



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Conducted into the Circumstances Surrounding Procurement and Contract Award Issues at the National Youth Service (NYS)

Ministry of Education

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EXECUTIVE SUMMARY

On 2009 August 26, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to Sections 15(1) and 16 of the Contractor General Act, initiated an Investigation into certain procurement and contract award issues at the National Youth Service (NYS).

Section 15 (1) of the Contractor General Act provides that “...a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters-

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

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

The decision to commence the Investigation followed upon the OCG’s receipt of a letter which was dated 2009 August 10, from Mrs. Audrey Sewell, the then Permanent Secretary, Ministry of Education (MoE), in which she sought the intervention of the OCG to investigate, *inter alia*, the contract award practices of the NYS and to provide clarification regarding the procedures and approval requirements which govern procurements that are undertaken by Public Bodies and, in particular, the NYS.

The Permanent Secretary’s letter of 2009 August 10, made direct reference to an NYS Invitation to Tender for Transportation Services, and the alleged subsequent execution of a contract between the NYS and Jamaica Transport Service (JTS). The alleged contract, based upon the correspondence, had raised concerns for the members of the Board of Directors of the NYS and had already been the subject of an Investigation by the Internal Auditors of the Ministry of Education.

Mrs. Audrey Sewell, in the referenced letter, also indicated that *“The Auditor General’s report of 2007/2008 cited the NYS for breaching the Government of Jamaica’s Procurement Guidelines in respect of three contracts of total value of \$105m which were awarded without the organization following the stipulated procedure for the procurement of goods and services. This included the award of a contract to Jamaica Transport Service.”*¹

The concerns, comments and findings of the NYS’ Board, the Ministry of Education’s Internal Auditor and the Auditor General’s Report of 2007/2008 would suggest, *inter alia*, that the procurement and contract management practices of the NYS may have been irregular, improper or lacking in transparency and fairness, and that Government contracts might not have been

¹ Letter which was dated 2009 August 10, to the OCG from Mrs. Audrey Sewell, Permanent Secretary, Ministry of Education.

awarded in accordance with the relevant provisions of the Contractor General Act, the applicable Government Procurement Procedures and/or the 2008 Public Sector Procurement Regulations.

These allegations and inferences, amongst others, raised several concerns for the OCG, especially in light of the perceived absence of adherence to the Government of Jamaica Handbook of Public Sector Procurement Procedures (GPPH) and the Government contract award principles that are enshrined in Section 4 (1) of the Contractor General Act.

Section 4 (1) of the Contractor General Act (1983) mandates that Government contracts must be awarded “*impartially and on merit*” and in circumstances which “*do not involve impropriety or irregularity*”.

Having regard to the foregoing, the OCG conducted a Preliminary Enquiry into the procurement process and the award of contracts for the provision of transportation services to the NYS, by the Jamaica Transport Service (JTS). The main objective of the Enquiry was to ascertain if the NYS had conformed to the Government of Jamaica Procurement Guidelines in the award of the contracts for Transportation Services to the JTS.

The OCG’s Preliminary Enquiry concluded that the NYS did not adhere, in all instances, to the guidelines of the GPPH (2008 November). The following shortcomings were identified:

1. The NYS’ Internal Auditor was a member of the Procurement Committee. This was a breach of Sub-Section No: S-1020 B3 of the then applicable 2008 November GPPH.
2. The contract which was executed between the NYS and the JTS did not include a total contract sum.
3. All relevant signatures were not affixed to the contract prior to the commencement of the provision of Transportation Services by the JTS. In particular, the signature of the Accounting Office of the NYS, that is, the Permanent Secretary, was absent from the contract which was consummated.

Based upon the findings of the Preliminary Enquiry, the OCG launched a formal Investigation into the procurement practices at the NYS.

The OCG's Investigation into the NYS' procurement practices, regarding the provision of Transportation Services, focused primarily upon those procurements and/or contracts which were awarded to the JTS.

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 applicable Government of Jamaica Procurement Procedures Handbook (GPPH-2001 May and 2008 November);
- (b) The procurement process which was employed by the NYS in the award of contracts to the Jamaica Transport Service (JTS); and
- (c) Whether the process which led to the award of contracts to the JTS was fair, impartial transparent, and whether the award of contracts were based upon merit.

The Terms of Reference of the OCG's Investigation, into the procurement practices of the NYS, 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, 1983.

Additionally, the OCG was guided by the important responsibilities which are imposed upon Public Officials by the GPPH, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

It is also the case that the OCG reviewed and considered the provisions of the National Youth Service Act during the course of its Investigation to ensure conformance with the provisions, thereof, by the representatives of the NYS as it undertook procurement activities.

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

At the commencement of the Investigation, the OCG, by way of a letter which was dated 2009 August 26, wrote to the Hon. Andrew Holness, M.P., the then Minister of Education, Mrs. Audrey Sewell, the then Permanent Secretary, Ministry of Education and Mr. Keith Duncan, the then Chairman, NYS, informing them of the decision to investigate the procurement practices of the NYS.

Requisitions/Questionnaires, which were dated 2009 September 1, were sent by the OCG to Dr. Wesley Hughes, Financial Secretary, Ministry of Finance and the Public Service, Mrs. Dasmine Kennedy, Executive Director (Ag.), NYS and Mr. Keith Duncan, Chairman, NYS

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

The Findings of the OCG's Investigation into the procurement of Transportation Services from the JTS, by the NYS, 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.

In general, the aforementioned references guided the context within which the Investigation was conducted, the Methodology which was utilized and the Findings and Conclusions which are reached herein.

Summary of Key Findings

1. The OCG found that the Ministry of Education's 2009 Internal Audit Report and the Auditor General's Audit Report (2007/2008) revealed that the NYS had not been utilizing the applicable provisions of the GOJ Public Sector Procurement Guidelines in the award of several contracts. The OCG also noted that there was particular mention of contracts which had been awarded to the JTS, by the NYS.

Both reports revealed that several contracts had been awarded, and several payments had been made to several contractors, inclusive of the JTS, without sufficient evidence to indicate that the process was transparent or in accordance with the requirements of the GOJ Procurement Guidelines.

2. At the commencement of the Investigation, the OCG, by way of a Statutory Requisition which was dated 2009 September 1, and which was addressed to Dr. Wesley Hughes, Financial Secretary, Ministry of Finance and the Public Service, sought to ascertain the names of the Accounting and Accountable Officers at the NYS, during the referenced period, as the foregoing was one of the issues for which the MoE had requested clarification. The OCG also sought to ascertain the responsibilities and obligations of the Accounting/Accountable Officer.
3. Based upon the sworn written response from Dr. Wesley Hughes, which was dated 2009 September 17, in response to the OCG's Requisition, the OCG was advised that the FAA Act defines an Accounting Officer as "*...any person designated by the Minister pursuant to section 16 and charged with the duty of accounting for expenditure on any service in respect*

of which moneys have been appropriated under the FAA Act or any other enactment”, while an Accountable Officer, as defined by the Act, means “any public officer, including an accounting officer, concerned in or responsible for the collection, receipt, custody, issues or payment of public moneys or other public property” Accountable officers are appointed by their respective Accounting Officer.²

Dr. Wesley Hughes, in his response to the said requisition, formally advised the OCG, by way of a letter which was dated 2009 February 19, that the Permanent Secretary for the MoE appointed Reverend Adinhair Jones as the Executive Director, NYS, and also as its Accountable Officer.

The OCG also found that, by way of a letter which was dated 2007 October 3, Mrs. Maria Jones, former Permanent Secretary, MoE, was the last person who was appointed as Accounting Officer at the MoE, as at the time of the OCG’s query to the Financial Secretary. It was also indicated by Dr. Wesley Hughes that there was no Accounting Officer appointed at the NYS.

4. The OCG found, based upon the sworn responses from the following individuals, namely: (a) Mrs. Angela Wisdom, Former Human Resource and Administrative Manager, NYS, (b) Mrs. Dasmine Kennedy, Acting Executive Director, NYS, (c) Mr. Keith Duncan, Chairman, NYS and (d) Mr. Ricardo James, Executive Chairman, JTS, that the services of the JTS were first engaged in 2003 February.

The foregoing assertions were supported by documentary evidence which was provided to the OCG by the respondents. The evidence also indicated that JTS was engaged by the NYS on several occasions during the period of 2003 through to 2009.

² Dr. Wesley Hughes’ response to the OCG’s Requisition, which was dated 2009 September 17.

It is also important to note that Mr. Ricardo James, Executive Chairman, JTS, also asserted that, based upon the invoices which were in his possession, approximately \$80,211,980.00 had been paid to the JTS, by the NYS, during the referenced period. However, Mr. James noted that the foregoing figure may be more as the figure was only based upon invoices which he was able to locate.

5. The OCG found that the JTS was hired by the NYS whenever Transportation Services were needed, after which an invoice would be sent to the NYS for payment. If there were any adjustments in rates, the JTS would inform the NYS via a letter and a new rate sheet would be provided. It is instructive to note that the representations which were made by Mr. Ricardo James, of the JTS have indicated that the company had tendered competitively only once in 2009 for the services which it provided to the NYS.³
6. The OCG also found that the JTS only signed one formal written contract with the NYS which was dated 2009 June 2. It is also instructive to note that the other contracts “...were annual approved rate sheets...”⁴

Mr. Ricardo James, Executive Chairman, JTS, also indicated that he assumed that the JTS was selected because of, *inter alia*, its competitive rates, accident history, Tax Compliance and NCC certification.

7. The OCG calculated the figures from each of the invoices which were provided by the JTS and it was found that at least \$77,164,980.00 was paid to the JTS, by the NYS, during the period of 2003 through to 2009. It is instructive to note that the foregoing figure is based upon the invoices which were submitted to the OCG by the JTS.

³ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG Requisition, which was dated 2009 September 14.

⁴ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG Requisition, which was dated 2009 September 14.

8. Mr. Ricardo James, Executive Chairman, JTS, informed the OCG that the JTS was engaged by the NYS, after he approached the NYS with the idea to provide transportation for that entity. He also indicated that his approach to the NYS was based upon the fact that the JTS has an islandwide reach, and he was informed by two of his sub-contractors that the NYS was having issues with some of its parish operators.

According to Mr. James, the foregoing idea was said to be embraced by Mr. Carlando Francis, the then Deputy Director, Community Service, who was the contact person at the NYS at that time.⁵ In this regard, the OCG found that the JTS was engaged by the NYS after it received an unsolicited proposal from the JTS.

Having regard to Section 5.3.6 of the then applicable GPPH (2001 May), which states, *inter alia*, that “Where the estimated value is equal to or greater than J\$15,000,000.00 but less than the international contract value threshold for the services, participation shall be restricted to domestic concerns only, except where no such qualified concern is registered with the NCC. Services shall be procured on the basis of selective tender, where all contractors who are registered with the NCC are afforded the opportunity to tender. Authority to enter into a contract shall be obtained from the Cabinet, after reference to the NCC and the Minister for approval of award recommendation...”,⁶ the OCG found that the NYS breached the GOJ’s Procurement Guidelines by failing to undertake a competitive tender process for the provision of Transportation Services during the years 2006-2008.

For each of the referenced years, the cost of Transportation Services was in excess of J\$15 million and would have required, as a consequence, the endorsement of the NCC and the approval of the Cabinet.

9. Based upon the information which was provided by Mrs. Dasmine Kennedy, the then Executive Director, NYS, in her response to the OCG’s Requisition which was dated 2009

⁵ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG Requisition, which was dated 2009 September 14.

⁶ Section 5.3.6 of the GPPH, May 2001.

September 14, the OCG found that for the financial years 2003 through to 2009, there were three (3) instances in which the payments which were made to the JTS would have required Cabinet approval, namely for the following annual periods:

- a. 2006 April 1 to 2007 March 31 - \$20,821,140.00;
- b. 2007 April 1 to 2008 March 31 - \$25,749,500.00; and
- c. 2008 April 1 to 2009 March 31 - \$25,044,285.00.

In all of the aforementioned instances, the annual payments exceeded the \$15,000,000 threshold stipulated in the GPPH (2001 May) and would have required the approval of the Cabinet after recommendation from the NCC, prior to the engagement of the services of the JTS. It is instructive to note that, based upon the records of the NCC, the OCG found no records to indicate that the annualized and extended contracts were submitted to the NCC for its endorsement.

Additionally, two (2) of the annualized contracts, that is, for the periods of 2004 April 1 to 2005 March 31, in the sum of \$4,428,500.00, and 2005 April 1 to 2006 March 31, in the sum of \$6,182,600.00, exceeded the \$4,000,000.00 threshold, which would have required the approval of the NCC.

Based upon the records of the NCC, neither of these contracts were submitted to the NCC for endorsement. According to Section 2.1.3.3 of the then applicable GPPH (2001 May) “...All contracts for \$4M or greater must receive prior written approval from the NCC through the Accounting Officer...”

10. It is also instructive to note that Mrs. Kennedy’s account of the JTS/NYS engagement was corroborated by the account which was given by Mr. Ricardo James. The payment figures provided by both individuals were slightly different, however, the amounts were in similar ranges.

Mrs. Kennedy's account also suggested that there was no evidence to indicate that any contracts were signed between the NYS and the JTS prior to 2009 as she asserted that "...there is no evidence of written contract(s) entered between the parties."⁷

11. The OCG found, based upon the supporting documentation which was provided by Mrs. Kennedy, that in 2005 the NYS utilized a methodology which appears to be akin to the Limited Tender Procurement Methodology, to engage the services of JTS. However, it must be noted that no Request for Quotation or Tender Evaluation Report was found in the referenced documentation which was provided by Mrs. Kennedy.

It should also be noted that four (4) companies submitted quotations, namely: JTS, Albert Dixon, JCAL and JUTA. JTS' quotation was submitted to the NYS by way of a letter which was dated 2005 January 6, it is unclear when Mr. Albert Dixon's quotation was submitted as it is not dated, JCAL's quotation was dated 2005 March 7, and JUTA's quotation was submitted on 2005 January 20.

The approval for JTS to provide Transportation Services to the NYS, in 2005, was granted on 2005 January 9, under what appears to be the signature of Mrs. Angela Wisdom, former Human Resource & Administration Manager. It is instructive to note that the contract with the JTS was consummated before the quotations from JUTA and JCAL were submitted.

Based upon the foregoing, it is unclear whether or not the prescribed Limited Tender Procurement Methodology was actually utilized, since the procurement process which was employed by the NYS does not conform to the provisions of the applicable GPPH.

In this regard, and based upon the provisions of Section 2.1.3.3 of the GPPH (2001 May), which states that "*Limited tender is a form of selective tender, whereby the procurement opportunity is open to a limited number of contractors included in the Register*

⁷ Mrs. Dasmine Kennedy's response to the OCG's Requisition, which was dated 2009 September 14.

of Approved Contractors. It includes the Request for Quotation (RFQ) and Sole Source procurement procedures. Procurement offered through limited tender is generally not advertised. Instead, procuring entities may contact appropriately qualified contractors on the register and invite them to participate. Criteria for selecting contractors from the register should include:

- *Nature of the work required;*
- *Contractor's relevant experience;*
- *Contractor's past performance record; and*
- *Contractor's current financial and technical capacities.*

Limited Tender must have prior written approval of Accounting Officers for contracts less than \$4M.

All contracts for \$4M or greater must receive prior written approval from the NCC through the Accounting Officer.

The request for permission to utilize the Limited Tender procedures must include the selection of a minimum of three (3) contractors and the criteria for the selection.

*The prepared lists of contractors shall be submitted to the Procurement Committee or such other person(s) as may be nominated by the Procurement Committee for approval prior to any contractor being invited to tender.*⁸ **(OCG Emphasis)**

12. The OCG also found that the account of the JTS' engagement by the NYS, which was given by Mr. Keith Duncan, the then Chairman of the Board, was similar to that of Mrs. Dasmine Kennedy and Mr. Ricardo James. Mr. Duncan confirmed that there was no formal contract in place between the NYS and JTS until 2009.

⁸ Section 2.1.3.3 of the GPPH 2001.

According to Mr. Duncan, it was after a Board Procurement Sub-Committee meeting of 2009 June 18, that he was informed that the Permanent Secretary would not be signing the 2009 June 2 contract due to issues relating to the value of the contract and that it should have been approved by Cabinet. The foregoing was the reason which was given by him for the contract not being signed by the Permanent Secretary.

13. The OCG also found, based upon Mrs. Angela Wisdom's response to the OCG's Requisition and the documentation which was provided by her, that Mrs. Wisdom's account of the circumstances which led to the engagement of JTS, during the period 2003 to 2009, was similar to the accounts which were provided by Mr. Ricardo James, Mrs. Dasmine Kennedy and Mr. Keith Duncan.

In her sworn response to the OCG, Mrs. Wisdom indicated that during the period **"2005-2006: "I conducted a Limited Tender in early 2005 to regularise and improve the efficiency and expediency of transportation services required for the Knox Cobbla Campus operations."**

Mrs. Wisdom also indicated that *"...Several companies were verbally contacted to provide Return Transportation Rate Sheets for the next financial year's Camp operation (April 2005 to March 2006).*

Jamaica Transport Services was selected in 2006 to provide transportation services for NYS after submission of 4 quotations from 4 potential suppliers namely JUTA, JCAL, JTS and a private person. JTS was selected due to its islandwide coverage and competitive rates. This was based on the review of a comparative analysis of the rate sheets...received and further investigation of each companies ability to provide islandwide coverage for unattached youth. This review involved me, former HR & Adm. Manager, the former Executive

Director, Finance & Accounts Director and Corporate Services (Deputy) Director at the time.”⁹

As was previously indicated, Section 2.1.3.3 of the GPPH (2001 May) indicates that for Limited Tender procurements, *“All contracts for \$4M or greater must receive prior written approval from the NCC through the Accounting Officer.*

The request for permission to utilize the Limited Tender procedures must include the selection of a minimum of three (3) contractors and the criteria for the selection.

The prepared lists of contractors shall be submitted to the Procurement Committee or such other person(s) as may be nominated by the Procurement Committee for approval prior to any contractor being invited to tender.”¹⁰

14. Additionally, having reviewed the NCC’s database, the OCG found no evidence to indicate that approval was sought by the NYS, or granted by the NCC, for the utilization of the Limited Tender Procurement Methodology in the award of a contract with a value in excess of \$4 Million.
15. Having regard to the foregoing, and the fact that the total amount on the invoices which were produced in 2005 to 2006 exceeded the \$4M threshold, the OCG found that the Limited Tender Procurement Methodology was not the most appropriate methodology for this procurement

It is also instructive to note that Section 2.1.3.2 of the then applicable GPPH (2001 May) indicates that *“Selective tendering is GOJ’s primary method of procurement. All contractors must be registered with GOJ, through the National Contracts Commission, and included in the GOJ Register of Approved Contractors. Procurement opportunities offered through*

⁹ Mrs Angela Wisdom’s Response to the OCG’s Requisition, which was dated 2010 February 1.

¹⁰ Section 2.1.3.3 of the GPPH 2001 May.

selective tender are open to all appropriately registered and qualified contractors, and are generally advertised as shown in Section 6. Procuring entities should endeavour to plan their procurement processes in order to allow sufficient time for interested contractors to complete the required registration and/or pre-qualification processes in time to prepare and submit responsive tenders.”¹¹

Further, according to the then applicable GPPH, 2001 May, Section 4.6, **“CONTRACT VALUE FROM J\$15M TO LESS THAN THE INTERNATIONAL CONTRACT VALUE THRESHOLD FOR GOODS.** *Where the estimated value is equal to or greater than J\$15,000,000.00 but less than the international contract value threshold for goods these shall be procured on the basis of selective tender by national advertising. Tenders should be invited from all appropriately qualified contractors registered with the NCC. A contractor pre-qualification process shall be required for goods in excess of J\$150 million. Authority to enter into contract must be obtained from the Cabinet, after reference to the NCC for approval of award recommendation...*”¹²

Having regard to the foregoing, the OCG found that the Selective Tender Procurement Methodology was the most appropriate methodology for the award of the referenced contract.

16. Mrs. Wisdom also confirmed that there was no tender process during the period of 2006 through to 2008. In this regard, Mrs. Wisdom indicated the following: *“2006 – 2008: No tender process was conducted during this period. Preparations to conduct a tender in 2008 were delayed by the interview/selection processes for an Internal Auditor, the processes to construct a tender box and the heavy demands of the HR & Admin. portfolio for the other 4 units (Procurement, Career Guidance, MIS and Participants Benefits) within the new expanded training role of the NYS during that time...*”¹³

¹¹ Section 2.1.3.2 of the GPPH May 2001

¹²Section 4.6, of GPPH May 2001

¹³ Mrs. Angela Wisdom’s sworn response to the OCG’s Requisition, which was dated 2010 January 28.

17. The OCG has found, based upon the assertions of Mrs. Wisdom, that the terms and conditions of the agreements between the NYS and the JTS, during the period 2006 to 2008, were determined based upon rate sheets which were agreed upon by the NYS and JTS. The foregoing was also confirmed by Mr. Ricardo James, President, JTS.
18. Based upon the documentary evidence which was supplied to it, inclusive of Mrs. Wisdom's response, the OCG found and confirmed that the NYS conducted a formal tender process in 2009 for which there was only one bidder. However, it must be noted that three bidders paid for tender documents but one of the bidders collected the tender document on the day of the bid opening and was advised that it would have been too late to prepare a bid to be submitted on the same day. In this regard, the prospective bidder decided to seek a refund for the tender document; a request which was granted by the NYS. Mrs. Wisdom also indicated that final approval of payment for this tender was granted by Rev. Adinhair Jones, the Former Executive Director, NYS.
19. The documents which were submitted to the OCG confirmed the above assertions which were made by Mrs. Wisdom. It is instructive to note that the "*INVITATION TO TENDER Receipt of Tender Documents Sheet*" indicated that the JTS and Soul to Soul Transportation Company Limited purchased tender documents. In accordance with Mrs. Wisdom's statement, a company by the name of 'Secret' also paid for a Tender Document, but was refunded for same.

The Bid Opening Record indicated that the Comparable Estimate, "Average cost per parish", for transportation services for the Cobbla Campus was in the amount of \$53,884.61 and the Chestervale Campus was in the amount of \$104,076.92. The documents also indicated that JTS was the only bidder, while the Bid Receipt Record indicated that the bid was submitted on 2009 May 15, at approximately 1:48 p.m. The Bid Opening Attendance Record indicated that persons in attendance at the Bid Opening were Ms. Sonia McFarlane, Ms. Rosemarie Dowdie, Ms. Angela Wisdom and Mr. Andre Bernard.

20. The OCG found that the contract which went to competitive tender was awarded to the JTS for a two year period as follows: Year 1 - 2009 to 2010: 2009 June 02 to 2010 April 21 and Year 2 - to be determined as per 2010 - 2011 budgetary allocation.¹⁴

The OCG also found, based upon the projected value of the contract, which was in excess of \$15 million, that same would have required the endorsement of the NCC and the approval of the Cabinet.

21. The OCG also found that the members of the NYS Board Procurement Sub-Committee initially included Mrs. Angela Wisdom, Mr. Andre Bernard and Ms. Ann Marie Smith. Subsequent to October 2008, the Board Procurement Sub-Committee included Mr. Robert Miller – Chairman, Ms. Garcia Imoru – Member, Mr. Harry Blake – Member as of June 18, 2009, Ms. Bridgette McDonald-Levy, Ms. Florette Blackwood, and Senator Dennis Meadows.
22. The OCG also found, according to Mrs. Wisdom, that the 2009 May Tender Evaluation Committee included, Mrs. Angela Wisdom, Mr. Andre Bernard, **Mrs. Rose-Marie Dowdie, Internal Auditor**, while in June 2009, the Tender Procurement Committee was comprised of all of the aforementioned individuals as well as the following persons: Ms. Kay Hendricks, Programmes Manager, HRA Unit and Mr. Howard Gardener, Programmes Director.
23. With specific reference to the composition of the Tender Procurement Committee it is instructive to note Sub-section 1020 B of the then applicable GPPH (2008 November), which indicated, *inter alia*, the following:

¹⁴ Contract which was consummated between the NYS and JTS, which was dated 2009 June 2.

“Procurement Committees

Each procuring entity shall establish a Procurement Committee consisting of not less than five (5) persons appropriate to the needs of the entity. The structure of the Procurement Committee shall be as follows:

- *Chairman*
- *Senior Financial Management Personnel;*
- *Recording Secretary (non-voting member);*
- *Procurement Personnel (non-voting member); and*
- *Any other appropriately qualified Officer.*

Internal Audit personnel may not sit on the Procurement Committee...¹⁵ (OCG Emphasis)

Having regard to the foregoing, the OCG found that the NYS breached the procurement guidelines by allowing the Internal Auditor to sit on the Procurement Committee.

24. The OCG also found, based upon the Minutes of the Procurement Sub-committee, that there were several issues with the 2009 Transportation Contract. According to the Minutes of the Procurement Sub-Committee, which was held on 2009 June 18, Ms. Garcia Imoru, Sub Committee Member, indicated that “...at the time approval was being sought from the Sub Committee the Contractor was already engaged.”¹⁶ It was also indicated by Ms. Imoru, in the referenced meeting, that she could not sign off on documents presented after the contract was awarded. The OCG also found that the Board members expressed their disapproval of the granting of the contract without their approval and expressed overall discomfort with the arrangement.

¹⁵ Sub-section 1020 B of the GPPH (November 2008).

¹⁶ Minutes of the Procurement Sub-Committee, which was dated 2009 June 18.

The Minutes also stated that Mr. Andre Bernard, (Member-Tender Evaluation Committee) indicated that the annual value of the contract would be approximately \$32M, while the rate sheet presented indicated that the estimated value of the contract was to be approximately \$4-5M for the two (2) camps monthly.

The NYS also explained to the Procurement Sub Committee that “...on a recent Office of the Contractor General (OCG) meeting held in early June that the entity had sought clarification on whether the Transportation and Camp contracts, which totaled over \$7M per Camp required NCC approval due to their annual cumulative values. The OCG representative advised that as invoiced contracts the values would be based on the monthly invoiced value and not the cumulative value due to the probability of the Camps being held. The NYS stated that while the Board’s view is understood, they must remember that the Carrier was selected based on the requirements for the public tender...”¹⁷

The OCG also found that there is no documented proof that the foregoing advice was given.

25. Despite the foregoing, the OCG found, based upon the estimated J\$32M yearly value of the contract, which was consummated in 2009, that the NYS would have required Cabinet approval upon the recommendation from the NCC and the Head of Entity/Accounting Officer, prior to the award of the contract.

According to Sub-section 2040 IV of the then applicable 2008 GPPH, contracts above J\$30,000,000 in value are required to be approved by the Cabinet, upon the recommendation of the NCC and the Accounting Officer/Head of Entity.

26. The OCG’s review of the Quarterly Contracts Award (QCA) Reports, which have been submitted by the NYS revealed that although the QCA requirements were in effect since

¹⁷ Minutes of the Procurement Sub-Committee which was dated 2009 June 18.

2006, The NYS was not formally requisitioned to provide QCA Reports until 2007 July 11.

The information on the consolidated QCA Reports, regarding contracts which were awarded to the JTS, contradicts, in at least one instance, the documentary evidence as well as the sworn statements which were provided by the NYS representatives who were requisitioned, who confirmed that prior to 2009, the NYS had reportedly attempted to engage transportation service providers via the Limited Tender Procurement Methodology, only once, in 2005.

Based upon the information which is contained in the QCA consolidated data, between the years 2006 June to 2009 November, fifty-two (52) contracts were reportedly awarded to the JTS, using the Limited Tender Procurement Methodology and three (3) contracts were awarded using the Open Tender Procurement Methodology, for the provision of Transportation Services.

However, the foregoing cannot be accurate should the representations which have been made to the OCG that the NYS tried to undertake some semblance of the Limited Tender Procurement Methodology in 2005 and a formal tender process in 2009. Therefore, the OCG has found that there are only two (2) noted instances in which the award of contracts to the JTS was subjected to any form of a competitive tender process which is contrary to the representations which have been made on the QCA Reports for the period of 2009 July through to 2009 November.

Having regard to the foregoing, the OCG found that there were several inaccuracies in the NYS QCA Reports. It also appeared that NYS was reporting on payments and not contract amounts in its QCA Reports.

Conclusions

Based upon the sworn responses which were received from certain Public Officials/Officers from the NYS and the Ministry of Finance and Planning, as well as the representative of the JTS, the OCG has arrived at the following considered Conclusions:

1. The OCG's Investigation has unearthed *prima facie* evidence of non-adherence with the stipulated Government of Jamaica Procurement Guidelines. The services of the JTS were engaged by the NYS during the period 2003 to 2009. However, with the exception of the 2009 contract, there was not sufficient evidence to indicate that the engagements were guided by a competitive process and in keeping with the GOJ procurements guidelines.
2. The evidence suggests that in excess of J\$80 million was paid to the JTS during the referenced period, and that there was no competitive tender except for a seeming Limited Tender Procurement process in the year 2005 and a Selective Tender process in 2009. Based upon the annual values of these contracts, same would have required either the NCC's endorsement and/the approval of the Cabinet. However, the OCG has not seen evidence to suggest that approvals were sought and/or received from the referenced Bodies.
3. Further, there is no evidence to indicate that the Procurement Committee was involved in the tender processes of the NYS until 2009. It is interesting to note that such involvement occurred after the Auditor General's Report of 2007/2008, which reported several irregularities at that Public Body. Further, there is no evidence to indicate that a Procurement Committee existed prior to 2008.
4. The OCG has concluded that there is no evidence to indicate that the requisite approvals for the award of the contracts were sought from the Accounting Officer, who is the Permanent Secretary for the Ministry of Education. All procurements were either approved by Mrs.

Angela Wisdom, former Human Resource and Administrative Manager or Rev. Adinhair Jones, the former Executive Director, NYS (who was appointed in 2009).

There is no evidence to indicate that the Permanent Secretary was an integral part of the procurement process at the NYS.

5. The OCG has also concluded that the 2009 June 2, contract which was consummated between the NYS and the JTS was irregular, having regard to the following:
 - a. The company was engaged before the board sub-committee's endorsement, was sought, consequently the Board sub-committee made the decision not to approve the contract.
 - b. All of the required signatures were not affixed to the Contract as the Permanent Secretary did not sign the contract.
 - c. The Contract was not endorsed by the NCC nor was it approved by Cabinet which would have been required based upon the fact that the approximate yearly value of the contract was J\$32M.

It is instructive to note that the approximate value of the contract should have been included in the contract document, however, the value was not included in the contract. The OCG, however, contends and has concluded, based upon the requirements of the then applicable GPPH (2008 November), that given the estimated J\$32 Million yearly value of the contract, the NYS would have required Cabinet's approval following the recommendation of the NCC and the Head of Entity/Accounting Officer.

6. The OCG has also concluded that there were several inaccuracies and inconsistencies in the reporting of Contracts on the QCA reports, by the NYS. The QCA data which was provided by the NYS also revealed that there were several procurement breaches with regard to the engagement of JTS.

7. The OCG has also been led to conclude that there was no set procurement process being utilized at the NYS prior to 2009 which precipitated several breaches of the GOJ's Public Sector Procurement Procedures (2008 November).

Having regard to the aforementioned, and the information which was provided to the OCG, the OCG has concluded that the contracts which were awarded to the JTS were awarded without the benefit of a competitive tender process and, as such, the OCG cannot determine if such awards were in fact meritorious. In this regard, the OCG has concluded that the contract award process was not transparent.

8. The OCG has also concluded, based upon the representations which were made by Dr. Wesley Hughes, the Financial Secretary, that the *"NYS is a public body constituted under the National Youth Service Act which receives a monthly subvention from the Ministry of Education."*¹⁸ Accordingly, and in keeping with the documentary evidence which has been provided by Dr. Wesley Hughes, the OCG can conclude that the Accounting Officer at the Ministry of Education, is the Permanent Secretary, who is also the Accounting Officer for the NYS.

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

¹⁸ Letter which was dated 2009 August 10, from Mrs. Audrey Sewell Permanent Secretary, Ministry of Education to the OCG

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.”¹⁹ (OCG Emphasis)

Having regard to the Findings and Conclusions, and concerns of the OCG, which have been set out herein and, having regard, in particular, to, *inter alia*, (a) the significant governance deficiencies which have been identified in the operation and management of procurement at the NYS, inclusive of the highly irregular contract awards, by the entity, to the JTS; (b) the NYS’ flagrant breaches of the GPPH (2001 May and 2008 November) and the Contractor General Act; (c) the absence of appropriate or satisfactory documentation to substantially evidence the process which led to the award of certain contracts; and (d) the failure of the NYS to obtain relevant approvals based upon the GOJ’s prescribed procurement thresholds, the OCG is of the considered opinion that the referenced breaches warrant the immediate attention of the Auditor General (AG). The position of the OCG is based upon the following:

1. Having regard to the failure of the NYS to adhere to the strictures of the GOJ Procurement Guidelines, the OCG is hereby referring a copy of its Report of Investigation to the Auditor General for such further action as the Auditor General may deem to be applicable, in light of the numerous contracts which were awarded in contravention of the GOJ Public Procurement Guidelines, and the attendant Public Sector Procurement Regulations, and which resulted in payments in excess of J\$15 million, per annum, to the JTS, for the period of 2006 through to 2008.

In particular, during the referenced period, the NYS failed to prepare a formal written contract to govern its contractual relation with the JTS but, instead, relied upon approved Rate Sheets as the principal basis of its engagement of the services of the JTS.

¹⁹ Contractor-General Act 1983

2. While the OCG is cognizant of the fact that the Auditor General had initiated and completed an Audit of the NYS and has specifically examined the referenced procurement, the OCG has, however, deemed it prudent to refer the matter for further review, as the Auditor General may deem applicable, in light of fact that referenced contract was awarded without the authorization of the Permanent Secretary and also in light of the remedial and other related actions which have already been reportedly taken by the NYS with respect to (a) its procurement activities, (b) its management and disbursement of public funds, (c) the conduct of Procurement workshops and (d) the sensitization of procurement officers with the upgraded procurement guidelines.

3. The OCG is hereby referring its Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police on the basis that it has found, herein, *prima facie* evidence that the then Accountable Officers of the NYS, who signed and submitted the QCA Reports which reported the contracts which were awarded to the JTS, and, in particular, which reported that several contracts during the period of 2006 through to 2008 were awarded to the JTS using the Limited Tender Procurement Methodology, despite the fact that the foregoing contract was only subject to a semblance of the Limited Tender Procurement Methodology once in 2005 and a Selected Tender Procurement Methodology in 2009, have committed a breach of Section 29 (a) and 29 (b) (ii) of the Contractor General Act, and by doing so, have committed a criminal offence.

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)

1. The OCG has found that there were breaches of the procurement guidelines, by the NYS, with respect to securing the requisite approvals of the Accounting Officer, the NCC and the Cabinet. In this regard, the OCG recommends that the Ministry of Education 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;
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 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 found that the NYS' engagement of the JTS was consummated as a result of an unsolicited proposal. According to Mr. Ricardo James, JTS in his sworn response to the OCG, "*...I sent our information to hundreds of places both government and private*

sector institutions. Two of my sub-contractors, Paul Dixon and Joseph Ramcharan in discussion with them expressed an idea to me, they said based on the fact that I had an islandwide reach and they were involved in transporting NYS persons on call, I should approach the head office with a proposal for the overall management of NYS contracts because they were having problems with some parish operators . I did just that and the idea was embraced by Mr. Carlando Francis who was suggested at NYS to be the person in charge of that aspect at the time.

He said the timing was good because NYS wanted to come out of the parish by parish arrangements which had problems of punctuality, uneven standards and the boisterous affairs whenever the time span in collecting cheques was too long.

He stated that I should give him a quotation and he would compare with the current expenses and would get back to me as soon as possible... ”²⁰

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

²⁰ Mr. Ricardo James’ sworn response to the OCG’s Requisition which was dated 2009 September 15.

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.

8. Finally the OCG recommends that due to the fact that the transportation requirement at the NYS is unpredictable, the entity could utilize a Frame Work Agreement for transportation services. Volume 2 of the Second Revised Handbook of Public Sector Procurement Procedures (the "Second Revised Handbook" or "SRHPP") 2010 December 10, Appendix 4, *“Procuring Entities may enter into Framework Agreements (FAs). Under these Agreements, a contractor commits to supplying the purchaser with goods and related services "as and when" required and on a pricing basis, according to stated terms and conditions. Framework Agreements may be used to supply off-the-shelf, readily available products. A Framework Agreement is not a contract, therefore, quantities and delivery dates cannot be determined in advance. Any “call-up” made against an FA represents acceptance, by a purchaser, of the terms and conditions. As such, it is the “call-up” which forms the contract that would be submitted for approval by the Head of the Procuring Entity, NCC or Cabinet, as the value warrants.*

Framework Agreements can be made between:

- (a) a single contractor and a single purchaser;*
- (b) a single contractor and multiple purchasers;*
- (c) multiple contractors and a single purchaser; and*
- (d) multiple contractors and multiple purchasers.*

Framework Agreements should be used when the overall requirements are known, but the specific quantity and delivery date of any particular good may not be known. Bids shall be solicited for the selection of a contractor to provide the necessary goods as and when they are required.

The Bidding Documents shall state that the Procuring Entity does not necessarily intend to enter into a contract – that is, currently, or ever. Rather, the intention is merely to establish the best source of a future supply, based upon firm prices and pre-determined conditions over a specified validity period.

NOTE: Care shall be taken when providing contractor(s) with an estimated quantity of goods and related services. In general, contractors will quote lower prices if there is a reasonable possibility that a firm amount will be ordered. If possible, the Bidding Documents should provide contractors with the minimum estimated quantity which may be ordered. Until an actual call-up document is issued, NO GUARANTEE shall be given that any amount will be ordered. The contractor may withdraw from the FA under pre-determined conditions, and would then have no further obligation to fill orders which are issued after the agreed withdrawal date.

A4.1 CRITERIA FOR ESTABLISHING FRAMEWORK AGREEMENTS

The following criteria should be satisfied in order to establish a Framework Agreement with a contractor:

- (a) the goods and related services should be clearly identified;*
- (b) the goods and related services should be commercially available; and*
- (c) the prices should be pre-determined and firm.*

A4.2 CHARACTERISTICS OF FRAMEWORK AGREEMENTS

Framework Agreements should have the following characteristics:

- (a) unit prices established as a result of a Competitive Bidding process;*
- (b) delivery dates stipulated in terms of a time period from the date of the call-up;*
- (c) stipulations regarding the limit on total expenditure;*
- (d) stipulated limits on individual call-up expenditure; and*

(e) a stipulated validity period - usually, FAs are valid for at least twelve (12) months. The period of validity should be the expiry date, or when the limit on total expenditure is reached, whichever comes first.

For multi-year FAs, there may be a clause allowing for a price increase due to inflation.

Framework Agreements shall be concluded through competitive tender.

NOTE: Procuring Entities shall obtain approval for Direct Contracting when seeking to establish a Framework Agreement with one contractor, when other contractors are available.

When a call-up against a FA is done, the call-up shall show the exact quantity and description of the required goods and related services, the packing and routing instructions, the delivery points and dates. The unit price and total price of the callup, including freight, shall be confirmed; and the contractor should be requested to acknowledge receipt of the call-up.

GoJ may enter into Framework Agreements on an annual basis for the supply of commonly used disposable goods and services, e.g. GoJ's Framework Agreement for the supply of fuel. These agreements may be entered into by the Ministry of Finance on behalf of GoJ, and reflected in an annual GoJ Schedule of Framework Agreements ("Schedule"). Contracts awarded will be in respect of goods and services for the following entities:

- (a) Central Government Ministries;*
- (b) Central Government Departments; and*
- (c) any other Procuring Entity (at its option)."*

Applicable procedures will be contained within the Schedule that is disseminated to Procuring Entities one month prior to the start of each fiscal year.”²¹

²¹ Volume 2 of the Second Revised Handbook of Public Sector Procurement Procedures (the "Second Revised Handbook" or "SRHPP") 2010 December 10, Appendix 4,

TERMS OF REFERENCE

Primary Objectives

The primary aim of the OCG's Investigation was to determine, *inter alia*, whether there was compliance on the part of the NYS with the provisions of the Contractor General Act (1983) and the relevant Government of Jamaica Procurement Procedures Handbook (GPPH) which were promulgated in 2001 May and 2008 November, respectively.

Specific Objectives

The Investigation also had the following specific objectives:

1. To identify the procurement process which was employed by the NYS, in the engagement of the services of the JTS, for the provision of transport services during the period of 2003 through to 2009.
2. To determine whether there were any breaches of the Government's procurement procedures and/or applicable laws, on the part of the NYS and/or anyone acting on its behalf, in the facilitation, procurement, award, implementation and/or the execution of transportation contracts between the NYS and JTS;
3. To determine whether the referenced contracts were awarded fairly and on merit and whether the contract award process was transparent;
4. To determine whether there is any evidence which would suggest impropriety on the part of any Public Officer, Public Official, individual or entity who was involved in and/or associated with the award of transportation contracts for and/or on behalf of the NYS.

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, were primarily developed in accordance with those of the mandates of the Contractor-General which are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor-General Act.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed upon Public Officials and Public Officers by, *inter alia*, the relevant Government of Jamaica Procurement Procedures, the Public Bodies Management and Accountability Act and the Contractor General 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.”

Requisitions/Questionnaires were sent, by the OCG, to the representatives of the JTS and the NYS, 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 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 utilized by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.

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

It is instructive to note that **Section 18 (2) of the Contractor-General Act** provides that, “*Subject as aforesaid, a Contractor-General may summon before him and examine on oath –*
a. any person who has made representations to him; or
b. any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the Investigation,

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

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

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

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

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

(a) in a voluntary declaration; or

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

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

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

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

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

information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.

