



OFFICE OF THE CONTRACTOR-GENERAL OF JAMAICA

Special Report of Investigation

National Works Agency/Constituency Development Fund

Contracts Awarded to Contractors Allegedly

Selected by the Hon. Derrick Kellier, M.P.

National Works Agency

Ministry of Transport, Works and Housing

INTRODUCTION

The Office of the Contractor General (OCG), on August 14, 2012 formally announced its decision to commence an investigation into the circumstances surrounding the alleged award of certain Government of Jamaica (GOJ) Constituency Development Fund (CDF) contracts, by the National Works Agency (NWA). These contracts were awarded to contractors who/which were allegedly selected by the Hon. Derrick Kellier, Member of Parliament, Southern St. James.

Placing reference upon official NWA documents that came within the possession of the OCG, and which were taken during a visit to the NWA's St. James Parish Office, at least one of the alleged contracts, in the sum of \$270,000, was awarded in December 2010 by the NWA, upon the specific written instructions of '*Derrick Kellier, CD, MP, South St. James*', to '*M & K Heavy Equipment Hireage Co. Ltd.*'



M & K Heavy Equipment Hireage Co. Ltd. is listed by the Registrar of Companies as a company that is 80% owned and controlled by one Martin Kellier. Also a Martin Kellier presently sits as the Peoples National Party (PNP) Councillor for the Welcome Hall Division of the St. James Southern Constituency. The Constituency is represented by Mr. Martin Kellier's brother, the Hon. Derrick Kellier, Member of Parliament, Southern St. James, and the Minister of Labour and Social Security.

In answer to questions that were posed by the OCG, during the course of its monitoring activities in 2011, personnel at the NWA's St. James Parish Office stated that *'Contractors were selected by the Member of Parliament who had provided the names of the Contractors on the Work Programme which was sent to the implementing agency'*.

The OCG's preliminary enquiry into the matter was triggered by a written complaint and allegation that was received by the OCG, via email, on 2012 July 20, from a "Concerned Citizen". The complaint alleged, verbatim, in part, as follows:

"I'm a young man living in the Welcome Hall division in Springfield St. James and I've noticed something that I think is worth looking into by the office of the contractor general. The councilor for this division is Martin Kellier and his brother, Derrick Kellier, is the MP for this constituency. Now to my knowledge, correct me if I'm wrong, a councilor should not do any government contract in his division however; there's a contract that has been given out by the MP, Derrick Kellier, and from what I've seen, heard and noticed its his brother, Martin Kellier that's doing it. I think they may be smart enough not to put it in Martin Kellier's



name but I think if an intelligent investigation is done it can be proven that he's the one doing it.”

Official NWA documents in the possession of the Contractor General establish that another CDF Government contract, in the sum of \$840,000.00, was also awarded by the NWA, in November 2011, to M & K Heavy Equipment Hireage Co. Ltd., for the execution of certain specified works, at certain specified locations.

The specified works and locations match exactly the works specifications that one “Derrick F. Kellier” communicated to the NWA, in writing, as works that he wanted the NWA to execute. One of the referenced internal NWA written communications, which was dated November 7, 2011 states, *inter alia*, as follows:

“I am to advise that Mr. Derrick Kellier Member of Parliament for South St. James had requested that Eight Hundred and Forty Thousand Dollars (\$840,000.00) Dollars [sic] from his \$3M Constituency Development Fund allocated to his constituency should be used to carry out patching works on the Anchovy - Mt. Horeb, Ducketts-Welcome (Jointer PC Road) and Fairfield-Point (Cottage Road). Consequently, I am hereby seeking your approval for this project to be declared as emergency works in light of the immediate danger to motorists, residents and property.”¹

Additionally, the OCG has seen another NWA document entitled “**INDEPENDENCE WORK PROGRAMME FOR SOUTH ST. JAMES – JULY 22, 2012 – Member of Parliament: Hon. Derrick Kellier CD**”. The referenced document details the particulars of what appears to be

¹ Internal Memorandum from Mr. Philip Clarke, Parish Manager, St. James to Mr. George Knight, Director of Regional Implementation & Special Projects, which was dated 2011 November 7.



contracts which were to be awarded to twenty-two (22) named contractors, inclusive of a “*Martin Kellier*”. The referenced award for Mr. Kellier refers to works in the “*Anchovy to Mt. Horeb to Welcome Hall*” area, in the sum of “\$200,000.00”

Given the gravity of the allegations which were made against the Hon. Derrick Kellier and the implications for same in regard to adherence to the contract award principles of Section 4 (1) of the Contractor General Act, the requirements of the applicable GOJ Public Sector Procurement Procedures Handbooks, the CDF Operational Procedures, amongst other relevant GOJ contract award policies, procedures, rules and/or laws, the Contractor General, acting pursuant to Sections 15 (1) and 16 of the Act, initiated an investigation into the circumstances of the contract awards.



TERMS OF REFERENCE

The OCG's Investigation sought to address the following questions, among others, in the award of contracts in the constituency of the Hon. Derrick Kellier, M.P.:

- (a) The particulars of the contracts which were awarded to Mr. Martin Kellier and/or his company, M & K Heavy Equipment Hireage Co. Ltd. and for which the Hon. Derrick Kellier had some degree of involvement in the selection process;
- (b) Whether the prescribed GOJ Procurement Procedures, the GOJ Public Sector Procurement Regulations and CDF Procedures were complied with in the award of the referenced contracts;
- (c) Whether the contracts were awarded in compliance with the standards that are prescribed by Section 4 (1) (a) of the Contractor General Act, that is to say whether they were awarded impartially and on merit, and in circumstances that did not involve impropriety or irregularity; and
- (d) Whether any other laws or regulations were contravened having regard to the alleged circumstances which surround the award of the contracts.



JURISDICTION

Detailed below is the legal basis upon which the CG has enquired into the alleged award of certain Government of Jamaica contracts, by the National Works Agency (NWA), to contractors whom/which were allegedly selected by the Hon. Derrick Kellier, M.P.

Section 2 of the Act provides as follows:

"government contract" includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;

"prescribed licence" means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;

"public body" means -

- (a) Ministry, department or agency of government;
- (b) a statutory body or authority;
- (c) any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company.

The National Works Agency, being an Executive Agency of the Government of Jamaica, is in fact a public body as defined by the Act.



Consequently, the mandatory approval process, or the absence of an approval process, inclusive, is the reason for the OCG's Investigation. In particular, the OCG has sought to ascertain how and under what circumstances were the award of the contracts by the NWA influenced and/or directed, in any way, by the Hon. Derrick Kellier.



METHODOLOGY

The Requisitions/Questionnaires, which were dated August 21, 2012 and September 3, 2012 respectively, were sent from the OCG to the following Public Officials/Officers:

1. The Hon. Derrick Kellier, M.P.;
2. Mr. Philip Clarke;
3. Mr. Howard Ramsay.

On Wednesday, July 25, 2012 a team from the OCG visited the Works Site to ascertain the veracity of the claims which had been made and further particulars of the works which had been undertaken in that area.

OCG Officers made a visit to the NWA St. James Parish Office on Monday, July 30, 2012 and obtained documents and information relating to, *inter alia*, the award of contracts to Martin Kellier.

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

During the conduct of its Investigation, the OCG, on February 11, 2013, visited the Head Office of the NWA to collect and review the contracts which were awarded to several individuals/contractors who/which were detailed in several letters under the signature of the Hon. Derrick Kellier, M.P., Southern St. James. The particulars of the required written contracts were



conveyed to the Chief Executive Officer of the NWA, Mr. E.G. Hunter, under cover of letter which was dated February 7, 2013.



SUMMARY OF FINDINGS

1. Two (2) of the PNP representatives for Region 6 includes a “Derrick Kellier” for the South St. James Region and a “Martin Kellier” for the Welcome Hall Region²;
2. Mr. Martin Kellier is the majority shareholder (80%) of the company M & K Heavy Equipment Hireage Co. Ltd. The company was incorporated on September 15, 2000.
3. As at July 23, 2012, M & K Heavy Equipment Hireage Co. Ltd. has reportedly received only one (1) contract which required NCC Endorsement. The said contract was endorsed by the NCC on “2002-08-28” in the sum of J\$16,303,276.21, in favour of the Ministry of Transport and Works.
4. The QCA Consolidated Report has revealed that fourteen (14) contracts in excess of J\$250,000.00 were awarded to the company by various Public Bodies between the 3rd quarter of 2006 and the 4th Quarter of 2011. The fourteen (14) contracts have an aggregated value of J\$11,410,965.00.
5. By way of a letter which was dated December 9, 2010 and which was addressed to one Mr. Philip Clarke, Parish Manager, National Works Agency, Montego Bay, and which was sent “*From the desk of Derrick F. Kellier, CD, Member of Parliament, Southern St. James*” and signed by Derrick Kellier, CD, MP, the NWA representative was advised, by recommendation, of a list of contractors who were to be engaged using Constituency Development Funds. The particular letter lists twenty (20) contractors, inclusive of M &

² Verification obtained from the Electoral Commission of Jamaica.



