the SCJ's harvesting fleet and the need to ensure that the upcoming crop of sugar cane was taken off with the minimum of down-time from which the company suffered huge losses in previous years.*³⁵ (OCG Emphasis)

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

1. The SCJ, via the Sole Source Procurement Methodology, purchased harvesters used parts from Partek Trading Ltd. based upon an “*unsolicited proposal*”.

³⁵ Maurice Jackson. Response to the OCG's Requisition. 2010 February 26. Question 8

2. The purchase of the harvesters' used parts from Partek Trading Ltd. was deemed by the SCJ to be economically beneficial as "*...these parts could not be sourced anywhere else in Jamaica.*"³⁶
3. The SCJ Board was advised on 2007 June 25 about the availability of factory spares (i.e. centrifugal baskets) in Florida. In this regard, the Minutes of the Meeting of the Board of Directors, SCJ, which was held on 2007 June 25, revealed the following:

"Mr. Dawkins informed the meeting of a Plant in Florida that was being closed, noting that it was likely that SCJ could purchase some of the equipment at a much lower price.

After some discussion it was agreed that Mr. Dawkins and Mr. Jaddoo who has been in contact with the factory would visit Florida to inspect the equipment identified by Mr. Dawkins with a view to purchasing some of the items needed."³⁷

4. Mr. Josh Jaddoo, Director, SCJ, Colonel Richard Sadler (retired), Chairman's Assistant and Mr. James Dawkins, Director of Engineering Services, SCJ, were sent to Florida to follow up with the information which was discussed in the referenced meeting of the Board of Directors, which was held on 2007 June 25.
5. On the referenced trip to Florida, the SCJ team became aware of the availability of a 30-ton cane trailer which the SCJ allegedly required. However, due to the interest of other parties in the said piece of equipment, the SCJ team was allegedly advised that an immediate deposit was required to secure the items.
6. Approval from the Chairman of the Board of Directors of the SCJ was allegedly sought and obtained for the engagement of Partek Trading Ltd. to handle the referenced transaction on behalf of the SCJ.

³⁶ Donovan Stanberry. Response to the OCG's Requisition. 2009 October 14. Question 5

³⁷ Minutes of the Meeting of the Board of Directors. 2007 June 25.

7. It is alleged that Mr. Jaddoo also sought and obtained the approval of the Chairman of the Board of Directors to acquire items from Alquip Agricultural Equipment Supply, Inc. (Florida), which had the right to dispose of the factory parts and equipment.

In this regard, Mr. Donovan Stanberry provided the OCG with a copy of a letter from Alquip Agricultural Equipment Supply, Inc., which was signed by a 'J Jaddoo' on 2007 August 3.

The referenced letter indicated that it was “A statement of understanding on purchasing/Sale of equipment” and provided, *inter alia*, as follows:

“This statement is between the Sugar Company of Jamaica Ltd (SCJ) “the buyer” and Alquip Agricultural Equipment Supply, Inc. “the seller” whereby the buyer has identified sugar factory and field equipment and is undertaking to buy these said equipment and the “seller” is undertaking to retain and make good the delivery as specified below:

Item identified to date:

1. *Code 601: as per proforma invoice “Batch/Quote 675” Three (3) H.G. Centrifugal Basket@ \$88,000.00 each (Maximum) Total \$264,000.00, Freight on truck.*
2. *Code 309: One (1) rotary vacuum (filter subject to availability) (Maximum) Total \$107,250.00, Freight on truck.*
3. *Cane carts 30 tons: Nineteen (19) @ \$14,000.00 each (Maximum) Total \$266,000.00, Freight on truck.*

Total for all items: Six hundred and thirty seven thousand two hundred and fifty dollars US (\$637,250.00)

30% Deposit: One hundred and ninety one thousand one hundred and seventy five dollars US (\$191,175.00)

Deposit already given: One hundred thousand dollars US (\$100,000.00)

Deposit owed on 31/08/07: Ninety one thousand one hundred and seven [sic] five dollars US (\$91,175.00)

Terms of payment:

(A) The “seller” will retain the One Hundred Thousand Dollars (US) deposit received on this order.

*(B) This statement will be **superseded** by an agreement to be executed on the 31/08/07 by the said party’s [sic] when an additional sum of \$91,175.00 will be paid to keep this deposit to Thirty percent (30%) of the total sale price agreed. Delivery to be specified in agreement.”³⁸*

8. With regard to the foregoing transactions, it is alleged that the SCJ Board Chairman asked Partek Trading Ltd., “...a long standing business partner of SCJ...”, to act as the representative of the SCJ.
9. The engagement of Partek Trading Ltd., in the referenced circumstances, involved “...firming up the agreement to obtain possession after payment in full, oversee the execution and modifications of the said trailers and the shipping of all the items to Jamaica, on its behalf.”³⁹

³⁸ Alquip Agricultural Equipment Supply, Inc. Statement with SCJ signed on 2007 August 3

³⁹ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 5

10. It is also alleged that Partek Trading Ltd. “...appointed P Factor, a company resident in Florida, to execute the same on their behalf.”⁴⁰
11. Mr. John Gayle was allegedly on leave when the referenced visit to Florida occurred.
12. Upon Mr. John Gayle’s return to work, it was alleged that he undertook a review of the specifications relating to the cane trailers and expressed some reservations in relation to the specifications. This prompted another visit to Florida, by the SCJ team, which comprised of Mr. Josh Jadoo, Ltd. Colonel Richard Sadler and Mr. John Gayle. It is also alleged that after discussions with the vendor and SCJ’s appointed agent (Partek Trading Ltd.) modifications were agreed on.
13. The initial deposit of US\$100,000 was allegedly made by Partek Trading Ltd. on behalf of the SCJ.

Approvals for the use of the Sole Source Procurement Methodology

Having regard to the contracts, which were awarded to Partek Trading Ltd., via the Sole Source Procurement Methodology, it is instructive to note that the OCG in its Requisition, which was dated 2009 September 11, asked Mr. Donovan Stanberry the following questions:

“Please state whether you, in your capacity as the Accounting Officer in the Ministry of Agriculture and Fisheries (MAF), approved the use of the Sole Source Methodology for each of the listed contracts.

(a) If yes, please state the date(s) on which this was done and provide documentary evidence of the same.

⁴⁰ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 5

(b) If no, why was this not done and is it customary for the SCJ to bypass the Accounting Officer when using the Sole Source Method of procurement.”⁴¹

In his response to the OCG’s Requisition, which was dated 2009 October 14, Mr. Stanberry stated, *inter alia*, “*Not applicable. The circumstances of this procurement are outlined in 5 i above. This matter was not referred to my attention for Sole Sourcing procurement approval. It is not customary for the SCJ to bypass the Accounting Officer.*”⁴²

Further, the OCG in its Requisition, which was dated 2009 September 11, also asked Mr. Donovan Stanberry, the following questions:

“Please state whether prior approval was sought from the National Contracts Committee (NCC) for the use of the Sole Source Methodology in each instance?

(a) If yes, please state the date(s) on which this was done and provide documentary evidence of the same.

(b) If NCC approval was granted, please provide the date(s) on which this was done and provide documentary evidence of the same.

(c) If no, why was this not done and is it customary for the SCJ to bypass the NCC when using the Sole Source Method of procurement.”⁴³

In his response to the OCG’s Requisition, which was dated 2009 October 14, Mr. Stanberry stated, *inter alia*, that “*No. The circumstances of this procurement are outlined in 5 i above. This matter was not referred to the NCC for Sole Sourcing procurement approval. It is not customary for the SCJ to bypass the NCC.*”⁴⁴

⁴¹ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 5

⁴² Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 5

⁴³ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 5

⁴⁴ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 5

It is instructive to note that Mr. Stanberry in his response to question number 5(i) indicated that the Chairman of the Board of Directors of the SCJ had approved the transaction. In this regard, Mr. Stanberry stated that *“It should be noted, that the exigencies surrounding this procurement warranted the taking of on the spot decisions after consultations with the Chairman. The matter was brought to a subsequent Board meeting for information/ratification.”*⁴⁵

Based upon the foregoing, the OCG found that the contracts which were awarded to Partek Trading Ltd., via the Sole Source Method of Procurement, were awarded in breach of Section 2.1.3.4 of the GPPH (May 2001). Section 2.1.3.4 of the GPPH (May 2001), provides, *inter alia*, that:

*“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.”*⁴⁶

Advance Payments

In light of the allegations that the *“...procurement process was circumvented by advance payments being made...”*, it is instructive to note that the OCG in its Requisition, which was dated 2009 September 11, which was addressed to Mr. Donovan Stanberry, asked, *inter alia*, the following questions, with regard to (a) Partek Trading Ltd., (b) P. Factor Trading and (c) Tyre Warehouse Ltd.:

“Please state whether advance payment(s) was/were made to any of the referenced contractors. If yes, please provide answers to the following questions and, where possible, provide documentary evidence to substantiate your assertions/responses:

(a) The rationale and purpose for making such payment(s);

⁴⁵ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 5

⁴⁶ GPPH. Section 2.1.3.4. 2001 May.

(b) *The date(s) on which payment(s) was/were made;*

(c) *The particulars relating to each instance payment was made including the amount(s) paid;*

(d) *The name(s) and title(s) of the person(s) who authorised such payment(s). ”⁴⁷*

In his response to the OCG’s Requisition, which was dated 2009 October 14, Mr. Stanberry stated, *inter alia*, that:

“Deposits were paid on some Purchase Orders as shown in Attachment No. I-A. The report also answers the queries in (a) to (c) below....