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

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

“Every person who -

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

(b) without lawful justification or excuse -

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

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

(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,

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

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

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

Requisitions/Questionnaires were directed by the OCG to the former and current 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 NYS representatives were required to provide written responses and documentation to formal Requisitions which were directed to them by the OCG:
 - a. Mrs. Dasmine Kennedy, the then Executive Director (Acting) NYS;
 - b. Mr. Keith Duncan, the then Chairman, NYS; and
 - c. Mrs. Angela Wisdom, Former Human Resource & Administration Manager, NYS; and
 - d. Dr. Wesley Hughes, C.D., Financial Secretary, Ministry of Finance and Planning.

2. The following JTS representative was required to provided written responses:
 - a. Mr. Trevino Ashman, President, Jamaica Transport Service (JTS).

FINDINGS

Representations which were made to the OCG by Mrs. Audrey Sewell, the then Permanent Secretary, Ministry of Education (MoE)

By way of a letter, which was dated 2009 August 10, Mrs. Audrey Sewell, the then Permanent Secretary, MoE, informed the OCG, *inter alia*, as follows:

“In light of recent developments at the NYS, I have been directed by the Honourable Minister to seek the intervention of your office to investigate the circumstances surrounding the award of contracts by that agency and clarify the procedures and regulations which public agencies must adhere [sic] when procuring goods and services.

The NYS is a public body constituted under the National Youth Service Act which receives a monthly subvention from the Ministry of Education. The Auditor General’s report of 2007/2008 cited the NYS for breaching the Government of Jamaica’s Procurement Guidelines in respect of three contracts of total value of \$105m which were awarded without the organization following the stipulated procedure for the procurement of goods and services. This included the award of a contract to Jamaica Transport Service. Note as well that this was raised last month at the Public Accounts Committee of Parliament. The Ministry committed to the Auditor General that it would ensure that all future contracts awarded by the NYS would be according to proper procedure.

Earlier this year, the NYS advertised and invited tenders for transportation services. Subsequently, NYS informed JTS that it was the successful bidder and a contract was executed by the NYS and Jamaica Transport Service. However, the Board brought to the Ministry’s attention its concerns about the manner in which the NYS was handling the award of contracts, especially the transportation contract. Based on the reports received, the internal

auditors of the Ministry were directed to investigate the matter and provide a report... The findings of the auditors and the reports from the Board are summarized as follows:

- 1) The contract was executed by the former Executive Director and the contractor prior to submission to the Procurement Sub-Committee of the Board in circumstances where it was stated to be effective on the 2nd of June 2009 and the contractor was providing services to NYS as at that date and continuing. On that basis the Procurement Sub-Committee refused to recommend approval of an award of contract to the JTS.
- 2) There was no approval from the Board, the Ministry of Education, the Sector Committee or the National Contracts Committee for the contract to be awarded to the JTS
- 3) The contract did not specify a contract sum or give an estimated value to the services to be provided under the contract
- 4) The former Executive Director informed the Board that the Office of the Contractor General advised him that the procedure that he used was acceptable as long as he used a rate contract. Note that using that procedure the previous year resulted in substantial sums being paid to the said contractor without reference to the GOJ procurement procedures.
- 5) The former executive officers of the NYS contended that they did not need to seek the Ministry's approval through the Permanent Secretary. In fact, one of the officers sought the advice of your office to determine whether the Permanent Secretary is the accounting officer for the NYS. (OCG Emphasis)

In light of the foregoing and in an effort to ensure that there is a clear understanding of the Government's Procurement Guidelines, the Ministry is requesting the Contractor General to conduct an audit of the procurement procedures of the NYS and in the stated circumstances,

determine whether the Government's Procurement Guidelines were breached. It would also be useful for the OCG to advise on whether the Permanent Secretary is the chief accounting officer and whether executives are obliged to refer contracts to their board and line ministry through the Permanent Secretary prior to notification of successful bidders, and if so, what is the role of the Board and the Permanent Secretary in the awarding of contracts by public agencies such as the NYS."²²

Supporting Documentation which was Appended to the then Permanent Secretary's Letter of Complaint to the OCG

Findings of the Auditor General's Audit Report for NYS (2007/2008)

Mrs. Audrey Sewell, in her Letter of Complaint to the OCG, submitted an extract of the 2007/2008 Auditor General's Department Annual Report (pages 53-54). The referenced Report detailed the Auditor General's Department's Audit Observations and Recommendations for the NYS.

The referenced document indicated as follows:

"NATIONAL YOUTH SERVICE

221. The audit of the captioned entity for the year under review disclosed the under-mentioned areas of concern:

Breach of Procurement Guidelines

²² Letter which was dated 2009 August 10, from Mrs. Audrey Sewell, the then Permanent Secretary, Ministry of Education, to the OCG.

222. Payments totaling approximately \$106M were made to three (3) suppliers without evidence that the suppliers were selected on a competitive basis. There was also no indication that the National Contracts Commission (NCC) approval was received.

Erroneous Payments

223. Inadequate supervisory checks contributed to the erroneous payment of approximately \$35,000 for telephone services on behalf of a former occupant of the entity's premises. The management was advised to take urgent steps to recover the amount. The Agency subsequently advised that full recovery had since been made.

Control of Assets

224. The requisite fixed assets inventory records were not maintained. As a result items costing \$2.36M which were acquired during the period under review were not recorded therein.

Contractors Levy

225. There was no indication that Contractors Levy of \$4,446 was deducted from payments made to a contractor and remitted to the Inland Revenue Department as required by the Contractors Levy Act. It was recommended that appropriate corrective action should be taken... ”²³

Findings of the Ministry of Education's Internal Audit (2009 July 10)

Mrs. Audrey Sewell, under cover of her letter which was dated 2009 August 10, also submitted to the OCG a copy of the MoE's 2009 Internal Audit Report in regard to the contract for the provision of Transportation Services to the NYS.

The referenced Audit Report was signed by Mr. A.C. Harvey, Acting Chief Internal Auditor, MoE. The Findings of the referenced Report indicated, *inter alia*, as follows:

²³ Pages 53 and 54 of the Auditor General's Department Annual Report -2007/2008

“FINDINGS

1. *The Jamaica Transport Services was employed previously to the National youth [sic] Service (NYS) without entering into a contract from as far back as in 2006. The Auditor general’s Report for 2007/2008 cites the NYS for awarding three (3) contracts for a total of \$105M without there being any evidence that there was a competitive process or the approval of the National Contracts Commission. This amount includes the transportation contract. The contractual agreement between this Company (the Jamaica Transport Services) and the National Youth Service (NYS) over the years is of some concern.*
2. *Omission of a total contracted sum, although prior data was available to arrive at a sum. For example, this is an open-ended agreement which can result in the payment of significant sums of monies to the company and exposing the organization. This is a poor and imprudent Management practice.*
3. **There was no evidence presented to substantiate that this current Agreement was brought to the attention of the Permanent Secretary, the Sector Committee or the National Contracts Commission. Although the NYS did not follow the Procurement Guidelines, the Executive Director signed a contract with the company... Note the omission of the date that the contract was signed.** (OCG Emphasis)
4. **The auditors were advised by Reverend Jones that work has actually started under the Contract which is not yet approved by the Permanent Secretary, although there is a line in the document of her approve.**[sic] (OCG Emphasis)
5. *The signed Agreement which is effective June 5, 2009 is for twenty-two (22) months and spans two financial years.*

6. *We were advised that the Permanent Secretary expressed concerns to the Executive Director on more than one occasion that the NYS did not relate to the Ministry on any matter, especially for the procurement of goods and services.* (OCG Emphasis)
7. *Executive Director and his staff breached the policy directives of the Ministry of Finance and the Public Service-public Expenditure Policy Coordination Division, Circular No. 36, dated 22nd September, 2008...*
8. *Instead of first submitting the documents to the Permanent Secretary for her approval, it is submitted by a letter dated 7th July, 2009 to the Office of the Contractor General by the Human Resource and Administrative Manager, Mrs. Angella Wisdom.*

Further investigation is currently being pursued to ascertain the magnitude of payments made to this company (Jamaica Transport Services) since 2006 and the amounts paid under this new 'Contract'.

It is recommended that all the necessary action be taken against the Executive Director and his staff."²⁴

Based upon the letter of complaint from Mrs. Audrey Sewell, the Findings of the Auditor General's 2007/2008 Annual Report, as well as the MoE's Internal Audit Report, the OCG found that over the period of 2006 through to 2009, that it appeared as though the NYS had flagrantly breached several provisions of the 2001/2008 GPPH in the award of contracts.

The referenced reports revealed that several contracts were awarded, and several payments had been made to companies, inclusive of the JTS. There is, however, no evidence to indicate that the process which was utilized by the NYS, in the award of the said contracts, was transparent or in accordance with the requirements of the Government Procurement Guidelines.

²⁴ Ministry of Education's Internal Audit Report of the NYS in 2009.

Having regard to the foregoing, the OCG decided to examine the circumstances surrounding the award of contracts to the JTS, by the NYS, in regard to the provision of transportation services, inclusive of making a determination of the Accounting and Accountable Officers of the NYS and their respective responsibilities.

Who was/were the Accounting/Accountable Officer(s) of the NYS between 2008 March 1 and 2009 August 31 and what are/were their responsibilities and obligations?

In light of the concerns which were raised by Mrs. Audrey Sewell in her letter of complaint to the OCG, as it regards, *inter alia*, “*whether the Permanent Secretary is the chief accounting officer and whether executives are obliged to refer contracts to their board and line ministry through the Permanent Secretary prior to notification of successful bidders...*”²⁵ the OCG deemed it prudent to ascertain the particulars of the responsibilities of, and distinction between the Accounting and Accountable Officers of the NYS.

In order to ascertain who were the Accountable and Accounting officers of the NYS, during the referenced period, the OCG, at the commencement of its Investigation, by way of a Statutory Requisition which was addressed to Dr. Wesley Hughes, Financial Secretary, Ministry of Finance and the Public Service (MOFPS), which was dated 2009 September 1, asked the following questions:

“With reference to the Financial Administration and Audit Act and any other pertinent legislation, we request the assistance of your good offices in the determination of the following questions:

²⁵Letter which was dated 2009 August 10, from Mrs. Audrey Sewell, then Permanent Secretary, Ministry of Education to the OCG.

1. *What was the name and title of the Accounting Officer at the National Youth Service (NYS) between 2008 March 1 and 2009 August 31?*
2. *What was the name and title of the Accountable Officer at the NYS between 2008 March 1 and 2009 August 31?*
3. *What was the name and title of the Accounting Officer at the Ministry of Education (MoE) between 2008 March 1 and 2009 August 31?*
4. *What was the name and title of the Accountable Officer at MoE between 2008 March 1 and 2009 August 31?*
5. *Please also advise what are the responsibilities and obligations of:*
 - a. *The Accounting Officer at the NYS particularly as they relate to the approval and award of the contracts and also as they relate to the approval and authorization of payments which are made on contracts;*
 - b. *The Accountable Officer at the NYS particularly as they relate to the approval and award of contracts and also as they relate to the approval and authorization of payments which are made on contracts;*
 - c. *The Accounting Officer at the MoE particularly as they relate to the approval and award of contracts by NYS and also as they relate to the approval and authorization of payments which are made in respect of contracts which are awarded by the NYS;*
 - d. *The Accountable Officer at the MoE particularly as they relate to the approval and award of contracts by the NYS and also as they relate to the approval and authorization of payments which are made in respect of contracts which are awarded by the NYS.*
6. *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.*²⁶

²⁶ OCG's Requisition to Dr. Wesley Hughes, Financial Secretary, Ministry of Finance and Planning, which was dated 2009 September 1.

Dr. Wesley Hughes, in his sworn response to the OCG's Requisition, which was dated 2009 September 17, indicated, *inter alia*, as follows:

"...The Financial Administration and Audit (FAA) Act clearly distinguishes between both terms and defines an Accounting Officer " as any person designated by the Minister pursuant to section 16 and charged with the duty of accounting for expenditure on any service in respect of which moneys have been appropriated under the FAA Act or any other enactment" Operating within this provision, only Permanent Secretaries and Chief Executive Officers of Executive Agencies are appointed Accounting Officer by the Minister of Finance.

An Accountable Officer as defined by the Act means "any public officer, including an accounting officer, concerned in or responsible for the collection, receipt, custody, issue or payment of public moneys or other public property" Accountable officers are appointed by their respective Accounting Officer.

In response to the issues raised in your letter, the questions and answers are set out accordingly:

1&2...There is no Accounting Officer appointed at the NYS. Based on our records, Rev. Adinhair Jones Executive Officer was appointed Accountable Officer by the Permanent Secretary by letter dated February 19, 2009.

3&4...The Ministry's record showed Mrs. Maria Jones to be the last person appointed Accounting Officer at the MOE by letter dated October 3, 2007. She was reassigned to the Ministry of Finance and the Public Service with effect from May 12th 2008. Mrs. Audrey Sewell is current Permanently Secretary and engaged by letter October 13, 2008 but who, inadvertently was appointed an Accounting Officer. Notwithstanding the above, Ms. Barbara Allen acted as Permanent Secretary between the period of Mrs. Jones reassignment and Mrs. Sewell's engagement and would have covered part of the period of review.

According to this Ministry's records the following officers were appointed Accountable Officer by letters dated February 19, 2009 at the MOE:

Name of the Officer

Title...

Rev Adinhair Jones

Executive Director-NYS...

5. *Pursuant to the FAA Act, Accounting Officers are responsible for the propriety of procurement expenditure affected by their portfolio entities. Accordingly, Accounting/Accountable Officers are required to adhere to the procedures contained in the Handbook of **Public Procurement Procedures**.*

*The public procurement system gives Accounting Officer the authority to certify/approve contract awards for goods, services and works up to **\$10M**. With respect to this value Accounting Officer has the authority to set expenditure thresholds which may also be delegated to Accountable Officers.*

The Accounting and Accountable Officers are obliged to take the necessary steps to ensure that payments of public money are properly made in respect of goods, services and services delivered or rendered in conformity with a valid agreement.

*Standard letters appointing Accounting and Accountable Officer are attached for your perusal. These letters would indicate the levels of responsibility assigned to each.*²⁷

Based upon the sworn response which was provided by Dr. Wesley Hughes, the OCG found that Reverend Adinhair Jones, Former Executive Director, NYS, was appointed the Accountable Officer of the NYS, by way of a letter which was dated 2009 February 19.

²⁷ Dr. Wesley Hugh's sworn response to the OCG's Requisition which was date 2009 September 17.

Further, and according to the information which was provided by Dr. Wesley Hughes, the OCG found that by way of a letter which was dated 2007 October 3, Mrs. Maria Jones, former Permanent Secretary, was the last person who was appointed as Accounting Officer at the MOE at the time of the award of the contracts to the JTS. There was no separate and distinct Accounting Officer appointed at the NYS.

It is instructive to note that *“The NYS is a public body constituted under the National Youth Service Act which receives a monthly subvention from the Ministry of Education.”*²⁸ Therefore, this would imply that the Accounting Officer at the MOE is also responsible for the affairs of the NYS, in conjunction with the designated Accountable Officer.

Having regard to the foregoing, the OCG found that Rev. Adinhair Jones, in his capacity as the then Executive Director and Accountable Officer of the NYS was *“charged with the duty of accounting for expenditure on any service in respect of which moneys have been appropriated under the FAA Act or any other enactment.”*²⁹

²⁸ Letter which was dated 2009 August 10, from Mrs. Audrey Sewell, the then Permanent Secretary, Ministry of Education, to the OCG.

²⁹ Dr. Wesley Hugh’s sworn response to the OCG’s Requisition which was date 2009 September 17.

Past and Present Employees' Accounts of their Involvement in the Award of Contracts to the JTS.

The OCG, at the commencement of the Investigation also sought to ascertain the names of the NYS representatives who were directly involved in the award of contracts to the JTS, during the period 2003-2009.

Consequently, by way of Requisitions which were dated 2009 September 1, the OCG asked Mrs. Dasmine Kennedy, Acting Executive Director, NYS and Mr. Keith Duncan, the then Chairman, NYS, the following question:

“What is/was the extent of your official and/or personal involvement in the award of any contract to Jamaica Transport Service (JTS)? Please provide a comprehensive statement to this question.”³⁰

Mrs. Dasmine Kennedy, *inter alia*, in her sworn response to the OCG's Requisition which was dated 2009 September 14, stated the following:

“My tenure with the National Youth Service commenced on August 24, 2009. I was seconded by the Ministry of Education as Acting Executive Director on an interim agreement. I have/had no official and/or personal involvement in the award of any contract to Jamaica Transport Service (JTS).

In light of the foregoing, please note that responses provided will therefore be based on information gleaned as a result of files reviewed and interviews held with staff.”³¹

³⁰ The OCG's Statutory Requisition to Mrs. Dasmine Kennedy and Mr. Keith Duncan, which were dated 2009 September 1.(Question #1)

³¹ Mrs. Dasmine Kennedy's response to the OCG's Requisition, which was dated 2009 September 14.(Question #1)

Mr. Keith Duncan, in his sworn response to the OCG's Requisition, which was dated 2009 October 5, stated, *inter alia*, the following:

*"I was not involved in the process associated with the award of the contract to the Jamaica Transport Service (JTS). Since the existence of the new Board in July 2008, a Procurement Sub-Committee was formed to address and review issues regarding procurement. Therefore recommendations are presented to the Board of Directors by the Procurement Sub-Committee at the Board meetings and approval granted by the Board of Directors. The first time the issue of the transportation contract came to the Board meeting was July 15, 2009."*³²

Based upon the supporting documents which were provided by Mrs. Kennedy and Mr. Duncan, the OCG found that Mrs. Angela Wisdom, former Human Resource & Administration Manager, NYS, was integral in the procurement activities at the NYS during the referenced period.

Consequently, the OCG, by way of a Requisition which was dated 2010 January 18, asked Mrs. Angela Wisdom, former Human Resource & Administration Manager, NYS, to provide answers to the following questions:

"Please provide an Executive Summary detailing the period of time for which you were officially associated with/and/or employed by the National Youth Service (NYS). The Executive Summary should detail the following particulars:

- i. The substantive post(s) which was/were held by you whilst at the NYS;*
- ii. The date(s) on which you were appointed to each of the named posts and the date(s) on which you demitted each of the named posts;*
- iii. Detail the core responsibilities of each post and the authority, if any, which each post allowed in regard to the approval of financial arrangements and procurement activities on behalf of the NYS."*

³² Mr. Keith Duncan's response to the OCG's Requisition, which was dated 2009 October 5. (Question #1)

Mrs. Angela Wisdom, in her sworn response to the OCG's Requisition, which was dated 2010 January 28, stated, *inter alia*, the following:

i. "Substantive posts held..."

- a) *Human Resource & Administration Manager (HR & Adm. Manager)*
- b) *Office Manager (OM)*

ii. Dates appointed and demitted each of the named posts respectively

- a) *October 01, 2003 to July 22, 2009*
- b) *September 10, 2001 to September 30, 2003*

iii. Details of core responsibilities

Human Resource & Administration Manager:

- *Strategically directed and contributed to the development, productivity and operational effectiveness of the NYS, within its expanded Vision 2013, by guiding, managing and meeting the requirements of all business units in terms of human resource management and development, office and administrative development and participants' development and welfare.*
- *Supervised the Office Manager who was responsible for the general procurement of goods and services and office management. Also provided direction for and supervision of the Career & Guidance, MIS and Participants Benefits Units.*

Approval Authority for Financial and Procurement Activities:

Reviewed, pre-approved and recommended 75% of all procurement matters for the NYS. The other 25% was conducted by respective Field Officers or Programme/Project Managers whose Manager/Director pre - approved procurement based on programme and parish project needs as per Executive direction.

Office Manager:

- *Responsible for the cost effective and timely procurement of all goods, equipment and services for all Corps and emerging programmes and activities to effectively meet the needs of the various units and*

- *the efficient management, monitoring and maintenance of the Agency's physical space and assets at the Head Office and in the Field in conjunction and /or collaboration with the Corporate Services Deputy Director (formerly Community Services) and the Finance & Accounts Director.*

Approval Authority for Financial and Procurement Activities:

Requisitioned 60% of all required quotes (3 at the time) for all procurement matters for the NYS. The other 40% of requisitions was conducted by respective Field Officers or Programme/Project Managers who pre - approved procurement based on programme and parish project needs as per Executive direction.³³

Based upon the foregoing, the OCG found that Mrs. Angela Wisdom was in charge of procurement activities at the NYS during the period 2005 to 2009.

³³ Mrs. Angela Wisdom's Sworn Response to the OCG Requisition, which was dated 2010 January 28, which was submitted under cover of a letter which was dated 2010 February 1.

The Consummation of the Services which were provided to the NYS by the JTS

At the commencement of the Investigation, the OCG also sought to ascertain when, how and by whom the transportation arrangements between the NYS and the JTS were initiated. Consequently, the OCG in its Requisitions which were dated 2009 September 1, and which were addressed to Mrs. Dasmine Kennedy, Executive Director (Acting), NYS, Mr. Keith Duncan, Chairman, NYS, and its Requisition which was dated 2010 January 18, to Mrs. Angela Wisdom, Former Human Resource and Administration Manager, NYS, posed the following question:

“When were the services of JTS contracted by the National Youth Service (NYS)? What goods, works and/or services were JTS contracted to provide?”³⁴

Mrs. Dasmine Kennedy, in her sworn response to the OCG’s Requisition, which was dated 2009 September 14, indicated, *inter alia*, as follows:

“Based on letter dated October 16, 2006 addressed to Mrs. Angela Wisdom and signed by J.T.S. President, Mr. Trevino Ashman, it would appear that the National Youth Service has been utilizing the services of J.T.S. since 2003.”³⁵

Mr. Keith Duncan, in his sworn response to the OCG’s Requisition, which was dated 2009 October 13, also indicated, *inter, alia*, as follows:

“...Based on letter dated October 16, 2006 addressed to Mrs. Angela Wisdom and signed by J.T.S. President, Mr. Trevino Ashman, the [sic] would appear that the National Youth Service has been utilizing the services of J.T.S. since 2003.

³⁴ The OCG’s Statutory Requisition to Mrs. Dasmine Kennedy and Mr. Keith Duncan, which were dated 2009 September 1,(Question #1) and to Mrs. Angela Wisdom which was dated 2009 January 18.(Question #1)

³⁵ Mrs. Dasmine Kennedy’s response to the OCG’s Requisition, which was dated 2009 September 14. (Question #1)

The JTS was contracted to provide transportation services islandwide for the NYS participants to and from the residential camps.”³⁶

Mrs. Angela Wisdom, in her sworn response to the OCG’s Requisition, which was dated 2010 January 28, indicated, *inter alia*, as follows:

“Prior to 2005: Reference may be made to the following letters which may ascertain the period that a JTS-NYS relation started. This seems to be 2 years prior to any discussions with my former office in 2005:

- *Letter dated January 6, 2005 in Appendix 2*
- *Letter dated October 16, 2006 in Appendix 4”³⁷*

The OCG found that the aforementioned letter of 2005 January 6, was addressed to Mrs. Wisdom from Mr. Trevino Ashman, President, JTS, and was captioned: ***“Re: Quotations and Information from Jamaica Transport Service (JTS)”***. The referenced letter indicated, *inter alia*, as follows:

“I want to first use this opportunity to express our gratitude for being chosen to do the transportation of the National Youth Service for the past 2 years. I also want to express best wishes for you and entire staff for the New Year.

Following your request on quotation for the upcoming year I now do so along with copies of valid Tax Compliant [sic] Certificate (TCC), National Contracts Commission (NCC) certificate of approval on government list of contractors.

³⁶ Mr. Keith Duncan’s sworn response to the OCG’s Requisition, which was dated 2009 October 1.

³⁷ Mrs Angel Wisdom’s Sworn Response to the OCG Requisition, which was dated 2010 January 28, which was submitted under cover of a letter which was dated 2010 February 1.

I look forward to again be selected due to our track record of performance, our competitive costs and the convenient and safe service that is always available form [sic] JTS.”

*I look forward for your favorable response.*³⁸

The OCG found that the letter of 2006 October 16, which was also alluded to by Mr. Keith Duncan, was in fact addressed to Mrs. Angela Wisdom and was submitted and signed by Mr. Trevino Ashman, President, JTS. The referenced letter, which was captioned **“Re: Proposal from Jamaica Transport Service (JTS)”** indicated, *inter alia*, as follows:

“I want to first use this opportunity to express our appreciation for having a continued business relationship with the National Youth Service (NYS) after we first started in 2003. We are happy we can function to aid in your development of the country’s youths.

*Following weeks of discussion we have concocted the following proposal as an interim measure to offset some of our expenses for the Cobbler Camp movement. As you are well aware we have been charging the same rate for some of the parish movements for the last 3 years with a spiraling cost of fuel, insurance, parts and other transportation related items and as such we solicit a small percentage increase until your proposed public tender... ”*³⁹ (OCG Emphasis)

The OCG, in its Requisition to Mr. Trevino Ashman, President, JTS, which was dated 2009 September 1, also sought to ascertain the JTS’ account of their previous and present contractual arrangements with the NYS.

³⁸ Letter of 2005 January 6, was addressed to Mrs. Wisdom from Mr. Trevino Ashman President, JTS.

³⁹ Letter of 2006 October 16, to Mrs. Angela Wisdom and from Mr. Trevino Ashman President, JTS.

In response to the OCG’s Requisition to Mr. Ashman, Mr. Ricardo James, Executive Chairman, JTS, by way of a sworn response which dated 2009 September 14, indicated, *inter alia*, as follows:

*“The contracts were annual approved rate sheet since 2003 and a signed contract in 2009”*⁴⁰

Mr. James also provided the OCG with a copy of four (4) letters which were sent from the JTS, to the NYS, during the period of 2003.

The first letter was addressed to Mr. Carlando Francis, the then Deputy Director, Community Services, NYS, from Mr. Trevino Ashman, President, JTS. The letter, which was dated 2003 February 7, was captioned *“Invoice for transportation done.”* and indicated, *inter alia*, as follows:

“The following is the total cost for providing transportation for participants in NYS’s JAMCAYNE programme. Participants were transported from their homes in Manchester and not from a central location.”

<i>DATE</i>	<i>BUS</i>	<i>DUTY</i>	<i>COST</i>
<i>Feb 4, 03</i>	<i>47</i>	<i>Manchester Homes to Meadowbrook</i>	<i>\$21,000</i>
<i>Feb 7, 03</i>	<i>47</i>	<i>Meadowbrook to Airport</i>	<i>\$11,500</i>
		<i>Total</i>	<i>\$32,500</i>

*The total cost is thirty two thousand five hundred dollars.*⁴¹

⁴⁰ Mr. Ricardo James, Executive Chairman, JTS, sworn response to the OCG’s Requisition, which dated 2009 September 14.

⁴¹ Letter from Mr. Trevino Ashman, President, JTS, to Mr. Carlando Francis, the then Deputy Director, Community Services, NYS.

The other three (3) letters, which were dated 2003 July 4, 2003 September 15 and 2003 November 5, respectively, were all captioned “*Invoice for Transportation of NYS Participants*”. The referenced letters were sent by Mr. Trevino Ashman to Mr. Carlando Francis, the then Deputy Director, Community Services, NYS. The total amounts on each of the letters were five hundred and five thousand dollars (\$505,000.00), five hundred and fifteen thousand dollars (\$515,000.00) and five hundred and eight thousand dollars (\$508,000.00), respectively.

Based upon the sworn responses from the NYS representatives, the JTS representative and the documentary evidence which was provided by the said respondents, the OCG found that the services of the JTS were first engaged in 2003 February.

The OCG has also found that in 2003, at the time at which the JTS was apparently first engaged, Mr. Carlando Francis, Deputy Director, Community Services, was the person in charge of the procurement of transportation services at the NYS.

The JTS' Account of its Engagement with the NYS over the period 2003 to 2009

The OCG, in its Requisition to Mr. Trevino Ashman, President, JTS, which was dated 2009 September 1, also requested that the JTS give full details of the circumstances under which it was engaged by the NYS.

Mr. Ricardo James, Executive Chairman, JTS, responded to the OCG's Requisition which had been directed to Mr. Trevino Ashman, President, JTS. The referenced response was dated 2009 September 14.

The following are the questions which were posed by the OCG in the Statutory Requisition and the answers which were provided by Mr. Ricardo James in his sworn written response:

OCG:

1. Has the Jamaica Transport Service (JTS) ever entered into a contract(s) with the National Youth Service (NYS)? If yes, please provide answers to the following questions and provide documentary evidence in support of your response where possible:

- i. The nature of the contract(s);*
- ii. The type of contract(s) which was/were entered into;*
- iii. The date(s) of the award of the contract(s);*
- iv. The specifics of JTS' contractual obligations;*
- v. The consideration which is/was to be paid to JTS under the contract(s);*
- vi. The total sum of money which was/has been paid to JTS under each of the listed contracts.*

2. *If your response to Question #1 above is yes, please indicate by whom, how, when and the circumstances under which the services of JTS was engaged, in each instance. Please provide, where possible, documentary evidence in support of your answer/assertion.*⁴²

JTS:

“Yes.

I The nature of contracts are transportation for participants, their belongings and teaching staff using buses and taxicabs and panel van.

Ii The contracts were annual approved rate sheet since 2003 and a signed contract in 2009

Iii April 1, 2003, April 1 2005, June 1, 2007 and May 18, 2009

Iv The obligation of JTS are to provide bus transportation for all participants for residential camps to and from each parish along with their luggages and the teaching staff from Utech to Chestervale daily whenever camps are being held there.

V The consideration will be paid based on the approved rates and the quantity of buses present signed off by NYS person at the site.

Vi The total sums by my records are as follows:

⁴² The OCG's Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

<i>PERIOD</i>	<i>AMOUNT</i>
<i>Feb. 2003-May 2004</i>	<i>2,129,500</i>
<i>August 2005-December 18,2006</i>	<i>18,537,900</i>
<i>January 5, 2007-December 11,2007</i>	<i>24,585,000</i>
<i>January 2, 2008- December 17, 2008</i>	<i>18,397,800</i>
<i>January 9-August 20,2009</i>	<i>16,561,780</i>
<i>TOTAL</i>	<i>80,211,980</i>

See invoices enclosed”⁴³

It must be noted that the following notation was written below the table which is detailed above
“*Cannot find 2005 invoices so this amount may be a bit more”⁴⁴ (OCG Emphasis)

OCG:

*“... please indicate by whom, how, when and the circumstances under which the services of the JTS was engaged, in each instance. Please provide, where possible, documentary evidence in support of your answer/assertion.”*⁴⁵

JTS:

Being involve [sic] with the transport business from 1998, I was manager of Dixon’s Transport part time until October 16, 2002 when my full time job came to an end. I decided I had a

⁴³ Mr. Ricardo James Executive Chairman, JTS response to the OCG’s 2009 September 1, Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

⁴⁴ Mr. Ricardo James Executive Chairman, JTS response to the OCG’s 2009 September 1, Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

⁴⁵ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

contingent of sub-contractors islandwide and had the business acumen to build a profitable, vibrant transport company.

I sent our information to hundreds of places both government and private sector institutions. Two of my sub-contractors, Paul Dixon and Joseph Ramcharan in discussion with them expressed an idea to me, **they said based on the fact that I had an islandwide reach and they were involved in transporting NYS persons on call, I should approach the head office with a proposal for the overall management of NYS contracts because they were having problems with some parish operators . I did just that and the idea was embraced by Mr. Carlando Francis who was suggested at NYS to be the person in charge of that aspect at the time.** (OCG Emphasis)

He said the timing was good because NYS wanted to come out of the parish by parish arrangements which had problems of punctuality, uneven standards and the boisterous affairs whenever the time span in collecting cheques was too long.

He stated that I should give him a quotation and he would compare with the current expenses and would get back to me as soon as possible.

He did so and that was how I was first doing business with NYS, either late 2002 or early 2003. (OCG Emphasis)

Since then I was engaged in negotiations in 2005 via selective tendering with Mrs. Angela Wisdom annually. ”⁴⁶

⁴⁶ Mr. Ricardo James Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

OCG:

*What is/was the extent of your official and/or personal involvement in the award of any contract to the JTS by the NYS? Please provide a comprehensive statement to this question.*⁴⁷

JTS:

“There was no un ethical [sic] or unprofessional involvement in JTS being awarded the contract at any time.

*I only bidded or quoted whenever request was made and in the final case responded when I saw the invitation to tender in the newspaper.”*⁴⁸

OCG:

*“What is the extent of your knowledge of the circumstances surrounding the award of contracts to the JTS by the NYS? Please provide a comprehensive statement to this question.”*⁴⁹

JTS:

*“I have no knowledge of the internal maneuvers or circumstances surrounding the award of any contract to me, I assume it is based on JTS competitive rates, accident history, tax compliance and NCC certification, one of 1st transport companies to do so, understanding the government cash flow systems, willingness to extend ourselves, diverse operations such as taxi and other modes of transport and the islandwide reach , all add up to give JTS the competitive edge.”*⁵⁰

⁴⁷ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

⁴⁸ Mr. Ricardo James, Executive Chairman, JTS response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

⁴⁹ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

⁵⁰ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

OCG:

“Is there any documentary evidence to support the claims and assertions which you have made in your responses to Requisitions/Questions #3 and #4 above? If yes, please state what it is and provide a certified copy of the relevant documentation.”⁵¹

JTS:

“I have no such documentary evidence in my possession only a reference I received from NYS when I was bidding for other contracts which stated their opinion of JTS service.”⁵²

OCG:

“Did you, or anyone acting on behalf of the JTS, directly approach any representative of the NYS in regard to the consummation of any contract between the JTS and the NYS? If yes, please provide full particulars inclusive of the name of the person(s) who were approached, the date(s) on which such an approach was made and the reason(s) for same.”⁵³

JTS:

“NO

There were no direct approach to anyone because I was not au-feit [sic] with the running and structure of NYS. On the suggestion from my sub-contractors I Initially approach the company via telephone and written requests and since then responded to tenders when invited or so compelled.”⁵⁴

⁵¹ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

⁵² Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

⁵³ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

⁵⁴ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

OCG:

“Did any Official/Officer/Employee or any other representative of the NYS approach you in regard to the provision of any, goods, works and/or services at the NYS? If yes, please provide full particulars, inclusive of the name of the person(s) who approached you, the date(s) on which such an approach was made and the reason(s) for same.”⁵⁵

JTS:

“NO”⁵⁶

OCG:

“Do you know, or do you have, or have you had a personal, business or other relationship with, any Public Official/Officer or Employee of the NYS, which was involved in the award of any contract(s) to the JTS? If yes, please indicate:

- a. The full name of the Public Official/Officer or Employee of the NYS;*
- b. The Length of time that you have known the Public Official/Officer or Employee of the NYS;*
- c. A full description of the nature of the relationship between yourself and the NYS.⁵⁷*

JTS:

I have never had any personal, business or other relationship with any of the public officials, officer involved with the award of contracts.⁵⁸

⁵⁵ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

⁵⁶ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

⁵⁷ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

OCG:

“Have you or any person acting on your behalf, received, whether directly or indirectly, any benefit(s), in cash or in kind, as a result of your involvement in and/or association with the contracts which were awarded to the JTS by the NYS? 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 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 had with the person(s).”⁵⁹

JTS:

“The ideals of the JTS was built is [sic] trust, honesty and integrity. ABSOLUTLEY, no one from JTS including myself directly or indirectly benefited in cash or kind in the awards of the contracts.

I only provide discounted trips once per year for the NYS staff function.”⁶⁰

OCG:

“Do you know of any Official/Officer or Employee of the NYS (former or present), or anyone acting on their behalf, who was received, either directly or indirectly, any benefit(s), whether in cash or in kind, as a result of that Official’s/Officer’s or Employee’s involvement in and/or association with the award of any contract to the JTS? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the Public Official/Officer or

⁵⁸ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition which was addressed to Mr. Trevino Ashman, President, JTS.

⁵⁹ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

⁶⁰ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

*Employee his/her job title and function, the name of the recipient(s) and a description of benefits(s) received.*⁶¹

JTS:

*“I know of no one, former employee, current employee that has benefited from the business engagement from the NYS, whether cash or kind.”*⁶²

OCG:

*“Do you know of any other Public Official/Officer or Employee (former or present), or anyone acting on his/her behalf, who has received, either directly or indirectly, any benefit(s), whether in cash or in kind, by virtue of the award of any contract(s) to JTS? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of Public Official/Officer or Employee, his/her job title and function, the name of the recipient(s) and a description of the benefit(s) received.”*⁶³

JTS:

*“None whatsoever”*⁶⁴

OCG:

“Are aware of any relative, friend and/or associate of any Public Official/Officer or Employee (former of present), who has benefited, either directly or indirectly, in cash or in kind, as a result

⁶¹ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

⁶² Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

⁶³ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

⁶⁴ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

*of the public Officials/Officers' or Employees' involvement in and/or association with the award of any contract to the JTS? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the full name of the Public Official/Officer or Employee, his/her job title and function, the full name of the relative, friend or associate and a description of the benefit(s) received.*⁶⁵

JTS:

*"No, not at all"*⁶⁶

OCG:

*"Are you aware of any arrangements which are presently subsisting for any of the persons who are referenced in Requisitions/Questions #9 through #12 to receive any future benefit(s), whether same has been expressed to be in cash or kind? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the intended recipient(s) and the description of the benefit(s) which is/are to be received."*⁶⁷

JTS:

*"Not at all"*⁶⁸

⁶⁵ The OCG's Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

⁶⁶ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG's 2009 September 1, Requisition which was addressed to Mr. Trevino Ashman, President, JTS.

⁶⁷ The OCG's Requisition to Mr. Trevino Ashman, which was dated 2009 September 14.

⁶⁸ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG's 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

OCG:

“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.”⁶⁹

JTS”

“Not at this time.”⁷⁰

Documentary Evidence Submitted to the OCG from the JTS

The JTS submitted several invoices and other correspondence to the OCG, regarding the company’s contractual engagement with the NYS during the period of 2003 through to 2009.

The Engagement of JTS by the NYS in 2003

The JTS submitted copies of four (4) invoices which were sent to the NYS during the year 2003 for services which were provided during the referenced period. The following table indicates the date of each invoice and the total amount on each invoice.

Date of Invoice	Amount on Invoice
2003 February 7	\$32,500
2003 July 4	\$505,000
2003 September 15	\$515,000
2003 November 5	\$508,000
Total	\$1,560,500

⁶⁹ The OCG’s Requisition to Mr. Trevino Ashman, which was dated 2009 September 14

⁷⁰ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG’s 2009 September 1 Requisition, which was addressed to Mr. Trevino Ashman, President, JTS.

Also provided to the OCG was a copy of the 2003 Rate Sheet which was issued to the NYS by the JTS. Detailed below are particulars of same.

“2003 Rate Sheet

<i>Parish</i>				<i>JTS</i>	
<i>Kgn & St. Andrew</i>		<i>45 & 15*</i>		<i>45,000</i>	
<i>St. Cath</i>		<i>1 (50) & (30)</i>		<i>45,000</i>	
<i>St. Eliz.</i>		<i>30</i>		<i>28,000</i>	
<i>Manch.</i>		<i>30&15*</i>		<i>18,000</i>	
<i>Clar.</i>		<i>1 (30) & 1 (15)</i>		<i>36,000</i>	
<i>West</i>		<i>30</i>		<i>35,000</i>	
<i>Han.</i>		<i>50</i>		<i>38,000</i>	
<i>St. James</i>		<i>50*</i>		<i>33,000</i>	
<i>Trew</i>		<i>30</i>		<i>50,000</i>	
<i>St. Ann</i>		<i>30 & (15*</i>		<i>50,000</i>	
<i>St. Mary</i>		<i>30</i>		<i>38,000</i>	
<i>Portland</i>		<i>30</i>		<i>45,000</i>	
<i>St. Thom</i>		<i>30</i>		<i>36,000</i>	

The Engagement of JTS by the NYS in 2004

The OCG was provided with one (1) invoice relating to the contracting of JTS during the year 2004 which was in the form of a letter, dated 2004 May 31, from Mr. Trevino Ashman to the NYS, which was entitled **“Invoice for transportation of NYS participants”**. The referenced letter stated, *inter alia*, that *“The following is the cost for providing all transportation for NYS participants from all parishes to Cobbler in Manchester on Saturday May 1, 2004 and return for*

them on Saturday May 29, 2004...The total cost is Five Hundred and Sixty Nine Thousand dollars (\$569,000.00)”⁷¹

The Engagement of JTS by the NYS in 2005

By way of a letter, which was dated 2005 January 6, from Mr. Trevino Ashman, President, JTS, to Mrs. Angela Wisdom, the then Human Resource Manager, NYS, and which was captioned **“Re: Quotations and Information from Jamaica Transport Service (JTS)”**, the following was indicated:

I want to first use this opportunity to express our gratitude for being chosen to do the transportation of the National Youth Service for the past 2 years. I also want to express best wishes for you and entire staff for the New Year.

Following your request on quotation for the upcoming year I now do so along with copies of valid Tax Compliant [sic] Certificate (TCC), National Contracts Commission (NCC) certificate of approval on government list of contractors.

I look forward to again be selected due to our track record of performance, our competitive costs and the convenient and safe service that is always available form [sic] JTS.

I look forward for your favorable response.”⁷²

The following rate sheet was also provided to the NYS from the JTS during 2005.

⁷¹ Letter which was dated 2004 May 31, from Mr. Trevino Ashman to the NYS.

⁷² Letter, which was dated 2005 January 6, from Mr. Trevino Ashman, President, JTS, to Mrs. Angela Wisdom, the then Human Resource Manager, NYS.

“JAMAICA TRANSPORT SERVICE (JTS)...