K Heavy Equipment Hireage Co. Ltd. The company was to be engaged to execute works on the Cambridge Drains, in the sum of J\$270,000.00.

6. A Labour contract between the NWA and a 'Martin Kellier' was signed on December 9, 2010 in the sum of J\$270,000.00. Subsequently, a Payment Voucher was issued on December 14, 2010 to Mr. Martin Kellier, in the sum of J\$270,000.00.
7. On Wednesday, 2012 July 25, a team from the OCG visited the Works Site to ascertain the veracity of the claims which had been made and further particulars of the works which had been undertaken in that area.
8. OCG Officers made a visit to the NWA St. James Parish Office on Monday, 2012 July 30, and obtained documents and information relating to, *inter alia*, the award of contracts to Martin Kellier. Included in the documentation and information which was obtained by OCG Officers during the visits to the NWA St. James Parish Office were the following:
 - a. A document entitled **“INDEPENDENCE WORK PROGRAM FOR SOUTH ST. JAMES – JULY 22, 2012 – Member of Parliament: Hon. Derrick Kellier CD”** which detailed particulars of contracts which were to be awarded to twenty-two (22) named contractors, inclusive of a Mr. Martin Kellier. The referenced contract to Mr. Martin Kellier was for works to be undertaken in the *“Anchovy to Mt. Horeb to Welcome Hall”* area, in the sum of J\$200,000.00.
 - b. A document entitled **“ESTIMATE – ISLANDWIDE FLOOD DAMAGE MITIGATION PROGRAMME – SOUTH ST. JAMES – DERRICK**



KELLIER”, detailed estimates of the works which were to be provided by approximately thirty-nine (39) contractors, inclusive of a Mr. Martin Kellier. The figure associated with the estimate of the works which were to be performed by Mr. Martin Kellier was in the amount of J\$250,000.00. The document did not bear a date.

- c. A letter which was dated October 5, 2011 which was signed by Mr. Derrick F. Kellier and which was addressed to Mr. Philip Clarke, Parish Manager, NWA, St. James. The letter which was captioned **“Re: CDF Patching Programme”** indicated that works were to be executed within the following road sections:
 - i. Ducketts/Cambridge/Welcome Hall;
 - ii. Anchovy to Mt. Horeb;
 - iii. Fairfield to Point.

- d. A Memorandum which was dated 2011 November 7, from Mr. Philip Clarke, NWA Parish Manager, St. James, to Mr. George Knight, Director of Regional Implementation and Special Projects. The Memorandum indicated, *inter alia*, that *“I am to advise that Mr. Derrick Kellier Member of Parliament for South St. James had requested that Eight Hundred and Forty Thousand Dollars (\$840,000.00) Dollars [sic] from his \$3M Constituency Development Fund allocated to his constituency should be used to carry out patching works on the Anchovy-Mt. Horeb, Ducketts-Welcome (Jointer PC Road) and Fairfield-Point (Cottage Road). Consequently, I am hereby seeking your approval for this project*



to be declared as emergency works in light of the immediate danger to motorists, residents and property.”³

- e. A contract document which was dated November 3, 2011, between the NWA and M & K Heavy Equipment Hireage Co. Ltd., in the sum of \$840,000.00, for the patching of roadways with hot mix in the following areas: Anchovy-Mt. Horeb, Ducketts-Welcome Hall, (Jointer PC Road) and Fairfield – Point (Cottage Road).

The foregoing are the exact locations which were referred to in the letter from Mr. Derrick Kellier, which was dated October 5, 2011.

- f. An Invoice which was submitted by M & K Heavy Equipment Hireage Co. Ltd to the NWA, in the sum of J\$840,000.00, which was dated November 11, 2011. The said Invoice was stamped and signed “*APPROVED FOR PAYMENT*” on ‘2011.11.16.’
- g. A NWA Payment Voucher and Payment Certificate which is in the sum of J\$840,000.00 in favour of M & K Heavy Equipment Hireage Co. Ltd.
- h. **A verbal assertion by an Officer of the NWA St. James Parish Office, in response to a query from an OCG Officer, regarding the selection of contractors, that often times the Members of Parliament would contact him by telephone and/or email indicating the list of contractors who/which were to be contacted for the works.**

³ Internal Memorandum from Mr. Philip Clarke, Parish Manager, St. James to Mr. George Knight, Director of Regional Implementation & Special Projects, which was dated 2011 November 7.



9. The Constituency Development Fund Programme Management Unit had approved a J\$3 Million Disaster Mitigation project for the Hon. Derrick Kellier for his St. James Southern constituency. The project was approved on July 19, 2011.

10. The OCG has also had sight of a letter dated September 7, 2011 from the Constituency Development Fund Programme Management Unit, which was addressed to the then Chief Executive Officer of the NWA, Mr. Patrick Wong, and which was captioned **“Re: CDF Project for Implementation – St. James Southern”**.

The referenced letter indicated, *inter alia*, that the funds which were received were “...governed by the Financial Administration and Audit (FAA) Act and its Financial Instructions, the Government Procurement Guidelines and Circulars from the Ministry of Finance and the Public Service, and these must be appropriately observed in disbursing funds.”⁴

11. During a site visit which was undertaken by an OCG Officer, on 2011 December 8, to review Christmas works which were undertaken in the Southern St. James Constituency, the OCG Officer was advised by a NWA Representative that, *inter alia*, “...the Contractors were selected by the Member of Parliament who had provided the names of the Contractors on the Work Programme which was sent to the implementing agency.”⁵

12. During the referenced site visit the OCG Officer was advised by a representative of the NWA that “...the major works which were carried out was undertaken by the Contractor, M & K Heavy Equipment Hireage Company Limited (contract value

⁴ Letter dated 2011 September 7 from the CDFPMU to Mr. Patrick Wong, then Chief Executive Officer, NWA.

⁵ Report of Site Meeting which was attended on 2011 December 8 by an OCG Inspector.



\$840,000), which according to the NWA representative was owned by the brother of the Member of Parliament for the area, Derrick Kellier.”⁶

13. The OCG is in possession of a Memorandum which was dated 2012 February 2, from Mr. Philip Clarke, Parish Manager, NWA St. James Parish Office, which was addressed to Mr. Earl Patterson, then Acting Chief Executive Officer, NWA. The particular Memorandum requested retroactive approval for the works which were carried out in 2011 November, through the Constituency Development Fund, on the main road from Anchovy to Mount Horeb, Ducketts to Welcome Hall and Fairfield to Point in Southern St. James.

The Memorandum stated, *inter alia*, as follows, “*I had sought approval before commencement of the works and was under an impression that this was granted. I was however incorrect in this assumption, hence the approval is being requested retrospectively.*

...I acknowledge that my reliance on an assumption that approval had been given resulted in a breach of procedures and assure you that such recurrence in the future will be guarded against.”⁷ (OCG Emphasis)

14. The “**REVISED CONSTITUENCY DEVELOPMENT FUND (CDF) OPERATIONAL PROCEDURES**” which were prepared by the Ministry of Finance and Planning and which is dated 2011 January 17, expressly states, under Section 9.1 (c) that Implementing Agencies are responsible “*To undertake procurement in accordance*

⁶ Report of Site Meeting which was attended on 2011 December 8 by an OCG Inspector.

⁷ Memorandum dated 2012 February 2 from Mr. Philip Clarke to Mr. Earl Patterson regarding “**Retrospective approval of Emergency Works**”.



with the procedures and guidelines outlined in the GOJ Procurement Handbook for the purchases of goods, services and works undertaken by the Fund.”

15. The CDF Operational Procedures, under Section 10.1 expressly states that *“The implementing MDA must ensure that the Procurement Policy, Guidelines, the FAA Act, Regulations and Instructions are strictly adhered to.”*

16. Despite the foregoing, it must be noted that the letter which was dated December 9, 2010 under the signature of Mr. Derrick Kellier, and the representations which have been made to the OCG by a representative of the NWA, would suggest that contracts were awarded to several contractors based upon the recommendations of Mr. Derrick Kellier and without adherence to the Procurement Guidelines or the CDF Operational Procedures.



Key Findings

Awareness of the NWA St. James Parish Officers of the award of the contracts to M & K Heavy Equipment Hireage Co. Ltd.