Advance payments were authorized by:-

a. the President/CEO Mr. Livingston Morrison – Jan 2006 to August 2006

b. the President/CEO Dr. Richard Harrison between the period September 2006 to August 2009

AND/OR

c. the Chief Financial Officer, Miss Jacinth Bennett Jan 2006 to June 2006

d. the Chief Financial Officer, Mr. Maurice Jackson July 2006 to present”⁴⁸

Below is a verbatim extract of the information, which was detailed by Mr. Donovan Stanberry, in the referenced “Attachment No. I-A”:

⁴⁷ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11

⁴⁸ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 1

ADVANCE PAYMENTS MADE					
Date	Company	Amount (US\$)	Amount (J\$)	Reasons for Payment	Particulars re Purchase
16-Feb-07	Partek Trading	150,000.00	-	Payment made as down payment & commitment to purchase Harvesters	Purchase of USED HARVESTERS from TYRES R US with a Contract value of Ja\$37,426,200.00. Payment was made to Partek on request of Tyres R US (see copy of letter from TYRES-R-US Ltd. at Attachment 1-A (i))
14-Jan-08	P. Factor Trading	150,000.00	-	Payment was made as a deposit to secure equipment pending completion of purchase arrangements & readiness for shipment	PURCHASE OF USED Hi-Tip Wagon & Tractors...
12-Jun-08	Partek Trading	-	1,734,102.50	Payment made in accordance with terms of supply of materials	Purchase covered 1,300 Bags of Castable Refractory Cement as specified on Purchase Order # S0009 for a value of Ja\$ 3,468,205
12-Jun-08	Partek Trading	-	510,619.50	Payment made in accordance with terms of supply of materials	Purchase covered 60 Pails Brick Mortar & 3,000 Bricks as specified on Purchase Order # S0010 for a value of Ja. \$1,021,239.00

ADVANCE PAYMENTS MADE					
Date	Company	Amount (US\$)	Amount (J\$)	Reasons for Payment	Particulars re Purchase
20-Jun-08	P. Factor Trading	-	3,015,600.00	Deposit was made in accordance with agreed terms of Purchase	Purchase of one re-conditioned Front-end Cane Loader for a value of US \$139,850.00; the deposit made was US \$42,000 @ exchange rate of 71.80

Having regard to the foregoing, the OCG, in its Follow-up Requisition, that was addressed to Mr. Donovan Stanberry, which was dated 2010 February 10, asked, *inter alia*, the following questions:

*“In your response to the OCG’s Requisition, which was dated October 14, 2009, you provided ‘Attachment No. 1A’, which detailed the circumstances under which the SCJ made several advance payments to Partek Trading Ltd. and P Factor Trading. In each instance, which has been detailed by you, state whether the SCJ requested and received an advance payment surety prior to the payments being made. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”*⁴⁹

In his response to the OCG’s Requisition, which was dated 2009 February 26, Mr. Stanberry stated, *inter alia*, that **“I am advised by the SCJ that it did not request, neither did it receive surety for the advance payments made to Partek and/or P. Factor, as Partek was a long established supplier to SCJ.** *Indeed, in conducting procurement in this manner the SCJ has never suffered any loss, as its suppliers are traditionally long standing and reputable entities.”*⁵⁰ (OCG Emphasis)

⁴⁹ OCG Requisition to Mr. Donovan Stanberry. 2010 February 10. Question 5

⁵⁰ Mr. Donovan Stanberry. Response to the OCG’s Requisition. 2010 February 26

It is also instructive to note that the former President of the SCJ, Dr. Richard Harrison, in his response to the OCG's Requisition, which was dated 2010 March 12, informed the OCG as follows:

"I am aware that some advanced payments were made to the referenced contractor; however, I cannot recall the details

The rationale for making the payment was to facilitate the timely delivery of the goods given the tight timelines under which we operated and in particular, the need to have factories and field equipment prepared for the crop...

Advanced payments are usually authorized by the Board of Directors after consultation with the Chairman Mr. Maurice Jackson, Chief Financial Officer and myself.⁵¹ (OCG Emphasis)

Dr. Richard Harrison, in his response to the OCG's Requisition, which was dated 2010 March 12, also informed the OCG that **"The decision to request surety from a Supplier is based on the relationship between the company and SCJ and an assessment of the risk involved in making the advanced payments."**⁵² (OCG Emphasis)

Having regard to the foregoing, the OCG found that the SCJ did not request and/or receive an advance payment security from Partek Trading Ltd. and/or P Factor Trading. As such, the OCG found that the SCJ breached Section 6.1.33 of the GPPH (May 2001), which provides as follows:

⁵¹ Dr. Richard Harrison. Response to the OCG's Requisition. 2010 March 12. Question 1

⁵² Dr. Richard Harrison. Response to the OCG's Requisition. 2010 March 12. Question 5

*“Where advance payments are to be made, these will only be allowed upon presentation of an advance payment security. No advance payment shall be made without provision of a surety in the full value of the advance.”*⁵³

Role of Mr. John Gayle

On 2009 September 3, the Prime Minister, the Hon. Bruce Golding submitted, to the OCG, certain documentation in which the following, *inter alia*, specific allegations were raised with regard to Mr. John Gayle:

1. **“Fraudulent activities took place in the purchasing of equipment for the SCJ by Mr. John Gayle in his former capacity as coordinator for factory services at the Sugar Industry Institute. (OCG Emphasis)**
2. **Mr. Gayle is alleged to have conspired with Tyres R US, Tyre Warehouse, Partek Trading Limited (Jamaica) and P. Factor (Miami) businesses which are operated by brothers Andrew Buddan, Bryan Buddan and Hans Buddan to defraud the SCJ and by extension the GOJ.”**⁵⁴ (OCG Emphasis)

Having regard to the foregoing, the OCG in its Requisition, which was dated 2009 September 11, asked Mr. Donovan Stanberry, the following questions:

“Was Mr. John Gayle, at any time, an employee, official and/or representative of the SCJ, the SCJ Holdings Ltd., the MAF and/or any other Public Body(ies) which was/were involved in the (1) negotiations, (2) procurement, (3) award, (4) implementation and/or (5) execution of contract(s) which was/were awarded for and on behalf of the SCJ?”

⁵³ GPPH. Section 6.1.33. 2001 May.

⁵⁴ Documentation submitted to the OCG from the Prime Minister. 2009 September 3

i. *If yes, please provide the following information:*

(a) *Mr. John Gayle's respective job title(s) and his associated responsibilities and duties;*

(b) *The date(s) on which he held the substantive post(s) listed in (a) above and the date(s) on which he demitted the said post(s);*

(c) *Did/does Mr. John Gayle have the authority to approve payments?*

(d) *Did/does Mr. John Gayle have the authority to approve the award, implementation and/ or variation of contract(s)?*

ii. *If the answer to (i) above is no, please state whether Mr. John Gayle had any role and/or responsibilities in the award, implementation and/or variation of contracts which were awarded for and on behalf of the SCJ.*"⁵⁵

In his response to the OCG's Requisition, which was dated 2009 October 14, Mr. Donovan Stanberry stated, *inter alia*, that "Mr. Gayle as an employee of SCJ, was authorized to negotiate, and implement contracts duly approved by the company. He also carries that responsibility as an employee of SCJ Holdings Ltd. since July 22, 2009."⁵⁶

Mr. Donovan Stanberry in his response to the OCG's Requisition, which was dated 2009 October 14, also stated, *inter alia*, as follows:

"During the period of the OCG's review, Mr. Gayle was employed to the Sugar Company of Jamaica Ltd as the Director of Agricultural Services with corporate responsibility for the agricultural practices and harvesting of sugar cane for the five estates under the

⁵⁵ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 7

⁵⁶ Donovan Stanberry. Response to the OCG's Requisition. 2009 October 14. Question 7

*management of SCJ. His duties included, inter alia, advising on and recommending expenditure on farms and farm equipment. He was seconded to SCJ Holdings Ltd in July 22, 2009 and holds the position of General Manager of that company.”*⁵⁷

Further, Mr. Donovan Stanberry informed the OCG that Mr. John Gayle was “*From November 2005 to June 2009 Director -Agricultural Services SCJ Ltd*” and “*From July 2009 to present -General Manager SCJ Holdings Ltd.*”⁵⁸

In addition, Mr. Donovan Stanberry indicated that Mr. Gayle had no authority to approve payments on behalf of the SCJ.

Based upon the foregoing, the OCG found that Mr. John Gayle was authorised to implement and negotiate contracts for and on behalf of the SCJ during the period of 2005 November to 2009 June. Mr. John Gayle, during the referenced period, was not authorised to approve the (a) award and (b) variation of contracts for and on behalf of the SCJ.

It is also instructive to note that the allegations of “*fraudulent activities*”, which involved Mr. John Gayle, were specific to the period of Mr. Gayle’s tenure as the Director – Agricultural Services. It should be noted that Mr. Gayle held this substantive post between 2005 November to 2009 June and, during the said period, he was not authorised to approve the (a) award and (b) variation of contracts for and on behalf of the SCJ.

In this regard, it is instructive to note that Mr. Donovan Stanberry, in his response to the OCG’s Requisition, which was dated 2009 October 14, indicated, *inter alia*, as follows:

“At SCJ (for the period Jan 2006 to July 2009), Mr. Gayle only has the authority to implement contracts relating to his area of responsibility. He had no authority to approve the award or the variation of contracts. (OCG Emphasis)

⁵⁷ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 7

⁵⁸ Donovan Stanberry. Response to the OCG’s Requisition. 2009 October 14. Question 7

At SCJ Holdings (for the period July 22, 2009 to present) in his capacity as General Manager, he has responsibility for all three actions...

At SCJ (for the period Jan 2006 to July 2009), Mr. Gayle only has the authority to implement contracts relating to his area of responsibility. He had no authority to approve the award or the variation of contracts.⁵⁹ (OCG Emphasis)

Having regard to the specific allegations about Mr. Gayle's involvement in "fraudulent activities" with (a) Partek Trading Ltd., (b) P Factor Trading, (c) Tyre Warehouse, and (d) Tyres-R-US Ltd., the OCG, in its Requisition, which was dated 2009 September 11, asked Mr. Donovan Stanberry, the following questions:

"Did Mr. John Gayle, in any way, facilitate the award, implementation, execution and/or variation of any of the contract(s) which was/were awarded to any of the following contractors:

- (a) Partek Trading Ltd.;*
- (b) P Factor Trading;*
- (c) Tyre Warehouse Ltd.;*
- (d) Tyres R US Ltd.*

*If yes, please provide particulars of the same. Please provide documentary evidence, where possible, to substantiate your assertions/responses.*⁶⁰

In his response to the OCG's Requisition, which was dated 2009 October 14, Mr. Stanberry stated, *inter alia*, that "Mr. Gayle was part of a team involved in the evaluation and recommendations relating to acquisition of Trailers, Harvesters, & Agricultural equipment from &/or through Partek Trading Ltd, P Factor Trading Ltd and Tyres R US Ltd. Mr.

⁵⁹ Donovan Stanberry. Response to the OCG's Requisition. 2009 October 14. Question 7

⁶⁰ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 7

Gayle's role involved assessing and making recommendations for the award and the implementation of such award after respective contracts were duly awarded."⁶¹

Mr. Maurice Jackson, Chief Financial Officer, SCJ, in response to the said OCG question, which was dated 2010 February 26, stated, *inter alia*, as follows:

"Mr. John Gayle's involvement in the purchasing process is restricted to provision of technical advise [sic] on acquisition of agricultural equipment prior to decision on purchasing. As Director of Agricultural Services he is called on to properly detail requirements and specifications on capital purchases and for material required for cultivation. To confirm participation he is usually required to place his signature on those purchase orders relating to his area of responsibility, prior to their [sic] being given final approval by the Chief Financial Officer. He is required to signify his agreement with the related transaction by signing on the purchase orders or any other relevant document prior to final approval by the Chief Financial Officer. This also applies to the four suppliers listed above."⁶² (OCG Emphasis)

It is instructive to note that the OCG also asked Mr. John Gayle whether he, in any way, facilitated the award, implementation, execution and/or variation of any contracts which were awarded to (a) Partek Trading Ltd., (b) P Factor Trading, (c) Tyre Warehouse, and (d) Tyres-R-US Ltd.