“Proposed rates per return movement from parishes islandwide to Cobbler Campus 2005

<i>Bus size</i>	<i>Parish</i>	<i>Cost</i>
<i>30 seater</i>	<i>Kgn.</i>	<i>22,500</i>
<i>50 seater</i>		<i>46,000</i>
<i>30 seater</i>	<i>St. Cath.</i>	<i>21,500</i>
<i>50 seater</i>	<i>“</i>	<i>45,000</i>
<i>15 seater</i>	<i>Clarendon</i>	<i>12,000</i>
<i>30 seater</i>	<i>“</i>	<i>20,000</i>
<i>30 seater</i>	<i>St. Mary</i>	<i>38,000</i>
<i>30 seater</i>	<i>St. Elizabeth</i>	<i>26,000</i>
<i>30 seater</i>	<i>Manchester</i>	<i>14,000</i>
<i>30 seater</i>	<i>St. Thomas</i>	<i>37,000</i>
<i>30 seater</i>	<i>Portland</i>	<i>47,000</i>
<i>30 seater</i>	<i>Westmoreland</i>	<i>37,000</i>
<i>30 seater</i>	<i>Hanover</i>	<i>40,000</i>
<i>30 seater</i>	<i>St. James</i>	<i>35,000</i>

<i>50 seater</i>	“	<i>51,000</i>
<i>15 seater</i>	<i>St. Ann</i>	<i>15,000</i>
<i>30 seater</i>	“	<i>33,000</i>
<i>15 seater</i>	<i>Trelawny</i>	<i>17,000</i>
<i>30 seater</i>	“	<i>35,000</i> ” ⁷³

The OCG also found, by way of a letter which was dated 2005 August 22, from Mr. Trevino Ashman, President, JTS, to Mr. Hewitt Walker, the then Director, Corporate Services, NYS, and which was entitled “*Invoice for Transportation of NYS Participants*”, that the following was stated:

*“...the cost for providing the transportation for NYS participants from all parishes to Cobbler in Manchester on Saturday July 23, 2005 and return on Saturday, August 20, 2005... **The total cost is Six Hundred and Thirty Six Thousand, Five Hundred Dollars (\$636,500.00).**”*⁷⁴

⁷³ 2005 Rate Sheet from the JTS.

⁷⁴ Letter which was dated 2005 August 22, from Mr. Trevino Ashman, President, JTS, to Mr. Hewitt Walker, the then Corporate Services Director, NYS.

The Engagement of JTS, by the NYS, in 2006

The OCG found that in a letter which was dated 2006 February 2, Mr. Hewitt Walker, the then Corporate Services Specialist, NYS, wrote a recommendation on behalf of the JTS. The referenced recommendation indicated as follows:

*“The **Jamaica Transport Service** located at 125 Maxfield Avenue, Kingston 10 has successfully completed various contractual transportation jobs for the National Youth Service, for the past three years. We have found their service to be economically competitive, punctual and reliable. In addition, we have noted that the drivers are neatly attired and extremely courteous to our staff and associates alike. This of course is in keeping with the values and culture we foster as an organization.*

The motor vehicles used from all indication are kept in very good condition. This is based on the fact that we have not encountered any difficulties as it relates to mechanical malfunction.

*Above all, we believe that the **Jamaica Transportation Services** has fleet of motor vehicles suitable for transporting people and goods anywhere in Jamaica at a competitive rate. In this venture the logistical coordination is extremely good.*

*The **Jamaica Transportation Service** has Tax compliance Certificate and is on the National Contract [sic] Commission. I have no hesitation in recommending this Service to your company to assist in your transportation needs.”⁷⁵*

The OCG also found that by way of a letter which was dated 2006 October 16, from the JTS, to the NYS, and which was captioned **“Re: Proposal from Jamaica Transportation Service (JTS)”**, it was indicated, *inter alia*, as follows:

⁷⁵ Letter of Recommendation for the JTS which was dated 2006 February 2, from Mr. Hewitt Walker, Corporate Services Specialist, written for and on behalf of the Executive Director, NYS.

*“I want to first use this opportunity to express our appreciation for having a continued business relationship with the **National Youth Service (NYS)** after we first started in 2003. We are happy we can function to aid your development of the country’s youths.*

Following weeks of discussion we have concocted the following proposal as interim measure to offset some of our expenses for the Cobbler Camp movement. As you are well aware we have been charging the same rate for some of the parish movements for the last 3 years with a spiraling cost of fuel, insurance, parts and other transportation related items and as such we solicit a small percentage increase until your proposed public tender.

The following is an in-depth analysis of the present situation and as such our basis for the increase.

The following are our major expenses

FUEL: *This increased by 100% between January 2003- August 2006 with no signs of change in the pattern.*

TYRES, SHOCKS & RELATED PARTS: *There is a major upsurge in the costs since these are imported and thus fluctuate due to the US Dollar.*

DRIVERS Salaries: *This has increased significantly recently as the transportation sector wages were overhauled.*

INSURANCE: *Due to recent claims brought about mainly by number of accidents, natural disasters, thefts of buses, personal injuries, especially with Public Passenger Vehicles the insurance sector retaliated with some hefty increases in premiums averaging close to 60%.*

INFLATION: Inflation has been for the past 3 years in the double digit range and no sign of abating.

Comparative Data

To substantiate [sic] our claim, please take a look at the table below

<i>Invoice Date</i>	<i>Parish</i>	<i>Bus Type</i>	<i>Cost</i>
<i>Nov. 5, 2003</i>	<i>St. Ann</i>	<i>30 seater</i>	<i>\$32,000</i>
<i>May 31, 2004</i>	<i>St. Ann</i>	<i>30 seater</i>	<i>\$34,000</i>
<i>Feb. 1, 2006</i>	<i>St. Ann</i>	<i>30 seater</i>	<i>\$33,000</i>
<i>May 31, 2004</i>	<i>Trelawny</i>	<i>30 seater</i>	<i>\$36,000</i>
<i>August 22, 2005</i>	<i>Trelawny</i>	<i>30 seater</i>	<i>\$35,000</i>
<i>Oct. 16, 2006</i>	<i>Trelawny</i>	<i>30 seater</i>	<i>\$35,000</i>
<i>Nov. 5, 2003</i>	<i>St. Catherine</i>	<i>2 (30) or 1 (50)</i>	<i>\$45,000</i>
<i>Aug. 22, 2005</i>	<i>St. Catherine</i>	<i>1(50) seater</i>	<i>\$45,000</i>
<i>Feb. 1 2006</i>	<i>St. Catherine</i>	<i>1(50)seater</i>	<i>\$45,000</i>

Proposed Rates

In light of this we propose the following adjustment to the rates per 30 seater and please note that a 50 seater is twice the cost for the 30 seater and is used for 20 or more participants with luggage:

<i>PARISH</i>	<i>PRESENTLY</i>	<i>PROPOSED</i>
<i>KMTR</i>	<i>\$22,500</i>	<i>\$30,000</i>
<i>St. Cath</i>	<i>\$21,500</i>	<i>\$28,000</i>
<i>Clarendon</i>	<i>\$20,000</i>	<i>\$26,000</i>
<i>St. Mary</i>	<i>\$38,000</i>	<i>\$46,000</i>

<i>St. Elizabeth</i>	<i>\$26,000</i>	<i>\$30,000</i>
<i>Manchester</i>	<i>\$14,000</i>	<i>\$17,000</i>
<i>St. Thomas</i>	<i>\$37,000</i>	<i>\$46,000</i>
<i>Portland</i>	<i>\$47,000</i>	<i>\$56,000</i>
<i>Westmoreland</i>	<i>\$37,000</i>	<i>\$45,000</i>
<i>Hanover</i>	<i>\$40,000</i>	<i>\$52,000</i>
<i>St. James</i>	<i>\$35,000</i>	<i>\$42,000</i>
<i>St. Ann</i>	<i>\$33,000</i>	<i>\$40,000</i>
<i>Trelawny</i>	<i>\$35,000</i>	<i>\$42,000</i>

*We await your expeditious and favorable response.*⁷⁶

Invoices submitted to the NYS by JTS during the Year 2006

The table below illustrates a list of the invoices which were submitted to the NYS, by the JTS, for payment in the year 2006.

Date of Invoice	Invoice Amount
2006 December 18	\$336,000.00
2006 December 18	\$32,000.00
2006 December 18	\$797,000.00
2006 December 16	\$60,000.00
2006 December 16	\$18,000.00
2006 December 11	\$20,000.00
2006 December 8	\$312,000.00
2006 December 8	\$1,465,000.00
2006 December 3	\$466,700.00
2006 December 3	\$24,000.00

⁷⁶ Letter which was dated 2006 October 16, from the JTS to the NYS.

Date of Invoice	Invoice Amount
2006 November 6	\$10,500.00
2006 November 6	\$1,398,000.00
2006 November 6	\$304,000.00
2006 October 16	\$794,000.00
2006 October 16	\$128,200.00
2006 October 2	\$304,000.00
2006 October 4	\$9,000.00
2006 October 2	\$1,422,000.00
2006 September 25	\$35,000.00
2006 September 20	\$54,000.00
2006 September 9	\$803,000.00
2006 September 7	\$819,000.00
2006 August 29	\$278,000.00
2006 August 29	\$592,000.00
2006 August 8	\$804,000.00
2006 August 2	\$185,000.00
2006 August 2	\$286,000.00
2006 July 29	\$72,000.00
2006 July 25	\$52,000.00
2006 July 17	\$1,241,000.00
2006 July 17	\$296,000.00
2006 June 12	\$32,000.00
2006 June 5	\$708,000.00
2006 May 31	\$28,000.00
2006 April 24	\$1,131,000.00
2006 April 24	\$179,000.00
2006 April 19	\$759,000.00

Date of Invoice	Invoice Amount
2006 March 13	\$759,000.00
2006 March 10	\$44,000.00
2006 March 7	\$69,000.00
2006 February 1	\$775,000.00
Total	\$17,901,400.00

The Engagement of JTS by the NYS in 2007

By way of a letter which was dated 2007 May 28, and which was captioned, “**Re: Adjustments to the Transportation of Cobbler Camp rates**” Mr. Trevino Ashman, President, JTS, informed Mrs. Angela Wisdom, the then Human Resource and Administration Manager, NYS, as follows:

“JTS has enjoyed a professional relationship with the NYS since we were awarded the contract for transportation of participants in 2003 and having gone to competitive tender again in 2005.

This relationship has never had rancor, disappointed or injuries to any participant among other impeccable records. We remain steadfast in our commitment to ensuring we play our role in attaining your mission.

As you know transportation is a costly venture due to ever escalating fuel prices, insurance coverage, parts and services among other factors. In light of the fact that we have not had any increase in past 3 years, we now ask your discretion in awarding us a [sic] increment in current rates.

<i>PARISH</i>	<i>BUS SIZE</i>	<i>CURRENT</i>	<i>PROPOSED</i>
<i>Kgn. & St. Andrew</i>	<i>30 seater</i>	<i>22,500</i>	<i>26,000</i>
	<i>50 seater</i>	<i>46,000</i>	<i>52,000</i>
<i>St. Catherine</i>	<i>30 seater</i>	<i>21,500</i>	<i>26,000</i>
	<i>50 seater</i>	<i>45,000</i>	<i>52,000</i>
<i>Clarendon</i>	<i>30 seater</i>	<i>20,000</i>	<i>25,000</i>
	<i>50 seater</i>	<i>40,000</i>	<i>50,000</i>
<i>St. Mary</i>	<i>30 seater</i>	<i>38,000</i>	<i>44,000</i>
	<i>50 seater</i>	<i>76,000</i>	<i>88,000</i>
<i>St. Elizabeth</i>	<i>30 seater</i>	<i>26,000</i>	<i>30,000</i>
	<i>50 seater</i>	<i>52,000</i>	<i>60,000</i>

<i>Manchester</i>	<i>30 seater</i>	<i>14,000</i>	<i>16,000</i>
	<i>50 seater</i>	<i>28,000</i>	<i>32,000</i>
<i>St. Thomas</i>	<i>30 seater</i>	<i>37,000</i>	<i>44,000</i>
	<i>50 seater</i>	<i>74,000</i>	<i>88,000</i>
<i>Portland</i>	<i>30 seater</i>	<i>47,000</i>	<i>52,000</i>
	<i>50 seater</i>	<i>94,000</i>	<i>100,000</i>
<i>Westmoreland</i>	<i>30 seater</i>	<i>37,000</i>	<i>42,000</i>
	<i>50 seater</i>	<i>74,000</i>	<i>84,000</i>
<i>Hanover</i>	<i>30 seater</i>	<i>40,000</i>	<i>44,000</i>
	<i>50 seater</i>	<i>80,000</i>	<i>88,000</i>
<i>St. James</i>	<i>30 seater</i>	<i>35,000</i>	<i>40,000</i>
	<i>50 seater</i>	<i>70,000</i>	<i>80,000</i>
<i>St. Ann</i>	<i>30 seater</i>	<i>33,000</i>	<i>38,000</i>
	<i>50 seater</i>	<i>66,000</i>	<i>76,000</i>
<i>Trelawny</i>	<i>30 seater</i>	<i>35,000</i>	<i>40,000</i>
	<i>50 seater</i>	<i>70,000</i>	<i>80,000</i>

We also want to ask a [sic] adjustment in cost of the (15) seater buses that are used in the Chestervale teaching camp as the roadway is in a deplorable state and this causes chronic problem in maintaining them with JTS buses making up to 3 trips each day. The current rate is \$8,000 daily and we are seeking a [sic] increase to \$10,000 daily.

Please note that a special insurance is calculated in these costs noting also that luggage is factored in.

We ask that both parties (JTS & NYS) achieve a mutual agreement on the rates in an expeditious manner as the camps for this financial year will soon open.”⁷⁷

By the way of a letter, which was dated 2007 June 18, and which was captioned **“Re: Approved Rates for the Corps Transportation at Chestervale Campus-2007-2008 (Inclusive of Return)”**, Mr. Trevino Ashman, President, JTS, informed Mrs. Angela Wisdom, the then Human Resource & Administration Manager, NYS, as follows:

“Following our meeting on June 13, 2007 the following rates were approved effective June 01, 2007.

<i>PARISH</i>	<i>BUS SIZE</i>	<i>RATES \$</i>
<i>Kingston and St. Andrew</i>	<i>30 Seater</i>	<i>\$36,000.00</i>
<i>St. Catherine</i>	<i>30 Seater</i>	<i>\$40,000.00</i>
<i>Clarendon</i>	<i>30 Seater</i>	<i>\$64,000.00</i>
<i>St. Mary</i>	<i>30 Seater</i>	<i>\$64,000.00</i>
<i>St. Elizabeth</i>	<i>30 Seater</i>	<i>\$70,000.00</i>
<i>Manchester</i>	<i>30 Seater</i>	<i>\$68,000.00</i>
<i>St. Thomas</i>	<i>30 Seater</i>	<i>\$68,000.00</i>
<i>Portland</i>	<i>30 Seater</i>	<i>\$78,000.00</i>
<i>Westmoreland</i>	<i>30 Seater</i>	<i>\$88,000.00</i>
<i>Hanover</i>	<i>30 Seater</i>	<i>\$94,000.00</i>
<i>St. James</i>	<i>30 Seater</i>	<i>\$80,000.00</i>
<i>St. Ann</i>	<i>30 Seater</i>	<i>\$66,000.00</i>
<i>Trelawny</i>	<i>30 Seater</i>	<i>\$86,000.00</i>

⁷⁷ Letter which was dated 2007 May 28, from Mr. Trevino Ashman, President, JTS, to Mrs. Angela Wisdom, the then Human Resource and Administration Manager, NYS.

It must be noted that only 30 & 15 seaters can handle the Chestervale route, and the cost per 15 seater is 66&2/3% of a (30) seater.”⁷⁸

By way of another letter, which was dated 2007 June 18, and which was captioned **“Re: Approved Rates for the Corps Transportation at Cobbler Camp”**, Mr. Trevino Ashman, President, JTS, informed Mrs. Angela Wisdom, the then Human Resource and Administration Manager, NYS, as follows:

“Following our meeting on Wednesday, June 13, 2007 the following rates were approved effective June 1, 2007.

<i>PARISH</i>	<i>BUS SIZE</i>	<i>RATES \$</i>
<i>Kingston and St. Andrew</i>	<i>30 Seater</i>	<i>26,000</i>
	<i>50 Seater</i>	<i>52,000</i>
<i>St. Catherine</i>	<i>30 Seater</i>	<i>26,000</i>
	<i>50 Seater</i>	<i>50,000</i>
<i>Clarendon</i>	<i>30 Seater</i>	<i>25,000</i>
	<i>50 Seater</i>	<i>50,000</i>
<i>St. Mary</i>	<i>30 Seater</i>	<i>44,000</i>
	<i>50 Seater</i>	<i>85,000</i>
<i>St. Elizabeth</i>	<i>30 Seater</i>	<i>30,000</i>
	<i>50 Seater</i>	<i>60,000</i>
<i>Manchester</i>	<i>30 Seater</i>	<i>16,000</i>
	<i>50 Seater</i>	<i>32,000</i>
<i>St. Thomas</i>	<i>30 Seater</i>	<i>44,000</i>
	<i>50 Seater</i>	<i>85,000</i>
<i>Portland</i>	<i>30 Seater</i>	<i>52,000</i>

⁷⁸ Letter, which was dated 2007 June 18 from Mr. Trevino Ashman, President, JTS, to Mrs. Angela Wisdom, the then Human Resource and Administration Manager, NYS.

<i>PARISH</i>	<i>BUS SIZE</i>	<i>RATES \$</i>
	<i>50 Seater</i>	<i>100,000</i>
<i>Westmoreland</i>	<i>30 Seater</i>	<i>42,000</i>
	<i>50 Seater</i>	<i>84,000</i>
<i>Hanover</i>	<i>30 Seater</i>	<i>44,000</i>
	<i>50 Seater</i>	<i>88,000</i>
<i>St. James</i>	<i>30 Seater</i>	<i>40,000</i>
	<i>50 Seater</i>	<i>80,000</i>
<i>St. Ann</i>	<i>30 Seater</i>	<i>38,000</i>
	<i>50 Seater</i>	<i>74,000</i>
<i>Trelawny</i>	<i>30 Seater</i>	<i>40,000</i>
	<i>50 Seater</i>	<i>80,000</i>

It must be noted that an increase of One thousand Dollars (\$1,000) was granted per bus per day for the teaching staff making it (\$9,000)”⁷⁹

Invoices submitted to the NYS from JTS during the Year 2007

The table below illustrates a list of the invoices which were submitted to the NYS, by the JTS, for the payment of services rendered in the year 2007.

Date of Invoice	Amount on Invoice
2007 January 5	\$84,000.00
2007 January 24	\$11,000.00
2007 January 30	\$10,000.00
2007 January 30	\$54,000.00
2007 January 30	\$11,000.00

⁷⁹ Letter which was dated 2007 June 18, from Mr. Tervino Ashman, President, JTS, to Mrs. Angela Wisdom, the then Human Resource and Administration Manager, NYS.

Date of Invoice	Amount on Invoice
2007 February 5	\$838,000.00
2007 February 5	\$30,000.00
2007 February 12	\$1,562,000.00
2007 February 19	\$24,500.00
2007 February 12	\$304,000.00
2007 February 12	\$35,000.00
2007 February 12	\$1,562,000.00
2007 March 5	\$74,000.00
2007 March 6	\$28,000.00
2007 March 9	\$52,000.00
2007 March 19	\$839,000.00
2007 March 26	\$70,000.00
2007 March 26	\$322,000.00
2007 April 3	\$46,000.00
2007 April 10	\$8,000.00
2007 April 10	\$74,000.00
2007 April 21	\$10,000.00
2007 May 2	\$837,000.00
2007 May 16	\$40,000.00
2007 May 16	\$58,000.00
2007 May 16	\$464,000.00
2007 May 16	\$1,173,000.00
2007 May 17	\$9,000.00
2007 May 30	\$32,000.00
2007 August 9	\$966,000.00
2007 August 9	\$484,000.00
2007 August 9	\$264,000.00

Date of Invoice	Amount on Invoice
2007 August 9	\$199,000.00
2007 August 9	\$448,000.00
2007 August 13	\$92,000.00
2007 August 13	\$68,500.00
2007 August 16	\$360,000.00
2007 August 22	\$1,757,000.00
2007 October 17	\$1,868,000.00
2007 November 16	\$923,000.00
2007 November 8	\$110,500.00
2007 November 22	\$139,000.00
2007 June 5	\$58,000.00
2007 June 18	\$324,000.00
No Date	\$45,000.00
2007 June 28	\$164,500.00
2007 July 3	\$890,000.00
2007 September 27	\$12,000.00
2007 September 28	\$198,000
2007 October 10	\$183,000.00
2007 October 17	\$914,000.00
2007 October 24	\$51,000.00
2007 November 1	\$270,000.00
2007 November 13	\$1,987,000.00
2007 December 10	\$252,000.00
2007 December 11	\$59,000.00
2007 December 11	\$1,990,000.00
2007 December 11	\$955,000.00
Total	\$24,693,000.00

The Engagement of JTS by the NYS in 2008

The OCG found, by the way of a letter which was dated 2008 May 5, and which was captioned **“Re: Continuation of Transportation Services Contract”**, that the NYS informed Mr. Ricardo James, Executive Chairman, JTS, as follows:

“As per our conversation (Wisdom/Walker/Bernard/James) concerning the non scheduling of corps training between February and late April 2008; please note that with the recent conclusion of the budget debates (April 27 2008), we had to redefine the total training cohorts for this financial year whilst structuring our payment terms based on disbursements from the Finance Ministry.

We are cognizant of the fuel increases and not withstanding the fact that we have not granted any increase since our inception de [sic] to varying factors, please be advised that we are unable to grant any increase prior to the transportation services going to tender. The outstanding matter of an Internal Auditor has been addressed and as such we intend to go to tender latest July 2008.

We will be extending, therefore the current contract from April 2008-June 2008 (as per schedule attached along with the proposed payment dates) at the same rates until the tender process has been facilitated. Please advise us in writing regarding your agreement for same.”⁸⁰

Invoices submitted to the NYS from JTS during the Year 2008

The table below details a list of the invoices which were submitted to the NYS, by the JTS, for the payment of services rendered in the year 2008.

⁸⁰ Letter which was dated 2008 May 5, captioned “Re: Continuation of Transportation Services Contract” from the NYS to the JTS.

Date of Invoice	Amount on Invoice
2008 January 2	\$13,000.00
2008 January 2	\$40,000.00
2008 January 2	\$43,000.00
2008 February 12	\$367,000.00
2008 January 15	\$471,000.00
2008 February 12	\$471,000.00
2008 March 13	\$28,000.00
2008 April 23	\$494,000.00
2008 May 6	\$494,000.00
2008 May 12	\$44,700.00
2008 May 26	\$3,500.00
2008 June 10	\$526,000.00
2008 June 26	\$144,000.00
2008 June 26	\$2,065,000.00
2008 July 1	\$526,000.00
2008 July 1	\$34,500.00
2008 July 1	\$114,800.00
2008 August 7	\$71,000.00
2008 August 7	\$65,900.00
2008 August 7	\$1,030,000.00
2008 August 7	\$324,000.00
2008 August 7	\$292,000.00
2008 August 7	\$628,000.00
2008 September 16	\$220,000.00
2008 September 17	\$572,000.00
2008 September 15	\$61,200.00
2008 August 12	\$9,700.00

Date of Invoice	Amount on Invoice
2008 September 17	\$583,000.00
2008 September 24	\$2,175,000.00
2008 September 24	\$150,000.00
2008 October 5	\$40,000.00
2008 October 16	\$583,000.00
2008 October 17	\$593,000.00
2008 October 21	\$63,900.00
2008 November 10	\$1,187,000.00
2008 November 20	\$30,900.00
2008 November 17	\$649,000.00
2008 November 20	\$200,000.00
2008 December 8	\$240,000.00
2008 December 8	\$1,287,000.00
2008 November 17	\$593,000.00
2008 December 17	\$839,000.00
2008 December 17	\$30,700.00
Total	\$18, 397,800.00

The Engagement of JTS by the NYS in 2009

By way of a letter, which was dated 2009 May 19, and which was captioned **“Re: Pre-acceptance of JTS’ Proposal Offer”**, Mrs. Angela Wisdom, the then Human Resources & Administration Manager, NYS, informed Mr. Trevino Ashman, President, JTS, as follows:

“With reference to the tender opening for return transport services held at the Head Office, National Youth Service on Friday May 15, 2009; kindly be advised that your proposal has met the terms and conditions of the eligibility criteria as outlined in the Request for Proposal. We

however, require a current Company Registration Certificate for the completion of the processing for contract offer.

Kindly submit same within ten (10) working days or on or before June 02, 2009. Failure to do so will result in a no-contract offer.”⁸¹

Invoices submitted to the NYS from JTS during the Year 2009

Date of Invoice	Amount on Invoice
2009 August 20	\$805,000.00
2009 August 21	\$849,000.00
2009 August 10	\$532,000.00
2009 July 30	\$805,000.00
2009 July 29	\$1,512,000.00
2009 July 8	\$958,500.00
2009 July 10	\$1,512,000.00
2009 July 29	\$1,512,000.00
2009 June 19	\$56,000.00
2009 June 8	\$44,000.00
2009 June 8	\$958,500.00
2009 June 4	\$308,000.00
2009 May 20	\$1,489,000.00
2009 April 27	\$56,700.00
2009 April	\$852,000.00*
2009 March 30	\$852,000.00*
2009 March 19	\$851,000.00*
2009 February 10	\$210,000.00
2009 February 11	\$142,080.00
2009 February 9	\$810,000.00
2009 February 9	\$1,159,000.00

⁸¹ Letter which was dated 2009 May 19, from Mrs. Angela Wisdom, the then Human Resources & Administration Manager, NYS, to the President of the JTS.

Date of Invoice	Amount on Invoice
2009 January 9	\$757,000.00
2009 January 9	\$1,043,000.00
Total	\$16,561,780

***April 2009 has the same details as March 30.**

***The OCG calculated \$861,000 while the invoice had conflicting totals of \$851,000 and \$810,000.**

The OCG has found, based upon the foregoing, that the services of the JTS were engaged by the NYS several times during the years of 2003 through to 2009.

Based upon the information which was provided to the OCG by Mr. Ricardo James, Executive Chairman, JTS, in his sworn response to the OCG, which was dated 2009 September 15, the OCG found that approximately \$80,211,980.00 had been paid to the JTS, by the NYS, during the period of 2003 February through to 2009 August 20.

It is instructive to note that based upon the OCG's calculation of the sum of the invoices for the period of 2003 through to 2009, the OCG found that invoices amounting to \$80,319,980 were prepared and provided to the NYS by the JTS.

The OCG also found, based upon the representations which were made by Mr. Ricardo James, in his response to the OCG's Requisition, that the JTS was frequently selected by the NYS for the award of contracts for the provision of transportation services. Mr. Ricardo James indicated to the OCG that it was his assumption that the company was selected because of its "*...competitive rates, accident history, tax compliance and NCC certification.*"⁸²

Based upon the information which was provided by the JTS, the OCG found that the JTS would provide the transportation services, produce an invoice and the NYS would subsequently make

⁸² Mr. Ricardo James' sworn response to the OCG's Requisition which was dated 2009 September 15.

the necessary payments accordingly. In instances where there were any adjustments in rates, the JTS would inform the NYS of same by way of a letter and the provision of a new rate sheet.

The OCG found by way of the sworn response which was provided by Mr. Ricardo James that for the period 2003 to 2009 the JTS participated in only one competitive process, which was conducted in 2009.

The OCG also found that the JTS was engaged by the NYS, after Mr. Ricardo James approached the public body with the idea to provide transportation for the entity. Mr. James' decision to approach the NYS was based upon his company's 'island-wide reach', and his acquired knowledge that the NYS had 'issues with some of its parish operators'.

The OCG found, based upon the representations which have been made to it, that the foregoing proposal by the JTS was allegedly embraced by Mr. Carlando Francis, the then Deputy Director, Community Service, who was also the contact person at the NYS during the referenced period.

Having regard to the foregoing, the OCG has found that the referenced circumstances surrounding the initial engagement of the services of the JTS, by the NYS, appears to be premised upon what can be regarded as an unsolicited proposal from the JTS.

Based upon the foregoing, the OCG found that the NYS breached the Government of Jamaica's Procurement Guidelines by not going to competitive tender for the provision of transportation services, during the years 2006-2008. For each of the referenced years, the cost which was incurred by the NYS for transportation services was in excess of J\$15 million per annum.

It should be noted that according to Section 5.3, Sub-section 5.3.6 of the then applicable GPPH, May 2001, the following is provided:

“Where the estimated value is equal to or greater than J\$15,000,000.00 but less than the international contract value threshold for the services, participation shall be restricted to domestic concerns only, except where no such qualified concern is registered with the NCC. Services shall be procured on the basis of selective tender, where all contractors who are registered with the NCC are afforded the opportunity to tender. Authority to enter into a contract shall be obtained from the Cabinet, after reference to the NCC and the Minister for approval of award recommendation...”⁸³

Based upon the period in which these services were undertaken, and the yearly value of each engagement, the OCG has found that for the period 2006 through to 2009, the authorization to enter into the foregoing transportation services arrangements should have been given by Cabinet, after reference to the Portfolio Minister and the NCC, in accordance with the requirements of the relevant Government of Jamaica Public Procurement Guidelines.

⁸³ Section 5.3.6 of the GPPH, May 2001

The NYS' Account of the Contractual Arrangements or Agreements with the JTS and the NYS during the period 2003 to 2009

In an attempt to corroborate the assertions which were made by Mr. Ricardo James, Executive Director, JTS, and to identify all of the contracts/agreements which were awarded by the NYS, to the JTS, during the referenced period, the OCG, by way of Requisitions which were dated 2009 September 1, to Mrs. Dasmine Kennedy, the then Executive Director (Acting), NYS, Mr. Keith Duncan, the then Chairman, NYS, and by way of a Requisition which was dated 2010 January 18, to Mrs. Angela Wisdom, the former Human Resource & Administration Manager, NYS, asked 'inter alia' the following question:

"... Please provide an Executive Summary listing all contractual agreements, if any, which were entered into between the NYS and JTS. The summary should detail:

- (i) The date of the signing of all contractual agreements listed;*
- (ii) The name of the entity and/or individual and the title of the individual who initiated contact prior to the consummation of each of the listed agreements/contracts, the circumstances relating to same, as well as the date on which such interactions took place;*
- (iii) The name and title of the NYS official(s)/representative(s) who negotiated and concluded the agreements/contracts;*
- (iv) The name and title of the JTS official(s)/representative(s) who negotiated and concluded the agreements/contracts;*
- (v) The terms and conditions of each of the agreements/contracts;"*

(vi) *The total pecuniary value of each agreement/contract which was consummated between the NYS and JTS;...’’⁸⁴*

The date of the signing of all contractual agreements listed

In response to the foregoing question, and having regard to the signing of all of the contractual agreements which were consummated between the NYS and the JTS, Mrs. Dasmine Kennedy, in her sworn response to the OCG’s Requisition, which was dated 2009 September 14, stated, *inter alia*, the following:

“Upon review of the files prior to June 2009, there is no evidence of written contract(s) entered into between the parties. However, a review of letters from JTS dated January 6, 2005 and October 16, 2006 (See Appendices #4 and #5) speak to the commencement of the provision of transportation services by JTS in 2003. This is further supported by a review of the NYS’ financial information.

However, an undated contract signed by NYS and JTS representatives to take effect June 2, 2009 representing the contractual period of June 2, 2009 to April 21, 2010 (in duplicate) is on file. The signature of the Permanent Secretary of the Ministry of Education is not affixed (Appendix 3).⁸⁵

Mr. Keith Duncan, in his sworn response to the OCG’s Requisition, which was dated 2009 October 5, stated, *inter alia*, the following, in regard to the signing of the contractual agreements which were consummated between the NYS and the JTS:

“As the Chairman of the Board of Directors, I was not actively involved in the operations of the Organisation and was dependent on information from the Executive Director and the various

⁸⁴ OCG’s Requisition which was dated 2009 September 1, to Mr. Keith Duncan and Mrs. Dasmine Kennedy (Question #4) and OCG’s Requisition which was dated 2010 January 18, to Mrs. Angela Wisdom (Question #5)

⁸⁵ Mrs. Dasmine Kennedy’s sworn response to the OCG’s Requisition, which was dated 2009 September 14,

Board Sub-committees. The Executive summary of contractual arrangements or agreement between the JTS and the NYS is therefore based on the Acting Executive Director's investigation and would have been mentioned in her Report to you.

Based on letter dated October 16, 2006 addressed to Mrs. Angela Wisdom and signed by J.T.S. President, Mr. Trevino Ashman, the [sic] would appear that the National Youth Service has been utilizing the services of J.T.S. since 2003.

The JTS was contracted to provide transportation services islandwide for the NYS participants to and from the residential camps...

When the files were reviewed by the Acting Executive Director it was found that prior to June 2009, there is no evidence of written contract(s) entered into between the parties. However, a review of letters from JTS dated January 6, 2005 and October 16, 2006 (See Appendices #3 and #4) speak to the commencement of the provision of transportation services by JTS in 2003. This is further supported by a review of the NYS' financial information.

It was after the Board Procurement Sub-Committee meeting of June 18, 2009 that I was informed that the Permanent Secretary would not be signing the contract already signed by the JTS and NYS due to issues relating to the value of the contract and that it should have been approved by Cabinet. (See Appendix #5)⁸⁶ (OCG Emphasis)

Mrs. Angela Wisdom, in her sworn response to the OCG's Requisition, which was dated 2010 January 28, stated, *inter alia*, the following in regard to the signing of the contractual agreements which were consummated between the NYS and the JTS:

⁸⁶ Mr. Keith Duncan's sworn response to the OCG's Requisition, which was dated 2009 October 5.

“Prior to 2005: Reference may be made to the following letters which may ascertain the period that a JTS-NYS relation started. This seems to be 2 years prior to any discussions with my former office in 2005:

- *Letter dated January 6, 2005 in Appendix 2*
- *Letter dated October 16, 2006 in Appendix 4*

2005 – 2006: JTS was selected from Limited Tender in early 2006. I am unable to locate a copy of a correspondence advising JTS of its selection and date thereof.

2006 - 2007: No official contracts. Continuation of 2005-6 Rate Sheet Agreement and Engagement of JTS services for Lecturer’s on March 27, 2006. (See Appendices 3 to 6)

*2007-2008: No official contracts. New Rate Sheets Approved dated **June 18, 2007**. (See Appendix 5)*

2009: First official Contract agreement dated 02 June, 2009, which due to an oversight on the NYS’ Senior Officers’ part no signing date was affixed. (Refer to Appendix 9: for Copy of Contract).”⁸⁷

Having regard to the foregoing responses from Mrs. Dasmine Kennedy, Mr. Keith Duncan and Mrs. Angela Wisdom, the OCG found that only one formal written contract was signed between the NYS and the JTS during the referenced period. The sole contract was signed on 2009 June 2. Consequently, for all the other years during the period of 2003-2009, there were no formal written contracts between the NYS and the JTS.

⁸⁷ Mrs. Angela Wisdom’s sworn response to the OCG’s Requisition, which was dated 2010 January 28.

However, it must be noted that Mr. Keith Duncan in his sworn response to the OCG indicated that: “It was after the Board Procurement Sub-Committee meeting of June 18, 2009 that I was informed that the Permanent Secretary would not be signing the contract already signed by the JTS and NYS due to issues relating to the value of the contract and that it should have been approved by Cabinet.”⁸⁸ (OCG Emphasis)

The OCG has also noted the assertion which was made by Mrs. Angela Wisdom that the date of the signing of the 2009 June 2 contract was not affixed due to an oversight on the part of the NYS’ Senior Officers.

⁸⁸ Mr. Keith Duncan’s sworn response to the OCG’s Requisition, which was dated 2009 October 5.

The name of the entity and/or individual and the title of the individual who initiated contact prior to the consummation of the agreements/contracts, the circumstances relating to same, as well as the date on which such interactions took place.

With regard to the particulars of the individual and/or entity who/which initiated contact prior to the consummation of the agreements/contracts, Mrs. Dasmine Kennedy, in her sworn response to the OCG's Requisition, which was dated 2009 September 14, stated, *inter alia*, the following:

“Based on unavailable information, I am unable to adequately answer this question/requisition as outlined.”⁸⁹

Mr. Keith Duncan, in his sworn response to the OCG's Requisition, which was dated 2009 October 5, stated, *inter alia*, the following:

“The Acting Executive Director was unable to find information in this regard”⁹⁰

It should be noted that Mrs. Angela Wisdom, in her sworn response to the OCG's Requisition which was dated 2010 January 28, stated, *inter alia*, the following:

“With reference to details of Responses 2 and 3:

- ***Prior to 2005:*** *I am unable to respond to this period except for the fact that the Community (Field) Services Department was responsible for the transportation engagement/s.*

- ***Post 2005 Initial Contact:*** *Mrs. Angela Wisdom, former HR & Admin. Manager*

⁸⁹ Mrs. Dasmine Kennedy's sworn response to the OCG's Requisition, which was dated 2009 September 14.

⁹⁰ Mr. Keith Duncan's sworn Response to the OCG's Requisition, which was dated 2009 October 5.

- **Contract dated June 2, 2009:** Offer letter dated May 19, 2009 and signed by me, post Tender Evaluation processes.⁹¹

Having regard to the foregoing, the OCG found that Mrs. Angela Wisdom, former Human Resource and Administration Manager, was the individual who initiated contact with the JTS prior to the consummation of the agreements/contracts during the period of 2005 to 2009.

Mrs. Wisdom, in her sworn response to the OCG, which was dated 2010 January 28, asserted that the Community (Field) Services Department was responsible for the transportation arrangements prior to 2005. The foregoing assertion was supported by Mr. Ricardo James, Executive Chairman, JTS, as it can be recalled that in his sworn response to the OCG's Requisition which was dated 2009 September 15, he asserted that "...*Mr. Carlando Francis...was suggested at the NYS to be the person in charge of that aspect (Transportation) at the time...*"⁹²

It is also instructive to note that Mr. Ricardo James also submitted a letter which was dated 2003 February 7, which was captioned "***Re: Invoice for transportation done.***" which was addressed to Mr. Carlando Francis, the then Deputy Director, Community Services, NYS.

⁹¹ Mrs. Angela Wisdom's response to the OCG's Requisition which was dated 2010 January 28.

⁹² Mr. Ricardo James' sworn response to the OCG's Requisition, which was dated 2009 September 15.

The name(s) and title(s) of the NYS and JTS official(s)/representative(s) who negotiated and concluded the agreements/contracts:

With regard to the names and titles of the NYS and JTS official(s)/representative(s) who negotiated and concluded the agreements/contracts, Mrs. Dasmine Kennedy, in her sworn response to the OCG's Requisition, which was dated 2009 September 14, stated, *inter alia*, the following:

“The records as of 2004 purport that the following NYS officials /representatives negotiated and concluded the agreements / contracts:

- 1. Mr. Adinhair Jones – Former Executive Director***
- 2. Mrs. Angela Wisdom – Former Human Resource and Administration Manager...***

The records as of 2004 indicate that the following JTS officials/ representatives negotiated and concluded the agreements / contracts:

Mr. Trevino Ashman – President

Mr. Ricardo James – Chairman”⁹³

Mr. Keith Duncan, in his sworn response to the OCG's Requisition, which was dated 2009 October 5, stated, *inter alia*, the following:

“Based on the investigations of the Acting Executive Director, the records as of 2004 purport that the following NYS officials/representatives negotiated and concluded the agreements/ contracts:

- 1. “Mr. Adinhair Jones – Former Executive Director***

⁹³ Mrs. Dasmine Kennedy's sworn response to the OCG's Requisition, which was dated 2009 September 14.

2. *Mrs. Angela Wisdom – Former Human Resource and Administration Manager*

The Acting Executive Director found that the records as of 2004 indicate that the following JTS officials/representatives negotiated and concluded the agreements/contracts:

Mr. Trevino Ashman – President

Mr. Ricardo James – Chairman”⁹⁴

Further, Mrs. Angela Wisdom, in her sworn response to the OCG’s Requisition, which was dated 2010 January 28, stated, *inter alia*, the following:

“The following members of the NYS Management Team signed off on JTS based on 2005-06 Comparative Rate Sheets and its Bid Proposal based on the 2009 Tender Evaluation Criteria:

- *Rev. Adinhair Jones, former Executive Director*
- *Mrs. Angela Wisdom, former HR & Admin. Manager*
- *Mr. Andre Bernard, former Finance & Accounts Director*

“The name and title of the JTS official(s)/representative(s) who negotiated and concluded the agreements/contracts:..

- *Mr. Ricardo James – Chairman*
- *Mr. Trevino Ashman – President”⁹⁵*

⁹⁴ Mr. Keith Duncan’s sworn response to the OCG’s Requisition, which was dated 2009 October 5.

⁹⁵ Mrs. Angela Wisdom’s sworn response to the OCG’s Requisition, which was dated 2010 January 28.

The OCG notes that while Mrs. Angela Wisdom indicated that the NYS official(s)/representative(s) who negotiated and concluded the agreements/contracts were Rev. Adinhair Jones, former Executive Director, Mrs. Angela Wisdom, former Human Resources & Administration Manager and Mr. Andre Bernard, former Finance and Account Director, Mr. Keith Duncan and Mrs. Dasmine Kennedy, in their responses to the OCG indicated that the NYS official(s)/representative(s) who negotiated and concluded the agreements/contracts were Rev. Adinhair Jones, former Executive Director, and Mrs. Angela Wisdom, former Human Resources & Administration Manager.

However, all of the respondents indicated that Mr. Trevino Ashman, President, JTS and Mr. Ricardo James, Chairman, JTS, were the JTS official(s)/representative(s) who negotiated and concluded the agreements/contracts.

The terms and conditions of the agreements/contracts

With regard to the terms and conditions of the agreements/contracts which were consummated between the NYS and the JTS, Mrs. Dasmine Kennedy, in her sworn response to the OCG's Requisition, which was dated 2009 September 14, stated, *inter alia*, the following:

“...The terms and conditions of the agreements/contracts which were consummated between NYS and JTS prior to 2009 could only be determined based on the rate sheets and travel schedules affixed to the files. They are as follows:

- ***Rate Sheet for 2005-06 (See Appendix #6)***
- ***Rate Sheet for 2006-07 (See Appendix # 7)***
- ***Rate Sheet for 2007-08 (See Appendix # 7 i)⁹⁶***

⁹⁶ Mrs. Dasmine Kennedy's response to the OCG's Requisition, which was dated 2009 September 14.

