



## **INTEGRITY COMMISSION**

### **Special Report of Investigation**

#### **Conducted into Alleged Acts of Irregularity and Impropriety Surrounding the Submission of 'Forged' National Contracts Commission (NCC) Registration Letter by Orchard Solutions Limited**

#### **National Contracts Commission**

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#### National Contracts Commission

### PREFACE

In 2017, the Government of Jamaica enacted the Integrity Commission Act (ICA), which retroactively became effective on February 22, 2018, as per Gazette dated March 7, 2017. The enactment and subsequent gazette of the ICA, which partially repealed the Contractor General Act (1983), and established the Integrity Commission (IC).

Consequently, Sections 1 and 5 of the Integrity Commission Act (ICA), fully subsumed the Office of the Contractor General (OCG), and its functions into the operations of the IC. Section 63(2)(b) of the ICA provides, *inter alia*, as follows:

*“The Commission established under this Act may -*

*...*

*(b) continue to do any act, thing or investigation which was pending before the appointed day.”*

### INTRODUCTION



In the foregoing regard, and in relation to the then applicable Contractor General Act (CGA), 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 in April 2016, into the alleged submission of a ‘*forged*’ National Contracts Commission (NCC) Registration Certificate by Orchard Solutions Limited to Petrojam Limited. The referenced NCC Certificate was submitted in response to Petrojam Limited’s Tender for the provision of “*Street and Flood Lamps Fixtures RFQ# 6000014095*”.

Section 15 (1) of the Act provides that:

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

- (a) the registration of contractors;*
- (b) tender procedures relating to contracts awarded by public bodies;*
- (c) the award of any government contract;*
- (d) the implementation of the terms of any government contract;*
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) **the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences**”.*<sup>1</sup> (OCG Emphasis)

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*”.

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<sup>1</sup> The Contractor General Act, Section 15(1).



The OCG’s decision to commence an Investigation into the referenced matter was based on an email correspondence dated March 27, 2014, at 9:35 a.m. from Petrojam Limited which stated, *inter alia*, as follows:

*“... Petrojam was utilizing the Limited Tender methodology and Orchard was one of the possible suppliers to be used. My staff member was not sure if they had registration in the required category and so went on the NCC website to check.*

*When they looked in the categories in which the letter says they are registered, they did not see Orchard in the categories shown on the letter. This is what prompted the checks.<sup>2</sup>*

Having regard to the referenced allegation, the OCG sought to determine, *inter alia*, whether Orchard Solutions Limited submitted a ‘*forged*’ NCC Registration Certificate to Petrojam Limited with the prospect of being awarded the contract for the referenced tender.

The foregoing objective formed the basis of the OCG’s Terms of Reference for its Investigation and was primarily developed in accordance with the provisions which are contained in Sections 4(1) and Section 15 (1) (a) to (d) of the Contractor General Act.

The findings of the OCG’s Investigation are premised primarily upon an analysis of the documentary evidence which was provided by Petrojam Limited and a review of the NCC’s List of Registered Public Sector Suppliers – Goods and Services Database.

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<sup>2</sup> Email correspondence dated March 27, 2014, from Petrojam Limited to the OCG.



## **JURISDICTION**

Detailed below is the legal basis upon which the Contractor General has enquired into the subject matter. The OCG's decision to undertake an Investigation into this matter is predicated upon the gravity of the allegations mentioned herein and which highlights issues of irregularity and impropriety contrary to Section 4 of the Contractor-General Act. The jurisdiction of the Contractor General also enables the OCG to enquire into the circumstances surrounding the referenced allegations in keeping with Sections 15 (1) and 16 of the Contractor General Act.

Instructively, Section 2 of the Contractor-General Act provides the following interpretation:

- *“government contract includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;” ...*
  
- *“public body means –*
  - a. a Ministry, department or agency of government;*
  - b. a statutory body or authority;*
  - c. any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company”*

Based upon the definition of a public body, as noted above, the NCC is in fact a public body as defined by the Act. Further, pursuant to Section 15(1) of the Contractor General Act, tender procedures relating to contracts awarded by public bodies fall within the jurisdiction of the Contractor General.