In this regard, Mr. John Gayle, in his response to the OCG's Requisition, which was dated 2010 January 28, stated, *inter alia*, that:

"Yes, I was a part of a team involved in the acquisition of Trailers, Harvesters, & Agricultural equipment from these Companies for and on behalf of SCJ."

⁶¹ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 7

⁶² Mr. Maurice Jackson. Response to the OCG's Requisition. 2010 February 26. Question 2

My role involved being one of the persons who assessed the equipment to be purchased.
*Thereafter once the award of contract is granted I would be a part of the team who monitored the use of the equipment by Sugar Company of Jamaica Limited.*⁶³ (OCG Emphasis)

Based upon the representations which were made by the Permanent Secretary in the MAF, the Chief Financial Officer at the SCJ and Mr. John Gayle, the OCG found that Mr. Gayle was, in fact, a part of a team which evaluated and recommended the award of contracts to (a) Partek Trading Ltd., (b) P Factor Trading, and (d) Tyres-R-US Ltd. for the acquisition of trailers, harvesters and agricultural equipment.

However, Mr. John Gayle, at the time of the award of the contracts in question to the referenced contractors, did not have the authority to approve the award and/or variation of contracts for and on behalf of the SCJ.

The Allegations with respect to Mr. John Gayle

The documentation which was provided to the OCG on 2009 September 3, by the Prime Minister, the Hon. Bruce Golding, made several allegations with regard to Mr. John Gayle's involvement in "*fraudulent activities*", and provided specifically four (4) cases as proof of said activities. These four (4) cases are as follows:

1. Case #1: In the first instance, the following, *inter alia*, allegations were made:

“John Gayle went to Louisiana in 2006, negotiated with John Deere Thibodaux for the purchase of six (6) harvesters on behalf of the SCJ. The purchase of these harvesters was done by Mr. Hans Buddan of P. Factor (Miami) who then shipped them to Mr. Andrew Buddan of Tyres R US (Jamaica). Partek Trading Ltd. operated by Mr. Bryan Buddan then sold the harvesters to the SCJ. Four of the six harvesters were purchased

⁶³ Mr. John Gayle. Response to the OCG's Requisition. 2010 January 28

for **US\$161,860.00** [sic] and then sold to the SCJ for **J431.0 million** or **US\$456,000.00**. The Buddans made a profit of **US\$294,140.00...**⁶⁴

In support of the foregoing allegations, copies of four (4) invoices were also provided to the OCG. These invoices, which were all dated 2007 March 2, were from John Deere Thibodaux, Inc. and addressed to Tyres-R-US Ltd. The table below details some of the particulars of the referenced invoices:

Quantity	Description	Total Amount US\$	Terms
1	Model CHT2500 Yellow Combine, Year 1998- Harvester Serial Number:10956	30,171.35	Advance Payment
1	Model CHT2500 Yellow Combine, Year 1998- Harvester Serial Number: 12560	56,615.55	Advance Payment
1	Model CHT2500 Yellow Combine, Year 1998- Harvester Serial Number: 12946	37,536.55	Advance Payment
1	Model CHT2500 Yellow Combine, Year 1998- Harvester Serial Number: 12173	37,536.55	Advance Payment
	TOTAL	161,860.00	

It should be noted that included in the total cost of each unit were the following:

- i. Net Price ex factory;
- ii. Export Preparation;
- iii. Inland freight;

⁶⁴ Documentation submitted to the OCG from the Prime Minister. 2009 September 3

- iv. Handling and Documentation;
- v. FCA Mobile, Alabama;
- vi. Ocean Freight;
- vii. Insurance;
- viii. CIF Kingston, Jamaica.

Having regard to the foregoing allegations, the OCG in its Requisition, which was dated 2009 September 11, asked Mr. Donovan Stanberry, Permanent Secretary, MAF, *inter alia*, the following questions:

“In 2006, and/or at any other point in time, did Mr. John Gayle make an official visit on behalf of SCJ, the SCJ Holdings Ltd., the MAF and/or any other Public Body(ies) to negotiate with John Deere Thibodaux, Inc. for the purchase of six (6) harvesters and/or any other equipment? If yes, please provide the following information:

- i. The date(s) on which Mr. John Gayle travelled;*
- ii. The result(s) and/or outcome of his visit(s);*
- iii. The particulars relating to the same;*
- iv. The name(s) and title(s) of the person(s) with whom Mr. John Gayle met.”⁶⁵*

In his response to the OCG’s Requisition, which was dated 2009 October 14, Mr. Donovan Stanberry stated, *inter alia*, that **“NO. Mr. Gayle was not sent to visit or negotiate with John Deere Thibodaux Inc. In October 2006, further to an offer by Tyres R US to sell used harvesters to the SCJ, Mr. Gayle and Mr.Wray Mendez one of SCJ’s Harvester Mechanic who worked at the Frome Estate Division, were sent by SCJ to accompany the representative of Tyres-R-US to Louisiana, to assess the suitability of Harvesters that**

⁶⁵ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 9

were being offered for sale. Mr. Gayle advised that he visited facilities in the town of Thibodaux where the used harvesters were located, but did not meet with any official of John Deere Thibodaux Inc.”⁶⁶(OCG Emphasis)

Further, Mr. Stanberry indicated, *inter alia*, as follows:

“Mr Gayle departed Jamaica on October 9, 2006 and returned on October 11, 2006.

On his return Mr. Gayle advised the Board that the equipment was suitable for SCJ’s purpose and use; the Board then directed that the procurement of the harvesters be tendered. (OCG Emphasis)

The Harvesters were subsequently purchased after going through the Open Tender process (report available), from Tyres -R-Us who was approved as the preferred Supplier. This transaction is included in the information provided at Attachment No. 4. (OCG Emphasis)

On this trip Mr. Gayle and Mr. Mendez met initially with Mr. Hans Buddan and Mr. Carlos Martinez in Florida. Mr. Martinez later accompanied the SCJ representatives to Louisiana. Mr. Gayle advised that they only interacted with persons in the workshop which they visited as Mr. Martinez had previously made the arrangements for their visit to inspect the Harvesters.”⁶⁷

It is instructive to note that the “Attachment No. 4”, which was referred to by Mr. Donovan Stanberry in his above response, indicated that the referenced contract was awarded using the Open Tender Procurement Methodology and was approved by the Cabinet on 2007 February 7, by way of Cabinet Decision No. 5/07.

⁶⁶ Mr. Donovan Stanberry response to the OCG’s Requisition. 2009 October 14. Question 9

⁶⁷ Mr. Donovan Stanberry response to the OCG’s Requisition. 2009 October 14.

The referenced “**Attachment No. 4**” also indicated that the contract amount was \$37,426,200.00.

It is also instructive to note that the OCG found that the referenced award of the contract to Tyres-R-US Ltd. was endorsed by the NCC on 2007 January 17.

In addition, the OCG in its Requisition that was addressed to Mr. John Gayle, which was dated 2010 January 13, also asked, *inter alia*, the following questions:

“In 2006, and/or at any other point in time, did you make an official and/or unofficial visit, to the United States of America, on behalf of the SCJ, the SCJ Holdings Ltd., the MAF and/or any other Public Body(ies) acting on their behalf, to negotiate with John Deere Thibodaux, Inc. for the purchase of six (6) harvesters and/or any other equipment? If yes, please provide the following information:

- i. The date(s) on which you travelled;*
- ii. The result(s) and/or outcome of your visit(s);*
- iii. The particulars relating to the same;*
- iv. The name(s) and title(s) of the person(s) with whom you met.”⁶⁸*

In his response to the OCG’s Requisition, which was dated 2010 January 28, Mr. John Gayle stated, *inter alia*, that “*No, I had no negotiations with John Deere Thibodaux Inc.*”⁶⁹

Further, the Permanent Secretary, Mr. Donovan Stanberry, provided the OCG with several documents, including the evaluation report, a copy of the tender advertisement and a copy of the bid documents for the ‘*Open Tender process*’, which led to the award of the contract to Tyres-R-US Ltd.

⁶⁸ OCG Requisition to Mr. John Gayle. 2010 January 13. Question 3

⁶⁹ Mr. John Gayle. Response to the OCG’s Requisition. 2010 January 28. Question 3

The Tender Evaluation Report indicated that advertisements were published in the Daily Gleaner on 2006 November 12 and 15. The Tender Advertisement and Tender Evaluation Report both indicated that the deadline for submission was 2006 December 5 at 10:10am.

Below is an extract of some of the information, which was detailed in the Tender Evaluation Report:

1. Tender Documents were collected by three (3) companies. The OCG found that the Tender Issuance Forms indicated that documents were collected by Tyres-R-US Ltd., Machinery & Parts Export LLC. (A foreign based company), and Kingston Industrial Agencies.
2. Tenders were submitted by only two (2) of the three (3) companies which had collected the tender document, namely (a) Tyres-R-US Ltd., and (b) Machinery & Parts Export LLC. (MAPEX).
3. *“The Tenders for Lots 1-3 were evaluated by a Technical Team of SCJ, comprising of Messrs John Gayle (Director Agriculture Services), James Dawkins (Director Engineering Services), Lloyd Salmon (Tractors & Transport Manager), Delroy Armstrong (Agronomist/Technical Assistant).”*⁷⁰
4. The particulars, in the Tender Evaluation Report, with regard to the evaluation of the bids are, *inter alia*, as follows:

⁷⁰ SCJ. Tender Evaluation Report-Purchase of Mechanical Harvesters

Tyres R US				MAPEX*			
Year	Type	Machine	Price CIF (J\$)	Year	Type	Machine	Price CIF (J\$)
1996	Cameco	4782	5,309,750	1997	Cameco	2852	10,224,840.00
1998	Cameco	4104	5,979,750	1997	Cameco	5799	7,717,391.50
1998	Cameco	3460	7,118,750	1996	Cameco	6571	7,048,734.00
1995	Austoff	7320	3,299,750	1996	Cameco	N/A	6,630,781.50
1995	Austoff	7460	3,299,750	1998	Cameco	8300	7,676,959.50
1998	Cameco	3980	6,180,750	2001	Cameco	N/A	11,740,841.00
			31,188,500				51,039,546.00

*Price quoted in US\$, exchange rate of J\$66.50 as used by tenderer in submission applied.

i) **“Purchase Price** **50 points maximum**

The lowest tender price (CIF) is assigned the full 50 point.