Mr. Keith Duncan, in his sworn response to the OCG's Requisition, which was dated 2009 October 5, stated, *inter alia*, the following:

Question 4v: The terms and conditions of each of the agreements/contracts;

Response: The investigation of the Acting Executive Director reflects that the terms and conditions of the agreements/contracts which were consummated between NYS and JTS prior to 2009 could only be determined based on the rate sheets and travel schedules affixed to the files. They are as follows:

- a. Rate Sheet for 2005-06 (See Appendix #6)*
- b. Rate Sheet for 2006-07 (See Appendix # 7)*
- c. Rate Sheet for 2007-08 (See Appendix # 7 i)⁹⁷*

Detailed overleaf are the particulars of the rate sheets which were provided by Mr. Duncan and Mrs. Kennedy:

⁹⁷ Mr. Keith Duncan's sworn response to the OCG's Requisition, which was dated 2009 October 5.

"JAMAICA TRANSPORT SERVICE (JTS)
 "24-7 Monitored Quality Movement Islandwide
 125 Maxfield Avenue
 Shop 11, Ideal Plaza
 Tel: 929-3632

Proposed rates per return movement from parishes
 Islandwide to Cobbler Campus 2005-2006

<i>Bus size</i>	<i>Parish</i>	<i>Cost</i>
30 seater	Kgn.	22,500
50 seater		46,000
30 seater	St. Cath.	21,500
50 seater	"	45,000
15 seater	Clarendon	12,000
30 seater	"	20,000
30 seater	St Mary	38,000
30 seater	St. Elizabeth	26,000
30 seater	Manchester	14,000
30 seater	St. Thomas	37,000
30 seater	Portland	47,000
30 seater	Westmoreland	37,000
30 seater	Hanover	40,000
30 seater	St. James	35,000
50 seater	"	51,000
15 seater	St. Ann	15,000
30 seater	"	33,000
15 seater	Trelawny	17,000
30 seater	"	35,000 ⁹⁸

⁹⁸ JTS Proposed rate for Transportation from the JTS, for the year 2005 to 2006.

JAMAICA TRANSPORT SERVICE (JTS)
 "24-7 Monitored Quality Movement Islandwide"
 125 Maxfield Avenue
 Shop 11, Ideal Plaza
 Tel: 929-3632

*Proposed rates per return movement from parishes
 Islandwide to Cobbler Campus 2006-2007*

<i>Bus size</i>	<i>Parish</i>	<i>Cost</i>
<i>30 seater</i>	<i>Kgn.</i>	<i>27,000</i>
<i>50 seater</i>		<i>54,000</i>
<i>30 seater</i>	<i>St. Cath.</i>	<i>26,000</i>
<i>50 seater</i>	<i>"</i>	<i>53,000</i>
<i>15 seater</i>	<i>Clarendon</i>	<i>18,000</i>
<i>30 seater</i>	<i>"</i>	<i>24,000</i>
<i>30 seater</i>	<i>St Mary</i>	<i>44,000</i>
<i>30 seater</i>	<i>St. Elizabeth</i>	<i>30,000</i>
<i>30 seater</i>	<i>Manchester</i>	<i>17,500</i>
<i>30 seater</i>	<i>St. Thomas</i>	<i>44,000</i>
<i>30 seater</i>	<i>Portland</i>	<i>52,000</i>
<i>30 seater</i>	<i>Westmoreland</i>	<i>42,000</i>
<i>30 seater</i>	<i>Hanover</i>	<i>45,000</i>
<i>30 seater</i>	<i>St. James</i>	<i>40,000</i>
<i>15 seater</i>	<i>St. Ann</i>	<i>20,000</i>
<i>30 seater</i>	<i>"</i>	<i>39,000</i>
<i>15 seater</i>	<i>Trelawny</i>	<i>21,000</i>
<i>30 seater</i>	<i>"</i>	<i>40,000</i>

NB: Once the number of persons exceed 20 then a 50 seater is used which is twice the cost for 30 seater

It must be noted that an increase of One Thousand (\$1,000.00) was granted per bus per per day for the teaching staff making it (\$9,000.00). ”⁹⁹

In a letter which was dated 2007 June 18, from the JTS to Mrs. Angela Wisdom, and which was captioned, “**Re: Approved Rates for the Corps Transportation at Cobbler Campus-2007-2008**”, it was indicated as follows:

“Following our meeting on June 13, 2007 the following rates were approved June 01, 2007.

<i>PARISH</i>	<i>BUS SIZE</i>	<i>RATES \$</i>
<i>Kingston and St. Andrew</i>	<i>30 Seater</i>	<i>\$26,000.00</i>
	<i>50 Seater</i>	<i>\$52,00.00</i>
<i>St. Catherine</i>	<i>30 Seater</i>	<i>\$26,000.00</i>
	<i>50 Seater</i>	<i>\$50,000.00</i>
<i>Clarendon</i>	<i>30 Seater</i>	<i>\$25,000.00</i>
	<i>50 Seater</i>	<i>\$50,000.00</i>
<i>St. Mary</i>	<i>30 Seater</i>	<i>44,000.00</i>
	<i>50 Seater</i>	<i>85,000.00</i>
<i>St. Elizabeth</i>	<i>30 Seater</i>	<i>30,000.00</i>
	<i>50 Seater</i>	<i>60,000.00</i>
<i>Manchester</i>	<i>30 Seater</i>	<i>16,000.00</i>
	<i>50 Seater</i>	<i>32,000.00</i>
<i>St. Thomas</i>	<i>30 Seater</i>	<i>44,000.00</i>
	<i>50 Seater</i>	<i>85,000.00</i>
<i>Portland</i>	<i>30 Seater</i>	<i>52,000.00</i>
	<i>50 Seater</i>	<i>100,000.00</i>
<i>Westmoreland</i>	<i>30 Seater</i>	<i>42,000.00</i>
	<i>50 Seater</i>	<i>84,000.00</i>

⁹⁹ Proposed rates per return movement from parishes Islandwide to Cobbler Campus 2006-2007

<i>PARISH</i>	<i>BUS SIZE</i>	<i>RATES \$</i>
<i>Hanover</i>	<i>30 Seater</i>	<i>44,000.00</i>
	<i>50 Seater</i>	<i>88,000.00</i>
<i>St. James</i>	<i>30 Seater</i>	<i>40,000.00</i>
	<i>50 Seater</i>	<i>80,000.00</i>
<i>St. Ann</i>	<i>30 Seater</i>	<i>38,000.00</i>
	<i>50 Seater</i>	<i>74,000.00</i>
<i>Trelawny</i>	<i>30 Seater</i>	<i>40,000.00</i>
	<i>50 Seater</i>	<i>80,000.00</i>

It must be noted that an increase of One Thousand (\$1,000.00) was granted per bus per day for the teaching staff making it (\$9,000.00). ”¹⁰⁰

Further, Mrs. Wisdom, in her sworn response to the OCG’s Requisition, which was dated 2010 January 28, stated, *inter alia*, the following:

“Prior to 2009: *The terms and conditions of the agreements were determined based on the rate sheets agreed to between NYS and JTS and as per monthly Transportation Training and the Movement of Participants’ Schedules developed by the Programmes and Corporate (Community) Services Units respectively.*

Post 2009: *The terms and conditions of the agreement were determined by a Contract dated June 2, 2009, less Permanent Secretary’s signature and approval. (No signing date affixed).¹⁰¹*

Having regard to the foregoing, the OCG notes that there were no official terms or conditions for the agreements as there were no written contracts prior to 2009. The OCG has found that prior to

¹⁰⁰ Letter which was dated 2007 June 18 from JTS to Mrs. Angela Wisdom and which was captioned, “Re: Approved Rates for the Corps Transportation at Cobbler Campus-2007-2008”.

¹⁰¹ Mrs. Wisdom in her sworn response to the OCG’s Requisition which was dated 2010 January 28.

2009, services were rendered to the NYS, by the JTS, based upon rate sheets which were approved during the referenced period.

Value of the Procurements/Services rendered during the period 2003 to 2009

The OCG also sought to ascertain the value of the agreements during the referenced period of 2003 through to 2009. Having regard to the foregoing, the OCG, in its 2009 September 1 Requisitions to Mrs. Dasmine Kennedy and Mr. Keith Duncan, and in its 2010 January 18 Requisition to Mrs. Angela Wisdom, requested that they provide “*The total pecuniary value of each agreement/contract which was consummated between the NYS and JTS;*”¹⁰²

Mrs. Dasmine Kennedy, in her sworn response to the OCG’s Requisition, which was dated 2009 September 14, stated, *inter alia*, the following:

Question 4vi: *The total pecuniary value of each agreement/contract which was consummated between the NYS and JTS;*

Response: *The total pecuniary value of each agreement/contract which was consummated between the NYS and JTS could not be ascertained from the JTS file as no clear agreement/contract periods were established prior to June 2009. Based on records that have come to my attention, that I was able to glean, the pecuniary value for each financial year between April 1, 2003 and March 31, 2009 is provided for your perusal.*

1. *April 1, 2003 to March 31, 2004 - \$2,242,000.00*
2. *April 1, 2004 to March 31, 2005 - \$4,428,500.00*
3. *April 1, 2005 to March 31, 2006 - \$6,182,600.00*
4. *April 1, 2006 to March 31, 2007 - \$20,821,140.00*
5. *April 1, 2007 to March 31, 2008 - \$25,749,500.00*
6. *April 1, 2008 to March 31, 2009 - \$25,044,285.00*
7. *April 1, 2009 to May 31, 2009 - \$3,340,200.00*¹⁰³

¹⁰² The OCG’s 2009 September 1 Requisitions which were addressed to Mrs. Dasmine Kennedy, Mr. Keith Duncan and the 2010 January 18 Requisition which was addressed to Mrs. Dasmine Kennedy.

¹⁰³ Mrs. Dasmine Kennedy’s sworn response to the OCG’s Requisition, which was dated 2009 September 14.

Mr. Keith Duncan, in his sworn response to the OCG's Requisition, which was dated 2009 October 5, stated, *inter alia*, the following:

Question 4vi: The total pecuniary value of each agreement/contract which was consummated between the NYS and JTS;

Response: The Acting Executive Director found that the total pecuniary value of each agreement / contract which was consummated between the NYS and JTS could not be ascertained from the JTS file as no clear agreement / contract periods were established prior to June 2009.

The following pecuniary values for each financial year between April 1, 2003 and March 31, 2009 were gleaned by the Acting Executive Director from the records that were presented to her:

1. April 1, 2003 to March 31, 2004 - \$2,242,000.00
2. April 1, 2004 to March 31, 2005 - \$4,428,500.00
3. April 1, 2005 to March 31, 2006 - \$6,182,600.00
4. April 1, 2006 to March 31, 2007 - \$20,821,140.00
5. April 1, 2007 to March 31, 2008 - \$25,749,500.00
6. April 1, 2008 to March 31, 2009 - \$25,044,285.00
7. April 1, 2009 to May 31, 2009 - \$ 3,340,200.00¹⁰⁴

Mrs. Angela Wisdom, in her sworn Response to the OCG's Requisition, which was dated 2010 January 28, stated, *inter alia*, the following:

Question 5vi: The total pecuniary value of each agreement/contract which was consummated between the NYS and JTS

¹⁰⁴ Mr. Keith Duncan's sworn response to the OCG's Requisition, which was dated 2009 October 5

Response 5iii:

I am unable to provide documentary evidence of the above. However, reference may be made to the NYS regarding the fulfilment of same... ”¹⁰⁵

The OCG, having calculated the total pecuniary value of each agreement/contract which was consummated between the NYS and the JTS, based upon the representations of Mrs. Dasmine Kennedy and Mr. Keith Duncan, found that the total value of all the contracts for the period of 2003 April 1 through to 2009 May 31 amounted to \$87,808,225.00.

The OCG also notes that Mr. Ricardo James, Executive Chairman, JTS, indicated that, based upon his records, the total amount of payments made to the JTS was approximately \$80,211,980.

Having regard to the foregoing, and based upon the representations of both the NYS and the JTS, the OCG found that in excess of \$80,000,000.00 was paid to the JTS, by the NYS, over a six (6) year period.

Analysis of Aggregate Annual Payments

Payments for the period 2003 April 1 to 2004 March 31

For the period of 2003 April 1 to 2004 March 31, the total sum of the payments which were made to the JTS amounted to \$2,242,000.00. It is instructive to note that the then applicable 2001 May GPPH stipulated the following in regard to the award of contracts of the aforesaid value:

Section 5.3.4 “*CONTRACT VALUE FROM J\$1M TO LESS THAN J\$4M*”

¹⁰⁵ Mrs. Angela Wisdom’s sworn Response to the OCG’s Requisition, which was dated 2010 January 28

Where the estimated value is equal to or greater than J\$1M but less than J\$4M, participation shall be restricted to domestic concerns only, except where no such qualified concern is registered with the NCC. Participation opportunities shall be open to all appropriately qualified suppliers that are registered with the NCC. Procuring entities shall advertise the procurement opportunity as set out in Section 3.2 herein, unless the nature and/or complexity of the procurement require national advertising....”¹⁰⁶

It must be noted that section 3.2 of the 2001 May GPPH states the following:

“...Procuring entities shall post invitations as follows:

- *At the Parish Council Offices of the Parish or Parishes within which any part of the procurement is to be carried out or delivered;*
- *At the National Works Agency Parish Offices of the Parish or Parishes within which any part of the procurement is to be carried out or delivered;*
- *At the Main Parish Post Offices of the Parish or Parishes within which any part of the procurement is to be carried out or delivered;*

In addition invitations may be posted as follows:

- *At the local or regional offices of the entity carrying out the procurement where such offices exist and are within reasonable proximity to the site or sites where the procurement is to be carried out or delivered;*
- *At local libraries or works department offices;*
- *On the procuring entity websites;*
- *Invitations may also be posted (mailed) to all appropriately registered contractors.”¹⁰⁷*

¹⁰⁶ Section 5.3.4, GPPH 2001 May.

¹⁰⁷ Section 3.2 GPPH 2001.

Payments for the period 2004 April 1 to 2006 March 31

For the period of 2004 April 1 through to 2005 March 31, the OCG found that the total pecuniary value of the payments which were made to the JTS amounted to \$4,428,500.00 while for the period of 2005 April 1 through to 2006 March 31, the total pecuniary value of the payments which were made to the JTS amounted to \$6,182,600.00.

It is instructive to note that the 2001 May GPPH, which would have been applicable during the period under consideration, stipulated the following regarding contracts of the aforementioned values:

Section 5.3.5 “CONTRACT VALUE FROM J\$4M TO LESS THAN J\$15M

Where the estimated value is equal or greater than J\$4M but less than J\$15M, participation shall be restricted to domestic concerns only, except where no such qualified concern is registered with the NCC. Opportunities should be offered through selective tender by national advertising, where all interested appropriately qualified contractors who are registered with the NCC are afforded the opportunity to tender. All contracts within this range of values shall be referred to the NCC for approval of recommendation for award... ”¹⁰⁸

The OCG has not seen evidence to suggest that the foregoing requirements were met by the NYS in regard to the referenced contracts.

Payments for the period 2006 April 1 to 2009 March 31

For the period 2006 April 1 through to 2007 March 31, the total pecuniary value of the payments which were made to the JTS amounted to \$20,821,140.00 while for the period of 2007 April 1 to 2008 March 31, the total pecuniary value of the payments amounted to \$25,749,500.00.

¹⁰⁸ Section 5.3.5 GPP1 2001

It is also important to note that for the period of 2008 April 1 through to 2009 March 31, the total value of the payments which were made to the JTS amounted to \$25,044,285.00.

Having regard to the foregoing, it is instructive to note that the then applicable 2001 May GPPH stipulated the following in regard to contracts of the foregoing values:

Section 5.3.6: “CONTRACT VALUE FROM J\$15M TO LESS THAN INTERNATIONAL CONTRACT VALUE THRESHOLD FOR SERVICES

Where the estimated value is equal to or greater than J\$15,000.00 but less than the international contract value threshold for services, participation shall be restricted to domestic concerns only, except where no such qualified concern is registered with the NCC. Services shall be procured on the basis of selective tender, where all the contractors who are registered with the NCC are afforded the opportunity to tender. Authority to enter into a contract shall be obtained from the Cabinet, after reference to the NCC and the Minister for approval of award recommendation... ”¹⁰⁹

Given the foregoing annual payments which were made to the JTS, and the fact that there were no formal written contracts, the OCG must again place upon the record the fact that such contracts should have been properly tendered and submitted to the NCC and the Cabinet for endorsement and final approval.

2009 April 1 to 2009 May 31

For the period of 2009 April 1 through to 2009 May 31 the total pecuniary value of the payments which were made to the JTS was in the amount \$3,340,200.00.

¹⁰⁹ Section 5.3.6 GPPH 2001

It must be noted that the Contract which was formally tendered by the NYS in 2009 came into effect on 2009 June 2 and, according to the formal written contract, *“the contractual term is for twenty- two (22) months (approximately two (2) years) as follows:*

Year 1 2009 to 2010: June 02, 2009 to April 21, 2010

Year 2 2009 to 2010: To be determined as per 2010 -2011 budgetary allocation”

Accordingly, the OCG has found that the referenced contract did not stipulate a contract sum but was instead informed by rate sheets. Nevertheless, and given the expenditure which was incurred by the NYS during the period of 2009 April 1 to 2009 May 31, as well as the historical trend of expenditure for the two (2) preceding years, the current contract, when annualized, would have yielded a contract value which would have required both the approval of the NCC and the Cabinet.

Other information pertinent to the agreement(s)/contract(s) which was/were entered into between the NYS and JTS.

In response to the OCG's request for the provision of information which was pertinent to the agreement(s)/contract(s) which was/were entered into between the NYS and JTS, Mrs. Wisdom provided the following information:

“Question 5vii: Any other particulars that are pertinent to the agreement(s)/contract(s) which was/were entered into between the NYS and JTS.

Response 5vii:

There were two (2) separate functions in the operation of contractual services for transportation namely the Contractor Selection Process and the Payment Approvals Process:

Contractor Selection:

The selection of the supplier/contractor was managed by the Management team prior to 2009 and later by the NYS Procurement Committee in 2009, exclusive of the Corporate Services and Programmes Units/Managers. These two Units were directly responsible for 1. the recruitment, selection and movement and 2. the training respectively of the annual unattached youth target. These Units were responsible for producing the Participants and Camp Schedules.

Contract Administration and Payment Recommendations/ Pre-Approvals:

The payment approval processes were managed by the Corporate Services and Programmes Units/Managers/Directors, which was independent of the Contractor's Selection team as follows:

a) *Corporate Services (Deputy) Director (CSDD) and related Field Officers was the direct liaison between JTS and NYS. The CSDD:*

- *Developed and provided Return Schedules for transportation of participants for both Cobbla and Chestervale Campuses that was submitted to JTS as per Camp schedule.*
- *Verified JTS Invoices and pre-approved payment after consultation with the Programmes Manager/s and 8 Field /Corporate Services Officers islandwide*

Payment Recommendations/Pre-Approvals:

b) *Project Supervisors/Programmes Managers: Carried out similar functions above.*

c) *Chester vale's Lecturer's Transportation Invoices: Programmes/Projects Manager/s reviewed and pre-approved invoices. HR & Adm. Manager countersigned to verify that officers and contractor used services as intended against agreed rates.*

d) *The former Executive Director was responsible for the final review and approval of payments post satisfactory service delivery and approval signature of respective Head of Unit.*¹¹⁰

¹¹⁰ Mrs. Angel Wisdom's sworn response to the OCG's Requisition which was dated 2010 January 28.

Procurement Procedures Utilized by the NYS During the Period 2003-2009, to Engage the Services of the JTS.

The OCG found that prior to 2005 the NYS did not have a formal tender process. This was asserted by Mrs. Dasmine Kennedy, Executive Director, NYS, Mr. Keith Duncan, Chairman, NYS and Mrs. Angela Wisdom, Former Human Resource & Administration Manager, NYS.

By way of a written Requisition, which was dated 2010 January 18, the OCG asked Mrs. Angela Wisdom, the following question:

“What was the extent of your official and/or personal involvement in the award of any contract to Jamaica Transport Service (JTS)? Please provide a comprehensive statement to this question.”¹¹¹

Mrs. Angela Wisdom, in her sworn response to the OCG’s Requisition, which was dated 2010 January 28, indicated the following:

“My involvement in the award of any contract to or engagements with Jamaica Transport Service was within the ambit of my former official capacity as Human Resource & Administration Manager, NYS, as follows:

“... I conducted a Limited Tender in early 2005 to regularise and improve the efficiency and expediency of transportation services required for the Knox Cobbla Campus operations. This was based on an Executive directive to rationalise the ad hoc approaches that were in force in the parishes prior to 2005...”¹¹² (OCG Emphasis)

¹¹¹ OCG’s Requisition to Mrs. Angela Wisdom, which was dated 2010 January 18.(Question #2).

¹¹² Mrs. Angela Wisdom’s sworn response to the OCG’s Requisition which was dated 2010 January 28.

The OCG also asked Mr. Keith Duncan and Mrs. Dasmine Kennedy, the foregoing question in its Requisitions which were dated 2009 September 1.

*For each of the contractual agreements which have been listed in the Executive Summary in Question#4, please detail the procurement methodology which was employed in the award of each of the contracts. Please provide the following, where possible, in support of your response.*¹¹³

Mr. Keith Duncan, in his sworn response to the OCG's Requisition which was dated 2009 October 5, indicated the following:

*“As the former Chairman I would not have been intimately involved in the processes so the following is the findings from the investigation of the Acting Executive Director. **She found that although the letter dated October 16, 2006 refers to an engagement between NYS and JTS, no other supporting documents were found to substantiate same. However the records show two clear procurement processes for provision of transportation services conducted by the NYS since 2005.**”* (OCG Emphasis)

Mrs. Dasmine Kennedy, in her sworn response to the OCG's Requisition, which was dated 2009 September 14, also indicated the following:

*“**While letter dated October 16, 2006 refers to an engagement between NYS and JTS, no other supporting documents were found to substantiate same. However the records show two clear procurement processes for provision of transportation services conducted by the NYS since 2005...**”¹¹⁴ (OCG Emphasis)*

¹¹³ OCG's Requisition to Mr. Keith Duncan and Mrs. Dasmine Kennedy which was dated 2009 September 1.

¹¹⁴ Mrs. Dasmine Kennedy's sworn response to the OCG's Requisition which was dated 2009 September 14.

The Procurement Methodology Utilized in 2005-2006

Mrs. Angela Wisdom, in her sworn response to the OCG's Requisition, which was dated 2010 January 28, indicated the following:

"2005-2006: I conducted a Limited Tender in early 2005 to regularise and improve the efficiency and expediency of transportation services required for the Knox Cobbla Campus operations. This was based on an Executive directive to rationalise the ad hoc approaches that were in force in the parishes prior to 2005. Several companies were verbally contacted to provide Return Transportation Rate Sheets for the next financial year's Camp operation (April 2005 to March 2006).

*Jamaica Transport Services was selected in 2006 to provide transportation services for NYS after submission of 4 quotations from 4 potential suppliers namely JUTA, JCAL, JTS and a private person. JTS was selected due to its islandwide coverage and competitive rates. This was based on the review of a comparative analysis of the rate sheets (**Refer to Appendix 2**) received and further investigation of each companies ability to provide islandwide coverage for unattached youth. This review involved me, former HR & Adm. Manager, the former Executive Director, Finance & Accounts Director and Corporate Services (Deputy) Director at the time."¹¹⁵*

Mr. Keith Duncan, in his sworn response to the OCG's Requisition, which was dated 2009 October 5, indicated the following:

"Procurement of transportation services 2005-2007.

The procurement methodology employed in the award of a contract / agreement in this instance appeared to be a limited tender method. The medium used to contact or invite the bidders was not stated, nor was the approval process outlined.

¹¹⁵ Mrs. Angela Wisdom's sworn response to the OCG's Requisition which was dated 2010 January 28.

- i. No tender document, request for proposal and/or letter of invitation to tender was seen on the files.
- ii. The following bidders submitted quotations/proposals
 - 1. Jamaica Urban Transport Authority (See Appendix #8)
 - 2. Mr. Albert Dixon (See Appendix # 9)
 - 3. Jamaica Cooperative Automobile and Limousine Tours Limited (JCAL) (See Appendix # 10)
 - 4. JTS – (See Appendix 11)
- iii. The only document identified regarding evaluation and approval of the proposals is a set of comparative analysis sheets signed by Mrs. Angela Wisdom with notations regarding the evaluation criteria (See Appendix # 12).
- iv. No documentation regarding the involvement of a procurement committee in the approval to undertake the contracting of services of JTS was appended to the file.”¹¹⁶(OCG Emphasis)

Mrs. Dasmine Kennedy, in her sworn response to the OCG’s Requisition, which was dated 2009 September 14, also indicated the following:

“Procurement of transportation services 2005-2007.

The procurement methodology employed in the award of a contract/agreement in this instance appeared to be a limited tender method. The medium used to contact or invite the bidders was not stated, nor was the approval process outlined.

- i. No tender document, request for proposal and / or letter of invitation to tender was seen on the files.
- ii. The following bidders submitted quotations/proposals

¹¹⁶ Mr. Keith Duncan’s sworn response to the OCG’s Requisition which was dated 2009 October 5

1. Jamaica Urban Transport Authority (See Appendix #8)
 2. Mr. Albert Dixon (See Appendix # 9)
 3. Jamaica Cooperative Automobile and Limousine Tours Limited (JCAL) (See Appendix # 10)
 4. JTS – (See Appendix 11)
- iii. The only document identified regarding evaluation and approval of the proposals is a set of comparative analysis sheets signed by Mrs. Angela Wisdom with notations regarding the evaluation criteria (See Appendix # 12).
- v. No documentation regarding the involvement of a procurement committee in the approval to undertake the contracting of services of JTS was appended to the file.¹¹⁷ (OCG Emphasis)

Having regard to the foregoing, it must be noted that Mrs. Wisdom submitted the following quotations from four (4) companies, including the JTS:

1. Proposed rate for transportation from the JTS, for the year 2005, as detailed overleaf.

¹¹⁷ Mrs. Dasmine Kennedy's sworn response to the OCG's Requisition, which was dated 2009 September 14.

“JAMAICA TRANSPORT SERVICE (JTS)
24-7 Monitored Quality Movement Islandwide
125 Maxfield Avenue
Shop 11, Ideal Plaza
Tel: 929-3632

Proposed rates per return movement from parishes

Islandwide to Cobbler Campus 2005

<i>Bus size</i>	<i>Parish</i>	<i>Cost</i>
30 seater	Kgn.	22,500
50 seater		46,000
30 seater	St. Cath.	21,500
50 seater	“	45,000
15 seater	Clarendon	12,000
30 seater	“	20,000
30 seater	St Mary	38,000
30 seater	St. Elizabeth	26,000
30 seater	Manchester	14,000
30 seater	St. Thomas	37,000
30 seater	Portland	47,000
30 seater	Westmoreland	37,000
30 seater	Hanover	40,000
30 seater	St. James	35,000
50 seater	“	51,000
15 seater	St. Ann	15,000
30 seater	“	33,000
15 seater	Trelawny	17,000
30 seater	“	35,000” ¹¹⁸

¹¹⁸ JTS Proposed rate for Transportation from the JTS, for the year 2005.

The JTS also submitted a letter which was dated 2005 January 6, and which was captioned “**Re: Quotations and Information from Jamaica Transport Service (JTS)**”, along with the company’s proposed rate sheet. The referenced letter was from Mr. Trevino Ashman, President, JTS, to Mrs. Angela Wisdom, the then Human Resources Manager, NYS. The referenced letter indicated, *inter alia*, as follows:

I want to first use this opportunity to express our gratitude for being chosen to do the transportation of the National Youth Service for the past 2 years. I also want to express best wishes for you and [sic] entire staff for the New Year.

Following your request on quotation for the upcoming year I now do so along with copies of valid Tax Compliant [sic] Certificate (TCC), National Contract Commission (NCC) certificate of approval on government list of contractors.

I look forward to again be selected due to our track record of performance, our competitive costs and the convenient and safe service that is always available from [sic] JTS...”

Appended to JTS’ submission were the following:

- (a) A Tax Compliance Certificate which was dated 2004 July 31, and which was valid up to 2005 March 2.
- (b) A letter which was dated 2004 September 22, which was sent to the NCC, from Antonia Carrington-Hardy, Account Executive Assistant, Guardian Insurance Brokers Limited. The letter confirmed that JTS was insured with United General Insurance Company through Guardian Insurance Brokers Limited.
- (c) NCC Letter of Registration which was dated 2004 December 1. The letter indicated that the registration of “Ricardo James T/A Jamaica Transport Service”, in the category of Transportation & Haulage was valid until 2005 November.

(d) A document from the JTS which was entitled **“INTRODUCTION”**. The document gave a brief description of the services which were offered by the JTS.

2. Proposed rates for JUTA for the year 2005

A **“JUTA Tours-Kingston Chapter fax sheet”**, which was dated 2005 January 20 indicated, *inter alia*, as follows:

“Attention: Ms. Angela Wisdom

Dear Ms. Wisdom,

As requested, kindly find rates to provide transportation as detailed below:

Pick up points	Size Bus	Destination	Cost
Kingston	30 Seater	Cobbler Camp.	\$ 14,000.00 (1 way)
	50 Seater	“	26,000.00 (1 way)
St. Catherine	30 Seater	“	14,000.00 (1 way)
	50 Seater	“	26,000.00 (1 way)
Clarendon	15 Seater	“	8,000.00 (1 way)
	30 Seater	“	12,000.00 (1 way)
St. Mary	30 Seater	“	18,000.00 (1 way)
St. Elizabeth	30 Seater	“	15,000.00 (1 way)
Manchester	30 Seater	“	10,000.00 (1 way)
St. Thomas	30 Seater	“	20,000.00 (1 way)
Portland	30 Seater	“	25,000.00 (1 way)
Westmoreland	30 Seater	“	25,000.00 (1 way)
Hanover	30 Seater	“	25,000.00 (1 way)

<i>St James</i>	<i>30 Seater</i>	<i>“</i>	<i>25,000.00 (1 way)</i>
	<i>50 Seater</i>	<i>“</i>	<i>40,000.00 (1 way)</i>
<i>St. Ann</i>	<i>15 Seater</i>	<i>“</i>	<i>10,000.00 (1 way)</i>
	<i>30 Seater</i>	<i>“</i>	<i>14,000.00 (1 way)</i>
<i>Trelawny</i>	<i>15 Seater</i>	<i>“</i>	<i>12,000.00 (1 way)</i>
	<i>30 Seater</i>	<i>“</i>	<i>23,000.00 (1 way)</i>

Kindly note that JUTA has the largest fleet of buses in the island that is air-conditioned, equipped with cellular phones and driven by courteous drivers.

*Thank you for choosing the excellent service of JUTA. We look forward to transporting your passengers with very best in safe and reliable transportation.*¹¹⁹

3. Proposed rates from Albert Dixon:

An undated Rate Sheet from ‘Albert Dixon’, Bus Operator. The Rate Sheet indicated as follows:

“ALBERT DIXON
Bus Operator
8 Kew Road
Rates for Cobbler Camp.

<i>Bus Size</i>	<i>Parish</i>	<i>Cost</i>
<i>30 seater</i>	<i>St. Thomas</i>	<i>40,000</i>
<i>30 seater</i>	<i>Portland</i>	<i>52,000</i>
<i>30 seater</i>	<i>Westmoreland</i>	<i>42,000</i>
<i>30 seater</i>	<i>Hanover</i>	<i>45,000</i>

¹¹⁹ JUTA Tours-Kingston Chapter fax sheet”, which was dated 2005 January 20.

<i>30 seater</i>	<i>St. James</i>	<i>38,000</i>
<i>50 seater</i>	<i>“</i>	<i>56,000</i>
<i>15 seater</i>	<i>St. Ann</i>	<i>18,000</i>
<i>30 seater</i>		<i>36,000</i>
<i>15 seater</i>	<i>Trelawny</i>	<i>22,000</i>
<i>30 seater</i>		<i>39,000</i>
<i>30 seater</i>	<i>Kgn.</i>	<i>30,000</i>
<i>50 seater</i>		<i>52,000</i>
<i>30 seater</i>	<i>St. Cath.</i>	<i>28,000</i>
<i>50 seater</i>		<i>50,000</i>
<i>15 seater</i>	<i>Clarendon</i>	<i>16,000</i>
<i>30 seater</i>		<i>26,000</i>
<i>30 seater</i>	<i>St. Mary</i>	<i>42,000</i>
<i>30 seater</i>	<i>St. Elizabeth</i>	<i>30,000</i>
<i>30 seater</i>	<i>Manchester</i>	<i>20,000</i>

4. Proposed rates from Jamaica Cooperate Automobile and Limousine Tours Limited (JCAL)

By way of a letter which was dated 2005 March 7, which was addressed to Mrs. Angela Wisdom, from Mr. Courtney Francis, Committee Chairman – Kingston, JCAL Tours, the following, *inter alia*, was indicated:

“Attention: Ms Wisdom,

The following is the proposed rates per return movement Island wide to Cobbler Camp...

Transportation Schedule for National Youth Service

<u>Pickup Point</u>	<u>Destination</u>	<u>Buses</u>	<u>Unit Cost</u>	<u>Return Cost</u>
Kingston	Cobbler	30 Seater	\$14,000.00	\$21,000.00
		50 Seater	\$21,700.00	\$32,550.00
St. Thomas	Cobbler	30 Seater	\$16,700.00	\$25,050.00
St. Ann	Cobbler	30 Seater	\$10,000.00	\$15,000.00
		15 Seater	\$ 7,500.00	\$11,250.00
Trelawny	Cobbler	30 Seater	\$10,000.00	\$15,000.00
		15 Seater	\$ 7,500.00	\$11,250.00
St. Catherine	Cobbler	30 Seater	\$12,000.00	\$18,000.00
		50 Seater	\$18,000.00	\$27,000.00
Portland	Cobbler	30 Seater	\$20,000.00	\$30,000.00
St Mary	Cobbler	30 Seater	\$15,000.00	\$22,500.00
Westmoreland	Cobbler	30 Seater	\$15,500.00	\$23,250.00
Hanover	Cobbler	30 Seater	\$20,000.00	\$30,000.00
St Elizabeth	Cobbler	30 Seater	\$ 9,500.00	\$14,250.00
Manchester	Cobbler	30 Seater	\$ 6,500.00	\$ 9,750.00
St James	Cobbler	30 Seater	\$14,000.00	\$21,000.00
		50 Seater	\$28,000.00	\$42,000.00
Clarendon	Cobbler	30 Seater	\$ 8,000.00	\$12,000.00
		15 Seater	\$ 6,000.00	\$ 9,000.00

We are awaiting a favorable response...

The OCG was also provided with a document which detailed three (3) comparative tables as follows:

Comparison of Transportation Cost

BUS SIZE	PARISH	ALBERT DIXION COST	JUTA COST	JTS COST	JCAL COST
30 SEATER	KINGSTON	\$30,000.00	\$28,000.00	\$22,000.00	\$21,000.00
50 SEATER	KINGSTON	\$52,000.00	\$52,000.00	\$46,000.00	\$32,550.00
30 SEATER	ST THOMAS	\$40,000.00	\$40,000.00	\$37,000.00	\$25,050.00
30 SEATER	PORTLAND	\$52,000.00	\$50,000.00	\$47,000.00	\$30,000.00
30 SEATER	WESTMORELAND	\$42,000.00	\$50,000.00	\$37,000.00	\$23,250.00
30 SEATER	HANOVER	\$45,000.00	\$50,000.00	\$40,000.00	\$30,000.00
30 SEATER	ST JAMES	\$38,000.00	\$50,000.00	\$35,000.00	\$21,000.00
50 SEATER	ST JAMES	\$56,000.00	\$80,000.00	\$51,000.00	\$42,000.00
15 SEATER	ST ANN	\$18,000.00	\$20,000.00	\$15,000.00	\$11,250.00
30 SEATER	ST ANN	\$36,000.00	\$28,000.00	\$33,000.00	\$15,000.00
15 SEATER	TRELAWNY	\$22,000.00	\$24,000.00	\$17,000.00	\$11,250.00
30 SEATER	TRELAWNY	\$39,000.00	\$46,000.00	\$35,000.00	\$15,000.00
30 SEATER	ST CATHERINE	\$28,000.00	\$28,000.00	\$21,000.00	\$18,000.00
50 SEATER	ST CATHERINE	\$50,000.00	\$52,000.00	\$45,000.00	\$27,000.00
15 SEATER	CLARENDON	\$16,000.00	\$16,000.00	\$12,000.00	\$9,000.00
30 SEATER	CLARENDON	\$26,000.00	\$24,000.00	\$20,000.00	\$12,000.00
30 SEATER	ST MARY	\$42,000.00	\$36,000.00	\$38,000.00	\$22,500.00
30 SEATER	ST. ELIZABETH	\$30,000.00	\$30,000.00	\$26,000.00	\$14,250.00
30 SEATER	MANCHESTER	\$20,000.00	\$20,000.00	\$14,000.00	\$9,750.00

Comparison of Transportation Cost Using a 50 & 30 Seater Bus

BUS SIZE	PARISH	ALBERT DIXION COST	JUTA COST	JTS COST	JCAL COST
50 SEATER	KINGSTON	\$ 52,000.00	\$52,000.00	\$46,000.00	\$32,550.00
30 SEATER	ST. THOMAS	\$40,000.00	\$40,000.00	\$37,000.00	\$25,050.00
30 SEATER	PORTLAND	\$52,000.00	\$50,000.00	\$47,000.00	\$30,000.00
30 SEATER	WESTMORELAND	\$42,000.00	\$50,000.00	\$37,000.00	\$23,250.00
30 SEATER	HANOVER	\$45,000.00	\$50,000.00	\$40,000.00	\$30,000.00
50 SEATER	ST JAMES	\$56,000.00	\$80,000.00	\$51,000.00	\$42,000.00
30 SEATER	ST ANN	\$36,000.00	\$28,000.00	\$15,000.00	\$15,000.00
30 SEATER	TRELAWNY	\$39,000.00	\$46,000.00	\$35,000.00	\$15,000.00
50 SEATER	ST. CATHERINE	\$50,000.00	\$52,000.00	\$45,000.00	\$27,000.00
30 SEATER	CLARENDON	\$26,000.00	\$24,000.00	\$20,000.00	\$12,000.00
30 SEATER	ST. MARY	\$42,000.00	\$36,000.00	\$38,000.00	\$22,500.00
30 SEATER	ST. ELIZABETH	\$30,000.00	\$30,000.00	\$26,000.00	\$14,250.00
30 SEATER	MANCHESTER	\$20,000.00	\$20,000.00	\$14,000.00	\$9,750.00
		\$530,000	\$558,000.00	\$451,000.00	\$298,350.00

Comparison of Transportation Cost Using a 30 Seater Bus

BUS SIZE	PARISH	ALBERT DIXION COST	JUTA COST	JTS	JCAL COST
30 SEATER	KINGSTON	\$30,000.00	\$28,000.00	\$22,000.00	\$21,000.00
30 SEATER	ST THOMAS	\$40,000.00	\$40,000.00	\$37,000.00	\$25,050.00
30 SEATER	PORTLAND	\$52,000.00	\$50,000.00	\$47,000.00	\$30,000.00
30 SEATER	WESTMORELAND	\$42,000.00	\$50,000.00	\$37,000.00	\$23,250.00
30 SEATER	HANOVER	\$45,000.00	\$50,000.00	\$40,000.00	\$30,000.00
30 SEATER	ST JAMES	\$38,000.00	\$50,000.00	\$35,000.00	\$21,000.00
30 SEATER	ST ANN	\$36,000.00	\$28,000.00	\$15,000.00	\$15,000.00
30 SEATER	TRELAWNY	\$39,000.00	\$46,000.00	\$17,000.00	\$15,000.00
30 SEATER	ST. CATHERINE	\$28,000.00	\$28,000.00	\$21,000.00	\$18,000.00

BUS SIZE	PARISH	ALBERT DIXION COST	JUTA COST	JTS	JCAL COST
30 SEATER	CLARENDON	\$26,000.00	\$24,000.00	\$12,000.00	\$12,000.00
30 SEATER	ST. MARY	\$42,000.00	\$36,000.00	\$38,000.00	\$22,500.00
30 SEATER	ST ELIZABETH	\$30,000.00	\$30,000.00	\$26,000.00	\$14,250.00
30 SEATER	MANCHESTER	\$20,000.00	\$20,000.00	\$14,000.00	\$9,750.00
	Grand Total	\$468,000.00	\$480,000.00	\$361,500.00	\$256,800.00

The OCG was also provided with a copy of the aforementioned ‘Comparison Sheets’ by Mr. Keith Duncan, the then Chairman, NYS, in his response to the OCG’s 2009 September 1 Requisition. The referenced response was dated 2009 October 5. It must be noted that the referenced Comparison Sheet had the following handwritten notation: “*Approved JTS re: Limited Tendering Process based on cost & availability of units islandwide.*” The referenced approval was granted under what appears to be the signature of Mrs. Angela Wisdom and was dated “08/01/05”.

It is instructive to note that the OCG has also made the following observations with regard to the purported tender process:

1. The JTS was approved to provide transportation services to the NYS on 2005 January 8;
2. The quotation from JCAL was dated 2005 March 7;
3. The quotation from JUTA Tours was dated 2005 January 20;
4. The quotation from Albert Dixon was undated;
5. The quotation from JTS was dated 2005 January 6;
6. There was no Request for Quotation, Letter of Invitation or tender document on file. This was also asserted by Mrs. Dasmine Kennedy and Mr. Keith Duncan in their responses to the OCG regarding the referenced procurement. Mrs. Kennedy also confirmed that “*The only document identified regarding evaluation and approval of the proposals is a set of comparative analysis sheets signed by Mrs. Angela Wisdom with notations regarding the evaluation criteria...*”

Having regard to the foregoing, it should be noted that the quotations from JUTA and JCAL were dated after the JTS was approved as the contractor for the year 2005.