## **TERMS OF REFERENCE**

The OCG, having considered the allegation and its obligation to ensure probity and transparency into the registration of contractors and the tender procedures relating to contracts awarded by public bodies, sought to ascertain the following:

1. Whether the entity, Orchard Solutions Limited, submitted a forged NCC Registration letter to Petrojam Limited with respect to the referenced tender for the provision of Street & Flood Lamps Fixtures ; and
2. Whether Orchard Solutions Limited was registered with the NCC at the time the entity submitted its quotation to Petrojam Limited in response to the referenced Request for Quotation (RFQ) for the provision of Street & Flood Lamps Fixtures.



## **FINDINGS OF FACT**

1. On Friday March 21, 2014, Petrojam Limited received an email correspondence from Orchard Solutions Limited in response to a Request for Quotation for the provision of Street & Flood Lamps Fixtures in the amount of US\$73,288.50.

In addition to its quotation, Orchard Solutions Limited submitted a NCC Registration Letter dated December 2, 2013, with an expiry date of May 29, 2015.

2. An internal review of Orchard Solutions Limited's registration with the NCC revealed that the last application for re-registration which was made by the entity was dated April 17, 2012. The referenced application was processed and approved on May 30, 2012, for a period of twelve (12) months, with an expiration date of May 29, 2013.

Subsequent to a change in policy by the NCC, the period of registration of all contractors was extended from twelve (12) months to eighteen (18) months. As a result, the NCC extended Orchard Solutions Limited's re-registration for an additional six (6) months with an expiration date of November 29, 2013.

3. The OCG has seen no evidence to indicate that Orchard Solutions Limited was registered with the NCC during the period December 2, 2013 to May 29, 2015.
4. A review of the NCC's Contract Management System database revealed that the status of Orchard Solutions Limited's registration with the Commission at present date is "*Expired*".
5. In relation to the December 2, 2013 Registration letter which was submitted by Orchard Solutions Limited to Petrojam Limited, the following observations were made:



- (a) The font size of the date, the registration expiry date, as well as the approval date, as reflected on the referenced letter, are slightly smaller than the font size for the other characters in the letter, which is uncommon in a typical registration letter issued by the NCC;
  - (b) The stamp which was used to approve the referenced letter was retired by the NCC prior to December 2, 2013;
  - (c) The stated letter displayed a special reference number of 1207, which is only displayed on initial letters of approval following the extension of the registration period from one (1) year to eighteen (18) months; and
  - (d) The referenced December 2, 2013 Registration letter does not form a part of the NCC's records. It is customary for the NCC to retain a record of all letters which are submitted to contractors.
6. The approval dates of applications for registration with the NCC are usually consistent with the dates on which NCC meetings are held, with the exception of applications approved by way of a round robin. If an application for registration with the NCC was approved by way of a round robin, same would be ratified in the subsequent meeting of the Commission.
7. **The NCC did not convene a meeting on Monday, December 2, 2013. It is customary for the NCC to convene on Wednesdays. Further, had the approval been granted by way of a round robin, same would have been ratified in the meeting of the NCC which was held on December 4, 2013. The Meeting Minutes of the NCC dated December 4, 2013 did not reflect that any such approval was ratified.**
8. The quotation submitted by Orchard Solutions Limited to Petrojam Limited was not signed by a representative of Orchard Solutions Limited or any other individual.
9. The shareholders/directors of Orchard Solutions Limited are Neville Parnell (Engineer) and Nevannie Chantilly Parnell (Business Woman). Ms. Nevannie Chantilly Parnell was





also listed as the Company's Secretary. Both individuals have been directors of the company since its incorporation on October 29, 2009. Errol Aitken (Businessman) was listed as a ceased director on April 28, 2015. There are no details in relation to the date Mr. Aitken became a director of Orchard Solutions Limited.



## **DISCUSSION OF FINDINGS**

### **The Allegation**

On March 27, 2014, the OCG's then Technical Services (Good and Services) Manager, received an email correspondence from a representative of Petrojam Limited. The email correspondence indicated that Orchard Solutions Limited, in response to a Request for Quotation from Petrojam Limited, for the provision of Street & Flood Lamps Fixtures, submitted a forged NCC Registration letter.