The number of points for consideration is calculated as under:

$$P = \text{CIFL} / \text{CIF} \times 50$$

P = Number of Points for tender under consideration

CIFL = CIF cost of lowest tender

CIFC = CIF cost for tender under consideration

Bidder	Cost (CIF)	Points
<i>Tyres R US Limited</i>	J\$31,188,500.00	50
<i>MAPEX</i>	J\$51,039,548.00	30.55

(It should be noted that based upon the OCG’s calculations of prices stated above, the total bid price for MAPEX should have been \$51,039,547.50 and not \$51,039,548.00 as was stated in the Tender Evaluation Report.)

ii) **Warranty Period Offered** **20 points maximum**

An estimated servicing and running cost over the warranty period will be calculated.

The total servicing and warranty offered is assigned points as follows:

The unit with the longest warranty is assigned the full 20 points. The number of points for the Tender under consideration is derived as under:

- P* = *WC/WL x 20*
- P* = *Number of points for the Tender under consideration*
- WL* = *Warranty of Longest period offered.*
- WC* = *Warranty for Tender under consideration.*

Lots	Tyres R US Ltd		MAPEX	
	Warranty	Points	Warranty	Points
<i>Lot 1 – Unit 1</i>	<i>3 Months</i>	<i>20</i>	<i>90 Days</i>	<i>20</i>
<i>Lot 1 – Unit 2</i>	<i>3 Months</i>	<i>20</i>	<i>45 Days</i>	<i>10</i>
<i>Lot 2 – Unit 1</i>	<i>3 Months</i>	<i>20</i>	<i>30 Days</i>	<i>6.67</i>
<i>Lot 2 – Unit 2</i>	<i>3 Months</i>	<i>20</i>	<i>30 Days</i>	<i>6.67</i>
<i>Lot 3 – Unit 1</i>	<i>3 Months</i>	<i>20</i>	<i>45 Days</i>	<i>10</i>
<i>Lot 3 – Unit 2</i>	<i>3 Months</i>	<i>20</i>	<i>90 Days</i>	<i>20</i>

*Points: Tyres R US = (120/120)*20 =20*

*MAPEX = (73.34/120) *20=12.22*

iii) Delivery

20 points maximum

- *5 points per week or portion there of [sic] will be deducted from the delivery beyond the period specified in the Supply Schedule.*
- *Full Point for Tender meeting or shorter than the period specified in the Supply Schedule.*

<i>Lots</i>	<i>Required by SCJ</i>	<i>Tyres R US</i>		<i>MAPEX</i>	
		<i>Delivery Period</i>	<i>Points</i>	<i>Delivery Period</i>	<i>Points</i>
<i>Lot 1 – Unit 1</i>	<i>3wks</i>	<i>3wks</i>	<i>20</i>	<i>3wks</i>	<i>20</i>
<i>Lot 1 – Unit 2</i>	<i>3wks</i>	<i>3wks</i>	<i>20</i>	<i>3wks</i>	<i>20</i>
<i>Lot 2 – Unit 1</i>	<i>3wks</i>	<i>3wks</i>	<i>20</i>	<i>4wks</i>	<i>15</i>
<i>Lot 2 – Unit 2</i>	<i>3wks</i>	<i>3wks</i>	<i>20</i>	<i>2wks</i>	<i>20</i>
<i>Lot 3 – Unit 1</i>	<i>4wks</i>	<i>4wks</i>	<i>20</i>	<i>6wks</i>	<i>10</i>
<i>Lot 3 – Unit 2</i>	<i>4wks</i>	<i>4wks</i>	<i>20</i>	<i>6wks</i>	<i>10</i>

$$\text{Points: Tyres R US} = (120/120)*20=20$$

$$\text{MAPEX} = (95/120)*20=15.83$$

iv) Related Services

10 points maximum

The Tenderer with the most favourable related services to the purchaser is assigned the full 10 points. In this case the number of service to the purchaser is assigned the full 10 points. In this case the number of services offered is assigned 25% of the points while the remaining 75% is assigned to the cost of servicing.

The number of points for consideration is calculated as

$$P = VRSE/VRSC \times 10$$

$$P = \text{Number of points for Tender under consideration}$$

VRSE = Value of Related Services most economical.

VRSC = Value of Related Services under consideration.

Lots	Amt. Of Services		Points		Servicing Cost (J\$)		Points	
	Tyres R US	MAPEX	Tyres R US	MAPEX	Tyres R US	MAPEX	Tyres R US	MAPEX
Lot 1 – Unit 1	4	1	2.5	2.5	0	1,704,461.50	7.5	0
Lot 1 – Unit 2	4	1	2.5	2.5	0	873,211.50	7.5	0
Lot 2 – Unit 1	4	1	2.5	2.5	0	611,933.00	7.5	0
Lot 2 – Unit 2	4	1	2.5	2.5	0	611,933.00	7.5	0
Lot 3 – Unit 1	4	1	2.5	2.5	0	734,293.00	7.5	0
Lot 3 – Unit 2	4	1	2.5	2.5	0	1,565,543.00	7.5	0
Lot 1 – Unit 1						6,101,375.00		

*Price quoted in US\$, exchange rate of J\$66.50 as used by tenderer in submission applied.

Points: Tyres R US = 10

MAPEX = 2.5

Summary

Factors	Tyres R US Ltd.	MAPEX
(i) Purchase Price	50	30.55
(ii) Warranty Period Offered	20	12.22
(iii) Delivery	20	15.83
(v) Related Services Offered	10	2.5
Total Score	100	61.1

Recommendation

It is recommended that all three (3) Lots (1,2 &3) be awarded to Tyres R US Limited totalling Jamaican Dollars (including fees), Thirty Seven Million, Four Hundred and Twenty Six Thousand, Two Hundred Dollars (J\$37,426,200).

Note that the Tender sum is not the sole criteria on which the recommendation is made, but is based on all evaluated factors.⁷¹

With regard to **Case #1- The purchase of harvesters from Tyres-R-US Ltd.**, the OCG found, *inter alia*, the following:

- i. According to Mr. John Gayle and Mr. Donovan Stanberry, Permanent Secretary, MAF, Mr. Gayle was not sent to negotiate with John Deer Thibodaux, Inc., in 2006, for the purchase of harvesters.
- ii. The purchase of the harvesters was done pursuant to an Open Tender exercise, which was undertaken by the SCJ, at which time Tyres-R-US Ltd. was evaluated as the preferred bidder.
- iii. The contract value of the referenced transaction was J\$37,426,200.00, and the contract was duly approved by the NCC on 2007 January 17 and the Cabinet on 2007 February 7.
- iv. The competing bid for the supply of harvesters, which was received from MAPEX, was in the amount of J\$51,039,548.00. However, it should be noted that based upon the OCG's calculations of prices stated in the Evaluation Report, the total bid price for MAPEX should have been \$51,039,547.50 and not \$51,039,548.00.

⁷¹ SCJ. Tender Evaluation Report-Purchase of Mechanical Harvesters

- v. It should be noted that the contract which was awarded to Tyres-R-US Ltd. was for the purchase of six (6) harvesters.
- vi. The invoices which were submitted by the “*Very Concerned Taxpayer*”, in support of ‘**Case #1**’, detailed particulars with regard to four (4) harvesters, which allegedly cost US\$161,860.00.

The OCG used the exchange rate of J\$66.5 to US\$1 to convert the alleged price of harvesters. In this regard, the amount for the four (4) harvesters was J\$10,763,690.00. It should be noted that this was the exchange rate that was used in the evaluation of the tenders which were received by the SCJ for the provision of the harvesters.

- vii. However, it should also be noted that the OCG was unable to verify that the referenced invoices were actually for the harvesters which were sold to the SCJ by Tyres-R-US Ltd.
- viii. Based upon the invoices which were provided to the OCG, Tyres-R-US Ltd. purchased the harvesters directly from John Deere Thibodaux, Inc. Further, there was no indication that this was done for and on behalf of the SCJ.
- ix. It should, however, be noted that prior to the conduct of the Open Tender exercise, Tyres R-US-Ltd. had submitted to the SCJ an offer, in 2006 October, to sell it used harvesters. Consequently, Mr. John Gayle and Mr. Wray Mendez were sent by the SCJ to accompany representatives of Tyres-R-US Ltd. to Louisiana to assess the suitability of the harvesters which were being offered by Tyres-R-US Ltd.

- x. On return to Jamaica, Mr. Gayle advised the Board of Directors of the SCJ that the equipment was suitable for SCJ's purposes. In turn, the Board of Directors of the SCJ directed that the procurement of harvesters should be tendered. Consequently, an Open Tender exercise was undertaken by the SCJ in 2006 December.
2. **Cases # 2, 3 and 4:** The OCG found that the following cases appeared to be connected and relate to several contracts which were awarded to Partek Trading Ltd. The referenced allegations for each case were as follows:
- A. Case # 2
*“Mr. Gayle went to Florida and negotiated twelve (12) trailers and eight (8) tractors. These were 20 years old. P. Factor (Miami) paid US\$3000 each for the infield trailers and through the same process described above, sold them to the SCJ for US\$15,000 each.
The tractors were bought for US\$5000 each and sold to the SCJ for US\$25,000 each.*
- B. Case # 3
Seventeen trailers were bought in Florida for US\$15,000 each. Purchase of these trailers was done by Hans Buddan and then shipped to Tyres R US. The price at which these trailers were sold to the SCJ has not been determined.
- C. Case # 4
Equipment costing US\$229,000.00 were identified at a factory in Florida and purchased by Partek then sold to the SCJ. The price at which these equipment were sold to SCJ has not been determined.”⁷²

⁷² Documentation submitted to the OCG from the Prime Minister. 2009 September 3

In this regard, the OCG upon a review of the QCA Reports, which were submitted by the SCJ for the fourth (4th) quarter of 2007, revealed that several contracts were awarded to Partek Trading Ltd. using the Sole Source Procurement Methodology.