It must also be noted that the proposal from JTS was dated 2005 January 6, which is two (2) days prior to the approval which was granted based upon the comparative rate sheets. In this regard, it would appear that JTS was contracted via the Direct Contracting Methodology instead of the Limited Tender Methodology as the quotations which were submitted by JUTA and JCAL were submitted after JTS was approved as the contractor. It is also instructive to note that the JTS was the only company that submitted a full proposal as the other three (3) companies only submitted quotations.

The OCG also notes that Mrs. Angela Wisdom indicated that the companies were contacted verbally for this procurement. However, the GPPH 2001 May stipulates the following, with regard to the Limited Tender Procurement Methodology:

“2.1.3.3 Limited Tender

Limited tender is a form of selective tender, whereby the procurement opportunity is open to a limited number of contractors included in the Register of Approved Contractors. It includes the Request for Quotation (RFQ) and Sole Source procurement procedures. Procurement offered through limited tender is generally not advertised. Instead, procuring entities may contact appropriately qualified contractors on the register and invite them to participate. Criteria for selecting contractors from the register should include:

- *Nature of the work required;*
- *Contractor’s relevant experience;*
- *Contractor’s past performance record; and*
- *Contractor’s current financial and technical capacities.*

Limited Tender must have prior written approval of Accounting Officers for contracts less than \$4M.

All contracts for \$4M or greater must receive prior written approval from the NCC through the Accounting Officer.

The request for permission to utilize the Limited Tender procedures must include the selection of a minimum of three (3) contractors and the criteria for the selection.

The prepared lists of contractors shall be submitted to the Procurement Committee or such other person(s) as may be nominated by the Procurement Committee of approval prior to any contractor being invited to tender.”

Having regard to the foregoing provisions of the GPPH, the OCG has found that the NYS did not adhere to any of the stipulations of the Limited Tender Procurement Methodology. The foregoing would, therefore, constitute a breach of the then applicable procurement guidelines.

The OCG also notes that according to Mr. Duncan and Mrs. Kennedy, for the period 2005 April 1 through to 2006 March 31, a total of \$6,182,600.00 was paid to the JTS, by the NYS. Having regard to the foregoing, it is instructive to note that Section 5.3.5 of the then applicable GPPH stipulates as follows:

“CONTRACT VALUE FROM J\$4M TO LESS THAN J\$15M

Where the estimated value is equal or greater that J\$4M but less than J\$15M, participation shall be restricted to domestic concerns only, except where no such qualified concern is registered with the NCC. Opportunities should be offered through selective tender by national advertising, where all interested appropriately qualified contractors who are registered with the NCC are

afforded the opportunity to tender. All contracts within this range of values shall be referred to the NCC for approval of recommendation for award...”

The foregoing constitutes another breach of the GPPH as the incorrect procurement methodology was utilized. It is instructive to note that Mrs. Angela Wisdom, Mr. Keith Duncan and Mrs. Dasmine Kennedy all indicated that the Limited Tender procurement methodology was utilized.

However, based upon the provisions of section 5.3.5 of the GPPH 2001 May, the Selective Tender procurement methodology would have been more appropriate in this instance. The OCG has found no evidence to suggest that permission was requested from the NCC for the utilization of the Limited Tender Procurement Methodology for the award of a contract with a value in excess of \$4 Million.

Furthermore, as was previously indicated, the NYS did not appear to use the Limited Tender Methodology as two of the quotations were dated after the approval for the award of the contract to JTS was granted by Mrs. Angela Wisdom. Therefore, it would appear that the Direct Contracting/Sole Source Methodology was used.

Procurement process for the period 2006-2008

Based upon the information which was provided by Mrs. Dasmine Kennedy, Mrs. Angela Wisdom and Mr. Keith Duncan, the OCG has found that there was no procurement process during the period 2006 to 2008 and the contracts to the JTS, which were based upon rate sheets, appeared to have been extended.

It is instructive to note that Mrs. Wisdom, in her sworn response to the OCG's Requisition, which was dated 2010 January 28, indicated, *inter alia*, the following:

2006 – 2008: *No tender process was conducted during this period. Preparations to conduct a tender in 2008 were delayed by the interview/selection processes for an Internal Auditor, the processes to construct a tender box and the heavy demands of the HR & Admin. portfolio for the other 4 units (Procurement, Career Guidance, MIS and Participants Benefits) within the new expanded training role of the NYS during that time. Routine call requests were made to JUTA and JTS, the largest all island providers for rates for Kingston and St. Andrew. (See Appendices 7-8). The latter rates were used to judge the rates for the other parishes and the more reasonable provider of the two was chosen. JTS was found to be more reasonable than JUTA over the period.*

JTS was selected to continue from January 2006 to May 31, 2007 at the 2005 rates on the basis that no increase in prices could be afforded at that time. An increase in rates for both Campuses was granted in June 2007. (See Appendices 4-5) While Jessa Tours, (formerly part of JCAL Tours), was selected to provide return transportation for Centre Staff (military and civilian) at the Cobbla and Chestervale Campuses, when it became necessary to do so in mid - 2006. (The NYS may be referenced for supports for JESSA Tours services).¹²⁰

Further, Mrs. Wisdom also indicated the following in regard to the consummation of certain contractual arrangements:

“2006 - 2007: *No official contracts. Continuation of 2005-6 Rate Sheet Agreement and Engagement of JTS services for Lecturer’s on March 27, 2006. (See Appendices 3 to 6)*

2007 - 2008: *No official contracts. New Rate Sheets Approved dated **June 18, 2007.** (See Appendix 5)”*

¹²⁰ Mrs. Angela Wisdom’s sworn response to the OCG’s Requisition which was dated 2010 January 28.

The OCG notes that the only documentation which was provided by all the respondents were rate sheets for the referenced years and a letter indicating a rate increase. There is no evidence of a tender process taking place during this period.

The following documents, relating to the contracting of JTS, by the NYS, during the period of 2006 through to 2009, were submitted by the respondents.

1. A letter which was dated 2006 March 24, from Mr. Trevino Ashman, President, JTS, to Mrs. Angela Wisdom, which indicated as follows:

“Re: Quote for Lecturer’s Transportation

This serves as the proposed costs to transport lecturers from Papine to Chestervale and return twice daily for a 4 week period beginning March 27, 2006 using 2 (15) seaters.

The daily cost per vehicle is Six Thousand Dollars (6,000) thus the total cost for two vehicles is Twelve Thousand Dollars (\$12,000.00) daily.”

2. A letter which was dated 2006 October 16, and which was captioned ***“Re: Proposal from Jamaica Transport Service (JTS),”*** from the JTS to Mrs. Angela Wisdom. The letter indicated as follows:

*“I want to first use this opportunity to express our appreciation for having a continued business relationship with the **National Youth Service (NYS)** after we first started in 2003. We are happy we can function to aid in your development of the country’s youths.*

Following weeks of discussion we have concocted the following proposal as an interim measure to offset some of our expenses for the Cobbler Camp movement. As you are well aware we have been charging the same rate for some of the parish movements for the last 3

years with a spiraling cost of fuel, insurance, parts and other transportation related items and as such we solicit a small percentage increase until your proposed public tender.

The following is an in-depth analysis of the present situation and as such our basis for the increase.

The following are our major expenses

FUEL: This increased by 100% between January 2003-August 2006 with no signs of change in the pattern.

TYRES, SHOCKS & RELATED PARTS: There is a major upsurge in the costs since these are imported and thus fluctuate due to the US Dollar.

DRIVERS Salaries: This has increased significantly recently as the transportation sector wages were overhauled.

INSURANCE: Due to recent Claims brought about mainly by number of accidents, natural disasters, thefts of buses, personal injuries, especially with Public Passenger Vehicles the insurance sector retaliated with some hefty increase in premiums averaging close to 60%.

INFLATION: Inflation has been for the past 3 years in the double digit range and no sign of abating.

Comparative Data

To substantiate our claim, please take a look at the table below

<i>Invoice Date</i>	<i>Parish</i>	<i>Bus Type</i>	<i>Cost</i>
<i>Nov. 5, 2003</i>	<i>St. Ann</i>	<i>30 Seater</i>	<i>\$32,000</i>
<i>May 31, 2004</i>	<i>St. Ann</i>	<i>30 Seater</i>	<i>\$34,000</i>
<i>Feb. 1 2006</i>	<i>St. Ann</i>	<i>30 Seater</i>	<i>\$33,000</i>
<i>May 31, 2004</i>	<i>Trelawny</i>	<i>30 Seater</i>	<i>\$36,000</i>
<i>August 22, 2005</i>	<i>Trelawny</i>	<i>30 Seater</i>	<i>\$35,000</i>
<i>Oct. 16, 2006</i>	<i>Trelawny</i>	<i>30 Seater</i>	<i>\$35,000</i>
<i>Nov. 5, 2003</i>	<i>St. Catherine</i>	<i>2 (30) or 1 (50)</i>	<i>\$45,000</i>
<i>Aug. 22, 2005</i>	<i>St. Catherine</i>	<i>1(50) seater</i>	<i>\$45,000</i>
<i>Feb. 1 2006</i>	<i>St. Catherine</i>	<i>1(50) seater</i>	<i>\$45,000</i>

Proposed Rates

In light of this we propose the following adjustment to the rates per 30 seater and please note that a 50 seater is twice the cost for the 30 seater and is used for 20 or more participants with luggage:

<i>PARISH</i>	<i>PRESENTLY</i>	<i>PROPOSED</i>
<i>KMTR</i>	<i>\$22,500</i>	<i>\$30,000</i>
<i>St. Cath</i>	<i>\$21,500</i>	<i>\$28,000</i>
<i>Clarendon</i>	<i>\$20,000</i>	<i>\$26,000</i>
<i>St. Mary</i>	<i>\$38,000</i>	<i>\$46,000</i>
<i>St. Elizabeth</i>	<i>\$26,000</i>	<i>\$30,000</i>
<i>Manchester</i>	<i>\$14,000</i>	<i>\$17,000</i>
<i>St. Thomas</i>	<i>\$37,000</i>	<i>\$46,000</i>
<i>Portland</i>	<i>\$47,000</i>	<i>\$56,000</i>
<i>Westmoreland</i>	<i>\$37,000</i>	<i>\$45,000</i>

<i>Hanover</i>	<i>\$40,000</i>	<i>\$52,000</i>
<i>St. James</i>	<i>\$35,000</i>	<i>\$42,000</i>
<i>St. Ann</i>	<i>\$33,000</i>	<i>\$40,000</i>
<i>Trelawny</i>	<i>\$35,000</i>	<i>\$42,000</i>

We await your expeditious and favorable response.”

4. A letter which was dated 2007 June 18, from the JTS to the NYS, under the caption, “**Re: Approves Rates for the Corps Transportation at Cobbla-Campus-2007-2008**”, which stated as follows:

“Following our meeting on June 13, 2007 the following rates were approved effective June 01, 2007.

<i>PARISH</i>	<i>BUS SIZE</i>	<i>RATES\$</i>
<i>Kingston and St. Andrew</i>	<i>30 Seater</i>	<i>26,000.00</i>
	<i>50 Seater</i>	<i>52,000.00</i>
<i>St. Catherine</i>	<i>30 Seater</i>	<i>26,000.00</i>
	<i>50 Seater</i>	<i>52,000.00</i>
<i>Clarendon</i>	<i>30 Seater</i>	<i>25,000.00</i>
	<i>50 Seater</i>	<i>50,000.00</i>
<i>St. Mary</i>	<i>30 Seater</i>	<i>44,000.00</i>
	<i>50 Seater</i>	<i>85,000.00</i>
<i>St. Elizabeth</i>	<i>30 Seater</i>	<i>30,000.00</i>
	<i>50 Seater</i>	<i>60,000.00</i>
<i>Manchester</i>	<i>30 Seater</i>	<i>16,000.00</i>
	<i>50 Seater</i>	<i>32,000.00</i>
<i>St. Thomas</i>	<i>30 Seater</i>	<i>44,000.00</i>

<i>PARISH</i>	<i>BUS SIZE</i>	<i>RATES\$</i>
	<i>50 Seater</i>	<i>85,000.00</i>
<i>Portland</i>	<i>30 Seater</i>	<i>52,000.00</i>
	<i>50 Seater</i>	<i>100,000.00</i>
<i>Westmoreland</i>	<i>30 Seater</i>	<i>42,000.00</i>
	<i>50 Seater</i>	<i>84,000.00</i>
<i>Hanover</i>	<i>30 Seater</i>	<i>44,000.00</i>
	<i>50 Seater</i>	<i>88,000.00</i>
<i>St. James</i>	<i>30 Seater</i>	<i>40,000.00</i>
	<i>50 Seater</i>	<i>80,000.00</i>
<i>St. Ann</i>	<i>30 Seater</i>	<i>38,000.00</i>
	<i>50 Seater</i>	<i>74,000.00</i>
<i>Trelawny</i>	<i>30 Seater</i>	<i>40,000.00</i>
	<i>50 Seater</i>	<i>80,000.00</i>

It must be noted that an increase of One Thousand (\$1000.00) was granted per bus per day for teaching staff making it (\$9,000).”

5. A letter which was dated 2007 June 18, from the JTS to the NYS, under the caption, **“Re: Approved Rates for the Corps Transportation at Chestervale Campus-2007-2008(Inclusive of Return)”**, which stated as follows:

“Following our meeting on June 13, 2007 the following rates were approved effective June 01, 2007.

<i>PARISH</i>	<i>BUS SIZE</i>	<i>RATES\$</i>
<i>Kingston and St. Andrew</i>	<i>30 Seater</i>	<i>36,000.00</i>
<i>St. Catherine</i>	<i>30 Seater</i>	<i>40,000.00</i>
<i>Clarendon</i>	<i>30 Seater</i>	<i>64,000.00</i>
<i>St. Mary</i>	<i>30 Seater</i>	<i>64,000.00</i>
<i>St. Elizabeth</i>	<i>30 Seater</i>	<i>70,000.00</i>
<i>Manchester</i>	<i>30 Seater</i>	<i>68,000.00</i>
<i>St. Thomas</i>	<i>30 Seater</i>	<i>68,000.00</i>
<i>Portland</i>	<i>30 Seater</i>	<i>78,000.00</i>
<i>Westmoreland</i>	<i>30 Seater</i>	<i>88,000.00</i>
<i>Hanover</i>	<i>30 Seater</i>	<i>94,000.00</i>
<i>St. James</i>	<i>30 Seater</i>	<i>80,000.00</i>
<i>St. Ann</i>	<i>30 Seater</i>	<i>66,000.00</i>
<i>Trelawny</i>	<i>30 Seater</i>	<i>86,000.00</i>

It was be noted that only 30 & 15 seaters can handle the Chestervale route and the cost per 15 seater is 66&2/3% of a (30) seater.”

6. A letter which was dated 2007 June 18, from the JTS to the NYS, under the caption, “**Re: Current Rates for the Corps Transportation at Chestervale Campus Inclusive of Return)**”, which stated as follows:

<i>PARISH</i>	<i>BUS SIZE</i>	<i>RATES\$</i>
<i>Kgn. and St. Andrew</i>	<i>30 Seater</i>	<i>36,000.00</i>
<i>St. Catherine</i>	<i>30 Seater</i>	<i>40,000.00</i>
<i>Clarendon</i>	<i>30 Seater</i>	<i>64,000.00</i>
<i>St. Mary</i>	<i>30 Seater</i>	<i>64,000.00</i>
<i>St. Elizabeth</i>	<i>30 Seater</i>	<i>70,000.00</i>
<i>Manchester</i>	<i>30 Seater</i>	<i>68,000.00</i>
<i>St. Thomas</i>	<i>30 Seater</i>	<i>68,000.00</i>
<i>Portland</i>	<i>30 Seater</i>	<i>78,000.00</i>
<i>Westmoreland</i>	<i>30 Seater</i>	<i>88,000.00</i>
<i>Hanover</i>	<i>30 Seater</i>	<i>94,000.00</i>
<i>St. James</i>	<i>30 Seater</i>	<i>80,000.00</i>
<i>St. Ann</i>	<i>30 Seater</i>	<i>66,000.00</i>
<i>Trelawny</i>	<i>30 Seater</i>	<i>86,000.00</i>

It must be noted that only 30 & 15 seaters can handle the route and the cost per 15 is 66&2/3% of a (30) seater”

7. A letter which was dated 2008 May 5, from Mrs. Angela Wisdom, the then Human Resources & Administration Manager, signing for the Executive Director, to Mr. Ricardo James, Executive Chairman, JTS, **“Re: Continuation of Transportation Services Contract”**, which stated as follows:

“As per recent conversations (Wisdom/Walker/ Bernard/ James) concerning the non-scheduling of Corps training between February and late April 2008; please note that with the recent conclusions of the budget debates (April 27, 2008), we had to redefine the total training cohorts for this financial year.

Given our limited budget and the fact that an increase was granted for Cobbla and Chestervale in 2007 to cushion and fuel increases during the period, please be advised that we are unable to grant any further increases prior to the transportation service going to tender. The outstanding matter of an Internal Auditor has been addressed and as such we intend to go to tender latest July 2008.

We will be extending, therefore, the current contract from April 2008 to June 2008 (as per schedule attached) at the same rates until the tender Process has been facilitated. Please advise us in writing regarding your agreement for same.”¹²¹

¹²¹ Letter which was dated 2008 May 5, from Mrs. Angela Wisdom, the then Human Resources & Administration Manager, signing for the Executive Director, to Mr. Ricardo James, Executive Chairman, JTS.

Procurement process in 2009

The OCG found that the NYS conducted a formal tender process in 2009 for the provision of Transportation Services. The foregoing was asserted by Mrs. Angela Wisdom, Mr. Keith Duncan and Mrs. Dasmine Kennedy, in their respective responses to the OCG.

Mrs. Angela Wisdom, in her sworn response to the OCG's Requisition, which was dated 2010 January 28, indicated, *inter alia*, the following in regard to the procurement process which was undertaken in 2009:

“2009: In consultation with and reviews by the former NYS management team, I prepared and finalised tender processes for a Selective Tender held in May 2009 for the provision of transportation services for the Knox Cobbla Campus and Chestervale Campus operations. JTS was selected by the Internal Procurement Committee for the award of a 2 Year Contract from June 2009 –March 2011. This was subject to JTS’ fulfilment of the tender requirements. The related documentation for same inclusive of Contract was presented to the Board Procurement Sub-Committee at the June 2009 Quarterly Meeting for their review and endorsement prior to final approval and signature from the Permanent Secretary (PS). (See Appendices 9 -12).”

Mrs. Angela Wisdom provided the following documentation to support the foregoing assertions:

1. A copy of a letter which was dated 2009 February 11, from Mrs. Angela Wisdom to the OCG, which was captioned: **“Re: Limited Tender for Transportation Processes for National Youth Service”**. In the referenced letter Mrs. Angela Wisdom informed the OCG as follows:

“The National Youth Service’s last review of the current contractors in the market for the movement of persons islandwide was conducted in 2005-06 through a limited tender process. At the time Jamaica Urban Transport Association (JUTA), Jamaica Transport

Service (JTS) and Jamaica Cooperative Automobile & Limousine Tours Ltd. (JCAL) were and still are the only major providers capable of moving twice per month 300 plus participants islandwide to our training sites at Knox's Cobbla Campus in Manchester and Eco Village Campus, Chestervale in Upper Rural St. Andrew. (JCAL has some limitations).

The need for reliable fleet of buses (return) twice per month is doubled during the summer when we conduct simultaneously three (3) camps island wide [sic] for our regular Corps training for 17-24 years old (600 unattached youth) and for our Behaviour Modification Programme for 13-17 years old (300 maladaptive students).

We had committed in our 2007-08 Audit to do a yearly limited tender to ensure competitiveness of the service. However, please note that we conduct periodic comparative analysis with the major companies to ascertain the continuation or switching of service providers each April. Of the 2 major providers in the island, Jamaica Transport Services has consistently been the best provider in terms of price and as such when periodic telephone comparison are done JTS tended to be the best and most reasonable provider.

We have developed the specifications for limited tender process and will submit this to the providers for February 2009. We should therefore finalise a provider for April 01, 2009 to March 2010 training portfolio.¹²²

The OCG was also provided with an invoice which was dated 2009 April 30, from the Gleaner Company, which detailed the client's information as "National Youth Service /Angella Wisdom 6 Collins Green Avenue Kingston 5". The referenced invoice indicated the following:

¹²² Letter which was dated 2009 February 11, to the OCG from Mrs. Angela Wisdom under the caption: Re: Limited Tender for Transportation Processes for National Youth Service.

- a. Total cost for the publication of a Tender Notice in the Daily Gleaner of 2009 May 1, in the sum of \$21,606.00; and
- b. Total cost for the publication of a Tender Notice in the Sunday Gleaner of 2009 May 3, in the sum of \$42,276.00.

It must be noted that the following Invitation to Tender was published in the 2009 May 1 edition of the Daily Gleaner:

“INVITATION TO TENDER

**TRANSPORTATION OF NATIONAL YOUTH SERVICE
PARTICIPANTS: COBBLA & CHESTERVALE CAMPUSES**

The National Youth Service invites contractors to bid for the provision of Transportation Services to facilitate the movement of approximately 3,600 participants for financial years 2009 -2011 from all parishes to the following training sites:

LOCATION:

- *Knox Cobbla Campus in Manchester*
- *Eco Village, Chestervale in Upper Rural, St. Andrew*

DESCRIPTION OF WORKS:

The contractor will be required to efficiently supply and supervise all fleet and labour processes to facilitate the return movement of approximately three hundred (300) participants with luggages per Corps Programme on a monthly basis; giving special commitment to being a stakeholder in the re-socialization process of our unattached youth.

ELIGIBILITY FOR TENDER:

Bidders must:

1. *Possess a valid Tax Compliance Certificate (TCC)*
2. *Be listed on the Ministry of Finance Register of approved suppliers as per the National Contracts Commission in the category stated above. (Further information on NCC registration may be obtained at. www.ocg.gov.jm)*
3. *Possess coverage by Third Party Limits for Motor Vehicle Liability Insurance totaling a minimum of:*
 - a. *\$10,000,000 for bodily injury or death to any one person*
 - b. *\$10,000,000 for bodily injury or death for any one event*
 - c. *\$10,000,000 for property damage for any one event*
4. *Submit Audited Financial Statements*
5. *Prove their ability to provide financial and performance information (this information will be verified and will be used in the selection process)*

COLLECTION OF DOCUMENTS:

*Tender documents may be collected from the Human Resource and Administration Department of the National Youth Service, 2nd Floor, 6 Collins Green Ave, Kingston 5. Documents will be available from **Monday, May 04** between **9:00a.m. and 4:00p.m.** upon payment of a **non-refundable fee of \$3,000** for each package. Payment should be in the form of certified cheque only made payable to the National Youth Service, 6 Collins Green Avenue, Kingston 5.*

RETURN OF TENDERS:

Sealed bids are to be placed in the Tender Box at the 2nd Floor Front Desk, NYS Head office on or before Friday, May 15, 2009 at 12:00 noon (local time). Submissions beyond this date and time will not be accepted.

Tenders will be opened publicly at 12:15p.m. Friday, May 15, 2009, at the 3rd Floor Boardroom (NYS Head Office).

For the collection of documents & further information, please contact:

Human Resource Administration Department

National Youth Service

6 Collins Green Ave., Kingston 5...

The National Youth Service is not obligated to accept the lowest of any bid.

All decisions are final.”

The OCG also identified the following in the Tender Document which was issued to prospective bidders.

Purpose of Request

...The purpose of this Request for Proposal (RFP) is to solicit proposals to provide return transportation services for the participants (unattached youth) selected for these Corps Programmes to its two (2) leased training sites for and approximate twenty-four (24) months contract period.

... Bid Overview

National Youth Service (NYS) invites bid from suitably qualified local companies registered with the National Contracts Commission (NCC) to provide Transportation

Services to two (2) of its Training Sites. The bid must be in whole, that is, the bidder must provide a proposal for all designated routes named below in Section 1:1.4.

The successful bidder will be required to efficiently supply and supervise all fleet and labour processes to facilitate the return movement of approximately three hundred (300) participants with luggages per Corps Programme. This will be accommodated at the beginning of each Corps Training and at the end within the designed four weeks period on a monthly basis. The successful bidder will be viewed as a strategic partner who will give special commitment to being a stakeholder in the re-socialization process of our unattached youth.

...Service Requirement

This RFP sets forth the requirements and solicits a detailed response from bidders to include pricing and service descriptions in the specified format. The Transportation Services will be required for the following annual routes, inclusive of but not limited to, the Service Specification in Appendix 1:

Annual Routes:

- *Route 1 for Participants' Transportation: Knox's Cobbla Campus, Spauldings, Manchester*
- *Route 2 for Participants Transportation: Eco Village Campus, Chestervale, St. Andrew*
- *Route 2a for Lecturers' Transportation: University of Technology (UTECH) Campus, Papine to Chestervale Campus*

Contract Period:

The contract period for 2009 to 2010, which relates to the total participants the NYS is able to train, has been determined by the Ministry of Finance & the Public Service's (MOFP) budgetary allocation to the NYS for the financial year 2009 -2010. The contract period for 2010-2011 will be determined by the MOFP's budgetary allocation when that period comes into effect.

Both contract years will be subject to a rate and performance review every six (6) month's [sic]...

SELECTION PROCESS FOR TENDER

Tender Qualification

The Proposal must adhere to the following eligibility criteria and the fulfillment of all the items stated in the Evaluation Matrix in Appendix 2:

Bidders must:

- 1. Possess a valid Tax Compliance Certificate (TCC)*
- 2. Be listed on the Ministry of Finance Register of approved suppliers as per the National Contracts Commission in the above category. (Further information on NCC registration may be obtained at www.ocg.gov.jm)*
- 3. Possess coverage by Third Party Limits for Motor Vehicle Liability Insurance totaling a minimum of:*
 - a. \$10,000,000 for bodily injury or death to any one person*
 - b. \$10,000,000 for bodily injury or death for anyone event*
 - c. \$10,000,00 for property damage for any one event*

4. *Submit Audited Financial Statement*
5. *Prove their ability to provide financial and performance information (this information will be verified and will be used in the selection process).*

...Tender Rejection

The NYS retains the right to reject any or all proposals without incurring any liability to the affected Bidder and without any further obligation to inform the affected Bidder of the reasons for rejection.

...Evaluation Procedure

The NYS Evaluation Team will privately evaluate the proposals solely on the basis of the bidder's responsiveness to the RFP, applying the selection criteria as outlined in the Evaluation Matrix.

...NOTES

...The NYS reserves the right to select the Bidder who best meets the organisation's requirements.

...The National Youth Service is not obligated to the lowest of any bid.

...All decisions are final.

...The successful bidder must be prepared to deliver service immediately after the selection of the service provider, which should be by May 18, 2009; at which time an offer letter be submitted prior to the signing of the contract... ”

The OCG was also provided with a copy of a document which was entitled “**THE NYS ACTIONS REGARDING THE TRANSPORTATION TENDER**”. The referenced document indicated as follows:

“Based on Board directives, Sub-Committee meetings are to be held once per quarter and it is the responsibility of Board to call the meetings, hence the next meeting would have been due for June 2009.

The last Meeting was held on March 09, 2009:

- ✓ *The Board was presented with a draft of the Tender notice which included the Eligibility for Tender criteria and Evaluation Matrix for the Board’s review and feedback.*
- ✓ *The consensus was for it to be a Public Tender.*
- ✓ *No feedback was received*
- ✓ *Next Meeting: June 2009*

May 1, 2009 May 3, 2009: *Tender notice was advertised twice in the Gleaner with a 2 weeks deadline for Tender submissions on/before May 15, 2009.*

May 14, 2009: External support Request at Tender Opening:

- a. *A representative from the National Contracts Commission was requested (Lim/J.Brown/Wisdom) to be at the opening a week and half prior to the opening.*
- b. *A formal letter was submitted to NCC on May 14, 2009 inclusive of a copy of the:*
 - ✓ *Notice and*
 - ✓ *Tender Document*

May 15, 2009: Tender Opening

Only 2 companies collected Tender Document. One other company came on the Tender Open Opening paid for documents. They were advised that it would be extremely late for them to fulfil and submit the requirements for 2:00 p.m. The requested a reimbursement of their Bid Fee.

The Evaluation Committee consisted of 3 NYS Officers based on availability of Officers and NCC guidance (Hyatt/Wisdom)

- ✓ *The Tender Officer: HR & Admin Manager*
- ✓ *The Internal Auditor*
- ✓ *The Finance & Accounts Director*
- ✓ *Programmes Manager*
- ✓ *Programmes Director*

May 19, 2009 to June 02, 2009:

The Procurement Committee consisted of:

- ✓ *HR & Admin Manager*
- ✓ *The Internal Auditor*
- ✓ *The Finance & Accounts Director*

A recent review of the NCC Procurement Committee Members Guideline (see Appendix I) indicate that HR & Admin Manager and the Internal Auditor should not have been on the Procurement Committee.

Fulfilment of the Selection Criteria

The sole Carrier met the selection/eligibility criteria outlined in the Notice and the Tender Documents as follows:

- ✓ *Cover Letter*
- ✓ *Executive Summary*

- ✓ *TCC Certification*
- ✓ *NCC Certification*
- ✓ *Proof of Liabilities Insurance*
- ✓ *Financial Status:*
 - a. *Audited Financial Statement (Last Two (2) Years)*
 - b. *Bank Reference Letter*
- ✓ *Financial Proposal*
- ✓ *Technical Proposal*

May 19, 2009: *Post evaluation, the Carrier was written to regarding offer of contract pending submission of Companies Registration Certificate. (10 working days notice given for same).*

June 2, 2009: *Contract was reviewed was signed with the following entities as signatories:*

- i. *The Ministry of Education, Permanent Secretary- awaiting signature post Sub-Committee's review and approval of processes*
- ii. *The National Youth Service, Executive Director- signature affixed*
- iii. *The Carrier, Manager Representative -signature affixed*

June 18, 2009: *Sub-Committee meeting re: Circular regarding above 100k new Procurement Procedures*

The NYS Team presented all related documents for the Tender Processes (See Appendix 3):

- ✓ *Newspaper Advertisement of Notice*
- ✓ *Tender Document*
- ✓ *Copy of Contract*
- ✓ *NCC Acknowledgement Letter of receipt re: request for their presence at Opening*

- ✓ *Internal Approval Letter*

Sub-Committee to review and sign off the Permanent Secretary's signature

NEXT STEP:

As per discussions (Hyatt/J. Brown/Wisdom), submit the following to National Contracts Commission, Inspection Unit:

- ✓ *A signed copy of the contract*
- ✓ *Copies of eligibility requirements met by the Carrier”¹²³*

Based upon the foregoing document, the OCG found that the tender submission deadline was 2009 May 15. The OCG found that two (2) companies collected tender documents and another company purchased a tender document on the day of the bid opening. The latter company was reportedly advised that it would be late for it to fulfill and submit the requirements by the 2:00 p.m. submission deadline. In this regard, the company reportedly requested a reimbursement of its bid fee, which was granted.

The OCG identified the following documentation to support the foregoing assertions:

1. Documents which were entitled *“INVITATION TO TENDER Receipt of Tender Documents Sheet”*. The documents indicate that a tender document was purchased by the JTS on 2009 May 7, and same was witnessed by a Ms. Karen Llewellyn, a NYS representative.

It must also be noted that a tender document was also purchased by Soul to Soul Transportation Company Limited. A tender document was also purchased by a company

¹²³ Document entitled THE NYS ACTION REGARDING THE TRANSPORTATION TENDER.

named Secret. The notation on the document indicated that it was “*due to late pickup /collection of tender documents... day of tender opening...*”

2. The Bid Opening Attendance Record indicated that Ms. Sonia McFarlane, JTS, Ms. Rosemarie Sinclair-Dowdie, NYS, and Mrs. Angela Wisdom, NYS, were present at the Bid Opening. It was stated on the Bid Opening Attendance Record that Mr. Andre Bernard was in “*attendance for the evaluation only*”.
3. The Bid Receipt Record indicated that only one bid was received and this was from the JTS. The referenced bid was received at 1:48 p.m. on 2009 May 15.
4. The Bid Opening Record revealed that the “*Comparable Estimate: Average cost per parish:*” was as follows: ‘Cobbla \$53,884.61’ and ‘Chestervale \$104,076.92’. The Bid Opening Record did not indicate the amount which was tendered by JTS. However, it indicated that a TCC and NCC were submitted along with proof of Liability Insurance, Audited Financial Statements, Bank Reference Letter, Financial Proposal and Technical Proposal.

The OCG also found that the following letter, which was dated 2009 May 12, and which was captioned “**Re: Response to tender from Jamaica Transportation Service**”, was sent from the JTS, to the NYS, along with its bid submission. The referenced letter indicated as follows:

“Following the Invitation to Tender notice in the public media JTS takes pleasure in responding and use this medium to firstly express gratitude for the professional relationship we have enjoyed over the last 4 years. As you know we provide logistical and all types of services which require bus, taxi or courier. As an islandwide transport group partnering with our bus operators consisting of a large fleet of vehicles we have been doing various types of movement, namely contracted travel for staff, excursions and shuttle.”

We know what the expectations of transportation services to NYS are and we are fully prepared to continue honouring all such obligations should we be given the opportunity again. We are also cognisant that one has to be committed, prompt, professional and accessible to engage in transport operations with the NYS. Jamaica Transport Service, whose business is primarily first class people transportation fits in ever so suitable with your objective, and with our tenets based on punctuality, reliability and value for money we are sure we fall into the [sic] your mission.

Enclosed are the required documents including , brief company profile, valid Tax Compliant Certificate, National Contracts Commission listing, Financial Plan and other information you would deem worthwhile.”¹²⁴

The OCG notes that a Company Profile and Curriculum Vitae were submitted with the foregoing letter. The Company also submitted the following quotations:

¹²⁴ Letter which was dated 2009 May 12 was sent from JTS to the NYS in response to Invitation to Tender from NYS which was dated 2009 September 18.

Quotation # 1

NATIONAL YOUTH SERVICE TRANSPORTATION PRICE SCHEDULE FOR KNOX'S

Cobbla Campus, Manchester, 2007 - 2010

Parish	Pick Up Points @ National Youth Service (NYS) Parish Offices	Departure Time To Knox's Cobbla Training Centre (Start of Camp)	Departure Time From Knox's Cobbla Training Center (End of Camp)	**Number of participants with at least 2 pieces of Luggages	*Return Trip 15 Seater \$	Return Trip 30 Seater \$
KMR	National Youth Service (NYS) Head Office 6 Collins Green Avenue Kingston 5	6:30 a.m.	1:00 p.m.	40	36,000	44,000
St. Catherine	NYS Office @ the Social Development Commission (SDC) Complex 4 Port Henderson Rd.	6:30 a.m.	1:00 p.m.	35	36,000	43,000
Clarendon	NYS Office @ SDC Complex 8b Manchester Avenue, May Pen	6:30 a.m.	1:00 p.m.	25	34,000	42,000
Manchester	NYS Office @ SDC Complex Lot 15-16 Nashville Plaza, Mandeville	6:30 a.m.	1:00 p.m.	25	18,000	24,000
St. Elizabeth	Cruz Business Centre, Institution Drive, Santa Cruz	6:30 a.m.	1:00 p.m.	25	56,000	64,000
Westmoreland	109 Great George Street, Savanna-la-mar	6:30 a.m.	1:00 p.m.	25	62,000	80,000
Hanover	National Commercial Bank Main Street, Lucea	6:30 a.m.	1:00 p.m.	20	70,000	84,000
St. James	LOJ Shopping Centre (at the Electronic Billboard) Howard Cooke Blvd, Montego Bay	6:30 a.m.	1:00 p.m.	30	64,000	74,000
St. Ann	National Commercial Bank St Ann's Bay Petcom Gas Station Alexandria Nam's Hardware Browns Town	6:30 a.m.	1:00 p.m.	30	60,000	74,000
Trelawny	Trelawny Credit Union Falmouth Clarke's Town Square Albert Town Square. Albert Town	6:30 a.m.	1:00 p.m.	20	62,000	78,000
St. Mary	Port Maria Civic Centre, Hogdson Street, Port Maria	6:30 a.m.	1:00 p.m.	20	70,000	96,000
Portland	1. Shines Plaza, Port Antonio 2. Texaco Gas Station Buff Bay	6:30 a.m.	1:00 p.m.	20	96,000	120,000
St. Thomas	1. Morant Bay Port Office Queen Street 2. NCB, Yallahs	6:30 a.m.	1:00 p.m.	20	90,000	110,000

NOTES:

- ✓ *** The number of participants per parish represents approximate numbers as they may vary according to Corps Training requirement/s not exceeding the stated annual training target.*
- ✓ *Buses should be able to accommodate participants and luggage, where the bus is unable to accommodate both there should be separate transportation for participants and luggage.*
- ✓ *Buses are expected to be at the pickup points at 6:00 a.m. for departure promptly at 6:30 a.m. The same applies for the return trip. Departure at 1:00 p.m. requires that the buses are at Cobbla on or before 12:00 noon.*
- ✓ *Only NYS Staff/Personnel is authorized to give permission for the buses to depart.*
- ✓ *It must be noted and observed that once the buses leave the pick up points the next stop should be at the destination point: Knox's Cobbla Campus, Manchester or the designated NYS Site.*
- ✓ *Transportation Services for more than 17 Passengers, will require more than one (1) bus. Where a fifty (50) seater is used, it is twice the cost of a 30 seater.*

Quotation # 2

**NATIONAL YOUTH SERVICE TRANSPORTATION PRICE SCHEDULE FOR ECO VILLAGE,
CHESTERTVALE CAMPUS, ST. ANDREW 2009-2010**

Parish	Pick Up Points @ National Youth Service (NYS) Parish Offices	Departure Time To Chestervale Training Centre (Start of Camp)	Departure Time From Chestervale Training Center [sic] (End of Camp)	**Number of participants with at least 2 pieces of Luggages	*Return Trip 15 Seater \$	Return Trip 30 Seater \$
KMR	National Youth Service (NYS) Head Office 6 Collins Green Avenue Kingston 5	6:30 a.m.	1:00 p.m.	40	46,000	56,000
St. Catherine	NYS Office @ the Social Development Commission (SDC) Complex 4 Port Henderson Rd.	6:30 a.m.	1:00 p.m.	35	46,000	60,000
Clarendon	NYS Office @ SDC Complex 8b Manchester Avenue, May Pen	6:30 a.m.	1:00 p.m.	25	70,000	96,000
Manchester	NYS Office @ SDC Complex Lot 15-16 Nashville Plaza, Mandeville	6:30 a.m.	1:00 p.m.	25	90,000	110,000
St. Elizabeth	Cruz Business Centre, Institution Drive, Santa Cruz	6:30 a.m.	1:00 p.m.	25	90,000	120,000
Westmoreland	109 Great George Street, Savanna-la-mar	6:30 a.m.	1:00 p.m.	25	100,000	125,000
Hanover	National Commercial Bank Main Street, Lucea	6:30 a.m.	1:00 p.m.	20	110,000	135,000
St. James	LOJ Shopping Centre (at the Electronic Billboard) Howard Cooke Blvd, Montego Bay	6:30 a.m.	1:00 p.m.	30	100,000	120,000
St. Ann	National Commercial Bank St Ann's Bay Petcom Gas Station Alexandria Nam's Hardware Browns Town	6:30 a.m.	1:00 p.m.	30	90,000	110,000
Trelawny	Trelawny Credit Union Falmouth Clarke's Town Square Albert Town Square. Albert Town	6:30 a.m.	1:00 p.m.	20	110,000	135,000
St. Mary	Port Maria Civic Centre, Hogdson Street, Port Maria	6:30 a.m.	1:00 p.m.	20	60,000	82,000
Portland	1. Shines Plaza, Port Antonio 2. Texaco Gas Station Buff Bay	6:30 a.m.	1:00 p.m.	20	70,000	88,000
St. Thomas	1. Morant Bay Port Office Queen Street 2. NCB, Yallahs	6:30 a.m.	1:00 p.m.	20	60,000	84,000

NOTES:

- ✓ *** The number of participants per parish represents approximate numbers as they may vary according to Corps Training requirement/s not exceeding the stated annual training target.*
- ✓ *Buses should be able to accommodate participants and luggage, where the bus is unable to accommodate both there should be separate transportation for participants and luggage.*
- ✓ *Buses are expected to be at the pickup points at 6:00 a.m. for departure promptly at 6:30 a.m. The same applies for the return trip. Departure at 1:00 p.m. requires that the buses are at Chestervale on or before 12:00 noon.*
- ✓ *Only NYS Staff/Personnel is authorized to give permission for the busses to depart.*
- ✓ *It must be noted and observed that once the buses leave the pick points the next stop should be at the destination point: Eco Village Campus, Chestervale, St. Andrew or the designated NYS Site.*

**Transportation services for more than 13 Passengers, will require more than one (1) bus. Neither a fifty (50) seater or a (40) seater can traverse the Chestervale route's terrain.*

**NATIONAL YOUTH SERVICE TRANSPORTATION PRICE SCHEDULE FOR
LECTURERS' RETURN TRIP FROM THE UNIVERSITY OF TECHNOLOGY (UTEC) TO
ECO VILLAGE CHESTERVALE CAMPUS, ST. ANDREW) 2009-2010**

<i>LECTURERS' DEPARTMENT TIME FROM THE UNVERSITY OF TECHNOLOGY TO CHESTERVALE TRAINING CENTRE</i>	<i>LECTURER'S DEPARTURE TIME FROM CHESTERVALE TRAINING CENTRE TO THE UNIVERSITY OF TECHNOLOGY</i>	<i>*RETURN TRIP 15 SEATER \$</i>
<i>7:00 a.m.</i>	<i>10:45 a.m.</i>	<i>6.000</i>
<i>9:00 a.m.</i>	<i>2:00 p.m.</i>	<i>6.000</i>
<i>12:30 p.m.</i>	<i>3:15 p.m.</i>	<i>6.000</i>
<i>1:30 P.m.</i>	<i>5:15 p.m</i>	<i>6.000</i>

NOTE:

- 1. The National Youth Service (NYS) Programmes Manager and/or Central Manager is to be notified if the total assigned Lecturing Personnel per trip is not at the site at the designated departure time/s.*
- 2. The NYS will also notify the designated driver of any changes for the total Lecturers' transportation on or before the designated departure time/s.*

**The cost is \$14,000 per 15 per day for more than 2 trips*

The following Evaluation Matrix was used by the NYS to evaluate the bid which was submitted by JTS.