The OCG issued a statutory requisition dated September 3, 2012 to Mr. Philip Clarke, Parish Manager, NWA St. James Parish Office, and Mr. Howard Ramsay, Assistant Parish Manager, NWA St. James Parish Office, asking both Officers the following question:

“What is/was the extent of your official and/or personal involvement in the award of any contract to M & K Heavy Equipment Hireage Co. Ltd and/or Martin Kellier, for works which were/are to be undertaken in the Southern St. James Constituency? Please provide a comprehensive statement to this question.”⁸

Mr. Philip Clarke, in his sworn response to the OCG’s Requisition, which was dated September 27, 2012 advised *“I am the Parish Manager of St. James for the National Works Agency. As such, in my official capacity I oversee works including the award of contracts within the parish and ensure that contracts are awarded in accordance with the GOJ Procurement Guidelines.”⁹*

In his sworn response dated September 25, 2012 Mr. Howard Ramsay stated *“In my position as Assistant Parish Manager at the National Works Agency I delegate and supervise work whenever I am instructed to do so. In the case of Mr Martin Kellier or M & K Heavy Equipment Hireage Co. Ltd. I was instructed by my Parish Manager Philip [sic] Clarke to prepare a contract which would be awarded to M & K Heavy Equipment Hireage Co. Ltd. to repair the*

⁸ OCG Requisition to Mr. Philip Clarke which was dated 2012 September 3. Question # 1

⁹ Sworn response from Mr. Philip Clarke which was dated 2012 September 27. Response # 1



roadway leading to the Kensington Primary School and patching of potholes along the Mount Horeb roadway. In doing so I took before pictures of the areas and drafted the Contract on M & K Heavy Equipment Hireage Co. Ltd. The works were completed and I submitted the contract along with before and after pictures to my supervising officer for his approval.”¹⁰

As such, the following question was posed to both the referenced Parish Manager and Assistant Parish Manager in an effort to determine the extent to which they were involved or aware of the award of contracts:

“What is the extent of your knowledge of the award of contracts to M & K Heavy Equipment Hireage Co. Ltd and/or Martin Kellier for works which were/are to be executed in the Southern St. James Constituency? Please provide a comprehensive statement to this question.”¹¹

Mr. Clarke, in his sworn response to the OCG indicated that *“In my official capacity as Parish Manger [sic] I am aware of contracts awarded to M & K Heavy Equipment Hireage Co. Ltd. There are two such contracts for works executed in South St. James in the sum \$270,000.00 and \$840,000.00 respectively. The contract in the amount of \$270,000.00 was awarded via direct contracting as per GOJ guidelines based on the value of the works. The contract in the amount of \$840,000.00 was awarded via direct contracting.”¹²*

In response to the question, Mr. Howard Ramsay, Assistant Parish Manager, NWA St. James Parish Office, advised *“I have no authority over the selection of Contractors for any works to be executed in the areas which I supervise. Therefore I act on instructions from my Parish Manager*

¹⁰ Response from Mr. Howard Ramsay which was dated 2012 September 25. Question # 1

¹¹ OCG Statutory Requisitions which were addressed to Mr. Philip Clarke and Mr. Howard Ramsay. Question # 2

¹² Sworn response from Mr. Philip Clarke, which was dated 2012 September 27. Question # 2



whenever it comes to the preparation of Estimates, Contracts etc. I am sometimes informed verbally or through written documents as to the issuing of contracts and supervision of same."¹³

It is instructive to note that the OCG, in the requisition to Mr. Philip Clarke, dated September 3, 2012 posed the following question:

“Did you, in any way, (a) recommend, (b) intervene in, (c) give instructions to any Public Officer/Official and/or (d) grant approval, in regard to the award of contracts to M & K Heavy Equipment Hireage Co. Ltd and in particular, for works which were to be executed in the Southern St. James Constituency of the Hon. Derrick Kellier? If yes, please provide:

- i. Details of (a) the recommendation(s) which was/were made by you, (b) the nature of your intervention, (c) the instructions which were given by you and/or (d) the approval(s) which was/were granted for the award of any such contract referenced above;*
- ii. If any recommendation(s) was/were made by you please provide particulars of same, inclusive of the name(s) and title(s) of the person(s) to whom the recommendation was made and the manner in which said recommendation(s) was/were made, whether verbally or in writing;*
- iii. If any instructions were given, please state the name(s) and title(s) of the person(s) to whom the instructions were given and, in each instance, whether such instructions were given verbally and/or in writing;*

¹³ Response from Mr. Howard Ramsay which was dated 2012 September 25. Question # 2



- iv. *If, in any instance, you granted approval for the award of any contract, please provide full particulars of same, inclusive of the authority under which you granted such approval;*
- v. *Particulars of your reason(s)/rationale for (a) making the stated recommendations, (b) giving the instructions, (c) intervening in the process and/or (d) granting approval of the contract(s);*
- vi. *The date(s) on which you recommended, intervened, gave instructions regarding the matter and/or granted approval for the award of the contract(s);*
- vii. *The authority under which you (a) made the recommendation, (b) issued the instructions, (c) intervened in the process and/or granted approval for the approval of the contract;*
- viii. *The ensuing results of any such recommendations, interventions made and/or the instructions which were given by you.*

*Please provide documentary evidence, where possible, in support of your response.*¹⁴

In his sworn response to the OCG's Statutory Requisition, dated September 27, 2012 Mr. Philip Clarke advised the OCG as follows:

"In my official capacity as the Parish Manager I made recommendations for the award of contracts to M & K Heavy Equipment Hireage Co. Ltd. These recommendations were made as per within my portfolio responsibility and in accordance with the GOJ Procurement guidelines. I did not at any time intervene in or gave instructions to any

¹⁴ OCG Requisition to Mr. Philip Clarke, NWA Parish Manager which was dated September 3, 2012. Question #



Public Officer/Official as it relates to the award of contracts to M & K Heavy Equipment Hireage Co. Ltd.

- i. Recommendations were made for the award of two (2) contracts to M & K Heavy Equipment in the amount of \$270,000.00 and \$840,000.00 respectively. The award of the contract in the amount of \$840,000.00 was done via direct contracting and implemented as emergency works.*
- ii. Recommendations for award of works are communicated internally. In the case of Direct Contracting, as Parish Manager I have an approval limit for entering into contracts up to a value of \$275,000.00. Approval for the award of emergency works as executed under the contract valuing \$840,000.00 was requested from the Chief Executive Officer.*
- iii. The only instructions issued to the contractors are upon the award of works as it relates to the execution, work requirements and timelines for completion.*
- iv. As indicated above, approval for the award of contract value \$270,000.00 was given as set out in the NWA approval limits set for officers.*
- v. Contracts were awarded based upon past performance and the nature of works to be executed.*
- vi. A request for approval for works to be executed as emergency was made on November 7, 2011.*
- vii. The recommendation for emergency works was given based on the threat of life and property based on the dangerous condition of the roadway.*



*The recommendation for award was subsequently approved by the Chief Executive Officer.*¹⁵

The identical question was put to Mr. Howard Ramsay, Assistant Parish Manager, and in his sworn response dated 2012 September 25, he asserted that *“I, at no time, recommended or gave instructions to any Officer or Official in regards to the award of contracts to M & K Heavy Equipment Hireage Co. Ltd.”*¹⁶

The OCG, during its preliminary Enquiry had been provided with a copy of a letter which was dated December 9, 2010 which was submitted to the NWA under the signature of the Hon. Derrick Kellier. The letter listed the names of several contractors and the values of the contracts which were to be awarded to them. Based upon the foregoing, the OCG, in its respective Statutory Requisitions to Mr. Philip Clarke and Mr. Howard Ramsay, posed the following question.

“Reference is made to a letter dated December 9, 2010, which was addressed to you, in your capacity as the Parish Manager, National Works Agency, which was signed by one Mr. Derrick F. Kellier, a copy of which is attached for ease of reference. Having regard to the foregoing, please provide responses to the following questions:

- i. Are you aware of the referenced letter?*
- ii. Are you aware of the basis(es) on which each of the listed contractors who/which are detailed in the referenced letter were selected?*

¹⁵ Sworn Response from Mr. Philip Clarke which was dated 2012 September 27. Question # 6

¹⁶ Sworn response from Mr. Howard Ramsay which was dated 2012 September 25. Question # 6



- iii. *Please advise of the basis/rationale, if any, which was given and/or used to determine the value of the contracts, in each instance, which are stipulated in the letter to you from Mr. Derrick Kellier;*
- iv. *On what basis was the letter of December 9, 2010 directed to you, as the NWA Parish Manager, for the works to be executed?;*
- v. *Is it a custom and/or norm for such letters, which detail the particulars of contracts, to be sent by Members of Parliament to your direct attention, in your capacity as the NWA Parish Manager? If yes, please also advise if this is a standard procedure at the NWA;*
- vi. *Please advise of the action, if any, which is normally taken by you upon receipt of such letters from Members of Parliament;*
- vii. *With specific reference to the letter of December 9, 2010, please advise of the action which was taken by you, and/or anyone acting on your behalf, in regard to the contract awards which are detailed in the referenced letter. Please also advise if the contracts were awarded in keeping with the particulars of the referenced letter;*
- viii. *Please advise whether you and/or any other Officer/Official of the NWA was/were coerced, placed under duress or intimidated, in any way, as it regards your facilitating the award of the contracts as detailed in the referenced letter. If yes, please provide responses to the following questions:*
 - (a) *The name(s) and title(s) of the person(s) who coerced, intimidated and/or placed you and/or any other Officer/Official of the NWA under such duress;*



- (b) *The nature and frequency of the coercion, intimidation and duress which was meted out to you and/or any other Officer/Official of the NWA in regard to the referenced matter;*
- (c) *The date(s) on which you and/or any other Officer/Official of the NWA was/were subjected to such coercion, intimidation and/or duress;*
- (d) *Whether such coercion, intimidation and/or duress was reported to anyone and if so, the name(s) and title(s) of the person(s) to whom the report was made and the date(s) of same.*

*Please provide documentary evidence, where possible, in support of your response and any assertions which are made.*¹⁷

Mr. Philip Clarke, in his sworn response to the OCG's Statutory Requisition, which was dated September 27, 2012 asserted that:

- i. *"Yes, I am aware of the referenced letter.*
- ii. *No, I am not aware on the basis(es) on which the listed contractors were selected.*
- iii. *No basis/rationale was given for the selections. To the best of my knowledge this information may have been assimilated from the estimates for the works that were approved by the CDFPMU for the project(s) submitted by the Member of Parliament. The National Works Agency prepared Bill of Quantities and/or estimates for works on the request of the Member of Parliament, which is standard procedure in preparation of their proposals to the CDFPMU.*

¹⁷ OCG Statutory Requisitions which were addressed to Mr. Philip Clarke and Mr. Howard Ramsay which were dated 2012 September 3. Question # 7.