These included, *inter alia*, the following contracts:

Contracts Awarded to Partek Trading via Sole Source		
Date of Award	Value \$	Contract Description
October 5, 2007	2,706,032.00	Sps for Centrifugal Baskets (Used)
October 5, 2007	3,566,607.00	Sps for Centrifugal Baskets (Used)
October 5, 2007	2,141,877.00	Sps for Centrifugal Baskets (Used)
October 5, 2007	3,155,443.00	Sps for Centrifugal Baskets B (Used)
October 5, 2007	3,413,616.00	Sps for Centrifugal Baskets B (Used)
October 5, 2007	1,845,456.00	Sps for Centrifugal Baskets B (Used)
October 5, 2007	2,706,032.00	Sps for Centrifugal Baskets(Used)
October 5, 2007	1,960,200.00	Sps for Centrifugal Baskets C (Used)
October 8, 2007	3,748,284.00	Sps for Centrifugal Baskets C (Used)
November 16, 2007	3,644,731.00	Cane Cart 30 Ton (used)
November 16, 2007	3,644,731.00	30 Ton Cane Cart (used)
November 19, 2007	2,556,395.00	Harvester Used Parts
November 23, 2007	3,670,935.00	Used Parts Harvester
December 11, 2007	3,644,731.00	Double Axle Cane Trailer 30 Ton (used)
December 11, 2007	3,644,731.00	Double Axle Cane Cart 30 Ton (used)
December 11, 2007	3,644,731.00	Double Axle Cane Cart 30 Ton (used)
December 11, 2007	1,916,756.00	Double Axle Cane Cart 30 Ton (used)
December 11, 2007	1,861,588.00	Austof Chopper Harvesters Sps.
December 11, 2007	3,644,731.00	Double Axle, 30 Ton Tipping Tractor (used)

With regard to the above referenced contracts, Mr. Donovan Stanberry, in his response to the OCG's Requisition, which was dated 2009 October 14, stated, *inter alia*, that:

*“Having regard to the perennial financial challenge to the enterprise, these parts & equipment are often sourced 2nd hand from whatever source is available. **In this instance, the SCJ Board was advised on June 25, 2007 of the availability of factory spares, (see copy of Board Minutes – Attachment No. 8), viz. centrifugal baskets spares, in Florida, consequent on the dismantling of a sugar factory in South***

Florida. Upon receiving this advice, and conscious that the SCJ was already late in procuring spare parts for the start of the 2007/08 crop in December and against the background of the severe financial constraints being faced by the company, the Chairman dispatched a team comprising Mr. Josh Jadoo,[sic] a Director of the SCJ Board, Mr. James Dawkins (Director of Engineering Services- SCJ) and Lt. Colonel Richard Sadler (retired) (Chairman's Assistant) to follow up on this lead. (OCG Emphasis)

While pursuing the centrifugal baskets in Florida, the team became aware of the availability of 30- ton cane trailers which the SCJ also required. The team was advised that due to the interest of other purchasers in these equipment & parts an immediate deposit was required to secure them. Given the exigencies of the situation, the team sought and obtained approval of the Chairman to engage Partek Trading Ltd who, through their representative in Florida, was in a better position to deal with the complexities of the purchase. Director Jaddo[sic] also sought and obtained the approval of the Chairman to confirm the arrangement to acquire the items from Alquip Agricultural Equipment Supply, Inc, a company in Florida who had the rights to dispose of the factory parts and equipment, with a commitment letter (see Attachment No. 7) pending finalization of the purchase arrangements by SCJ . In order to secure the company's interest, **Partek a long standing business partner of SCJ, was asked by the SCJ Chairman to act as its agent in all aspects of the arrangements.** This involved firming up the agreement to obtain possession after payment in full, oversee the execution and modifications of the said trailers and the shipping of all the items to Jamaica, on its behalf. Partek in turn, appointed P Factor, a company resident in Florida, to execute the same on their behalf. (OCG Emphasis)

The aforementioned visit transpired whilst Mr. John Gayle (Director Agricultural Services) was on leave. Upon his return, he undertook a review of the specs relating to the cane trailers, since he had direct responsibility for agricultural operations. He expressed some reservations in relation to the specs for the cane trailers which prompted another visit to Florida. A team comprising Mr. John Gayle, Mr. Josh Jaddoo and Lt. Col. Richard Sadler was dispatched to Florida to review the suitability of the cane trailers. The team after discussions with the vendor and SCJ's appointed agent, agreed on some modifications.

It should be noted, that the exigencies surrounding this procurement warranted the taking of on the spot decisions after consultations with the Chairman. The matter was brought to a subsequent Board meeting for information/ratification.

(OCG Emphasis)

...In respect to the Harvester Used Parts items in the referenced list, these, were the subject of an unsolicited proposal made to the company. *SCJ was also looking for these parts and accepted the offer after evaluating alternative solutions (report available on file for inspection). The company found the offer to be economically beneficial as these parts could not be sourced anywhere else in Jamaica.”⁷³ (OCG Emphasis)*

Mr. Maurice Jackson, Chief Financial Officer, SCJ, also gave a similar account of the contracting of Partek Trading Ltd. for the referenced transactions.

In this regard, Mr. Jackson, in his response to the OCG's Requisition, which was dated 2010 February 26, stated, *inter alia*, that “*The decision to engage Partek emerged from consideration that SCJ had a long standing business relationship with them and that they had a history of being reliable and cost effective when transacting business with SCJ...Director Jaddo [sic] also sought and obtained the approval of the Chairman to*

⁷³ Donovan Stanberry. Response to the OCG's Requisition. 2009 October 14. Question 5

confirm the arrangement to hold the items from Alquip Agricultural Equipment Supply, Inc, the company in Florida who had the rights to dispose of the factory parts and equipment pending finalization of the purchase arrangements by SCJ.”⁷⁴

Mr. Jackson, in his response to the OCG’s Requisition, which was dated 2010 February 26, further stated, *inter alia*, that “...**Partek was asked to act as its agent in all aspects of the arrangements.** This involved verification of the bona fides of the vendor equipment; protection of SCJ’s interest in the equipment after payment and prior to delivery of the equipment; firming up the agreement to obtain possession after payment in full; oversee the execution and modifications of the said trailers to comply with SCJ’s technical requirements and the export requirements of the USA and, the shipping of all the items to Jamaica. Partek in turn, appointed P Factor...to execute and carry out SCJ’s request and see to the securing of SCJ’s interests in the transaction(s)...”⁷⁵ (OCG Emphasis)

With regard to the engagement of Partek Trading Ltd., in the referenced transaction, it is instructive to note that the OCG in its Requisition, which was dated 2010 February 10, which was addressed to Mr. Maurice Jackson, asked, *inter alia*, for the following particulars:

- i. “...The stated cost of the equipment;*
- ii. The cost of the services which were being provided by Partek Trading Ltd. and/or any other third party;*
- iii. The payment terms of any agreement(s) which was/were reached with respect of the purchase of the equipment;*

⁷⁴ Maurice Jackson. Response to the OCG’s Requisition. 2010 February 26. Question 4

⁷⁵ Maurice Jackson. Response to the OCG’s Requisition. 2010 February 26. Question 4

iv. *The final amount(s) which was/were paid by the SCJ with regard to the acquisition of equipment...*⁷⁶

In his response the OCG's Requisition, which was dated 2010 February 26, Mr. Maurice Jackson stated, *inter alia*, as follows:

i. *"The initial cost of each trailer was agreed with the vendor/owner at US\$14,000 as is where is. Estimated cost delivered to SCJ was approximately \$1,870,000.00.*

ii. *Partek &/or its representative in Florida is to be **reimbursed** for agreed expenditure in modifying and making the units road worthy and shipping to Jamaica and for delivery to SCJ. They are also to be paid a commission of 5% for their services.*

iii. *SCJ agreed to pay the amount discussed and indicated by the vendor/owner plus any costs incurred to receive the trailer in Jamaica. **There is to be no mark-up on the vendors [sic] price and Partek is entitled to an agreed commission of 5%.** (OCG Emphasis)*

iv. *Final payment was \$1,975,193*⁷⁷

Mr. Donovan Stanberry also provided the OCG with a copy of a letter from Alquip Agricultural Equipment Supply, Inc., which was signed by a 'J Jadoo' on 2007 August 3.

⁷⁶ OCG Requisition to Mr. Maurice Jackson. 2010 February 10. Question 9

⁷⁷ Maurice Jackson. Response to the OCG's Requisition. 2010 February 26. Question 9

The referenced letter indicated, *inter alia*, that:

“This statement is between the Sugar Company of Jamaica Ltd (SCJ) “the buyer” and Alquip Agricultural Equipment Supply, Inc. “the seller” whereby the buyer has identified sugar factory and field equipment and is undertaking to buy these said equipment and the “seller” is undertaking to retain and make good the delivery as specified below:

Item identified to date:

- 1. Code 601: as per pro forma Invoice “Batch/Quote 675” Three (3) H.G. Centrifugal Basket@\$88,000.00 each (Maximum) Total \$264,000.00, Freight on truck.*
- 2. Code 309: One (1) rotary vacuum (filter subject to availability) (Maximum) Total \$107,250.00, Freight on truck.*
- 3. Cane carts 30 tons: Nineteen (19) @ \$14,000.00 each (Maximum) Total \$226,000.00, Freight on truck.*

Total for all items: Six hundred and thirty seven thousand two hundred and fifty dollars US (\$637,250.00) (OCG Emphasis)

30% Deposit: One hundred and ninety one thousand one hundred and seventy five dollars US (\$191,175.00)

Deposit already given: One hundred thousand dollars US (\$100,000.00)

Deposit owed on 31/08/07: Ninety one thousand one hundred and seven [sic] five dollars US (\$91,175.00)

Terms of payment:

(A) The “seller” will retain the One Hundred Thousand Dollars (US) deposit received on this order.

*(B) This statement will be **superseded** by an agreement to be executed on the 31/08/07 by the said party’s[sic] when an additional sum of \$91,175.00 will be paid to keep this deposit to Thirty percent (30%) of the total sale price agreed. Delivery to be specified in agreement.”⁷⁸*

Having regard to the foregoing, the OCG has made the following, *inter alia*, determinations:

1. ‘**Case #4**’ makes allegations with respect of the acquisition of equipment which were identified at a factory in Florida which cost US\$229,000.00.
2. Based upon the information which was presented to the OCG, by the SCJ, equipment was purchased from “...*Alquip Agricultural Equipment Supply, Inc, a company in Florida who had the rights to dispose of the factory parts and equipment...*”, at a cost of “*US\$637,250.00*”. With regard to this transaction, Partek Trading Ltd. acted as an agent.
3. Partek Trading Ltd. was allegedly paid, by the SCJ, a commission of 5% of the transaction amount and the final payment was \$1,975,193.00.
4. The OCG’s review of the QCA Reports which were submitted by the SCJ did not reveal a payment of any commission to Partek Trading Ltd.

⁷⁸ Alquip Agricultural Equipment Supply, Inc. Statement with SCJ signed on 2007 August 3

5. Based upon the assertions of the Chief Financial Officer, Mr. Maurice Jackson, there was no mark up of the purchase price of the equipment from the vendor Alquip Agricultural Equipment Supply, Inc. Instead, Partek Trading Ltd. was reimbursed for modifications and expenditure which was undertaken on behalf of the SCJ.

Relationship between the Named Parties

Having regard to the allegations that Mr. John Gayle “...conspired with Tyres R US, Tyre Warehouse, Partek Trading Limited (Jamaica) and P. Factor (Miami) businesses which are operated by brothers Andrew Buddan, Bryan [sic] Buddan and Hans Buddan to defraud the SCJ and by extension the GOJ.”⁷⁹, the OCG sought to ascertain the nature of the relationship, if any, which existed between the named parties.