The referenced email stated, *inter alia*, that:

*“... Petrojam was utilizing the Limited Tender methodology and Orchard was one of the possible suppliers to be used. My staff member was not sure if they had registration in the required category and so went on the NCC website to check.*

*When they looked in the categories in which the letter says they are registered, they did not see Orchard in the categories shown on the letter. This prompted the checks.”*

The quotation and the referenced NCC registration letter were submitted to Petrojam Limited from [orchelect@cwjamaica.com](mailto:orchelect@cwjamaica.com) on March 21, 2014 at 12:24 p.m.

The OCG attaches hereunder a copy of the alleged forged NCC registration letter:



Any reply or acknowledgment in this communication should be addressed to the National Contracts Commission and the following reference quoted:-

Special Ref No: 1207

Telephone No. : 929-8560/6466

FAX No. : 929-7333

E-Mail: [ncc@ncc.gov.jm](mailto:ncc@ncc.gov.jm)

Registration No: 7910

2013 December 2

Manager  
ORCHARD SOLUTIONS LIMITED  
22 Retirement Road,  
Kingston 5

Dear Sirs,

This serves to notify that your application to the Government of Jamaica has been placed in the following category:

- Electrical and Communication
- Electrical Appliance and

This registration is valid for eighteen months.

Please take careful note of the expiration date of the registration, which is no later than eight (8) weeks before the end of the registration period.

Yours truly,

  
.....  
For National Contracts Commission



Having carefully examined the referenced letter, the OCG has observed that the font size of the date, the registration expiry date, as well as the approval date, as reflected on the referenced letter, are slightly smaller than the font size for the other characters in the letter. It is instructive to note that on a typical NCC letter, the font size of all the characters are the same.

Additionally, the OCG highlights the following email correspondence dated April 29, 2014 from the Technical Services (Good and Services) Manager, OCG, which was addressed to Mr Dirk Harrison, Contractor General:

**“...The document submitted by Orchard Solutions appeared to have been tampered with and therefore contact was made with [OCG Officer] regarding the matter and a copy of the document submitted by Orchard Solutions to Petrojam Limited was also forwarded.**

**The following anomalies were identified...:**

1. **The date of the letter was changed and the type font different from the rest of the document**
2. **The date of expiry was indicated as 2015 May 29 (type font different as well) – the date of expiry is November 29, 2013**
3. **The NCC Approved Stamp date was changed to December 02, 2013 – further the stamp shown was no longer in use as at that date.**
4. **The letter also displayed a special reference number of 1207. A special reference**



number was  
indicated only on initial letters of approval  
following the extension of the registration  
period from one year to eighteen months.<sup>3</sup>  
(OCG Emphasis)

Along with the referenced NCC Registration letter, a quotation was submitted by Orchard Solutions Limited to Petrojam Limited on a Request for Quotation form. The Vendor's address was stated as "*Orchard Solutions Limited, 22 Retirement Road Kingston 5*". Two (2) Orchard Solution Limited's stamps were also placed on the document. Further, the form included the following:

*"Vendor Quote Information submitted by:*

*Print Name* \_\_\_\_\_

*Signature* \_\_\_\_\_"

The total amount quoted by Orchard Solutions Limited was US\$73,288.50.

Of note, the sections above were not completed and as such there is no evidence of the identity of the representative of Orchard Solutions Limited or any other individual who submitted the quotation.

In furtherance of its Investigation, the OCG sought to ascertain the particulars of the directors and/or shareholders of Orchard Solutions Limited by undertaking a comprehensive review of the Companies Office of Jamaica online database<sup>4</sup>. The OCG's review outlined, *inter alia*, the following:

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<sup>3</sup> Email correspondence dated April 29, 2014 from Technical Services (Good and Services) Manager, OCG, and addressed to Mr. Dirk Harrison, Contractor General.