“GENERAL EVALUATION MATRIX

Name of Tender			
<i>RFP NUMBER: MAY 01, 2009</i>			
<i>DUE DATE: MAY 15, 2009</i>			
Particulars		Bidders	
Description			
	POINTS	SCORES	
Bid Qualification Checklist			
1) Cover Letter			
2) Executive Summary			
3) TCC Certification			
4) NCC Certification			
5) Proof of Liability Insurance			
6) Financial Status:			
a. Audited Financial Statement (Last Two (2) Years)			
b. Bank Reference Letter			
7) Financial Proposal			
8) Technical Proposal			
A. <u>Financial Proposal</u>	30		30
• Price/Rate Schedules <i>(To be completed and returned with Proposal)</i>	30		
B. <u>Technical Proposal/Bidder Stability</u>	70		70
1. Ability to Service Contract	40		
• Customer’s Service References <i>(As per enclosed Client Referral Form)</i>			
• Past Performance Record			

Name of Tender			
<i>RFP NUMBER: MAY 01, 2009</i>			
<i>DUE DATE: MAY 15, 2009</i>			
Particulars		Bidders	
Description			
	POINTS	SCORES	
<ul style="list-style-type: none"> • <i>Number of Similar Works (Appendix 3)</i> 			
<ul style="list-style-type: none"> • <i>Staff Complement & Contract Supervision</i> 			
2. <i>Fulfillment of Service Specifications</i> <ul style="list-style-type: none"> • <i>Appendix 1</i> 	20		
3. <i>Years in Business</i> <ul style="list-style-type: none"> • <i>Companies Valid Registration Certificate</i> 	10		
TOTAL TECHNICAL SCORE	100		100

The OCG also identified a letter which was dated 2009 May 19, from Mrs. Angela Wisdom, to the JTS, under the caption **“Re: Pre-acceptance of JTS Proposal Offer”**. The referenced letter advised as follows:

“With reference to the tender opening for return transportation services held at the Head Office, National Youth Service on Friday May 15, 2009; kindly be advised that your proposal has met the terms and conditions of the eligibility criteria as outlined in the Request for Proposal. We however, require a current Company Registration Certificate for the completion of the processing for the contract offer.

Kindly submit same within ten (10) working days or on or before June 02, 2009. Failure to do so will result in a no-contract offer.”

The OCG notes that the pre-acceptance letter was dated four (4) days after the date of the Tender Opening.

The OCG also found that the following Memorandum, which was dated 2009 June 2, to Rev. Adinhair Jones (the then Executive Director) from Mrs. Angela Wisdom, the then Human Resources & Administration Manager, which was captioned “*Approval of Contractor for Transportation Services*” indicated, *inter alia*, as follows:

“As per last Board Sub-Committee Procurement Meeting’s decision dated March 09, 2009 and with reference to previous discussions, a Public Tender was conducted for the provision of return transportation services on May 15, 2009. Kindly refer to the attached Tender documents regarding the requirements.

Of the two companies that collected tender documents only one (1) company submitted a proposal. The Jamaica Transport Service’s proposal was accepted for the award of a contract. Kindly find 2 copies of same attached for your approval and signature.”

The Tender Evaluation Team was as follows:

Mrs. Angela Wisdom, Human Resources & Admin Manager

Mrs. Rosemarie Dowdie, Internal Auditor

Mr. Andre Bernard, Finance & Accounts Director

Please be advised also that the National Contracts Commission was contacted during the two week period prior to the tender opening, which was formalized with a letter (addressed to Mr. Jordon Brown) regarding their attendance at the Opening. However, they were unable to attend same due to lack of available personnel.

With regards to recent conversations with Mr. Micheal Hyatt, Senior Inspector, NCC we are now required to submit the following:

- ✓ *A signed copy of the contract*
- ✓ *Copies of all eligibility requirements met by the Carrier”¹²⁵*

The following is an extract of the written contractual agreement which was consummated between the NYS and the JTS:

“AGREEMENT FOR TRANSPORTATION LOGISTICS SERVICES

AGREEMENT entered into effective as of the 02nd June 2009.

Between NATIONAL YOUTH SERVICE (EMPLOYER) with principal place of business at 6 Collins Green Avenue, Kingston 5 and JAMAICA TRANSPORT SERVICES (CARRIER) with principal place of business at 125 Maxfield Avenue, Kingston 10.

The National Youth Service requires transportation logistics services, including the use of motorized carriers, in its operations, in order to meet its distinct needs. Jamaica Transport Services is engaged as a logistics provider in the business of arranging and providing for the transportation of National Youth Service Participants and personnel for compensation and has agreed to provide such services to the National Youth Service on the terms and conditions hereinafter set forth.

Contract Period:

¹²⁵ Memorandum which was dated 2009 June 2, from Mrs. Angela Wisdom (Human Resources & Admin Manager) to Rev. Adinhair Jones (Executive Director).

The contractual term is for twenty -two (22) months (approximately 2 years) as follows:

Year 1 2009 to 2010: June 02, 2009 to April 21, 2010

Year 2 2009 to 2010: To be determined as per 2010-2011 budgetary allocation

ACCORDINGLY, the National Youth Service and Jamaica Transport Services agree, as follows:

1. DEFINITIONS

For all purposes of this Agreement, the following terms shall have the following meanings. Such meanings to be equally applicable to both the singular and plural forms of the terms defined, even if not so noted below.

"Participants" means youth within the 17-24 age group recruited and presently undergoing a sojourn on the National Youth Service Programme.

"Personnel" mean members of staff of the National Youth Service, especially contracted individuals forming administrative staff of the residential camps and Military personnel on an assignment of duty to the National Youth Service

"Residential Training Facility" means The Knox Cobbla Campus, The Chestervale Youth Camp or any other facility being used by the National Youth Service for the purpose of training.

"Corporate Service Office" means any office owned or leased by the National Youth Service that is under the control of one or more of its functionaries, being used for the sole purpose of dispensing the services of the National Youth Service

“Points of Destination” and “Origin” means any of the National Youth Service’s Residential Training Sites listed in the **Schedule C and D** and Corporate Offices listed in Schedule F, or such other locations as maybe designated from time to time during the term of this Agreement.

“Carrier” means an owner/operator of motor vehicle that is engaged by the National Youth Service to transport Participants and Personnel.

“Transportation Logistics Services” means arranging for Transportation Services and otherwise providing the services called for in Section 2.

2. SERVICES TO BE PROVIDED BY JAMAICA TRANSPORT SERVICES

2.1

Jamaica Transport Service hereby agrees to provide to the National Youth Service during the term of this Agreement the Transportation Logistics Services more fully specified in the following paragraphs of this Section 2, as requested from time to time by the National Youth Service. Jamaica Transport Service shall provide such services in accordance with the **Service Specifications set forth in Schedule A**, and any additional obligations as set forth in Schedule B and Schedules C, D, E.(as each may be reasonably changed from time to time by the National Youth Service), and for the compensation provided for in Section 3.

In fulfillment of its obligations to the National Youth Service hereunder, the Jamaica Transport Service shall:

(a) Arrange for and carry out safe and timely Transportation Services associated with the movement of Participants on the National Youth Service Programme, to the residential

training facilities (as defined in Section 1) and back in accordance with the points of origin and destination forming Schedule B.

It is understood and agreed that

(b)As time is of the essence with respect to the transportation of National Youth Service Personnel and Participants, Jamaica Transport Service will provide all equipment necessary to effect the timely and safe movement of such Personnel and Participants in accordance with Schedule B and Schedules C, D, E from points of origin to points of destination.

(c)It will not give any other party higher priority than that given to the National Youth Service with regards to equipment availability.

(d)Jamaica Transport Service will use its best efforts to effect cost savings for the National Youth Service in either the rates charged by Jamaica Transport Service or by improving the processes and procedures involve in the transportation of The National Youth Service Participants and Personnel.

2.2

Jamaica Transport Service shall have the right to subcontract the Transportation Services required hereunder to other Carriers, provided any such Carrier shall be reasonably acceptable to The National Youth Service and qualified to perform the required Transportation Services. All subcontractors appointed by Jamaica Transport Services shall be subject to the terms and conditions set forth herein.

2.3

The services rendered shall be consistent with operating authority held by the Jamaica Transport Services per its relevant Transport License Certificate(s), and any extensions or

additions thereto. In addition, Jamaica Transport Service shall have and maintain at all times during the course of this Agreement, and subcontract Transportation Services only to Carriers who demonstrate that they have, appropriate licenses to operate chattels as public carriers, including, without limitation persons and cargo, as may from time to time be required by any applicable governmental or regulatory body. During the period of time that this Agreement is in effect, it is understood that it is the Jamaica Transport Service that is providing Transportation Services and that all services tendered to Jamaica Transport Service or its authorized agents and designated subcontractors under this Agreement are carried out pursuant to the terms and conditions of this Agreement.

2.4

Jamaica Transport Service agrees to comply during the life of this Agreement with all rules and regulations established by the Jamaica Transport Authority and other state agencies having jurisdiction over the Transportation Services to be performed pursuant to this Agreement. The Jamaica Transport Services shall also maintain a satisfactory safety rating as stated in Jamaica Transport Services' Work plan and Schedule G.

3. RATES, CHANGES AND PAYMENTS

3.1

The Jamaica Transport Service will be compensated on the basis of the provisions, rates, and charges as per Schedules C, D and E attached hereto and incorporated herein by reference (including subsequent revisions thereof approved in the manner provided for by amendments to this Agreement, as set forth in Section 18). Except as expressly provided for in this Agreement, the provisions, rates, and charges in Schedules C, D and E shall include all costs associated with the services provided by Jamaica Transport Service, its agents and designated subcontractors, under this Agreement.

3.2

*The rates set forth in Schedules C, D and E shall be applicable to Services from **June 02, 2009 to April 21, 2010**. Rates for each subsequent Financial Year shall be mutually-agreed on in **March of the prior Financial Year**. The contract period will be subject to a rate and performance review every six (6) month's based on the fluctuations in fuel charges.*

Other than adjustments for escalation in fuel charges, such rates shall not increase over the prior year by more than the percentage increase in the rate of inflation. Increases in fuel costs shall be accommodated for via the fuel charge in this Section 3.2.

3.3

Notwithstanding the fuel escalation charge and the annual rate provided for in Section 3.1, The National Youth Service or the Jamaica Transport Service may each seek an adjustment over or below that provided for by Sections 3.1 and 3.2, in the rates or provisions set forth herein, by written request to the other party due to unusual, unavoidable and unanticipated occurrences. Such adjustments to the rates shall be allowed once per calendar quarter, and shall be retroactive to the date the occurrence necessitating the adjustment. The parties shall use their best efforts to agree upon such mutually accepted rate adjustments.

3.4

If during the term of this Agreement, the National Youth Service changes its Residential Training facilities or any of its Corporate Offices locations by adding or removal of Residential Training sites or Corporate Offices (the "New Location") to the list set forth in Schedule F, The National Youth Service may initially award the New Location to the Jamaica Transport Service for a period not to exceed six (6) months, at rates proposed by the Jamaica Transport Service calculated on the same economic basis as the then-current agreed-upon rates. During this six (6) months period, the National Youth Service will request rate proposals for transportation services to and from the New Location(s) from the Jamaica Transport Service and other transportation providers. Upon completion of this

proposal process, and in the sole discretion of the National Youth Service, the National Youth Service may award the New Location to a carrier deemed by the National Youth Service as the most appropriate. Unless expressly agreed otherwise in writing, any service for new Location(s) awarded to the Jamaica Transport Service shall be under the terms of this Agreement.

3.5

Jamaica Transport Service will invoice the National Youth Service on the first business day of the month for transportation charges incurred during the previous month. The National Youth Service shall pay such invoices within thirty (30) days of receipt of a correct and proper invoice. All other amounts otherwise chargeable to the National Youth Service hereunder shall be invoiced by the Jamaica Transport Service reasonably and promptly in accordance with normal business practices following the month in which such were incurred by the Jamaica Transport Service. Such timely invoices shall similarly be paid by the National Youth Service promptly in the ordinary course in accordance with the National Youth Service's normal business practices... ”

The OCG notes that the contract was not signed by the Permanent Secretary although there was a space for the signature of the Permanent Secretary.

The OCG also identified a Memorandum, which was dated 2009 June 18, to the NYS Board Procurement Sub- Committee, from the NYS Procurement Committee, which indicated, *inter alia*, as follows:

As per last Board Sub-Committee Procurement Meeting’s decision dated March 09, 2009, the Public Tender was conducted for the provision of return transportation services on May 15, 2009. Kindly refer to the attached documents for your review and approval and for the Permanent Secretary’s final approval:

- ✓ *Copy of Tender Document regarding the requirements for the service*
- ✓ *Internal approval letter*
- ✓ *Contract*
- ✓ *NCC letter of acknowledgement regarding their attendance at Tender Opening*

This is in fulfillment of the new procurement procedures guidelines regarding Agencies of the Ministry of Education as outlined in meeting dated June 11, 2009.

Minutes of the Meetings of the Procurement Sub-Committee of the Board regarding the 2009 Transportation Tender

Detailed, hereunder, are particulars of the Procurement Sub-Committee Meetings which were held on 2009 June 11 and 2009 June 18, respectively, to discuss, *inter alia*, the procurement of Transportation Services.

a. "MINUTES OF BOARD'S PROCUREMENT SUB COMMITTEE MEETING

Held on Thursday, June 11, 2009

At 6 Collins Green Avenue, Kingston 5

Present were:

- ✓ ***Mr. Robert Miller (Chairman)***
- ✓ ***Rev. Adinhair Jones (Executive Director)***
- ✓ ***Mr. Andre Bernard (Finance & Accounts Director)***
- ✓ ***Mrs. Angela Wisdom (Human Resources & Administration Manager)***
- ✓ ***Miss Ann Marie Smith (Procurement Services Administrator (Office Manager))***

Purpose of Meeting

The meeting was called by the Executive Director to clarify matters raised at the Board Meeting of May 28, 2009 in relation to operational procedures, standards and expectations of the Board's Procurement Sub Committee.

The Chairman explained that coming out of the last Board of Directors' Meeting there were concerns addressed to him which he was not able to respond as Chairman of the Procurement Sub Committee. He indicated that he has been asked to give a status report on procurement matters and practices observed. He further informed the meeting that the purpose was to appraise the organisation of some new requirements. Mrs. Wisdom noted the concerns and reminded the Chairman that based on Board directive, sub-committee meetings

are to be held on a quarterly basis, which meant that the next meeting would be due in June. Mr. Miller stated however, that the meetings needed to be regularized based on new procedures going forward in relation to the procurement of goods or services.

New Procurement Guidelines

The Chairman indicated that based on a recent MOE circular that the Permanent Secretary is the Accounting Officer of the Agency which falls under the Ministry and not the Executive Director. Mr. Bernard requested from the Chairman a copy of the Circular from the Ministry indicating the change in the interpretation of who is the Accounting Officer of the Agency since we had not yet received the particular Circular. The Chairman promised that he would provide a copy of the document. Mr. Miller further read to the meeting the methods and requirements to be observed when the organization procures. He also asked if a copy was required. Mrs. Wisdom stated that the NYS is currently in possession of same based on a recent correspondence from the Ministry of Education. She also reminded the Chairman that since the Procurement Sub-Committee was given a copy of NYS' 2008 Procurement Procedures at the first meeting that there has been no feedback or recommendations for changes to the document.

Mr. Miller informed the meeting that any contract over \$100,000 as of the meeting date must be routed through the Executive Director, the Board Procurement Sub Committee and then the Permanent Secretary for approval. He also indicated that he must be given a monthly report on all items procured for the period. On the matter of tenders, when the organisation is conducting one, a member of the Board must be a part of the Selection Committee. In order to facilitate the new procedures, the Procurement Sub Committee must meet more frequently.

Mrs. Wisdom advised that based on the foregoing, the NYS Procurement Procedure document will be updated to reflect the changes and that the new standards will be adhered to effective to the date of the meeting....

Transportation Tender

*Of the two (2) companies that collected tender documents only one (1) submitted a proposal; that was Jamaica Transport Service. A request was made (verbally & in writing) for a representative from National Contracts Commission to attend the tender opening; no one was able to attend. A copy of the tender document was also submitted to NCC. Jamaica Transport Service was awarded the contract. In light of the new procedures, approval is to be sought from the Board's Procurement Sub Committee and the Permanent Secretary. Documentation is also to be submitted to the National Contracts Commission post these approvals.*¹²⁶ (OCG Emphasis)

¹²⁶ “Minutes of the NYS BOARD'S PROCUREMENT SUB COMMITTEE MEETING Held on Thursday, June 11, 2009

*“Procurement Sub Committee Meeting
Held on Thursday, June 18, 2009
At 6 Collins Green Avenue, Kingston 5*

Present were:

Mr. Robert Miller (Chairman)

Ms. Garcia Imoru

Mr. Harry Blake

Mr. Andre Bernard

Ms. Ann Marie Smith

Mrs. Angela Wisdom

Mr. Richard Sharpe

Call to Order

The meeting was called to order at approximately 3:20 p.m.

The Chairman indicated that the meeting would be a short meeting since some persons had to leave due to other commitments; he also indicated that only the most urgent matters would be addressed.

This was Mr. Harry Blake's first sitting with the Sub-Committee.

Ms. Imoru expressed a need for procurement guideline documents to be provided to assist the Committee with the selection process.

Transportation Tender

The documentation for the Transportation Tender was tabled for approval of the procedures by the Sub Committee. Mr. Blake sought to clarify how the tender process was done. Mrs. Wisdom referred to the Minutes of the previous meeting that explained the processes that would have been taken. She further explained that a Public Tender was conducted and submitted the following documents for the Sub-Committee's review: the Newspaper advertisement, Tender document, Contract and other related documents. The Committee was also advised that only 2 companies had collected tender documents and only one submitted a proposal. The National Contracts Commission (NCC) was invited to the tender but based on several calls and a letter, the entity was unable to send a representative for the Opening. Mrs. Wisdom referred the Committee to a copy of the request letter to the NCC, which was reviewed by Ms. Imoru.

Mr. Blake objected to the signing off of the contract since there was no member of the Board present at the Tender Opening. He requested that the tender process be re-done so that Sub Committee members can attend. The Chair also agreed with the recommendation. Ms. Imoru stated that the processes were ok. However at the time when approval was being sought from the Sub Committee, the Contractor was already engaged and that in order not to put him out of his schedule we should engage for the next camp. Mrs. Wisdom clarified that the internal Procurement Procedures document was previously submitted to the Procurement Sub Committee last year and at no time did any member indicate that any changes should be made to the document or for a Board member to sit on the Evaluation Committee. She also sought clarification as to whether there were any problems with the processes followed for the Public Tender based on the documentation presented. **Mrs. Wisdom advised that she would write/consult with the National Contracts Commission (NCC) on how to proceed with the request for a re-tender.**

The Committee was also advised that the contract was signed by the Carrier and the NYS and was awaiting the Permanent Secretary's signature. Ms. Imoru expressed that

she cannot sign off on the documents presented after the contract was awarded. The Board members expressed their disapproval of the granting of the contract without it coming to them first for perusal. They expressed that they were uncomfortable with the arrangement and would not sign off on the memorandum.

The NYS requested guidance on how to proceed with the Carrier who was already providing service and the fact that 2 Camps were scheduled for July. The Committee advised that in the interim the organisation should use the contracted Carrier until the tender process was finalised. Mr. Miller queried what the contract amount awarded and when it was awarded. He was informed that based on the rate sheet presented the estimated amount for the contract was approximately \$4-\$5M for 2 Camps on a monthly basis and that the contract process was finalized in early June 2009; this was required to facilitate the scheduled camps. Mr. Blake left the meeting at this point.

Mr. Miller further queried the total contract value for the year and the length of the contract. Mr. Bernard advised that the yearly value would be approximately \$32M. Mr. Miller stated that for that amount the Board would have had to sign off on the contract award. Ms. Imoru stated that a similar step should have been taken with this matter as with the Trelawny matter, which was a much smaller amount that had come to the Committee. The Committee was reminded that the matter came to the Committee based on the IDB loan implications. Mr. Miller was advised that the Contract was for 2 Years and that it did not state a figure because it is referenced to the rate sheet.

The NYS further explained that based on a recent Office of the Contractor General (OCG) meeting held in early June that the entity had sought clarification on whether the Transportation and Camp contracts, which totaled over \$7M per Camp, required NCC approval due to their annual cumulative values. The OCG representative advised that as invoiced contracts the values would be based on the monthly invoiced value and not the cumulative value due to the probability of the Camps being held. The NYS

stated that while the Board's view is understood, they must remember that the Carrier was selected based on the requirements for the public tender.

Mr. Bernard queried whether the Board was not aware of the Tender process that was conducted for the Transportation service. Mrs. Wisdom restated that the documents for the tender process inclusive of the OCG Procurement Reports from 2008 were submitted at the last Sub Committee Meeting. Mr. Miller and Ms. Imoru acknowledged receiving the documents and advised that they did not have a problem with it. Mr. Bernard further advised that the Carrier may pursue legal proceedings against the entity for the re-tender.

Ms Imoru reiterated that she needed to be brought up to speed with the whole procurement procedure and that the Board should have been made aware of same by the NYS. Mrs. Wisdom indicated that the NYS should also be guided by the Sub-Committee and reminded the Committee that the NYS Procurement Guidelines presented last year had outlined the basic procedures at the time. Mrs. Wisdom recommended that in light of the current misunderstandings, the team needed to clarify the structure of future meetings including a quorum of Board members for each meeting. Ms. Imoru indicated that a governance structure is being examined at a broader Board level. She also expressed that in terms of accountability as a Board they will ensure that they are `offay' [sic] with all the procedures. She further requested a soft copy of the procurement guidelines for all Committee members before the next meeting. Mrs. Wisdom stated that this will be provided.

Circular for Permanent Secretary's \$100K Approval

Mr. Bernard made another request of the Chairman for a copy of the document that indicates that the Head of the Entity is the Permanent Secretary and not the Executive Director and that everything over \$100,000 must be sent to the Permanent Secretary. Mr.

Miller clarified that he had said that the Head of the Entity is the Executive Director and the Permanent Secretary is the Accounting Officer. The NYS had requested same in the last meeting. Mr. Miller indicated that the document was delivered to him under private cover for his personal use but he would try again to locate it in order to share it with the Committee.”

Having regard to the foregoing, the OCG found that the JTS was engaged by the NYS, before the matter was discussed at the Procurement Committee level. The OCG also notes that, based upon the Minutes of the Procurement Sub-Committee, at “**...the time when approval was being sought from the Sub Committee, the Contractor was already engaged...**¹²⁷ The OCG also notes that the Minutes of the Meeting indicated that the contract which was dated 2009 June 2, was not signed by the Permanent Secretary.

The OCG also notes that there was also a request for a re-tender of the transportation contract as a result of the foregoing irregularities.

The OCG also notes that there were discussions relating to the projected value of the contract and, as such, it was stated that the “**yearly value would be approximately \$32M**”¹²⁸. However, it was indicated in the Minutes of the Procurement Sub-Committee of the Board that the members indicated that, based upon the value of the contract, the contract would have needed the approval of the Board.

The OCG notes that based upon the projected value of the contract, same would have, as a matter of course, also required Cabinet approval.

The OCG also notes that the 2009 June 18 Minutes indicated that “**based on a recent Office of the Contractor General (OCG) meeting held in early June that the entity had sought**

¹²⁷ NYS’ Procurement Sub Committee Meeting Held on Thursday, 2009 June 18.

¹²⁸ NYS’ Procurement Sub Committee Meeting Held on Thursday, 2009 June 18

clarification on whether the Transportation and Camp contracts, which totaled over \$7M per Camp, required NCC approval due to their annual cumulative values. The OCG representative advised that as invoiced contracts the values would be based on the monthly invoiced value and not the cumulative value due to the probability of the Camps being held. The NYS stated that while the Board's view is understood, they must remember that the Carrier was selected based on the requirements for the public tender.” However, the OCG has not seen any written documentation indicating that such advice was given. **(OCG Emphasis)**

The OCG also found that on 2009 July 2, a meeting of the Procurement Sub-Committee of the Board was held. The referenced Minutes of the Meeting indicated the following:

**“MINUTES OF
NATIONAL YOUTH SERVICE PROCUREMENT BOARD SUB COMMITTEE
MEETING HELD ON THURSDAY, JULY 2, 2009 AT 6 COLLINS GREEN
AVENUE, KINGSTON 5**

PRESENT WERE:

Mr. Robert Miller (Chairman)

Mrs. Angela Wisdom

Ms. Garcia Imoru

Mr. Andre Bernard

Mr. Howard Gardener

CALL TO ORDER

The meeting was called to order by the Chairman at approximately 10:45a.m...

MATTERS ARISING

Review of NYS Procurement Procedures with NCC Guidelines

Mrs. Wisdom made reference to the previous NYS Procurement Guideline document which was submitted to the Sub Committee at the initial meeting of the Committee; she indicated that at the time when the document was circulated the limit was \$251,000 and now it has been raised to \$275,000. The goods that the entity does not seek approval for external to the entity would be under \$10M based on the new procurement guidelines. The entity has the ability to approve goods up to \$10M and anything above that has to be routed through the Permanent Secretary and the National Contracts Commission (NCC). It lays out the basic areas that the organisation can approve/not approve; it also outlines the General Procurement Committee for the NYS and the Tender Evaluation Procurement Committee.

Mrs. Wisdom further explained that the document was brought back to the meeting for members to fully look at it to see if there are any objections because it was not fully assessed by the Committee initially. She also informed the meeting that she has advised the Executive Director that she will be asking Miss Smith to revise it inline with the new NCC Guideline. In reviewing the document she said that they learnt that the Internal Auditor can sit on the Evaluation Committee but must not be a part of the Internal Procurement Committee. She further indicated that based on the Minutes of the last meeting, the Board had requested that a member of the Board be designated on the Evaluation Committee.

Miss Imoru asked for clarification of the grey areas from the last meeting; she was advised that one area was if a member of the Board is required to sit on the internal Evaluation Committee for Tenders. Mr. Miller advised that the request was for a member of the Board to sit on the General Procurement Committee; Mrs. Wisdom explained that if a member of the Board sits on the General (internal) Procurement Committee they

would be playing a double role on 2 similar Committees and that they basically would be involved in the operation side of the organisation.

Mr. Gardener explained that the Board cannot be accountable to itself unless it has an Executive Chairman. The internal process has to be done first and the Executive Director approves; the Executive Director also sits on the Board so it is for him to refer to the Sector Committee for a general ratification at the Board level. Ms. Imoru indicated that there is need to determine what the caps are and what goes where. She says that a determination needs to come to the Board.

Mrs. Wisdom indicated that based on NCC guidelines and previous practices, anything above \$251,000 would have been referenced for noting with the Board; anything above \$4M went to the Permanent Secretary directly. She gave as an example of when the NYS' renovation of the third floor; all the paper work was done by the NYS. The Executive Director signed off on it and it went to the Permanent Secretary for her review and approval. The Permanent Secretary wrote back to say that the NYS was not to spend the money on the property (the over \$4M was inclusive of infrastructural works, wiring etc) but recommended instead to look outside for purchasing/other options.

Mrs. Wisdom went on to say that clarification is needed for the new requirement above \$100,000 that was raised at the June 11, 2009 meeting stating that anything above that amount must go to the Board Sub Committee and then the Permanent Secretary. She alluded to the fact that she has asked the NCC and they do not know about it and they are not aware of any circular that any Ministry has sent out and they have not sent out any. In relation to the matter of the Board sitting on the Evaluation Committee, they indicated that it is not a requirement in their summary; Mrs. Wisdom explained that if the Board wishes to do it so however, it would be within their purview to do so.

Mr. Gardener enquired that if it is that the Executive Director is not the Accounting Officer how can he be summoned to the Public Accounts Committee. Mr. Miller responded by saying the Executive Director would be there to give support to the Permanent Secretary who is the Accounting Officer; it is the Permanent Secretary that answers to the Contractor General. Mr. Gardener went on to explain that the NYS is a statutory organisation that has a Board and a Chairman unlike National Centre for Youth Development which is a Department of the Ministry of Education. Mrs. Wisdom indicated that she will be sending a copy of the NYS structure to the NCC for clarification regarding this grey area. Mr. Miller reiterated that anything over \$100,000 must come to the Board Procurement Sub Committee for approval; anything over \$275,000 must be signed off by the entity head and forwarded to the office of the Permanent Secretary for approval.

Mr. Gardener cautioned that the Committee has to be very careful in what it does. There are companies that are established by instruments of Parliament and if you are a director then you have certain duties that attract legal obligations; your power is governed by the instrument establishing the company. He says that we need to know whether or not what we have as a Board Sub Committee and what power we have as a Board and if we can give directive outside of the Contractor General directive or the normal Public Sector because it will have implications for every single Board member; if a member acts contrary to his duties then he is accountable. We need to establish the powers of the Sub Committee or the powers of the Board to give directive outside of the Public Sector guidelines or the Contractor General guidelines in terms of procurement for the agency; it is best for us to get a determination on those issues before we go forward in terms of new directives against old directives because of implications for other Board members and the organisation on a whole.

Mrs. Wisdom stated that as a team, the Committee needed to define now the different area for rationalisation. Miss Imoru suggested that the areas we seek clarity on should

be: (1) who is the Accounting Officer, (2) What is to be brought to the Procurement Committee and the different areas. Mrs. Wisdom added the limits for noting versus limits for approval The documents for this meeting will be sent to the Board for ratification. The \$100,000 is to be ratified by the Board. The information is to be given to Miss Clarke with a summary of the areas to be ratified for submission to the Board.

STRUCTURE OF PROCURMENT [sic] COMMITTEE AND QUORUM

Mrs. Wisdom outlined that a quorum and a vice -chair needed to be defined for the meetings and referenced a Summer Employment/KFC matter that had to be submitted directly to the Permanent Secretary due to the absence of the Chair. Ms. Imoru indicated that she cannot see a quorum being less than three persons and they will have to impress upon the other members the importance of being present at the meetings.

At this point, Mr. Miller indicated that while it is not yet ratified that Mr. Harry Blake is a member of the Procurement Sub Committee. He said that he thought Mr. Blake was a member; they were of the notion that he was a member until Miss Clarke brought it to his attention. Mr. Blake was notified not to come to anymore meetings until it is ratified by the Board.

The Committee recommended that the quorum be three persons from the Board. Mr. Miller recommended Ms. Imoru to serve as Deputy Chairman for the Committee and also for Mr. Blake to serve on the Committee if he is still interested. Mrs. Wisdom expressed her appreciation to the members of the Board who have been supportive. She also requested clarification regarding the time for the meetings given the varied and timely nature of the procurement processes. After deliberations, Ms. Imoru suggested that the Committee meets every second Thursday of the month at 2p.m. This was agreed by all with flexibility where required...

TRANSPORTATION TENDER

Based on discussions from the last meeting it was recommended that a retender be done for the transportation service. There was to be a subsequent follow-up meeting that did not take place. The tender documents will be taken back to the Board for further ratification.

Mr. Gardener sought to clarify that the transport contract is \$0; there is no value to the contract; what is used is a rate sheet. He said that he would have a contract that says if there is work available then the successful bidder would benefit.

The final recommendation is that the re-tender will be taken to the Board for ratification.”

As a part of its regular monitoring activities, the OCG, on 2009 June 25, wrote a letter to Mrs. Angela Wisdom, the then Human Resource and Administration Manager, NYS. The referenced letter indicated, *inter alia*, as follows:

“Re: Invitation to Tender Contractors for Transportation Services for Knox Cobbla Campus and Eco Village Campus

The Office of the Contractor-General (OCG), acting on behalf of the Contractor-General, and pursuant to Section 4 of the Contractor-General Act, will be monitoring the referenced procurement.

Further to this, we are requesting that you furnish us with the following information:

- (1) A copy of Tender Receival Form;*
- (2) A copy of the Evaluation Report and;*

(3) *A Status Report...*¹²⁹

In response to the foregoing OCG letter of 2009 June 25, the NYS wrote a letter which was dated 2009 July 7 to the OCG, which indicated the following:

1. Re: NYS Transportation Tender 2009

As per discussions (Wisdom/Hyatt) and (Wisdom/J.Brown) and letter dated May 14, 2009, please be advised that the Tender Opening was conducted with the following outcomes:

- 1. Two (2) Companies collected the Tender Document*
- 2. One (1) Company submitted a Tender Proposal and sat at the Tender Opening*

The selected Company was Jamaica Transport Services, which met all the requirements for the eligibility criteria as outlined in attached copies of the following documents:

- ✓ Evaluation Matrix and Tender Notice*
- ✓ Offer Letter dated May 19, 2009*
- ✓ Internal procurement approval correspondences*

Based on the fact that only one company had tendered, we had advised the Carrier in the Offer Letter to proceed with the service and that the contract would be awarded subject to the submission of a current Companies Registration Certificate. Kindly refer to enclosed copies of previous and current Companies Certificate.

¹²⁹ OCG's Letter to Mrs. Angela Wisdom which was 2009 June 25, "Re: Invitation to Tender Contractors for Transportation Services for Knox Cobbla Campus and Eco Village Campus.

A copy of the Contract inclusive of the Carrier's Price /Rate Schedules is attached for your perusal. The contract which was signed in the first week of June 2009 under the NYS and Carrier's signatures facilitated the start of the Camps on May 20, 2009. However, it is awaiting the Permanent Secretary's signature. Kindly refer to details of Status Report for further clarification.

2. Office of the Contractor General (OCG)/National Contracts Commission (NCC) Clarification

With reference to the attached NYS Organogram and Diagram 1 outlining the current approval processes, we are requesting the OCG/NCC's clarification and guidance regarding the following queries from recent Board and NYS discussions:

- 1. To define what the Accounting Officer means in relation to Head of Entity (Statutory)*
- 2. Is the Accounting Officer superior, coterminous to the Head of the Entity or is it the opposite?*
- 3. Based on the organizational structure, how does either posts relate to a Statutory Agency with its own bank account versus a Department of a Ministry?*
- 4. Based on best practices, under what condition, if any, should a Board member sit on the Agency's Evaluation Committee or Internal Procurement Committee?*
- 5. What limit expenditure should a Board Sub-Committee approve as against noting?*
- 6. What limit should the Executive Director approve within \$10M?*

We await your comments and or/no objection to the process herein tendered for Item 1 and your clarification regarding Item 2.

It is important to note that the OCG, having reviewed the contract, found that the Contract was not signed by the Permanent Secretary.

Having regard to the foregoing, the OCG found that the NYS conducted a tender process utilizing the Selective Tender Procurement Methodology in 2009 and, in so doing, published an advertisement in a national newspaper publicizing the tender opportunity.

The Tender Receipt Records of the NYS indicated that the JTS and Soul to Soul Transportation Company Limited purchased tender documents, however the money was refunded to Soul to Soul Transportation Company Limited. The Bid opening record indicated that the comparable estimate for Cobbler was \$53,884.61 and Chestervale \$104,076.92. The documents also indicated that the JTS was the only bidder, while the Bid Receipt indicated that the bid was submitted on 2009 May 15, at 1:48 p.m. The Bid Opening Record also indicated that the persons in attendance at the bid opening were Ms. Sonia McFarlene, Ms. Rosemarie Dowdie, Mrs. Angela Wisdom and Mr. Andre Bernard.

The agreement between the NYS and the JTS, which was dated 2009 June 2, indicated the following:

The contractual term is for twenty –two (22) months (approximately 2 years) as follows:

Year 1 2009 to 2010: June 02, 2009 to April 21, 2010

Year 2 2009 to 2010: To be determined as per 2010-2011 budgetary allocation.”

It was, however, noted that pre-approval was granted by Mrs. Angela Wisdom, while approval was granted by the Rev. Adinhair Jones.

The Permanent Secretary of the Ministry of Education was also slated to be a signatory of the contract. However, no signature was present for the Permanent Secretary on the executed contract document.

The foregoing was evidenced by a copy of the official contract document, which was dated 2009 June 2, in which the signature line for the Accountable Officer, the Permanent Secretary, Mrs. Audrey Sewell was left blank. The contract was, however, signed by Mr. Trevino Ashman, President of JTS, and Rev. Adinhair Jones, the Former Executive Director, NYS.

Based upon the estimated yearly value of this contract, the OCG has found that same should have been submitted to the Cabinet for its approval. Further, the contract was not signed by all the relevant parties.

The Procurement approval process of the NYS

The OCG also requested that Mrs. Angela Wisdom, Mr. Keith Duncan and Mrs. Dasmine Kennedy give their respective accounts of the procurement approval process which existed at the NYS during the period in which the services of the JTS were engaged.

As such, the OCG, in its 2010 January 18, Requisition asked Mrs. Angela Wisdom to detail the procurement and approval processes which were in place at the NYS during the period of 2008-2009. The following were the questions which were posed by the OCG:

OCG: “9. Please provide an Executive Summary detailing the Procurement approval process(es) which was/were in existence at the NYS for the period of 2008 March 1 through to 2009 August 31. The Executive Summary must detail:

- i. The method by which tenders were invited by the NYS in respect of varying monetary value ranges;*
- ii. The names and titles of the Officers/Officials and/or Employees of the NYS who were/are involved in the procurement approval process(es);*
- iii. The roles and responsibilities of each of the named Officers/Officials and/or Employees in the referenced procurement process;*
- iv. Particulars of the varying approval levels, if any, which were/are in existence at the NYS;*
- v. The manner in which approval was/is granted and all hierarchical steps involved in the process;*
- vi. The name(s) and title(s) of the NYS Officers/Officials and/or Employees who were/are required to give the **final** approval of procurement and/or contracting undertaken by the NYS.”¹³⁰*

¹³⁰ The OCG’s Requisition to Mrs. Angela Wisdom which was dated 2010 January 18.

Mrs. Angela Wisdom, in her sworn response to the OCG's Requisition, which was dated 2010 January 28, indicated, *inter alia*, the following:

Question 9: "Please provide an Executive Summary detailing the Procurement approval process(es) which was/were in existence at the NYS for the period of 2008 March 1 through to 2009 August 31. The Executive Summary must detail:

Question 9i: The method by which tenders were/are invited by the NYS in respect of varying monetary value ranges:

Response 9i:

Apart from the 2005 Limited Tender, the NYS first advertised tenders were conducted as follows:

- a) April 2009: A Selective Tender was conducted for the KOICA-NYS MIS Project (See Appendices 11 and 17). Estimated value of scope of work was below \$4,000,000. This was our first tender process and first civil works project. We therefore sought the guidance of and collaboration of the Ministry of Education's Building Unit namely the Chief Architect and a Quantity Surveyor.*
- b) May 2009: A Selective Tender conducted for the Transportation Services for Corps Training May 2009- March 2010. estimated at \$4, 500,000 per month, if both Camps are held in a given month. (See Appendices 18 and 19)*

An Open Tender was recommended by the NYS Board Procurement Subcommittee in March 2009. However, an internal review of NCC guidelines for tenders revealed that selective tender would have been appropriate for the Transportation Tender as open tenders are for contracts above the threshold. Hence, Selective Tender was chosen based on the monthly value of the service.

*This was derived from internal deliberations with the NYS management team in 2008 as per members listed below. The value of the tender was estimated at the **monthly value based on the Rate Sheet** provided for the service as per Camp/s held monthly subject to a monthly invoice.*

- ✓ *Mrs. Angela Wisdom*
- ✓ *Rev. Adinhair Jones*
- ✓ *Mr. Howard Gardener*
- ✓ *Mr. Andre Bernard*
- ✓ *Mr. Hewitt Walker*

*The **cumulative value** was assessed not to be prudent or practical as it would open the NYS to a commitment for an annual sum pegged to the uncertainty of Camps being held within a climate of financial instability.*

Question 9ii: *The names and titles of the Officers/Officials and/or Employees of the NYS who were/are involved in the procurement approval process (es);*

Question 9iii: *The roles and responsibilities of each of the named Officers/Officials and/or Employees in the referenced procurement process;*

Question 9iv: *Particulars of the varying approval levels, if any, which were/are in existence at the NYS;*

Responses 9 ii, 9iii and 9iv: *Kindly refer also to Table 1: NYS Procurement Committee Profile in Responses 6 and 7.*

Recommendation Level:

The general process was that the Internal Procurement Committee or Junior Managers or Office Manager would recommend based on the presentation and review of required quotes or tender process criteria/proposals according to NCC requirements. Generally the minimum 5 quotes were solicited for all transactions below tender requirements.

Pre-Approval Level:

- ✓ *Mrs. Angela Wisdom*
- ✓ *Mr. Hewitt Walker*
- ✓ *Mr. Howard Gardener*
- ✓ *Internal Procurement Committee*

Final Approver/s:

March 2009

*Rev. Adinhair Jones
Board Sub-Committee*

After June 11, 2009:

*Board Sub-Committee
Board of Directors
Permanent Secretary*

Question 9v: The manner in which approval was/is granted and all hierarchical steps involved in the process:

Response 9v: The Head of Unit pre-approved recommendations of the respective requisitioning Unit or the Office Manager and/or the Internal Procurement Committee recommended/pre-approved where it applied. These pre-approved recommendations were then submitted to the Executive Director. After June 2009,

Board Sub-Committee, Board of Directors and/or the Permanent Secretary and/or NCC or Cabinet for final approval as per required nature of procurement value.