In this regard, the OCG in its Requisition that was addressed to Mr. Gayle, which was dated 2010 January 13, asked, *inter alia*, the following questions:

“Are you familiar and/or associated with any of the following persons:

- A. Andrew Buddan;
- B. Hans Buddan;
- C. Bryan Buddan.[sic]

i. If yes, please provide the following information:

(a) Please provide a description of the relationship which you have and/or have had with each person;

(b) Detail the nature of your relationship with each of the named individuals;

⁷⁹ Documentation submitted to the OCG from the Prime Minister. 2009 September 3

(c) *The date(s) on which you became familiar with each individual and the circumstances relating to the same;*

(d) *The length of time you have known and/or been associated with each individual...*⁸⁰

In his response to the OCG's Requisition, which was dated 2010 January 28, Mr. John Gayle stated, *inter alia*, that **"Yes... The relationship which I have with Andrew Buddan, Hans Buddan and Bryan [sic] Buddan are such that I know them and have interacted with them as suppliers of equipment to SCJ, and consequently I have a business relationship with them on behalf of SCJ."**⁸¹ (OCG Emphasis)

Mr. Gayle also informed the OCG as follows:

"The nature of my relationship with Andrew Buddan, Hans Buddan and Bryan [sic] Buddan extends to them being suppliers of equipment to SCJ and the communication and utilization of my expertise as the Director of Agricultural Services to attain equipment for the sole benefit of SCJ.

The date that I became familiar with Andrew Buddan and Bryan [sic] Buddan as business associates only was about the year 1998 and whilst I was employed to SCJ. The circumstances relating to when I got to know them was due to my employment with SCJ and the requirement for SCJ to procure goods.

The date that I became familiar with Hans Buddan as a business associate only was about the year 2006 and whilst I was employed to SCJ. The circumstances relating to when I got to know him was due to my employment with SCJ and the requirement for SCJ to procure goods.

⁸⁰ OCG Requisition to Mr. John Gayle. 2010 January 13. Question 8

⁸¹ Mr. John Gayle. Response to the OCG's Requisition. 2010 January 28. Question 8

*I have known Andrew Buddan and Bryan [sic] Buddan for twelve (12) years. I have known Hans Buddan for about four (4) years.”*⁸² (OCG Emphasis)

The OCG, in its Requisition, that was addressed to Mr. John Gayle, which was dated 2010 January 13, also asked, *inter alia*, the following questions:

“Do you know, or do you have, or have you had a personal, business or other relationship with, any of the principals, shareholders, directors, partners, officers and/or employees of any of the following companies, and/or anyone acting on its behalf? If yes, please indicate:

- (a) Tyre Warehouse Ltd;*
- (b) Tyres R US Ltd;*
- (c) Partek Trading Ltd;*
- (d) P Factor Trading.*

- i. The full name of the Representative and his/her relationship with each entity;*
- ii. The length of time that you have known the Representative;*
- iii. A full description of the nature of the relationship between yourself and the Representative.”*⁸³

In his response to the OCG’s Requisition, which was dated 2010 January 28, Mr. John Gayle stated, *inter alia*, that *“No, I John Gayle, in my personal capacity, do not have nor have I ever had a personal, business or other relationship with any of the principals, shareholders, directors, partners, officers and/or employees of any of the following companies, and/or anyone acting on its behalf.”*⁸⁴

⁸² Mr. John Gayle. Response to the OCG’s Requisition. 2010 January 28. Question 8

⁸³ OCG Requisition to Mr. John Gayle. 2010 January 13. Question 10

⁸⁴ Mr. John Gayle. Response to the OCG’s Requisition. 2010 January 28. Question 10

Based upon the foregoing, the OCG found that Mr. John Gayle became familiar with the companies Tyres-R-US Ltd., Tyre Warehouse Ltd., Partek Trading Ltd. and P. Factor and their respective proprietors, namely Mr. Andrew Buddan, Mr. Hans Buddan and Mr. Brian Buddan, through his employment with the SCJ.

In this regard, Mr. John Gayle acknowledged having a business relationship with the named parties, which was premised upon the fact that the named individuals and companies were suppliers of equipment to the SCJ. Mr. Gayle, however, denied having a personal relationship with any of the named individuals.

Was there any Impropriety?

Having regard to the allegations of the conduct of “*fraudulent activities*”, conspiracy and the circumvention of the procurement process, the OCG sought to ascertain whether there was any evidence of impropriety and/or irregularity in the award of the contracts, by the SCJ, to (a) Tyres-R-US Ltd., (b) Tyre Warehouse Ltd., (c) Partek Trading Ltd., and (d) P. Factor.

In this regard, the OCG in its Requisition that was addressed to Mr. Donovan Stanberry, Permanent Secretary, MAF, which was dated 2009 September 11, asked, *inter alia*, the following question:

“Did Mr. John Gayle, in any way, facilitate the award, implementation, execution and/or variation of any of the contract(s) which was/were awarded to any of the following contractors:

- (a) Partek Trading Ltd.;*
- (b) P Factor Trading;*
- (c) Tyre Warehouse Ltd.;*
- (d) Tyres R US Ltd.*

If yes, please provide particulars of the same. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”⁸⁵

In his response to the OCG’s Requisition, which was dated 2009 October 14, Mr. Stanberry stated, *inter alia*, that “*Mr. Gayle was part of a team involved in the evaluation and recommendations relating to acquisition of Trailers, Harvesters, & Agricultural equipment from &/or through Partek Trading Ltd, P Factor Trading Ltd and Tyres R US Ltd. **Mr. Gayle’s role involved assessing and making recommendations for the award and the implementation of such award after respective contracts were duly awarded.***”⁸⁶ (OCG Emphasis)

It is instructive to note that the OCG also asked Mr. John Gayle whether he, in any way, facilitated the award, implementation, execution and/or variation of any contracts which were awarded to (a) Partek Trading Ltd., (b) P Factor Trading, (c) Tyre Warehouse, and (d) Tyres-R-US Ltd.

In this regard, Mr. John Gayle, in his response to the OCG’s Requisition, which was dated 2010 January 28, stated, *inter alia*, that:

“Yes, I was a part of a team involved in the acquisition of Trailers, Harvesters, & Agricultural equipment from these Companies for and on behalf of SCJ.

My role involved being one of the persons who assessed the equipment to be purchased. Thereafter once the award of contract is granted I would be a part of the team who monitored the use of the equipment by Sugar Company of Jamaica Limited.”⁸⁷ (OCG Emphasis)

⁸⁵ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 7(iii)

⁸⁶ OCG Requisition to Mr. Donovan Stanberry. 2009 September 11. Question 7

⁸⁷ Mr. John Gayle. Response to the OCG’s Requisition. 2010 January 28. Question 2

Further, the OCG, in its Requisitions, that were addressed to Mr. Andrew Buddan and Mr. Brian Buddan, which were dated 2010 May 31 and 2010 March 3 respectively, asked, *inter alia*, the following questions:

“Did Mr. John Gayle, the General Manager, SCJ, in any way, facilitate the award, implementation, execution and/or variation of any of the contract(s) which was/were awarded to any of the following contractors:

- (a) Partek Trading Ltd.;*
- (b) P Factor Trading;*
- (c) Tyre Warehouse Ltd.;*
- (d) Tyres R US Ltd.*

*If yes, please provide particulars of the same. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”*⁸⁸

Mr. Brian Buddan, in his response to the OCG’s Requisition, which was dated 2010 March 18, stated, *inter alia*, as follows:

- (a) “Partek Trading Ltd.; No*
- (b) P Factor Trading; I am not aware of any such transaction.*
- (c) Tyre Warehouse Ltd.; I am not aware of any such transaction.*
- (d) Tyres R US Ltd. I am not aware of any such transaction.”*⁸⁹

Mr. Andrew Buddan, his response to the OCG’s Requisition, which was dated 2010 June 8, stated, *inter alia*, that “*Not within my knowledge.”*⁹⁰

⁸⁸ OCG Requisitions to Mr. Andrew Buddan and Mr. Brian Buddan. 2010 May 31 and 2010 March 3. Question 1 & 3

⁸⁹ Mr. Brian Buddan. Response to the OCG’s Requisition. 2010 March 18. Question 3

⁹⁰ Mr. Andrew Buddan. Response to the OCG’s Requisition. 2010 June 8. Question 1

It is instructive to note that the OCG in its Requisition that was addressed to Mr. John Gayle, which was dated 2010 January 13, asked, *inter alia*, the following questions:

“Did any of the principals, shareholders, directors, partners, officers and/or employees of the following companies, or anyone acting on its behalf, approach you and/or any public official, soliciting assistance in getting approval for any of the contract(s) which was/were awarded to the below listed companies?”

- (a) Tyre Warehouse Ltd;*
- (b) Tyres R US Ltd;*
- (c) Partek Trading Ltd;*
- (d) P Factor Trading.*

If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the relevant principals, shareholders, directors, partners, officers and/or employees of each of the entity, the date(s) assistance was/were sought, and the nature of the assistance sought.”⁹¹

In his response to the OCG’s Requisition, which was dated 2010 January 28, Mr. John Gayle stated “No”.⁹²

The OCG in its Requisitions that were addressed to Mr. Andrew Buddan and Mr. Brian Buddan, which were dated 2010 May 31 and 2010 March 3, respectively, asked, *inter alia*, the following questions:

“Did you, and/or any of the principals, shareholders, directors, partners, officers and/or employees of the following companies, or anyone acting on its behalf, approach any public

⁹¹ OCG Requisition to Mr. John Gayle. 2010 January 13.

⁹² Mr. John Gayle. Response to the OCG’s Requisition. 2010 January 28. Question 9

official and/or employee of the SCJ, soliciting assistance in getting approval for any of the contract(s) which was/were awarded to the below listed companies?