<sup>4</sup> Companies Office of Jamaica website accessed at <https://www.orcjamaica.com/PrintCompanyDetails.aspx?cId1=1bc4c449-737a-48ae-8c1f-15ca5a70c8cb> on December 6, 2017.



1. The shareholders/directors are:
  - (a) Neville Parnell (Engineer); and
  - (b) Nevannie Chantilly Parnell (Business Woman).

Ms. Nevannie Chantilly Parnell was also listed as the Company's Secretary. Both individuals have been directors of the company since the date of incorporation on October 29, 2009.

2. Errol Aitken (Businessman) was listed as a ceased director on April 28, 2015. There are no details in relation to the date Mr. Aitken became a director of Orchard Solutions Limited.



## **The OCG's Internal Review into Limited**

## **the Registration of Orchard Solutions**

In light of the gravity of the allegations mentioned herein, the OCG deemed it prudent to conduct a review of the registration of Orchard Solutions Limited with the NCC. Upon the completion of its review, the OCG observed that the last application for re-registration which was made by Orchard Solutions Limited to the NCC was dated April 17, 2012. The referenced application was processed and approved on May 30, 2012, for a period of twelve (12) months, with an expiration date of May 29, 2013.

Subsequently, the NCC implemented a policy to extend the period of registration of all contractors from a period of twelve (12) months to eighteen (18) months. The OCG further observed a letter of registration which was issued to Orchard Solutions Limited and which was dated October 1, 2012. As a result of this change in policy, the stated letter indicated that the NCC extended Orchard Solutions Limited's re-registration for an additional six (6) months with an expiration date of November 29, 2013. A copy of this letter is attached hereunder:



Any reply or subsequent reference to this communication should be addressed to the National Contracts Commission and the following reference quoted -

Special Ref No.: 1207

TELEPHONE No. : 929-8560/6466

FAX No. : 929-7335

E-Mail : [ncc@ocg.gov.jm](mailto:ncc@ocg.gov.jm)

Registration No: 7910

2012 October 1

Manager  
ORCHARD SOLUTIONS LIMITED  
22 Retirement Road,  
Kingston 5

Dear Sirs,

This serves to notify that your application to the Government of Jamaica has been accepted and has been placed in the following category:

- **Electrical and Communication**
- **Electrical Appliance and**

This registration is valid for eighteen (18) months.

Please take careful note of the expiration date of this registration, which is valid for a period of **no later than eight (8) weeks before** the expiration date.

Yours truly,

.....  
**For National Contracts Commission**





At this juncture, the OCG notes with importance the NCC's directive to Orchard Solutions Limited in the abovementioned letter of October 1, 2012 that subsequent applications for re-registration should not be made "...***no later than eight (8) weeks before the expiry date...***". Upon the expiry of Orchard Solutions Limited's re-registration with the NCC on November 29, 2013, the OCG conducted a review of the NCC's Contract Management System database, which revealed that the entity's status as at present date<sup>5</sup> is "*Expired*". Additionally, the OCG has found no evidence to indicate that Orchard Solutions Limited submitted an application for re-registration with the NCC which would account for the purported Registration letter dated December 2, 2013.

The OCG, in a further attempt to verify the authenticity of the stated December 2, 2013 Registration letter, reviewed the Meeting Minutes of the NCC of even date. Of note, the date of approval for an application for re-registration is usually consistent with the date of the NCC meeting, unless such an application was approved by way of a round robin. In the event that the stated application was approved by way of a round robin, same would be ratified in a subsequent meeting of the NCC.

In point of fact, the OCG has found no evidence to indicate that a meeting of the NCC was held on December 2, 2013. However, the OCG observed that a meeting of the NCC was held on December 4, 2013, the Meeting Minutes of which did not reflect that such an approval was ratified.