Response 9v: *It was also the practice that the Executive Director pre-approved all work prior to submission to the Board or the PS, where it was so required based on approval limits for his office under \$10M.*

*Kindly refer to Page 9 of NYS Procurement Policy in **Appendix 14** and NYS In A Nutshell: Rationalisation of Procurement Procedures in **Appendix 19** (presented to Board of Directors by Executive Director at July 2009 Board Meeting)*

Question 9vi: *The name(s) and title(s) of the NYS Officers/Officials and/or Employees who were/are required to give the final approval of procurement and/or contracting undertaken by the NYS.*

Response 9vi:

Prior to March, 2009: Referencing Response 9v, final approval would be given by the Executive Director for procurement below \$10,000,000.

March 2009-June 2009 After March 2009, these were reviewed and endorsed by the Board Procurement Sub-Committee. Any procurement above that value would be approved by the Board of Directors and/or the Permanent Secretary, where it applied, based on value of goods/services or availability of Sub-Committee Chairman.

Post June 11, 2009: Executive Approval limit was reduced to approval under \$100K. Any Procurement above \$100K was instructed by Chairman of

*Proc. Sub-Committee to be approved by Committee, Board of Directors/PS, post Executive Director Recommendation. **Kindly refer to Minutes of June 18, 2009 and July 2, 2009 for related changes and Appendices 15-16 and 19.***

The OCG, in its Requisitions which were dated 2009 September 1, also asked Mr. Keith Duncan and Mrs. Dasmine Kennedy the following questions:

“Please provide an Executive Summary detailing the Procurement Approval process(es) which has/have been in existence at the NYS for the past eighteen (18) months, i.e. 2008 March 1 through to 2009 August 31. The Executive Summary must detail:

- i. The method by which tenders were/are invited by the NYS in respect of varying monetary value ranges;*
- ii. The names and titles of the Officers/Officials and/or Employees of the NYS who were/are involved in the procurement approval process(es);*
- iii. The roles and responsibilities of each of the named Officers/Officials and/or Employees in the referenced procurement process;*
- iv. Particulars of the varying approval levels, if any, which were/are in existence at the NYS;*
- v. The manner in which approval was/is granted and all hierarchical steps involved in the process;*
- vi. The name(s) and title(s) of the NYS Officers/Officials and/or Employees who were/are required to give the **final** approval of procurement and/or contracting undertaken by the NYS.*

Mrs. Dasmine Kennedy, in her sworn response to the OCG’s Requisition which was dated 2009 September 14, stated, *inter alia*, the following:

“Question 9: Please provide an Executive Summary detailing the Procurement approval process(es) which has/have been in existence at the NYS for the past eighteen (18) months, i.e. 2008 March 1 through to 2009 August 31. The Executive Summary must detail:

Response: *The procurement approval processes which have been in existence at the NYS for the past eighteen months are detailed on the General Procurement Chart Process (Appendix 16). The figures have been adjusted from J\$251,000 to J\$275,000 and from J\$4M to J\$10M.*

Due to concerns raised by the Board of Management regarding procurement practices, the Procurement Sub Committee made a recommendation which was subsequently approved by the Board where the Permanent Secretary, Ministry of Education was asked to approve expenditures over J\$275,000 effective June 2009. The Board also made recommendation that goods and services with values over J\$100,000 be presented to the Sub Committee of the Board for approval.

Question 9i: *The method by which tenders were/are invited by the NYS in respect of varying monetary value ranges;*

Response: *Three tenders were conducted on April 2, 9 & 14, 2009 prior to the transportation tender. A limited tender was used based on the monetary range. My investigation revealed that a selective tender process was used for the transportation tender, although recommendations were made for Public Tender from the Procurement Sub Committee.*

Question 9ii: *The names and titles of the Officers/Officials and/or Employees of the NYS who were/are involved in the procurement approval process(es);*

Response: *The procurement approval processes involved the following persons:*

- *Mrs. Angela Wisdom - Former Human Resource & Administration Manager*
- *Rev. Adinhair Jones – Former Executive Director*

Question 9iii: *The roles and responsibilities of each of the named Officers/Officials and/or Employees in the referenced procurement process;*

Response: *Based on submissions from the Procurement Committee, the former H.R. Manager would pre-approve and submit to the Former Executive Director who would in turn submit to the Board Procurement sub-committee for approval.*

Question 9iv: *Particulars of the varying approval levels, if any, which were/are in existence at the NYS;*

Response: *The approval level commenced at the Heads of Departments who would approve pending pre-approval from Internal Procurement Committee'. Recommendation is submitted to Executive Director/ Board of Directors and or the Permanent Secretary and/ or NCC or Cabinet for final approval.*

Question 9v: *The manner in which approval was/is granted and all hierarchical steps involved in the process;*

Response: *Same as (iv) above.*

Question 9vi: *The name(s) and title(s) of the NYS Officers/Officials and/or Employees who were/are required to give the final approval of procurement and/or contracting undertaken by the NYS.*

Response: *Final approval would come from the Executive Director and the Chairman of the Procurement Sub-committee.*

Mr. Keith Duncan, in his sworn response to the OCG's Requisition, which was dated 2009 October 5, stated, *inter alia*, the following:

“Question 9: *Please provide an Executive Summary detailing the Procurement approval process(es) which has/have been in existence at the NYS for the past eighteen (18) months, i.e. 2008 March 1 through to 2009 August 31. The Executive Summary must detail:*

Response: *The procurement approval processes which have been in existence at the NYS for the past eighteen months are detailed on the General Procurement Chart Process (Appendix 16). The figures have been adjusted from J\$251,000 to J\$275,000 and from J\$4M to J\$10M.*

In the Board Meeting of July 15, 2009, the Procurement Sub-Committee recommended that: (i) Goods and services valuing over J\$100,000 be presented to the Board Procurement Sub Committee for approval; and (ii) The Permanent Secretary should be asked to approve expenditures over J\$275,000.

Question 9i: *The method by which tenders were/are invited by the NYS in respect of varying monetary value ranges;*

Response: *In the Acting Executive Director's investigation she found that three tenders were conducted on April 2, 9 & 14, 2009 prior to the transportation tender. A limited tender was used based on the monetary range.*

*An invitation to tender was advertised in the Gleaner on Friday, May 1, 2009.
(Please refer to Appendix 13)*

Question 9ii: *The names and titles of the Officers/Officials and/or Employees of the NYS who were/are involved in the procurement approval process(es);*

Response: *The procurement approval processes involved the following persons:*

- *Mrs. Angela Wisdom - Former Human Resource & Administration Manager*
- *Rev. Adinhair Jones – Former Executive Director*

Question 9iii: *The roles and responsibilities of each of the named Officers/Officials and/or Employees in the referenced procurement process;*

Response: *Based on submissions from the Procurement Committee, the former H.R. Manager would pre-approve and submit to the Former Executive Director who would in turn submit to the Board Procurement sub-committee for approval.*

Question 9iv: *Particulars of the varying approval levels, if any, which were/are in existence at the NYS;*

Response: *The approval level commenced at the Heads of Departments who would approve pending pre-approval from Internal Procurement Committee. The recommendation is then submitted to Executive Director/ Board of Directors and or the Permanent Secretary and/ or NCC or Cabinet for final approval.*

Question 9v: *The manner in which approval was/is granted and all hierarchical steps involved in the process;*

Response: *Same as 9(iv) above.*

Question 9vi: *The name(s) and title(s) of the NYS Officers/Officials and/or Employees who were/are required to give the final approval of procurement and/or contracting undertaken by the NYS.*

Response: *Final approval would come from the Executive Director and the Chairman of the Procurement Sub-committee.”¹³¹*

¹³¹ Mr. Keith Duncan’s sworn response to the OCG’s Requisition which was dated 2009 October 5

The Internal Procurement Process at the NYS

Based upon the Government of Jamaica Public Procurement Guidelines and the queries which had been raised regarding the procurement of the services of the JTS, by the NYS, the OCG sought to examine the internal procurement process which existed at the NYS and which would have informed its procurement activities.

In response to the OCG's request for such information, Mrs. Angela Wisdom, in her response to the OCG's Requisitions, which was dated 2010 January 28, submitted a document which was entitled "*National Youth Service Procurement Policy Document (As submitted in October 2008 to Board Procurement Sub-Committee) (To be updated re: NCC Limits)*" The referenced document indicated, *inter alia*, as follows:

"The Process of Procuring Good/Services:

"The procurement of goods and services within the National Youth Service is based on a needs assessment of the different programmes and projects of the organization and is guided by the policies, procedures and standard of the National Contracts Commission and the Ministry of Finance and Planning as follows:

Goods below J\$251,000.00

- *When goods or services are needed a written or verbal request is made to the Procurement Services Administrator.*
- *A minimum of three quotations are solicited from potential suppliers. Limited tendering is also used based on the requested service or goods to be procured.*
- *The quotes are vetted and based on the price, quality and availability a supplier is chosen.*

- *A memo is submitted for the Human Resource & Administration Manager's approval or relevant department head's approval.*
- *This is subject to final approval by the Executive Director.*
- *A purchase order is generated and approved by the Director of Finance and Accounts or the Senior Accountant.*
- *Upon delivery, the goods are checked, if the goods are in good condition the invoice is stamped and signed and submitted to the Accounts Department for payment.*
- *Payment is facilitated between one week and a month subject to the availability of funds.*
- *In the case of personnel for consulting services, a contract is generated by the Human Resources and Administration Manager in consultation with relevant department heads.*

Goods below J\$4,000,0 [sic]

Where the estimated value of goods or services is equal to or greater than J\$251,000 but less than J\$4M the same processes are channeled through the Procurement Committee for Executive approval.

Goods below J\$4,000,000.00

Where the estimated value of goods or services is equal to or greater than J\$4M the same process is channeled through the Tender Evaluation and Procurement Committee and the Board of Director's Procurement Committee. The NCC procedures for a public tender are adhered to and conducted as follows:

- *A tender notice or invitation to tender is developed and is nationally advertised*
- *The tender evaluation committee approves the Criteria Evaluation Matrix*
- *The acceptable tenders are reviewed and a contractor is selected by the Committee based on the Criteria Evaluation Matrix*
- *Submission is made to the Cabinet Office for final selection and approval*

<i>*General Procurement Committee</i>	<i>Tender Evaluation Procurement Committee</i>
1) <i>Executive Director</i>	1) <i>Executive Director</i>
2) <i>Human Resources & Admin Manager</i>	2) <i>Human Resources & Admin Manager</i>
3) <i>Procurement Services Administrator</i>	3) <i>Internal Auditor</i>
4) <i>Director of Finance & Accounts</i>	4) <i>Director of Finance & Accounts</i>
5) <i>Programmes Director</i>	5) <i>Corporate Services Specialist</i>
6) <i>MIS Manager</i>	6) <i>External Consultant or Technical Advisor</i>
	7) <i>The other members named in the General Procurement Committee based on the specific procurement needs</i>

***The Procurement Committee:**

The latter two persons are invited to the committee based on the technicality of the purchase and the need for added expertise in aiding the process.

The Committee takes into consideration the following criteria:

- ✓ *Net purchase price*
- ✓ *Maintenance and other service costs or consumables*
- ✓ *Availability of service parts*
- ✓ *Terms of payment*
- ✓ *Delivery time/date*
- ✓ *Functional characteristic of the goods*
- ✓ *The life span of goods*
- ✓ *Service provider's track record*

After careful vetting a recommendation is made and approval is made is sought through the Executive Director. The Executive Director through the Resources & Admin Manager then proceeds to seek approval through the Ministry's contract awards process, wherever it applies.

Companies from which goods valued over \$251,000 (to update) are purchased are required to submit before any contractual arrangement is completed the following:

- ✓ Registration letter for the National Contracts Committee*
- ✓ Tax Compliance Certificate*
- ✓ General Consumption Tax Number*
- ✓ For deposit request, the company must submit a banker's guarantor to indemnify the NYS from any from loss or non-delivery of goods and/or services....*

Contracts/Procurement Reports:

As an agency of the government, the NYS is required to submit to the Office of the Contractor-General and the Ministry of Education and Youth a report of all contract awards or procurement within the limit of \$251,000-\$3.5M.

These are prepared by the Finance & Accounts Unit.

Disposal of Assets:

The assets are first identified and prepare the list the assets that should be written off based on usability. A request letter is submitted to the Board of Survey, Ministry of Finance and Planning. The Board of Survey will examine the lists of assets that should be written off. They would recommend which assets are to be destroyed or sold based on their assessment. The assets are then removed from the NYS asset listing as soon as the written recommendation is received from the Board of Survey.

NOTES

TCC Requirement:

Suppliers are required to provide a valid TCC for all purchases even those below \$251,000 to verify their compliance status

National Contracts Commission (NCC) Referral:

Contracts valued over 4M will be referred to the NCC.

Re: New Limit

Effective October 2008, the report limit has been revised to \$275,000-\$10M.¹³²

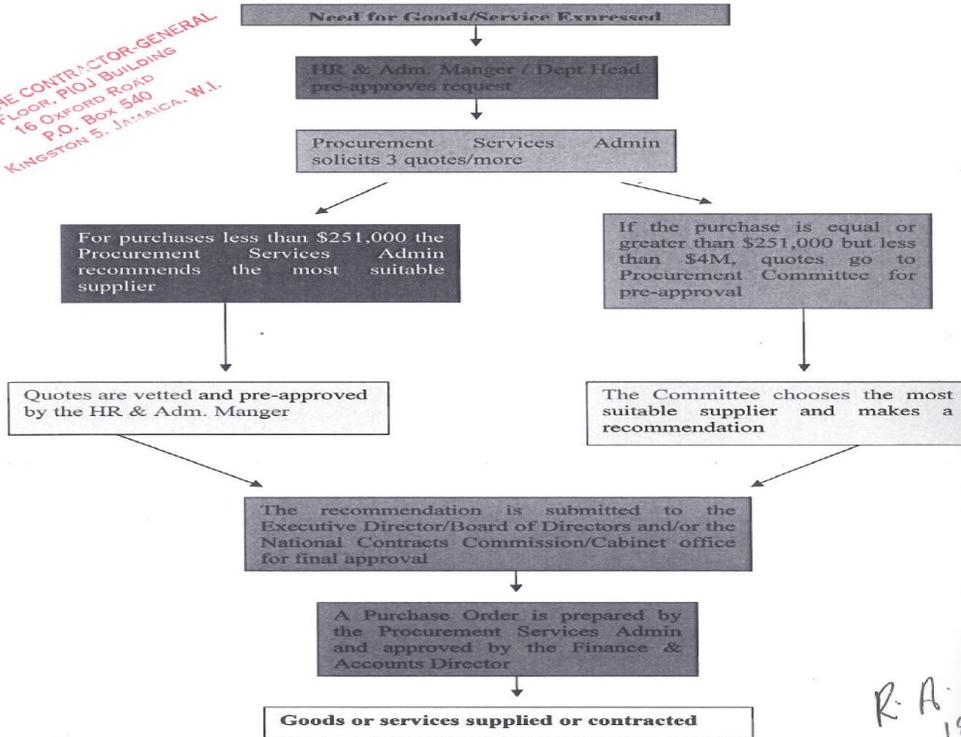
The foregoing documentation and information were also provided by Mr. Keith Duncan and Mrs. Dasmine Kenney in their responses to the OCG.

In support of her response regarding the NYS' internal procedures, Mrs. Angela Wisdom, in her sworn response to the OCG's Requisition, which was dated 2010 January 28, also provided the OCG with the following documentation:

¹³² Mrs. Angela Wisdom sworn response to the OCG's Requisitions which was dated 2010 January 28,

GENERAL PROCUREMENT CHART PROCESS: Update Chart Processes

OFFICE OF THE CONTRACTOR-GENERAL
1st Floor, PIOJ Building
16 Oxford Road
P.O. Box 540
Kingston 5, JAMAICA, W.I.



NYS/HR&AD/REVISED 01.08.2008

R. A. Scott
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The OCG notes that there is no document indicating that there was a standard procurement procedure at the NYS prior to 2008.

The Members of the Procurement Committee of the NYS

The OCG, by way of its Requisition which was dated 2009 September 1, asked Mr. Keith Duncan the following questions, regarding the members of Procurement Committee of the NYS:

“Did the NYS have a Procurement Committee in place within the last eighteen (18) months, i.e. 2008 March 1 through to 2009 August 31? If yes, please provide the following information:

- i. The names and titles of the members of the NYS’ Procurement Committee for the period 2008 March 1 through to 2009 August 31¹³³*

In his sworn response to the OCG’s Requisition, which was dated 2009 October 5, Mr. Keith Duncan indicated the following:

“Response The new NYS Board was instituted on June 10, 2008 and its first meeting was held on June 4, 2008. The Procurement Sub-Committee was formed in the meeting of July 31, 2008.

The members of the Executive Board Procurement Sub-Committee are:

- Mr. Robert Miller – Chairman***
- Ms. Garcia Imoru – Member up to July 2, 2009***
- Mr. Harry Blake – Member as of June 18, 2009***
- Ms. Bridgette McDonald-Levy***
- Ms. Florette Blackwood***
- Senator Dennis Meadows***

The following NYS employees based on the nature of their job functions, were also assigned to this committee:

¹³³ OCG’s Requisition which was dated 2009 September 1, to Mr. Keith Duncan (Question #7)

- *Mrs. Angela Wisdom*
- *Mr. Andre Bernard*
- *Ms. Ann Marie Smith*¹³⁴

The OCG, in its Requisition which was dated 2010 January 18, also asked Mrs. Angela Wisdom the foregoing question.

In her 2010 January 28 response to the referenced OCG Requisition, Mrs. Angela Wisdom indicated the following:

“Question 7 Did the NYS have a Procurement Committee in place within the last eighteen (18) months, i.e. 2008 March 1 through to 2009 August 31? If yes, please provide the following information:

Response 7: *Yes, prior to October 2008, the NYS had an Internal Procurement Committee. There was no officially assigned Board Procurement Sub-Committee prior to the new 2008 Board.*

After October 2008, it had both the Internal NYS Committee and a Board-NYS Procurement Sub-Committee.

Response 7i: *The names and titles of the members of the NYS’ Procurement Committee for the period 2008 March through to 2009 August 31:*

¹³⁴ Mr. Keith Duncan’s sworn response to the OCG’s Requisition which was dated 2009 October 5.

Table 1: NYS Procurement Committee Profile 2008 March to 2009 August 31

<u>*General Internal Procurement Committee</u> <u>(based on service needed)</u>	<u>NAMES</u>	<u>Tender Evaluation/ Procurement Committee KOICA Tenders</u>	<u>Committees Transportation Tender</u>
			<u>Tender Evaluation</u>
1) Human Resources & Admin Manager	Mrs. Angela Wisdom	2) Human Resources & Admin Manager	✓ Human Resources & Admin Manager
2) Procurement Services Administrator/Office Manager	Miss Ann-marie Smith	3) MIS Manager	✓ Internal Auditor, Mrs. Rosemarie Dowdie
3) Director of Finance & Accounts	Mr. Andre Bernard	4) Programmes Manager (HR Unit)	✓ Director, Finance & Accounts
4) Programmes Director	Mr. Howard Gardener	4) Director of Finance & Accounts	<u>Procurement Committee</u> ✓ The Above Named
5) MIS Manager	Mr. Richard Sharpe	5) External Consultant or Technical Advisor: Ministry of Education	✓ Programmes Director
6) Programmes Manager (HR Unit)	Miss Kay Hendricks		✓ Programmes Manager (HR Unit)
7) Other NYS Officers based on the specific procurement needs of project, programmes or field needs.	Kindly refer to Response 6	<u>Final Approver</u>	<u>Final Approvers</u>
8) Executive Director	Rev. Adinhair Jones	Executive Director	✓ Executive Director
9) Board sub-Committee , Board of Directors and/or Permanent Secretary, MOEY: Mrs.Audrey Sewell			✓ Board sub-Committee , Board of Directors and/or Permanent Secretary, MOEY: Mrs. Audrey Sewell/NCC/Cabinet Office

Kindly refer to Appendix 14 for the Internal NYS Procurement Policy and Rationalisation of Procurement Procedures in Appendix 19.

Response 7i:

After October 2008, the Board Procurement Sub-Committee included:

- *Mr. Robert Miller – Chairman*
- *Ms. Garcia Imoru – Member*
- *Mr. Harry Blake – Member as of June 18, 2009*
- *Ms. Bridgette McDonald-Levy*
- *Ms. Florette Blackwood*
- *Senator Dennis Meadows*

NYS Board Procurement Sub-Committee Staff Members included:

- *Mrs. Angela Wisdom*
- *Mr. Andre Bernard*
- *Ms. Ann Marie Smith*

The first recorded Quarterly Sub-Committee Meeting was held in March 2009. The Committee operated without a quorum or agreed guidelines for said Committee. Mr. Miller and Ms. Imoru were the only two (2) consistent members attending meetings, except for Mr. Harry Blake who started on June 18, 2009.

*The Internal NYS Procurement Policy (Appendix 14) was presented by the NYS for the Board's review and approval in March 2009. However, no feedback was received or recommendations made for changes, corrections or inclusions by the Board Members. **Kindly refer to Appendices 15 - 16 (from personal records) for Minutes since March 2009 and specifically Minutes dated March 9, 2009 and June 18, 2009 and Minutes dated July 2, 2009.***¹³⁵

¹³⁵ Mrs. Angela Wisdom's sworn response to the OCG's Requisition which was dated 2010 January 28.

Detailed below are the particulars of the questions which were posed to Mrs. Dasmine Kennedy, by the OCG, in its Requisition which was dated 2009 September 1 and her responses thereto, which were dated 2009 September 14, in regard to the Procurement Committee of the NYS:

“Did the NYS have a Procurement Committee in place within the last eighteen (18) months, i.e. 2008 March 1 through to 2009 August 31? If yes, please provide the following information:

Question 7i: *The names and titles of the members of the NYS’ Procurement Committee for the period 2008 March through to 2009 August 31?*

Response *The NYS had an Executive Board Procurement Sub-Committee during the stated period of which one function is to review and endorse recommendations by the Executive Director, in furtherance of recommendations by the internal evaluation committee. There is no clear indication of the existence of an internal procurement committee.*

The members of the Executive Board Procurement Sub-Committee are:

- *Mr. Robert Miller – Chairman*
- *Ms. Garcia Imoru – Member up to July 2, 2009*
- *Mr. Harry Blake – Member as of June 18, 2009*
- *Ms. Bridgette McDonald-Levy*
- *Ms. Florette Blackwood*
- *Senator Dennis Meadows*

The following NYS employees based on the nature of their job functions, were also assigned to this committee:

- *Mrs. Angela Wisdom*

- *Mr. Andre Bernard*
- *Ms. Ann Marie Smith*¹³⁶

Based upon the foregoing, the OCG found that the NYS Board Procurement Sub-Committee Staff Members included: Mrs. Angela Wisdom, Mr. Andre Bernard and Ms. Ann Marie Smith. However, after 2008 October, the Board Procurement Sub-Committee included:

- Mr. Robert Miller – Chairman;
- Ms. Garcia Imoru – Member;
- Mr. Harry Blake – Member as of June 18, 2009;
- Ms. Bridgette McDonald-Levy;
- Ms. Florette Blackwood; and
- Senator Dennis Meadows.

The OCG also found that according to Mrs. Wisdom, the May 2009 Tender Evaluation Committee included, Mrs. Angela Wisdom, Mr. Andre Bernard and Mrs. **Rose-Marie Dowdie, Internal Auditor**, while, in June 2009, the Tender Procurement Committee consisted of all the abovementioned individuals as well as the following individuals: Ms. Kay Hendricks, Programmes Manager, HRA Unit, and Mr. Howard Gardener, Programmes Director. Mrs. Wisdom also noted that the two additional officers, namely, Ms. Kay Hendricks and Mr. Howard Gardener, were also asked to conduct their own evaluations to inform their recommendation or non-recommendation thereof.

It is instructive to note that Section S-1020 B, (**Functional Responsibilities**) of the then applicable GPPH, 2008 November, indicated the following:

¹³⁶ Mrs. Dasmine Kennedy's sworn response to the OCG's Requisition which was dated 2009 September 14.

Procurement Committees

Each procuring entity shall establish a Procurement Committee consisting of not less than five (5) persons appropriate to the needs of the entity. The structure of the Procurement Committee shall be as follows:

- Chairman*
- Senior Financial Management Personnel;*
- Recording Secretary (non-voting member);*
- Procurement Personnel (non-voting member); and*
- Any other appropriately qualified Officer.*

Internal Audit personnel may not sit on the Procurement Committee.

Technical personnel must be co-opted as necessary, pursuant to the nature of the procurement.

The Procurement Committee should not be chaired by anyone who by virtue of their functional position in the entity, would approve or sign-off on procurements.

With respect to Parish Councils and Municipalities, an elected Councilor may sit on the Procurement Committee subject to the provisions above and provided that he/she is not in a conflict position pursuant to the Conflict of Interest provisions contained in this Handbook and the Parish Council Act.

The Accounting Officer shall set the monetary threshold for procurements to be reviewed by the Procurement Committee.

The Procurement Committee is mandated to:

- Review recommendations for award within the threshold set by the Head of the Entity*

- *Ensure compliance with relevant policies, guidelines and procedures;*
- *Review evaluations done by evaluation committees;*
- *Facilitate response to contractor inquiries;*
- *Maintain proper record of Committee meetings, including records of the procurement; and*
- *Ensure compliance with reporting obligations.*

Procurement Committee meetings should be convened pursuant to the needs of the entity. Proper minutes must be recorded and maintained for each meeting. The quorum of the meeting should be pre-determined by the Chairman and no meeting shall be properly convened in the absence of this quorum.

Having regard to the foregoing, the OCG also found that the Internal Auditor also served on the Procurement Committee, which constituted a contravention of the abovementioned provision. Based upon the documentary evidence which was provided to the OCG, it must be noted that the foregoing contravention was recognized and acceded to by the NYS in 2009.

Measures and/or steps taken by the NYS to ensure compliance with the GOJ Procurement Procedures

The OCG also sought to ascertain what measures were taken if any, by the NYS to ensure compliance with the GOJ Procurement Procedures. In this regard, the OCG, in its 2010 January 18 Statutory Requisition to Mrs. Angela Wisdom, posed the following question.

“What measures and/or steps were taken to ensure that the requirements of the Government Procurement Procedures Handbook (GPPH) were adhered to in the procurement of any and all goods, works and services which were provided by JTS? Please provide documentary evidence, where possible, in support of your response.”¹³⁷

In her sworn response to the OCG’s Requisition, which was dated 2010 January 28, Mrs. Angela Wisdom stated, *inter alia*, the following:

“Response 10

Kindly see response to Questions 2 and 9 which give details on how services were procured for JTS for the period 2005-May 2009. In May 2009 the process of conducting a public tender for the transportation services was initiated. The following process was followed:

- ✓ *Preparation of the tender documents (by HR & Admin. Manager/ least non-related Camp Management Officer).*
- ✓ *Preparation of the invitation to tender and placement in the Newspaper*
- ✓ *Issue of tender documents to potential suppliers who came to bid for the Contract.*
- ✓ *Placement of tender box in conspicuous spot at head office for collection of bid(s).*

¹³⁷ OCG’s 2010 January 18, Statutory Requisition to Mrs. Angela Wisdom.

- ✓ *Guidance sought and letter of request, dated May 19, 2009, was submitted to NCC for its attendance at Tender opening, due to Tender of this type being NYS' first. (See Appendix 11: Appendix 4).*
- ✓ *Public opening of tender box and recording of bid received. Three (3) NYS personnel and one (1) bidder representative were present.*
- ✓ *Evaluation of the sole bid received by members of the Tender Evaluation Committee was done independently using specified Tender eligibility/evaluation criteria.*
- ✓ *Tally of scores & comparison to the passing score*
- ✓ *Review and recommendation of Internal Procurement Committee to award the Contract.*
- ✓ *Review and approval by Head of Entity, Executive Director for contract Award.*
- ✓ *Signing of Contract by Selected Contractor and NYS.*
- ✓ *Endorsement or non-endorsement by Board Procurement Sub-Committee for PS final Approval or Disapproval thereof at June 2009 Quarterly Meeting.*

See below references to the appropriate documents and references to meetings that took place in relation to the valuation of the actual contract. The valuation of the contract was the subject of a difference of interpretation between members of the NYS Board Procurement Subcommittee and the then NYS Senior Management. NCC/OCG guidance was sought regarding clarification specifically in relation to the Head of Entity issue.

Request for Transportation Services 2009-11

Kindly refer to Appendices 8 to 12 for Tender Documentation and Processes relating to the following:

- *NYS Tender Documents inclusive of copies of:*

- ✓ *Advertisement for same in the May 1 and 3, 2009 Sunday Gleaner*
 - ✓ *Bid Documents and bid report*
 - ✓ *Letter dated May 14, 2009 to the NCC for guidance and assistance with Tender Opening*
 - ✓ *Proposal/s which was/were submitted or not submitted by bidders*
 - ✓ *Tender evaluation report / assessments*
 - ✓ *NYS Procurement Committees' written recommendation and /or approval, in each instance, to undertake the contracting of the services JTS.*
- *Letter of Request from OCG/[OCG Officer] dated June 25, 2009 and NYS' Response submitted to the OCG July 8, 2009 inclusive of clarification of tender issues relating to Board-NYS differences in approaches to transportation tender and general procurement management of the Service. (See Appendix 12 – already received by OCG).*
 - *Board Procurement Query Report*
 - *OCG Letter dated May ..., 2009, where [an OCG Officer] met with NYS representatives to clarify the role of the OCG. (See Appendix 20/NYS Records). It was at this meeting which was held in May 2009 that the NYS used the opportunity to clarify which value should be used, whether the cumulative or the monthly value, to determine the contract value for the procurement of Transportation Services and Camp Training Sites.*

The following NYS Officers were in attendance. The meeting was not formally minuted:

- ✓ *Mrs. Angela Wisdom*
- ✓ *Miss Kay Hendricks*
- ✓ *Mr. Howard Gardener*
- ✓ *Mr. Andre Bernard*
- ✓ *Miss Ann-Marie Smith*
- ✓ *Mrs. Yvonne Chambers, Snr. Accounting Technician*

✓ Mrs. Camille Hines, Participants Database Administrator

While [the OCG Officer] outlined that he was not from the NCC, he clarified that it was his understanding that the monthly value and not the cumulative value was the correct value to be used for contracts like the Camp/Transportation Services due to the forecasted, potential or projected hosting of said training, subject to several variables that might affect the fulfilment of same.

Reference to this Meeting was made in Minutes dated June 18, 2009.

The June 2, 2009 contract was thus indexed against the Rate Sheet using the monthly value totalling \$1.5M to 2.5M per Camp site and not the cumulative value (totalling appx. \$25M) because of the uncertainty of the projected training schedule, which was subject to budgetary allocation/cuts.

Mrs. Wisdom also submitted to the OCG the following 2009 Report in support of her foregoing response:

“NYS’ PROCUREMENT QUERY REPORT:

Steps Undertaken Regarding NYS’ First Set of Tender Exercises

A. Previous Understanding:

On the basis of past practice and the National Contracts Commission (NCC) guidelines (see attached NCC’s Summary of Procurement Procedures in Appendix 1), the Accounting Officer or Head of Entity, is the final approval authority based on the entity’s organizational structure. It has been the NYS’ understanding that its ‘final’ approving authority is the Executive Director. This was also guided by recent NCC adjustments in Entities’ approval threshold from under \$4 Million to awards under \$10 Million.

Based on the latter, the NYS recently conducted two of its first tender processes as follows:

- i. Selective Tender for Civil Works/Goods-Korean-NYS Lab Project, which required interior construction and technical network services.*
- ii. Public tender for Services-Return Transportation Services*

See Table 1 below outlining contract totals for Koica Project Tenders and Request for Rate Sheet in copy of Tender Documents (see Appendix 3), which requires a monthly invoiced contract for Transportation Services.

Due Diligence:

Due to our limited experience with tenders of this type and new NCC guidelines, both tender processes were conducted with the assistance and guidance of the Ministry of Education's Technical and MIS Departments and NCC. Kindly review attachments for processes taken regarding the following:

- a) Appendix 2: Copies of Tender Notice and Contract Format for Koica Project***
- b) Appendix 3: Copies of Tender Notice and Document for Transportation Services***
- c) Appendix 4: Copies of Approval Processes and Contract Format for Transportation Services***
- d) Appendix 5: NYS Actions re-Transportation Tender Processes***

Please be advised that it was not until the meetings of June 11, 2009 and June 18, 2009 that we were made aware that NYS should have received the Board's Procurement Sub-Committee's approval prior to the award of contracts.

All contracts awarded to date were done on the basis of Head of Entity's approval status on the contractors' fulfillment of the tender criteria. After which the Board is duly informed of the processes taken and outcomes as in the case of the Korean Project for Tenders conducted between April-May 2009, which was tabled at recent Board and Procurement Sub-Committee Meeting. The same was done for the Public Tender for Transportation Services (See Appendices 4&5).

Table 1: Selective Tender-Korean –NYS Project

Training Labs	Contractor	Original Sums	Final Expenditure
Head Office	GARCO Construction Services	\$1,883,710.00	\$2,117,801.00
Cobbla	GARCO Construction Services	\$1,471,00.00	\$1,593,995.40
Chestervale	Complete Construction Services	\$1,539,881.40	\$2,210,621.00
Grand Total	Difference: \$973,825.60	\$4,948,591.40	\$5,922,417.00

B. BOARD'S PROCUREMENT SUB-COMMITTEE QUERIES:

Based on previous Meeting of June 11, 2009 (Rev. Jones/ Board's Procurement Sub-Committee) and documentary examination by the 3 Board Members in attendance at the June 18, 2009 Meeting, **the Tender process for Transportation Services, was found to be sound, except for the following issues:**

- a. No member of the Board was present at the Tender Opening.
- b. The approval with supports for the award of the contract was presented to the Board after the Contractor was advised that his company had been awarded same.
- c. The contract was signed prior to Board's approval for same and after the Executive Director's approval.

Board's Procurement Sub-Committee Recommendations:

- 1) *A Board member must be a part of the Tender Evaluation Committee*
- 2) *NYS is to receive approval from the Board's Procurement Sub-Committee prior to all contract awards*
- 3) *NYS is to submit to the Board all related NCC guidelines by soft copy (This will have to be extracted from MOF&P Website, which is a very large document).*

In light of the foregoing, the Board Sub-Committee did not approve the recommendation and decided that the Tender was to be re-advertised.

C. NYS QUERIES:

The Sub-Committee was advised that a Re-Tender implies the following:

- 1) *The Public Tender Processes were flawed*
- 2) *If they were correct, then the approval process applied is an internal matter and should be addressed as such without affecting the external party (the Carrier), that met the selection criteria.*
- 3) *A formal advice to the Carrier that the contract award is withdrawn may and can legally expose the organization.*
- 4) *The NYS is still awaiting the Sub-Committee's Chairman's submission of the official document regarding the New \$100K Procurement Policy since June 11, 2009 notification.*

The NYS is fully aware that if violations have occurred on the basis that the Board's Procurement Sub-Committee had established policy standards for the management of Tender Processes, then the NYS would have to act accordingly regarding the Board's recommendation to retender

NYS Recommendations:

1. *The roles and responsibility of NYS Procurement Committee vs. Board's Sub-Committee need to be mutually and clearly defined within the NCC guidelines and Board Governance*
2. *The Accounting/ Head of Agency to be addressed: Is it the Permanent Secretary or the Executive Director.*
3. *A Quorum needs to be established for Meetings and Resolutions. Last 2 meeting 1or 2 Board members attended*
4. *To define specific day/s for approvals for Sub-Committee and MOE/ Permanent Secretary in light of the new procurement requirement of over \$100K purchases to be approved by the Permanent Secretary*
5. *To update NYS' 2008 Procurement Procedures Guideline within new NCC standards (new Entity limit moved from under \$4K to under \$10K).*
6. *To request Training from the Ministry of Finance and the Public Service for both the NYS' Procurement Team and the Board's Procurement Sub-Committee. The request process (NYS/MOFP) for this has already started and we only need to define mutual date with MOFP.*

The current confusion regarding the management of procurement processes within the NYS will be addressed if all recommendations tabled above are structurally clarified and mutually agreed to for the proper and effective management of related processes.¹³⁸

The OCG, in its 2009 September 1 Requisition also asked Mr. Keith Duncan the foregoing question in regard to the measures which were taken by the NYS to ensure compliance with the GOJ Procurement Procedures.

¹³⁸ NYS' Procurement Query Report 2009.

In his sworn response to the OCG's Requisition which was dated 2009 October 5, Mr. Keith Duncan indicated, *inter alia*, the following:

“Response: I requested that the Acting Executive Director review the process undertaken during that period and she found that the records regarding the procurement of services in relation to the JTS prior to May 2009 do not adequately indicate whether or not the measures and/or steps were taken to ensure that the requirements of the GPPH were adhered to in the procurement of any and all goods, works and services which were provided by JTS.

Indications were given that the requirements of the GPPH were in part adhered to in the procurement of transportation services in June of 2009. A written request dated May 14, 2009 was made to the National Contracts Commission for a representative to be present at the tender opening. However I am unable to ascertain whether the representative was present at same (Appendix 17).

The tender document was opened on May 15, 2009. (Appendix 18)”¹³⁹

The OCG, in its 2009 September 1 Requisition which was addressed to Mrs. Dasmine Kennedy, also asked the foregoing question regarding the measures which were taken by the NYS to ensure compliance with the GOJ Procurement Procedures.

In her sworn response to the OCG's Requisition, which was dated 2009 September 14, Mrs. Dasmine Kennedy indicated, *inter alia*, the following:

“Response: The records regarding the procurement of services in relation to the JTS prior to May 2009 do not adequately indicate whether or not the measures and / or steps were taken to ensure that the requirements of the GPPH were adhered to

¹³⁹ Mr. Keith Duncan's sworn response to the OCG's Requisition which was dated 2009 October 5.

in the procurement of any and all goods, works and services which were provided by JTS.

Indications were given that the requirements of the GPPH were in part adhered to in the procurement of transportation services in June of 2009. A written request dated May 14, 2009 was made to the National Contracts Commission for a representative to be present at the tender opening. However I am unable to ascertain whether the representative was present at same (Appendix 17).

The Board of the NYS had a meeting on May 28, 2009 at which the Permanent Secretary was invited on the request of the Chair of the Procurement Committee. Concerns were relayed regarding procurement practices of NYS and the way forward was established.

Based on the foregoing, the Procurement Sub Committee convened a meeting on June 4, 2009 and outlined step by step procedures on the Government Procurement Guidelines.”¹⁴⁰

Having regard to the foregoing responses from Mrs. Angela Wisdom, Mrs. Dasmine Kennedy and Mr. Keith Duncan the OCG found that steps were taken by the NYS in 2009 to ensure that there was adherence to the GOJ procurement guidelines.

However, prior to 2009, the NYS did not utilize a formal procurement process. This was indicated by Mr. Keith Duncan and Mrs. Dasmine Kennedy who both indicated that having reviewed the procurement processes it was found that prior to 2009 the records regarding the procurement of services in relation to JTS did not adequately indicate whether measures or steps were taken to ensure that the requirements of the GPPH were adhered to.

¹⁴⁰ Mrs. Dasmine Kennedy’s sworn response to the OCG’s Requisition which was dated 2009 September 14.

Review of the NYS' Quarterly Contracts Awards Report for the Contracts which were awarded to JTS

On 2006 July 11, the OCG required that every Procuring Public Body submit Quarterly Contract Award (QCA) Reports of the particulars of contracts which are awarded by each Public Body, which are of a value of J\$250,000 to J\$3,999,999.99. The regulatory regime was expressed to apply to all classifications of Government contracts which are awarded as of 2006 May 1. These Reports were requested in order to verify whether Public Bodies were adhering to the provisions of the Government of Jamaica Handbook of Public Sector Procurement Procedures, (GPPH) 2001 May.

This requirement was also revised in 2008 November, where it was indicated that as at 2008 October 1, each Public Body should submit to the OCG, QCA Reports comprising the particulars of each contract which it has awarded, whenever such contract is of a value of between J\$275,001 and J\$10,000,000. These Reports were to include procurements which were made in accordance with the Revised Government of Jamaica Handbook of Public Sector Procurement Procedures, (RPPH, 2008 November).

The table below details the particulars of all the contracts which were reportedly awarded by the NYS, to the JTS, and which were reported to the OCG via the QCA Reporting requirements. It is instructive to note that the NYS was not initially requisitioned by the OCG in 2006, however, the entity was submitting QCA Reports prior to its receipt of a formal QCA Requisition which was dated 2007 July 11.