- iv. **Members of Parliament, to the best of my knowledge, can make recommendations and/or queries regarding works to be executed in their constituency and as Parish Manager these correspondences can be directed to me as the Agency's representative.** (OCG Emphasis)
- v. *To the best of my knowledge, Members of Parliament may make recommendations for works to be executed under the Constituency Development Fund. It is not a standard procedure, however it is not excluded.*
- vi. *Due consideration is given to the Members' of Parliament or other representatives' recommendation for works of this nature.*
- vii. *Due consideration was given to the referenced letter and the recommendations made by the Member of Parliament. Contracts awarded for the works were made based on the capability of the contractors and their ability to execute the works in accordance with the estimates.*
- viii. *I was not coerced or placed under duress or intimidated, in any way to facilitate the award of contracts as detailed in the referenced letter.*¹⁸

Mr. Howard Ramsay, the Assistant Parish Manager, NWA St. James Parish Office, in his sworn response to the OCG advised that:

- i. *Yes I am aware of the referenced letter.*
- ii. *No I am not aware of the basis on which the contractors were selected.*
- iii. *I am not aware of the basis or rationale used to determine the value of the Contracts which were stipulated in the letter from Mr. Kellier*

¹⁸ Sworn response from Mr. Philip Clarke which was dated 2012 September 27. Response to question # 7



- iv. *I am aware that letters are sent by the Members of Parliament advising the Parish Manager whenever works are to be executed*
- v. *Yes, it is customary for letters to be sent by Members of Parliament to advise The Parish Manager for the execution of works and the available expenditures. This is a standard operating procedure at the NWA. These are filed and kept at the St. James Parish Office and serve as documentary evidence.*
- vi. *It is customary to get in contact with the persons listed and make arrangements to meet with them and take 'before' pictures of the work to be done and prepare contracts for the execution of the works. The letters normally list one person / contact per contract with the relevant contact information*
- vii. *Mr. Clarke advised me to make contact with the Contractor in question additionally he gave me a copy of a letter dated October 5, 2011 relating to the works to be implemented. (A copy has been included for your information.)*
- viii. *No, I was never ever intimidated neither am I aware of any other Officer or Officials that have been intimidated coerced or placed under duress as to the awarding of contracts. I do not have intimate knowledge of the process to negotiate contracts. I only get involved with the execution / Implementation of contracts.”¹⁹*

¹⁹ Response from Mr. Howard Ramsay which was dated 2012 September 25. Question # 7



Selection of Contractors and the Involvement of the Hon. Derrick Kellier, M.P, Southern St. James

In furtherance of the investigation, Statutory Requisitions were sent to Mr. Philip Clarke and Mr. Howard Ramsay, and the following question was put to them.

“Has the Hon. Derrick Kellier, at any time, (a) recommended and/or (b) selected and/or (c) directed/instructed and/or (d) influenced the award of any contract, by the NWA, for works which were to be executed in his Southern St. James Constituency? If yes, please provide a comprehensive list of all contract awards, if any, which the Hon. Derrick Kellier has (a) recommended and/or (b) selected and/or (c) directed/instructed and/or (d) influenced, at any time between 2010 January to present, whether directly or indirectly, in his Southern St. James Constituency. The list should include the following:

- i. The name(s) of the Contractor(s), in each instance;*
- ii. For each named Contractor, please indicate, in very specific terms, whether, in each instance, the Hon. Derrick Kellier (a) recommended and/or (b) selected and/or (c) directed/instructed and/or (d) influenced the award of the contract(s) to the named contractor;*
- iii. The date(s) on which he recommended, selected, directed/instructed and/or influenced the award of each of the referenced contracts;*
- iv. The manner and method by which the Hon. Derrick Kellier recommended, selected, directed/instructed and/or influenced the award of each of the referenced contracts;*



- v. *The name(s) and title(s) of the person(s) who were advised of his (a) recommendation and/or (b) selection and/or (c) directive/instruction and/or (d) who was influenced in regard to the award of the referenced contract(s);*
- vi. *The action(s), if any, which were taken by either yourself and/or the named individuals in regard to his (a) recommendation, (b) selection, (c) directive/instruction and/or (d) influence on the process;*
- vii. *Particulars of the value(s) of the contract(s), in each instance;*
- viii. *The location and nature of the works which were/are to be undertaken.*

*Please provide documentary evidence, where possible, in support of your response and any assertions which are made.*²⁰

Mr. Philip Clarke, in his sworn response to the OCG's Requisition, dated September 28, 2012, indicated that *"The Hon. Derrick Kellier has made recommendations of contractors to the NWA for works which were to be executed in his Southern St. James Constituency as indicated in the referenced letter dated December 9, 2010. To the best of my knowledge there are no other such written recommendations that were received."*²¹

Mr. Howard Ramsay, Assistant Parish Manager, NWA St. James Parish Office, in his sworn response to the OCG's Requisition which was dated September 25, 2010 advised the OCG that **"Whenever CDF works are to be implemented the Member of Parliament would recommend and provide a list with the names of the contractors. An example of this is seen in the December 9, 2010 letter which is referred in your correspondence to me."**²² (OCG Emphasis)

²⁰ OCG Requisition to Mr. Philip Clarke and Mr. Howard Ramsay which were dated 2012 September 3. Question # 8

²¹ Response from Mr. Philip Clarke which was dated 2012 September 27. Question # 8

²² Response from Mr. Howard Ramsay which was dated 2012 September 25. Question # 8



During the course of its investigation, the OCG sought to ascertain whether the Hon. Derrick Kellier, M.P., had given any instructions to any Officer of the NWA St. James Parish Office concerning the award of any contract in his Southern St. James Constituency.

In response to the foregoing, Mr. Philip Clarke, in his sworn response to the OCG, advised the OCG that *“To the best of my knowledge neither I nor any Officer(s) of the NWA has ever been instructed by the Hon. Derrick Kellier in regards to the award of any contract in his Southern St. James constituency.”*²³

In direct response to the foregoing question, Mr. Howard Ramsay indicated *“No”* and further stated that he was *“...always instructed by my Parish Manager as per the NWA’S Organizational structure. All Assistant Parish Managers report to/take instructions from the Parish Manager.”*²⁴

On August 21, 2012 a Statutory Requisition was issued to the Hon. Derrick Kellier and the following question was put to him *“Please provide a comprehensive list of all contractors, if any, whom you have (a) recommended and/or (b) selected and/or (c) directed, at any time between 2010 January to present, whether directly or indirectly, to be the recipient of any Government of Jamaica Contract in your Southern St. James Constituency. The list should include the following:*

- i. The name(s) of the Contractor(s), in each instance;*
- ii. The date(s) on which you recommended, selected and/or directed the award of each of the referenced contracts;*

²³ Response from Mr. Philip Clarke which was dated 2012 September 27. Question # 10

²⁴ Response from Mr. Howard Ramsay dated 2012 September 25. Question # 10.



- iii. *The name(s) and title(s) of the person(s) who were advised of your (a) recommendation and/or (b) selection and/or (c) directed by you in regard to the award of the referenced contract(s);*
- iv. *The action(s), if any, which were taken by the named individuals in regard to your (a) recommendation, (b) selection and/or (c) directive;*
- v. *Particulars of the value(s) of the contract(s), in each instance;*
- vi. *The location and nature of the works which were/are to be undertaken.*²⁵

It must be noted that the Hon. Derrick Kellier, in his sworn response to the OCG advised that “*With reference to recommendation to Question # 7, the information requested in respect of 7 (i), 7 (ii), 7 (iii), 7 (v) and 7 (vi) respectively are set out in the attached letters numbered **DK I – DK X** inclusive.*” It is also the case that the Hon. D. Kellier advised the OCG that “*The works set out in **DK I – DK X** inclusive were implemented.*”²⁶

The Hon. Derrick Kellier provided the OCG with copies of eight (8) letters and two (2) further exhibit notes which were written by him and directed to either the NWA and/or the National Solid Waste Management Authority (NSWMA) and/or which detailed the particular recommendations which he had made in regard to the award of contracts.