- (a) Tyre Warehouse Ltd;*
- (b) Tyres R US Ltd;*
- (c) Partek Trading Ltd;*
- (d) P Factor Trading.*

If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the relevant principals, shareholders, directors, partners, officers and/or employees of each of [sic] entity, the date(s) assistance was sought, and the nature of the assistance sought.”⁹³

Mr. Andrew Buddan, in his response to the OCG’s Requisition, which was dated 2010 June 8, stated, *inter alia*, that with regard to (a) Tyre Warehouse Ltd. and (b)Tyres-R-US Ltd., “*No*”.⁹⁴

However, with regard to the contracts which were awarded to (c) Partek Trading Ltd. and (d) P Factor Trading, Mr. Andrew Buddan stated that this was “*Not within my knowledge.*”⁹⁵

Mr. Brian Buddan, in his response to the OCG’s Requisition, which was dated 2010 March 18, stated, *inter alia*, as follows:

- (a) “Tyre Warehouse Ltd; I am not aware.*
- (b) Tyres R US Ltd; I am not aware.*
- (c) Partek Trading Ltd; No.*
- (d) P Factor Trading. I am not aware.”⁹⁶*

⁹³ OCG Requisitions to Mr. Andrew Buddan and Mr. Brian Buddan. 2010 May 31 and 2010 March 3. Question 4 & 12

⁹⁴ Mr. Andrew Buddan. Response to the OCG’s Requisition. 2010 June 8. Question 4

⁹⁵ Mr. Andrew Buddan. Response to the OCG’s Requisition. 2010 June 8. Question 4

⁹⁶ Mr. Brian Buddan. Response to the OCG’s Requisition. 2010 March 18. Question 12

Further, the OCG in its Requisitions that were addressed to Mr. Andrew Buddan and Mr. Brian Buddan, which were dated 2010 May 31 and 2010 March 3 respectively, asked, *inter alia*, the following questions:

“Did you and/or any company in which you are associated, ever enter into any agreement with Mr. John Gayle, the General Manager, SCJ, that involved his (Mr. John Gayle), receiving any benefit(s) and/or payment(s) in cash, or in kind, whether directly or indirectly, from you and/or your associated companies, as a result of the award of a contract by the SCJ?”

i. If yes, please provide the following information:

a. The date(s) on which Mr. John Gayle received such benefit(s) and/or payment(s);

b. The nature of the benefit(s) and/or payment(s) which was/were received by Mr. John Gayle;

c. The name(s) of the individual(s) and/or entity(ies) from whom such benefit(s) and/or payment(s) was/were received;

d. The particulars of the benefit(s) and/or payment(s) which was/were received by Mr. John Gayle;

e. The value(s) and/or amount(s) of the benefit(s) and/or payment(s) which was/were received by Mr. John Gayle;

f. The rationale, purpose, justification and/or reason for making such payment(s) and/or providing Mr. John Gayle with such benefit(s).

- ii. *If no, has any relative and/or any person acting on behalf of Mr. John Gayle, received, whether directly or indirectly, any benefit(s), in cash or in kind, from you and/or your associated companies? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of a description of the benefit(s) received.*”⁹⁷

Mr. Andrew Buddan, in his response to the OCG’s Requisition, which was dated 2010 June 8, stated, *inter alia*, as follows:

“2. *No*
2ia. *N/A*
2ib. *N/A*
2ic. *N/A*
2id. *N/A*
2ie. *N/A*
2if. *N/A*
2ii. *No*”⁹⁸

Mr. Brian Buddan, in his response to the OCG’s Requisition, which was dated 2010 March 18, stated, *inter alia*, that “*No...not applicable...No*”⁹⁹

The OCG in its Requisitions that were addressed to Mr. Andrew Buddan and Mr. Brian Buddan, which were dated 2010 May 31 and 2010 March 3 respectively, also asked, *inter alia*, the following questions:

“Are you aware of any arrangement(s) and/or agreement(s) which was/were/is/are in place, at any point in time, with any of the following companies, and Mr. John Gayle, the

⁹⁷ OCG Requisitions to Mr. Andrew Buddan and Mr. Brian Buddan. 2010 May 31 and 2010 March 3. Question 2 & 10

⁹⁸ Mr. Andrew Buddan. Response to the OCG’s Requisition. 2010 June 8. Question 2

⁹⁹ Mr. Brian Buddan. Response to the OCG’s Requisition. 2010 March 18. Question 10

General Manager, SCJ, with regard to (a) the purchase of equipment and/or goods and (b) the provision of services:

- (a) Partek Trading Ltd.;*
- (b) P Factor Trading;*
- (c) Tyre Warehouse Ltd.;*
- (d) Tyres R US Ltd.*

If yes, please provide a comprehensive statement of all relevant particulars... ”¹⁰⁰

Mr. Andrew Buddan, in his response to the OCG’s Requisition, which was dated 2010 June 8, stated, *inter alia*, that “No”.¹⁰¹

Mr. Brian Buddan, in his response to the OCG’s Requisition, which was dated 2010 March 18, stated, *inter alia*, as follows:

- | | |
|----------------------------------|---|
| <i>(a) “Partek Trading Ltd.;</i> | <i>No</i> |
| <i>(b) P Factor Trading;</i> | <i>I am not aware of any arrangement and/or agreement.</i> |
| <i>(c) Tyre Warehouse Ltd.;</i> | <i>I am not aware of any arrangement and/or agreement.</i> |
| <i>(d) Tyres R US Ltd.;</i> | <i>I am not aware of any arrangement and/or agreement.”¹⁰²</i> |

In an effort to ascertain whether Mr. John Gayle received any benefits and/or payments with respect to the award of contracts by the SCJ, the OCG in its Requisition that was addressed to Mr. John Gayle, which was dated 2010 January 13, asked, *inter alia*, the following questions:

¹⁰⁰ OCG Requisitions to Mr. Andrew Buddan and Mr. Brian Buddan. 2010 May 31 and 2010 March 3. Question 3 & 11

¹⁰¹ Mr. Andrew Buddan. Response to the OCG’s Requisition. 2010 June 8. Question 3

¹⁰² Mr. Brian Buddan. Response to the OCG’s Requisition. 2010 March 18. Question 11

“Have you ever received any benefit(s) and/or payment(s) in cash, or in kind, whether directly or indirectly, from any of the following companies and/ or its Agent(s), Official(s), Officer(s), Employee(s) and/or anyone acting on its behalf?”

- (a) Partek Trading Ltd.;*
- (b) P Factor Trading;*
- (c) Tyre Warehouse Ltd.;*
- (d) Tyres R US Ltd.*

i. If yes, please provide the following information:

(a) The date(s) on which you received such benefit(s) and/or payment(s);

(b) The nature of benefit(s) and/or payment(s) which was/were received by you;

(c) The name(s) of the individual(s) and/or entity(ies) from whom such benefit(s) and/or payment(s) was/were received;

(d) The particulars of the benefit(s) and/or payment(s) which was/were received by you;

(e) The value(s) and/or amount(s) of the benefit(s) and/or payment(s) which was/were received by you;

(f) The rationale, purpose, justification and/or reason for the listed companies, it’s Agent(s), Official(s), Officer(s), Employee(s) and/or anyone acting on its behalf, making such payment(s) and/or providing you with such benefit(s).

- ii. *If no, has any relative and/or any person acting on your behalf, received, whether directly or indirectly, any benefit(s), in cash or in kind, from any of the listed companies, its Agent(s), Official(s), Officer(s), Employee(s) and/or anyone acting on its behalf? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of a description of the benefit(s) received. In any case where the benefit was received by a person who was acting on your behalf, please also provide the full name, profession and address of the person(s) and a description of the relationship which you have and/or have had with that person(s).*¹⁰³

In his response to the OCG's Requisition, which was dated 2010 January 28, Mr. John Gayle stated, *inter alia*, that "No".¹⁰⁴

¹⁰³ OCG Requisition to Mr. John Gayle. 2010 January 13. Question 7

¹⁰⁴ Mr. John Gayle. Response to the OCG's Requisition. 2010 January 28. Question 7

CONCLUSIONS

Based upon the documents which have been reviewed as well as the sworn testimony which has been received from the representatives of the MAF and the SCJ, other Public Officials and persons of interest, the OCG has arrived at the following considered Conclusions:

1. The allegations against Mr. John Gayle spoke specifically to the conduct of “*fraudulent activities*” prior to 2009 July, when Mr. John Gayle assumed the position of the General Manager of the SCJ Holdings Ltd.

Having regard to the foregoing, the OCG narrowed its Investigation to the period of 2006 January to 2009 June. It is instructive to note that Mr. Donovan Stanberry, Permanent Secretary, MAF, informed the OCG that during the referenced period Mr. John Gayle was not authorised to approve the (a) award and (b) variation of contracts for and on behalf of the SCJ.

However, during the referenced period Mr. John Gayle was authorised to (a) negotiate and (b) implement contracts which were awarded by the SCJ.

2. The OCG has concluded that the companies, which were allegedly involved in the “*fraudulent activities*”, namely (a) Tyres-R-US Ltd., (b) Partek Trading Ltd., (c) P. Factor and (d) Tyre Warehouse Ltd. are in fact operated by the brothers, Mr. Andrew Buddan, Mr. Hans Buddan and Mr. Brian Buddan.
3. The OCG is unable to definitively state that Mr. John Gayle “*conspired*” with (a) Tyres-R-US Ltd., (b) Partek Trading Ltd., (c) P. Factor and (d) Tyre Warehouse Ltd. and/or the Buddan Brothers namely, Mr. Andrew Buddan, Mr. Hans Buddan and Mr. Brian Buddan.

This is premised upon the fact that the OCG has not seen sufficient *prima facie* evidence to suggest that the named parties colluded and conspired to defraud the SCJ.

4. The SCJ reportedly utilised the Open Tender Procurement Methodology to award the contract to Tyres-R-US Ltd. for the supply of six (6) harvesters. The referenced contract was valued at J\$37,426,200.00. Following the approvals of Procurement Committee, the NCC on 2007 January 17 and the Cabinet on 2007 February 7, the contract was awarded to Tyres-R-US Ltd.
5. Based strictly upon the procurement process which was utilised by the SCJ, the OCG has concluded that the process which led to the award of the contract to Tyres-R-US Ltd., appears, on the face of it, to have been fair, impartial and transparent.

This is premised upon the fact that (a) the bids were solicited from suppliers of the requisite equipment, (b) the SCJ conducted a comparative analysis of the bids which were submitted to it, and (c) approval was sought and granted by the NCC and the Cabinet for the award of the contract to Tyres-R-US Ltd. As such, in the OCG's considered opinion, the SCJ undertook a competitive bidding exercise and sought and obtained the requisite approvals.

However, prior to the conduct of the Open Tender exercise, the SCJ received an offer from Tyres-R-US Ltd., for the supply of harvesters, sometime in 2006 October. Upon the receipt of the referenced offer, the representatives of the SCJ visited the premises of John Deere Thibodaux, along with representatives of Tyres-R-US Ltd. and examined the harvesters which were being offered. After the inspection of the harvesters by Mr. Wray Mendez and Mr. John Gayle, they informed the SCJ Board of Directors that the referenced equipment was suitable for the SCJ's use.

Consequently, the SCJ Board of Directors instructed that an Open Tender exercise should be conducted. This tender exercise was undertaken in 2006 December and Tyres-R-US Ltd. was subsequently evaluated as the preferred bidder.

Based upon the foregoing, the OCG has concluded that the above detailed circumstances have raised questions about the propriety and regularity of the tender process which led to the award of the contract to Tyres-R-US Ltd. In this regard, the questions which are raised include, *inter alia*, the following:

- (a) Did the SCJ, after meeting with Tyres-R-US Ltd., tailor the specifications in the 2006 December tender document to mirror the harvesters which Tyres-R-US Ltd. had presented to it in 2006 October?
- (b) Having already presented the harvesters to the SCJ, was Tyres-R-US Ltd. given an unfair advantage in allocating twenty (20) out of a possible one hundred (100) points for 'Delivery Time' in the evaluation criteria for the tenders?