Particulars of Contracts which were reported via the QCA Reports

<u>No.</u>	<u>Year</u>	<u>Quarter</u>	<u>Contract Award Date</u>	<u>Contract Value</u>	<u>Principal Site</u>	<u>Procurement Method</u>	<u>Number of Tenders/Quotes Requested</u>	<u>Number of Tenders/Quotes Received</u>	<u>Procurement Committee Approval?</u>
1	2006		2006-06-13	736,000.00	None Indicated	LT	N/A*		
2	2006		2006-07-21	1,241,000.00	None Indicated	LT	N/A*	3	Y
3	2006		2006-07-27	326,000.00	None Indicated	LT	N/A*	3	Y
4	2006		2006-08-09	523,000.00	None Indicated	LT	N/A*	3	Y
5	2006		2006-08-16	842,150.00	None Indicated	LT	N/A*	3	Y
6	2006		2006-09-01	870,000.00	None Indicated	LT	N/A*	3	Y
7	2006		2006-09-07	392,500.00	None Indicated	LT	N/A*	3	Y
8	2006		2006-09-15	410,500.00	None Indicated	LT	N/A*	3	Y
9	2006		2006-10-05	711,000.00	None Indicated	LT	N/A*	3	Y
10	2006		2006-10-13	1,015,000.00	None Indicated	LT	N/A*	3	Y
11	2006		2006-10-19	808,500.00	None Indicated	LT	N/A*	3	Y
12	2006		2006-11-010	323,500.00	None Indicated	LT	N/A*	3	Y
13	2006		2006-11-04	264,500.00	None Indicated	LT	N/A*	3	Y
14	2006		2006-11-16	1,398,000.00	None Indicated	LT	N/A*	3	Y
15	2006		2006-11-23	838,450.00	None Indicated	LT	N/A*	3	Y
16	2007	1	2007-02-09	838,000	Cobbla-Manchester & Eco Village- St. Andrew	LT	N/A*	3	Y
17	2007	2	2007-05-02	837,000	Cobbla-Manchester	LT	N/A*	3	Y
18	2007	2	2007-05-18	1,815,500	Chestervale-St. Andrew	LT	N/A*	3	Y
19	2007	2	2007-06-29	478,000	Chestervale-St. Andrew	LT	N/A*	3	Y
20	2007	3	2007-07-09	890,000	Cobbla-Manchester	LT	N/A*	3	Y
21	2007	3	2007-08-09	2,361,000	Cobbla - Manchester Elim Agric. School-St. Elizabeth, Garvey Maceo High School-Clarendon	LT	N/A*	3	Y
22	2007	3	2007-08-16	497,500	Cobbla Manchester and Chestervale - St. Andrew	LT	N/A*	3	Y
23	2007	3	2007-08-23	1,757,000	Chestervale-St. Andrew	LT	N/A*	3	Y
24	2007	4	2007-10-18	2,782,000	Cobbla - Manchester and Chestervale - St. Andrew	LT	N/A*	3	Y
25	2007	4	2007-11-01	270,000	Chestervale -	LT	N/A*	3	Y

<u>No.</u>	<u>Year</u>	<u>Quarter</u>	<u>Contract Award Date</u>	<u>Contract Value</u>	<u>Principal Site</u>	<u>Procurement Method</u>	<u>Number of Tenders/Quotes Requested</u>	<u>Number of Tenders/Quotes Received</u>	<u>Procurement Committee Approval?</u>
					St. Andrew				
26	2007	4	2007-11-22	280,000	Chestervale - St. Andrew	LT	N/A*	3	Y
27	2007	4	2007-12-10	252,000	Chestervale_ St. Andrew	LT	N/A*	3	Y
28	2007	4	2007-12-13	955,000	Cobbla-Manchester	LT	N/A*	3	Y
29	2008	2	2008-05-16	494,000	Cobbla-Manchester	LT	N/A*	3	Y
30	2008	2	2008-06-20	526,000	Cobbla-Manchester	LT	N/A*	3	Y
31	2008	2	2008-05-30	489,200	Cobbla-Manchester and Starfish Hotel-Trelawny	LT	N/A*	3	Y
32	2008	3	2008-07-10	2,598,005	Cobbla-Manchester & Chestervale-St. Andrew	LT	N/A*	3	Y
33	2008	3	2008-07-16	260,500	Cobbla-Manchester & Chestervale-St. Andrew	LT	N/A*	3	Y
34	2008	3	2008-08-15	2,960,900	Cobbla-Manchester & Chestervale-St. Andrew	LT	N/A*	3	Y
35	2008	3	2008-08-25	626,000	Cobbla-Manchester & Chestervale-St. Andrew	LT	N/A*	3	Y
36	2008	3	2008-09-17	1,445,900	Cobbla-Manchester & Chestervale-St. Andrew	LT	N/A*	3	Y
37	2008	3	2008-09-29	2,325,000	Cobbla-Manchester & Chestervale-St. Andrew	LT	N/A*	3	Y
38	2008	4	2008-10-17	1,176,000	Cobbla, Manchester	LT	2	2	Y
39	2008	4	2008-11-11	1,187,000	Chesterval, St Andrew	LT	2	2	Y
40	2008	4	2008-11-17	1,242,000	Cobbla, Manchester	LT	2	2	Y
41	2008	4	2008-12-10	1,287,000	Chesterval, St Andrew	LT	2	2	Y
42	2008	4	2008-12-10	283,500	Chesterval, St Andrew	LT	2	2	Y
43	2008	4	2008-12-18	839,000	Cobbla, Manchester	LT	2	2	Y
44	2009	1	2009-01-12	1,800,000	Cobbla, Manchester & Chestervale, St. Andrew	LT	3	3	Y
45	2009	1	2009-02-11	1,969,000	Cobbla, Manchester & Chestervale, St. Andrew	LT	3	3	Y
46	2009	1	2009-02-12	474,480	Chestervale, St. Andrew	LT	3	3	Y

<u>No.</u>	<u>Year</u>	<u>Quarter</u>	<u>Contract Award Date</u>	<u>Contract Value</u>	<u>Principal Site</u>	<u>Procurement Method</u>	<u>Number of Tenders/Quotes Requested</u>	<u>Number of Tenders/Quotes Received</u>	<u>Procurement Committee Approval?</u>
47	2009	2	2009-04-29	1,704,000	Cobbla, Manchester	OT		1	Y
48	2009	2	2009-06-05	350,560	Chestervale, St. Andrew	OT		1	Y
49	2009	2	2009-06-26	2,978,000	Chestervale, St. Andrew	OT	1	1	Y
50	2009	2	2009-06-29	477,000	Chestervale, St. Andrew	LT	3	3	Y
51	2009	3	2009-07-16	1,917,000	Cobbla, Manchester	LT	1	1	Y
52	2009	3	2009-08-12	3,024,000	Chestervale, St. Andrew	LT	2	2	Y
53	2009	3	2009-09-03	1,610,000	Cobbla, Manchester	LT	1	1	Y
54	2009	3	2009-09-03	565,500	Chestervale, St. Andrew	LT	2	2	Y
55	2009	4	2009-11-06	1,698,000	Cobbla, Manchester	LT	1	1	Y
				61,020,645					

* The OCG's initial QCA Forms for the period did not require particulars of the Number of Tenders/Quotes Requested.

The table above indicates that a total of fifty five (55) contracts have reportedly been awarded to JTS during the period of 2006 June to 2009 November. The contracts were reportedly valued at \$61,020,645.00.

It is important to note that evidence was submitted to the OCG to indicate that several payments were made by the NYS, during the referenced period. The JTS confirmed that during the period 2005 August to 2006 December and January 2007 to December 2007 a total of \$24,585,000 was paid to that company by the NYS.

The information presented on the QCA Reports also contradicts the documentary evidence as well as the sworn statements which were provided by the NYS representatives in their sworn responses to the OCG's Statutory Requisition, as they all confirmed that the Limited Tender Procurement Methodology was utilized only once and that was in 2005.

Having regard to the foregoing, the OCG found that there were several inaccuracies in the NYS QCA reports. The OCG also found that NYS was also reporting payments and not contracts in its QCA report as it was asserted by the NYS representatives in their response to the OCG's

Statutory Requisition, that there was only one (1) written contract between the NYS and the JTS, and for the previous years, except in 2005, there were annually approved rate sheets. The JTS also asserted that the NYS would contact them whenever they were needed to provide transportation services.

SUMMARY OF FINDINGS

1. The OCG found that the Ministry of Education's 2009 Internal Audit Report and the Auditor General's Audit Report (2007/2008) revealed that the NYS had not been utilizing the applicable provisions of the GOJ Public Sector Procurement Guidelines in the award of several contracts. The OCG also noted that there was particular mention of contracts which had been awarded to the JTS, by the NYS.

Both reports revealed that several contracts had been awarded, and several payments had been made to several contractors, inclusive of the JTS, without sufficient evidence to indicate that the process was transparent or in accordance with the requirements of the GOJ Procurement Guidelines.

2. At the commencement of the Investigation, the OCG, by way of a Statutory Requisition which was dated 2009 September 1, and which was addressed to Dr. Wesley Hughes, Financial Secretary, Ministry of Finance and the Public Service, sought to ascertain the names of the Accounting and Accountable Officers at the NYS, during the referenced period, as the foregoing was one of the issues for which the MoE had requested clarification. The OCG also sought to ascertain the responsibilities and obligations of the Accounting/Accountable Officer.
3. Based upon the sworn written response from Dr. Wesley Hughes, which was dated 2009 September 17, in response to the OCG's Requisition, the OCG was advised that the FAA Act defines an Accounting Officer as "*...any person designated by the Minister pursuant to section 16 and charged with the duty of accounting for expenditure on any service in respect of which moneys have been appropriated under the FAA Act or any other enactment*", while an Accountable Officer, as defined by the Act, means "*any public officer, including an accounting officer, concerned in or responsible for the collection, receipt, custody, issues or*

payment of public moneys or other public property” Accountable officers are appointed by their respective Accounting Officer.¹⁴¹

Dr. Wesley Hughes, in his response to the said requisition, formally advised the OCG, by way of a letter which was dated 2009 February 19, that the Permanent Secretary for the MoE appointed Reverend Adinhair Jones as the Executive Director, NYS, and also as its Accountable Officer.

The OCG also found that, by way of a letter which was dated 2007 October 3, Mrs. Maria Jones, former Permanent Secretary, MoE, was the last person who was appointed as Accounting Officer at the MoE, as at the time of the OCG’s query to the Financial Secretary. It was also indicated by Dr. Wesley Hughes that there was no Accounting Officer appointed at the NYS.

4. The OCG found, based upon the sworn responses from the following individuals, namely:
 - (a) Mrs. Angela Wisdom, Former Human Resource and Administrative Manager, NYS, (b) Mrs. Dasmine Kennedy, Acting Executive Director, NYS, (c) Mr. Keith Duncan, Chairman, NYS and (d) Mr. Ricardo James, Executive Chairman, JTS, that the services of the JTS were first engaged in 2003 February.

The foregoing assertions were supported by documentary evidence which was provided to the OCG by the respondents. The evidence also indicated that JTS was engaged by the NYS on several occasions during the period of 2003 through to 2009.

It is also important to note that Mr. Ricardo James, Executive Chairman, JTS, also asserted that, based upon the invoices which were in his possession, approximately \$80,211,980.00 had been paid to the JTS, by the NYS, during the referenced period. However, Mr. James

¹⁴¹ Dr. Wesley Hughes’ response to the OCG’s Requisition, which was dated 2009 September 17.

noted that the foregoing figure may be more as the figure was only based upon invoices which he was able to locate.

5. The OCG found that the JTS was hired by the NYS whenever Transportation Services were needed, after which an invoice would be sent to the NYS for payment. If there were any adjustments in rates, the JTS would inform the NYS via a letter and a new rate sheet would be provided. It is instructive to note that the representations which were made by Mr. Ricardo James, of the JTS have indicated that the company had tendered competitively only once in 2009 for the services which it provided to the NYS.¹⁴²
6. The OCG also found that the JTS only signed one formal written contract with the NYS which was dated 2009 June 2. It is also instructive to note that the other contracts “...were annual approved rate sheets...”¹⁴³

Mr. Ricardo James, Executive Chairman, JTS, also indicated that he assumed that the JTS was selected because of, *inter alia*, its competitive rates, accident history, Tax Compliance and NCC certification.

7. The OCG calculated the figures from each of the invoices which were provided by the JTS and it was found that at least \$77,164,980.00 was paid to the JTS, by the NYS, during the period of 2003 through to 2009. It is instructive to note that the foregoing figure is based upon the invoices which were submitted to the OCG by the JTS.
8. Mr. Ricardo James, Executive Chairman, JTS, informed the OCG that the JTS was engaged by the NYS, after he approached the NYS with the idea to provide transportation for that entity. He also indicated that his approach to the NYS was based upon the fact that the JTS

¹⁴² Mr. Ricardo James, Executive Chairman, JTS, response to the OCG Requisition, which was dated 2009 September 14.

¹⁴³ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG Requisition, which was dated 2009 September 14.

has an islandwide reach, and he was informed by two of his sub-contractors that the NYS was having issues with some of its parish operators.

According to Mr. James, the foregoing idea was said to be embraced by Mr. Carlando Francis, the then Deputy Director, Community Service, who was the contact person at the NYS at that time.¹⁴⁴ In this regard, the OCG found that the JTS was engaged by the NYS after it received an unsolicited proposal from the JTS.

Having regard to Section 5.3.6 of the then applicable GPPH (2001 May), which states, *inter alia*, that “*Where the estimated value is equal to or greater than J\$15,000,000.00 but less than the international contract value threshold for the services, participation shall be restricted to domestic concerns only, except where no such qualified concern is registered with the NCC. Services shall be procured on the basis of selective tender, where all contractors who are registered with the NCC are afforded the opportunity to tender. Authority to enter into a contract shall be obtained from the Cabinet, after reference to the NCC and the Minister for approval of award recommendation...*”,¹⁴⁵ the OCG found that the NYS breached the GOJ’s Procurement Guidelines by failing to undertake a competitive tender process for the provision of Transportation Services during the years 2006-2008.

For each of the referenced years, the cost of Transportation Services was in excess of J\$15 million and would have required, as a consequence, the endorsement of the NCC and the approval of the Cabinet.

9. Based upon the information which was provided by Mrs. Dasmine Kennedy, the then Executive Director, NYS, in her response to the OCG’s Requisition which was dated 2009 September 14, the OCG found that for the financial years 2003 through to 2009, there were three (3) instances in which the payments which were made to the JTS would have required Cabinet approval, namely for the following annual periods:

¹⁴⁴ Mr. Ricardo James, Executive Chairman, JTS, response to the OCG Requisition, which was dated 2009 September 14.

¹⁴⁵ Section 5.3.6 of the GPPH, May 2001.

- a. 2006 April 1 to 2007 March 31 - \$20,821,140.00;
- b. 2007 April 1 to 2008 March 31 - \$25,749,500.00; and
- c. 2008 April 1 to 2009 March 31 - \$25,044,285.00.

In all of the aforementioned instances, the annual payments exceeded the \$15,000,000 threshold stipulated in the GPPH (2001 May) and would have required the approval of the Cabinet after recommendation from the NCC, prior to the engagement of the services of the JTS. It is instructive to note that, based upon the records of the NCC, the OCG found no records to indicate that the annualized and extended contracts were submitted to the NCC for its endorsement.

Additionally, two (2) of the annualized contracts, that is, for the periods of 2004 April 1 to 2005 March 31, in the sum of \$4,428,500.00, and 2005 April 1 to 2006 March 31, in the sum of \$6,182,600.00, exceeded the \$4,000,000.00 threshold, which would have required the approval of the NCC.

Based upon the records of the NCC, neither of these contracts were submitted to the NCC for endorsement. According to Section 2.1.3.3 of the then applicable GPPH (2001 May) “...All contracts for \$4M or greater must receive prior written approval from the NCC through the Accounting Officer...”

10. It is also instructive to note that Mrs. Kennedy’s account of the JTS/NYS engagement was corroborated by the account which was given by Mr. Ricardo James. The payment figures provided by both individuals were slightly different, however, the amounts were in similar ranges.

Mrs. Kennedy's account also suggested that there was no evidence to indicate that any contracts were signed between the NYS and the JTS prior to 2009 as she asserted that "...there is no evidence of written contract(s) entered between the parties."¹⁴⁶

11. The OCG found, based upon the supporting documentation which was provided by Mrs. Kennedy, that in 2005 the NYS utilized a methodology which appears to be akin to the Limited Tender Procurement Methodology, to engage the services of JTS. However, it must be noted that no Request for Quotation or Tender Evaluation Report was found in the referenced documentation which was provided by Mrs. Kennedy.

It should also be noted that four (4) companies submitted quotations, namely: JTS, Albert Dixon, JCAL and JUTA. JTS' quotation was submitted to the NYS by way of a letter which was dated 2005 January 6, it is unclear when Mr. Albert Dixon's quotation was submitted as it is not dated, JCAL's quotation was dated 2005 March 7, and JUTA's quotation was submitted on 2005 January 20.

The approval for JTS to provide Transportation Services to the NYS, in 2005, was granted on 2005 January 9, under what appears to be the signature of Mrs. Angela Wisdom, former Human Resource & Administration Manager. It is instructive to note that the contract with the JTS was consummated before the quotations from JUTA and JCAL were submitted.

Based upon the foregoing, it is unclear whether or not the prescribed Limited Tender Procurement Methodology was actually utilized, since the procurement process which was employed by the NYS does not conform to the provisions of the applicable GPPH.

In this regard, and based upon the provisions of Section 2.1.3.3 of the GPPH (2001 May), which states that "*Limited tender is a form of selective tender, whereby the procurement opportunity is open to a limited number of contractors included in the Register*

¹⁴⁶ Mrs. Dasmine Kennedy's response to the OCG's Requisition, which was dated 2009 September 14.

of Approved Contractors. It includes the Request for Quotation (RFQ) and Sole Source procurement procedures. Procurement offered through limited tender is generally not advertised. Instead, procuring entities may contact appropriately qualified contractors on the register and invite them to participate. Criteria for selecting contractors from the register should include:

- *Nature of the work required;*
- *Contractor's relevant experience;*
- *Contractor's past performance record; and*
- *Contractor's current financial and technical capacities.*

Limited Tender must have prior written approval of Accounting Officers for contracts less than \$4M.

All contracts for \$4M or greater must receive prior written approval from the NCC through the Accounting Officer.

The request for permission to utilize the Limited Tender procedures must include the selection of a minimum of three (3) contractors and the criteria for the selection.

*The prepared lists of contractors shall be submitted to the Procurement Committee or such other person(s) as may be nominated by the Procurement Committee for approval prior to any contractor being invited to tender.*¹⁴⁷ **(OCG Emphasis)**

12. The OCG also found that the account of the JTS' engagement by the NYS, which was given by Mr. Keith Duncan, the then Chairman of the Board, was similar to that of Mrs. Dasmine Kennedy and Mr. Ricardo James. Mr. Duncan confirmed that there was no formal contract in place between the NYS and JTS until 2009.

¹⁴⁷ Section 2.1.3.3 of the GPPH 2001.

According to Mr. Duncan, it was after a Board Procurement Sub-Committee meeting of 2009 June 18, that he was informed that the Permanent Secretary would not be signing the 2009 June 2 contract due to issues relating to the value of the contract and that it should have been approved by Cabinet. The foregoing was the reason which was given by him for the contract not being signed by the Permanent Secretary.

13. The OCG also found, based upon Mrs. Angela Wisdom's response to the OCG's Requisition and the documentation which was provided by her, that Mrs. Wisdom's account of the circumstances which led to the engagement of JTS, during the period 2003 to 2009, was similar to the accounts which were provided by Mr. Ricardo James, Mrs. Dasmine Kennedy and Mr. Keith Duncan.

In her sworn response to the OCG, Mrs. Wisdom indicated that during the period **"2005-2006: *"I conducted a Limited Tender in early 2005 to regularise and improve the efficiency and expediency of transportation services required for the Knox Cobbla Campus operations."***

Mrs. Wisdom also indicated that *"...Several companies were verbally contacted to provide Return Transportation Rate Sheets for the next financial year's Camp operation (April 2005 to March 2006).*

Jamaica Transport Services was selected in 2006 to provide transportation services for NYS after submission of 4 quotations from 4 potential suppliers namely JUTA, JCAL, JTS and a private person. JTS was selected due to its islandwide coverage and competitive rates. This was based on the review of a comparative analysis of the rate sheets...received and further investigation of each companies ability to provide islandwide coverage for unattached youth. This review involved me, former HR & Adm. Manager, the former Executive

*Director, Finance & Accounts Director and Corporate Services (Deputy) Director at the time.*¹⁴⁸

As was previously indicated, Section 2.1.3.3 of the GPPH (2001 May) indicates that for Limited Tender procurements, *“All contracts for \$4M or greater must receive prior written approval from the NCC through the Accounting Officer.*

The request for permission to utilize the Limited Tender procedures must include the selection of a minimum of three (3) contractors and the criteria for the selection.

*The prepared lists of contractors shall be submitted to the Procurement Committee or such other person(s) as may be nominated by the Procurement Committee for approval prior to any contractor being invited to tender.*¹⁴⁹

14. Additionally, having reviewed the NCC’s database, the OCG found no evidence to indicate that approval was sought by the NYS, or granted by the NCC, for the utilization of the Limited Tender Procurement Methodology in the award of a contract with a value in excess of \$4 Million.
15. Having regard to the foregoing, and the fact that the total amount on the invoices which were produced in 2005 to 2006 exceeded the \$4M threshold, the OCG found that the Limited Tender Procurement Methodology was not the most appropriate methodology for this procurement

It is also instructive to note that Section 2.1.3.2 of the then applicable GPPH (2001 May) indicates that *“Selective tendering is GOJ’s primary method of procurement. All contractors must be registered with GOJ, through the National Contracts Commission, and included in the GOJ Register of Approved Contractors. Procurement opportunities offered through*

¹⁴⁸ Mrs Angela Wisdom’s Response to the OCG’s Requisition, which was dated 2010 February 1.

¹⁴⁹ Section 2.1.3.3 of the GPPH 2001 May.

selective tender are open to all appropriately registered and qualified contractors, and are generally advertised as shown in Section 6. Procuring entities should endeavour to plan their procurement processes in order to allow sufficient time for interested contractors to complete the required registration and/or pre-qualification processes in time to prepare and submit responsive tenders.”¹⁵⁰

Further, according to the then applicable GPPH, 2001 May, Section 4.6, **“CONTRACT VALUE FROM J\$15M TO LESS THAN THE INTERNATIONAL CONTRACT VALUE THRESHOLD FOR GOODS.** *Where the estimated value is equal to or greater than J\$15,000,000.00 but less than the international contract value threshold for goods these shall be procured on the basis of selective tender by national advertising. Tenders should be invited from all appropriately qualified contractors registered with the NCC. A contractor pre-qualification process shall be required for goods in excess of J\$150 million. Authority to enter into contract must be obtained from the Cabinet, after reference to the NCC for approval of award recommendation...*”¹⁵¹

Having regard to the foregoing, the OCG found that the Selective Tender Procurement Methodology was the most appropriate methodology for the award of the referenced contract.

16. Mrs. Wisdom also confirmed that there was no tender process during the period of 2006 through to 2008. In this regard, Mrs. Wisdom indicated the following: **“2006 – 2008: No tender process was conducted during this period. Preparations to conduct a tender in 2008 were delayed by the interview/selection processes for an Internal Auditor, the processes to construct a tender box and the heavy demands of the HR & Admin. portfolio for the other 4 units (Procurement, Career Guidance, MIS and Participants Benefits) within the new expanded training role of the NYS during that time...**”¹⁵²

¹⁵⁰ Section 2.1.3.2 of the GPPH May 2001

¹⁵¹ Section 4.6, of GPPH May 2001

¹⁵² Mrs. Angela Wisdom’s sworn response to the OCG’s Requisition, which was dated 2010 January 28.

17. The OCG has found, based upon the assertions of Mrs. Wisdom, that the terms and conditions of the agreements between the NYS and the JTS, during the period 2006 to 2008, were determined based upon rate sheets which were agreed upon by the NYS and JTS. The foregoing was also confirmed by Mr. Ricardo James, President, JTS.
18. Based upon the documentary evidence which was supplied to it, inclusive of Mrs. Wisdom's response, the OCG found and confirmed that the NYS conducted a formal tender process in 2009 for which there was only one bidder. However, it must be noted that three bidders paid for tender documents but one of the bidders collected the tender document on the day of the bid opening and was advised that it would have been too late to prepare a bid to be submitted on the same day. In this regard, the prospective bidder decided to seek a refund for the tender document; a request which was granted by the NYS. Mrs. Wisdom also indicated that final approval of payment for this tender was granted by Rev. Adinhair Jones, the Former Executive Director, NYS.
19. The documents which were submitted to the OCG confirmed the above assertions which were made by Mrs. Wisdom. It is instructive to note that the "*INVITATION TO TENDER Receipt of Tender Documents Sheet*" indicated that the JTS and Soul to Soul Transportation Company Limited purchased tender documents. In accordance with Mrs. Wisdom's statement, a company by the name of 'Secret' also paid for a Tender Document, but was refunded for same.

The Bid Opening Record indicated that the Comparable Estimate, "Average cost per parish", for transportation services for the Cobbla Campus was in the amount of \$53,884.61 and the Chestervale Campus was in the amount of \$104,076.92. The documents also indicated that JTS was the only bidder, while the Bid Receipt Record indicated that the bid was submitted on 2009 May 15, at approximately 1:48 p.m. The Bid Opening Attendance Record indicated that persons in attendance at the Bid Opening were Ms. Sonia McFarlane, Ms. Rosemarie Dowdie, Ms. Angela Wisdom and Mr. Andre Bernard.

20. The OCG found that the contract which went to competitive tender was awarded to the JTS for a two year period as follows: Year 1 - 2009 to 2010: 2009 June 02 to 2010 April 21 and Year 2 - to be determined as per 2010 - 2011 budgetary allocation.¹⁵³

The OCG also found, based upon the projected value of the contract, which was in excess of \$15 million, that same would have required the endorsement of the NCC and the approval of the Cabinet.

21. The OCG also found that the members of the NYS Board Procurement Sub-Committee initially included Mrs. Angela Wisdom, Mr. Andre Bernard and Ms. Ann Marie Smith. Subsequent to October 2008, the Board Procurement Sub-Committee included Mr. Robert Miller – Chairman, Ms. Garcia Imoru – Member, Mr. Harry Blake – Member as of June 18, 2009, Ms. Bridgette McDonald-Levy, Ms. Florette Blackwood, and Senator Dennis Meadows.
22. The OCG also found, according to Mrs. Wisdom, that the 2009 May Tender Evaluation Committee included, Mrs. Angela Wisdom, Mr. Andre Bernard, **Mrs. Rose-Marie Dowdie, Internal Auditor**, while in June 2009, the Tender Procurement Committee was comprised of all of the aforementioned individuals as well as the following persons: Ms. Kay Hendricks, Programmes Manager, HRA Unit and Mr. Howard Gardener, Programmes Director.
23. With specific reference to the composition of the Tender Procurement Committee it is instructive to note Sub-section 1020 B of the then applicable GPPH (2008 November), which indicated, *inter alia*, the following:

¹⁵³ Contract which was consummated between the NYS and JTS, which was dated 2009 June 2.

“Procurement Committees

Each procuring entity shall establish a Procurement Committee consisting of not less than five (5) persons appropriate to the needs of the entity. The structure of the Procurement Committee shall be as follows:

- *Chairman*
- *Senior Financial Management Personnel;*
- *Recording Secretary (non-voting member);*
- *Procurement Personnel (non-voting member); and*
- *Any other appropriately qualified Officer.*

Internal Audit personnel may not sit on the Procurement Committee...¹⁵⁴ (OCG Emphasis)

Having regard to the foregoing, the OCG found that the NYS breached the procurement guidelines by allowing the Internal Auditor to sit on the Procurement Committee.

24. The OCG also found, based upon the Minutes of the Procurement Sub-committee, that there were several issues with the 2009 Transportation Contract. According to the Minutes of the Procurement Sub-Committee, which was held on 2009 June 18, Ms. Garcia Imoru, Sub Committee Member, indicated that “...at the time approval was being sought from the Sub Committee the Contractor was already engaged.”¹⁵⁵ It was also indicated by Ms. Imoru, in the referenced meeting, that she could not sign off on documents presented after the contract was awarded. The OCG also found that the Board members expressed their disapproval of the granting of the contract without their approval and expressed overall discomfort with the arrangement.

¹⁵⁴ Sub-section 1020 B of the GPPH (November 2008).

¹⁵⁵ Minutes of the Procurement Sub-Committee, which was dated 2009 June 18.

The Minutes also stated that Mr. Andre Bernard, (Member-Tender Evaluation Committee) indicated that the annual value of the contract would be approximately \$32M, while the rate sheet presented indicated that the estimated value of the contract was to be approximately \$4-5M for the two (2) camps monthly.

The NYS also explained to the Procurement Sub Committee that “...on a recent Office of the Contractor General (OCG) meeting held in early June that the entity had sought clarification on whether the Transportation and Camp contracts, which totaled over \$7M per Camp required NCC approval due to their annual cumulative values. The OCG representative advised that as invoiced contracts the values would be based on the monthly invoiced value and not the cumulative value due to the probability of the Camps being held. The NYS stated that while the Boards view is understood, they must remember that the Carrier was selected based on the requirements for the public tender...”¹⁵⁶

The OCG also found that there is no documented proof that the foregoing advice was given.

25. Despite the foregoing, the OCG found, based upon the estimated J\$32M yearly value of the contract, which was consummated in 2009, that the NYS would have required Cabinet approval upon the recommendation from the NCC and the Head of Entity/Accounting Officer, prior to the award of the contract.

According to Sub-section 2040 IV of the then applicable 2008 GPPH, contracts above J\$30,000,000 in value are required to be approved by the Cabinet, upon the recommendation of the NCC and the Accounting Officer/Head of Entity.

26. The OCG’s review of the Quarterly Contracts Award (QCA) Reports, which have been submitted by the NYS revealed that although the QCA requirements were in effect since

¹⁵⁶ Minutes of the Procurement Sub-Committee which was dated 2009 June 18.

2006, The NYS was not formally requisitioned to provide QCA Reports until 2007 July 11.

The information on the consolidated QCA Reports, regarding contracts which were awarded to the JTS, contradicts, in at least one instance, the documentary evidence as well as the sworn statements which were provided by the NYS representatives who were requisitioned, who confirmed that prior to 2009, the NYS had reportedly attempted to engage transportation service providers via the Limited Tender Procurement Methodology, only once, in 2005.

Based upon the information which is contained in the QCA consolidated data, between the years 2006 June to 2009 November, fifty-two (52) contracts were reportedly awarded to the JTS, using the Limited Tender Procurement Methodology and three (3) contracts were awarded using the Open Tender Procurement Methodology, for the provision of Transportation Services.

However, the foregoing cannot be accurate should the representations which have been made to the OCG that the NYS tried to undertake some semblance of the Limited Tender Procurement Methodology in 2005 and a formal tender process in 2009. Therefore, the OCG has found that there are only two (2) noted instances in which the award of contracts to the JTS was subjected to any form of a competitive tender process which is contrary to the representations which have been made on the QCA Reports for the period of 2009 July through to 2009 November.

Having regard to the foregoing, the OCG found that there were several inaccuracies in the NYS QCA Reports. It also appeared that NYS was reporting on payments and not contract amounts in its QCA Reports.

CONCLUSIONS

Based upon the sworn responses which were received from certain Public Officials/Officers from the NYS and the Ministry of Finance and Planning, as well as the representative of the JTS, the OCG has arrived at the following considered Conclusions:

1. The OCG's Investigation has unearthed *prima facie* evidence of non-adherence with the stipulated Government of Jamaica Procurement Guidelines. The services of the JTS were engaged by the NYS during the period 2003 to 2009. However, with the exception of the 2009 contract, there was not sufficient evidence to indicate that the engagements were guided by a competitive process and in keeping with the GOJ procurements guidelines.
2. The evidence suggests that in excess of J\$80 million was paid to the JTS during the referenced period, and that there was no competitive tender except for a seeming Limited Tender Procurement process in the year 2005 and a Selective Tender process in 2009. Based upon the annual values of these contracts, same would have required either the NCC's endorsement and/the approval of the Cabinet. However, the OCG has not seen evidence to suggest that approvals were sought and/or received from the referenced Bodies.
3. Further, there is no evidence to indicate that the Procurement Committee was involved in the tender processes of the NYS until 2009. It is interesting to note that such involvement occurred after the Auditor General's Report of 2007/2008, which reported several irregularities at that Public Body. Further, there is no evidence to indicate that a Procurement Committee existed prior to 2008.
4. The OCG has concluded that there is no evidence to indicate that the requisite approvals for the award of the contracts were sought from the Accounting Officer, who is the Permanent Secretary for the Ministry of Education. All procurements were either

approved by Mrs. Angela Wisdom, former Human Resource and Administrative Manager or Rev. Adinhair Jones, the former Executive Director, NYS (who was appointed in 2009).

There is no evidence to indicate that the Permanent Secretary was an integral part of the procurement process at the NYS.

5. The OCG has also concluded that the 2009 June 2, contract which was consummated between the NYS and the JTS was irregular, having regard to the following:
 - a. The company was engaged before the board sub-committee's endorsement, was sought, consequently the Board sub-committee made the decision not to approve the contract.
 - b. All of the required signatures were not affixed to the Contract as the Permanent Secretary did not sign the contract.
 - c. The Contract was not endorsed by the NCC nor was it approved by Cabinet which would have been required based upon the fact that the approximate yearly value of the contract was J\$32M.

It is instructive to note that the approximate value of the contract should have been included in the contract document, however, the value was not included in the contract. The OCG, however, contends and has concluded, based upon the requirements of the then applicable GPPH (2008 November), that given the estimated J\$32 Million yearly value of the contract, the NYS would have required Cabinet's approval following the recommendation of the NCC and the Head of Entity/Accounting Officer.

6. The OCG has also concluded that there were several inaccuracies and inconsistencies in the reporting of Contracts on the QCA reports, by the NYS. The QCA data which was provided by the NYS also revealed that there were several procurement breaches with regard to the engagement of JTS.

The OCG has also been led to conclude that there was no set procurement process being utilized at the NYS prior to 2009 which precipitated several breaches of the GOJ's Public Sector Procurement Procedures (2008 November).

Having regard to the aforementioned, and the information which was provided to the OCG, the OCG has concluded that the contracts which were awarded to the JTS were awarded without the benefit of a competitive tender process and, as such, the OCG cannot determine if such awards were in fact meritorious. In this regard, the OCG has concluded that the contract award process was not transparent.

7. The OCG has also concluded, based upon the representations which were made by Dr. Wesley Hughes, the Financial Secretary, that the "*NYS is a public body constituted under the National Youth Service Act which receives a monthly subvention from the Ministry of Education.*"¹⁵⁷ Accordingly, and in keeping with the documentary evidence which has been provided by Dr. Wesley Hughes, the OCG can conclude that the Accounting Officer at the Ministry of Education, is the Permanent Secretary, who is also the Accounting Officer for the NYS.

¹⁵⁷ Letter which was dated 2009 August 10, from Mrs. Audrey Sewell Permanent Secretary, Ministry of Education to the OCG

REFFERALS

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.”¹⁵⁸ (OCG Emphasis)

Having regard to the Findings and Conclusions, and concerns of the OCG, which have been set out herein and, having regard, in particular, to, *inter alia*, (a) the significant governance deficiencies which have been identified in the operation and management of procurement at the NYS, inclusive of the highly irregular contract awards, by the entity, to the JTS; (b) the NYS’ flagrant breaches of the GPPH (2001 May and 2008 November) and the Contractor General Act; (c) the absence of appropriate or satisfactory documentation to substantially evidence the process which led to the award of certain contracts; and (d) the failure of the NYS to obtain relevant approvals based upon the GOJ’s prescribed procurement thresholds, the OCG is of the considered opinion that the referenced breaches warrant the immediate attention of the Auditor General (AG). The position of the OCG is based upon the following:

1. Having regard to the failure of the NYS to adhere to the strictures of the GOJ Procurement Guidelines, the OCG is hereby referring a copy of its Report of Investigation to the Auditor General for such further action as the Auditor General may

¹⁵⁸ Contractor-General Act 1983

deem to be applicable, in light of the numerous contracts which were awarded in contravention of the GOJ Public Procurement Guidelines, and the attendant Public Sector Procurement Regulations, and which resulted in payments in excess of J\$15 million, per annum, to the JTS, for the period of 2006 through to 2008.

In particular, during the referenced period, the NYS failed to prepare a formal written contract to govern its contractual relation with the JTS but, instead, relied upon approved Rate Sheets as the principal basis of its engagement of the services of the JTS.

2. While the OCG is cognizant of the fact that the Auditor General had initiated and completed an Audit of the NYS and has specifically examined the referenced procurement, the OCG has, however, deemed it prudent to refer the matter for further review, as the Auditor General may deem applicable, in light of fact that referenced contract was awarded without the authorization of the Permanent Secretary and also in light of the remedial and other related actions which have already been reportedly taken by the NYS with respect to (a) its procurement activities, (b) its management and disbursement of public funds, (c) the conduct of Procurement workshops and (d) the sensitization of procurement officers with the upgraded procurement guidelines.
3. The OCG is hereby referring its Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police on the basis that it has found, herein, *prima facie* evidence that the then Accountable Officers of the NYS, who signed and submitted the QCA Reports which reported the contracts which were awarded to the JTS, and, in particular, which reported that several contracts during the period of 2006 through to 2008 were awarded to the JTS using the Limited Tender Procurement Methodology, despite the fact that the foregoing contract was only subject to a semblance of the Limited Tender Procurement Methodology once in 2005 and a Selected Tender Procurement Methodology in 2009, have committed a breach of Section 29 (a) and 29 (b) (ii) of the Contractor General Act, and by doing so, have committed a criminal offence.

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)

1. The OCG has found that there were breaches of the procurement guidelines, by the NYS, with respect to securing the requisite approvals of the Accounting Officer, the NCC and the Cabinet. In this regard, the OCG recommends that the Ministry of Education 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.
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 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 found that the NYS' engagement of the JTS was consummated as a result of an unsolicited proposal. According to Mr. Ricardo James, JTS in his sworn response to the OCG, *"...I sent our information to hundreds of places both government and private sector institutions. Two of my sub-contractors, Paul Dixon and Joseph Ramcharan in discussion with them expressed an idea to me, they said based on the fact that I had an islandwide reach and they were involved in transporting NYS persons on call, I should approach the head office with a proposal for the overall management of NYS contracts because they were having problems with some parish operators . I did just that and the idea was embraced by Mr. Carlando Francis who was suggested at NYS to be the person in charge of that aspect at the time.*

He said the timing was good because NYS wanted to come out of the parish by parish arrangements which had problems of punctuality, uneven standards and the boisterous affairs whenever the time span in collecting cheques was too long.

He stated that I should give him a quotation and he would compare with the current expenses and would get back to me as soon as possible... ”¹⁵⁹

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

¹⁵⁹ Mr. Ricardo James' sworn response to the OCG's Requisition which was dated 2009 September 15.

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.

8. Finally the OCG recommends that due to the fact that the transportation requirement at the NYS is unpredictable, the entity could utilize a Frame Work Agreement for transportation services. Volume 2 of the Second Revised Handbook of Public Sector Procurement Procedures (the "Second Revised Handbook" or "SRHPP") 2010 December 10, Appendix 4, *"Procuring Entities may enter into Framework Agreements (FAs). Under these Agreements, a contractor commits to supplying the purchaser with goods and related services "as and when" required and on a pricing basis, according to stated terms and conditions. Framework Agreements may be used to supply off-the-shelf, readily available products. A Framework Agreement is not a contract, therefore, quantities and delivery dates cannot be determined in advance. Any "call-up" made against an FA represents acceptance, by a purchaser, of the terms and conditions. As such, it is the "call-up" which forms the contract that would be submitted for approval by the Head of the Procuring Entity, NCC or Cabinet, as the value warrants.*

Framework Agreements can be made between:

- (a) a single contractor and a single purchaser;*
- (b) a single contractor and multiple purchasers;*
- (c) multiple contractors and a single purchaser; and*
- (d) multiple contractors and multiple purchasers.*

Framework Agreements should be used when the overall requirements are known, but the specific quantity and delivery date of any particular good may not be known. Bids shall be solicited for the selection of a contractor to provide the necessary goods as and when they are required.

The Bidding Documents shall state that the Procuring Entity does not necessarily intend to enter into a contract – that is, currently, or ever. Rather, the intention is merely to establish the best source of a future supply, based upon firm prices and pre-determined conditions over a specified validity period.

NOTE: Care shall be taken when providing contractor(s) with an estimated quantity of goods and related services. In general, contractors will quote lower prices if there is a reasonable possibility that a firm amount will be ordered. If possible, the Bidding Documents should provide contractors with the minimum estimated quantity which may be ordered. Until an actual call-up document is issued, NO GUARANTEE shall be given that any amount will be ordered. The contractor may withdraw from the FA under pre-determined conditions, and would then have no further obligation to fill orders which are issued after the agreed withdrawal date.

A4.1 CRITERIA FOR ESTABLISHING FRAMEWORK AGREEMENTS

The following criteria should be satisfied in order to establish a Framework Agreement with a contractor:

- (a) the goods and related services should be clearly identified;*

- (b) the goods and related services should be commercially available; and*
- (c) the prices should be pre-determined and firm.*

A4.2 CHARACTERISTICS OF FRAMEWORK AGREEMENTS

Framework Agreements should have the following characteristics:

- (a) unit prices established as a result of a Competitive Bidding process;*
- (b) delivery dates stipulated in terms of a time period from the date of the call-up;*
- (c) stipulations regarding the limit on total expenditure;*
- (d) stipulated limits on individual call-up expenditure; and*
- (e) a stipulated validity period - usually, FAs are valid for at least twelve (12) months. The period of validity should be the expiry date, or when the limit on total expenditure is reached, whichever comes first.*

For multi-year FAs, there may be a clause allowing for a price increase due to inflation.

Framework Agreements shall be concluded through competitive tender.

NOTE: Procuring Entities shall obtain approval for Direct Contracting when seeking to establish a Framework Agreement with one contractor, when other contractors are available.

When a call-up against a FA is done, the call-up shall show the exact quantity and description of the required goods and related services, the packing and routing instructions, the delivery points and dates. The unit price and total price of the callup, including freight, shall be confirmed; and the contractor should be requested to acknowledge receipt of the call-up.

GoJ may enter into Framework Agreements on an annual basis for the supply of commonly used disposable goods and services, e.g. GoJ's Framework Agreement for the supply of fuel. These agreements may be entered into by the Ministry of Finance on behalf of GoJ, and reflected in an annual GoJ Schedule of Framework Agreements ("Schedule"). Contracts awarded will be in respect of goods and services for the following entities:

- (b) Central Government Ministries;*
- (b) Central Government Departments; and*
- (c) any other Procuring Entity (at its option)."*

Applicable procedures will be contained within the Schedule that is disseminated to Procuring Entities one month prior to the start of each fiscal year."¹⁶⁰

¹⁶⁰ Volume 2 of the Second Revised Handbook of Public Sector Procurement Procedures (the "Second Revised Handbook" or "SRHPP") 2010 December 10, Appendix 4.