It is noted that of the ten (10) pieces of correspondence and/or exhibit notes which were provided by the Hon. Derrick Kellier, seven (7) of the same were letters which were addressed to Mr. Philip Clarke, Parish Manager, NWA, St. James, whilst the two (2) were exhibit notes which captioned the substance of verbal recommendations which the Hon. Derrick Kellier indicated that he had made to representatives of the NWA St. James Parish Office.

²⁵ OCG Requisition to Mr. Derrick Kellier which was dated 2012 August 21. Question # 7

²⁶ Response from the Hon. Derrick Kellier which was dated 2012 September 18. Response # 7



Included in the seven (7) letters which were provided by the Hon. Derrick Kellier were the following:

1. A copy of a letter which was dated December 9, 2010, from the Hon. Derrick Kellier which was addressed to Mr. Philip Clarke and which, prior to listing some twenty contract locations, sums and names of contractors, advised as follows: “*Kindly execute the following progress [sic] as set out below in the dispatched areas for bushing, clear debris and drain cleaning.*”²⁷
2. A copy of a letter which was dated December 2, 2011 from the Hon. Derrick Kellier which was addressed to Mr. Philip Clarke, and which stated, *inter alia*, as follows: “*...kindly undertake the works stated below as a matter of urgency under an Emergency Procurement Method.*”²⁸ The referenced letter stipulated the locations of three (3) projects but did not indicate the names of the contractors or the contract sums.
3. A copy of a letter which was dated November 26, 2010, from the Hon. Derrick Kellier which was addressed to Mr. Philip Clarke, and which advised, *inter alia*, as follows: “*Please execute bushing and drain cleaning in the following areas as stated below*”.²⁹

The letter provided the particulars of the locations at which the works were to be undertaken, namely, in the Anchovy, Welcome Hall, Maroon Town and Catadupa Divisions, the particulars of the contractors who/which were to undertake the works and the sum of the works.

²⁷ Copy of a letter dated 2010 December 9 from the Hon. Derrick Kellier to Mr. Philip Clarke.

²⁸ Copy of a letter dated 2011 December 2 from the Hon. Derrick Kellier to Mr. Philip Clarke.

²⁹ Copy of a letter dated 2010 November 26 from the Hon. Derrick Kellier to Mr. Philip Clarke.



4. A copy of a letter dated December 10, 2010, from the Hon. Derrick Kellier which was addressed to Mr. Philip Clarke, and which advised, *inter alia*, as follows: “*Kindly Execute the following program as set out below for drain clearing and bushing*”.

The letter listed four (4) locations at which works were to be undertaken, namely:

- a. Bottom Cambridge Housing Scheme to Seven Rivers;
- b. Senior to Cambridge;
- c. Tangle River Drains Section 1; and
- d. Tangle River Drains Section 2.

The letter also detailed the names of the contractor and the sums of the works which were to be performed. The referenced letter also included a sum for the ‘supervision’ of the stated works.

5. A copy of a letter dated August 2, 2011, from the Hon. Derrick Kellier addressed to Mr. Philip Clarke, captioned **“Re: \$6M Drain Cleaning Programme – South St. James”** which advised: “*Kindly allocate to the following areas as set out below*”. The referenced letter listed two (2) locations at which works were to be undertaken, namely, Red Dirt to Horse Guard and Flamstead to German Town. The values of the works to be undertaken and the names of the persons/contractors and contact particulars were also stated on the referenced letter.

It must be noted that attached to the referenced letter was a document entitled **“ESTIMATE ISLANDWIDE FLOOD DAMAGE MITIGATION PROGRAMME SOUTH ST. JAMES – DERRICK KELLIER”** which provided the particulars of



thirty-nine (39) other locations, names of contractors, contact particulars and the values of works which were to be undertaken.

6. A copy of a letter which was dated October 18, 2011, from the Hon. Derrick Kellier to Mr. Philip Clarke, which was captioned “*Re: \$3M Mitigation Programme*”. The referenced letter advised as follows: “*Kindly implement the above programme for bushing and cleaning as set out on the attached.*” It is instructive to note that attached to the referenced letter was a listing of some twenty-eight (28) contractors and their contact particulars, the particulars of roads on which works were to be undertaken and the values of the works which were to be executed.

7. A copy of a hand-written letter which was dated “*5.12.2011*” from the Hon. Derrick Kellier, which was addressed to Mr. Philip Clarke, and which was captioned “*Re: \$2 Million Bushing & Drain Cleaning*”. The referenced letter stated, *inter alia*, “*Kindly execute the above programme as set out below*”. It is instructive to note that the particulars of twenty (20) locations, the respective costs of the works and the names of the contractors who/which were to undertake same were detailed in the referenced letter.

Also presented to the OCG and labeled “DK IX” and “DK X” were two (2) exhibit notes in which the Hon. Derrick Kellier outlined the recommendations which were made by him.

The first exhibit note, which was labeled “DK IX”, stated as follows:

“I was advised by National Works Agency, St. James Parish Manager, Phillip Clarke vi telephone to submit recommendations for the NWA Mitigation Drain Cleaning Programme in



three areas. The following were recommended:

1. *Dennis Wanliss – Cambridge*
2. *Donald McInstosh – Bickersteth*
3. *Delroy Wallace – Anchovy/Lethe”*

The second exhibit note, which was labeled “DK X”, stated as follows:

“I made recommendations via telephone (Howard Ramsey – Works Officer, National Works Agency, St. James and Derrick Kellier) re drain cleaning, bushing and debris removal as follows:

1. *Claudius Kerr - Cambridge - \$450,000.00*
2. *Ivet Nelson - Kensington - \$60,000.00*
3. *Noel Chung - Tulloch castle - \$164,000.00”*

The OCG, therefore, found that numerous recommendations were made by the Hon. Derrick Kellier in regard to the award of contracts in his constituency. Categorically, such recommendations are not, without more, in and of themselves, unusual or untoward.

Subsequent to the launch of the OCG’s investigation, public assertions were made by the Hon. Derrick Kellier, in the media, in defense of his actions involving the award of contracts to his brother. As such, and out of an abundance of caution, the OCG, in its Statutory Requisitions to Mr. Philip Clarke and Mr. Howard Ramsay, dated September 3, 2012, posed the following question:



*“Reference is made to a newspaper Article which was printed in the Jamaica Observer on Wednesday, August 15, 2012, entitled **“Kellier defends decision; says brother on gov’t contract list”**, a copy of which is attached for ease of reference. The referenced newspaper article quotes the Hon. Derrick Kellier, M.P., amongst other things, as follows:*

“I did not select anyone; I only made recommendations like anybody else would. Selections are made by the works agency (NWA). It is standard practice for people in Parliament to make recommendations. You can recommend anyone you want to recommend. If they want to choose one over those that you recommend, that is their business,”

In light of the foregoing assertions of the Hon. Derrick Kellier, M.P., please provide responses to the following questions:

- (a) Is the referenced assertion by the Hon. Derrick Kellier an accurate and truthful representation of his interaction and/or involvement in the process which was employed in the award of contracts to contractors in his Southern St. James Constituency?;*
- (b) Please reconcile your response to question #12(a) above with any correspondence which was received by you and/or anyone acting on behalf of the NWA and which formed the basis(es) upon which the referenced contracts were awarded;*
- (c) In any instance, and/or for any reason for which you are of the opinion that the foregoing assertion of the Hon. Derrick Kellier is false, please*



provide particulars of same and the reasons which have led you to that belief.

Where possible, please provide documentary evidence in support of your response and/or any assertions made.”³⁰

Mr. Philip Clarke, in his sworn response to the OCG advised as follows:

“a. To the best of my knowledge the referenced assertion by the Hon. Derrick Kellier is an accurate and truthful representation of his interaction and/or involvement in the process employed in the award of contracts to contractors in his constituency for works implemented by the NWA.

*b. Please see Appendix B”*³¹

Of note, Appendix B consisted of the three (3) aforementioned letters which were dated 2010 December 9, 2011 October 5 and 2011 December 2, as it regards the allocation of CDF Funds for the ‘execution’ of works.

In response to the foregoing question, Mr. Howard Ramsay, in his sworn response which was dated 2012 September 25, asserted as follows:

“12. All communication with Mr. Kellier is done by the Parish Manager.

(a) I had no direct contact with Mr. Kellier regarding the said contract as such I cannot speak to the accuracy of his statement.

³⁰ OCG Statutory Requisition to Mr. Philip Clarke and Mr. Howard Ramsay which were dated 2012 September 3. Question # 12.

³¹ Sworn Response from Mr. Philip Clarke which was dated 2012 September 25. Question # 12.



(b) I have no dealings with the selection of contracts as such I have no document to this regard, I was simply verbally advised of the award of this contract and took the necessary action to have the work executed.

(c) In this instance I was verbally informed of the contract and as such have no basis upon which to determine exactly who selected the contractor.”³²

Engagement of M & K Heavy Equipment Hireage Co. Ltd.

The OCG, in its Statutory Requisition to the Hon. Derrick Kellier, M.P., which was dated August 21, 2012, posed the following question to the Member of Parliament.