In light of the fact that (a) Tyres-R-US Ltd. approached the SCJ with regard to the said harvesters prior to the tender exercise in 2006 December and, (b) the SCJ examined the harvesters which were being offered by Tyres-R-US Ltd. prior to the tender exercise, the OCG hereby concludes that questions may be raised with respect to the propriety and regularity of the bidding process which led to the award of the contract to Tyres-R-US Ltd.

It should be noted, however, that irrespective of the foregoing questions which may be raised about the propriety and/or the irregularity of the bidding process, the OCG has not found any evidence to indicate that the award of the contract to Tyres-R-US Ltd. was unmeritorious.

- 6. With regard to Case #1- The purchase of harvesters from Tyres-R-US Ltd., the OCG is unable to determine whether the allegations are entirely accurate. In this regard, while the invoices, which were provided to the OCG in support of the allegations, show that the harvesters were purchased from John Deere Thibodaux, Inc. by Tyres-R-US Ltd., the OCG is unable to verify that the invoiced harvesters were the said harvesters which were sold to the SCJ.

It should be noted that the allegations only provided particulars relating to four (4) harvesters which were allegedly purchased by Tyres-R-US Ltd. for US\$161,860.00.

However, the OCG found that the contract which was awarded to Tyres-R-US Ltd., by the SCJ, was for the purchase of six (6) and not four (4) harvesters. This contract was valued at J\$37,426,200.00.

Using the conversion rate of J\$66.50 to US\$1 (this was the conversion rate which was utilised in the evaluation of the bids which were received in the Open Tender Process which led to the awarded of the contract to Tyres-R-US Ltd.), the contract value would have been equal to US\$562,800.00, for the purchase of six (6) harvesters.

7. The OCG was only able to compare the offers which were actually received by the SCJ in response to the tender invitation. In this regard, Tyres-R-US Ltd. provided the SCJ with the most cost-effective offer as it submitted a bid of J\$37,426,200.00, while MAPEX submitted a bid of \$51,039,548.00. However, it should be noted that based upon the OCG's calculations of the prices that were stated in the Evaluation Report, the total bid price for MAPEX should have been \$51,039,547.50 and not \$51,039,548.00.
8. The SCJ has made several advance payments to (a) Partek Trading Ltd. and (b) P Factor. In point of fact, Partek Trading Ltd. was paid a total of US\$150,000.00 and J\$2,244,722.00 between 2007 February and 2008 June. On the other hand, P. Factor was paid US\$150,000.00 and J\$3,015,600.00 between 2008 January and June.

However, the OCG has concluded that the SCJ breached Section 6.1.33 of the GPPH (2001 May), as advance payment securities were not sought and/or received by the SCJ for each of the referenced payments. Section 6.1.33 of the GPPH (2001 May) provides that:

“Where advance payments are to be made, these will only be allowed upon presentation of an advance payment security. No advance payment shall be made without provision of a surety in the full value of the advance.”¹⁰⁵

9. Based upon the representations which have been made to the OCG, the OCG has concluded that Mr. John Gayle was not involved in the initial negotiations to the purchase of trailers and equipment in Florida on behalf of the SCJ.

According to Mr. Donovan Stanberry, Permanent Secretary, MAF, a team of SCJ representative were dispatched to Florida at the instructions of the Board of Directors of the SCJ. Of import, is the fact that Mr. John Gayle was not a member of the team which was sent to negotiate on behalf of the SCJ for the acquisition of the equipment.

Subsequent to the referenced trip, the SCJ acquired spares and equipment from Alquip Agricultural Equipment Supply, Inc. which had the rights to dispose of the equipment and parts.

The referenced transaction it is alleged occurred while Mr. John Gayle was on leave, and he only became involved after he raised concerns with regard to the specifications of the equipment which was being purchased. As such, contrary to the allegations, Mr. Gayle only became involved in the transaction after the SCJ had already contracted Partek Trading Ltd. to handle the acquisition of the equipment from Alquip Agricultural Equipment Supply, Inc.

10. Partek Trading Ltd. was appointed an agent by the SCJ to handle the acquisition of equipment from Alquip Agricultural Equipment Supply, Inc. Partek Trading Ltd. also paid the initial deposit of US\$100,000.00 on behalf of the SCJ and appointed P Factor Trading to execute the transaction on its behalf.

¹⁰⁵ GPPH. Section 6.1.33. 2001 May.

In this regard, Partek Trading was paid a five percent (5%) commission of J\$1,975,193.00.

11. The OCG has concluded that the referenced commission payment of J\$1,975,193.00 was not reported to the OCG on the QCA Reports which were submitted by the SCJ for 2007.

The payment of the referenced commission, and what appears to be the failure on the part of the SCJ to report same, to the OCG, on the prescribed QCA reporting form, is a matter in respect of which the OCG will be seeking further particulars from the SCJ's and the MAF's Accounting Officer, Mr. Donovan Stanberry.

The OCG is obliged to pursue this matter in light of the fact that the SCJ is lawfully required to submit, to the OCG, via its QCA Reports, the particulars of all contracts which were awarded by it within the relevant QCA contract value ranges. Consequently, a failure, on the part of the SCJ to report same, would constitute a *prima facie* breach of Section 29(b) (ii) of the Contractor General Act.

Section 29(b) (ii) of the Contractor-General Act provides, *inter alia*, as follows:

“Every person who –

... (b) without lawful justification or excuse –

v. ...

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

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.”

12. Partek Trading Ltd. submitted an “*unsolicited proposal*” to the SCJ which resulted in the SCJ purchasing used harvesters via the Sole Source Procurement Methodology. In this regard, Mr. Donovan Stanberry, informed the OCG that “***This being an unsolicited and unique business opportunity, there were no other offers and as far as the company was***

*aware, no other supplier in Jamaica had used harvester parts available for sale at that time.*¹⁰⁶ (OCG Emphasis)

13. The OCG has concluded that several of the contracts, which were awarded to Partek Trading Ltd., via the Sole Source Method of Procurement, were awarded in breach of Section 2.1.3.4 of the GPPH (May 2001). Section 2.1.3.4 of the GPPH (May 2001), provides, *inter alia*, that:

*“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.”*¹⁰⁷

14. The OCG has not seen any *prima facie* evidence to suggest that there was impropriety on the part of any individual or entity which contributed to the award (or non-award) of the contracts to (a) Partek Trading Ltd., (b) P Factor, (c) Tyre Warehouse Ltd. and (d) Tyres-R-US Ltd.

¹⁰⁶ Mr. Donovan Stanberry. Response to the OCG’s Follow-up Requisition. 2010 February 26. Question 2

¹⁰⁷ GPPH. Section 2.1.3.4. 2001 May.

SPECIAL NOTE

It is instructive to note that by way of a letter, which was dated 2010 June 3, the SCJ informed the OCG, *inter alia*, as follows:

“This letter serves to inform and confirm that the assets of the Sugar Company of Jamaica Limited (SCJ) have been divested and/or transferred as of July 31, 2009. The assets of SCJ and the operations of the sugar factories previously owned by that company are now the responsibility of SCJ Holdings Limited trading as Sugar Divestment Enterprise (SDE).

During the period following closure to the end of December 2009, SCJ continued to facilitate the operations of SCJ Holdings Limited to enable that company to put in place proper purchasing systems, including the issuing of purchase orders. SCJ Limited has therefore signed and submitted its last Quarterly Report which covers the period October 1, 2009 to December 31, 2009 and the company is now in the process of being wound up.”¹⁰⁸ (OCG Emphasis)

Further, it is instructive to note that on 2010 July 13, the Jamaica Information Service (JIS) published an article, which was entitled “*Gov’t Finalising US\$9 Million Sale of Last 3 Sugar Factories*”¹⁰⁹.

In the referenced article, it was reported, *inter alia*, that “*The Government’s Sugar Divestment Team (SDT) is to finalise a deal soon with China’s COMPLANT International Sugar Industry Company, for the sale of its three remaining sugar factories - Frome, Monymusk and Bernard Lodge - following Monday’s (July 12) green light from the Cabinet.*”¹¹⁰

¹⁰⁸ SCJ. Letter to the OCG. 2010 June 3

¹⁰⁹ JIS. “*Gov’t Finalising US\$9 Million Sale of Last 3 Sugar Factories*” 2010 July 13

¹¹⁰ JIS. “*Gov’t Finalising US\$9 Million Sale of Last 3 Sugar Factories*” 2010 July 13

Having regard to the foregoing and, in particular, the Findings and Conclusions which are detailed herein, the OCG has deemed it prudent to direct its Recommendations to the Ministry of Agriculture (MAF), its respective portfolio Public Bodies and the SCJ Holdings Ltd.

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 breaches of the procurement guidelines, by the SCJ, with respect to (a) securing the requisite approvals of the Accounting Officer and the NCC for the use of the Sole Source Procurement Methodology and, (b) securing advance payment sureties.

It is instructive to note that this is the second instance, in the space of a year, in which the OCG, via a Report of Special Investigation, has identified procurement breaches on the part of a Public Body entity in respect of which the MAF’s Permanent Secretary has Accounting Officer portfolio responsibilities.

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 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.

In the circumstances, the OCG recommends that the MAF and its Accounting Officer should ensure scrupulous compliance, by its respective portfolio Public Bodies, with the Revised Handbook of Public Sector Procurement Procedures (2010 October) which came into effect on January 2, 2011, 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) Securing the requisite contract security where advance payments are made, in conformance with the requirements of Section A7.6.3 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 the 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. The OCG also recommends that the Auditor General conducts an exhaustive Investigation and/or audit into the financial affairs of the SCJ and SCJ Holdings Ltd. The OCG believes that such an exhaustive Investigation is also required in light of the divestment of the remaining GOJ sugar assets.

8. The OCG remains concerned that the **unsolicited proposal** mechanism is a corruption enabling device which can be utilized by unscrupulous Public Officials to direct lucrative multi-million dollar State contracts to connected, undeserving or desired contractors. This can be easily accomplished by influential but corrupt Public Officials who are willing to clandestinely conspire with a contractor to have the contractor approach the State with what appears to be a unique contracting proposal.

It is the OCG's considered position that all such proposals must be tested for propriety, legitimacy, cost-effectiveness, quality, value for money and competitiveness in the open market place.

Consequently, the OCG recommends that Public Bodies, through their respective Accounting and Accountable Officers, should pay keen attention to, and ensure compliance with, Section 1.2 of Volume 2 of 4 of the RHPP, which dictates how unsolicited proposals should be treated and, in particular, with respect to price testing and competitive bidding.

9. Finally, while the OCG's Investigation has not unearthed any *prima facie* evidence of corruption, the nature of the allegations which triggered the OCG's Investigation requires that the OCG should remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption.

The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that "*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*".

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.