It is instructive to note that Section 3 of the Forgery Act defines "forgery" as "*the making of a false document in order that it may be used as genuine...and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided.*"

According to the referenced Act, a document is false where, any "...*whole or any material part thereof purports to be made by, or on behalf or on account of a person who did not make it nor authorize its making; or if, though made by, or on behalf or on account of, the person by whom*

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<sup>5</sup> As at the date of the OCG's Investigation



*or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein;*<sup>6</sup>

Further, Section 9 of the Forgery Act states as follows:

- (1) **Every person who utters any forged document, seal, or die, shall be guilty of an offence of the like degree (whether felony or misdemeanour), and on conviction there-of shall be liable to the same punishment, as if he himself had forged the document, seal, or die.**
- (2) **A person utters a forged document, seal, or die, who, knowing it to be forged, and with either of the intents necessary to constitute the offence of forging the document, seal, or die, uses, offers, publishes, delivers, disposes of, tenders in payment or in exchange, exposes for sale or exchange, exchanges, tenders in evidence, or puts off such forged document, seal, or die.**

(OCG Emphasis)

Pursuant to the Forgery Act, the OCG notes that the NCC Registration letter dated December 2, 2013 which was submitted by Orchard Solutions Limited is false as it was purported to be made by the NCC, which did not “*authorize its making*”. Further, the action of Orchard Solutions Limited in the above regard, constitutes the offence of uttering a forged document.

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<sup>6</sup> Section 3(2) of the Forgery Act.



## CONCLUSIONS

Based upon the documentary evidence submitted to the OCG by Petrojam Limited and the NCC, the OCG has arrived at the following considered conclusions:

1. The OCG concludes, *prima facie*, that Orchards Solutions Limited submitted a forged NCC Registration letter dated December 2, 2013, to Petrojam Limited in response to a Request for Quotation for the provision of Street & Flood Lamps Fixtures.
2. The submission of the forged NCC Registration letter is a criminal offence “...*punishable with imprisonment with hard labour for any term not exceeding seven years*” pursuant to Section 5 of the Forgery Act.
3. The submission of the NCC Registration letter by Orchard Solutions Limited constitutes the criminal offence of uttering a forged document. Pursuant to Section 9 of the Forgery Act, “*a person utters a forged document..., who knowing it to be forged, and with either of the intents to constitute the offence of forging...*”
4. The OCG concludes that Orchard Solutions Limited **was not** registered with the NCC during the period December 2, 2013 to May 29, 2015.



## **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. In keeping with Section 1.3.2 of the Government of Jamaica Handbook of Public Sector Procurement Procedures, the OCG recommends that Orchards Solutions Limited be suspended or barred from participation in future Government of Jamaica procurement opportunities, pursuant to the consideration of the NCC.

Further, the OCG wishes to remind contractors of Section 1.3.2 , Volume 2 of the Government of Jamaica Handbook of Public Sector Procurement Procedures, which provides information pertaining to following:

### **“DEBARMENT,       SUSPENSION       AND INELIGIBILITY**

*A contractor may be disqualified and/or stricken from the NCC Register of Public Sector Contractors without liability to GoJ, if it is found at any time, that the information submitted concerning his/her qualifications was deliberately falsified. Procuring Entities should, therefore, report any such findings to the NCC promptly, along with any evidence substantiating the falsification. Contractors may also be disqualified, suspended, or stricken from the*



NCC Register without liability to GoJ, for reasons of poor performance.”

2. The OCG recommends that all public bodies develop the practice of verifying the NCC registration of all prospective contractors. The OCG considers this recommendation to be absolutely important as there is no latitude for Contractors who provide false information or misrepresent information in the public procurement process.

In this regard, Petrojam Limited must be commended for taking the initiative to independently verify the authenticity of the NCC Registration letter as well as to ensure compliance with the required NCC category. If this verification exercise was not conducted, the discrepancy, in relation to the status of Orchard Solutions Limited’s registration with the NCC may not have been identified.

3. In keeping with the findings and conclusions, relating to, *inter alia*, the forged NCC Registration letter. It is being recommended that the matter be referred to the Fraud Squad Division of the Jamaica Constabulary Force (JCF) to undertake further investigation and any other action, which may be deemed appropriate.

This recommendation is being made on the basis that Orchard Solutions Limited, *prima facie*, submitted a forged NCC Registration letter to Petrojam Ltd. in response to a Request for Quotation for the provision of Street & Flood Lamps Fixtures, in contravention of Sections 5 and 9 of the Forgery Act.