“What is/was the extent of your official and/or personal involvement in the award of any contract to M & K Heavy Equipment Hireage Co. Ltd and/or Martin Kellier, for works which were/are to be undertaken in your Southern St. James Constituency? Please provide a comprehensive statement to this question.”³³

According to the Hon. Derrick Kellier, in his sworn response to the OCG, which was dated September 18, 2012 *“I recommended M & K Heavy Equipment Hireage Company Ltd. and Martin Kellier along with several other contractors in my capacity as Member of Parliament as per letters attached numbered **DK I & DK V** to the National Works Agency, St. James. I played no part in the awarding of the contracts.”³⁴*

The referenced letters which were included in the Hon. Derrick Kellier’s response to the OCG,

³² Sworn response from Mr. Howard Ramsay which was dated September 18, 2012. Question # 12.

³³ OCG Requisition to the Hon. Derrick Kellier which was dated August 21, 2012. Question # 1

³⁴ Response from the Hon. Derrick Kellier, which was dated September 18, 2012.



and which were numbered 'DKI' and 'DKV' were respectively dated December 9, 2010 and August 2, 2011.

It must be noted that the letter of December 9, 2010 was addressed to Mr. Philip Clarke, Parish Manager, NWA St. James Parish Office, and detailed the particulars of contracts which were to be awarded to a list of twenty (20) named contractors, inclusive of M & K Heavy Equipment Hireage Co. Ltd, which is majority owned by the brother of the Hon. Derrick Kellier, M.P., one Mr. Martin Kellier. The value of the referenced contract was in the sum of \$ 270,000.00

In the case of the document which was labeled 'DKV', same was a listing of some thirty nine (39) contractors who/which were to undertake work in the South St. James Constituency of the Hon. Derrick Kellier as a part of the Islandwide Flood Damage Mitigation Programme.

In the latter instance, the estimate of works which were to be performed by Mr. Martin Kellier was in the sum of J\$250,000.00.

It is instructive to note that the OCG also required the Hon. Derrick Kellier to provide a response to the following question:

*"What is the extent of your knowledge of the award of contracts to M & K Heavy Equipment Hireage Co. Ltd and/or Martin Kellier for works which were/are to be executed in your Southern St. James Constituency? Please provide a comprehensive statement to this question."*³⁵

In his sworn response to the OCG, which was dated September 18, 2012 the Hon Derrick Kellier

³⁵ OCG Statutory Requisition to the Hon Derrick Kellier which was dated August 21, 2012. Question # 2



advised the OCG that *“As Member of Parliament, I do not award contracts. The process of awarding contracts is carried out by the National Works Agency. My involvement stops at recommendation. However by letter dated December 2, 2011 addressed to Mr. Phillip Clarke, Parish Manager, National Works Agency, St. James, I requested the National Works Agency to undertake work on an emergency basis as set out in the attached **DK II**. Subsequently I was advised by the Parish Manager, National Works Agency, St. James that the works set out in **DK II** would be undertaken by M & K Heavy Equipment Hireage Company Ltd.”*³⁶

The OCG observed that the referenced letter, which was labeled “DKII”, did not stipulate the names of the contractors and/or contract values.

It is instructive to note that the OCG also posed the following question to the Hon. Derrick Kellier:

“Did you, in any way, (a) recommend, (b) intervene in and/or (c) give instructions to any Public Officer/Official in regard to the award of contracts to M & K Heavy Equipment Hireage Co. Ltd and in particular, for works which were to be executed in your Southern St. James Constituency? If yes, please provide:

- i. Details of (a) the recommendation(s) which was/were made by you, (b) the nature of your intervention and/or (c) the instructions which were given by you;*
- ii. If any recommendation(s) was/were made by you please provide particulars of same, inclusive of the name(s) and title(s) of the person(s) to whom the*

³⁶ Response from the Hon. Derrick Kellier, Response # 2



- recommendation was made and the manner in which said recommendation(s) was/were made, whether verbally or in writing;*
- iii. If any instructions were given, please state the name(s) and title(s) of the person(s) to whom the instructions were given and, in each instance, whether such instructions were given verbally and/or in writing;*
- iv. Particulars of your reason(s)/rationale for (a) making the stated recommendations, (b) giving the instructions and/or (c) intervening in the process;*
- v. The date(s) on which you recommended, intervened and/or gave instructions regarding the matter;*
- vi. The authority under which you (a) made the recommendation, (b) issued the instructions and/or (c) intervened in the process;*
- vii. The ensuing results of any such recommendations, interventions made and/or the instructions which were given by you.*

Please provide documentary evidence, where possible, in support of your response.”³⁷

In his sworn response which was dated September 18, 2012 the Hon. Derrick Kellier advised the OCG as follows:

- “(a) Yes, recommendation in relation to Southern St. James only*
- (i) As per letter attached marked **DK I**.*
- (ii) See attached **DK I**.*
- (iii) No instructions were given*

³⁷ OCG Requisition which was dated August 21, 2012. Question # 5



- (iv) (a) *recommendation was made based on company's registration with National Contracts Commission.*
- (v) *The date of the recommendation is as stated in **DK I**.*
- (vi) (a) *The authority to recommend comes from my capacity as Member of Parliament for Southern St. James*
- (vii) *The National Works Agency implemented the works programme. I am not in possession of any documentary evidence.*³⁸

It must be noted that the OCG also sought to ascertain and/or to verify the nature of the relationship between the Hon. Derrick Kellier and the proprietors of M & K Heavy Equipment Hireage Co. Ltd. as such, the OCG, in its Statutory Requisition, which was dated August 21, 2012 posed the following question to the Hon. Derrick Kellier:

“Please advise if you are in any way related to and/or have a relationship with any of the Principals, Shareholders and/or Officers of M & K Heavy Equipment Hireage Co. Ltd. If yes, please provide full particulars of same, inclusive of the following:

- i. The name(s) and title(s) of the Principal(s), Shareholder(s) and/or Officer(s) of M & K Heavy Equipment Hireage Co. Ltd to whom you are related/with whom you have a relationship;*
- ii. The nature of the relationship between yourself and the named Principal(s), Shareholder(s) and/or Officer(s) of M & K Heavy Equipment Hireage Co. Ltd;*
- iii. The length of time that you have known the named Principal(s), Shareholder(s) and/or Officer(s) of M & K Heavy Equipment Hireage Co. Ltd.*³⁹

³⁸ Response from the Hon. Derrick Kellier which was dated September 18, 2012. Question # 5

³⁹ Requisition to the Hon. Derrick Kellier dated August 21, 2012. Question # 4



In his sworn response to the OCG, which was dated September 18, 2012 the Hon. Derrick Kellier advised the OCG as follows:

“Yes

- (i) Martin Kellier*
- (ii) Brother*
- (iii) 53 years ”⁴⁰*

Selection and Recommendation for Award of Contracts

It is instructive to recall that the Hon. Derrick Kellier, by way of a letter which was dated December 9, 2010 and captioned **“Re: CDF Allocation (\$1,999,998.00)”** had written to Mr. Philip Clarke, Parish Manager, NWA St. James Parish Office, which stated, *inter alia*, the following: *“Kindly execute the following progress [sic] as set out below in the dispatched areas for bushing, clear debris and drain cleaning”*.

The referenced letter detailed the particulars of some twenty (20) locations, monetary sums and the names of individuals, and a commercial entity, **M & K Heavy Equipment Hireage Co. Ltd.**, in regard to the execution of the works. (OCG Emphasis)

Having regard to the foregoing, the OCG, in its Statutory Requisition to the Hon. Derrick Kellier, which was dated August 21, 2012 posed the following questions:

⁴⁰ Sworn Response from the Hon. Derrick Kellier which was dated September 18, 2012 . Question # 4



“Reference is made to a letter dated December 9, 2010, which was addressed to a Mr. Phillip Clarke, Parish Manager, National Works Agency, which was signed by you, a copy of which is attached for ease of reference. Having regard to the foregoing, please provide responses to the following questions:

- i. Are you aware of the referenced letter?*
- ii. On what basis did you select each of the contractors who/which are detailed in the referenced letter?*
- iii. Please advise of the basis/rationale by which you arrived at a determination as to the value of the contracts, in each instance, which are stipulated in your letter to the Parish Manager of the NWA.*
- iv. On what basis did you direct your letter of December 9, 2010 to the National Works Agency Parish Manager for the works to be executed?*

Please provide documentary evidence, where possible, in support of your response and any assertions which are made.”⁴¹

In his sworn response to the OCG which was dated September 18, 2012, the Hon. Kellier advised as follows:

- (i) “Yes*
- (ii) Persons recommended are well known in the districts, posses [sic] the required TRN and have a proven track record in executing these types of work.*

⁴¹ OCG Requisition to the Hon. Derrick Kellier which was dated 2012 August 21. Question # 6.



- (iii) *The rationale is based on the approved allocation and the specific need of the stated areas needing attention in drain cleaning and bushing.*
- (iv) *Based on Mr. Phillip Clarke, Parish Manager, National Works Agency, St. James advising me in my capacity as Member of Parliament by telephone to submit recommendations for the implementation of the Constituency Development Fund Allocation.”⁴²*

In regard to the aforementioned letter of December 9, 2010, it is instructive to note that the OCG, by way of its Statutory Requisitions which were dated September 3, 2012, posed a similar question, amongst others, to Mr. Philip Clarke and Mr. Howard Ramsay to ascertain the basis upon which the named contractors were nominated for the listed works.

In his sworn response to the OCG, which was dated September 27, 2012, Mr. Clarke advised the OCG, *inter alia*, that

- i. *“Yes, I am aware of the referenced letter.*
- ii. *No, I am not aware on the basis(es) on which the listed contractors were selected.*
- iii. *No basis/rationale was given for the selections. To the best of my knowledge this information may have been assimilated from the estimates for the works that were approved by the CDFPMU for the project(s) submitted by the Member of Parliament. The National Works Agency prepared Bill of Quantities and/or estimates for works on the request of the Member of Parliament, which is standard procedure in preparation of their proposals to the CDFPMU.*

⁴² Response from the Hon. Derrick Kellier which was dated 2012 September 18. Question # 6



- iv. *Members of Parliament, to the best of my knowledge, can make recommendations and/or queries regarding works to be executed in their constituency and as Parish Manager these correspondences can be directed to me as the Agency's representative.*
- v. *To the best of my knowledge, Members of Parliament may make recommendations for works to be executed under the Constituency Development Fund. It is not a standard procedure, however it is not excluded.*
- vi. *Due consideration is given to the Members' of Parliament or other representatives' recommendation for works of this nature.*
- vii. *Due consideration was given to the referenced letter and the recommendations made by the Member of Parliament. Contracts awarded for the works were made based on the capability of the contractors and their ability to execute the works in accordance with the estimates.*
- viii. *I was not coerced or placed under duress or intimidated, in any way to facilitate the award of contracts as detailed in the referenced letter."*

It is instructive to note that Mr. Howard Ramsay, the Assistant Parish Manager, NWA St. James Parish Office, advised the OCG as follows:

- “7. i. Yes I am aware of the referenced letter.*
- ii. No I am not aware of the basis on which the contractors were selected.*
- iii. I am not aware of the basis or rationale used to determine the value of the Contracts which were stipulated in the letter from Mr. Kellier*
- iV. I am aware that letters are sent by the Members of Parliament advising the Parish Manager whenever works are to be executed*



V. Yes, it is customary for letters to be sent by Members of Parliament to advise The Parish Manager for the execution of works and the available expenditures. This is a standard operating procedure at the NWA .These are filed and kept at the St. James Parish Office and serve as documentary evidence.

Vi. It is customary to get in contact with the persons listed and make arrangements to meet with them and take 'before' pictures of the work to be done and prepare contracts for the execution of the works. The letters normally list one person / contact per contract with the relevant contact information

Vii. Mr. Clarke advised me to make contact with the Contractor in question additionally he gave me a copy of a letter dated October 5.2011 relating to the works to be implemented.(A copy has been included for your information.)

Viii. No, I was never ever intimidated neither am I aware of any other Officer or Officials that have been intimidated coerced or placed under duress as to the awarding of contracts. I do not have intimate knowledge of the process to negotiate contracts. I only get involved with the execution / Implementation of contracts.⁴³

⁴³ Response from Mr. Howard Ramsay which was dated 2012 September 25. Question # 7.



Particulars of the Process which was employed by the NWA in the award of contracts

The OCG, in its statutory requisitions dated September 3, 2012, required both Mr. Philip Clarke and Mr. Howard Ramsay to provide particulars of the process by which the contracts were awarded in the Southern St. James Constituency. As such, the OCG posed the following question to both gentlemen:

“Please provide particulars of the process which is/has been utilized by the NWA St. James Parish Office in order to determine and/or to ensure that works which are to be undertaken through the proceeds of the Constituency Development Fund are in fact executed. Your response should include, inter alia, the following:

- i. The means and/or basis(es) upon which a determination is made regarding the works which are to be performed;*
- ii. The name(s) and title(s) of the person(s) who are vested with the responsibility of determining the works which are to be performed;*
- iii. The name(s) and title(s) of the person(s) and/or entity(ies) who/which are vested with the responsibility for selecting the contractor(s) in each instance;*
- iv. Particulars of the approvals which must be granted, as known to you, in order to proceed and/or execute the projects which are funded through the proceeds of the Constituency Development Fund.*

Please provide documentary evidence, where possible, in support of your response.”⁴⁴

⁴⁴ OCG Requisition to Mr. Philip Clarke and Mr. Howards Ramsay. Question # 13



Mr. Philip Clarke, in his sworn response to the OCG which was dated September 27, 2012 asserted as follows:

“Works undertaken through the proceeds of Constituency Development Fund are executed as per standard project implementation methods and are procured as per GOJ guidelines upon receipt of such approval by the NWA.

- i. The means and/or basis(es) are determined based on the GOJ Procurement Guidelines.*
- ii. As far as I am aware the works to be performed are determined by the CDFPMU before the granting of approval for the projects as requested by the Member of Parliament.*
- iii. The National Works Agency has the vested responsibility for selecting contractors. This determination is done as per the GOJ procurement guidelines.*
- iv. As per the CDF Operational Procedures and to the best of my knowledge the NWA has to be in receipt of authorization/approval letter from the Constituency Development Fund Project Management Unit (CDFPMU) for the respective projects in order to proceed with execution of works.”⁴⁵ (OCG Emphasis)*

Mr. Howard Ramsay, in his sworn response to the OCG, which was dated September 25, 2012 advised the OCG as follows:

“13.i My only awareness is that the Member of Parliament is responsible for His Constituency Development Fund and with the necessary Committee chooses projects

⁴⁵ Response from Mr. Philip Clarke which was dated 2012 September 25. Question # 13



within his Constituency and makes Recommendations for the implementation. (OCG Emphasis)

- ii. *I am not aware of neither do i know the name(s) and title(s) of the person(s) who are vested with the responsibility of determining the works which are to be performed.*
- iii. *I am not aware of any of the person(s) and or entity (ies) who is vested with the responsibility of selecting contractor(s) in each instance.*
- iv. *The NWA'S Organizational structure must be followed as per approvals and execution of works.*⁴⁶

It is instructive to note that the CDF Operational Procedures, which governs the methodology by which CDF funds are to be utilized provides, *inter alia*, as follows:

"9. IMPLEMENTING AGENCY

(9.1) Implementing Agencies shall be responsible for:

- (a) Implementing the projects and activities of the CDF assigned to it By the CDF-PMU;*
- (b) To undertake technical, administrative and supervisory functions of CDF project/activities assigned;*
- (c) To undertake procurement in accordance with the procedures and guidelines outlined in the GOJ Procurement Handbook for the purchases of goods, services and works undertaken by the Fund...*

⁴⁶ Response from Mr. Howard Ramsay which was dated 2012 September 18. Question # 13



10. PROCUREMENT GUIDELINES

- (10.1) *The implementing MDA must ensure that the Procurement Policy, Guidelines, the FAA Act, Regulations and Instructions are strictly adhered to.*
- (10.2) *Where any doubt exists in relation to the procurement procedures, clarification and/or advice must be sought from the Ministry of Finance and the Public Service before proceeding.*⁴⁷

⁴⁷ Revised Constituency Development Fund Operational Procedures. 2011 January 17.



Analysis of Contract Awards

Having regard to the numerous recommendations which were made by the Hon. Derrick Kellier, and the various letters which were provided by him, to the OCG, the OCG took a decision to review the contracts which were awarded by the NWA and to assess those awards against the recommendations which were made by the Hon. Derrick Kellier.

In this regard, the OCG perused more than ninety percent (90%) of the contracts which were recommended by the Hon. Derrick Kellier and found that, in all instances, the contracts were awarded by the NWA to the persons/contractors who/which were named by him. It is also the case that the OCG found that the contracts were awarded to the named contractors/individuals in the sums which were outlined in the various pieces of correspondence and for works to be carried out at the stipulated locations which were stated in the letters from the Hon. Derrick Kellier.

Against this background, the OCG found that the contracts were awarded by the NWA, as per the content of the letters from the Hon. Derrick Kellier. Further, given the direct relationship between the content of the said letters and the ultimate award of the contracts, same raises the question as to the level and/or degree of influence which was exerted upon the process by the Hon. Derrick Kellier.



CONCLUSIONS

Based upon the documentary evidence, inclusive of the sworn Statements which have been submitted to the OCG, by the Hon. Derrick Kellier and the representatives of the NWA, the OCG has arrived at the following considered conclusions:

1. The OCG has concluded that the majority shareholder of M & K Heavy Equipment Hireage Co. Ltd., Mr. Martin Kellier, is the brother of the Hon. Derrick Kellier, Member of Parliament for the Southern St. James Constituency.
2. The OCG has found and concluded that Mr. Martin Kellier/M & K Heavy Equipment Hireage Co. Ltd. have been the beneficiaries of at least two (2) contracts which were awarded subsequent to a written request from the Hon. Derrick Kellier, to the representatives of the NWA, for certain works to be executed in his Constituency.

The OCG has further concluded, based upon the sworn statement of Mr. Philip Clarke, that he, Mr. Philip Clarke, in his official capacity as the NWA Parish Manager “... *made recommendations for the award of contracts to M & K Heavy Equipment Hireage Co. Ltd. These recommendations were made as per within my portfolio responsibility and in accordance with the GOJ Procurement guidelines. I did not at any time intervene in or gave instructions to any Public Officer/Official as it relates to the award of contracts to M & K Heavy Equipment Hireage Co. Ltd.*”

3. The OCG has further concluded that the representative of the NWA, who, had previously expressed to an OCG Officer that works were undertaken at the request of the Hon. Kellier, has now, in his sworn representations to the OCG denied any such occurrence or



that he felt in any way, intimidated, under duress, and/or coerced in the facilitation of the award of the referenced contracts.

4. The OCG has concluded, based upon the sworn statement of the Hon. Derrick Kellier, that the contracts/works which were 'recommended' by him were eventually awarded by the NWA St. James Parish Office.
5. Based upon the sworn statements of the Hon. Derrick Kellier, Mr. Philip Clarke and Mr. Howard Ramsay, the OCG has concluded that none of the three (3) public officers/officials are willing to accede to who and/or which entity was responsible for the selection of the contractors who were listed in several letters by the Hon. Derrick Kellier and to whom/which contracts were ultimately awarded. In particular, the OCG has found that the statements which have been supplied by the Hon. Derrick Kellier, Mr. Philip Clarke and Mr. Howard Ramsay as it regards the selection of the contractors are not explicit, and does not clearly detail the name of the person(s) who ultimately selected the contractors.
6. The OCG has concluded that the statement by the Hon. Derrick Kellier that he only recommends and does not award contracts is factually correct. However, the ultimate effect of the recommendation is the consequence or apparent influence which his written correspondence had in the award of the contracts, inclusive of contract awards to his brother, Martin Kellier and M & K Heavy Equipment Hireage Co. Ltd.
7. The OCG has found that on at least seven (7) distinct occasions the Hon. Derrick Kellier 'recommended' for works to be undertaken in his Southern St. James Constituency and,



in the majority of instances, though not all, listed the contractors, contract sums and locations at which the works were to be undertaken.

However, the OCG has found, based upon the ninety percent (90%) review of the contracts, and concluded that the NWA awarded the contracts to numerous contractors in keeping with the recommendations which were made by the Hon. Derrick Kellier. There was, therefore, a direct relationship between the contract awards and the recommendations which had been made by the Hon. Derrick Kellier.

8. Based upon the documentation which has been provided to the OCG, during the course of its investigation, the OCG has concluded that in the award of a contract to M & K Heavy Equipment Hireage Co. Ltd., the referenced contract, in the sum of \$840,000.00, was awarded under the emergency contract award process but without the requisite prior approval of the Accountable Officer of the NWA. The foregoing would have, therefore, been a breach of the Government's Procurement Regulations.
9. The OCG has concluded, based upon the sworn statements which were supplied to it by the Hon. Derrick Kellier, Mr. Philip Clarke and Mr. Howard Ramsay, that it is an ongoing practice for Members of Parliament to advise 'the Parish Manager' of works which they are desirous of having executed.
10. Despite the sworn statement which has been provided by the Hon. Derrick Kellier to advise the OCG that the extent of his involvement was restricted to positing recommendation, the OCG has been led to conclude, based upon the content, language and instructions of his numerous correspondence to the Parish Manager of the NWA St. James Parish Office, that same was not interpreted as a mere recommendation by the



NWA Official, and given the fact that the Hon. Derrick Kellier has attested to the fact that the “... *works set out in DKI to DKX inclusive were implemented*”, it has been concluded that same was not implemented as ‘mere recommendations’.

11. The ‘recommendations’ of the Hon. Derrick Kellier were executed by the NWA St. James Parish Office; same has led the OCG to conclude that there is a *prima facie* case of nepotism, concerning the recommendations made by the Hon. Derrick Kellier, and the consequent award of at least one (1) contract to Mr. Martin Kellier.



REFERRALS

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

Section 21 of the Contractor-General Act, provides as follows:

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

1. The OCG, based upon documentary evidence which has been presented to it by representatives of the NWA, is hereby referring a copy of its Special Enquiry Report to the Director of Public Prosecutions, for due consideration and/or investigation as she may deem fit, having regard to the breaches of the Government of Jamaica Procurement Procedures and the attendant Regulations, which have been identified herein.

The OCG is hereby referring the matter for the determination to be made as to whether Mr. Phillip Clarke, Parish Manager, NWA St. James Parish Office, breached Sub-Section S-1.1.5, ‘Contracting Under Emergency Circumstances’ of the Handbook of Public Sector Procurement Procedures (October 20), which states, *inter alia*, that “Where an emergency situation exists as defined above, the Procuring Entity may engage a contractor by means of



Direct Contracting. The Head of the Procuring Entity shall give approval for the issuing of emergency contracts. This approval shall be in writing and shall form part of the procurement record to be kept by the Entity.”

In the instant matter, Mr. Phillip Clarke, as evidenced by a Memorandum of 2012 February 2, and although having previously sought approval for the award of a contract for M & K Heavy Equipment Hireage Co. Ltd, proceeded with the award of the contract prior to the receipt of approval for same. The foregoing resulted in retroactive approval being granted for same.

The OCG is referring this matter to the Director of Public Prosecutions, having particular regard to the provisions of Section 40 of the Public Sector Procurement Regulations (2008), which provides as follows:

“A person who –

(a) contravenes these Regulations; or

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



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 therefor 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)

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

1. It is strongly recommended that Members of Parliament and/or Ministers of Government should not be involved in the recommendation and/or selection of contractors to whom they are related as the proposed beneficiaries of Government of Jamaica contract awards.

The OCG’s recommendation is premised upon the fact that the selection and/or recommendation for the award of contract(s), by a Public Official, to his/her relative and/or a company in which such a relative has a pecuniary interest, can create the perception of a conflict of interest, or the perception of the notion of bias and, inevitably, the perception of nepotism. Consequently, without the proper checks and balances, and an independent selection and award criterion, the process runs the risk of being labelled nepotistic.

2. Further, the OCG must recommend that Members of Parliament should recuse themselves from decision making processes which involve the award of GOJ contracts in



scenarios which pose potential conflicts of interest. In particular, where there is the slightest hint and/or suggestion of nepotism, whether real or perceived.

3. The OCG recommends that there be an absolute separation of the responsibilities of the Members of Parliament as it concerns the conduct of needs assessments and the identification of projects which are to be undertaken through their respective CDF Fund allotments, and the eventual recommendation and/or selection of contractors to execute the identified works.
4. Given the circumstances of the current Investigation, which involves both a Member of Parliament and a Councillor for a given Constituency, the OCG must strongly recommend that such Public Officers/Officials should not be the recipients of contract awards and/or undertake work in their own constituency, either through the use of a private firm with which they are affiliated or otherwise, given the perception of a conflict of interest and the perceived notion of bias.
5. The OCG recommends that strict adherence be observed to the Procurement Guidelines and attendant Public Sector Procurement Regulations by all procuring Public Bodies and the respective Public Officers who are charged with the responsibility for administering the award of Government Contracts.
6. Where, however, a GOJ Development Project permits the receipt of recommendations from a Member of Parliament and/or Minister of Government for the engagement of contractors, the suitability of the recommended contractors should be, at a minimum, independently vetted by the Procuring/Implementing Public Body with time being of the



essence for completion of the process and once in excess of a certain value threshold, same should be subjected to some form of a competitive procurement process.

The OCG, therefore, recommends that Public Bodies should, in keeping with the stipulated Procurement Guidelines, establish robust and transparent systems and processes to ensure that the selection of contractors at the community level is free from the perception of bias and political interference in the award of the referenced contracts.



APPENDICES



List of Appendices

Page #

1.	A copy of a letter which was dated 2010 December 9, from the Hon. Derrick Kellier which was addressed to Mr. Philip Clarke.....	(i)
2.	A copy of a letter which was dated 2011 December 2, from the Hon. Derrick Kellier which was addressed to Mr. Philip Clarke.....	(iii)
3.	A copy of a letter which was dated 2010 November 26, from the Hon. Derrick Kellier which was addressed to Mr. Philip Clarke.....	(iv)
4.	A copy of a letter which was dated 2010 December 10, from the Hon. Derrick Kellier which was addressed to Mr. Philip Clarke.....	(v)
5.	A copy of a letter which was dated 2011 August 2, from the Hon. Derrick Kellier which was addressed to Mr. Philip Clarke.....	(vi)
6.	A copy of a letter which was dated 2011 October 18, from the Hon. Derrick Kellier to Mr. Philip Clarke, which was captioned “ <i>Re: \$3M Mitigation Programme</i> ”.....	(xi)
7.	A copy of a hand-written letter which was dated “5.12.2011” from the Hon. Derrick Kellier, which was addressed to Mr. Philip Clarke, and which was captioned “ <i>Re: \$2 Million Bushing & Drain Cleaning</i> ”.....	(xiii)
8.	Exhibit note, which was labeled “DK IX”.....	(xvi)
9.	Exhibit note, which was labeled “DK X”.....	(xvii)